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THE EUROPEAN UNION**

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**INFORMATION NOTE**

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from: General Secretariat  
to: Permanent Representatives Committee/Council

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Subject: Proposal for a Directive of the European Parliament and of the Council on insurance mediation (recast)  
- Outcome of the European Parliament's first reading  
(Strasbourg, 24 to 27 February 2014)

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**I. INTRODUCTION**

The Committee on Economic and Monetary Affairs submitted one amendment to the proposal for a Directive. In addition:

- the EPP political group submitted three amendments (amendments 2-4);
- the ECR political group submitted three amendments (amendments 5-7);
- the Greens/EFA political group submitted four amendments (amendments 8-11); and
- the ALDE political group submitted one amendment (amendment 12).

## II. DEBATE

The Rapporteur, Mr Werner LANGEN (EPP - DE), opened the debate, which took place on 25 February 2014, and detailed some of the key features of what he characterised as the balanced and consumer-friendly work of the Committee on Economic and Monetary Affairs:

- consumers, insurance intermediaries and the many small insurance offices will all find the regulation to be capable of implementation;
- consumers' rights will be strengthened. Consumers will receive information on insurance intermediaries' remuneration. Commission and costs must both be disclosed;
- product information documents will in future inform consumers about risks, the type and scope of insurance, contractual conditions and duration times. It will thus be easier to compare offers;
- insurance intermediaries will within five years have to spend at least 200 hours a year in training with independent organisations. Member States will be responsible for this; and
- insurance investment products will now be subject to a consistent regime in a manner similar to the MiFID regime

Commissioner BARNIER:

- noted that the insurance intermediary sector is dominated by SMEs, some of which are extremely small. In view of this and other features of this market, the Commission had opted for a minimal harmonisation approach. He noted that the EU is often accused of excessive harmonisation;
- noted that the Council would not be ready to enter into negotiations with the current Parliament, but called for an agreement to be reached before the end of the year;
- stated that the Committee's work had been a response to concerns which the Commission shared and that its report was a real improvement on the Commission's proposal;
- noted that the Committee had:
  - introduced a requirement for an information document for non-life products;
  - increased the powers of EIOPA;
  - sought to ensure fair competition conditions for all the operators in this sector; and
  - increased the scope to include part-time insurance salesmen and insurance comparison websites.

- stressed the need to ensure that the proposed Directive is consistent with other legislation, such as the recently concluded MiFID, with the Key Information Documents for Investment Products regulation which is currently in trilogue, and with the Directive on extrajudicial regulation of consumer litigation.

Speaking on behalf of the Committee on the Internal Market and Consumer Protection, Mrs Catherine STIHLER (S&D - UK):

- stressed the need to improve policyholder protection as well as selling practices for different kinds of insurance, but expressed her concern that the current proposal does not reflect these specific consumer concerns. She would have liked the Parliament to take a bolder and more ambitious approach to consumer protection; and
- expressed her disappointment that it was felt that there is a need to change alternative dispute rules ("ADR") and binding decisions, when the Parliament had only very recently reached an agreement on ADR. This is of particular concern to those Member States which have gone further. In the United Kingdom, for example, the Financial Ombudsman has the power to introduce binding decisions on businesses in favour of consumers - so the current proposal could potentially weaken protection for consumers. As a result of this ADR issue, she could not support the report of the Committee on Economic and Monetary Affairs in its current form.

Speaking on behalf of the EPP political group, Mrs Ildikó GÁLL-PELCZ (EPP - HU):

- welcomed the fact that the proposal would ensure maximum protection for consumers by addressing risks and risk-sharing, and by ensuring that consumers receive information in due time before they sign insurance policy contracts;
- argued that Member States should be able to require insurance intermediaries to publish their remuneration. If such a provision had been in force before the crisis, this would have prevented intermediaries misleading consumers;
- called for training to be compulsory;
- called for an online registration system; and
- supported the Committee's report as well-balanced.

Speaking on behalf of the S&D political group, Mr Antolín SÁNCHEZ PRESEDO (S&D - ES):

- stressed the economic importance of the insurance sector, the need to avoid legislative fragmentation and the importance of a level playing-field;
- emphasised the importance of professional standards in this sector. There should therefore be a register, activity declarations, principles of conduct, a duty to update employees' technical knowledge and greater professional responsibility;
- stressed the importance of transparency with regard to intermediary remuneration; and
- stated his support for the report of the Committee on Economic and Monetary Affairs.

