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THE EUROPEAN UNION**

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**NOTE**

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From: Presidency

To: Delegations

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Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF  
THE COUNCIL on insurance mediation (recast)  
*- Presidency compromise*

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Delegations will find below the second Presidency compromise on the abovementioned proposal.

With respect to the first Presidency compromise, the new text is marked in **underlined bold** and deletions are indicated in ~~strikethrough~~.

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on insurance ~~mediation~~ **distribution**

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 53(1) and 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee,

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) A number of amendments are to be made to Directive 2002/92/EC of the European Parliament and the Council of 9 December 2002 on insurance mediation<sup>1</sup>. In the interests of clarity, that Directive should be recast.
- (2) Since the main objective and subject-matter of this proposal is to harmonise national provisions concerning the mentioned areas, the proposal should be based on Article 53(1) and 62 TFEU. The form of a Directive is appropriate in order to enable the implementing provisions in the areas covered by this Directive, when necessary, to be adjusted to any existing specificities of the particular market and legal system in each Member State. This Directive should also aim at coordinating national rules concerning the access to the activity of insurance and reinsurance mediation, and is therefore based on Article 53(1) of the Treaty. In addition, since this is a sector offering services across the Union, this Directive is also based on Article 62 of the Treaty.
- (3) Insurance and reinsurance intermediaries play a central role in the distribution of insurance and reinsurance products in the Union.
- (4) Various types of persons or institutions, such as agents, brokers and 'bancassurance' operators, insurance undertakings, travel agents and car rental companies can distribute insurance products. Equality of treatment between operators and customer protection requires that all these persons or institutions be covered by this Directive.
- (5) The application of Directive 2002/92/EC has shown that a number of provisions require further precision with a view to facilitating the exercise of insurance and reinsurance mediation and that the protection of consumers requires an extension of the scope of that Directive to all sales of insurance products, whether by insurance intermediaries or insurance undertakings. In respect of their sales, after-sales and claims processes insurance undertakings which sell directly insurance products, should be brought into the scope of the new Directive on a similar basis as insurance agents and brokers.

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<sup>1</sup> OJ L 9, 15.1.2003, p. 3.

- (6) In order to guarantee that the same level of protection applies regardless of the channel through which consumers buy an insurance product, either directly from an insurance undertaking or indirectly from an intermediary, the scope of ~~the~~**this** Directive needs to cover not only insurance undertakings but other market participants who sell insurance products on an ancillary basis (e.g. travel agents and car rental companies, suppliers of goods not meeting conditions for the exemption).
- (7) This Directive should apply to persons whose activity consists of assisting (whether on behalf of a customer or an insurance undertaking) in the administration and performance of a contract of insurance or reinsurance.
- (8) There are still substantial differences between national provisions which create barriers to the taking-up and pursuit of the activities of insurance and reinsurance intermediaries in the internal market.
- (9) Current and recent financial turbulence has underlined the importance of ensuring effective consumer protection across all financial sectors. It is appropriate therefore to strengthen the confidence of customers and to make regulatory treatment of the distribution of insurance products more uniform in order to ensure an adequate level of customer protection across the Union. Measures to protect customers should be adapted to the particularities of each category of customers (professional or other).
- (10) This Directive should apply to persons whose activity consists of providing insurance or reinsurance mediation services to third parties for remuneration, which may be pecuniary or take some other form of agreed economic benefit tied to performance.

- (11) This Directive should apply to persons whose activity consists of the provision of information on one or more contracts of insurance or reinsurance in response to criteria selected by the customer whether via an aggregator or price comparison website or other means, or the provision of a ranking of insurance or reinsurance products or a discount on the price of a contract, when the customer is able to directly conclude an insurance contract at the end of the process either using the aggregator or price comparison website or by concluding the contract directly with an insurance undertaking; it should not apply to mere introducing activities consisting of the provision of data and information on potential policyholders to insurance or reinsurance intermediaries or undertakings or of information about insurance or reinsurance products or an insurance or reinsurance intermediary or undertaking to potential policyholders.
- (12) This Directive should not apply to persons with another professional activity, such as tax experts, accountants or lawyers, who provide advice on insurance cover on an incidental basis in the course of that other professional activity, neither should it apply to the mere provision of information of a general nature on insurance products, provided that the purpose of that activity is not to help the customer conclude or fulfil an insurance or reinsurance contract.
- (13) This Directive should not apply to persons practising insurance mediation as an ancillary activity under certain restrictions regarding the policy, in particular the knowledge required to sell it, the risks covered and the amount of premium.
- (14) This Directive defines 'tied insurance intermediary' to take account of the characteristics of certain Member States' markets and to establish conditions applicable to such intermediaries.

- (15) Insurance and reinsurance intermediaries who are natural persons should be registered with the competent authority of the Member State where they have their residence ; those which are legal persons should be registered with the competent authority of the Member State where they have their registered office (or, if under their national law they have no registered office, their head office), provided that they meet strict professional requirements in relation to their ability, good repute, professional indemnity cover and financial capacity. Insurance intermediaries already registered in Member States shall not be required to register again under this Directive.
- (16) Insurance and reinsurance intermediaries should be able to avail themselves of the freedom of establishment and the freedom to provide services which are enshrined in the Treaty. Accordingly, registration with or a declaration to their home Member State should allow insurance and reinsurance intermediaries to operate in other Member States in accordance with the principles of freedom of establishment and freedom to provide services, provided that an appropriate notification procedure has been followed between the competent authorities.
- (17) *deleted*
- (18) In order to enhance transparency and facilitate cross-border trade, EIOPA should establish, publish and keep up to date a single electronic database containing a record of each insurance and reinsurance intermediary which has notified an intention to exercise its freedom of establishment or to provide services. Member States should provide relevant information to EIOPA promptly to enable it to do this. This database should show a hyperlink to each relevant competent authority in each Member State. Each competent authority of each Member State should show on its website a hyperlink to this database.
- (19) The relative rights and responsibilities of home and host Member States in respect of the supervision of insurance and reinsurance intermediaries registered by them or carrying on insurance or reinsurance mediation activities within their territory in exercise of the rights of freedom of establishment or freedom to provide services, should be clearly established.

- (20) Member States should not apply the registration requirements to insurance intermediaries which conduct insurance mediation in relation to certain types of insurance contract on an ancillary basis, provided that they comply with the requirements of this Directive as to knowledge and ability and good repute and the applicable information and conduct of business requirements, and a declaration of activity has been submitted to the competent authority.
- (21) The inability of insurance intermediaries to operate freely throughout the Union hinders the proper functioning of the single market in insurance.
- (22) It is important to guarantee a high level of professionalism and competence among insurance and reinsurance intermediaries and the employees of direct insurers who are involved in activities preparatory to, during and after the sales of insurance policies. Therefore, the professional knowledge of an intermediary, of the employees of direct insurers, and of car rental companies and travel agents needs to match the level of complexity of these activities. Continuing education should be ensured.
- (23) The coordination of national provisions on professional requirements and registration of persons taking up and pursuing the activity of insurance or reinsurance mediation can contribute both to the completion of the single market for financial services and to the enhancement of customer protection in this field.
- (24) In order to enhance cross border trade, principles regulating mutual recognition of intermediaries' knowledge and abilities should be introduced.

- (25) A national qualification accredited to level 3 or above under the European Qualification Framework established under the Recommendation of the European Parliament and Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning<sup>2</sup> should be accepted by a host member state as demonstrating that an insurance or reinsurance intermediary meets the requirements of knowledge and ability which are a condition of registration in accordance with this Directive. This framework helps Member States, education institutions, employers and individuals compare qualifications across the Union's diverse education and training systems. This tool is essential for developing a employment market throughout the Union. This framework is not designed to replace national qualifications systems but to supplement the actions of the Member States by facilitating cooperation between them.
- (26) Despite the existing single passport systems for insurers and intermediaries, the European insurance market remains very fragmented. In order to facilitate cross-border business and enhance transparency for consumers, Member States shall ensure publication of the general good rules applicable in their territories, and a single electronic register and information on all Member States' general good rules applicable to insurance and reinsurance mediation should be made publicly available.
- (27) Cooperation and exchange of information between the competent authorities are essential in order to protect customers and ensure the soundness of insurance and reinsurance business in the single market.

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<sup>2</sup> OJ C 111. 6.5.2008.. p.1.



- (28) There is a need for appropriate and effective out-of-court complaint and redress procedures in the Member States in order to settle disputes between insurance intermediaries or undertakings and customers, using, where appropriate, existing procedures. Effective out-of-court complaint and redress procedures should be available to deal with disputes concerning rights and obligations established under this Directive between insurance undertakings or persons selling or offering insurance products and customers. In order to ensure legal certainty, the provisions of Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) should be applicable to the out of court settlement of disputes between insurance intermediaries, insurance undertakings or persons carrying out the activity of insurance mediation on an ancillary basis and customers.

Without prejudice to the right of customers to bring their action before the courts, Member States should ensure that ADR entities dealing with disputes referred to under this Directive cooperate in resolving cross-border disputes. Member States should encourage ADR entities dealing with such disputes to become part of FIN-NET<sup>3</sup>.

- (29) The expanding range of activities that many insurance intermediaries and undertakings carry on simultaneously has increased potential for conflicts of interest between those different activities and the interests of their customer. It is therefore necessary that Member States to provide for rules to ensure that such conflicts do not adversely affect the interests of the customer.

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<sup>3</sup> [http://ec.europa.eu/internal\\_market/fin-net/index\\_en.htm](http://ec.europa.eu/internal_market/fin-net/index_en.htm)

- (30) Consumers should be provided in advance with clear information about the status of the persons who sell the insurance product and about the remuneration which they receive. There is a need to introduce a mandatory status disclosure for European insurance intermediaries and insurance undertakings. This information should be given to the consumer at the pre-contractual stage. Its role is to show the relationship between the insurance undertaking and the intermediary (where applicable) as well as the structure and the content of the intermediaries' remuneration.
- (31) In order to mitigate conflicts of interest between the seller and the buyer of an insurance product, it is necessary to ensure sufficient disclosure of remuneration of insurance distributors. Accordingly, for life insurance products, the intermediary and the employee of the insurance intermediary or the insurance undertaking should be obliged to inform the customer about its remuneration, in advance of the sale. For other insurance products, subject to a transitional period of 5 years, the customer must be informed of the customer's right to request this information, which must be provided to the customer upon request.
- (32) In order to provide a customer with comparable information on the insurance mediation services provided regardless of whether the customer purchases through an intermediary, or directly from an insurance undertaking, and to avoid the distortion of competition by encouraging insurance undertakings to sell direct to customers rather than via intermediaries in order to avoid information requirements, insurance undertakings should also be required to provide information about remuneration to customers with whom they deal directly in the provision of insurance mediation services about the remuneration they receive for the sale of insurance products.
- (33) As the current proposal aims to enhance consumer protection, some of its provisions are only applicable in "business to consumer" (B2C) relationships, especially those which regulate conduct of business rules of insurance intermediaries or of other sellers of insurance products.
- (34) In order to avoid mis-selling cases, if necessary, the sale of insurance products should be accompanied with honest and professional advice.

