



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 13 May 2014  
(OR. en)**

**9760/14**

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**Interinstitutional File:  
2012/0175 (COD)**

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**EF 150  
ECOFIN 472  
SURE 15  
CODEC 1266**

**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 first Presidency compromise on the abovementioned proposal.

With respect to the original Commission proposal, the new text is marked in **underlined bold** and deletions are indicated in ~~strike through~~.

**DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on insurance mediation**

**(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 ~~including professional management of claims and loss adjusting~~, 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,  $\Rightarrow$  insurance undertakings, travel agents and car rental companies  $\Leftarrow$  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 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, ~~including the professional management of claims, or of loss adjusting or the expert appraisal of claims.~~
- (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 ~~or~~, 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 ~~or to professional management of claims, loss adjusting or expert appraisal of claims~~, 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, ~~as well as the professional knowledge of persons carrying on the activities of the management of claims, loss adjusting or expert appraisal of claims~~ 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.** ~~In order to enhance the effectiveness of out-of-court resolution of disputes procedures dealing with complaints submitted by customers, this Directive should provide that insurance undertakings or persons selling or offering insurance products have to participate in dispute resolution procedures, which do not result in a binding decision, instituted against themselves by customers and concerning rights and obligations established under this Directive. Such out-of-court resolution of disputes procedures would aim to achieve a quicker and less expensive settlement of disputes between insurance undertakings or persons selling or offering insurance products and customers and lightening of the burden on the court system. However, out-of-court resolution of disputes procedures should not prejudice the rights of the parties to such procedures to bring legal proceedings before courts.~~

⇐ 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>.

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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)

- (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.
- (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 ~~the customer~~ 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) ~~Contracts of insurance that involve investments~~ **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 retail investment products** (~~insurance investment products as defined in the Regulation on key information documents for 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 ~~Articles [8] regarding notions of adequate knowledge and ability of the intermediary, Article [17 and 23] regarding management of conflicts of interest and Articles [24 and 25] regarding conduct of business obligations in relation to insurance packaged retail investment products as well as implementing technical standards as set out in Article [30] regarding procedures and forms for submitting information in relation to sanctions.~~ **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, ~~⇒ including professional management of claims and loss adjusting,~~ ⇐ 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 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;
  - (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 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 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, ~~provided that equal treatment is guaranteed to all persons carrying out or authorised to carry out insurance ⇒ and reinsurance ⇐ mediation activities on that market.~~

This Directive shall not regulate insurance ⇒ or reinsurance ⇐ mediation activities carried out in third countries.

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

## *Article 2*

### *Definitions*

For the ~~purposes~~ purpose of this Directive:

- (1) 'insurance undertaking' means an undertaking **as defined in Article 13(1) of Directive 2009/138/EC** ~~which has received official authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;~~
- (2) 'reinsurance undertaking' means an undertaking **as defined in Article 13 (4) of Directive 2009/138/EC** ~~⇒ which has received official authorisation in accordance with Article of Directive 2005/68/EC ⇐;~~

- (3) 'insurance mediation' means the activities of ~~⇒~~advising on~~⇐~~, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, concluding such contracts or assisting in the administration and performance of such contracts, in particular in the event of a claim~~⇒~~, ~~and the activity of professional management of claims and loss adjusting~~~~⇐~~. 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 insurance mediation 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.**

None of the following activities shall be considered to be insurance mediation 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.**

(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 investment product' means a contract of insurance which could be also classified as an "investment product" as defined in Article 2(a) of [Regulation on key information documents for investment products (PRIIPs Regulation) ];~~

**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' means the 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, ~~and the activity of professional management of claims and loss adjusting.~~ ⇔ These activities shall be considered to be reinsurance mediation also if carried on by a reinsurance undertaking without the intervention of a reinsurance intermediary. ⇔

None of the following activities shall be considered to be reinsurance mediation 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 reinsurance mediation;