Speaking on behalf of the ALDE political group, Mr Olle SCHMIDT (ALDE – SE):

- noted that the United Kingdom bans certain products which are not currently banned in Sweden;
- wondered whether it might be appropriate to set a limit to intermediaries' remuneration; and
- noted that two of the Rapporteur's amendments (amendments 4 and 5) concern alignment to MiFID. What would they entail in practice? The Shadow Rapporteur for the Greens/EFA political group, Mr Giegold, would argue that these amendments would not influence the coming negotiations concerning the alignment of MiFID and the Insurance Mediation Directive - but he had himself heard the opposite. Adding in Mr Giegold's amendments (amendments 8, 9, 10 and 11) would make the legal procedure more technical and difficult. He therefore asked both the Commissioner and the Rapporteur whether amendments 4 and 5 alone would be enough to secure the alignment.

Speaking on behalf of the Greens/EFA political group, Mr Sven GIEGOLD (Greens/EFA – DE):

- stated that there were many consumer protection problems in this area, particularly in respect of capital investments. It had been the case for years that products covered by MiFID are subject to better European consumer protection standards than insurance investment products. He was therefore pleased that the Commission wished to put them on the same footing through the proposal currently under discussion;
- stated that the Committee on Economic and Monetary Affairs had found a compromise that is balanced overall and that strengthens consumer protection in some areas but that in other respects weakens the Commission's proposal. Likewise, some of the other amendments submitted to the plenary would strengthen consumer protection, whilst others would weaken it; and

- argued that many amendments would depart from the most recent MiFID reform. He called for the plenary to ensure fair competition between bank-based products, between funds on the one hand and insurance products on the other. A simple recital is not sufficient, because it would ultimately not have the same status in trilogue negotiations.

Commissioner BARNIER once more took the floor and:

- referred to Mrs Stihler's point on consumer protection and suggested that this could be revisited during trilogues, particularly in order to ensure consistency with other texts whilst not losing sight of the very specific character of the insurance sector;
- accepted the need to balance supplier and consumer interests; and
- stated that it would be necessary to examine the question of alignment and consistency with MiFID during the trilogue stage.

The Rapporteur once more took the floor and:

- recalled that the Commission had submitted its proposal in July 2012 - more than eighteen months earlier. The Parliament's internal discussions had lasted that length of time and the Council was even now still asleep. Adoption was therefore unlikely during the current Parliament, but rather during the next;
- stated in response to Mrs Stihler that the Committee on Economic and Monetary Affairs had to a considerable degree taken on the suggestions of the Committee on the Internal Market and Consumer Protection - but had decided that the decision on which authorities should be competent should be left to the Member States. Overall, it is right that Member States should be able to go further if they so wish - but without this becoming a general prescription;
- noted that the Greens/EFA political group had submitted an amendment for a ban on commissions. He personally believed that a commissions ban is never sensible. His political group could not support this amendment;
- stated that the MiFID dimension would need to be addressed in future negotiations, but also stated that he did not want to see rules which are not relevant to insurance products introduced through the back door into the text; and

- noted that the Greens/EFA political group had submitted an amendment for a new Article 26a which would allow EIOPA to ban products. In his personal view, this is a task for national supervisory bodies and not for EIOPA. His political group would also oppose this amendment.

### III. VOTE

When it voted on 26 February 2014, the Parliament adopted six amendments (amendments 1, 4, 5, 8, 9 and 11 <sup>1</sup>). The text of these amendments is annexed to this note.

Rather than proceed to a vote on the legislative resolution (thus concluding the Parliament's first reading), the plenary instead decided to refer the matter back to the Committee on Economic and Monetary Affairs, pursuant to Rule 57(2) of the Parliament's Rules of Procedure.

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<sup>1</sup> Amendment 11 was adopted by roll-call vote, with 324 votes in favour, 323 votes against and 9 abstentions.

