



Brussels, 15 October 2014  
(OR. en)

14341/14

---

---

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

---

---

ECOFIN 921  
CODEC 2025  
SURE 34  
EF 263

**NOTE**

---

From: Presidency  
To: Delegations

---

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

---

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

With respect to the fourth Presidency compromise (13635/14), the new text is marked in **underlined bold** and deletions are indicated in ~~striketrough~~.

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on insurance distribution

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

After consulting the European Data Protection Supervisor,

Acting in accordance with the  $\Rightarrow$ ordinary legislative $\Leftarrow$  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.

---

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

- (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 distribution, 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.
- (2a) However, this Directive is aimed at minimum harmonisation and therefore should not preclude Member States from maintaining or introducing more stringent provisions in order to protect customers, provided that such provisions are consistent with their obligations under Union law.
- (3) Intermediaries play a central role in the distribution of insurance and reinsurance products.
- (4) Various types of persons or institutions, such as agents, brokers and 'bancassurance' operators, ⇒⇒ insurance undertakings ⇐⇐ 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 distribution 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.

- (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 this Directive needs to cover not only insurance undertakings but also other market participants who sell insurance products on an ancillary basis, unless they meet the conditions for the exemption.
- (7) This Directive should apply to persons whose activity consists of assisting (whether on behalf of a customer or an insurance undertaking) in the administration and performance of a contract of insurance or reinsurance.
- (8) There are still substantial differences between national provisions which create barriers to the taking-up and pursuit of the activities of insurance and reinsurance distribution 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).
- (9a) This Directive should not prevent the competent authorities of the host Member State from verifying that marketing communications comply with national law before the insurance distributor can use them, subject to such control being non-discriminatory. Such a requirement should not constitute a prior condition for an insurance intermediary to pursue his business.**
- (10) This Directive should apply to persons whose activity consists of ~~providing~~ providing insurance ~~or~~ or reinsurance ~~distribution services~~ distribution services to third parties.

- (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 ~~aimed at the conclusion or the performance of an insurance contract~~, when this activity is remunerated by the insurance distributor or by the customer; 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. It should not apply either to the mere introducing activities consisting of the provision of data and information about insurance or reinsurance products or an insurance or reinsurance intermediary or undertaking to potential policyholders, such as the one performed by websites managed by public authorities or consumers' associations which, without being remunerated or aiming at the conclusion of any contract, compare insurance products available on the market.
- (12) This Directive should not apply to persons with another professional activity, such as tax experts, accountants or lawyers, who provide advice on insurance cover on an incidental basis in the course of that other professional activity, neither should it apply to the mere provision of information of a general nature on insurance products, provided that the purpose of that activity is not to help the customer conclude or fulfil an insurance or reinsurance contract.
- (13) *[deleted]*
- (14) *[deleted]*

- (14a) This Directive should take into account the **differences in the types of distribution channel. It should, for example, take into account the** characteristics of **insurance intermediaries who are under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings** (tied insurance intermediaries) which exist in certain Member States' markets and should establish appropriate and proportionate conditions applicable to **the different types of distribution** such intermediaries. In particular, Member States should be able to stipulate that the insurance and reinsurance distributor which is responsible for the activity of an insurance, reinsurance or ancillary insurance intermediary is to ensure that the latter meets the conditions for registration and register that intermediary.
- (15) Insurance, reinsurance and ancillary insurance intermediaries who are natural persons should be registered with the competent authority of the Member State where they have their residence. **With regard to those persons commuting on a daily basis between the Member State of private residence and the Member State from which they carries out their intermediation activity (professional residence), the Member State of the registration shall be that of the professional residence. Those insurance, reinsurance and ancillary insurance intermediaries** ~~or, if different, where they carry out their insurance distribution activity; those which~~ **who** 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. **Member States should be able to allow other bodies to co-operate with competent authorities in the registration and regulation of insurance intermediaries.** Insurance, reinsurance and ancillary insurance intermediaries should be registered 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, ancillary 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 their home Member State should allow insurance, reinsurance and ancillary insurance intermediaries to operate in other Member States in accordance with the principles of freedom of establishment and freedom to provide services, provided that appropriate notification procedures have been followed between the competent authorities.
- (17) *[deleted]*
- (17a) In order to ensure a high level of service quality and effective protection of consumer, home and host Member States should closely cooperate in the enforcement of the obligations set out in this Directive. Where an insurance or reinsurance distributor or an ancillary insurance intermediary pursues business in different Member States under the freedom to provide services, the competent authority of the home Member State shall be responsible for ensuring compliance with the obligations set out in this Directive with regard to the entire business within the internal market. Should the competent authority of a host Member State become aware of any breaches of ~~such~~ obligations occurring within its territory, it shall inform the competent authority of the home Member State which shall then be obliged to take the appropriate measures. This concerns in particular breaches of the rules on **good repute**, professional knowledge and competence requirements or on the conduct of business. ~~However~~ **Moreover**, the competent authority of the host Member State should be entitled to intervene, if the home Member State fails to take appropriate measures or if such measures or if the measures taken are insufficient.

- (17b) In the case of branch establishment or the establishment of a permanent presence in another Member State it is appropriate to distribute responsibility for enforcement between home and host Member States. While responsibility for compliance with obligations affecting the business as a whole – such as the rules on professional requirements – should remain with the competent authority home Member State under the same regime as in the case of provision of services, the competent authority of the host Member State should assume responsibility for enforcing the rules on information requirements and conduct of business with regard to the services provided within its territory. However, should the competent authority of a host Member State become aware of any breaches of obligations occurring within its territory with respect to which this Directive does not confer responsibility to the host Member State, it shall inform the competent authority of the home Member State which shall then be obliged to take the appropriate measures. This concerns in particular breaches of the rules on **good repute**, professional knowledge and competence requirements. ~~However~~**Moreover**, the competent authority of the host Member State should be entitled to intervene, if the home Member State fails to take appropriate measures or if such measures or if the measures taken are insufficient.
- (18) In order to enhance transparency and facilitate cross-border trade, Member States should establish a single information point which gives access to their registers for insurance, reinsurance and ancillary insurance intermediaries. This single information point should also show a hyperlink to each relevant competent authority in each Member State. EIOPA should establish a website with hyperlinks to each such single information point.
- (19) The relative rights and responsibilities of home and host Member States in respect of the supervision of insurance, reinsurance and ancillary insurance intermediaries registered by them or carrying on insurance or reinsurance distribution activities within their territory in exercise of the rights of freedom of establishment or freedom to provide services, should be clearly established.
- (20) *[deleted]*
- (21) *[deleted]*



- (22) It is important to guarantee a high level of professionalism and competence among insurance, reinsurance and ancillary insurance 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 needs to match the level of complexity of these activities. Continuing education should be ensured.
- (22-a) The integrity requirements are ultimately a cornerstone of sound and reliable insurance sector and are fostering the main objective of insurance regulation and supervision, namely, the adequate protection of policy-holders. Such requirements imply the absence of ‘negative records’ such as no records on criminal offences, offences under the financial services legislation, offences of dishonesty, fraud or financial crime and other offences under company law, bankruptcy, insolvency or consumer protection.
- (22a) It is equally important that relevant persons within the management structure of an insurance, reinsurance or ancillary insurance intermediary who are involved in the distribution of insurance or reinsurance products, as well as the relevant employees of an insurance distributor directly involved in insurance or reinsurance distribution possess an appropriate level of knowledge and competence in relation to the distribution activity. The appropriateness of the level of knowledge and competence should be assured by the application of specific knowledge and professional requirements to those persons.
- (22b) However, Member States need not consider as relevant persons any manager nor employee involved in the distribution of insurance products. In particular, concerning insurance and reinsurance intermediaries and undertakings, all employees directly involved in the distribution activity are expected to possess appropriate level of knowledge and competence, with the exception of the ones which are devoted to merely executive or administrative tasks. Concerning ancillary insurance undertaking, at least the person responsible for the activity of a point of sale where insurance products are sold should be considered among the relevant employees which are expected to possess appropriate level of knowledge and competence. When the insurance and reinsurance distributor is a legal persons, the persons within the management structure in charge of executing policies and procedures related to the activity of distribution of insurance products should also abide by appropriate knowledge and competences requirements.

In any case the qualification of a person as “relevant” should guarantee an efficient and adequate customer’s protection. To this extent, the person who is responsible for the activity of insurance distribution within the insurance, reinsurance and ancillary insurance intermediary should be considered at any rate as a relevant person.