- (35) It is essential for the customer to know whether he/she is dealing with an intermediary who is advising him on products from a broad range of insurance undertakings or on products provided by a specific number of insurance undertakings.
- (36) Due to the increasing dependence of consumers on personal recommendations, it is appropriate to include a definition of advice. Before advice is provided, the insurance intermediary or undertaking should assess the customer's needs, demands and its financial situation. If the intermediary declares that it is giving advice on products from a broad range of insurance undertakings, it should carry out a fair and sufficiently wide-ranging analysis of the products available on the market. In addition, all insurance intermediaries and insurance undertakings should explain the reasons underpinning their advice.
- (37) Prior to the conclusion of a contract, including in the case of non-advised sales, the customer should be given the relevant information about the insurance product to allow the customer to make an informed decision. The insurance intermediary should be able to explain to the customer the key features of the insurance products it sells.
- (38) Uniform rules should be laid down in order to give the person selling the insurance product a certain choice with regard to the medium in which all information is provided to the customer allowing for use of electronic communications where it is appropriate having regard to the circumstances of the transaction. However, the customer should be given the option to receive it on paper. In the interest of consumer access to information, all pre-contractual information should always be provided free of charge.
- (39) There is less of a need to require that such information be disclosed when the customer is seeking reinsurance or insurance cover for commercial and industrial risks, or is a professional customer (see Annex I of the Directive).

(40) This Directive should specify the minimum obligations which insurance undertakings and insurance intermediaries should have in providing information to customers. A Member State should be able to in this area maintain or adopt more stringent provisions which may be imposed on insurance intermediaries and insurance undertakings independently of the provisions of their home Member State where they are pursuing insurance mediation activities on its territory provided that any such more stringent provisions comply with Union law, including Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce)<sup>4</sup>. A Member State which proposes to apply and applies provisions regulating insurance intermediaries and the sale of insurance products in addition to those set out in this Directive should ensure that the administrative burden stemming from these provisions is proportionate for consumer protection. In the interest of consumer protection and in order to prevent mis-selling of insurance products, Member States should be permitted to apply exceptionally the more stringent requirements to such insurance intermediaries conducting insurance mediation on an ancillary basis if they consider it necessary and proportionate.

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<sup>4</sup> OJ L 138, 13.7.2000, p. 1.

- (41) Cross-selling practices are a common strategy for retail financial service providers throughout the Union. They can provide benefits to consumers but can also represent practices where the interest of consumers is not adequately considered. For instance, certain forms of cross-selling practices or products, namely tying practices where two or more financial services are sold together in a package and at least one of those services or products is not available separately, can distort competition and negatively affect consumers' mobility and their ability to make informed choices. An example of tying practices can be the necessary opening of current accounts when an insurance service is provided to a consumer in order to pay the premiums or the necessary conclusion of a motor insurance contract when a consumer credit is provided to a consumer in order to insure the financed car. While practices of bundling, where two or more financial services or products are sold together in a package, but each of the services can also be purchased separately, may also distort competition and negatively affect customer mobility and customers' ability to make informed choices, they at least leave choice to the customer and may therefore present less risk to the compliance of insurance intermediaries with their obligations under this directive. The use of such practices should be carefully assessed in order to promote competition and consumer choice.
- (42) Insurance policies with an investment element are often made available to customers as potential alternatives or substitutes to investment products subject to Directive [MiFID II]<sup>5</sup>. To deliver consistent investor protection and avoid the risk of regulatory arbitrage, it is important that insurance based investment products are subject to the same conduct of business standards: these include provision of appropriate information, requirements for advice to be suitable and restrictions on inducements, as well as requirements to manage conflicts of interest, and in the case of independent advisers, restrictions on the form of remuneration.

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<sup>5</sup> Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (Recast); COM(2011) 656 final.

The European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) should work together to achieve as much consistency as possible in the conduct of business standards for retail investment products that are subject to either [MiFID II] or to this Directive through guidelines. For insurance based investment products, the standards of this Directive which are applicable to all insurance contracts (Chapter VII of this Directive), and the enhanced standards for insurance based investment products are cumulative. Accordingly, persons carrying out insurance mediation in relation to insurance based investment products should comply with the conduct standards applicable to all insurance contracts as well as to the enhanced standards applicable to insurance based investment products.

- (43) In order to ensure compliance with the provisions of this Directive by insurance undertakings and persons who pursue insurance mediation, and to ensure that they are subject to similar treatment across the Union, Member States should be required to provide for administrative sanctions and measures which are effective, proportionate and dissuasive. A review of existing powers and their practical application has been carried out with the aim of promoting convergence of sanctions and measures in the Commission Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial sector<sup>6</sup>. Therefore, administrative sanctions and measures laid down by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or measure, publication, key sanctioning powers and levels of administrative pecuniary sanctions.
- (44) In particular, the competent authorities should be empowered to impose pecuniary sanctions which are sufficiently high to offset the benefits that can be expected and to be dissuasive even for larger institutions and their managers.
- (45) In order to ensure a consistent application of sanctions across Member States, when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, Member States should be required to ensure that the competent authorities take into account all relevant circumstances.

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<sup>6</sup> COM(2010)716.

- (46) In order to strengthen the dissuasive effect on the public at large and to inform about breaches of rules which may be detrimental to customer protection, sanctions and measures imposed should be published, except in certain well-defined circumstances. In order to ensure compliance with the principle of proportionality, sanctions and measures imposed should be published on an anonymous basis where publication would cause a disproportionate damage to the parties involved.
- (47) In order to detect potential breaches, the competent authorities should have the necessary investigatory powers, and should establish effective mechanisms to encourage reporting of potential or actual breaches.
- (48) This Directive should refer to both administrative sanctions and measures irrespective of their qualification as a sanction or a measure under national law.
- (49) This Directive should be without prejudice to any provisions in the laws of Member States in respect of criminal offences.
- (50) In order to attain the objectives set out in this Directive, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of details concerning notions of adequate knowledge and competence of the intermediary, management of conflicts of interest, conduct of business obligations in relation to insurance packaged retail investment products and procedures and forms for submitting information in relation to sanctions. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (51) Technical standards in financial services should ensure consistent harmonisation and adequate protection of consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust EIOPA with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.
- (52) By means of delegated acts pursuant to Articles 290 and 291 of the Treaty on the Functioning of the European Union and in accordance with Articles 10 to 15 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority)<sup>7</sup>, the Commission should adopt delegated acts as set out in Article 23 regarding management of conflicts of interest. These delegated acts and implementing technical standards should be developed in draft by EIOPA.
- (53) Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States<sup>8</sup> and Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data<sup>9</sup> shall govern the processing of personal data carried out by EIOPA within the framework of this Regulation, under the supervision of the European Data Protection Supervisor.

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<sup>7</sup> OJ L 331, 15.12.2010, p.48.

<sup>8</sup> OJ L 281, 23.11.1995, p. 31.

<sup>9</sup> OJ L 8, 12.1.2001, p. 1.



- (54) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, as enshrined in the Treaty.
- (55) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (56) A review of this Directive should be carried out five years after the date on which this Directive enters into force in order to take account of market developments as well as developments in other areas of Union law or Member States experiences in implementation of Union law, in particular with regard to products covered by Directive 2003/41/EC.
- (57) Directive 2002/92/EC should accordingly be repealed.
- (58) The obligation to transpose this Directive into national law should be confined to those provisions which represent an amendment of the substance of Directive 2002/92/EC. The obligation to transpose the provisions which are unchanged arises under Directive 2002/92/EC.
- (59) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of Directive 2002/92/EC,

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### SCOPE AND DEFINITIONS

#### *Article 1*

##### *Scope*

1. This Directive lays down rules concerning the taking-up and pursuit of the activities of insurance and reinsurance ~~mediation~~ **distribution**, by natural and legal persons which are established in a Member State or which wish to be established there.
2. This Directive shall not apply to persons providing ~~mediation~~ **insurance distribution** services for insurance contracts if all the following conditions are met:
  - (a) the insurance contract only requires knowledge of the insurance cover that is provided;
  - (b) the insurance contract is not a life assurance contract;
  - (c) the insurance contract does not cover any liability risks;
  - (d) the principal professional activity of the person is other than insurance ~~mediation~~ **distribution**;
  - (e) ~~the insurance is complementary to goods supplied by any provider, where such insurance covers the risk of breakdown, loss of or damage to the goods supplied by that provider;~~
  - (f) the amount of the ~~annual~~ premium for the insurance contract, when pro-rated to produce an annual amount, does not exceed EUR 600.

3. This Directive shall not apply to insurance and reinsurance ~~mediation~~**distribution** services provided in relation to risks and commitments located outside the Union.

This Directive shall not affect a Member State's law in respect of insurance and reinsurance ~~mediation business~~**distribution activity** pursued by insurance and reinsurance undertakings or intermediaries established in a third country and operating on its territory under the principle of freedom to provide services .

This Directive shall not regulate insurance or reinsurance ~~mediation~~**distribution** activities carried out in third countries.

Member States shall inform the Commission of any general difficulties which their insurance ~~intermediaries~~**distributors** encounter in establishing themselves or carrying out insurance mediation activities in any third country.

## *Article 2*

### *Definitions*

For the purpose of this Directive:

- (1) '~~insurance undertaking~~' means an undertaking as defined in Article 13(1) of Directive 2009/138/EC;
- (2) '~~reinsurance undertaking~~' means an undertaking as defined in Article 13 (4) of Directive 2009/138/EC ;

- (3) ~~'insurance mediation' means the~~ **'insurance distribution' means the remunerated** activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, **with or without advice**, concluding such contracts **with or without advice**, or assisting in the administration and performance of such contracts, in particular in the event of a claim. ~~These activities shall be considered to be insurance mediation also if carried on directly by an insurance undertaking without the intervention of an insurance intermediary.~~

The following activities shall also be considered to be ~~as~~ **insurance mediation** **distribution** for the purposes of this Directive: Provision of information on one or more contracts of insurance ~~or reinsurance~~ in response to criteria selected by the customer whether via an aggregator or price comparison website or other means, or the provision of a ranking of insurance ~~or reinsurance~~ products or a discount on the price of a contract, when the customer is able to directly conclude an insurance contract at the end of the process either using the aggregator or price comparison website or by concluding the contract directly with an insurance undertaking **via the aggregator or price comparison website**.

None of the following activities shall be considered to be insurance ~~mediation~~ **distribution** for the purposes of this Directive:

- (a) the provision of information on an incidental basis to a customer in the context of another professional activity, if the provider does not take any additional steps to assist the customer in concluding or performing an insurance contract;
- (aa) the management of claims of an insurance undertaking or a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims;

- (b) the mere provision of data and information on potential policyholders to insurance intermediaries or insurance undertakings or of information about insurance products or an insurance intermediary or insurance undertaking to potential policyholders, whether via a website or other means, if the potential policyholder is not able to directly conclude an insurance contract at the end of the process;

**(3a) “insurance distributor” means any natural or legal person who takes up or pursues the activity of insurance distribution. Insurance distributors for the purposes of this Directive include insurance intermediaries and insurance and reinsurance undertakings. For the purposes of insurance distribution activities as laid down in the second subparagraph of Article 2(3), an insurance intermediary shall also be considered a recipient of the service as defined in Article 2(d) of Directive 2000/31/EC;**

**(3b) 'insurance intermediary' means any natural or legal person, other than an insurance or reinsurance undertaking, who, for remuneration, takes up or pursues the activity of insurance distribution.;**

**(3c) 'insurance undertaking' means an undertaking as defined in Article 13(1) of Directive 2009/138/EC;**

**(3d) 'ancillary insurance distributor' means an insurance distributor, other than a credit institution or an investment firm, which conducts insurance distribution on an ancillary basis, provided that its activities meet all the following conditions:**

**(i) the principal professional activity of the insurance distributor is other than insurance mediation;**

**(ii) the insurance distributor only distributes certain insurance products that are complementary to a product or service and clearly identifies them in its registration;**

**(iii) the insurance products concerned do not cover life assurance or liability risks, unless that cover is incidental to the main cover;**

- (4) 'insurance-based investment product' means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations.