## Insurance mediation \*\*\*I

Amendments adopted by the European Parliament on 26 February 2014 on the proposal for a directive of the European Parliament and of the Council on the insurance mediation (recast) (COM(2012)0360 – C7-0180/2012 – 2012/0175(COD))<sup>1</sup>

(Ordinary legislative procedure – recast)

[Amendment No 1, unless otherwise indicated]

AMENDMENTS BY THE EUROPEAN PARLIAMENT\*

to the Commission proposal

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**DIRECTIVE 2014/.../EU  
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**on insurance mediation  
(recast)**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular *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,

Acting in accordance with the ordinary legislative procedure,

Whereas:

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<sup>1</sup> The matter was referred back to the committee responsible for reconsideration pursuant to Rule 57(2), second subparagraph (A7-0085/2014).

\* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■** .

- (1) Amendments are to be made to Directive 2002/92/EC of the European Parliament and the Council<sup>1</sup>. **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 TFEU. The form of a Directive is appropriate in order to enable the implementing provisions in the areas covered by this Directive, when necessary, to be adjusted to any existing specificities of the particular market and legal system in each Member State. This Directive should also aim at coordinating national rules concerning the access to the activity of insurance and reinsurance mediation, ■ and is therefore based on Article 53(1) TFEU. In addition, since this is a sector offering services across the Union, this Directive is also based on Article 62 TFEU.
- (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. ■
- (4a) ***In order to guarantee that the same level of protection applies and that the consumer can benefit from comparable standards it is essential that this Directive promotes a level playing field and competition on equal terms between intermediaries whether they are tied to an insurance undertaking or not. Consumers benefit if insurance products are mediated through a variety of channels and intermediaries with different forms of cooperation with insurance undertakings, provided that those channels and intermediaries have to apply the same rules on consumer protection. It is important that those aspects are taken into account by the Member States in the implementation of this Directive.***
- (5) The application of Directive 2002/92/EC has shown that a number of provisions require further precision with a view to facilitating the exercise of insurance and reinsurance mediation and that the protection of consumers requires an extension of the scope of that Directive to all sales of insurance products **as a main professional activity**, whether by insurance intermediaries or insurance undertakings. In respect of their sales, after-sales and claims processes insurance undertakings which sell directly insurance products, should be brought into the scope of the new Directive on a similar basis as insurance agents and brokers.  
■
- (8) There are still substantial differences between national provisions which create barriers to the taking-up and pursuit of the activities of insurance and reinsurance intermediaries in the internal market. ***There is a need to further strengthen the internal market and create 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

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<sup>1</sup> 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).



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/.../EU of the European Parliament and of the Council [MiFID]<sup>1</sup>. The distribution of insurance contracts, including so called insurance investment products should therefore be regulated under this Directive and be aligned with Directive 2014/.../EU [MiFID]. The minimum standards need to be raised with regard to distribution rules and the creation of a level playing field applicable to all packaged insurance investment products. Measures to protect customers should be **higher for 'non professional' than for 'professional' customers.***

- (10) This Directive should apply to persons whose activity consists of providing insurance or reinsurance mediation services to third parties for remuneration, which may be pecuniary or take some other form of agreed economic benefit tied to performance.
- (11) This Directive should apply to persons whose activity consists of the provision of information on one or more contracts of insurance or reinsurance in response to criteria selected by the customer whether via a website or other means, or the provision of a ranking of insurance or reinsurance products or a discount on the price of a contract, when the customer is able to directly conclude an insurance contract at the end of the process; it should not apply to mere introducing activities consisting of the provision of data and information on potential policyholders to insurance or reinsurance intermediaries or undertakings or of information about insurance or reinsurance products or an insurance or reinsurance intermediary or undertaking to potential policyholders.
- (12) This Directive should not apply to persons with another professional activity, such as tax experts or accountants, 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.***
- (13) This Directive should not apply to persons practising insurance mediation as an ancillary activity under certain restrictions regarding the policy, in particular the knowledge required to sell it, the risks covered and the amount of premium.
- (14) This Directive defines 'tied insurance intermediary' to take account of the characteristics of certain Member States' markets and to establish conditions applicable to such intermediaries.
- (15) Insurance and reinsurance intermediaries who are natural persons should be registered with the competent authority of the Member State where they have their residence; those which are legal persons should be registered with the competent authority of the Member State where they have their registered office (or, if under their national law they have no registered office, their head office), provided that they meet strict professional requirements in relation to their ability, good repute, professional indemnity cover and financial capacity. Insurance intermediaries already registered in Member States shall not be required to register again under this Directive.