- (23) The coordination of national provisions on professional requirements and registration of persons taking up and pursuing the activity of insurance or reinsurance distribution 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) *[deleted]*
- (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 distribution 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. Exchange of information should in particular be promoted, both in the process of registration and on an on-going basis, with reference to information concerning the good repute and the professional and knowledge competences of persons responsible for carrying out the activity of an insurance distributor, in particular when such persons are coming from or are connected to Member States different than the home Member State.
- (28) *[deleted]*

**(28a) Member States should ensure that consumers have access to effective and efficient alternative dispute resolution procedures for the settlement of disputes concerning rights and obligations established under this Directive. Such alternative dispute resolution procedures and the entities offering them shall comply with the quality requirements laid down in Directive 2013/11/EU.**

- (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 and the Commission 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 people who sell insurance products and about the remuneration which they receive. There is a need to introduce a mandatory status disclosure for European insurance distributors. 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) *[deleted]*
- (32) *[deleted]*
- (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 the sale of insurance products should always be associated with a proper specification, on the basis of information obtained from the customer, of the demands and the needs of that customer. Any insurance product proposed to the customer should always be consistent with the insurance customer's demands and needs and be presented in a comprehensible form to allow that customer to make an informed decision.

- (34a) The sale of insurance products could also be accompanied with a personalised recommendation (advice). If the intermediary or the undertaking declares that it is giving advice on products, in addition to the duty of specifying the customers' demands and needs, the insurance intermediary or undertaking should provide the customer with a personalised recommendation explaining why such a particular product best meets the customer's insurance needs.
- (35) It is essential for the customer to know whether he/she is dealing with an intermediary who gives advice on the basis of a fair and personal analysis. **In order to assess whether the number of contracts and providers considered by the intermediary is sufficiently large to cater for a fair and personal analysis, appropriate consideration should be given, inter alia, to the needs of the customer, the number of providers in the market, the market share of those providers, the number of relevant insurance products available from each provider, and the features of those products.**
- (36) *[deleted]* ⇒ ⇒
- (37) *[deleted]*
- (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) **In line with the minimum harmonisation nature of this Directive,** ~~This Directive~~ should specify the minimum obligations which insurance ~~undertakings and insurance intermediaries~~ **distributors** 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~~ **distributors** independently of the provisions of their home Member State where they are pursuing insurance distribution 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>2</sup>. A Member State which proposes to apply and applies provisions regulating insurance ~~intermediaries~~ **distributors** 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.
- (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.

---

<sup>2</sup> OJ L 138, 13.7.2000, p. 1.

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.

- (41a) In order to ensure that insurance products meet the needs of the target market, insurance undertakings - and, in those jurisdiction where this is the case, even insurance intermediaries manufacturing insurance products for sale to customers - should maintain, operate and review a process for the approval of each insurance product. The insurance undertaking's product approval process should be an integral part of its risk management and should involve all relevant "key functions" as specified in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance. Where an insurance distributor advises on or proposes insurance products which it does not manufacture, it should in any case be able to understand the characteristics and identified target market of those products.

(42) Insurance policies with an investment element are often made available to customers as potential alternatives or substitutes to investment products subject to Directive 2014/65/EU of the European Parliament and of the Council<sup>3</sup>. To deliver consistent investor protection and avoid the risk of regulatory arbitrage, it is important that insurance based investment products are subject, in addition to the conduct of business standards defined for the insurance products, to specific standards aimed at addressing the investment element embedded in those products: these include provision of appropriate information, requirements for advice to be suitable and restrictions on inducements.

**(42a) As participants of the PRIIPs market, insurance distributors are subject to uniform requirements in relation to the provision of the key information document to customers when distributing insurance-based investment products, as laid down in Regulation (EU) No .../2014 [PRIIPs]. In addition to the information provided in the key information document, distributors of insurance-based investment products should provide additional information detailing any cost of distribution that is not already included in the costs specified in the key information document, so as to enable the customer to understand the cumulative effect that these aggregate costs have on the return of the investment. This Directive should therefore lay down rules on provision of information on costs of the distribution service connected to the insurance-based investment product in question.**

---

<sup>3</sup> [Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU \(OJ L 173, 12.6.2014, p. 349\)](#) 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.

- (43) In order to ensure compliance with the provisions of this Directive by insurance undertakings and persons who pursue insurance distribution, 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>4</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 and publication.
- (43a) Even though nothing prevents Member States from laying down rules for administrative and criminal sanctions for the same infringements, Member States should not be required to lay down rules for administrative sanctions for the infringements of this Directive which are subject to national criminal law. In accordance with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they should be able to do so if their national law so permits. However, the maintenance of criminal sanctions instead of administrative sanctions for infringements of this Directive should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Directive, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution.
- (44) *[deleted]*

---

<sup>4</sup> COM(2010)716.



- (44a) In order to deliver consistent investor protection and avoid the risk of regulatory arbitrage, it is important that, **in case of an infringement** related to the distribution of an insurance based investment product, **administrative sanctions and measures set out by Member States satisfy certain essential requirements in relation to criteria to be taken into account when applying a sanction or measure, publication, key powers to impose sanctions and levels of administrative fines** as ~~satisfies the same essential requirements in relation to key sanctioning powers or to the level of administrative pecuniary sanctions provided for in PRIIPs Regulation (Reg. n. ...).~~
- (45) In order to ensure a consistent application of sanctions across **the Union**, Member States; ~~when determining the type of administrative sanctions or measures and the level of administrative sanctions, Member States should be required to ensure that, **when determining the type of administrative sanctions or measures and the level of administrative fines, the competent authorities take**~~ ~~the competent authorities adopt administrative sanctions and measures according to the proportionality principle and taking into account all relevant circumstances.~~
- (46) In order **to ensure that decisions on infringements by competent authorities have a dissuasive effect on the public at large and to inform market participants of behaviour that is considered detrimental to customers, those decisions should be published, unless such disclosure jeopardises the stability of insurance and/or reinsurance markets. If such publication would cause disproportionate damage to the parties involved, the competent authority should be able to decide not to publish the sanctions or to publish them anonymously.** ~~to strengthen the dissuasive effect on the public at large and to inform about infringements 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 infringements, the competent authorities should have the necessary investigatory powers, and should establish effective mechanisms to enable reporting of potential or actual infringements.

- (48) **In order to cover all actions applied after an infringement, t** This Directive should refer to ~~both administrative sanctions and measures~~ **which are intended to prevent further infringements,** irrespective of their qualification as ~~an administrative 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 management of conflicts of interest, the obligation to fulfil product oversight and governance requirements, and assessment of suitability and appropriateness of insurance-based investment products. 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 technical standards which do not involve policy choices, for submission to the Commission.
- (52) *[deleted]*

- (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>5</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>6</sup> shall govern the processing of personal data carried out by EIOPA within the framework of this Directive, under the supervision of the European Data Protection Supervisor.
- (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 ~~and~~ 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.

---

<sup>5</sup> OJ L 281, 23.11.1995, p. 31.

<sup>6</sup> OJ L 8, 12.1.2001, p. 1.

(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 distribution in the European Union.
- 1a. This Directive applies to any natural and legal person who is established in a Member State or who wish to be established there in order to take up and pursue the distribution of insurance and reinsurance products.
2. *[deleted]*
- 2a. This Directive shall not apply to ~~insurance distribution activities conducted by~~ ancillary insurance intermediaries **carrying out insurance distribution activities**, where all the following conditions are met:
  - a) the insurance is complementary to the good or service supplied by any provider, where such insurance covers:
    - (i) the risk of breakdown, loss of or damage to the goods **or the non-use of the service** supplied by that provider or;
    - (ii) damage to or loss of baggage **and other risks** linked to the travel booked with that provider;
  - b) the amount of the ~~annual~~ premium **paid** for the insurance product does not exceed EUR [300]. **Where the contract is concluded for a period of more than 1 year, this threshold shall apply to the annual premium.**

**2b. Member States shall ensure that, when carrying out the distribution activity through an ancillary insurance intermediary who is exempted from the application of this Directive pursuant to paragraph 2a, the insurance distributor who is conducting this distribution activity is responsible for the compliance, as appropriate, with Article 15, 15b and 21. The relevant insurance distributor shall in particular ensure that:**

**(a) the customer is informed, prior to the conclusion of the contract, about its identity and address and about the procedures referred to in Article 12 allowing customers and other interested parties to lodge complaints;**

**(b) appropriate arrangements are in place to comply with Article 15b(2).**

3. This Directive shall not apply to insurance and reinsurance distribution activities 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 distribution activity pursued by insurance and reinsurance undertakings or intermediaries established in a third country and operating on its territory.