- (8) '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) '~~contingent commission~~' means ~~a remuneration in the form of a commission where the amount payable is based on the achievement of agreed targets relating to the business placed by the intermediary with that insurer;~~
- (11) 'large risks' shall be as defined by **Article 13(27) of Directive 2009/138/EC** ~~Article 5(d) of Directive 73/239/EEC~~;
- (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 durable medium~~ ⇒ as defined in Article 2(m) of Directive 2009/65/EC; ⇐
- (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(~~34~~**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) ~~'tying practice' means the offering of one or more ancillary services with an insurance service or product in a package where this insurance service or product is not made available to the consumer separately.~~
- (20) ~~'bundling practice' means the offering of one or more ancillary services with an insurance service or product in a package where this insurance service or product is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services.~~



## CHAPTER II

### REGISTRATION REQUIREMENTS

#### *Article 3*

#### *Registration*

1. ~~⇒ Except as provided in Article 4, ⇐ insurance~~ **Insurance** and reinsurance intermediaries shall be registered with a competent authority, ~~in their home Member State.~~ ⇒ Insurance **and reinsurance** undertakings registered in Member States **authorised** under **Directive 2009/138/EC** ~~Directive 73/239/EEC, Directive 2002/83/EC and Directive 2005/68/EC~~ and their employees shall not be required to register ~~again~~ 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 insurance and reinsurance intermediaries and in the application of the requirements of Article 8 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.

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), be satisfied as to the matter set out in paragraph 7 of this Article, subparagraph (c). 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.

2. Member States may establish more than one register for insurance and reinsurance intermediaries provided that they lay down the criteria according to which intermediaries are to be registered.

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. 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.

4. 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. ~~That~~ **This** register shall contain links to, and be accessible from, each of the Member States' competent authorities' websites.

Member States shall ensure that registration of insurance intermediaries - including tied ones - and reinsurance intermediaries is made subject to the fulfilment of the professional requirements laid down in Article 8.

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.

5. 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 ~~registers~~ **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.

6. 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.

7. 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.
8. 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.

## CHAPTER III

### ~~SIMPLIFIED REGISTRATION PROCEDURE – DECLARATION OF ACTIVITIES~~ INSURANCE MEDIATION AS AN ANCILLARY ACTIVITY

#### *Article 4*

#### *Ancillary insurance mediation* ~~Declaration procedure for providing ancillary insurance mediation; professional management of claims or loss assessment services~~

1. ~~The registration requirements in~~ **Member States may stipulate that** Article 3 ~~shall~~ **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 ~~declaration~~ **notification**;
  - (c) the insurance products concerned do not cover life assurance or liability risks, unless that cover is incidental to the main cover.
2. ~~The registration requirements in Article 3 shall not apply to insurance intermediaries whose sole activity is professional management of claims or loss assessment services.~~

3. Any insurance intermediary who is, ~~subject to paragraphs 1 and 2 of this Article shall submit to the competent authority of its home Member State a declaration whereby it informs~~ **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 ~~who are subject to paragraphs 1 and 2~~ **as referred to in paragraph 1** of this Article shall be subject to the provisions of Chapters I, III, IV, ~~V, VIII, IX~~ and Articles **8d, 8e, 8f, 14 and 15(1)(iv)** ~~15 and 16~~ of this Directive.

## CHAPTER IV

### FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT

#### *Article 5*

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

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 ability **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 ~~declaration~~**notification** in the home Member State, as evidence of the required knowledge and ability.

3. The proof of the previous registration or ~~declaration~~**notification** shall be established by evidence of registration issued or ~~declaration~~**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.

## CHAPTER V

### ~~OTHER ORGANISATIONAL~~ PROFESSIONAL REQUIREMENTS

#### Article 8

##### General provisions

1. Home Member States shall ensure that natural persons carrying out insurance or reinsurance mediation 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 basis.

#### Article 8a

##### Professional knowledge and competence requirements

1. Natural persons carrying out the activity of insurance or reinsurance mediation shall hold a diploma certifying successful completion of secondary level education. Furthermore, natural persons carrying out insurance mediation covering 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' professional experience in insurance mediation.