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<sup>1</sup> ***Directive 2014/.../EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC (OJ ...)***

(16) Insurance and reinsurance intermediaries should be able to avail themselves of the freedom of establishment and the freedom to provide services which are enshrined in the *TFEU*. Accordingly, registration with or a declaration to their home Member State should allow insurance and reinsurance intermediaries to operate in other Member States in accordance with the principles of freedom of establishment and freedom to provide services, provided that an appropriate notification procedure has been followed between the competent authorities.

(18) 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 Council<sup>1</sup>* should establish, publish and keep up to date a single electronic database containing a record of each insurance and reinsurance intermediary which has notified an intention to exercise its freedom of establishment or to provide services. Member States should provide relevant information to EIOPA promptly to enable it to do this. This database should show a hyperlink to each relevant competent authority in each Member State. Each competent authority of each Member State should show on its website a hyperlink to this database.

(19) The relative rights and responsibilities of home and host Member States in respect of the supervision of insurance and reinsurance intermediaries registered by them or carrying on insurance or reinsurance mediation activities within their territory in exercise of the rights of freedom of establishment or freedom to provide services, should be clearly established.

(21) 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 within the internal market.***

***(21a) An insurance or reinsurance intermediary carries on insurance mediation activities under the terms of freedom to provide services if he or she performs insurance or reinsurance mediation activities for a policy-holder or potential policy-holder resident or established in a Member State other than the Member State of origin of the intermediary, and each risk to be insured is located in a Member State other than the Member State of origin of the intermediary. An insurance or reinsurance intermediary carries on insurance or reinsurance mediation activities under the terms of freedom of establishment if it maintains a permanent presence in a Member State other than its Member State of origin.***

(22) It is important to guarantee a high level of professionalism and competence among insurance and reinsurance intermediaries and the employees of direct insurers who are involved in activities preparatory to, during and after the sales of insurance policies. Therefore, the professional knowledge of an intermediary ***and*** of the employees of direct insurers needs to

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<sup>1</sup> *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).*

match the level of complexity of these activities. Continuing education should be ensured. ***Issues of form, substance and required documentary evidence should be regulated by the Member States. Professional training organisations linked to the sector or belonging to an association should receive certification in that context.***

- (22a) ***For employees of an intermediary who advise on or sell insurance 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 investment products. Buying an insurance 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 clients 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 mediation can contribute both to the completion of the single market for financial services and to the enhancement of customer protection in this field.
- (24) In order to enhance cross border trade, principles regulating mutual recognition of intermediaries' knowledge and abilities should be introduced.
- (25) A national qualification accredited to level 3 or above under the European Qualification Framework established under the Recommendation of the European Parliament and Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning should be accepted by a host member state as demonstrating that an insurance or reinsurance intermediary meets the requirements of knowledge and ability which are a condition of registration in accordance with this Directive. This framework helps Member States, education institutions, employers and individuals compare qualifications across the Union's diverse education and training systems. This tool is essential for developing a employment market throughout the Union. This framework is not designed to replace national qualifications systems but to supplement the actions of the Member States by facilitating cooperation between them.
- (26) Despite the existing single passport systems for insurers and intermediaries, the European insurance market remains very fragmented. In order to facilitate cross-border business and enhance transparency for consumers, Member States shall ensure publication of the general good rules applicable in their territories, and a single electronic register and information on all Member States' general good rules applicable to insurance and reinsurance mediation should be made publicly available.
- (27) Cooperation and exchange of information between the competent authorities are essential in order to protect customers and ensure the soundness of insurance and reinsurance business in the single market.
- (28) There is a need for appropriate and effective out-of-court complaint and redress procedures in the Member States in order to settle disputes between insurance intermediaries or undertakings and customers, using, where appropriate, existing procedures. Effective out-of-court complaint and redress procedures should be available to deal with disputes concerning rights and obligations ■ under this Directive between insurance undertakings or persons selling or offering insurance products and customers. ***In the case of alternative dispute resolution (ADR), the provisions of Directive 2013/11/EU of the European Parliament and***