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

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

*Article 2*  
*Definitions*

For the purpose of this Directive:

- (1) *[deleted]*
- (2) *[deleted]*
- (3) 'insurance distribution' means the activities of ~~⇒~~advising on~~⇐~~<sup>⇐</sup>~~⇐~~<sup>⇐</sup>, 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~~⇐~~<sup>⇐</sup>.

The provision of information on one or more contracts of insurance 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 products or a discount on the price of a contract ~~aimed at the conclusion or the performance of an insurance contract~~, shall also be considered as insurance distribution for the purposes of this Directive when this activity is remunerated directly or indirectly by an insurance distributor or by the customer.

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

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

- (3a) “insurance distributor” means any ~~natural or legal person who takes up or pursues the activity of insurance distribution. Insurance distributors for the purposes of this Directive include insurance intermediaries~~, ancillary insurance intermediaries or ~~and~~ insurance ~~and reinsurance~~ undertakings;
- (3b) 'insurance intermediary' means any natural or legal person, other than an insurance or reinsurance undertaking, who, for remuneration ~~of any kind, including third party payments or any other financial or non-financial advantage~~, takes up or pursues the activity of insurance distribution;
- (3c) 'insurance undertaking' means an undertaking as defined in Article 13(1) of Directive 2009/138/EC;
- (3d) 'ancillary insurance intermediary' means any natural or legal person ~~insurance intermediary~~, other than a credit institution or an investment firm as defined in Article 4(1) of Regulation (EU) No 575/2013 [CRD IV], which carries out and is remunerated for the activity of insurance distribution on an ancillary basis with respect to clearly identified insurance products, provided that all the following conditions are met:
- (i) the principal professional activity of the insurance distributor is other than insurance distribution;
  - (ii) the insurance intermediary only distributes certain insurance products that are complementary to a good or service;
  - (iii) the insurance products concerned do not cover life assurance or liability risks, unless that cover is incidental to the main cover;
- (4) 'insurance-based investment product' means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations.

Insurance-based investment products shall not include:

- (a) non-life insurance products as listed in Annex I of Directive 2009/138/EC (Classes of Non-life Insurance);



- (b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or infirmity;
- (c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitles the investor to certain benefits;
- (d) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC;
- (e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;

(5) *[deleted]*

(6) 'reinsurance distribution' 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. These activities shall be considered to be reinsurance distribution 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 distribution for the purposes of this Directive:

- (a) the provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;
- (b) the mere provision of data and information on potential policyholders to reinsurance intermediaries or reinsurance undertakings or of information about reinsurance products or a reinsurance intermediary or reinsurance undertaking to potential policyholders, if the provider does not take any additional steps to assist the customer in concluding or performing an insurance contract;

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

- (15) 'cross-selling practice' means the offering of an insurance ~~service or~~ product together with another service or product as part of a package or as a condition of taking another agreement or package;
- (16) 'close links' means a situation referred to in Article 13(17) of Directive 2009/138/EC;
- (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 **or any other financial or non-financial advantage**, offered or given in ~~connection with~~ **respect of** insurance distribution activities.
- (19) *[deleted]*
- (20) *[deleted]*

## CHAPTER II

### REGISTRATION REQUIREMENTS

#### *Article 3*

#### *Registration*

1. Insurance, reinsurance and ancillary insurance intermediaries shall be registered with a competent authority in their home Member State.⇒  
  
⇐Without prejudice to the first subparagraph, Member States may stipulate that insurance and reinsurance distributors and other bodies may cooperate with the competent authorities in registering insurance, reinsurance and ancillary insurance intermediaries and in the application of the requirements of Chapter V to such intermediaries.
2. Member States may stipulate that the insurance and reinsurance distributor which is responsible for the activity of an insurance, reinsurance or ancillary insurance intermediary shall be responsible for ensuring that the latter meets the conditions for registration, including the conditions set out in Article 3b(5)(c).

3. Member States may also stipulate that the insurance or reinsurance distributor which is responsible for the activity of an insurance, reinsurance or ancillary insurance intermediary shall register that intermediary.

### *Article 3a*

#### *Establishment of registers*

1. Member States may establish more than one register for insurance, reinsurance and ancillary insurance intermediaries provided that they lay down the criteria according to which intermediaries are to be registered.
2. Member States shall establish an online registration system, which should be easily accessible for insurance and reinsurance distributors, and allowing the form to be completed directly online.
3. *[deleted]*
4. The register shall indicate further the Member States in which the intermediary conducts insurance or reinsurance distribution under the rules on the freedom of establishment or on the freedom to provide services.

### *Article 3ab*

#### *Single information point*

1. In case there is more than one register, Member States shall establish a single information point 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 Article 3(1).
2. EIOPA shall establish a website with hyperlinks to each single information point referred to in paragraph 1.

*Article 3b*

*Conditions of registration*

1. Member States shall ensure that registration of insurance, reinsurance and ancillary insurance intermediaries is made subject to the fulfilment of the relevant requirements of Chapter V.
2. Member States need not apply the requirement referred to in the first paragraph to all employees of an insurance, reinsurance or ancillary insurance intermediary.
3. Member States shall ensure that relevant persons within the management structure of a legal person who are involved in the distribution of insurance or reinsurance products, as well as the relevant employees of a legal or natural person directly involved in insurance or reinsurance distribution, fulfil the applicable requirements set out in Chapter V.
4. Member States shall ensure that the registers specify the names of the natural persons within the management of the registered legal person who are responsible for the **insurance or reinsurance** distribution-business. Member States shall also ensure that the names of the relevant persons referred to in paragraph 3 which are not specified in the registers, are made available, on request, to the competent authorities as well as evidence that these persons fulfil the applicable requirements set out in Chapter V.
5. Member States shall ensure that the following information from insurance and reinsurance intermediaries is requested as a condition of registration:
  - (a) the identities of shareholders or members, whether natural or legal persons, that have a holding in the intermediary that **amounts to** ~~exceeds~~ 10% **or more** and the amounts of those holdings;
  - (b) the identities of persons who have close links with the insurance or reinsurance intermediary;

- (c) that the holdings or close links do not prevent the effective exercise of the supervisory functions of the competent authority.

Member States shall ensure that insurance and reinsurance intermediaries inform the competent authorities without undue delay where information provided under this paragraph changes.

6. Member States shall ensure that competent authorities refuse registration if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the insurance or reinsurance intermediary has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, prevent the effective exercise of their supervisory functions.
7. Member States shall provide that applications by intermediaries for inclusion in the register shall be processed within four months of the submission of a complete application, and that the applicant shall be notified promptly of the decision.

#### *Article 3d*

##### *Monitoring and withdrawal of registration*

1. The validity of the registration shall be subject to a regular review by the competent authority.
2. Member States shall ensure that insurance, reinsurance and ancillary insurance intermediaries who cease to fulfil the registration requirements in Article 3(1) or fail to satisfy the requirements laid down in national law, are removed from the register. Where applicable, the home Member State shall inform the host Member State of such removal.
3. *[deleted]*

*Article 3e*

*Insurance and reinsurance undertakings*

Insurance and reinsurance undertakings shall not be required to register under this Directive.

CHAPTER III

INSURANCE MEDIATION AS AN ANCILLARY ACTIVITY

*Article 4*

*Ancillary insurance mediation*

[deleted]

CHAPTER IV

FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT

*Article 5*

*Exercise of the freedom to provide services*

1. Any insurance, reinsurance or ancillary insurance intermediary who intends to pursue business in another Member State for the first time under the freedom to provide services shall first notify 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, where applicable, the name of any insurance or reinsurance undertaking represented;

(d) the relevant classes of insurance, if applicable, to which the products sold pertain and the type of the products distributed in the host Member State or Member States;

(e) *[deleted]*

(ee) whether it provides advice in respect of the products referred to in point (d).

2. The competent authority of the home Member State shall, within one month of receiving the notification referred to in paragraph 1, communicate it to the competent authority of the host Member State, which shall acknowledge the receipt without delay. The competent authority of the home Member State shall inform the insurance, reinsurance or ancillary insurance intermediary in writing that the information has been received by the competent authority of the host Member State. The competent authority of the home Member State shall also advise the intermediary that information concerning the ~~relevant~~ legal provisions ~~protecting general good~~ referred to in Article 9(1) which are applicable in the host Member State ~~are~~ is available through the means referred to in Articles 9(3) and (4). After receiving this information, the insurance, reinsurance or ancillary insurance intermediary can commence distribution activities, provided that it complies with the legal provisions applicable in the host Member State referred to in Article 9(1).