- 3. Provided that the conditions in paragraphs (1), and (2) are met, the host Member State shall recognise the professional knowledge and competence of natural persons carrying out insurance or reinsurance mediation 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 in its territory.**
- 4. Home Member States may provide that in the cases referred to in the second subparagraph of Article 3(1), the insurance undertaking or insurance intermediary shall verify that the professional knowledge and competence of natural persons carrying out insurance mediation are in conformity with the requirements under this Directive and, if need be, shall provide such persons with training.**

**Article 8b**

**Good repute**

- 1. Natural persons carrying out insurance and reinsurance mediation shall be of good repute. As a minimum, they shall have a clean police 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.**

**Article 8c**

**Continuing professional training**

- 1. Home Member States shall ensure that natural persons carrying out insurance mediation 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 appropriate training of at least 50 hours in five consecutive 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**

**Insurance intermediaries which carry out insurance mediation only on an ancillary basis shall possess appropriate knowledge of the terms and conditions of the policies they mediate and, where applicable, of claims handling rules.**

Article 8e

Minimum amounts of cover against liability arising from professional negligence

Insurance and reinsurance intermediaries 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.

Article 8f

Protection against intermediary's insolvency

Member States shall take all necessary measures to protect customers against the inability of the insurance intermediary 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 18750;



(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 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 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 in their territories.
2. 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 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 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 ~~EN~~ Chapter VIII ~~EN~~ 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 16 of Council Directive 92/49/EEC and Article 15 of Council Directive 92/96/EEC~~.

## *Article 12*

### *Complaints*

Member States shall ensure that procedures are set up which allow customers and other interested parties, especially consumer associations, to register complaints about insurance and reinsurance intermediaries  $\Rightarrow$  and undertakings  $\Leftarrow$ . In all cases complaints shall receive replies.

## *Article 13*

### *Out-of-court redress*

~~1. Member States shall ensure the setting up of appropriate, effective,  $\Rightarrow$  impartial and independent  $\Leftarrow$  complaints and redress procedures for the out of court settlement of disputes between insurance intermediaries and customers,  $\delta$  and between insurance undertakings and customers,  $\ddot{\imath}$  using existing bodies where appropriate.  $\delta$  Member States shall further ensure that all insurance undertakings and insurance intermediaries participate in the procedures for the out of court settlement of disputes where the following conditions are met:~~

~~(a) the procedure results in decisions which are not binding;~~

~~(b) [the running of] the limitation period for bringing the dispute before a court is suspended for the duration of the procedure for alternative dispute resolution;~~

- ~~(e) — the period of prescription of the claim is suspended for the duration of the procedure;~~
- ~~(d) — the procedure is free of charge or at moderate costs;~~
- ~~(e) — electronic means are not the only means by which the parties can gain access to the procedure and;~~
- ~~(f) — interim measures are possible in exceptional cases where the urgency of the situation so requires. ⇐~~

~~2. — Member States shall ⇨ ensure that ⇨ these bodies cooperate in the resolution of cross-border disputes.~~

#### *Article 14*

#### ~~⇨~~ *Restriction on use of intermediaries* ~~⇨~~

~~Member States shall ensure that insurance ⇨ and reinsurance ⇐ undertakings ⇨ and intermediaries ⇐ use the insurance and reinsurance mediation services only of registered insurance and reinsurance intermediaries ⇨ or ⇨ of the persons referred to in Article 1(2) ⇨ or of the persons who have fulfilled the declaration procedure referred to in Article 4 ⇐.~~

## CHAPTER VI

### INFORMATION REQUIREMENTS ~~AND~~ AND CONDUCT OF BUSINESS RULES ~~AND~~

#### *Article 15*

##### *General principle*

1. Member States shall require that, when carrying out insurance mediation with or for customers, an insurance intermediary or insurance undertaking acts honestly, fairly and professionally in accordance with the best interests of its customers.
2. All information, including marketing communications, addressed by the insurance intermediary or insurance undertaking to customers or potential customers shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

#### *Article 16*

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

- 1. \_\_\_\_\_ Member States shall lay down rules ensuring that, prior to the conclusion of any insurance contract, an insurance intermediary - including tied ones- shall make the following disclosures to customers:**

~~(a) — prior to the conclusion of any insurance contract, an insurance intermediary — including tied ones — shall make the following disclosures to customers:~~