*of the Council*<sup>1</sup> **should be binding also for the purposes of this Directive.** In order to enhance the effectiveness of out-of-court resolution of disputes procedures dealing with complaints submitted by customers, this Directive should provide that insurance undertakings or persons selling or offering insurance products have to participate in dispute resolution procedures, **and the decisions** which **upon explicit request may be binding for the intermediary and the customer**, instituted against themselves by customers and concerning rights and obligations established under this Directive. Such out-of-court resolution of disputes procedures would aim to achieve a quicker and less expensive settlement of disputes between insurance undertakings or persons selling or offering insurance products and customers and lightening of the burden on the court system. ■

Without prejudice to the right of customers to bring their action before the courts, Member States should ensure that ADR entities dealing with disputes referred to under this Directive cooperate in resolving cross-border disputes. Member States should encourage ADR entities dealing with such disputes to become part of *the Financial Services Complaints Network* (FIN-NET).

- (29) The expanding range of activities that many insurance intermediaries and undertakings carry on simultaneously has increased potential for conflicts of interest between those different activities and the interests of their customer. It is therefore necessary that Member States ■ provide ■ rules to ensure **the interest** of the customer **are addressed**.
- (30) Consumers should be provided in advance with clear information about the status of the persons who sell the insurance product. **It would be worth considering introducing** a mandatory status disclosure for European insurance intermediaries and insurance undertakings. This information should be given to the consumer at the pre-contractual stage. Its role is to show the relationship between the insurance undertaking and the intermediary, where applicable.
- (31) In order to mitigate conflicts of interest between the seller and the buyer of an insurance product, it is necessary to ensure sufficient disclosure of remuneration of insurance distributors. ■ The intermediary and the employee of the insurance intermediary or the insurance undertaking should be obliged to inform the customer, **on request**, about **the nature and source of its remuneration** in advance of the sale **and, free of charge**.
- (32) In order to provide a customer with comparable information on the insurance mediation services provided regardless of whether the customer purchases through an intermediary, or directly from an insurance undertaking, and to avoid the distortion of competition by encouraging insurance undertakings to sell direct to customers rather than via intermediaries in order to avoid information requirements, insurance undertakings should also be required to provide information about remuneration to customers with whom they deal directly in the provision of insurance mediation services about the remuneration they receive for the sale of insurance products. (32a) **Where the cost of fees and inducements cannot be ascertained prior to the provision of the advice, then the manner of calculation must be disclosed in a comprehensive, accurate and understandable manner in the key services documents with the total aggregate cost and its impact on returns of the advice being disclosed to the client as soon as practically possible thereafter. Where investment advice is**

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<sup>1</sup> **Directive 2013/11/EU of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (OJ L 165, 18.6.2013, p. 63).**

*provided on an ongoing basis, disclosure as to the cost of investment advice, including inducements, must be provided on a periodic basis and at least annually. The periodic report shall disclose all inducements paid or received in the preceding period.*

- (32b) *Any person selling insurance products, who is not the product manufacturer, should provide the retail investor in a separate key service document with details of their costs and services in accordance with this Directive and Directive 2014/.../EU [MiFID] as well as additional relevant information needed for the retail investor to assess the appropriateness of the of the insurance product for their needs which cannot be provided by the investment product manufacturer.*
- (32c) *There is a benefit to consumers if insurance products are sold through various channels and intermediaries with different forms of cooperation with insurance undertakings provided they have to apply the same rules on consumer protection and transparency.*
- (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.

**I**

(34a) *Member States should require that remuneration policies of insurance intermediaries and insurance undertakings in relation to their employees or representatives do not impair the ability to act in the best interests of customers. For employees who advise on or sell insurance investment products to customers, Member States should require that insurance intermediaries and insurance undertakings ensure that their remuneration by the firm does not affect employees' impartiality in making a suitable recommendation or appropriate sale or presenting information in a form that is fair, clear and not misleading. Remuneration in such situations should not be solely dependent on sales targets or the profit to the firm from a specific product.*