3. *[deleted]*

4. In the event of the termination of the insurance distribution activities carried out in the host Member State or of a change in any of the ~~particulars~~ information communicated in accordance with paragraph 1, the insurance, reinsurance or ancillary insurance intermediary shall notify 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 5a

### *Breach of obligations in case of freedom to provide services*

1. Where the competent authority of the host Member State has grounds for concluding that an insurance, reinsurance or ancillary insurance intermediary acting within its territory under the freedom to provide services is in breach of any obligation set out in this Directive, including the obligations set out in Chapter V of this Directive, it shall refer those findings to the competent authority of the home Member State.

The competent authority of the home Member State shall, at the earliest opportunity, take the appropriate measures to ensure that the insurance, reinsurance or ancillary insurance intermediary remedies the irregular situation. It shall inform the competent authority of the host Member State of the measures taken.

In case the competent authority of the home Member State has not taken the appropriate measures, or in cases where, despite measures taken by the competent authority of the home Member State, an insurance, reinsurance or ancillary insurance 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, reinsurance or ancillary insurance 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, reinsurance or ancillary insurance intermediaries from initiating any further transactions within its territory;
- (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.

2. Paragraph 1 shall not affect the power of the Member States concerned to take, in a situation where an immediate action is necessary in order to protect the rights of consumers, appropriate measures to prevent or penalise irregularities committed within their territories. This shall include the possibility of preventing insurance, reinsurance and ancillary insurance intermediaries from continuing to distribute new insurance contracts within their territories.
3. ~~The competent authority of the host Member State is further entitled to take appropriate measures to prevent an insurance, reinsurance or ancillary insurance intermediary established in another Member State from carrying on business within its territory under the freedom to provide service where it can demonstrate that the relevant activity is entirely or principally directed towards the territory of the host Member State with the sole purpose of avoiding the legal provisions which would be applicable in the case of an establishment within the host Member State.~~
4. Any measure adopted by the competent authorities of the host Member State under this Article involving penalties or restrictions on the conduct of distribution activities shall be communicated to the intermediary concerned in a well reasoned document and notified to the competent authority of the home Member State, **to EIOPA** and to the Commission **without undue delay**.

#### *Article 6*

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

1. Member States shall require any insurance, reinsurance or ancillary insurance intermediary who intends 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, **to which the products sold pertain** ~~and the type of the products distributed in the host Member States;~~
- (e) *[deleted]*
- (ee) whether it provides advice in respect of the products referred to in point (d);**
- (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) *[deleted]*
- (i) *[deleted]*

Any permanent presence of an intermediary in the territory of another Member State shall be treated in the same way as a branch, even where that presence does not take the form of a branch, but consists of an office managed by the own staff of the intermediary or by a person who is independent but has permanent authority to act for the intermediary as an agent.

2. Unless the competent authority of the home Member State has reasons to doubt the adequacy of the organisational structure or the financial situation of the insurance, reinsurance or ancillary insurance intermediary, taking into account the distribution 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 competent authority of the home Member State shall inform the insurance, reinsurance or ancillary insurance intermediary in writing that the information has been received by the competent authority of 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, reinsurance or ancillary insurance intermediary within one month of receiving all the information referred to in paragraph 1.

Such a refusal or failure shall be subject to a right of appeal to the courts in the home Member State.

- 3a. Before the branch starts business, the competent authority of the host Member State shall, where applicable, within one month of receiving the information referred to in paragraph 1, inform the competent authority of the home Member State that information **concerning the legal provisions referred to in Article 9(1) which are applicable** ~~on the conditions under which, in the interest of the general good, that business must be pursued~~ in the host Member State is available through the means referred to in Articles 9(3) and (4). The competent authority of the home Member State shall communicate this information to the insurance, reinsurance or ancillary insurance intermediary concerned.

The insurance, reinsurance or ancillary insurance intermediary may establish the branch and start business as from the date upon which the competent authority of the home Member State has received such communication or, if no communication is received, on expiry of the period provided for in the first subparagraph, **provided that it complies with the legal provisions referred to in Article 9(1) applicable in the host Member State.**

4. In the event of the termination of the activities carried out in the host Member State or of a change in any of the particulars communicated in accordance with paragraph 1, an insurance, reinsurance or ancillary insurance 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

### *Breach of obligations in case of freedom of establishment*

1. *[deleted]*
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.
- 2a. Where the competent authority of a host Member State ascertains that an insurance, reinsurance or ancillary insurance 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 for which the competent authorities of host Member States are responsible in accordance with paragraph 2, that authority shall take the appropriate measures.
  - (a) *[deleted]*
  - (b) *[deleted]*
3. Where the host Member State has grounds for concluding that an insurance, reinsurance or ancillary insurance intermediary acting within its territory through an establishment is in breach of any obligation set out in this Directive, including the obligations set out in Chapter V of this Directive, and where the competent authority of the host Member State does not have responsibility in accordance with paragraph 2, it shall refer those findings to the competent authority of the home Member State.

The competent authority of the home Member State shall, at the earliest opportunity, take the appropriate measures to ensure that the insurance, reinsurance or ancillary insurance intermediary remedies the irregular situation. It shall inform the competent authority of the host Member State of the measures taken.

In case the competent authority of the home Member State has not taken appropriate measures, or 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 intermediary from initiating any further transactions within its territory;
- (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.

3a. Paragraph 3 shall not affect the power of the Member States concerned to take, in a situation where an immediate action is necessary in order to protect the rights of consumers, appropriate measures to prevent or penalise irregularities committed within their territories. This shall include the possibility of preventing insurance, reinsurance and ancillary insurance intermediaries from continuing to distribute new insurance contracts within their territories.

4. *[deleted]*

- 4a. Any measure adopted by the competent authority of the host Member State under this Article involving penalties or restrictions on the conduct of distribution activities must be communicated to the intermediary concerned in a well reasoned document and notified to the competent authority of the home Member State, **to EIOPA** and to the Commission **without undue delay**.

#### *Article 7b*

##### *Agreements on division of competences*

If an insurance, reinsurance or ancillary insurance intermediary's primary place of business is located in Member State other than the home Member State as defined in this Directive, then the competent authority of that other Member State may ~~ask for an agreement~~ 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 V, VI, VII 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.

#### *Article 7c*

##### *Powers in relation to national provisions adopted in the interest of general good*

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 **referred to in Article 9(1)**. This shall include the possibility of preventing offending insurance, reinsurance or ancillary insurance intermediaries from initiating any further activities within their territories.

**Moreover, this Directive shall not affect the power of the competent authority of the host Member State to take appropriate measures to prevent an insurance distributor established in another Member State from carrying out activity within its territory under the freedom to provide services or the freedom of establishment, where the relevant activity is entirely or principally directed towards the territory of the host Member State with the sole purpose of avoiding the legal provisions which would be applicable if that insurance distributor had its residence or registered office in that host Member State and, in addition, where its activity seriously endangers the proper functioning of insurance and reinsurance markets. In such a case 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. The competent authorities involved may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010, and in such a 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

### PROFESSIONAL REQUIREMENTS

#### *Article 8*

##### *General provisions*

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



## Article 8a

### *Professional knowledge and competence requirements*

1. Natural persons carrying out the activity of an insurance or reinsurance intermediary, shall present certificates or other appropriate evidence of his knowledge and ability required to carry out the activity of insurance distribution, such as an attestation of competence or certified professional experience or an attestation of successful completion of a professional examination or traineeship.
  - 1a. Natural persons carrying out the activity of insurance or reinsurance intermediaries, who distribute insurance policies of non-life risks classified under classes 1 to 18 in Part A of Annex I of Directive 2009/138/EC, insurance-based investment products and other policies covering life risks classified in Annex II of Directive 2009/138/EC, shall, in particular, demonstrate compliance with at least 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. *[deleted]*
- 2a. Natural persons carrying out the activity of an ancillary insurance intermediary shall demonstrate appropriate knowledge of the terms and conditions of the policies they distribute and, where applicable, of rules on handling claims and complaints.
3. Provided that the relevant conditions in paragraphs 1, 1a and 2a are met, and without prejudice of Articles 5a(1) and 7(3), the host Member State shall not restrict, for any reason relating to professional knowledge and competence, the pursuit of insurance or reinsurance distribution in its territory.
4. *[deleted]*
5. Without prejudice to Article 3(2), Member States shall have in place and publish criteria and mechanisms used to verify the required knowledge and competence. Member States may differentiate knowledge and competence requirements referred to in this Article depending on the nature of the products sold, the role performed by the natural persons within the intermediary and the activity carried out.

