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NOTE

From: Presidency/General Secretariat of the Council
To: Permanent Representatives Committee (Part 2)

Subject: Proposal for a Directive of the European Parliament and of the Council on insurance mediation (recast)
- Confirmation of the final compromise text with a view to agreement

Delegations will find below the final compromise text on the abovementioned Commission proposal, as a result of the Trilogue of 30 June 2015

DIRECTIVE 2015/...
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 *Article* 53(1) and *Article* 62 thereof,

Having regard to the proposal from the European Commission,

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

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

After consulting the European Data Protection Supervisor,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Amendments are to be made to Directive 2002/92/EC of the European Parliament and the Council ¹. ***Thus it is proposed that the*** Directive ***be*** recast.
- (2) Since the main objective and subject-matter of this proposal is to harmonise national provisions concerning the mentioned areas, the proposal should be based on Article 53(1) and ***Article 62 of the Treaty on the Functioning of the European Union*** (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) ***TFEU***. In addition, since this is a sector offering services across the Union, this Directive is also based on Article 62 ***TFEU***.
- (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 Union law, including this Directive.***
- (3) Insurance and reinsurance intermediaries play a central role in the distribution of insurance and reinsurance products in the Union.
- (4) Various types of persons or institutions, such as agents, brokers and 'bancassurance' operators, insurance undertakings, travel agents and car rental companies can distribute insurance products. Equality of treatment between operators and customer protection requires that all these persons or institutions be covered by this Directive.
- (4a) ***Consumers should benefit from the same level of protection despite the differences between distribution channels. In order to guarantee that the same level of protection applies and that the consumer can benefit from comparable standards, in particular in the area of the disclosure of information, a level playing field between distributors is essential.***

¹ ***Directive 2002/92/EC of the European Parliament and the Council of 9 December 2002 on insurance mediation*** (OJ L 9, 15.1.2003, p. 3).

- (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 **distribution** and that the protection of consumers requires an extension of the scope of that Directive to all sales of insurance products **■**. Insurance undertakings which sell **■** insurance products **directly**, 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 **customers** 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 **or intermediaries**, but **also** other market participants who sell insurance products on an ancillary basis **such as** travel agents and car rental companies, **unless they meet the** conditions for the exemption.

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- (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. ***There is a need to further strengthen the internal market and promote a true European internal market for life and non-life insurance products and services.***
- (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. ***The level of consumer protection should be raised in relation to Directive 2002/92/EC in order to reduce the need for varying national measures. It is important to take into consideration the specific nature of insurance contracts in comparison to investment products regulated under Directive 2014/65/EU. The distribution of insurance contracts, including insurance based investment products should therefore be regulated under this Directive and be aligned with that Directive. The minimum standards need to be raised with regard to distribution rules and the creation of a level playing field applicable to all insurance based investment products.***

- (10) This Directive should apply to persons whose activity consists of providing insurance or reinsurance *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 ■ in response to criteria selected by the customer whether via a website or other *media*, or the provision of a ranking of insurance ■ products or a discount on the price of *an insurance* contract, when the customer is able to directly *or indirectly* conclude an insurance contract at the end of the process. *It should not apply to websites managed by public authorities or consumers' associations, which do not aim at the conclusion of any contract, and merely compare insurance products available on the market.*
- (11a) *This Directive should not apply to* mere introducing activities consisting of the provision of data and information on potential policyholders to insurance or reinsurance intermediaries or undertakings or of information about insurance or reinsurance products or an insurance or reinsurance intermediary or undertaking to potential policyholders.
- (12) This Directive should not apply to persons with another professional activity, such as tax experts, accountants *or lawyers*, who provide advice on insurance cover on an incidental basis in the course of that other professional activity, neither should it apply to the mere provision of information of a general nature on insurance products, provided that the purpose of that activity is not to help the customer conclude or fulfil an insurance or reinsurance contract. *It should not apply to the professional management of claims on behalf of an insurance or reinsurance undertaking, nor to the loss adjusting and expert appraisal of claims.*

- (12a) This Directive should not apply to persons practising insurance distribution as an ancillary activity where the premium does not exceed a certain amount and the risks covered are limited to certain risks. Such insurance can be complementary to a good or to a service, including the risk of non-use of a service expected to be used at a certain point in time, such as a train journey, a gym subscription or a seasonal theatre pass, and other risks linked to travel such as travel cancellation or loss of luggage. However, in order to ensure that an adequate degree of consumer protection is always attached to the activity of insurance distribution, an insurance distributor, carrying out the distribution activity through an ancillary insurance intermediary exempted by the application of the requirements laid out in this Directive, should ensure the fulfillment of certain basic requirements, such as the communication of its identity and of the way in which a complaint can be lodged, and that the demands and needs of the customer are considered.*
- (12b) This Directive should ensure that the same level of protection applies and that all consumers can benefit from comparable standards. This Directive should promote a level playing field and competition on equal terms between intermediaries whether or not they are tied to an insurance undertaking. There is a benefit to consumers if insurance products are distributed through various channels and through intermediaries with different forms of cooperation with insurance undertakings, provided that they have to apply similar rules on consumer protection. This should be taken into account by the Member States in the implementation of this Directive.*
- (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. 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 carry 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 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. █ Intermediaries already registered in Member States shall not be required to register again under this Directive.
- (15a) *The inability of insurance intermediaries to operate freely throughout the Union hinders the proper functioning of the single market in insurance. This Directive is an important step towards an increased level of consumer protection and market integration.*
- (16) Insurance, reinsurance *and ancillary insurance* intermediaries should be able to avail themselves of the freedom of establishment and the freedom to provide services which are enshrined in the *TFEU*. 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.

- (17a)** *In order to ensure a high quality of service and effective consumer protection, home and host Member States should closely cooperate in the enforcement of the obligations set out in this Directive. Where insurance, reinsurance or ancillary insurance intermediaries pursue 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 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. 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 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. 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 the measures taken are insufficient.*

- (17c) *The competent authorities of the Member States should have at their disposal all means necessary to ensure the orderly pursuit of business by insurance and reinsurance intermediaries and ancillary insurance intermediaries throughout the Union, whether pursued in accordance with the right of establishment or the freedom to provide services. In order to ensure the effectiveness of the supervision all actions taken by the competent authorities should be proportionate to the nature, scale and complexity of the risks inherent in the business of such a distributor, regardless of the importance of the distributor concerned for the overall financial stability of the market.*
- (18) *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. In order to enhance transparency and facilitate cross-border trade, the European Insurance and Occupational Pensions Authority ('EIOPA') established by Regulation (EU) No 1094/2010 of the European Parliament and of Council² should establish, publish and keep up to date a single electronic database containing a record of each insurance, reinsurance **and ancillary insurance** intermediary which has notified an intention to exercise its freedom of establishment or to provide services. Member States should provide relevant information to EIOPA promptly to enable it to do this. This database should show a hyperlink to each relevant competent authority in each Member State. Each competent authority of each Member State should show on its website a hyperlink to this database.*
- (18a) *Any permanent presence of an intermediary in the territory of another Member State that is equivalent to a branch should be treated in the same way as a branch, unless the intermediary lawfully sets up the presence in another legal form. This could be the case, depending on the further circumstances, even where that presence does not formally take the form of a branch, but consists merely 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 agency would.*

² *Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).*

(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.