Insurance-based investment products shall not include:

- (a) non-life insurance products as listed in Annex I of Directive 2009/138/EC (Classes of Non-life Insurance);
  - (b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
  - (c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitles the investor to certain benefits;
  - (d) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC;
  - (e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;
- (5) ~~'insurance intermediary' means any natural or legal person, other than an insurance undertaking, who, for remuneration, takes up or pursues insurance mediation;~~

- (6) 'reinsurance ~~mediation~~**distribution**' means the **remunerated** activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, of concluding such contracts or assisting in the administration and performance of such contracts, in particular in the event of a claim . These activities shall be considered to be reinsurance ~~mediation~~**distribution** also if carried on by a reinsurance undertaking without the intervention of a reinsurance intermediary. **The following activities shall also be considered as reinsurance distribution for the purposes of this Directive: Provision of information on one or more contracts of reinsurance in response to criteria selected by the customer whether via an aggregator or price comparison website or other means, or the provision of a ranking of reinsurance products or a discount on the price of a contract, when the customer is able to directly conclude a reinsurance contract at the end of the process either using the aggregator or price comparison website or by concluding the contract directly with a reinsurance undertaking via the aggregator or price comparison website.**

None of the following activities shall be considered to be reinsurance ~~mediation~~**distribution** for the purposes of this Directive:

- (a) the provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;
- (b) the mere provision of data and information on potential policyholders to reinsurance intermediaries or reinsurance undertakings or of information about reinsurance products or a reinsurance intermediary or reinsurance undertaking to potential policyholders;
- (7) 'reinsurance intermediary' means any natural or legal person, other than a reinsurance undertaking, who, for remuneration, takes up or pursues **the activity of** reinsurance ~~mediation~~**distribution**;

- (8) **'reinsurance undertaking' means an undertaking as defined in Article 13(4) of Directive 2009/138/EC;** ~~'tied insurance intermediary' means any person who carries on the activity of insurance mediation for and on behalf of one or more insurance undertakings or insurance intermediaries, and who acts under the full responsibility of those insurance undertakings or insurance intermediaries, provided that the insurance intermediaries under whose responsibility the person acts do not themselves act under the responsibility of another insurance undertaking or intermediary ;~~
- (9) 'advice' means the provision of a personal recommendation to a customer, either upon their request or at the initiative of the insurance undertaking or the insurance intermediary;
- (10) *[deleted]*
- (11) 'large risks' shall be as defined by Article 13(27) of Directive 2009/138/EC ;
- (12) 'home Member State' means:
- (a) where the intermediary is a natural person, the Member State in which his residence is situated;
  - (b) where the intermediary is a legal person, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;
- (13) 'host Member State' means the Member State in which an insurance or reinsurance intermediary has a permanent presence or establishment or provides services and which is not its home Member State ;
- (14) 'durable medium' means any instrument which:
- (a) enables a client to store information addressed personally to that client in a way accessible for future reference and for a period of time adequate for the purposes of the information, and
  - (b) allows the unchanged reproduction of the information stored;



- (15) 'cross-selling practice' means the offering of an insurance service or product together with another service or product as part of a package or as a condition of taking another agreement or package;
- (16) 'close links' means a situation referred to in Article 4(35) of Directive [MIFID II];
- (17) 'primary place of business' means the location from where the main business is managed;
- (18) 'remuneration' means any commission, fee, charge or other payment, including an economic benefit of any kind, offered or given in connection with insurance mediation activities.
- (19) *[deleted]*
- (20) *[deleted]*

## CHAPTER II

### REGISTRATION REQUIREMENTS

*[Articles 3-3e below replace/partly include content of Article 3 of doc. 9760/14]*

#### *Article 3*

#### *Registration of insurance and reinsurance intermediaries and ancillary insurance distributors*

1. Insurance and reinsurance intermediaries, **and ancillary insurance distributors** shall be registered with a competent authority, in their home Member State. ~~Insurance and reinsurance undertakings authorised under Directive 2009/138/EC and their employees shall not be required to register under this Directive.~~

Without prejudice to the first subparagraph, Member States may stipulate that insurance and reinsurance undertakings and other bodies may cooperate with the competent authorities in registering **other** insurance and reinsurance intermediaries and in the application of the requirements of ~~Article 8~~ **Chapter V** to such intermediaries. In particular, in the case of tied insurance intermediaries, they may be registered by an insurance undertaking, by an association of insurance undertakings, or by an insurance or reinsurance intermediary under the supervision of a competent authority.

2. Member States may stipulate that, where an insurance or reinsurance intermediary acts under the responsibility of an insurance or reinsurance undertaking or of another registered insurance or reinsurance intermediary, the latter intermediary or the undertaking shall be responsible for ensuring that it meets the conditions for registration set out in this Directive. In such a case, the person or entity accepting responsibility shall, having been informed by the Member States of the matters set out in ~~paragraph 7 of this Article~~, subparagraphs (a) and (b) **of Article 3b(5)**, be satisfied as to the matter set out in ~~paragraph 7 of this Article~~, subparagraph (c) **of Article 3b(5)**.

3. Member States may also stipulate that the person or entity which takes responsibility for the intermediary shall register that intermediary.

~~Member States need not apply the requirement referred to in the first and second subparagraphs to all the natural persons who work in an insurance or reinsurance undertaking or a registered insurance or reinsurance intermediary and who pursue the activity of insurance or reinsurance mediation.~~

~~Member States shall ensure the registration of legal persons and shall also specify in the register the names of the natural persons within the management who are responsible for the mediation business.~~

### Article 3a

#### Registers for insurance and reinsurance intermediaries and ancillary insurance distributors

1. Member States may establish more than one register for insurance and reinsurance intermediaries **and ancillary insurance distributors** provided that they lay down the criteria according to which intermediaries are to be registered.
2. Member States shall establish an online registration system consisting of one single registration form available on an internet website, which should be easily accessible for insurance intermediaries and undertakings, and allowing the form to be completed directly online.
3. Member States shall see to it that a single information point is established allowing quick and easy access to information from these various registers, which shall be compiled electronically and kept constantly updated. This information point shall also provide the identification details of the competent authorities of each Member State referred to in ~~paragraph 1, first subparagraph.~~ **Article 3(1).**
4. The register shall indicate further the country or countries in which the intermediary conducts business under the rules on the freedom of establishment or on the freedom to provide services.

~~EIOPA shall establish, publish on its website and keep up-to-date a single electronic register containing records of insurance and reinsurance intermediaries which have notified their intention to carry on cross-border business in accordance with Chapter IV. Member States shall provide relevant information to EIOPA promptly to enable it to do this. This register shall show a hyperlink to each relevant competent authority in each Member State. This register shall contain links to, and be accessible from, each of the Member States' competent authorities' websites.~~

Article 3b

Conditions of registration

1. Member States shall ensure that registration of insurance intermediaries ~~—including tied ones—~~ and reinsurance intermediaries **intermediaires and ancillary insurance distributors** is made subject to the fulfilment of the ~~professional~~ **relevant** requirements laid down in Article ~~8~~ **of Chapter V**.

~~Member States shall also ensure that insurance intermediaries ~~—including tied ones—~~ and reinsurance intermediaries who cease to fulfil these requirements are removed from the register. The validity of the registration shall be subject to a regular review by the competent authority. If necessary, the home Member State shall inform the host Member State of such removal.~~

2. **Regarding the authorisation of legal persons, Member States need not apply the requirement referred to in the first paragraph to all the natural persons who work in an insurance or reinsurance intermediary.**
3. **Member States shall ensure that a reasonable proportion of the persons within the management structure of such undertakings who are responsible for distribution in respect of insurance or reinsurance products, as well as all their employees directly involved in insurance or reinsurance distribution, demonstrate the knowledge and ability necessary for the performance of their duties.**

**4. Member States shall specify in the register the names of the natural persons within the management of the registered legal person who are responsible for the distribution business.**

~~Member States shall ensure that the competent authorities do not register an insurance or reinsurance intermediary unless it is satisfied that the intermediary meets the requirements laid down in Article 8.~~

~~The competent authorities may provide the insurance and reinsurance intermediaries with a document enabling any interested party by consultation of any of the register(s) referred to in paragraph 2 to verify that they are duly registered.~~

~~That document shall at least provide the information specified in Article 16(a) and (b), and, in the case of a legal person, the name(s) of the natural person(s) referred to in the fourth subparagraph of paragraph 1 of this Article.~~

~~The Member State shall require the return of the document to the competent authority which issued it when the insurance or reinsurance intermediary concerned ceases to be registered.~~

~~Member States shall provide that applications by intermediaries for inclusion in the register shall be treated within six months of the submission of a complete application, and that the applicant shall be notified promptly of the decision.~~

~~Member States shall ensure that the competent authorities have in place appropriate measures enabling them to monitor whether insurance and reinsurance intermediaries continue to meet the registration requirements of this Directive at all times.~~

**5. Member States shall ensure that their competent authorities request the following information from insurance and reinsurance intermediaries, as a condition of registration:**

- (a) to provide information to their competent authorities of the identities of shareholders or members, whether natural or legal persons, that have a holding in the intermediary that exceeds 10% and the amounts of those holdings;

- (b) to provide information to their competent authorities of the identities of persons who have close links with the insurance or reinsurance intermediary;
- (c) to demonstrate in a satisfactory manner that the holdings or close links do not prevent the effective exercise of the supervisory functions of the competent authority.

**6.** Member States shall ensure that ~~the~~ competent authorities refuse registration if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the insurance or reinsurance intermediary has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, prevent the effective exercise of their supervisory functions.

**7.** **Member States shall provide that applications by intermediaires for inclusion in the register shall be treated within six months of the submission of a complete application, and that the applicant shall be notified promptly of the decision.**

### **Article 3c**

#### **Proof of registration**

**Competent authorities may provide insurance and reinsurance intermediaries and ancillary insurance distributors with a document enabling any interested party by consultation of any of the register(s) referred to in Article 3a(1) to verify that they are duly registered.**

**That document shall at least provide the information specified in Article 15a(1)(a) - (d), and, in the case of a legal person, the name(s) of the natural person(s) referred to in Article 3b(3).**

Article 3d

Monitoring and withdrawal of registration

1. The validity of the registration shall be subject to a regular review by the competent authority.
2. Member States shall ensure that insurance and reinsurance intermediaries and ancillary insurance distributors who cease to fulfil the registration requirements in Article 3(1) or fail to satisfy the requirements laid down in national law, are removed from the register. Where applicable, the home Member State shall inform the host Member State of such removal.
3. Member State shall require the return of the document to the competent authority which issued it when the insurance or reinsurance intermediary concerned ceases to be registered.

Article 3e

Insurance and reinsurance undertakings

Insurance and reinsurance undertakings authorised under Directive 2009/138/EC shall not be required to register under this Directive.