*Article 8b*  
*Good repute*

1. Natural persons carrying out insurance ~~and~~or reinsurance distribution shall be of good repute. As a minimum, they shall have a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they should not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.  
**Member States need not to apply the requirement in this Article to all the relevant persons involved in the activity of insurance or reinsurance distribution, in accordance with Article 3b(3).**
2. Member States may, in accordance with Article 3(1) and 3(2), allow the insurance distributor to check the good repute of natural persons referred to in paragraph 1 of this Article.

*Article 8c*  
*Continuing professional ~~training~~development*

1. Home Member States shall ensure that natural persons carrying out insurance ~~and~~or reinsurance distribution regularly update their professional knowledge and competence through continuing professional development in order to maintain an adequate level of performance.
2. Home Member States shall require continuing professional development and publish the criteria that will be identified to fulfill this obligation. Those criteria shall encompass, over specified time horizons, either a minimum number of hours of training or the successful completion of an appropriate exam, **taking into account the nature of the products sold, the type of insurance distributor, the role performed by the natural persons within the insurance distributor and the activity carried out.**
3. *[deleted]*

*Article 8e*

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

1. Insurance, or 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.
2. Member States shall require that ancillary insurance intermediaries hold professional indemnity insurance or comparable guarantees at a level established by Member States taking into account the nature of the products sold and the activity carried out.

*Article 8f*

*Protection against insolvency*

Member States shall take all necessary measures to protect customers against the inability of the insurance, reinsurance or ancillary 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 18 750;

- (c) a requirement that customers' monies shall be transferred via strictly segregated customer accounts and that these accounts shall not be used to reimburse other creditors in the event of bankruptcy;
- (d) a requirement that a guarantee fund be set up.

#### *Article 8fa*

##### *Requirements for insurance and reinsurance undertakings*

1. Insurance ~~and~~or reinsurance undertakings shall apply the obligations set out in Articles 8a(1), 8a(1a), 8b and 8c to the relevant employees involved in the insurance or reinsurance distribution activity, approving, implementing and regularly reviewing an internal policy and appropriate internal procedures accordingly.
2. Member States shall ensure that a function is identified to ensure the proper implementation of the endorsed policies and procedures.
3. Insurance and reinsurance undertakings shall establish, maintain and keep up to date records of all the relevant documentation regarding the application of Articles 8a, 8b and 8c. Member States shall also ensure that the name of the relevant employees referred to in paragraph 1 and of the responsible of the function referred to in paragraph 2 are made available, on request, to the competent authorities as well as evidence that these persons fulfill the applicable requirements set out in Chapter V.
4. *[deleted]*

#### *Article 8g*

##### *Regulatory technical standards*

1. EIOPA shall review the amounts referred to in Article 8e and Article 8f(b) regularly in order to take account of changes in the European Index of Consumer Prices as published by Eurostat. The first review shall take place at the latest five years after the entry into force of this Directive and the successive reviews every five years after the previous review date.

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

## **CHAPTER Va**

### **GENERAL GOODS, INSTITUTIONAL ARRANGEMENTS AND COOPERATION**

#### *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, **including information about whether and how the Member State has chosen to apply the stricter provisions in accordance with art. 19(2) and 24(12),** which are applicable to the carrying on of insurance and reinsurance distribution in their territories.

2. A Member State which proposes to apply and applies provisions regulating insurance or reinsurance distribution in addition to those set out in this Directive shall ensure that the administrative burden stemming from these provisions is proportionate for consumer protection. The Member State shall continue to monitor these provisions to ensure they remain so.
3. EIOPA shall include on its website the hyperlinks to the websites of competent authorities where information on general good rules is published. Such information shall be updated by the national competent authorities on a regular basis and EIOPA shall make this information available on its website, 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, including the duty to verify that insurance and reinsurance distributors meet the requirements of this Directive. 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*

##### *Cooperation and exchange of information between the competent authorities of Member States*

1. The competent authorities of different Member States shall cooperate among themselves and exchange any relevant information on insurance distributors in order to ensure the proper application of the provisions of this Directive.
  - 1a. In particular, both in the process of registration and on an on-going basis, the competent authorities shall share, as appropriate, the relevant information concerning the good repute and the professional and knowledge competences of an insurance distributor.
2. The competent authorities shall also exchange information on insurance distributors who have been subject to a sanction or a measure referred to in ~~in~~ Chapter VIII ~~and~~ and such information is likely to lead to removal from the register of such intermediaries.
3. All persons required to receive or divulge information in connection with this Directive shall be bound by professional secrecy, in the same manner as is laid down in Article 64 of Directive 2009/138/EC.

#### *Article 12*

##### *Complaints*

Member States shall ensure that procedures are set up which allow customers and other interested parties, especially consumer associations, to lodge complaints about insurance and reinsurance distributors. In all cases complaints shall receive replies.

*Article 13*

*Out-of-court redress*

*[deleted]*

*Article 14*

~~☒~~☒ *Restriction on use of intermediaries* ~~☒~~☒

~~☒~~☒ *[deleted]*

CHAPTER VI

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

*Article 15*

*General principle*

1. Member States shall require that, when carrying out insurance distribution, an insurance distributor acts honestly, fairly and professionally in accordance with the best interests of its customers.
2. Without prejudice to Directive 2005/29/EC, Member States shall require that all information related to the subject of this Directive, including marketing communications, addressed by insurance distributors to customers or potential customers shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.
3. ~~Member States may prohibit the acceptance or receipt of fees, commissions or other monetary or non-monetary benefits paid or provided to insurance distributors by any third party, or a person acting on behalf of a third party, in relation to the distribution of insurance products.~~



4. Member States shall lay down rules ensuring that insurance distributors are not remunerated or do not remunerate or assess the performance of their employees in a way that conflicts with its duty to act in the best interest of its customers. In particular, an insurance distributor shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs.
5. *[deleted]*
6. *[deleted]*

#### *Article 15a*

##### *Information provided by and conduct of business of the insurance intermediary*

1. Member States shall lay down rules ensuring that, in good time before the conclusion of an insurance contract, an insurance intermediary makes the following disclosures to customers:
  - (a) its identity and address and that it is an insurance intermediary;
  - (aa) whether it provides advice about the insurance products sold;
  - (b) *[deleted]*
  - (c) the procedures referred to in Article 12 allowing customers and other interested parties to register complaints about insurance intermediaries; and
  - (d) the register in which it has been included and the means for verifying that it has been registered.
2. Member States shall ensure that in good time before the conclusion of an insurance contract, an insurance intermediary provides the customer with at least the following information:

- (a) whether ~~it~~ ~~has~~ a holding, direct or indirect, representing 10% or more of the voting rights or of the capital in a given insurance undertaking;
- (b) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing 10% or more of the voting rights or of the capital in the insurance intermediary;
- (c) in relation ~~to~~ the contracts ~~proposed~~ or advised upon ~~it~~, whether:
  - (i) it ~~gives~~ advice on the basis of a fair and personal analysis, or
  - (ii) ~~it~~ is under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings. Furthermore, it shall provide the names of those insurance undertakings, or
  - (iii) ~~it~~ is not under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings and does not give advice on the basis of ~~a~~ fair and personal analysis. In that case, it shall provide the names of the insurance undertakings with which it may and does conduct business;
- (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
  - (ia) on the basis of other type of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract; or

- (iii) on the basis of a combination of any type of remuneration set out at points (i), (ii) and (iia).

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

3. If any payments, other than the ongoing premiums and scheduled payments, are made by the customer under the insurance contract after its conclusion, the insurance intermediary shall also make the disclosures in accordance with this Article for each such payment.
4. Prior to the conclusion of an insurance contract, the insurance intermediary shall specify, on the basis of information obtained from the customer, the demands and the needs of that customer and shall provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision. Any contract proposed shall be consistent with the customer's insurance demands and needs.
5. Where advice is provided prior to the conclusion of any specific contract, the insurance intermediary shall provide the customer with a personalised recommendation explaining why a particular product would best meet the customer's demands and needs.
6. The details referred to in paragraphs 4 and 5 shall be modulated according to the complexity of the insurance product being proposed and the type of customer.
7. When the insurance intermediary informs the customer that it gives its advice on the basis of a fair and personal analysis, it is obliged to give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable it to make a recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

*Article 15b*

*Information provided by and conduct of business of ancillary insurance intermediaries*

1. Member States shall lay down rules ensuring that, in good time before the conclusion of an insurance contract, an ancillary insurance intermediary makes the following disclosures to customers:
  - (a) its identity and address and that it is an ancillary insurance intermediary;
  - (b) *[deleted]*
  - (c) the procedures referred to in Article 12 allowing customers and other interested parties to lodge complaints about ancillary insurance intermediaries;
  - (d) the register in which it has been included and the means for verifying that it has been registered; and
  - (e) the nature of the remuneration received in relation to the insurance contract.
2. Prior to the conclusion of a contract, the ancillary insurance intermediary shall specify, on the basis of information provided by the customer, the demands and the needs of that customer and shall provide the customer with the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision. Any contract proposed shall be consistent with the customer's insurance demands and needs.
3. The details ~~⇒~~referred to in paragraph 2 may be modulated according to the insurance ~~⇒~~product~~⇒~~ being proposed and the type of the customer.