(19a) *In order to deal with situations where an insurance or ancillary insurance intermediary is established in a Member State with the sole purpose to avoid to comply with the rules of another Member State which is the place where it entirely or principally carries out its activity, the possibility for the host Member State to take precautionary measures may be an appropriate solution where the proper functioning of the insurance market of this Member State is at stake and should not be prevented by this Directive. However, those measures should not be an obstacle to the freedom to provide services and the freedom of establishment, or an access barrier for cross-border activity.*

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(22) It is important to guarantee a high level of professionalism and competence among insurance, reinsurance **and ancillary insurance** intermediaries and the employees of **insurance undertakings** who are involved in activities preparatory to, during and after the sales of insurance policies. Therefore, the professional knowledge of **intermediaries and ancillary insurance intermediaries and the employees of insurance undertakings needs to match the level of complexity of these activities. Ancillary insurance intermediaries should be required to know the terms and conditions of the policies they distribute and where applicable, rules on handling claims and complaints.**

(22a) *Continuing training and development should be ensured. Such training and development could encompass various types of facilitated learning opportunities including courses, e-learning and mentoring. Issues of form, substance and required certificates or other appropriate evidence, such as a record in a register or the successful completion of an exam, should be regulated by the Member States.*

- (22b) *The integrity requirements contribute to a sound and reliable insurance sector and the objective of the adequate protection of policy-holders. Those requirements include having a clean criminal record or any other national equivalent in relation to certain offences such as offences under the financial services legislation, offences of dishonesty, fraud or financial crime and other offences under company law, bankruptcy law or insolvency law.*
- (22c) *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.*
- (22d) *However, Member States need not consider as relevant persons those managers or employees not directly involved in the distribution of insurance products. 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 exceptions, such as for those who are merely devoted to administrative tasks. Concerning ancillary insurance intermediaries, at least the persons responsible for ancillary insurance distribution 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 person, the persons within the management structure in charge of executing policies and procedures relating to the activity of distribution of insurance products should also abide by appropriate knowledge and competence requirements. To this extent, the person who is responsible for the activity of insurance distribution within the insurance, reinsurance and ancillary insurance intermediary should always abide by the knowledge and competence requirements.*

(22e) *For insurance intermediaries and insurance undertakings who advise on or sell insurance based investment products to retail customers, Member States should ensure that they possess an appropriate level of knowledge and competence in relation to the products offered. This is particularly important given the increased complexity and the continuous innovation in the design of insurance based investment products. Buying an insurance based investment product implies a risk and investors should be able to rely on the information and quality of assessments provided. It is furthermore necessary that employees are given adequate time and resources to be able to provide all relevant information to customers about the products that they provide.*

(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 **consumer** protection in this field.

(24) In order to enhance cross border trade, principles regulating mutual recognition of intermediaries' knowledge and abilities should be introduced.

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(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 **customers**, 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.**

- (28) There is a need for appropriate and effective out-of-court complaint and redress procedures in the Member States in order to settle disputes between insurance *distributors* and customers, using, where appropriate, existing procedures. *These* procedures should be available to deal with disputes concerning rights and obligations under this Directive. Such out-of-court *complaint and redress* procedures would aim to achieve a quicker and less expensive settlement of disputes between insurance *distributors and customers*.
- (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 to provide for rules to ensure that such conflicts do not adversely affect the interests of the customer.
- (30) *Customers* should be provided in advance with clear information about the status of the persons who sell insurance products and about the *type of* remuneration which they receive. This information should be given to the *customer* 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 *type* of the *intermediary's* remuneration.
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- (32) In order to provide a customer with information on the insurance *distribution* services provided, regardless of whether the customer purchases through an intermediary, or directly from an insurance undertaking, and to avoid the distortion of competition by encouraging insurance undertakings to sell direct to customers rather than via intermediaries in order to avoid information requirements, insurance undertakings should also be required to provide information to customers about the *nature of the* remuneration *their employees* receive for the sale of insurance products.

- (32b) *Insurance intermediaries and insurance undertakings are subject to uniform requirements when distributing insurance-based investment products, as laid down in Regulation (EU) No 1286/2014. In addition to the information required to be provided in the form of 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 products in question.*
- (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 accompanied *by a demands and needs test on the basis of information obtained from the customer. Any insurance product proposed to the customer should always be consistent with the customer's demands and needs and be presented in a comprehensible form to allow that customer to make an informed decision.*
- (34a) *Where advice is provided prior to the sale of an insurance product, in addition to the duty to specify the customers' demands and needs, a personalised recommendation should be provided to the customer explaining why a particular product best meets the customer's insurance needs.*
- (34b) *Member States should require that remuneration policies of insurance distributors in relation to their employees or representatives do not impair the ability to act in the best interests of customers or prevent them from making a suitable recommendation or presenting information in a form that is fair, clear and not misleading. Remuneration based on sales targets should not provide an incentive to recommend a particular product to the customer.*

(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. This Directive should not prevent Member States from imposing that an insurance intermediary who wishes to give advice on the basis of a fair and personal analysis on an insurance contract is required to give such an advice on all the insurance contracts that it distributes.*

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(37) Prior to the conclusion of a contract, including in the case of non-advised sales, the customer should be given the relevant information about the insurance product to allow the customer to make an informed decision. *An insurance product information document should provide standardised information about non-life insurance products. It should be drawn up by the relevant insurance undertaking or in those Member States where this is the case, the insurance intermediary that manufactures the insurance product.* The insurance intermediary should █ explain to the customer the key features of the insurance products it sells *and therefore its staff should be given appropriate resources and time to do this.*

(37a) *In case of group insurances "customer" should mean the representative of a group of members who concludes an insurance contract on behalf of the group of members where the individual members cannot take an individual decision to join, such as a mandatory occupational pension arrangement. The representative of the group should promptly after enrolment of the member in the group insurance disclose, where relevant, the insurance product information document and the distributor's conduct of business information.*

- (38) Uniform rules should be laid down in order to give the *customer the choice of* medium in which information is provided 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 *customer* access to information, all pre-contractual information should be *accessible* 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 *solely for the purposes of distributing insurance-based investment products*, is a professional *client as defined in Directive 2014/65/EU*.
- (40) This Directive should specify the minimum obligations which insurance *distributors* should have in providing information to customers. A Member State should be able to maintain or adopt more stringent provisions *in this area* which may be imposed on insurance *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 Council³. A Member State which proposes to apply and applies provisions regulating insurance *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 *and remains limited*.
- (41) Cross-selling practices are a common strategy *used by insurance distributors* throughout the Union. They can provide benefits to *customers* but can also represent practices where the interest of *customers* is not adequately considered. *This Directive should not prevent the distribution of multi-risk insurance policies*.
- (41a) *The provisions of this Directive concerning cross-selling should be without prejudice to the application of European Union legislation providing for rules applicable to cross-selling practices in relation to certain categories of goods or services.*

³ *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') (OJ L 138, 13.7.2000, p. 1).*

- (41b) *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. 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. This Directive should not limit the variety and flexibility of the approaches which undertakings use to develop new products.*
- (42) *Insurance based investment products* are often made available to customers as potential alternatives or substitutes to investment products subject to Directive 2014/65/EU. 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 all 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 remuneration.
- (42a) *In order to ensure that any fee or commission or any non monetary benefit in connection with the distribution of an insurance-based investment product paid to or paid by any party except the customer or a person on behalf of the customer does not have a detrimental impact on the quality of the relevant service to the customer, the insurance distributor should put in place appropriate and proportionate arrangements in order to structurally avoid such detrimental impact. To this extent, the insurance distributor should develop, adopt and regularly review policies and procedures relating to conflicts of interests with the aim of avoiding any detrimental impact on the quality of the relevant service to the customer and to ensure that the customer is adequately informed on fees, commissions or benefits.*

(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 *other* 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 *other* measures in the Commission Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial sector⁴. Therefore, administrative sanctions and *other* 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 *other* measure and publication

(43a) Even though nothing prevents Member States from laying down rules for administrative and criminal sanctions for the same breaches, Member States should not be required to lay down rules for administrative sanctions for the breaches 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 breaches 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 breaches to the competent judicial authorities for criminal prosecution.