## CHAPTER III

### INSURANCE MEDIATION AS AN ANCILLARY ACTIVITY

#### *Article 4*

##### *Ancillary insurance mediation*

1. ~~Member States may stipulate that Article 3 does not apply to an insurance intermediary which conducts insurance mediation on an ancillary basis, provided that its activities meet all the following conditions:~~
  - (a) ~~the principal professional activity of the insurance intermediary is other than insurance mediation;~~
  - (b) ~~the insurance intermediary only mediates certain insurance products that are complementary to a product or service and clearly identifies them in the notification;~~
  - (c) ~~the insurance products concerned do not cover life assurance or liability risks, unless that cover is incidental to the main cover.~~
2. *[deleted]*
3. ~~Any insurance intermediary who is, in accordance with paragraph 1, exempt from the registration requirements under Article 3, shall notify the competent authority of its home Member State of his identity, address and professional activities.~~
4. ~~Intermediaries as referred to in paragraph 1 of this Article shall be subject to the provisions of Chapters I, III, IV, VIII, IX and Articles 8d, 8e, 8f, 14 and 15(1)(iv) of this Directive.~~



## CHAPTER IV

### FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT

#### *Article 5*

#### *Exercise of the freedom to provide services*

1. Any insurance or reinsurance intermediary who intends to carry on business within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the competent authority of his home Member State:
  - (a) the name, address and any registration number of the intermediary;
  - (b) the Member State or Member States in which the intermediary intends to operate;
  - (c) the category of intermediary and, if applicable, the name of any insurance or reinsurance undertaking represented;
  - (d) the relevant classes of insurance, if applicable;
  - (e) ~~demonstration of professional knowledge, competence requirements and a proof of the duration of his professional experience as laid down in Article 8a.~~
2. The competent authority of the home Member State shall, within one month of receiving the information referred to in paragraph 1, forward it to the competent authority of the host Member State, which shall acknowledge the receipt without delay. The home Member State shall inform the insurance or reinsurance intermediary in writing that the information has been received by the host Member State and that the insurance or reinsurance undertaking can commence its business in the host Member State.

When receiving the information referred to in paragraph 1, the host Member State shall accept previous experience in insurance or reinsurance mediation activity, as demonstrated by proof of registration or notification in the home Member State, as evidence of the required knowledge and ability.

3. The proof of the previous registration or notification shall be established by evidence of registration issued or notification received by the competent authority or body of the home Member State of the applicant, which the latter shall submit in support of his application presented to the host Member State.
4. In the event of a change in any of the particulars communicated in accordance with paragraph 1, the insurance or reinsurance intermediary shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed of that change by the competent authority of the home Member State as soon as is practicable and no later than one month from the date of receipt of the information by the competent authority of the home Member State.

#### *Article 6*

##### *Exercise of the freedom of establishment*

1. Member States shall require any insurance or reinsurance intermediary who intends to exercise his freedom of establishment to establish a branch within the territory of another Member State first to notify the competent authority of his home Member State and to provide it with the following information:
  - (a) the name, address and registration number (where applicable) of the intermediary;
  - (b) the Member State within the territory of which he plans to establish a branch or permanent presence;

- (c) the category of intermediary and, if applicable, the name of any insurance or reinsurance undertaking represented;
- (d) the relevant classes of insurance, if applicable;
- (e) ~~a programme of operations setting out, the insurance or reinsurance mediation activities to be carried on and the organisational structure of the establishment; also indicating the identity of agents where the intermediary intends to use them;~~
- (f) the address in the host Member State from which documents may be obtained;
- (g) the name of any person responsible for the management of the establishment or permanent presence;
- (h) ~~demonstration of professional knowledge, competence requirements and a proof of the duration of his professional experience as laid down under Article 8a.~~

2. Unless the competent authority of the home Member State has grounds for considering the organisational structure or the financial situation of the insurance or reinsurance intermediary to be inadequate, taking into account the mediation activities envisaged, it shall, within one month of receiving the information referred to in paragraph 1, communicate it to the competent authority of the host Member State, which shall acknowledge the receipt without delay. The home Member State shall inform the insurance or reinsurance intermediary in writing that the information has been received by the host Member State and that the insurance or reinsurance undertaking can commence its business in the host Member State.

3. Where the competent authority of the home Member State refuses to communicate the information to the competent authority of the host Member State, it shall give reasons for its refusal to the insurance or reinsurance intermediary within one month of receiving all the information referred to in paragraph 1.

4. In the event of a change in any of the particulars communicated in accordance with paragraph 1, an insurance or reinsurance intermediary shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed of that change by the competent authority of the home Member State as soon as is practicable and no later than one month from the date of receipt of the information by the competent authority of the home Member State.

#### *Article 7*

##### *Division of competence between home and host Member States*

1. If an insurance intermediary's primary place of business is located in another Member State, then the competent authority of that other Member State may agree with the home Member State competent authority to act as if it were the home Member State competent authority with regard to the obligations in Chapters VI, VII and VIII of this Directive. In the event of such an agreement, the home Member State competent authority shall notify the insurance intermediary and EIOPA without delay.
2. The competent authority of the host Member State shall assume responsibility for ensuring that the services provided by the establishment within its territory comply with the obligations laid down in Chapters VI and VII and in measures adopted pursuant thereto.

The competent authority of the host Member State shall have the right to examine establishment arrangements and to request such changes as are strictly needed to enable the competent authority to enforce the obligations under Chapter VI and Chapter VII and measures adopted pursuant thereto with respect to the services or activities provided by the establishment within its territory.

3. Where the host Member State has grounds for concluding that an insurance or reinsurance intermediary acting within its territory under the freedom to provide services or through an establishment is in breach of any obligation set out in this Directive it shall refer those findings to the competent authority of the home Member State which shall take the appropriate measures. In cases where, despite measures taken by the competent authority of the home Member State, an insurance or reinsurance intermediary persists in acting in a manner that is clearly prejudicial to the interests of host Member State consumers or the orderly functioning of insurance and reinsurance markets, the insurance or reinsurance intermediary shall be subject to the following measures:
- (a) the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures needed in order to protect consumers and the proper functioning of insurance and reinsurance markets including by preventing the offending insurance or reinsurance intermediaries from initiating any further transactions within its territory; the competent authority of the host Member State shall inform the Commission of such measures without undue delay;
  - (b) the competent authority of the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010; in that case, EIOPA may act in accordance with the powers conferred on it by that Article in cases of a disagreement between the competent authorities of the host and home Member States.
4. Where the competent authorities of a host Member State ascertain that an insurance or reinsurance intermediary who has an establishment within its territory is in breach of the legal or regulatory provisions adopted in that Member State pursuant to those provisions of this Directive which confer powers on the host Member State's competent authorities, those authorities shall require the insurance or reinsurance intermediary concerned to put an end to this situation.

In cases where, despite measures taken by the competent authority of the host Member State, an insurance or reinsurance intermediary persists in acting in a manner that is clearly prejudicial to the interests of host Member State consumers or the orderly functioning of insurance and reinsurance markets, the insurance or reinsurance intermediary shall be subject to the following measures:

- (a) the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures needed in order to protect consumers and the proper functioning of the markets including by preventing the offending insurance or reinsurance intermediaries from initiating any further transactions within its territory; the competent authority of the host Member State shall inform the Commission of such measures without undue delay;
- (b) the competent authority of the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010; in that case, EIOPA may act in accordance with the powers conferred on it by that Article in cases of a disagreement between the competent authorities of the host and home Member States.

#### Article 7a

#### EIOPA register

**EIOPA shall establish, publish on its website and keep up-to-date a single electronic register containing records of insurance and reinsurance intermediaries and ancillary insurance distributors which have notified their intention to carry on cross-border business in accordance with this Chapter. Member States shall provide relevant information to EIOPA promptly to enable it to do this. This register shall show a hyperlink to each relevant competent authority in each Member State. This register shall contain links to, and be accessible from, each of the Member States' competent authorities' websites.**

## CHAPTER V

### PROFESSIONAL REQUIREMENTS

#### *Article 8*

##### *General provisions*

1. Home Member States shall ensure that natural persons, **including those referred to in Article 3b(3)**, carrying out insurance or reinsurance ~~mediation~~ **distribution**, possess appropriate knowledge and competence and comply with continuing professional training requirements and complete their tasks and perform their duties adequately.
2. The requirements set out in this Chapter shall be fulfilled on a ~~permanent~~ **an ongoing** basis.

#### *Article 8a*

##### *Professional knowledge and competence requirements **for insurance and reinsurance intermediaires***

1. Natural persons carrying out ~~the activity of insurance, reinsurance or reinsurance mediation~~ **ancillary insurance distribution activity**, shall hold a diploma certifying **successful completion of secondary level education, or shall present certificates and other evidence of formal qualifications showing his knowledge and ability required to carry out the activity of insurance distribution, such as an attestation of competence or certified professional experience or an attestation of** successful completion of secondary level education. **a professional examination or traineeship.**

- 1a.** Furthermore In addition to the requirements set out in paragraph 1, natural persons carrying out the activity of insurance, reinsurance or ancillary insurance mediation covering, who distribute insurance policies of non-life risks classified under classes 1 to 18 in Part A of Annex I of Directive 2009/138/EC, insurance-based investment products and other policies covering life risks classified in Annex II of Directive 2009/138/EC, shall demonstrate compliance with the relevant professional knowledge and competence requirements for the relevant insurance product as laid out in points (a), (b) and (c) of Annex II of this Directive.
2. ~~In addition to the requirements set out in paragraph (1), for the purposes of the freedom to provide services or the freedom of establishment, natural persons carrying out the activity of insurance or reinsurance mediation shall also demonstrate at least three years<sup>2</sup> professional experience in insurance mediation.~~
3. Provided that the conditions in paragraphs 1 and ~~2~~**1a** are met, the host Member State shall recognise the professional knowledge and competence of natural persons carrying out insurance or, reinsurance mediation or ancillary insurance distribution activity, acquired in another Member State when they carry out this activity in its territory either under the freedom of establishment or under the freedom to provide services. The host Member State shall not restrict, for any reason relating to professional knowledge and competence, the pursuit of insurance or reinsurance mediation distribution in its territory.
4. ~~Home Member States may provide that in the cases referred to in the second subparagraph of Article 3(1), the~~**shall require** insurance undertaking or intermediaires and insurance intermediary shall verify that the professional knowledge and competence of undertakings to ensure and demonstrate to competent authorities on request that natural persons carrying out insurance mediation are in conformity with meet the requirements:
- (a) of Annex II(a) when distributing products with non-life risks;**
- (b) of Annex II(b) when distributing insurance-based investment products;**



**(c) of Annex II(c) when distributing products with life risks;**

**to fulfil their obligations** under this Directive and, if need be, **Member States** shall provide **publish the criteria used for assessing** such persons with training **knowledge and competence**.

*Article 8b*

*Good repute*

1. Natural persons carrying out insurance and reinsurance ~~mediation~~ **distribution** shall be of good repute. As a minimum, they shall have a clean ~~police~~ **criminal** record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they should not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.
2. Member States may, in accordance with the provisions of the second subparagraph of Article 3(1), allow the insurance undertaking to check the good repute of ~~insurance intermediaries and natural persons acting on their behalf~~ **referred to in paragraph 1 of this Article**.

*Article 8c*

*Continuing professional training*

1. Home Member States shall ensure that natural persons carrying out insurance ~~mediation~~ **and reinsurance distribution** regularly update their professional knowledge and competence through continuing professional development in order to maintain an adequate level of performance.
2. Home Member States shall require continuing professional development through **either** appropriate training of at least 50 hours in **total over** five consecutive **years or through** **passing an appropriate exam every three** years.

3. Home Member States shall have in place mechanisms to control, assess and certify the required knowledge and competence.

*Article 8d*

*Requirements for ancillary insurance ~~intermediaries~~ distributors*

1. Insurance intermediaries which ~~Member States shall require from natural persons who~~ carry out insurance ~~mediation~~ only distribution on an ancillary basis shall to possess appropriate knowledge of the terms and conditions of the policies they ~~mediated~~ distribute and, where applicable, of claims handling rules.
2. Member States shall put in place appropriate requirements for the regular updating of the professional knowledge and competence of all ancillary insurance distributors.
3. Member States shall require ancillary insurance distributors to ensure and demonstrate to competent authorities on request that natural persons meet the requirements in paragraph 1. Member States shall publish the criteria used for such knowledge.