- (i) its identity and address and that it is an insurance intermediary;
- (ii) whether or not it provides any type of advice about the insurance products sold;

- (iii) the procedures referred to in Article 12 allowing customers and other interested parties to register complaints about insurance and reinsurance intermediaries ~~and about the out-of-court complaint and redress procedures referred to in Article 13;~~
- (iv) the register in which it has been included and the means for verifying that it has been registered **or notified**; and
- (v) whether the intermediary is representing the customer or is acting for and on behalf of the insurance undertaking;

~~(b)~~**2. 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:

- (i) its identity and address and that it is an insurance undertaking;
- (ii) whether or not it provides any type of advice about the insurance products sold;
- (iii) the procedures referred to in Article 12 allowing customers and other interested parties to register complaints about insurance undertakings ~~and about the out-of-court complaint and redress procedures referred to in Article 13.~~

#### *Article 17*

#### ~~⊗~~*Conflicts of interest and transparency* ~~⊗~~

1. Prior to the conclusion of any insurance contract, **and, if necessary, upon amendment or renewal thereof**, an insurance intermediary - including tied ones - shall provide 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 intermediary;
- (c) in relation ~~to~~ the contract ~~to~~ proposed ~~to~~, 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 mediation business exclusively with one or more insurance undertakings. In that case, it shall provide the names of those insurance undertakings, or
  - (iii) ~~it~~ ~~is~~ not under a contractual obligation to conduct insurance mediation 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~~to~~~~to~~;
- (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);



- (f) ~~if the intermediary will receive a fee or a commission of any kind, the full amount of the remuneration concerning the insurance products being offered or considered or, where the precise amount is not capable of being given, the basis of calculation of all the fee or commission or the combination of both;~~
  - (g) 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.
2. ~~By derogation from paragraph 1 (f) for five years from the date on which this Directive comes into force, the intermediary of insurance contracts other than contracts in any of the classes specified in Annex I of Directive 2002/83/EC, shall, prior to the conclusion of any such insurance contract, if the intermediary is to be remunerated by a fee or commission,~~
- (a) ~~provide the customer with the amount or, where the precise amount is not capable of being given, the basis of calculation of the fee or commission or the combination of both, if the customer so requests.~~
  - (b) ~~inform the customer of his right to request the information referred to in point (a).~~
3. ~~The insurance undertaking or insurance intermediary shall also inform the customer about the nature and the basis of the calculation of any variable remuneration received by any employee of theirs for distributing and managing the insurance product in question.~~
4. If any payments are made by the customer under the insurance contract after its conclusion, the insurance undertaking or intermediary shall also make the disclosures in accordance with this Article for each such payment.

5. ~~The Commission shall be empowered to adopt delegated acts in accordance with Article 33. Those delegated acts shall specify:~~
- ~~(a) appropriate criteria for determining how the remuneration of the intermediary – including contingent commission – shall be disclosed to the customer as referred to in paragraph 1 (f) and (g) and paragraph 2 of this Article;~~
  - ~~(b) appropriate criteria for determining in particular the basis of calculation of all the fee or commission or the combination of both;~~
  - ~~(c) the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to disclose their remuneration to the customer.~~

#### *Article 18*

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

1. Prior to the conclusion of any specific contract, the insurance intermediary ⇐ –including tied ones – or insurance undertaking ⇐ shall identify on the basis of information provided by the customer:
  - (a) the demands and the needs of that customer;
  - (b) and shall specify to the customer the underlying reasons for any advice to the customer on a specified insurance product, if given ⇐.
2. The details ⇐ referred to in points (a) and (b) of paragraph 1 ⇐ shall be modulated according to the complexity of the insurance ☒product☒ being proposed⇐ and the level of financial risk to the customer ⇐.

3. When the insurance intermediary or the insurance undertaking inform 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.
4. Prior to the conclusion of a contract, whether or not advice is given, the insurance intermediary or 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 costumer.