(44) In particular, the competent authorities should be empowered to impose pecuniary sanctions which are sufficiently high to offset the *actual or potential profits*, and to be dissuasive even for larger institutions and their managers.

⁴ COM(2010)0716.

- (44a) *In order to deliver consistent investor protection and avoid the risk of regulatory arbitrage, it is important that, in case of breaches related to the distribution of an insurance based investment product, administrative sanctions and measures set out by Member States should be aligned to those in Regulation (EU) No 1286/2014.*
- (45) In order to ensure a consistent application of sanctions across *the Union*, Member States *should ensure that* when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, **█** the competent authorities take into account all relevant circumstances.
- (46) In order to *ensure that decisions on breaches 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, *provided that the time period for lodging an appeal has passed and no appeal was lodged, unless such disclosure jeopardises the stability of insurance or reinsurance markets. Where national law provides for the publication of the sanction or measure which is subject to an appeal this should also be published without undue delay, as well as the outcome of the appeal. In any event if publication of the sanction or measure 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.*
- (47) In order to detect potential breaches, the competent authorities should have the necessary investigatory powers, and should establish effective mechanisms to *enable* reporting of potential or actual breaches.
- (48) This Directive should refer to both administrative sanctions and *other* measures irrespective of their qualification as a sanction or *other* 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 *product oversight and governance requirements for all products; and* in relation to *the distribution of insurance based investment products, management of conflicts of interest, the conditions under which inducements can be paid or received, and assessment of suitability and appropriateness*. 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 *EIOPA is* a body with highly specialised expertise, it *could be entrusted solely* with the elaboration of draft **■** implementing technical standards which do not *necessitate* policy choices, for submission to the *European Parliament, the Council and the Commission*.
- (52) *In accordance with the Common Understanding on delegated acts, without prejudice to its further revision, the Commission should take into account the objection period as well as Parliament and Council procedures as regards the date of transmission of the delegated act. Furthermore, in accordance with the Common Understanding on delegated acts, without prejudice to its further revision, where applicable, Regulation (EU) No 1094/2010, proper transparency and appropriate contacts with the Parliament and Council should be ensured in advance of the adoption of the delegated act.*

- (53) Directive 95/46 of the European Parliament and of the Council of [...] ⁵ and Regulation (EU) No 45/2001 of the European Parliament and of the Council of [...] ⁶ 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.
- (55b) This Directive should not be too burdensome for small and medium-sized insurance and reinsurance distributors. One of the tools by which to achieve that objective is the proper application of the proportionality principle. That principle should apply both to the requirements imposed on the insurance and reinsurance distributors and to the exercise of supervisory powers.***
- (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.

⁵ ***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*** (OJ L 281, 23.11.1995, p. 31).

⁶ ***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*** (OJ L 8, 12.1.2001, p. 1).

- (57) Directive 2002/92/EC should accordingly be repealed *24 months after the entry into force of this Directive, however, Chapter IIIA of Directive 2002/92/EC should be deleted from the date of entry into force of this Directive.*
- (58) The obligation to transpose this Directive into national law should be confined to those provisions which represent an amendment of the substance of Directive 2002/92/EC. The obligation to transpose the provisions which are unchanged arises under Directive 2002/92/EC.
- (59) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of Directive 2002/92/EC,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

1. This Directive lays down rules concerning the taking-up and pursuit of the activities of insurance and reinsurance *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.*
- 2a. *This Directive shall not apply to 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 premium paid for the insurance product does not exceed EUR 600 pro-rata annually.*
 - (ba) *by way of derogation from point (b), where the insurance is complementary to a service referred to in point (a) and the duration of that service is equal to or less than three months, the amount of the premium paid per person does not exceed EUR 200.*
- 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 undertaking or insurance intermediary ensures that:*

- (a) *information is made available to the customer, 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 and proportionate arrangements are in place to comply with Articles 15 and 21 and to consider the demands and needs of the customer before the proposal of the contract.*
- (c) *the product information document referred to in Article 18(4) is provided to the customer prior to the conclusion of the contract.*

2c. *Member States shall ensure that competent authorities monitor the market, including the market for ancillary insurance products which are marketed, distributed or sold in or from their Member State. EIOPA may facilitate and coordinate such monitoring.*

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 under the principle of freedom to provide services, provided that equal treatment is guaranteed to all persons carrying out or authorised to carry out insurance and reinsurance mediation activities on that market.

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

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

Article 2
Definitions

For the purposes of this Directive:

- (1) 'insurance undertaking' means an undertaking *as defined in Article 13(1) of Directive 2009/138/EC*;
- (2) 'reinsurance undertaking' means *a reinsurance undertaking as defined in Article 13(4) of Directive 2009/138/EC*;
- (3) 'insurance **distribution**' means the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, concluding such contracts, or assisting in the administration and performance of such contracts, in particular in the event of a claim **■** .

The provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media shall be considered to be insurance distribution.

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 **■** in concluding or performing an insurance contract;
- (aa) *the management of claims of an insurance 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 *if the provider does not take any additional steps to assist in the conclusion of an insurance contract;*

(ba) *the mere provision* 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 in the conclusion of an insurance contract.*

(3a) *'insurance distributor' means any insurance intermediary, ancillary insurance intermediary or insurance undertaking;*

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

(3c) *'ancillary insurance intermediary' means any natural or legal person, other than a credit institution or an investment firm as defined in Article 4(1) of Regulation (EU) No 575/2013 [CRD IV], who, for remuneration, takes up or pursues the activity of insurance distribution on an ancillary basis, provided that all the following conditions are met:*

(i) *the principal professional activity of that natural or legal person is other than insurance distribution;*

(ii) *the natural or legal person 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 complements the product or service which the intermediary provides as his principal professional activity;*

- (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, not including:*
- (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 disability;*
 - (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;*

- (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, *including when* 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;

(aa) *the management of claims of 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 reinsurance intermediaries or reinsurance undertakings *if the provider does not take any additional steps to assist in the conclusion of a reinsurance contract;*

(ba) *the mere provision* 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 in the conclusion of a reinsurance contract;*

(7) 'reinsurance intermediary' means any natural or legal person, other than a reinsurance undertaking *or its employees*, who, for remuneration, takes up or pursues *the activity of reinsurance distribution;*

■

(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;*

■

(11) 'large risks' *means large risks* as defined *in Article 13(27) of Directive 2009/138/EC;*

(12) 'home Member State' means:

(a) where the intermediary is a natural person, the Member State in which his residence is situated;

(b) where the intermediary is a legal person, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;

(13) 'host Member State' means the Member State in which an insurance or reinsurance intermediary has a permanent presence or establishment or provides services and which is not its home Member State ;

(13a) '*branch*' means an agency or a branch of an intermediary which is located in the territory of a Member State other than the home Member State;

(14) 'durable medium' means *any instrument which:*

(a) *enables a customer to store information addressed personally to that customer 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;*

■

(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 or incentive* offered or given in *respect of* insurance *distribution* activities.