⇒⇐Article 15c

Information ~~provided by~~ and conduct of business of rules applicable to direct sales by the insurance undertaking

1. Member States shall lay down rules ensuring that in good time before the conclusion of an insurance contract, an insurance undertaking makes the following disclosures to customers:
  - (a) its identity and address and that it is an insurance undertaking;
  - (b) *[deleted]*
  - (c) whether it provides advice about the insurance products sold;
  - (d) the procedures referred to in Article 12 allowing customers and other interested parties to register complaints about insurance undertakings.
2. *[deleted]*
3. Member States shall ensure that in good time before the conclusion of an insurance contract, any insurance undertaking communicates to the customer the nature of the remuneration received by its employees in relation to the insurance contract.
4. If any payments, other than the ongoing premiums and scheduled payments, are made by the customer under the insurance contract after its conclusion, the insurance undertaking shall also make the disclosures in accordance with this Article for each such payment.
5. Prior to the conclusion of a contract, the insurance undertaking shall specify, on the basis of information provided by the customer, the demands and the needs of that customer and provide the customer with the relevant information about the insurance product in a comprehensible form to allow that customer to make an informed decision. Any contract proposed shall ~~meet~~ **be consistent with** the customer's insurance demands and needs.

6. Where advice is provided prior to the conclusion of any specific contract, the insurance undertaking shall provide the customer with a personalised recommendation explaining why a particular product would best ~~be consistent with~~ **meet** the customer's demands and needs.
7. The details referred to in paragraphs 5 and 6 shall be modulated according to the complexity of the insurance product being proposed ~~and~~ and the type of customer.
- [8. Member States shall ensure that, where the insurance contract consists of a mandatory occupational pension scheme and the customer becomes a member of this scheme without having taken an individual decision to join it, the information referred to in this Article shall be provided to the customer promptly after the enrolment.]**

*Article 16*

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

*[deleted]*

*Article 17*

*Conflicts of interest and transparency*

*[deleted]*

*Article 18*

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

*[deleted]*

## Article 19

### Information exemptions and flexibility clause ⇐⇐

1. The information referred to in ~~in~~ Articles 15a, 15b and 15c ~~need not be given~~ when the insurance distributor carries out distribution activity in the insurance of large risks, in the case of distribution by reinsurance intermediaries ~~or~~ or reinsurance undertakings, or in relation to professional customers as specified in the Annex I.
2. Member States may maintain or adopt stricter provisions regarding the requirements referred to in this Chapter and in particular ~~Articles 15a, 15b, and 15c~~ **and 21** provided that such provisions comply with Union law. In particular, Member States may make the advice referred to in Articles 15a(5) and 15c(6) mandatory for the sales of any insurance product, or for certain type of insurance products. In such a case, those stricter national provisions shall be complied with by ~~relevant insurance distributors operating in that Member State,~~ including those operating under the freedom to provide services or the freedom of establishment, **when concluding insurance contracts with customers having their habitual residence in that Member State.** ~~Member States shall communicate to EIOPA and the Commission such national provisions.~~
  - 2a. Member States may limit or prohibit the acceptance or receipt of fees, commissions or other monetary or non-monetary benefits paid or provided to insurance distributors by any third party, or a person acting on behalf of a third party, in relation to the distribution of insurance products.**
  - [2b. Member States may also require to the insurance distributor the ex-ante notification to the competent authority of the relevant information and documents about the insurance product distributed in that Member State.]**
3. In order to establish a high level of transparency by all appropriate means, EIOPA ~~shall ensure that the information it receives relating to national provisions is also communicated to consumers and insurance distributors.~~

*Article 20*  
*Information conditions*

1. All information to be provided in accordance with Articles 15a, 15b, 15c and ~~24~~ shall be communicated to the customers:
  - (a) on paper;
  - (b) in a clear and accurate manner, comprehensible to the customer;
  - (c) in an official language of the Member State in which the risk is situated or the Member State of the commitment or in any other language agreed by the parties; and
  - (d) free of charge.
2. By way of derogation from point (a) of paragraph 1, the information referred to in Articles 15a, 15b, 15c and 24 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 of this Article are met; or
  - (b) by means of a website where the conditions laid down in paragraph 5 of this Article are met.
3. However, where the information referred to in Articles 15a, 15b, 15c and 24 is provided using a durable medium other than paper or by means of a website, a paper copy shall be provided to the customer upon request and free of charge.
4. The information referred to in Articles 15a, 15b, 15c and 24 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 insurance distributor and the customer; and



- (b) the customer has been given the choice between information on paper and in the durable medium, and has chosen that other medium.
5. The information referred to in Articles 15a, 15b, 15c and 24 may be provided by the means of a website if it is addressed personally to the customer or if the following conditions are met:
- (a) the provision of the information referred to in Articles 15a, 15b, 15c and 24 by means of a website is appropriate in the context of the business conducted between the insurance distributor and the customer;
- (b) the customer has consented to the provision of the information referred to in Articles 15a, 15b, 15c and 24 by means of a website;
- (c) the customer has been notified electronically of the address of the website, and the place on the website where the information referred to in Articles 15a, 15b, 15c and 24 can be accessed;
- (d) it is ensured that the information referred to in Articles 15a, 15b, 15c and 24 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 insurance distributor and the customer, if there is evidence that the customer has regular access to the Internet. The provision by the customer of an e-mail address for the purposes of that business shall be regarded as such evidence.
7. In the case of telephone selling, the prior information given to the customer shall be in accordance with ~~the~~ Union ~~and~~ 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~~ immediately after the conclusion of the insurance contract.

## Article 21

### Cross-selling

1. *[deleted]*
2. When an insurance product is offered together with another service or in a package or as a condition for the same agreement or package, the insurance distributor shall inform the customer whether it is possible to buy the different components separately and, if so, shall provide for an adequate description of the different components of the agreement or package as well as a separate evidence of the costs and charges of each component. ~~This shall not prevent the distribution of insurance products with different levels of insurance coverage or multi insurance risk policies.~~
- 2a. Where the risks and the insurance coverage resulting from such an agreement or package offered to a customer are likely to be different from those associated with the components taken separately, the insurance distributor shall provide an adequate description of the different components of the agreement or package and the way in which their interaction modifies the risks and the insurance coverage.
3. EIOPA may develop guidelines for the assessment and the supervision of cross-selling practices indicating situations in which cross-selling practices are not compliant with obligations laid down in Article 15(1).
4. **This Article shall not prevent the distribution of insurance products with different levels of insurance coverage or multi-risk insurance policies.**

## Article 21a

### Product oversight and governance requirements

1. Insurance undertakings, as well as intermediaries which manufacture any insurance product for sale to customers, shall maintain, operate and review a process for the approval of each insurance product, or significant adaptations of an existing insurance product, before it is marketed or distributed to customers.

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

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

Insurance undertakings, as well as intermediaries which manufacture insurance products, shall make available to any distributor all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product.

Where an insurance distributor advises on or proposes insurance products which it does not manufacture, it shall have in place adequate arrangements to obtain the information referred to in the fourth subparagraph and to understand the characteristics and identified target market of each insurance product.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 to ensure that insurance ~~intermediaries and insurance undertakings~~ **distributors** comply with the principles set out in this Article when providing insurance distribution activities to their customers, **taking into account the activities performed, the insurance products sold and the nature of the distributor.**

3. The policies, processes and arrangements referred to in this paragraph shall be without prejudice to all other requirements under this Directive including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interest, and inducements.