*Article 19*

*⇒Information exemptions and flexibility clause⇐*

1. The information referred to in ~~in~~ Articles 16, 17 and 18 ~~need~~ not be given when the insurance intermediary or insurance undertaking mediates in the insurance of large risks, in the case of mediation by reinsurance intermediaries ~~or~~ or reinsurance undertakings, or in relation to professional customers as specified in the Annex.
2. Member States may maintain or adopt stricter provisions regarding the information requirements referred to in ~~in~~ Articles 16, 17 and 18 ~~provided~~ 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~~ shall ensure that the information it receives relating to national provisions is also communicated to consumers, insurance intermediaries ~~and~~ and insurance undertakings .

*Article 20*  
*Information conditions*

1. All information to be provided in accordance with Articles 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. It shall be provided free of charge.
2. By way of derogation from paragraph 1(a), the information referred to in Articles 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 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 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 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 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 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 16, 17 and 18 can be accessed;
- (d) it is ensured that the information referred to in Articles 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 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. ~~Member States shall allow bundling practices but not tying practices.~~
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 shall inform the customer whether it is possible to buy the different components separately.**~~When an insurance service or product is offered together with another service or product as a package, the insurance undertaking or, where applicable, the insurance intermediary shall offer and inform the customer that it is possible to buy the components of the package separately and shall provide information of the costs and charges of each component of the package that may be bought through or from it separately.~~
  - 2a. **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 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 31 December [20XX] at the latest,\*, 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)**Articles 16, 17 and 18 or paragraph 1 of this Article.

## CHAPTER VII

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

#### *Article 22*

#### *Scope*

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

(a) — an insurance intermediary;

(b) — an insurance undertaking.

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

*Article 22a*

*Prevention of conflicts of interest*

**An insurance intermediary and insurance undertaking 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 ~~interest~~ interests*

1. Member States shall require insurance intermediaries and insurance undertakings 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 ~~on~~ **out any** insurance ~~mediation~~ **distribution activities**.
  
2. Where steps taken ~~in compliance with Articles 15, 16 and 17~~ **organisational or administrative arrangements made** by the insurance intermediary or insurance undertaking in ~~compliance with Articles 15, 16 and 17~~ **accordance with Article 22 to manage conflicts of interest** are not sufficient to ensure, with reasonable confidence, that risks of damage to ~~the~~ **customer** ~~interests of customers and potential customers arising from conflicts of interest~~ will be prevented, the insurance intermediary or insurance undertaking shall clearly disclose **to the customer** the general nature ~~and/or sources of conflicts of interest to the customer~~ **and/or** sources of conflicts of interest ~~to the customer~~ before undertaking business on ~~the customer's~~ **sits** behalf.



3. The Commission shall be empowered to adopt delegated acts, in accordance with Article 33 **in order** to specify:
- (a) **define** the steps ~~and effective organisational and administrative arrangements that~~ insurance intermediaries ~~and/or~~ insurance undertakings might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when ~~providing~~ **carrying out** insurance ~~mediation;~~ **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.

#### *Article 24*

##### *General principles and information to customers*

1. Member States shall ~~require~~ **ensure** that, when carrying out insurance ~~mediation with or for~~ ~~customers~~ **distribution activities**, an insurance intermediary or insurance undertaking acts honestly, fairly and professionally in accordance with the best interests of its customers and ~~complies, in particular, with the principles set out in this Article and in Article 25.~~
2. All information, including marketing communications, addressed by the insurance intermediary or insurance undertaking 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.** ~~Appropriate information shall be provided to customers or potential customers about:~~

~~(a) — the insurance intermediary or insurance undertaking and its services. When advice is provided, information shall specify whether the advice is provided on an independent basis and whether it is based on a broad or on a more restricted analysis of the market and shall indicate whether the insurance intermediary or insurance undertaking will provide the customer with the on-going assessment of the suitability of the insurance product recommended to the customer;~~

~~(b) — insurance products and proposed investment strategies. This should include appropriate guidance on and warnings of the risks associated with investments in those products or in respect of particular investment strategies; and~~

~~(c) — costs and associated charges.~~

4. ~~The information referred to in this Article should be provided in a comprehensible form in such a manner that the customers or potential customers are reasonably able to understand the nature and risks of the specific insurance product that is being offered and, consequently, to take investment decisions on an informed basis. This information may be provided in a standardised format.~~