■

REGISTRATION REQUIREMENTS

Article 3

Registration

1. ■ Insurance, reinsurance, *and ancillary insurance* intermediaries shall be registered with a competent authority in their home Member State.

Insurance *and reinsurance* undertakings ■ and their employees shall not be required to register ■ under this Directive.

Without prejudice to the first subparagraph, Member States may stipulate that insurance and reinsurance undertakings *and intermediaries* and other bodies may cooperate with the competent authorities in registering insurance and reinsurance *and ancillary insurance* intermediaries and in the application of the requirements of Article 8 ■ .

In particular, ■ they may be registered by an insurance *or reinsurance* undertaking, *insurance or reinsurance intermediary, or* by an association of insurance *or reinsurance* undertakings, or ■ insurance or reinsurance *intermediaries*, under the supervision of a competent authority.

■ An insurance or reinsurance intermediary *or an ancillary insurance intermediary may* act under the responsibility of an insurance or reinsurance undertaking or ■ another ■ intermediary ■ . In such a case, *Member States may stipulate that the insurance or reinsurance undertaking or other intermediary shall be responsible for ensuring that the insurance or reinsurance intermediary or ancillary insurance intermediary meets the conditions for registration, including the conditions set out in Article 3(7)(c).*

Member States may also stipulate that *the insurance or reinsurance undertaking or other intermediary* which takes responsibility for the *insurance or reinsurance* intermediary *or ancillary insurance intermediary registers* that intermediary *or ancillary intermediary*.

Member States need not apply the requirement referred to in the first [] subparagraph to all the natural persons who work in an [] insurance or reinsurance intermediary *or ancillary insurance intermediary* and who pursue the activity of insurance or reinsurance *distribution*.

Member States shall ensure *that the registers* specify [] the names of the natural persons within the management *of the insurance or reinsurance distributor* who are responsible for the *insurance or reinsurance distribution*.

The register shall further indicate the Member States in which the intermediary conducts business under the rules on the freedom of establishment or on the freedom to provide services.

2. 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.

Member States shall establish an online registration system [], which should be easily accessible [] allowing the *registration* form to be completed directly online.

3. *In case there is more than one register*, Member States shall *establish* a single information point [] allowing quick and easy access to information from *those* registers, which shall be compiled electronically and kept [] updated. This information point shall also provide the identification details of the competent authorities of *the home* Member State [] .
4. EIOPA shall establish, publish on its website and keep up-to-date a single electronic register containing records of insurance, reinsurance *and ancillary insurance* intermediaries which have notified their intention to carry on cross-border business in accordance with Chapter IV. Member States shall provide relevant information to EIOPA promptly to enable it to do this. This [] register shall contain links to, and be accessible from, each of the Member States' competent authorities' websites.

EIOPA shall have right of access to the data stored there. EIOPA and the competent authorities shall have the right to modify this data. Data subjects whose personal details can be stored and exchanged shall be entitled to access and have the right to be appropriately informed.

EIOPA shall establish a website with hyperlinks to each single information point or where applicable, a register, established by Member States under Article 3(3).

Member States *referred to in the first sub-paragraph of Article 3(1)* shall ensure that registration of insurance, ■ reinsurance *and ancillary insurance* intermediaries is made subject to the fulfilment of the *relevant* requirements *of* Article 8.

■ The validity of the registration shall be subject to a regular review by the competent authority.

Member States shall ensure that insurance, reinsurance and ancillary insurance intermediaries who cease to fulfil the requirements laid down in Article 8 are removed from the register. Where applicable, the home Member State shall inform the host Member State of such removal.

■

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

■

7. Member States shall ensure that ■ the following information *is requested* as a condition of registration *of insurance, reinsurance and ancillary insurance intermediaries*:
- (a) ■ the identities of shareholders or members, whether natural or legal persons, that have a holding in the intermediary that exceeds 10% and the amounts of those holdings;
 - (b) ■ the identities of persons who have close links with the ■ intermediary;
 - (c) ■ that *those* holdings or close links do not prevent the effective exercise of the supervisory functions of the competent authority.

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

8. 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 ■ 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.

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 carry on business within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the competent authority of his home Member State.
 - (a) the name, address and *where applicable*, 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;

2. The competent authority of the home Member State 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 and that the *intermediary* can commence its business in the host Member State. *Where applicable, at the same time it shall communicate to the intermediary that information concerning the legal provisions referred to in Article 9(1) which are applicable in the host Member State is available through the means referred to in Articles 9(3) and (4) and that the intermediary must comply with those provisions in order to commence its business in the host Member State.*

4. In the event of a change in any of the particulars communicated in accordance with paragraph 1, the insurance or reinsurance intermediary *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 when exercising the freedom to provide services

1. *Where the competent authority of the host Member State has reason to consider 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, it shall communicate those considerations to the competent authority of the home Member State.*

After having assessed the information received pursuant to the first sub paragraph, the competent authority of the home Member State shall, at the earliest opportunity and where applicable take appropriate measures to remedy the situation. It shall inform the competent authority of the host Member State of any measures taken.

Where, despite the measures taken by the home Member State or because those measures prove to be inadequate or are lacking, the insurance, reinsurance or ancillary insurance intermediary persists in acting in a manner that is clearly detrimental to the interests of host Member State consumers on a large scale, or the orderly functioning of insurance and reinsurance markets, the competent authority of the host Member State may, after informing the supervisory authority of the home Member State, take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing that intermediary from continuing to carry on new business within its territory.

In addition, the competent authority of the home or 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.

2. *Paragraph 1 shall not affect the power of the host Member State to take appropriate measures to prevent or penalise irregularities committed within their territory, in a situation where an immediate action is necessary in order to protect the rights of consumers. This power shall include the possibility of preventing insurance, reinsurance and ancillary insurance intermediaries from carrying out new business within its territory.*
4. *Any measure adopted by the competent authorities of the host Member State under this Article 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 exercise his freedom of establishment to establish a branch within the territory of another Member State *shall communicate* the competent authority of his home Member State and to provide it with the following information:
 - (a) the name, address and *where applicable*, registration number ■ 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;

■

(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.

Any permanent presence of an intermediary in the territory of another Member State that is equivalent to a branch shall be treated as in the same way as a branch, unless the intermediary lawfully sets up the presence in another legal form.

2. Unless the competent authority of the home Member State has *reason 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 *that information* to the competent authority of the host Member State, which shall acknowledge *its* 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.

Within one month of receipt of the information referred to in the first sub paragraph, the competent authority of the host Member State shall communicate the legal provisions referred to in Article 9(1) through the means referred to in Articles 9(3) and 9(4) which are applicable in its territory to the competent authority of the home Member State. The home Member State shall communicate that information to the intermediary and that the intermediary may commence its business in the host Member State provided that it complies with those legal provisions.

Where no communication is received within the period provided for in the second sub paragraph, the insurance, reinsurance or ancillary insurance intermediary may establish the branch and commence its business.

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.