- (35) It is **important** for the customer to know whether he/she is dealing with an intermediary who is advising the customer on products from a broad range of insurance undertakings or on products provided by a specific number of insurance undertakings.
- (36) Due to the increasing dependence of consumers on personal recommendations, it is appropriate to include a definition of advice. **The quality of advice is crucial and any advice should reflect the personal characteristics of the customer.** Before advice is provided, the insurance intermediary or undertaking should assess the customer's needs, **expectations** and its financial situation. If the intermediary declares that it is giving advice on products from a broad range of insurance undertakings, it should carry out a fair and **wide-ranging analysis of a sufficiently large number of insurance** products available on the market. In addition, all insurance intermediaries and insurance undertakings should explain the reasons underpinning their advice **and recommend suitable insurance products according to the customer's preferences, needs, financial situation and personal circumstances.**
- (37) Prior to the conclusion of a contract, including in the case of non-advised sales, the customer should be given the relevant information about the insurance product to allow the customer to make an informed decision. The insurance intermediary should 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 so.**
- (38) Uniform rules should be laid down in order to **facilitate the choice of** the medium in which

**mandatory** information is provided to the customer allowing for use of electronic communications where it is appropriate having regard to the circumstances of the transaction. However, the customer should be given the option to receive it on paper. In the interest of consumer access to information, all pre-contractual information **should** 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 is a professional customer ■.
- (40) This Directive should specify the minimum obligations which insurance undertakings and insurance intermediaries should have in providing information to customers. A Member State should be able to in this area maintain or adopt more stringent provisions which may be imposed on insurance intermediaries and insurance undertakings independently of the provisions of their home Member State where they are pursuing insurance mediation activities on its territory provided that any such more stringent provisions comply with Union law, including Directive 2000/31/EC of the European Parliament and of the Council<sup>1</sup>. A Member State which proposes to apply and applies provisions regulating insurance intermediaries and the sale of insurance products in addition to those set out in this Directive should ensure that the administrative burden stemming from these provisions **remains limited**.
- (41) Cross-selling practices are a common **and appropriate** strategy for retail financial service providers throughout the Union. ■
- (41a) When insurance is offered together with another service or product as part of a package or as a condition for the same agreement or package, it is subject to Directive 2005/29/EC of the European Parliament and of the Council<sup>2</sup>. This Directive also provides a set of safeguards for customers purchasing insurance as part of a package. Member States may require national competent authorities to adopt or maintain additional measures to address cross selling practices that are detrimental to consumers.***
- (42) Contracts of insurance that involve investments are often made available to customers as potential alternatives or substitutes to investment products subject to Directive 2014/.../EU [MiFID]. To deliver consistent investor protection and avoid the risk of regulatory arbitrage, it is important that retail investment products (insurance investment products as defined in the Regulation on key information documents for investment products) are subject to the same

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<sup>1</sup> 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 178, 17.7.2000, p. 1).

<sup>2</sup> **Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ L 149, 11.6.2005, p. 22).**

conduct of business standards: these include provision of appropriate information, requirements for advice to be suitable and restrictions on inducements, as well as requirements to manage conflicts of interest **further** restrictions on remuneration. The *European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council*<sup>1</sup> and EIOPA should work together to achieve as much consistency as possible in the conduct of business standards for retail investment products that are subject to either Directive 2014/.../EU [MiFID] or to this Directive through guidelines. ***The specificities of non-life insurance products should, however, be taken into account in those guidelines. Also, in line with the analogous principle in Directive 2014/.../EU [MIFID], an analogous regime for insurance undertakings, when implementing this Directive at national level, and in the joint committee's guidelines should be considered.*** For insurance investment products, ***there should be enhanced conduct of business standards that replace*** the standards of this Directive which are applicable to ***general*** insurance contracts. Accordingly, persons carrying out insurance mediation in relation to insurance investment products should comply with the enhanced standards applicable to ***such*** products.