5. ~~When the insurance intermediary or insurance undertaking informs the customer that insurance advice is provided on an independent basis, the insurance intermediary or insurance undertaking shall:~~

~~(a) — assess a sufficiently large number of insurance products available on the market. The insurance products should be diversified with regard to their type and issuers or product providers and should not be limited to insurance products issued or provided by entities having close links with the insurance intermediary or insurance undertaking; and~~

~~(b) — not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to customers.~~

6. ~~The Commission shall be empowered to adopt delegated acts in accordance with Article 33 concerning measures to ensure that insurance intermediaries and insurance undertakings comply with the principles set out in this Article when carrying on insurance mediation with their customers. Those delegated acts shall specify:~~
- ~~(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; and~~
  - ~~(b) — the nature of the products being offered or considered including different types of insurance products.~~

#### *Article 25*

##### *Assessment of suitability and appropriateness and reporting to customers*

1. When providing **investment** advice the insurance intermediary or insurance undertaking shall obtain the necessary information regarding the customer's or potential customer's knowledge and experience in the **investment** field relevant to the specific type of product or service, as well as regarding the customer's or potential customer's **that person's** financial situation **including his ability to bear losses**, and his investment objectives, ~~on the basis of which~~ **including his risk tolerance, so as to enable** the insurance intermediary or insurance undertaking ~~should~~ **to** recommend ~~the~~ **to the customer or potential customer** **the investment-based** insurance products that are suitable for the customer or potential customer ~~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 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, when carrying on insurance ~~mediation~~ **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 ~~the customer's or potential customer's~~ **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 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 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 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 shall warn them that the insurance intermediary or insurance undertaking 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 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 activity, the insurance intermediary or insurance undertaking 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 13c.**

3. The insurance intermediary or insurance undertaking shall establish a record that includes ~~at the~~ document or documents ~~such as a contract which has been~~ agreed between the insurance intermediary or insurance undertaking and the customer that set out the rights and obligations of the parties, and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.
4. ~~The customer must receive from the insurance intermediary or insurance undertaking~~ **shall provide the customer with** adequate reports on the service provided ~~to its customers~~ **in a durable medium**. ~~These~~ **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. ~~When providing advice, the insurance intermediary or insurance undertaking shall specify how the advice given meets the personal characteristics of the customer.~~
- 4a. When providing investment advice, the insurance intermediary or insurance undertaking shall, before the transaction is made, 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 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 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 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 investment 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 ~~mediation with their customers~~ **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 3 (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 ~~specify~~ **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 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 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 activities under Articles 3 or 4** ~~an insurance or reinsurance intermediary who is not registered in a Member State and who does not fall within Article 1(2) or Article 4;~~
  - (b) ~~a person providing ancillary insurance activities without having submitted a declaration as laid down in Article 4, or who has submitted such a declaration but in respect of whom the requirements set out in Article 4 are not met;~~
  - (c) an insurance or reinsurance undertaking or insurance or reinsurance intermediary using the insurance or reinsurance mediation services of persons who ~~are neither registered in a Member State nor referred to in Article 1(2), and who have not submitted a declaration under Article 4;~~ **referred to in paragraph 1(a);**
  - (d) an insurance or reinsurance intermediary ~~having~~**who** obtained a registration through false statements or any other irregular means in breach of Article 3;
  - (**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 ~~failing~~**who fails** to ~~meet the provisions of Article 8~~ **professional knowledge and competence requirements as laid down in this Directive;**
  - (f) an insurance undertaking or insurance or reinsurance intermediary ~~failing~~**who fails** to comply with conduct of business requirements in accordance with Chapter 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 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 **Article 23** ~~Articles 8, 17, 23, 24 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 **Article 23**~~Articles 8, 17, 23, 24 and 25~~ shall be conferred on the Commission for an indeterminate period of time from ~~the date of entry into force of this Directive....~~
3. The delegation of powers referred to in **Article 23**~~Articles 8, 17, 23, 24 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 **Article 23**~~Articles 8, 17, 23, 24 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 ~~2~~**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 ~~2~~**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 Article 17(2), 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 Article 17(2) 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 [1-39~~34~~34] and Annex I of ~~the~~ **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 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 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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