4. In the event of a change in any of the particulars communicated in accordance with paragraph 1, an insurance or reinsurance intermediary *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 7

Division of competence between home and host Member States

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

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

Article 7a

Breach of obligations when exercising the freedom of establishment

1. *Where the competent authority of a host Member State ascertains that an insurance, reinsurance or ancillary insurance intermediary is in breach of the legal or regulatory provisions adopted in that Member State pursuant to the provisions of Chapters VI and VII, that authority may take appropriate measures.*

3. Where the host Member State has *reasons to consider* 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 *and where that competent authority does not have responsibility in accordance with Article 7 paragraph 2*, it shall refer those findings to the competent authority of the home Member State. *After having assessed the information received pursuant to the first sub paragraph, the competent authority of the home Member State shall, at the earliest opportunity and where applicable take appropriate measures to remedy the situation. It shall inform the competent authority of the host Member State of any measures taken.*

3a. *Where, despite the measures taken by the home Member State or because those measures prove to be inadequate or are lacking, the insurance, reinsurance or ancillary insurance intermediary persists in acting in a manner that is clearly detrimental to the interests of host Member State consumers on a large scale, or the orderly functioning of insurance and reinsurance markets, the competent authority of the host Member State may, after informing the supervisory authority of the home Member State, take appropriate measures to prevent further irregularities, including in so far as is strictly necessary, preventing that intermediary from continuing to carry on new business within its territory.*

■

In addition, the competent authority of the **home or 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 ■ .

3b. *Paragraphs 3 and 3a shall not affect the power of the host Member State to take appropriate and non-discriminatory measures to prevent or penalise irregularities committed within their territory, in a situation where an immediate action is strictly necessary, in order to protect the rights of consumers of the host Member State, and as long as equivalent measures of the home Member State are inadequate or lacking. Where those conditions are satisfied, this power shall include the possibility of preventing the relevant insurance, reinsurance and ancillary insurance intermediary from carrying out new business within its territory.*

4. *Any measure adopted by the competent authorities of the host Member State under this Article 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 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 and non-discriminatory measures to penalise irregularities committed within their territories which are contrary to their legal provisions referred to in Article 9(1), in so far as is strictly necessary.

Where those conditions are satisfied, this power shall include the possibility, of preventing the relevant insurance, reinsurance and ancillary insurance intermediary from carrying out new business within its territory.

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 where applicable 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 the host Member State as regards the protection of consumers. In such a case the competent authority of the host Member State, after informing the competent authority of the home Member State, may take with respect to that insurance distributor all the appropriate measures needed in order to protect the rights of consumers in the host Member State. 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.

■ ORGANISATIONAL REQUIREMENTS

Article 8

Professional and organisational requirements

1. ***Home Member States shall ensure that insurance and reinsurance distributors and employees of insurance and reinsurance undertakings carrying out insurance or reinsurance distribution activities, ■ possess appropriate knowledge and ability in order to complete their tasks and perform their duties adequately ■ .***

1a. Home Member States shall ensure that insurance and reinsurance intermediaries and employees of insurance and reinsurance undertakings and employees of insurance intermediaries comply with continuing professional training and development requirements in order to maintain an adequate level of performance corresponding to the role they are performing and the relevant market.

To that end, home Member States shall have in place and publish mechanisms to effectively control and assess the knowledge and competence of insurance and reinsurance intermediaries and employees of insurance and reinsurance undertakings and employees of insurance intermediaries, based on at least 15 hours of professional training or development per year, taking into account the nature of the products sold, the type of distributor, the role they perform and the activity carried out within the insurance or reinsurance distributor.

Home Member States may require that the successful completion of the training and development requirements is proven by obtaining a certificate.

Member States *shall* adjust the required conditions with regard to knowledge and ability in line with the particular activity of insurance or reinsurance *distributors* and the products *distributed*, particularly *in the case of ancillary insurance intermediaries*. ■ Member States may provide that in the cases referred to in the third subparagraph of Article 3(1) *and with regard to the employees of insurance undertakings who are engaged in insurance distribution*, the insurance undertaking or intermediary shall verify that the knowledge and ability of the intermediaries are in conformity with the obligations set out in ■ paragraph 1 and, if need be, shall provide such intermediaries with training *or professional development means* which correspond to the requirements concerning the products sold by the intermediaries.

Member States need not apply the requirements referred to in *paragraph 1 and in* the first subparagraph of this paragraph to all the natural persons working in an insurance *or reinsurance* undertaking or insurance or reinsurance intermediary who pursue the activity of insurance or reinsurance *distribution*. Member States shall ensure that the *relevant* persons within the management structure of such undertakings who are responsible for *distribution* in respect of insurance and reinsurance products and all other persons directly involved in insurance or reinsurance *distribution* demonstrate the knowledge and ability necessary for the performance of their duties.

Insurance and reinsurance intermediaries shall demonstrate compliance with the relevant professional knowledge and competence requirements as laid down in Annex IIA of this Directive.

2. *Natural persons working in an insurance or reinsurance undertaking or insurance or reinsurance intermediary who pursue insurance 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 may, in accordance with the provisions of the third subparagraph of Article 3(1), allow the insurance *distributor* to check the good repute of its *employees and where appropriate*, insurance intermediaries.

Member States need not apply the requirement referred to in the first subparagraph of this paragraph to all the natural persons who work in an insurance *or reinsurance* undertaking or insurance and reinsurance intermediary *provided they are not directly involved in insurance or reinsurance distribution*. Member States shall ensure that the *persons within the* management structure *responsible for*, and any staff directly involved in insurance or reinsurance *distribution* fulfil that requirement.

For ancillary insurance intermediaries, Member States shall ensure that the persons responsible for ancillary insurance distribution fulfil the requirement referred to in the first subparagraph of this paragraph.

3. Insurance and reinsurance intermediaries shall hold professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, for at least *EUR 1 250 000* applying to each claim and in aggregate *EUR 1 850 000* per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.
- 3a. *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.*

4. 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.

7. EIOPA shall review the amounts referred to in paragraphs 3 and 4 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 *by 31 December 2017* and the successive reviews every five years *thereafter*.

EIOPA shall develop draft regulatory standards which adapt the base amount in euro referred to in paragraphs 3 and 4 by the percentage change in that Index over the period between **31 December 2012 and 31 Decemeber 2017** or between the last review date and the new review date and rounded up to the nearest **multiple of EUR 10**.

EIOPA shall submit those draft regulatory technical standards to the Commission **by 30 June 2018** and the successive **draft regulatory technical standards** every five years **thereafter**.

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

■

8a. To ensure compliance with the requirements in paragraphs 1, 1a and 2 insurance and reinsurance undertakings shall approve, implement and regularly review their internal policies and appropriate internal procedures.

Insurance and reinsurance undertakings shall identify a function to ensure the proper implementation of the endorsed policies and procedures.

Insurance and reinsurance undertakings shall establish, maintain and keep up-to-date records of all the relevant documentation regarding the application of paragraphs 1, 1a and 2. Insurance and reinsurance undertakings shall make available the name of the person responsible for that function, upon request, to the home Member State competent authority.

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. 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 ***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 ... * ***[OJ please insert date: 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 *or associations whose members directly or indirectly include insurance or reinsurance undertakings or insurance or reinsurance intermediaries without prejudice to the possibility of cooperation between competent authorities and other bodies where that is expressly provided for in Article 3(1)*.
3. The competent authorities shall possess all the powers necessary for the performance of their duties *laid down in 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 and reinsurance distributors** in order to ensure the proper application of the provisions of this Directive.
 - 1a. **In particular, in the process of registration and on an on-going basis, the competent authorities shall share relevant information concerning the good repute, the professional knowledge and competences of insurance and reinsurance distributors.**
2. The competent authorities shall **also** exchange information on insurance and reinsurance **distributors who** have been subject to a sanction **or another measure** referred to in Chapter VIII 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 register complaints about insurance and reinsurance **distributors**. In all cases complaints shall receive replies.