*Article 8da*

*Requirements for intermediaries as legal persons*

Where the insurance or reinsurance intermediary or ancillary insurance distributor is a legal person, home Member States shall provide that, in the cases referred to in the second subparagraph of Article 3(1), they shall verify that the professional knowledge and competence of natural persons carrying out the insurance or reinsurance distribution activity, including those referred to in Article 3b(3), are in conformity with the requirements under this Directive and, if necessary, shall provide such persons with training.

*Article 8e*

*Minimum amounts of cover against liability arising from professional negligence **for insurance and reinsurance intermediaries and ancillary insurance distributors***

- 1.** Insurance and reinsurance intermediaries **and ancillary insurance distributors** shall hold professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1,250,000 applying to each claim and in aggregate EUR 1,850,000 per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.
  
- 2.** **Member States shall require in respect of insurance intermediaries which conduct insurance distribution of goods on an ancillary basis the insurance or comparable guarantees of at least a half of the levels provided for in the first paragraph.**

*Article 8f*

*Protection against intermediary's **and ancillary insurance distributor's** insolvency*

Member States shall take all necessary measures to protect customers against the inability of the insurance **or the reinsurance** intermediary **or the ancillary insurance distributor** to transfer the premium to the insurance undertaking or to transfer the amount of claim or return premium to the insured.

Such measures shall take any one or more of the following forms:

- (a) provisions laid down by law or contract whereby monies paid by the customer to the intermediary are treated as having been paid to the undertaking, whereas monies paid by the undertaking to the intermediary are not treated as having been paid to the customer until the customer actually receives them;

- (b) a requirement for insurance intermediaries to have financial capacity amounting, on a permanent basis, to 4 % of the sum of annual premiums received, subject to a minimum of EUR 18 750;
- (c) a requirement that customers' monies shall be transferred via strictly segregated customer accounts and that these accounts shall not be used to reimburse other creditors in the event of bankruptcy;
- (d) a requirement that a guarantee fund be set up.

*Article 8fa*

*Requirements for insurance and reinsurance undertakings*

1. Insurance and reinsurance undertakings shall apply the obligations set out in Articles 8a and 8c on every employee that is directly involved in the insurance distribution. Insurance and reinsurance undertakings shall endorse, implement and regularly review internal policy and appropriate internal procedures for the proper application of Articles 8a and 8c.
2. Member States shall ensure that a function is established to ensure the proper implementation of the endorsed policies and procedures.
3. Insurance and reinsurance undertakings shall establish, maintain and keep up to date an archive with all the relevant documentation regarding the application of Articles 8a and 8c.
4. Member States shall ensure the implementation of this Article and may request a regular report in this respect.

*Article 8g*  
*Regulatory technical standards*

1. EIOPA shall review the amounts referred to in Article 8e and Article 8f(b) regularly in order to take account of changes in the European Index of Consumer Prices as published by Eurostat. The first review shall take place **at the latest** five years after the entry into force of this Directive and the successive reviews every five years after the previous review date.
2. EIOPA shall develop draft regulatory standards which adapt the base amount in euro referred to in Article 8e and Article 8f(b) by the percentage change in that Index over the period between the entry into force of this Directive and the first review date or between the last review date and the new review date and rounded up to the nearest multiple of EUR 10.
3. EIOPA shall submit those draft regulatory technical standards to the Commission five years after the entry into force of this Directive and the successive reviews every five years after the previous review date.
4. Power is delegated to the Commission to adopt, and where necessary amend, regulatory technical standards to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee referred to Article 8e and Article 8f(b). Those regulatory technical standards shall be adopted in accordance with Article 15 of Regulation (EU) No 1094/2010.

*Article 9*  
*Publication of general good rules*

1. Member States shall take the necessary steps to ensure appropriate publication by their competent authorities of the relevant national legal provisions protecting the general good which are applicable to the carrying on of insurance and reinsurance ~~mediation~~ ~~business~~ **distribution** in their territories.

2. A Member State which proposes to apply and applies provisions regulating insurance ~~intermediaries and the sale of insurance products~~**distribution** in addition to those set out in this Directive shall ensure that the administrative burden stemming from these provisions is proportionate for consumer protection. The Member State shall continue to monitor these provisions to ensure they remain so.
3. ~~EIOPA shall present a standardised information sheet for general good rules to be completed by the competent authorities in each Member State. It shall include~~ **shall include on its website** the hyperlinks to the websites of competent authorities where information on general good rules is published. Such information shall be updated by the national competent authorities on a regular basis and EIOPA shall make this information available on its website in the English, French and German languages, with all national general good rules categorised into different relevant areas of law.
4. Member States shall establish a single point of contact responsible for providing information on general good rules in their respective Member State. Such a point of contact should be an appropriate competent authority.
5. EIOPA shall examine in a report and inform the Commission about the general good rules published by Member States as referred to in this Article in the context of the proper functioning of this Directive and the Internal Market before X X 20XX [three years after the entry into force of the Directive].

*Article 10*  
*Competent authorities*

1. Member States shall designate the competent authorities empowered to ensure implementation of this Directive. They shall inform the Commission thereof, indicating any division of those duties.
2. The authorities referred to in paragraph 1 shall be either public authorities or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. They shall not be insurance or reinsurance undertakings.
3. The competent authorities shall possess all the powers necessary for the performance of their duties. Where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate closely so that they can discharge their respective duties effectively.

*Article 11*  
*Exchange of information between Member States*

1. The competent authorities of the various Member States shall cooperate in order to ensure the proper application of the provisions of this Directive.
2. The competent authorities shall exchange information on insurance and reinsurance intermediaries if they have been subject to a sanction referred to in Chapter VIII and such information is likely to lead to removal from the register of such intermediaries. The competent authorities may also exchange any relevant information at the request of an authority.
3. All persons required to receive or divulge information in connection with this Directive shall be bound by professional secrecy, in the same manner as is laid down in Article 64 of Directive 2009/138/EC.

*Article 12*

*Complaints*

Member States shall ensure that procedures are set up ~~which~~ **within the competent authority** which allow customers and other interested parties, especially consumer associations, to ~~register~~ **lodge** complaints about insurance and reinsurance ~~**distributors** intermediaries and undertakings~~. In all cases complaints shall receive replies.

*Article 13*

*Out-of-court redress*

*[deleted]*

*Article 14*

*Restriction on use of intermediaries*

*[deleted]*



## CHAPTER VI

### INFORMATION REQUIREMENTS AND CONDUCT OF BUSINESS RULES

#### *Article 15*

##### *General principle*

1. Member States shall require that, when carrying out insurance ~~mediation~~ **distribution** with or for customers, an insurance ~~intermediary or insurance undertaking~~ **distributor** acts honestly, fairly and professionally in accordance with the best interests of its customers.
2. ~~All~~ **Without prejudice to Directive 2005/29/EC, Member States shall require that all** information, including marketing communications, addressed by ~~the insurance intermediary or insurance undertaking~~ **distributors** to customers or potential customers shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.
3. **Member States may prohibit the acceptance or receipt of fees, commissions or monetary benefits paid or provided to insurance distributors by any third party or a person acting on behalf of a third party in relation to the distribution of insurance products.**
4. **An insurance distributor shall ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interest of its customers. In particular, it shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs.**

**5. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 to ensure that insurance distributors comply with the principles set out in this Article when distributing insurance products to their customers:**

- (a) the conditions with which the information must comply in order to be fair, clear and not misleading;**
- (b) the details about content and format of information to customers in relation to insurance distributors and their activity, insurance products, costs and charges;**
- (c) the criteria for the assessment of a range of insurance products available on the market;**
- (d) the criteria to assess compliance of insurance distributors receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interest of the customer.**

**6. The delegated acts referred to in paragraph 5 shall take into account:**

- (a) the nature of the distribution of the insurance product carried out for the customer or potential customer, taking into account the type, object, size and frequency of the activity;**
- (b) the nature and range of insurance products being offered or considered.**

*[Articles 15a-15c below replace/partly include content of Articles 16-18 of doc. 9760/14]*

**Article 15a**

**Information provided by the insurance intermediary**

- 1. Member States shall lay down rules ensuring that, prior to the conclusion of an insurance contract, an insurance intermediary shall make the following disclosures to customers:**
  - (a) its identity and address and that it is an insurance intermediary;**
  - (b) whether it provides advice about the insurance products sold;**
  - (c) the procedures referred to in Article 12 allowing customers and other interested parties to register complaints about insurance and reinsurance intermediaries;**
  - (d) the register in which it has been included and the means for verifying that it has been registered; and**
  - (e) whether the intermediary is representing the customer or is acting for and on behalf of the insurance undertaking.;**
  
- 2. Member States shall ensure that in good time before any distribution service is provided to the customer, prior to the conclusion of an insurance contract an insurance intermediary provides the customer with at least the following information:**
  - (a) whether it has a holding, direct or indirect, representing more than 10% or more of the voting rights or of the capital in a given insurance undertaking;**

- (b) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing more than 10% or more of the voting rights or of the capital in the insurance intermediary;**
- (c) in relation to the possible range of the contracts proposed or advised upon, whether:**
- (i) it gives advice on the basis of a fair and personal analysis, or**
  - (ii) it is under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings. Furthermore, it shall provide the names of those insurance undertakings, or**
  - (iii) it is not under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair and personal analysis. In that case, it shall provide the names of at least five of the insurance undertakings with which it may and does conduct business;**
- (d) the nature of the remuneration received in relation to the insurance contract;**
- (e) whether in relation to the insurance contract, it works:**
- (i) on the basis of a fee, that is the remuneration paid directly by the customer; or**
  - (ii) on the basis of a commission of any kind, that is the remuneration included in the insurance premium; or**
  - (iii) on the basis of a combination of both (i) and (ii);**

**Where the fee is payable by the customer, it shall provide the amount of the fee or where this is not possible, the method for calculating it;**

**(f) if the amount of the commission is based on the achievement of agreed targets or thresholds relating to the business placed by the intermediary with an insurer, the targets or thresholds as well as the amounts payable on the achievement of them.**

**3. If any payments are made by the customer under the insurance contract after its conclusion, the insurance intermediary shall also make the disclosures in accordance with this Article for each such payment.**

**4. Without prejudice to Article 25(2a) regarding the distribution of insurance-based investment products, prior to the conclusion of a contract, whether or not advice is given, the insurance intermediary shall give the customer the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision, while taking into account the complexity of the insurance product and the type of customer.**

**5. Where advice is provided prior to the conclusion of any specific contract, the insurance intermediary shall identify on the basis of information provided by the customer:**

**(a) the demands and the needs of that customer; and**

**(b) it shall specify to the customer the underlying reasons for any advice to the customer on a specified insurance product.**

**6. The details -referred to in points (a) and (b) of paragraph 5 shall be modulated according to the complexity of the insurance product being proposed and the level of financial risk to the customer-**

**7. When the insurance intermediary who is representing the customer informs the customer that it gives its advice on the basis of a fair analysis, it is obliged to give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable it to make a recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.**

**Article 15b**

**Information provided by ancillary insurance distributors**

**1. Member States shall lay down rules ensuring that, prior to the conclusion of any insurance contract, an ancillary insurance distributor makes the following disclosures to customers:**