**4. This Article shall not apply to insurance products which consist of the insurance of large risks.**

## CHAPTER VII

### ADDITIONAL SPECIFIC REQUIREMENTS IN RELATION TO INSURANCE-BASED INVESTMENT PRODUCTS

#### *Article 22*

##### *Scope*

*[deleted]*

#### *Article 22a*

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

Without prejudice to Article 15, an insurance intermediary or an insurance undertaking carrying out the distribution of insurance-based investment products 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. Those arrangements shall be proportionate to the activities performed, the insurance products sold and nature of the distributor.

## Article 23

### Conflicts of interest

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

## Article 24

### Information to customers

1. *[deleted]*
2. *[deleted]*
3. *[deleted]*
4. *[deleted]*

5. *[deleted]*
6. *[deleted]*
7. Without prejudice to Article 15a, paragraphs 1, 2 and 3, and Article 15c, paragraphs 1 and 3, appropriate information shall be provided in good time prior to the conclusion of a contract to customers or potential customers with regard to the distribution of insurance-based investment products, and all costs and related charges. That information shall include at least the following:
- a) when advice is provided,
    - i) *[deleted]*
    - ii) *[deleted]*
    - iii) whether the insurance intermediary or insurance undertaking will provide the customer with a periodic assessment of the suitability of the insurance-based investment products recommended to that customer, referred to in Article 25;
  - (b) as regards the information on insurance-based investment products and proposed investment strategies, appropriate guidance on and warnings of the risks associated with the insurance-based investment products or in respect of particular investment strategies proposed;

- (c) as regards the information on all costs and associated charges, ~~the information to be disclosed in accordance with Article 8(3)(f) of Regulation (EU) No /2014 [PRIIPs]~~, **information relating to the distribution of the insurance-based investment product, including the cost of advice, where relevant, the cost of the insurance-based investment product recommended or marketed to the customer and how the customer may pay for it, also encompassing any third party payments. In particular, the existence, nature and amount of the payment or benefit referred to in paragraph 10, or, where the amount cannot be ascertained, the method of calculating that amount shall be clearly disclosed to the customer. Where applicable, the insurance intermediary or insurance undertaking shall also inform the customer on mechanisms for transferring to the customer the fee, commission, monetary or non-monetary benefit received in relation to the distribution of the insurance-based investment product.**

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

8. The information referred to in paragraph 7 shall be provided **in a comprehensible form**, ~~in accordance with Article 6(4) of Regulation (EU) No /2014 [PRIIPs]~~, in such a manner that customers or potential customers are reasonably able to understand the nature and risks concerning the insurance-based investment product offered and, consequently, to take investment decisions on an informed basis.
9. *[deleted]*

10. Without prejudice to Article 15(3)~~19(2a)~~, Article 15a, paragraph 2, points (d) and (e), and Article 15c(3), Member States shall ensure that insurance intermediaries or insurance undertakings are regarded as not fulfilling their obligations under Articles 15(1), 22a or 23 where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, to or by any party except the customer or a person on behalf of the customer, other than where the payment or benefit:

- (a) **does not have a detrimental impact on** ~~is designed to enhance the quality of the relevant service to the customer; and~~
- (b) does not impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interest of its customers-

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

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

11. *[deleted]*



12. Member States may impose stricter requirements on distributors in respect of the matters covered by this Article. In particular, Member States may make the advice referred to in point (a) of paragraph 7 mandatory for the sales of any insurance-based investment products, or for certain type of them. In such a case, those stricter national provisions have to be complied with by all insurance intermediaries or insurance undertakings ~~operating in that Member State~~, including those operating under the freedom to provide services or the freedom of establishment, **when concluding insurance contracts with customers having their habitual residence in that Member State**. ~~Member States shall communicate to EIOPA and the Commission such national provisions.~~

### *Article 25*

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

1. Without prejudice to paragraphs 4 and 5 of Article 15a and to paragraphs 5 and 6 of Article 15c when providing advice on an insurance-based investment product, the insurance intermediary and the insurance undertaking shall also 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, that person's financial situation including his ability to bear losses, and his investment objectives, including his risk tolerance, so as to enable the insurance intermediary or the insurance undertaking to recommend to the customer or potential customer the investment-based insurance products that are suitable for him and, in particular, are in accordance with his risk tolerance and ability to bear losses.

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

2. Without prejudice to Article 15a(4) and to Article 15c(5), Member States shall ensure that insurance intermediary or insurance undertaking, when carrying on insurance distribution activities other than those referred to in paragraph 1, in relation to sales where no advice is given, asks the customer or potential customer to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the insurance intermediary or the 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 the 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 the 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 the insurance undertaking shall warn them that the insurance intermediary or the 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. Without prejudice to Article 15a(4) and to Article 15c 5), where no advice is given in relation to insurance-based investment products, Member States may derogate to the obligations referred to in paragraph 2 of this Article, allowing insurance intermediaries or insurance undertakings to carry out insurance distribution activities within their territories without the need to obtain the information or make the determination provided for in paragraph 2 of this Article 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 distribution activity, the insurance intermediary or the 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 Articles 22a and 23.

All insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers having their habitual residence in a Member State which do not make use of the derogation referred to in this Paragraph need to comply with the applicable provisions in that Member State.

3. The insurance intermediary and the insurance undertaking shall establish a record that includes the document or documents agreed between the insurance intermediary or the 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 the 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 insurance intermediary or the insurance undertaking shall provide the customer with adequate reports on the service provided in a durable medium. Those reports shall include periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.

4a. When providing advice on the insurance-based investment product, the insurance intermediary or the insurance undertaking shall, prior to the conclusion of the contract, provide the customer with a statement on suitability specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the customer. The conditions set out in Article 20, paragraphs 1, 2, 3 and 4 shall apply .

Where the agreement regarding 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 the 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 distributor has given the customer the option of delaying the transaction in order to receive the statement on suitability in advance.

Where an insurance intermediary or an insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the insurance-based investment product meets the customer's preferences, objectives and other characteristics of the customer.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 to ensure that insurance intermediaries and insurance undertakings comply with the principles set out in this Article when carrying on insurance distribution activities with their customers, including information to obtain when assessing the suitability and appropriateness of the insurance-based investment products for their customers, criteria to assess non-complex insurance-based investment products for the purposes of paragraph 2a (a)(ii) of this Article, the content and format of records and agreements for the provision of services to customers and of periodic reports to customers on the services provided. Those delegated acts shall take into account:
- (a) the nature of the service(s) offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions;
  - (b) the nature of the products being offered or considered including different types of insurance products.
6. EIOPA shall develop by [...], and update periodically, guidelines for the assessment of insurance-based investment products incorporating a structure which makes it difficult for the customer to understand the risk involved in accordance with paragraph 2a(a)(i).
7. EIOPA may develop guidelines, and update them periodically, for the assessment of insurance-based investment products being classified as non complex for the purpose of paragraph 2a(a)(ii), taking into account the delegated acts adopted under paragraph 5.

## CHAPTER VIII

### SANCTIONS AND MEASURES

#### *Article 26*

#### *Administrative sanctions and measures*

1. Without prejudice to the supervisory powers of competent authorities ~~in accordance with Chapter II~~ and the right for Member States to provide for and impose criminal sanctions, Member States shall lay down rules on and ensure that their competent authorities may impose administrative sanctions and measures applicable to all infringements of the national provisions transposing this Directive, and shall take all measures necessary to ensure that they are implemented. Member States shall ensure that their administrative sanctions and measures are effective, proportionate and dissuasive.
  - 1a. Member States may decide not to lay down rules for administrative sanctions for infringements which are subject to criminal sanctions under their national law. In that case, Member States shall communicate to the Commission the relevant criminal law provisions;
  - 1b. Competent authorities shall exercise the powers to impose sanctions provided for in this Chapter in accordance with their national legal frameworks:
    - (a) directly;
    - (b) in collaboration with other authorities;
    - (c) by application to the competent judicial authorities.
2. Member States shall ensure that where obligations apply to insurance or reinsurance distributors, in case of an infringement, administrative sanctions and measures can be applied to the members of their administrative, management or supervisory body, and any other natural or legal persons who, under national law, are responsible for an infringement.
  - 2a. Member States shall ensure that administrative sanctions and measures taken in accordance with this Article are subject to the right of appeal.

3. The competent authorities shall be given all investigatory powers that are necessary for the exercise of their functions. In the exercise of their powers set out in **this** Article-28, competent authorities shall cooperate closely to ensure that the administrative measures and sanctions produce the desired results of this Directive and coordinate their action in order to avoid possible duplication and overlap when applying administrative measures and sanctions to cross border cases.