Article 13

Out-of-court redress

1. Member States shall ensure *that adequate and* effective, impartial and independent *out-of-court* complaint and redress procedures for the **■** settlement of disputes between *customers and insurance distributors concerning the rights and obligations arising under this Directive are established according to the relevant national and Union legislation*, using existing bodies where appropriate. Member States shall **■** ensure that *such* procedures *are applicable to, and the relevant body's competence effectively extends to, insurance distributors against whom the procedures are initiated*.
2. *Member States shall require the bodies referred to in paragraph 1 to cooperate for the resolution of cross-border disputes concerning the rights and obligations arising under this Directive.*

Article 14

Restriction on use of intermediaries

Member States shall ensure that, *when using the services of the insurance or reinsurance intermediaries or ancillary insurance intermediaries, insurance and reinsurance undertakings and intermediaries use the insurance and reinsurance distribution services only of registered insurance and reinsurance intermediaries, ancillary insurance intermediaries or of the persons referred to in Article 1(2a)* .

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 intermediary or insurance *distributor always* 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 the insurance distributor to customers or potential customers shall be fair, clear and not misleading. Marketing communications shall always be clearly identifiable as such.*

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.*

Article 16

General information provided by the insurance intermediary or insurance undertaking

Member States shall lay down rules ensuring that

- (a) *in good time before* the conclusion of *an* insurance contract, an insurance intermediary makes the following disclosures to customers:

- (i) its identity and address and that it is an insurance intermediary;
 - (ii) whether ■ it provides ■ advice about the insurance products sold;
 - (iii) the procedures referred to in Article 12 allowing customers and other interested parties to register complaints about insurance ■ intermediaries and about the out-of-court complaint and redress procedures referred to in Article 13;
 - (iv) the register in which it has been included and the means for verifying that it has been registered; and
 - (v) whether the intermediary is representing the customer or is acting for and on behalf of the insurance undertaking;
- (b) ***in good time before*** the conclusion of ***an*** insurance contract, an insurance undertaking ■ makes the following disclosures to customers:
- (i) its identity and address and that it is an insurance undertaking;
 - (ii) whether ■ it provides ■ advice about the insurance products sold;
 - (iii) the procedures referred to in Article 12 allowing customers and other interested parties to register complaints about insurance undertakings and about the out-of-court complaint and redress procedures referred to in Article 13.

Article 17

Conflicts of interest and transparency

1. ***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*, 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
 - (iia) 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)*.
2. *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.*

- 3a. *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.

Article 18

Advice, and standards for sales where no advice is given

1. Prior to the conclusion of *an insurance* contract, the insurance *distributor* 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.

Where advice is provided prior to the conclusion of any specific contract, the insurance distributor shall provide the customer with a personalised recommendation explaining why a particular product would best meet the customer's demands and needs.

2. The details referred to in paragraph 1 shall be modulated according to the complexity of the insurance product being proposed and the *type of* customer .
3. When *an* 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 *personal* recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

4. ***Without prejudice to Articles 183 and 184 of 2009/138/EC***, prior to the conclusion of a contract, whether or not advice is given ***and irrespective of whether the insurance product is part of a package pursuant to Article 21a***, the insurance distributor shall provide the customer the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision, while taking into account the complexity of the insurance product and the type of customer.
- 4a. ***The information shall be provided by way of a standardised insurance product information document on paper or another durable medium for the distribution of non-life insurance products as listed in Annex I to Directive 2009/138/EC.***
- 4b. ***The insurance product information document shall be drawn up by the manufacturer of the non-life insurance product referred to in paragraph 4a.***
- 4c. ***The insurance product information document shall:***
- (a) ***be a short and stand-alone document;***
 - (b) ***be presented and laid out in a way that is clear and easy to read, using characters of a readable size;***
 - (c) ***be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;***
 - (d) ***be written in the official languages, or in one of the official languages, used in the part of the Member State where the insurance product is offered or, if agreed by the consumer and the distributor, in another language;***
 - (e) ***be accurate and not misleading;***
 - (f) ***contain the title ‘insurance product information document’ at the top of the first page***

(g) include a statement that complete pre-contractual and contractual information on the product is provided in other documents.

Member States may determine that the insurance product information document shall be provided together with information required pursuant to other relevant Union or national legislative acts on the condition that all the requirements of the first subparagraph of this paragraph are met.

4d. The insurance product information document shall contain the following information:

(a) information about the type of insurance;

(b) a summary of the insurance cover, including the main risks insured, the insured sum and, where applicable, the geographical scope and a summary of the excluded risks;

(c) the means of payment of premiums and the duration of payments;

(d) main exclusions where claims cannot be made;

(e) obligations at the start of the contract;

(f) obligations during the term of the contract;

(g) obligations in case of a claim made;

(h) the term of the contract including start and end date of the contract;

(i) the means of terminating the contract.

4e. EIOPA, after consulting national authorities and after consumer testing, shall develop draft implementing technical standards regarding a standardised presentation format of the insurance product information document specifying the details of the presentation of the information referred to in paragraph 4d.

EIOPA shall submit those draft implementing technical standards to the Commission by [OJ please insert 12 months after entry into force].

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

Article 18a

Information provided by ancillary insurance intermediaries

Member States shall ensure that ancillary insurance intermediaries comply with Articles 16(a)(i), (iii) and (iv), Article 17(1)(d).

Article 19

Information exemptions and flexibility clause

1. The information referred to in Articles 16, 17 and 18 need not be *provided* when the insurance *distributor carries out distribution activities in relation to* the insurance of large risks *and* in the case of *distribution* by reinsurance intermediaries or reinsurance undertakings **■**.

Member States may provide that the information referred to in Articles 24 and 25 need not be provided to a professional client as defined in Article 4, paragraph 1, point 10 of Directive 2014/65/EU.

2. Member States may maintain or adopt stricter provisions regarding the information requirements referred to in *this chapter* provided that such provisions comply with Union law. Member States shall communicate to EIOPA and the Commission such national provisions.

Member States shall also take the necessary steps to ensure appropriate publication by their competent authorities of the information about whether and how the Member State has chosen to apply the stricter provisions in accordance with this paragraph.

In particular, Member States may make the advice referred to in Article 18(1) subparagraph 3 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 insurance distributors, 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.

- 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.*
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 *customers, insurance and reinsurance distributors.*
4. *Member States shall ensure that where the insurance distributor is responsible for the provision of mandatory occupational pension arrangements, and an employee becomes a member of such an arrangement without having taken an individual decision to join it, the information referred to in this Article shall be provided to the employee promptly after the enrolment.*

Article 20

Information conditions

1. All information to be provided in accordance with Articles 16, 17, 18 *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 16, 17, 18 *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 are met; or
 - (b) by means of a website where the conditions laid down in paragraph 5 are met.
3. However, where the information referred to in Articles 16, 17, 18 *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 16, 17, 18 *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 16, 17, 18 *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 16, 17, 18 *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 16, 17, 18 *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 16, 17, 18 **and 24** can be accessed;
 - (d) it is ensured that the information referred to in Articles 16, 17, 18 **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 **including the insurance product information document** shall be in accordance with Union rules applicable to the distance marketing of consumer financial services. Moreover, **even if the customer has chosen to obtain information in a medium other than paper in accordance with paragraph 4**, information shall be provided to the customer in accordance with paragraph 1 or 2 immediately after the conclusion of the insurance contract.

Article 21

Cross-selling

1. When an insurance ■ product is offered together with **an ancillary product or service which is not insurance, as part of a package or the same agreement, 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 separate evidence of the costs and charges of each component** ■ .