**(a) its identity and address and that it is an ancillary insurance distributor;**

**(b) whether or not it provides advice about the insurance products sold;**

**(c) the procedures referred to in Article 12 allowing customers and other interested parties to lodge complaints about insurance and reinsurance;**

**(d) the register in which it has been included and the means for verifying that it has been registered.**

**2. Prior to the conclusion of a contract, whether or not advice is given, the ancillary insurance distributor shall give the customer the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision, while taking into account the complexity of the insurance product and the type of customer.**

Article 15c

Information provided by the insurance undertaking

**1. Member States shall lay down rules ensuring that prior to the conclusion of any insurance contract, an insurance undertaking shall make the following disclosures to customers:**

- (a) its identity and address and that it is an insurance undertaking;**
- (b) whether the distribution is restricted to its own insurance products or whether the insurance undertaking also distributes insurance products manufactured by other insurance undertakings;**
- (c) whether it provides advice about the insurance products sold;**
- (d) the procedures referred to in Article 12 allowing customers and other interested parties to register complaints about insurance undertakings.**

**2. Member States shall ensure that in good time before any distribution service is provided to the customer, prior to the conclusion of an insurance contract, an insurance undertaking distributing an insurance product or insurance products of another insurance undertaking provides the customer with at least the following information:**

- (a) whether it has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in a given insurance undertaking;**
- (b) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in the insurance undertaking distributing an insurance product or insurance products of another insurance undertaking;**

**(c) in relation to the possible range of the contracts proposed or advised upon, ,  
whether:**

**(i) it gives advice on the basis of a fair and personal analysis, or**

**(ii) it is under a contractual obligation to conduct insurance distribution  
business exclusively with one or more insurance undertakings.  
Furthermore, it shall provide the names of those insurance  
undertakings, or**

**(iii) it is not under a contractual obligation to conduct insurance  
distribution business exclusively with one or more insurance  
undertakings and does not give advice on the basis of a fair and personal  
analysis. In that case, it shall provide the names of the insurance  
undertakings with which it may and does conduct business.**

**3. Member States shall ensure that in good time before any distribution service is  
provided to the customer and prior to the conclusion of an insurance contract, any  
insurance undertaking provides the customer with at least the following information:**

**(a) the nature of the remuneration received in relation to the insurance contract;**

**(b) whether in relation to the insurance contract, it works:**

**(i) on the basis of a fee, that is the remuneration paid directly by the  
customer; or**

**(ii) on the basis of a commission of any kind, that is the remuneration  
included in the insurance premium; or**

**(iii) on the basis of a combination of both (i) and (ii).**

**Where the fee is payable by the customer, it shall provide the amount of the  
fee or where this is not possible, the method for calculating it;**



**(c) if the amount of the commission is based on the achievement of agreed targets or thresholds relating to the business placed by the insurance undertaking with an insurer, the targets or thresholds as well as the amounts payable on the achievement of them.**

**4. If any payments are made by the customer under the insurance contract after its conclusion, the insurance undertaking shall also make the disclosures in accordance with this Article for each such payment.**

**5. Without prejudice to Article 25 (2a) regarding the distribution of insurance-based investment products, prior to the conclusion of a contract, whether or not advice is given, the insurance undertaking shall give the customer the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision, while taking into account the complexity of the insurance product and the type of customer.**

**6. Where advice is provided prior to the conclusion of any specific contract, the insurance undertaking shall identify on the basis of information provided by the customer:**

**(a) the demands and the needs of that customer and**

**(b) it shall specify to the customer the underlying reasons for any advice to the customer on a specified insurance product.**

**7. The details referred to in points (a) and (b) of paragraph 6 shall be modulated according to the complexity of the insurance product being proposed and the level of financial risk to the customer.**

*Article 16*

*General information provided by the insurance intermediary or insurance undertaking*

*[deleted]*

*Article 17*

*Conflicts of interest and transparency*

*[deleted]*

*Article 18*

*Advice, and standards for sales where no advice is given*

*[deleted]*

*Article 19*

*Information exemptions and flexibility clause*

1. The information referred to in Articles **15a, 15b and 15c** ~~16, 17 and 18~~ need not be given when the insurance ~~intermediary or insurance undertaking mediates~~ **distributor carries out distribution activity** in the insurance of large risks, in the case of ~~mediation~~ **distribution** by reinsurance intermediaries or reinsurance undertakings, or in relation to professional customers as specified in the Annex **I**.
2. Member States may maintain or adopt stricter provisions regarding the information requirements referred to in **Chapter VI and in particular** Articles **15a, 15b and 15c** ~~16, 17 and 18~~ provided that such provisions comply with Union law. Member States shall communicate to EIOPA and the Commission such national provisions.
3. In order to establish a high level of transparency by all appropriate means, EIOPA shall ensure that the information it receives relating to national provisions is also communicated to consumers, **and** ~~insurance intermediaries and insurance undertakings~~ **distributors**.

*Article 20*

*Information conditions*

1. All information to be provided in accordance with Articles **15a, 15b and 15c** ~~16, 17 and 18~~ shall be communicated to the customers:
  - (a) on paper;
  - (b) in a clear and accurate manner, comprehensible to the customer; and
  - (c) in an official language of the Member State in which the risk is situated or the Member State of the commitment or in any other language agreed by the parties;  
**and**
  - (d)** ~~It~~ **it** shall be provided free of charge.
2. By way of derogation from paragraph 1(a), the information referred to in Articles **15a, 15b and 15c** ~~16, 17 and 18~~ may be provided to the customer in one of the following media:
  - (a) using a durable medium other than paper, where the conditions laid down in paragraph 4 are met; or
  - (b) by means of a website where the conditions laid down in paragraph 5 are met.
3. However, where the information referred to in Articles **15a, 15b and 15c** ~~16, 17 and 18~~ is provided using a durable medium other than paper or by means of a website, a paper copy shall be provided to the customer upon request and free of charge.
4. The information referred to in Articles **15a, 15b and 15c** ~~16, 17 and 18~~ may be provided using a durable medium other than paper if the following conditions are met:

- (a) the use of the durable medium is appropriate in the context of the business conducted between the intermediary or insurance undertaking and the customer; and
  - (b) the customer has been given the choice between information on paper and in the durable medium, and has chosen that other medium.
5. The information referred to in Articles **15a, 15b and 15c** ~~16, 17 and 18~~ may be provided by the means of a website if it is addressed personally to the customer or if the following conditions are met:
- (a) the provision of the information referred to in Articles **15a, 15b and 15c** ~~16, 17 and 18~~ **by** means of a website is appropriate in the context of the business conducted between the intermediary or insurance undertaking and the customer;
  - (b) the customer has consented to the provision of the information referred to in Articles **15a, 15b and 15c** ~~16, 17 and 18~~ by means of a website;
  - (c) the customer has been notified electronically of the address of the website, and the place on the website where the information referred to in Articles **15a, 15b and 15c** ~~16, 17 and 18~~ can be accessed;
  - (d) it is ensured that the information referred to in Articles **15a, 15b and 15c** ~~16, 17 and 18~~ remains accessible on the website for such period of time as the customer reasonably need to consult it.
6. For the purposes of paragraph 4 and 5, the provision of information using a durable medium other than paper or by means of a website shall be regarded as appropriate in the context of the business conducted between the ~~intermediary or insurance undertaking~~ **distributor** and the customer, if there is evidence that the customer has regular access to the Internet. The provision by the customer of an e-mail address for the purposes of that business shall be regarded as such evidence.

7. In the case of telephone selling, the prior information given to the customer shall be in accordance with Union rules applicable to the distance marketing of consumer financial services. Moreover, information shall be provided to the customer in accordance with paragraph 1 or 2 immediately after the conclusion of the insurance contract.

### *Article 21*

#### *Cross-selling*

1. *[deleted]*
2. When an insurance service or policy covers different classes of insurance risks, including ancillary risks, or is offered together with another service or in a package or as a condition for the same agreement or package, the insurance ~~intermediary or the insurance undertaking~~ **distributor which provides advised sales** shall inform the customer whether it is possible to buy the different components separately **and shall provide for a separate evidence of the costs and charges of each component**.
- 2a. ~~Where~~ **For products where** the risks resulting from such an agreement or package offered to a customer are likely to be different from the risks associated with the components taken separately, the insurance ~~intermediary or the insurance undertaking~~ **distributor** shall provide an adequate description of the different components of the agreement or package and the way in which its interaction modifies the risks.
3. ~~EIOPA, in cooperation with the European Securities and Markets Authority and the European Banking Authority, shall develop by ...\*, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations set out in Article 20(1) and (2).~~

Article 21a

Product oversight and governance requirements

1. An insurance undertaking which manufactures any insurance product for sale to customers shall maintain, operate and review a process for the approval of each insurance product or significant adaptations of an existing insurance product before it is marketed or distributed to customers.

The product approval process shall specify an identified target market of customers for each product and ensure that all relevant risks to such identified target market are assessed, the intended distribution strategy is consistent with the identified target market and take reasonable steps to ensure that the insurance product is distributed to the identified target market.

The insurance undertaking shall understand and regularly review the insurance products it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the product remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

An insurance undertaking which manufactures insurance products shall make available to any distributor all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product. Where an insurance distributor advises on or proposes insurance products which it does not manufacture, it shall have in place adequate arrangements to obtain the information referred to in the fourth subparagraph and to understand the characteristics and identified target market of each insurance product.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 to ensure that insurance intermediaries and insurance undertakings comply with the principles set out in this Article when providing insurance mediation and insurance distribution activities to their customers.

- 3. The policies, processes and arrangements referred to in this paragraph shall be 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.**

## CHAPTER VII

### ADDITIONAL CUSTOMER PROTECTION REQUIREMENTS IN RELATION TO INSURANCE-BASED INVESTMENT PRODUCTS

#### *Article 22*

##### *Scope*

Subject to the exception in the ~~second~~ **third** subparagraph of Article 2(3), this Chapter lays down additional requirements on insurance ~~mediation activities and to direct sales carried out by insurance undertakings when they are carried out~~ **distribution** in relation to the sale of insurance-based investment products.

(a) *[deleted]*

(b) *[deleted]*

~~These activities shall be referred to as insurance distribution activities.~~

#### *Article 22a*

##### *Prevention of conflicts of interest*

An insurance ~~intermediary and insurance undertaking~~ **distributor** shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest, as determined in Article 23, from adversely affecting the interests of its customers.

*Article 23*  
*Conflicts of interests*

1. Member States shall require insurance ~~intermediaries and insurance undertakings~~**distributors** to take all appropriate steps to identify conflicts of interest between themselves, including their managers, employees and tied insurance intermediaries, or any person directly or indirectly linked to them by control and their customers or between one customer and another that arise in the course of carrying out any insurance distribution activities.
2. Where organisational or administrative arrangements made by the insurance intermediary or insurance undertaking in accordance with Article ~~22~~**22a** to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented, the insurance ~~intermediary or insurance undertaking~~**distributor** shall clearly disclose to the customer the general nature and/or sources of conflicts of interest before undertaking business on its behalf.
3. The Commission shall be empowered to adopt delegated acts, in accordance with Article 33 in order to:
  - (a) define the steps that insurance ~~intermediaries or insurance undertakings~~**distributors** might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when carrying out insurance distribution activities;
  - (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~~**distributor**.