#### *Article 27*

#### *Publication of sanctions*

1. Member States shall provide that the competent authority publishes any **administrative** sanction or measure that has been imposed for infringements 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 infringement 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 may decide not to publish or to publish the sanctions on an anonymous basis.
  - 1a. Competent authorities shall inform EIOPA of all administrative sanctions and measures imposed but not published in accordance with paragraph 1.
  - 1b. Competent authorities 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.

## Article 28

### Sanctions

1. This Article shall apply to **at least** the following:
  - (a) a person who fails to register his distribution activities under Articles 3 to 3d;
  - (b) *[deleted]*
  - (c) an insurance or reinsurance undertaking or insurance or reinsurance intermediary using the insurance or reinsurance distribution services of persons ~~who~~ referred to in paragraph 1(a);
  - (d) an insurance, reinsurance or ancillary insurance intermediary who obtained a registration through false statements or any other irregular means in breach of Articles 3 to 3d;
  - (e) an insurance distributor who fails to meet the professional knowledge and competence requirements as laid down in this Directive;
  - (f) an insurance undertaking or insurance intermediary who fails to comply with conduct of business requirements in accordance with Chapters VI and VII, in relation to the distribution of insurance-based investment products;
  - (g) an insurance ~~or reinsurance~~ distributor who fails to comply with conduct of business requirements in accordance with Chapters VI, in relation to any insurance ~~or reinsurance~~ products other than the ones referred to in point (f) of this paragraph.
  
2. Member States shall ensure that the competent authorities have the power to impose in the cases of the infringements referred to in paragraph 1(f), in accordance with national law, at least the following administrative sanctions and measures:
  - (a) a public statement, which indicates the natural or legal person and the nature of the infringement;



- (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 intermediary, withdrawal of the registration referred to in Article 3;
- (d) a temporary or, for repeated serious infringements, a permanent ban against any member of the management body of the insurance intermediary or insurance undertaking or any other natural person, who is held responsible, to exercise management functions in insurance intermediaries, or insurance undertakings;
- (e) in case of a legal person, maximum administrative pecuniary sanctions:
  - (i) at least {EUR 5 000 000} or up to 3% of the total annual turnover according to the last available accounts approved by the management body, or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of entry into force of this Directive ~~83/349/EEC~~, **Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU**, the relevant total turnover shall be the total annual turnover ~~or the corresponding type of income according to the relevant accounting Directives~~ according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking; or
  - (ii) up to twice the amount of the profits gained or losses avoided because of the infringement where those can be determined;

~~Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to Directive 83/349/EEC, the relevant total annual turnover shall be the total annual turnover according to the last available consolidated accounts approved by the management of the ultimate parent undertaking;~~

- (f) in case of a natural person, maximum administrative pecuniary sanctions:

- (i) of at least {700 000 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; or
- (ii) up to twice the amount of the profits gained or losses avoided because of the infringement where those can be determined.

2b. Member States shall ensure that the competent authorities have the power to impose in the cases of the infringements referred to in paragraph 1(a) to (e) and (g), in accordance with national law, at least the following administrative sanctions and measures:

- (a) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;
- (b) in case of an insurance, reinsurance or ancillary reinsurance intermediary, withdrawal of the registration referred to in Article 3.

2c. Member States may empower competent authorities to provide for additional sanctions or measures and for higher levels of administrative pecuniary sanctions than those provided for in this Article.

### *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 adopt administrative sanctions and measures according to the proportionality principle and take into account all relevant circumstances, including where appropriate:

- (a) the gravity and the duration of the infringement;
- (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 impact of the infringement on the customer interests;
- (f) the level of cooperation of the responsible natural or legal person with the competent authority;
- (fa) measures taken, after the infringement, by the responsible person to prevent the repetition of the infringement, and
- (g) any previous infringement by the responsible natural or legal person.

2. *[deleted]*

### *Article 30*

#### *Reporting of infringements*

1. Member States shall ensure that the competent authorities establish effective mechanisms to enable reporting of potential or actual infringements of national provisions implementing this Directive to the competent authorities.
2. Those mechanisms 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 report infringements committed within them; and
  - (c) protection of personal data concerning both the person who reports the infringements and the natural person who is allegedly responsible for a infringement, in compliance with the principles laid down in Directive 95/46/EC.

*Article 31*

*Submitting information to EIOPA in relation to sanctions*

*[deleted]*

CHAPTER IX

FINAL PROVISIONS

*Article 31a*

*Competent authorities*

*Article 32*

*Data Protection*

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

*Article 33*

*Delegated acts*

The Commission shall be empowered to adopt delegated acts in accordance with Article 34 concerning Articles 23(3), 21a(23) and 25(5).

*Article 34*  
*Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 21a(~~23~~), 23(3) and 25(5) shall be conferred on the Commission for an indeterminate period of time from ...
3. The delegation of powers referred to in Articles 21a(~~23~~), 23(3) and 25(5) may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 21a(~~23~~), 23(3) and 25(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or the Council.

*Article 34a*  
*Transitional period*

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

## Article 35

### Review and evaluation

1. Five years after the entry into force of this Directive, the Commission shall review this Directive. The review shall include a general survey of the practical application of rules laid down in this Directive taking due account of developments in the retail investment products markets as well as experiences acquired in practical application of this Directive and Regulation on key information documents for investment products and [MIFID II]. The review shall reflect on a possible application of the provisions of this Directive to products falling under the scope of Directive 2003/41/EC. This review shall also include a specific analysis of the impact of Articles 15a(2)(d)-(e) and 15c(3), taking into account the situation of competition on the market of intermediation services for contracts other than contracts in any of the classes specified in Annex I of Directive 2002/83/EC and the impact of the obligations referred to in Articles 15a(2)(d)-(e) and 15c(3) 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 this Directive by 24 months after the entry into force of the Directive, 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 this Directive.

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

2. Large undertakings meeting two of the following size requirements on a company basis:
  - balance sheet total: EUR 20,000,000
  - net turnover: EUR 40,000,000
  - own funds: EUR 2,000,000.
3. National and regional governments, including public bodies that manage public debt at national or regional level, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.
4. Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

The entities mentioned above are considered to be professionals. They must however **be informed that they are being treated as a professional customers and** be allowed to request non-professional treatment and distributors may agree to provide a higher level of protection. Where the customer is an undertaking referred to above, the distributor must inform it prior to any provision of services that, on the basis of the information available to the distributor, the customer is deemed to be a professional customer, and will be treated as such unless the distributor and the customer agree otherwise. The distributors 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 distributor 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. appropriate knowledge of terms and conditions of policies offered, including ancillary risks if covered by such policies;
  - b. appropriate knowledge of applicable laws of the relevant Member State governing the distribution of insurance products, such as consumer protection law, **tax law and social and labour law**;
  - c. appropriate knowledge of claims handling;
  - d. appropriate knowledge of complaints handling in the relevant Member State;
  - e. appropriate knowledge of assessing consumer needs;
  - f. conflicts of interest management;
  - g. *[deleted]*
  - h. appropriate knowledge of the insurance market in the relevant Member State;
  - i. appropriate knowledge of business ethics standards; and
  - j. appropriate financial competency.
- (b) Insurance-based investment products
- a. appropriate knowledge of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits;
  - b. appropriate knowledge of advantages and disadvantages of different investment options for policy-holders;
  - c. appropriate knowledge of financial risks borne by policy-holders;
  - d. *[deleted]*
  - e. appropriate knowledge of policies covering life risks and other savings products;

- f. appropriate knowledge of organisation and benefits guaranteed by the pension system of the relevant Member State;
  - g. appropriate knowledge of applicable laws of the relevant Member State governing the distribution of insurance products, such as consumer protection law **and tax law**;
  - h. appropriate knowledge of the insurance market and of the saving products market in the relevant Member State;
  - i. appropriate knowledge of complaints handling in the relevant Member State;
  - j. appropriate knowledge of assessing consumer needs;
  - k. conflicts of interest management;
  - l. appropriate knowledge of business ethics standards; and
  - m. appropriate financial competency.
- (c) Life risks classified in Annex II of Directive 2009/138/EC
- a. appropriate knowledge of policies, including terms, conditions, the guaranteed benefits and, where applicable, ancillary risks;
  - b. *[deleted]*
  - c. appropriate 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. appropriate knowledge of the insurance and other relevant financial services markets in the relevant Member State;
  - f. appropriate knowledge of complaints handling in the relevant Member State;
  - g. appropriate knowledge of assessing consumer needs;
  - h. conflicts of interest management;
  - i. appropriate knowledge of business ethics standards; and
  - j. appropriate financial competency.