2. *In that case and where the risk or the insurance coverage resulting from such an agreement or package offered to a customer is different from that 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 risk or the insurance coverage.*
- 2a. *When an insurance product is ancillary to a good or a service which is not insurance, as part of a package or the same agreement, the insurance distributor shall offer to the customer the possibility of buying the good or service separately. This paragraph shall not apply when an insurance product is ancillary to an investment service or activity as defined in article 4, paragraph 1, point 2, of Directive 2014/65/EU, a credit agreement as defined in article 4, point 3, of Directive 2014/17/EU, or a payment account as defined in article 2, paragraph 3, of Directive 2014/92/EU.*
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.
4. *This Article shall not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).*
- 4a. *In cases referred to in paragraph 1 and 2a, Member States shall ensure that an insurance distributor specifies the demands and needs of the customer in relation to the insurance products that form part of the overall package or the same agreement.*
- 4b. *Member States may maintain or adopt additional stricter measures or intervene on a case-by-case basis to prohibit the sale of insurance together with an ancillary service or product which is not insurance, as part of a package or the same agreement when they can demonstrate that such practices are detrimental to consumers.*

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 be proportionate and appropriate to the nature of the insurance product.

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 fifth 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 further specify the principles set out in this Article, taking into account in a proportional way the activities performed, the nature of 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 ■ REQUIREMENTS IN RELATION TO INSURANCE-*BASED* INVESTMENT PRODUCTS

Article 22

Scope

This Chapter applies ■ requirements *additional* to *those applicable in accordance with Articles 15, 16, 17 and 18 to insurance distribution*, when *they are* carried on in relation to the sale of insurance-*based* investment products by *the following*:

- (a) an insurance intermediary;
- (b) an insurance undertaking.

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 to take all appropriate steps to identify conflicts of interest between themselves, including their managers *and* 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 intermediary or insurance undertaking 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 intermediary or insurance undertaking shall clearly disclose *to the customer* the general nature or sources of conflicts of interest **■**, *in good time* before *the conclusion of an insurance contract*.
- 2a. *By way of derogation from Article 20 (1), the disclosure referred to in paragraph 2 shall:*
 - (a) *be made in a durable medium; and*
 - (b) *include sufficient detail, taking into account the nature of the customer, to enable that customer to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.*
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 *in order to:*
 - (a) *define* the steps **■** that insurance intermediaries and insurance might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when *carrying out* insurance *distribution activities*;
 - (b) *establish* appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers of the insurance intermediary or insurance undertaking.

7. *Without prejudice to Article 16 and 17(1) and (2), 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, 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 to be disclosed, information relating to the distribution of the insurance-based investment product, including the cost of advice, where relevant, the cost of the insurance-based investment product recommended or marketed to the customer and how the customer may pay for it, also encompassing any third party payments.*

The information about all costs and charges, including costs and charges in connection with the distribution 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.

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

■

- 10.** *Without prejudice to Article 19(2a), Article 17, paragraph 1, points (d) and (e), and Article 17(3), Member States shall ensure that insurance intermediaries or insurance undertakings are regarded as 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 only where the payment or benefit:*
- (a) does not have a detrimental impact on 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.*

12. Member States may impose stricter requirements on distributors in respect of the matters covered by this Article. In particular, Member States may additionally prohibit or further restrict the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice.

That may include requiring any such fees, commissions or non-monetary benefits to be returned to the clients or offset against fees paid by the client.

Member States may make the advice referred to in Article 25 mandatory for the sales of any insurance-based investment products, or for certain type of them.

The stricter national provisions have to be complied with by 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 that Member State.

Member States may further require that where an intermediary informs the client that advice is given independently, the intermediary shall assess a sufficiently large number of insurance products available on the market which are sufficiently diversified with regard to their type and issuers or product providers to ensure that the client's objectives can be suitably met and shall not be limited to insurance products issued or provided by entities having close links with the intermediary.

14. Without prejudice to paragraph 12, the Commission shall be empowered to adopt delegated acts in accordance with Article 33 to specify:

- (a) the criteria for assessing whether inducements paid or received by an insurance intermediary or an insurance undertaking have a detrimental impact on the quality of the relevant service to the customer;**
- (b) the criteria for assessing compliance of insurance intermediaries and insurance undertakings paying or receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interest of the customer.**

15. *The delegated acts referred to in paragraph 14 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.*

Article 25

Assessment of suitability and appropriateness and reporting to customers

1. *Without prejudice to Article 18(1) 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 insurance-based investment 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 provides 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 18(1), 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 insurance undertaking considers, on the basis of the information received under the previous subparagraph, that the product ■ is not appropriate to the customer or potential customer, the insurance intermediary or insurance undertaking shall warn the customer or potential customer. This warning may be provided in a standardised format.

Where customers or potential customers do not provide the information referred to in the first subparagraph, or where they provide insufficient information regarding their knowledge and experience, the insurance intermediary or insurance undertaking shall warn them that the insurance intermediary or insurance undertaking is not in a position to determine whether the ■ product envisaged is appropriate for them. This warning may be provided in a standardised format.

2a. *Without prejudice to Article 18(1), 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 Directive 2014/65/EU 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 investments for the purpose 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 the customer or potential customer does not benefit from the corresponding protection of the relevant conduct of business rules. Such a 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 or insurance undertaking shall establish a record that includes *the* document or documents ■ agreed between the insurance intermediary or insurance undertaking and the customer that set out the rights and obligations of the parties, and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.
4. The ■ insurance intermediary or 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. ■

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 in a durable medium 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 contract 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 contract, 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 contract; and*
- b) the insurance intermediary or insurance undertaking has given the customer the option of delaying the conclusion of the contract 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 *services* 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-*based investment* products.

(ba) the retail or professional nature of the customer or potential customer.

- 5a. *By ...* [OJ please insert date: 18 months after the date of entry into force of this Directive], EIOPA shall develop guidelines and update them periodically, for the assessment of insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risk involved as referred to in 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 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 their supervisory powers, including investigatory powers and 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 a breach, administrative sanctions and measures can be applied to the members of their management ***or supervisory*** body, and any other natural or legal persons who, under national law, are responsible for a breach.
 - 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 **to impose sanctions**, the competent authorities shall cooperate closely to ensure that **the administrative measures and sanctions** produce the desired results and coordinate their action when dealing with cross border cases, **while ensuring that conditions are met for legitimate data processing in accordance with Directive 95/46/EC and Regulation (EC) No 45/2001.**

Where Member States have chosen, in accordance with paragraph 1a of this Article, to lay down criminal sanctions for infringements of the provisions referred to in Article 28, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information relating to criminal investigations or proceedings commenced for possible infringements of this Directive and provide such information to other competent authorities and EIOPA to fulfil the obligation of competent authorities to cooperate with each other and with EIOPA for the purposes of this Directive.