Article 24

General principles and information to customers

1. Member States shall ensure that, when carrying out insurance distribution activities, an insurance ~~intermediary or insurance undertaking~~**distributor** acts honestly, fairly and professionally in accordance with the best interests of its customers.
2. ~~All~~**Without prejudice to Directive 2005/29/EC, Member States shall require that all** information, including marketing communications, addressed by the insurance ~~intermediary or insurance undertaking~~**distributor** to customers or potential customers shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.
3. ~~Member States may prohibit the acceptance or receipt of fees, commissions or any monetary benefits paid or provided to insurance intermediaries or insurance undertakings, by any third party or a person acting on behalf of a third party in relation to the distribution of insurance-based investment products to customers.~~
  - (a) *[deleted]*
  - (b) *[deleted]*
  - (c) *[deleted]*
4. *[deleted]*
5. *[deleted]*
  - (a) *[deleted]*
  - (b) *[deleted]*
6. *[deleted]*
  - (a) *[deleted]*
  - (b) *[deleted]*

**7. Appropriate information shall be provided in good time to customers or potential customers with regard to the distribution of insurance-based investment products, and all costs and related charges. That information shall include the following:**

- a) when advice is provided, the insurance intermediary or insurance undertaking must, in good time before it provides advice, inform the customer:**
  - i) whether or not the advice is provided on an independent basis;**
  - ii) whether the advice is based on a broad or on a more restricted analysis of different types of insurance-based investment products and, in particular, whether the range is limited to insurance-based investment products issued or provided by entities having close links with the insurance intermediary or insurance undertaking or any other legal or economic relationships, such as contractual relationships, so close as to pose a risk of impairing the independent basis of the advice provided;**
  - iii) whether the insurance intermediary or insurance undertaking will provide the customer with a periodic assessment of the suitability of the insurance-based investment products recommended to that customer;**
- (b) the information on insurance-based investment products and proposed investment strategies must include appropriate guidance on and warnings of the risks associated with those insurance-based investment products or in respect of particular investment strategies;**
- (c) the information on all costs and associated charges must include information relating to the distribution of the insurance-based investment product, including the cost of advice where relevant, the cost of the insurance-based investment product recommended or marketed to the customer and how the customer may pay for it, also encompassing any third party payments.**

The information about all costs and charges, including costs and charges in connection with the distribution and the insurance-based investment product, which are not caused by the occurrence of underlying market risk, shall be aggregated to allow the customer to understand the overall cost as well as the cumulative effect on return of the investment, and where the customer so requests, an itemised breakdown shall be provided. Where applicable, such information shall be provided to the customer on a regular basis, at least annually, during the life of the investment.

8. The information referred to in paragraph 7 shall be provided in a comprehensible form in such a manner that customers or potential customers are reasonably able to understand the nature and risks concerning the insurance-based investment product offered and, consequently, to take investment decisions on an informed basis. Member States may allow that information to be provided in a standardised format.

9. Where an insurance intermediary or insurance undertaking informs the customer that advice is provided on an independent basis, the insurance intermediary or insurance undertaking shall assess a sufficient range of insurance-based investment products on the market which must be sufficiently diverse with regard to their type and issuers or product providers to ensure that the customer's objectives can be suitably met and must not be limited to insurance-based investment products issued or provided by:

(a) the insurance intermediary or insurance undertaking itself or by entities having close links with the insurance intermediary or insurance undertaking;  
or

(b) other entities with which the insurance intermediary or insurance undertaking has such close legal or economic relationships, as to pose a risk of impairing the independent basis of the advice provided.

**10. Notwithstanding Article 15(3), Member States shall ensure that insurance intermediaries or insurance undertakings are regarded as not fulfilling their obligations under Article 23 or under paragraph 1 of this Article where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, to or by any party except the customer or a person on behalf of the customer, other than where the payment or benefit:**

**(a) is designed to enhance the quality of the relevant service to the customer; and**

**(b) does not impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interest of its customers.**

**The existence, nature and amount of the payment or benefit referred to in the first subparagraph, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the customer, in a manner that is comprehensive, accurate and understandable, prior to the distribution of the insurance-based investment product. Where applicable, the insurance intermediary or insurance undertaking shall also inform the customer on mechanisms for transferring to the customer the fee, commission, monetary or non-monetary benefit received in relation to the distribution of the insurance-based investment product.**

**The payment or benefit which enables or is necessary for the distribution of the insurance-based investment product, such as custody costs, settlement and exchange fees, regulatory levies or legal fees, and which by its nature cannot give rise to conflicts with the investment firm's duties to act honestly, fairly and professionally in accordance with the best interests of its customers, is not subject to the requirements set out in the first subparagraph.**

**11. An insurance distributor which carries out the distribution of insurance-based investment products for customers shall ensure that it does not remunerate or assess the performance of its staff in a way that conflicts with its duty to act in the best interest of its customers. In particular, it shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to its staff to recommend a particular insurance-based investment product to a customer when the insurance distributor could offer a different insurance-based investment product which would better meet the customer's needs.**

**12. Member States may impose additional requirements on distributors in respect of the matters covered by this Article. Such requirements must be objectively justified and proportionate so as to address specific risks to customer protection or to market integrity which are of particular importance in the circumstances of the market structure of that Member State.**

**Member States shall notify the Commission of any requirement which they intend to impose in accordance with this paragraph without undue delay and at least two months before the date appointed for that requirement to come into force. The notification shall include a justification for that requirement. Any such additional requirements shall not restrict or otherwise affect the rights of insurance intermediaries and insurance undertakings under Articles 5 and 6.**

**The Commission shall communicate to Member States and make public on its website the additional requirements imposed in accordance with this paragraph.**

1. ~~When~~ **Without prejudice to paragraphs 5 and 6 of Article 15a, when providing advice on, or proposing an insurance-based investment advice product,** the insurance ~~intermediary or insurance undertaking~~ **distributor** shall obtain the necessary information regarding the customer's or potential customer's knowledge and experience in the **insurance - investment** field relevant to the specific type of product or service, that person's financial situation including his ability to bear losses, and his investment objectives, including his risk tolerance, so as to enable the ~~insurance intermediary or insurance undertaking~~ **distributor** to ~~recommend~~ **advise on or propose** to the customer or potential customer the investment-based insurance products that are suitable for him and, in particular, are in accordance with his risk tolerance and ability to bear losses.

Member States shall ensure that where an insurance ~~intermediary or insurance undertaking~~ **distributor** provides investment advice recommending a package of services or products bundled pursuant to Article 21, the overall bundled package is suitable.

2. Member States shall ensure that insurance ~~intermediaries and insurance undertakings~~ **distributors**, when carrying on insurance distribution activities other than those referred to in paragraph 1, in relation to sales where no advice is given, 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 insurance undertaking~~ **distributor** 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 21, the assessment shall consider whether the overall bundled package is appropriate.

Where the insurance ~~intermediary or insurance undertaking~~ **distributor** considers, on the basis of the information received under the previous subparagraph, that the product or service is not appropriate to the customer or potential customer, the insurance ~~intermediary or insurance undertaking~~ **distributor** 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 referred to in the first subparagraph, or where they provide insufficient information regarding their knowledge and experience, the insurance ~~intermediary or insurance undertaking~~ **distributor** shall warn them that the insurance ~~intermediary or insurance undertaking~~ **distributor** is not in a position to determine whether the service or product envisaged is appropriate for them. This warning may be provided in a standardised format.

2a. ~~Member States shall allow insurance intermediaries and insurance undertakings when providing investment services that only consist of execution or reception and transmission of customer order with or without ancillary services, excluding the granting of credits or loans as specified in Section B.1 of Annex I of [MiFID II] that do not comprise of existing credit limits of loans, current accounts and overdraft facilities to customers, to provide those investment services to~~ **Where no advice is given in relation to insurance-based investment products, Member States shall allow insurance distributors to carry out insurance distribution activities for** their customers without the need to obtain the information or make the determination provided for in paragraph 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 [MiFID II] 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 investment products for the purposes 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 ~~mediation~~**distribution** activity, the insurance ~~intermediary or insurance undertaking~~**distributor** is not required to assess the appropriateness of the insurance-based investment product or insurance distribution activity provided or offered and that he does not benefit from the corresponding protection of the relevant conduct of business rules. This warning may be provided in a standardised format;
- (d) the insurance intermediary or insurance undertaking complies with its obligations under Article ~~13e~~**23**.
3. The insurance ~~intermediary or insurance undertaking~~**distributor** shall establish a record that includes the document or documents agreed between the insurance ~~intermediary or insurance undertaking~~**distributor** 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~~**distributor** 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.
4. The insurance ~~intermediary or insurance undertaking~~**distributor** shall provide the customer with adequate reports on the service provided in 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.
- 4a. When providing ~~investment advice,~~**on** the insurance ~~intermediary or~~**-based investment product, the** insurance ~~undertaking~~**distributor** shall, ~~before~~**prior to** the ~~transaction is made~~**conclusion of the contract**, provide the customer with a statement on suitability in a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the customer.



Where the agreement to buy or sell an insurance-based investment product is concluded using a means of distance communication which prevents the prior delivery of the suitability statement, the ~~insurance intermediary or insurance undertaking~~ **distributor** may provide the written statement on suitability in a durable medium immediately after the customer is bound by any agreement, provided both the following conditions are met:

- (a) the customer has consented to receiving the suitability statement without undue delay after the conclusion of the transaction; and
- (b) the ~~insurance intermediary or insurance undertaking~~ **distributor** has given the customer the option of delaying the transaction in order to receive the statement on suitability in advance.

Where an insurance ~~intermediary or insurance undertaking~~ **distributor** provides portfolio management or 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.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 to ensure that insurance intermediaries and insurance undertakings comply with the principles set out in this Article when carrying on insurance distribution activities with their customers, including information to obtain when assessing the suitability and appropriateness of the services and financial instruments for their customers, criteria to assess non-complex financial instruments for the purposes of **paragraph 2a3(a)(ii)** of this Article, the content and format of records and agreements for the provision of services to customers and of periodic reports to customers on the services provided. Those delegated acts shall take into account:
  - (a) the nature of the service(s) offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions;

- (b) the nature of the products being offered or considered including different types of insurance products.
6. EIOPA shall develop by ..., and update periodically, guidelines for the assessment of insurance-based investment products incorporating a structure which makes it difficult for the customer to understand the risk involved in accordance with **paragraph 2a(a)(i)** ~~points (a)(i) of paragraph 3.~~
7. EIOPA may develop guidelines, and update them periodically, for the assessment of insurance-based investment products being classified as non complex for the purpose of **paragraph 2a(a)(ii)** ~~point (a)(ii) of paragraph 3,~~ taking into account the delegated acts adopted under paragraph 5.

## CHAPTER VIII

### SANCTIONS AND MEASURES

#### *Article 26*

#### *Administrative sanctions and measures*

1. Member States shall ensure that their administrative sanctions and measures are effective, proportionate and dissuasive.
2. Member States shall ensure that where obligations apply to insurance or reinsurance undertakings or insurance or reinsurance intermediaries, in case of a breach, administrative sanctions and measures can be applied to the members of their management body, and any other natural or legal persons who, under national law, are responsible for a breach.

3. The competent authorities shall be given all investigatory powers that are necessary for the exercise of their functions. In the exercise of their sanctioning powers, the competent authorities shall cooperate closely to ensure that sanctions or measures produce the desired results and coordinate their action when dealing with cross border cases.

*Article 27*

*Publication of sanctions*

Member States shall provide that the competent authority publishes any sanction or measure that has been imposed for breaches of the provisions of the national provisions adopted in the implementation of this Directive without undue delay including information on the type and nature of the breach and the identity of persons responsible for it, unless such disclosure would seriously jeopardise insurance and reinsurance markets. Where the publication would cause a disproportionate damage to the parties involved, the competent authorities shall publish the sanctions on an anonymous basis.