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 breaches of the provisions of the national provisions adopted in the implementation of this Directive **and against which no appeal was lodged in time**, without undue delay including information on the type and nature of the breach and the identity of persons responsible for it. **However, where the publication of the identity of the legal persons, or identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by case assessment conducted on the proportionality of the publication of such data or where publication jeopardises the stability of financial markets an on-going investigation, the competent authority may decide to defer the publication, not to publish or to publish the sanctions on an anonymous basis.**

1aa. *Where national law provides for the publication of the decision to impose a sanction or measure which is subject to an appeal before the relevant judicial or other authorities, the competent authorities shall publish on their official website without undue delay, such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose a sanction or a measure which has been published shall also be published.*

1a. *Competent authorities shall inform EIOPA of all administrative sanctions and measures imposed but not published in accordance with paragraph 1 including any appeal in relation thereto and the outcome thereof.*

Article 28

Breaches *and* sanctions

1. This *Article* shall apply to *at least* the following:
 - (a) *a person who fails to register his distribution activities in accordance with Article 3;*
 -
 - (c) an insurance or reinsurance undertaking or insurance or reinsurance intermediary using the insurance or reinsurance *distribution* services of persons *referred to in point (a)*;
 - (d) an insurance, reinsurance *or ancillary insurance* intermediary *who* obtained a registration through false statements or any other irregular means in breach of Article 3;
 - (e) an insurance *distributor who fails* to meet the provisions of Article 8;

- (f) an insurance undertaking or insurance [] intermediary failing to comply with conduct of business requirements in accordance with Chapter VI and VII, *in relation to the distribution of insurance-based investment products*;
- (g) *an insurance distributor who fails to comply with conduct of business requirements in accordance with Chapter VI, in relation to any insurance 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 breaches* 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 breach;
- (b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;
- (c) in case of an insurance [] intermediary, withdrawal of *the* registration *referred to in* Article 3;
- (d) a *temporary* ban against any member of the management body of the insurance [] intermediary or insurance [] undertaking [] 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 5% 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. 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 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 breach where those can be determined;*
- (f) in case of a natural person, *maximum* administrative pecuniary sanctions: ■
- (i) *of at least EUR 700 000, 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 breach where those can be determined.*

2b. Member States shall ensure that the competent authorities have the power to impose in the cases of the breaches referred to in paragraph 1 point (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 insurance 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 shall take into account all relevant circumstances, including **where appropriate:**
 - (a) the gravity and the duration of the breach;
 - (b) the degree of responsibility of the responsible natural or legal person;
 - (c) the financial strength of the responsible natural or legal person, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
 - (d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;

- (e) the losses for **customers and** third parties caused by the breach, insofar as they can be determined;
- (f) the level of cooperation of the responsible natural or legal person with the competent authority;
- (fa) **measures taken by the responsible natural or legal person to prevent the repetition of the breach,** and
- (g) **any** previous breaches by the responsible natural or legal person.

Article 30

Reporting of breaches

1. Member States shall ensure that the competent authorities establish effective mechanisms to **enable and** encourage **the** reporting of **possible or actual** breaches of national provisions implementing this Directive to **them**.
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 **distributors, and where possible for other persons, who report infringements committed within those entities at least against retaliation, discrimination or other types of unfair treatment;** and
 - (c) protection of **the identity of** both the person who reports the breach and the natural person who is allegedly responsible for **the** breach, **at all stages of the procedure unless such disclosure is required by national law in the context of further investigation or subsequent administrative or judicial proceedings.**

Article 31

Submitting information to EIOPA in relation to sanctions

1a. Competent authorities shall inform EIOPA of all administrative sanctions and measures imposed but not published in accordance with paragraph 1 of Article 27.

1. **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.

2. Where the competent authority has disclosed an administrative measure or administrative sanction to the public, it shall **at the same time** report that fact to EIOPA.



Chapter IX

FINAL PROVISIONS


Article 32

Data Protection

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

Article 33

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 34 concerning Articles  21a, 23, 24 and 25.

Article 34

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 21a, 23, 24 and 25 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.
3. The delegation of powers referred to in Articles 21a, 23, 24 and 25 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 21a, 23, 24 and 25 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of **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 8(1) of this Directive by [3 years after its entry into force].

Article 35

Review and evaluation

1. ***Five years after the entry into force of this Directive, the Commission shall submit to the European Parliament and to the Council a report on the application of Article 1 of this Directive. This report shall include an assessment, on the basis of information received from the Member States and EIOPA pursuant to Article 1(2c), of whether the scope of this Directive including the exception provided under Article 1(2a), remains appropriate with regard to the level of consumer protection, the proportionality of treatment between different insurance distributors and the administrative burden imposed on competent authorities and insurance distribution channels.***

- 1a. 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 **■ (EU) No 1286/2014/EU and Directive 2014/65/EU**. *The review shall include an evaluation whether the specific conduct of business rules for the distribution of insurance-based investment products set out in Chapter VII deliver appropriate and proportionate results, taking into account the need to ensure a sufficient level of consumer protection consistent with the investor protection standards applicable under Directive 2014/65/EU and the specific characteristics of insurance-based investment products and the specific nature of their distribution channels. The review shall also reflect on a possible application of the provisions of this Directive to products falling under the scope of Directive 2003/41/EC.* This review shall also include a specific analysis of the impact of Article 17, taking into account the situation of competition on the market of **insurance distribution** for contracts other than contracts in any of the classes specified in **Annex II** of Directive **2009/138/EC** and the impact of the obligations referred to in Article 17 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* [OJ please insert date: 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* [OJ please insert date: 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* [OJ please insert date: 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 * [OJ please insert date: 24 months after the date of entry into force of this Directive]* at the latest . They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those *measures*, 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

Amendment of Directive 2002/92/EC

*Chapter IIIA of Directive 2002/92/EC is deleted with effect from ... * [OJ please insert date: the day of entry into force of this Directive].*

Article 37a

Repeal

Directive 2002/92/EC is repealed with effect from...* [OJ please insert date: 24 months after the date of entry into force of this Directive], without prejudice to 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 ,

For the European Parliament

For the Council

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ANNEX IIA

MINIMUM PROFESSIONAL KNOWLEDGE AND COMPETENCE REQUIREMENTS FOR DISTRIBUTION OF POLICIES AS REFERRED TO IN ARTICLE 8(1)

- (a) *Non-life risks classified under classes 1 to 18 in Part A of Annex I of Directive 2009/138/EC***
- a. *minimum necessary knowledge of terms and conditions of policies offered, including ancillary risks if covered by such policies;***

 - b. *minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law, relevant tax law and relevant social and labour law;***

 - c. *minimum necessary knowledge of claims handling;***

 - d. *minimum necessary knowledge of complaints handling;***

 - e. *minimum necessary knowledge of assessing customer needs;***

- h. minimum necessary knowledge of the insurance market;*
- i. minimum necessary knowledge of business ethics standards; and*
- j. minimum necessary financial competency.*

(b) Insurance-based investment products

- a. minimum necessary knowledge of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits;*
- b. minimum necessary knowledge of advantages and disadvantages of different investment options for policy-holders;*
- c. minimum necessary knowledge of financial risks borne by policy-holders;*
- e. minimum necessary knowledge of policies covering life risks and other savings products;*
- f. minimum necessary knowledge of organisation and benefits guaranteed by the pension system;*

- g. minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law and relevant tax law;*
- h. minimum necessary knowledge of the insurance market and of the saving products market;*
- i. minimum necessary knowledge of complaints handling;*
- j. minimum necessary knowledge of assessing customer needs;*
- k. conflicts of interest management;*
- l. minimum necessary knowledge of business ethics standards; and*
- m. minimum necessary financial competency.*

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

- a. *minimum necessary knowledge of policies including terms, conditions, the guaranteed benefits and, where applicable, ancillary risks;*
- c. *minimum necessary 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, relevant tax law and relevant social and labour law;*
- e. *minimum necessary knowledge of the insurance and other relevant financial services markets;*
- f. *minimum necessary knowledge of complaints handling;*
- g. *minimum necessary knowledge of assessing consumer needs;*
- h. *conflicts of interest management;*
- i. *minimum necessary knowledge of business ethics standards; and*
- j. *minimum necessary financial competency.*