*Article 28*

*Breaches*

1. This Article shall apply to the following:
  - (a) a person who fails to register ~~or notify his mediation~~ **distribution** activities under Articles 3 ~~to 3d~~ **or 4**;
  - (b) *[deleted]*
  - (c) an insurance or reinsurance undertaking or insurance or reinsurance intermediary using the insurance or reinsurance mediation services of persons who referred to in paragraph 1(a);
  - (d) an insurance or reinsurance intermediary who obtained a registration through false statements or any other irregular means in breach of Articles 3 to 3d;

- (da) ~~an insurance or reinsurance intermediary who notified his mediation activities while providing false statements or any imprecise information in breach of Article 4;~~
- (e) an insurance or reinsurance intermediary or insurance undertaking who fails to meet the professional knowledge and competence requirements as laid down in this Directive;
- (f) an insurance undertaking or insurance or reinsurance intermediary who fails to comply with conduct of business requirements in accordance with Chapters VI and VII, where applicable.

2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative sanctions and measures that can be applied include at least the following:

- (a) a public statement, which indicates the natural or legal person and the nature of the breach;
- (b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;
- (c) in case of an insurance or reinsurance intermediary, withdrawal of registration in accordance with Article 3;
- (d) a ban against any member of the management body of the insurance or reinsurance intermediary or insurance or reinsurance undertaking or any other natural person, who is held responsible, to exercise functions in insurance intermediaries or reinsurance intermediaries, or insurance or reinsurance undertakings;
- (e) in case of a legal person, administrative pecuniary sanctions of up to 10 % of the total annual turnover of the legal person in the preceding business year; where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year;

- (f) in case of a natural person, administrative pecuniary sanctions of up to 5 000 000 EUR, or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this Directive; and

where the benefit derived from the breach can be determined, Member States shall ensure that the maximum level is no lower than twice the amount of that benefit.

### *Article 29*

#### *Effective application of sanctions*

1. Member States shall ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including:
  - (a) the gravity and the duration of the breach;
  - (b) the degree of responsibility of the responsible natural or legal person;
  - (c) the financial strength of the responsible natural or legal person, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
  - (d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;
  - (e) the losses for third parties caused by the breach, insofar as they can be determined;
  - (f) the level of cooperation of the responsible natural or legal person with the competent authority; and
  - (g) previous breaches by the responsible natural or legal person.

2. EIOPA shall issue guidelines addressed to the competent authorities in accordance with Article 16 of Regulation No (EU) 1094/2010 on the types of administrative measures and sanctions and level of administrative pecuniary sanctions.
3. This Directive shall not affect the power of the host Member States to take appropriate measures to prevent or to penalise irregularities committed within their territories which are contrary to legal or regulatory provisions adopted in the interest of the general good. This shall include the possibility of preventing offending insurance or reinsurance intermediaries from initiating any further activities within their territories.

### *Article 30*

#### *Reporting of breaches*

1. Member States shall ensure that the competent authorities establish effective mechanisms to encourage reporting of breaches of national provisions implementing this Directive to the competent authorities.
2. Those arrangements shall include at least:
  - (a) specific procedures for the receipt of reports and their follow-up;
  - (b) appropriate protection for employees of insurance or reinsurance undertakings or intermediaries who denounce breaches committed within them; and
  - (c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with the principles laid down in Directive 95/46/EC.

### *Article 31*

#### *Submitting information to EIOPA in relation to sanctions*

1. Member States shall provide EIOPA annually with aggregated information regarding all administrative measures or administrative sanctions imposed in accordance with Article 26.

EIOPA shall publish this information in an annual report.

2. Where the competent authority has disclosed an administrative measure or administrative sanction to the public, it shall contemporaneously report that fact to EIOPA.
3. EIOPA shall develop draft implementing technical standards on procedures and forms for submitting information as referred to in this Article.

EIOPA shall submit those draft implementing technical standards to the Commission by [XX/ insert concrete date 6 months after entry into force/application of this Directive].

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

## CHAPTER IX

### FINAL PROVISIONS

#### *Article 31a*

##### *Competent authorities*

**Member States shall ensure that competent authorities have in place appropriate measures enabling them at all times to monitor whether insurance and reinsurance intermediaries and ancillary insurance distributors meet the requirements of this Directive.**

## *Article 32*

### *Data Protection*

1. Member States shall apply Directive 95/46/EC to the processing of personal data carried out in the Member States pursuant to this Directive.
2. Regulation (EC) No 45/2001 shall apply to the processing of personal data carried out by EIOPA pursuant to this Directive.

## *Article 33*

### *Delegated acts*

The Commission shall be empowered to adopt delegated acts in accordance with Article 34 concerning Articles **15, 21a, 23 and 25**.

## *Article 34*

### *Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles **15, 21a, 23 and 25** shall be conferred on the Commission for an indeterminate period of time from ....
3. The delegation of powers referred to in Articles **15, 21a, 23 and 25** may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.



5. A delegated act adopted pursuant to Articles **15, 21a, 23 and 25** shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

*Article 34a*

*Transitional period*

Member States shall ensure that intermediaries already registered under Directive 2002/92/EC comply with the relevant provisions of national law implementing Article 8a of this Directive before .... [3 years after the transposition deadline as laid down in Article 36].

*Article 35*

*Review and evaluation*

1. Five years after the entry into force of this Directive, the Commission shall review this Directive. The review shall include a general survey of the practical application of rules laid down in this Directive taking due account of developments in the retail investment products markets as well as experiences acquired in practical application of this Directive and Regulation on key information documents for investment products and [MIFID II]. The review shall reflect on a possible application of the provisions of this Directive to products falling under the scope of Directive 2003/41/EC. This review shall also include a specific analysis of the impact of Articles **15a(2)(d)-(f) and 15c(3)**<sup>17(2)</sup>, taking into account the situation of competition on the market of intermediation services for contracts other than contracts in any of the classes specified in Annex I of Directive 2002/83/EC and the impact of the obligations referred to in Articles **15a(2)(d)-(f) and 15c(3)**<sup>17(2)</sup> on insurance intermediaries which are small and medium sized enterprises.
2. After consulting the Joint Committee of European Supervisory Authorities, the Commission shall submit a first report to the European Parliament and the Council.

3. By X X 20XX [four years after the entry into force of the Directive], and at least on a two-year basis thereafter, EIOPA shall prepare a second report on the application of this Directive. EIOPA shall consult ESMA before making public its report.
4. In a third report to be prepared by X X 20XX [two years after the entry into force of the Directive], EIOPA shall undertake an evaluation of the structure of insurance intermediaries' markets.
5. A report to be prepared by EIOPA by X X 20XX [four years after the entry into force of the Directive] as referred to in paragraph 3 shall examine whether the competent authorities referred to in Article 10(1) are sufficiently empowered and have adequate resources to carry out their tasks.
6. The report referred to in paragraph 3 shall examine at least the following issues:
  - (a) the changes in the insurance intermediaries' market structure;
  - (b) the changes in the patterns of cross-border activity;
  - (c) an interim assessment on the improvement of quality of advice and selling methods and the impact of this Directive on insurance intermediaries which are small and medium-sized enterprises .
7. That same report shall also include an evaluation by EIOPA of the impact of this Directive.

### *Article 36*

#### *Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~Articles [1-34] and Annex I~~ of this Directive by [date] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the ~~directive~~**Directive** repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 37*

##### *Repeal*

Directive 2002/92/EC is repealed with effect from [date of adoption 20XX] , without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of that Directive.

References to the repealed Directive shall be construed as references to this Directive.

#### *Article 38*

##### *Entry into force*

This Directive shall enter into force on the twentieth day of its publication in the Official Journal of the European Union .

*Article 39*  
*Addressees*

This Directive is addressed to the Member States.

Done at Strasbourg, ...

*For the European Parliament*

*For the Council*

ANNEX I  
PROFESSIONAL CUSTOMERS

A professional customer is a customer who possesses the experience, knowledge and expertise to make his own decisions and properly assess the risks that he incurs. The following should all be regarded as professionals in all insurance services and activities and insurance products for the purposes of ~~the~~**this** Directive.

1. Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a non-Member State:
  - (a) Credit institutions;
  - (b) Insurance and reinsurance intermediaries and investment firms;
  - (c) Other authorised or regulated financial institutions;
  - (d) Insurance and reinsurance undertakings;
  - (e) Collective investment schemes and management companies of such schemes;
  - (f) Pension funds and management companies of such funds;
  - (g) Commodity and commodity derivatives dealers;
  - (h) Locals;
  - (i) Other institutional investors.

2. Large undertakings meeting two of the following size requirements on a company basis:
  - balance sheet total: EUR 20,000,000
  - net turnover: EUR 40,000,000
  - own funds: EUR 2,000,000.
3. National and regional governments, including public bodies that manage public debt at national or regional level, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.
4. Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions. The entities mentioned above are considered to be professionals. They must however be allowed to request non-professional treatment and firms may agree to provide a higher level of protection. Where the customer of a firm is an undertaking referred to above, the firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the customer is deemed to be a professional customer, and will be treated as such unless the firm and the customer agree otherwise. The firm must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

It is the responsibility of the customer, considered to be a professional customer, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved. This higher level of protection will be provided when a customer who is considered to be a professional enters into a written agreement with the firm to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business regime. Such agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

## ANNEX II

### MINIMUM PROFESSIONAL KNOWLEDGE AND COMPETENCE REQUIREMENTS FOR MEDIATION OF POLICIES AS REFERRED TO IN ARTICLE 8A

- (a) Non-life risks classified under classes 1 to 18 in Part A of Annex I of Directive 2009/138/EC
- a. knowledge of terms and conditions of policies offered, including ancillary risks if covered by such policies;
  - b. knowledge of applicable insurance contract law, consumer protection law, data protection law, anti-money laundering law and, where applicable, tax law;
  - c. knowledge of claims handling;
  - d. knowledge of complaints handling;
  - e. knowledge of assessing consumer needs;
  - f. conflicts of interest management;
  - g. understanding emerging risks;
  - h. knowledge of the insurance market in the relevant Member State;
  - i. knowledge of business ethics standards; and
  - j. general financial competency.
- (b) Insurance-based investment products
- a. knowledge of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits;
  - b. knowledge of advantages and disadvantages of different investment options for policy-holders;
  - c. knowledge of financial risks borne by policy-holders;
  - d. knowledge of uncertainty risks for policy-holders;

- e. knowledge of policies covering life risks and other savings products;
- f. knowledge of organisation and benefits guaranteed by the pension system of the relevant Member State;
- g. knowledge of applicable insurance contract law, consumer protection law, data protection law, anti-money laundering law and, where applicable, tax law and social and labour law;
- h. knowledge of the insurance and other financial services markets in the relevant Member State;
- i. knowledge of complaints handling;
- j. knowledge of assessing consumer needs;
- k. conflicts of interest management;
- l. knowledge of business ethics standards; and
- m. advanced financial competency.

(c) Life risks classified in Annex II of Directive 2009/138/EC

- a. knowledge of policies, including the guaranteed benefits and, where applicable, ancillary risks;
- b. knowledge of different savings products;
- c. knowledge of organisation and benefits guaranteed by the pension system of the relevant Member State;
- d. knowledge of applicable insurance contract law, consumer protection law, data protection law, anti-money laundering law and, where applicable, tax law and social and labour law;
- e. knowledge of the insurance and other financial services markets in the relevant Member State;



- f. knowledge of complaints handling;
  - g. knowledge of assessing consumer needs;
  - h. conflicts of interest management;
  - i. knowledge of business ethics standards; and
  - j. advanced financial competency.
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