***(42a) The European Parliament will seek to ensure the alignment of this Directive with Directive 2014/.../EU [MIFID II] during its negotiations with the Council. [Am. 4]***

***(42b) The European Parliament will seek to ensure the alignment of this Directive with Directive 2014/.../EU [MIFID II] in its negotiations with the Council. [Am. 5]***

***(42c) This Directive lays down rules concerning the taking-up and pursuit of the activities of insurance and reinsurance mediation by natural and legal persons which are established in a Member State or which wish to be established there. Provisions of other Union instruments which depart from or supplement those rules should not apply to the activities of insurance and reinsurance mediation.***(43) In order to ensure compliance with the provisions of this Directive by insurance undertakings and persons who pursue insurance mediation, and to ensure that they are subject to similar treatment across the Union, Member States should be required to provide for administrative *penalties* 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 *penalties* and *other* measures in the Commission Communication of 8 December 2010 on reinforcing *penalty* regimes in the financial sector. Therefore, administrative *penalties* 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 *penalty* or *other* measure, publication ***and*** key powers ***to impose penalties.***

(44) In particular, the competent authorities should be empowered to impose pecuniary *penalties* which are sufficiently high to offset the benefits that can be expected and to be dissuasive even for larger institutions and their managers.

(45) In order to ensure a consistent application of *penalties* across Member States, when determining the type of administrative *penalties* or *other* measures and the level of

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<sup>1</sup> *Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).*

administrative pecuniary *penalties*, Member States should be required to ensure that the competent authorities take into account all relevant circumstances. ***Member States are however not obliged to provide for administrative penalties when national law provides for penalties within the criminal justice system.***

- (46) In order to strengthen the dissuasive effect on the public at large and to inform about breaches of rules which may be detrimental to customer protection, *penalties* and measures imposed should be published, except in certain well-defined circumstances. In order to ensure compliance with the principle of proportionality, *penalties* and *other* measures imposed should be published on an anonymous basis where publication would cause a disproportionate damage to the parties involved.
- (47) In order to detect potential breaches, the competent authorities should have the necessary investigatory powers, and should establish effective mechanisms to encourage reporting of potential or actual breaches ***which provide appropriate protection for those who denounce such breaches. However this Directive does not imply that Member States have to give administrative authorities the power to conduct criminal investigations.***
- (48) This Directive should refer to both administrative *penalties* and *other* measures irrespective of their qualification as a *penalty* or *other* a measure under national law.
- (49) This Directive should be without prejudice to any provisions in the laws of Member States in respect of criminal offences.
- (49a) Whistleblowers bring new information to the attention of competent authorities which assists them in detecting and penalising cases of insider dealing and market manipulation. However, whistleblowing may be deterred for fear of retaliation, or for lack of adequate procedures for reporting breaches. This Directive should therefore ensure that adequate arrangements are in place to encourage whistleblowers to alert competent authorities to possible breaches of this Directive and to protect them from retaliation. Member States should also ensure that whistleblowing schemes they implement include mechanisms that provide appropriate protection of a reported person, particularly with regard the right to the protection of personal data and procedures to ensure the rights of the defence of the reported person and the right to be heard before the adoption of a decision concerning that person as well as the right to seek effective remedy before a court against a decision concerning that person.***
- (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 management of conflicts of interest, conduct of business obligations in relation to insurance packaged retail investment products and procedures and forms for submitting information in relation to *penalties*. 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, but limited capacities, it could be entrusted solely*** with the elaboration of draft ***proposals*** which do not ***necessitate*** policy choices, for submission to the ***European Parliament and to the Commission.***



- (52) By means of delegated acts pursuant to Articles 290 and 291 of the *TFEU* and in accordance with Articles 10 to 15 of Regulation (EU) No 1094/2010 [...], the Commission should adopt delegated acts as set out in ***this Directive*** regarding management of conflicts of interest, regarding conduct of business obligations in relation to insurance packaged retail investment products as well as implementing technical standards *and* regarding procedures and forms for submitting information in relation to *penalties*. These delegated acts and implementing technical standards should be developed in draft by EIOPA.
- (53) Directive 95/46 of the European Parliament and of the Council [...] <sup>1</sup> and Regulation (EU) No 45/2001 of the European Parliament and of the Council [...] <sup>2</sup> shall govern the processing of personal data carried out by EIOPA within the framework of this Regulation, under the supervision of the European Data Protection Supervisor.
- (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 <sup>3</sup>, 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.
- (55a) The supervisory authorities of the Member States should have at their disposal all means necessary to ensure the orderly pursuit of business by insurance intermediaries and reinsurance undertakings 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 supervisory authorities should be proportionate to the nature, scale and complexity of the risks inherent in the business of an insurance or reinsurance undertaking, regardless of the importance of the undertaking concerned for the overall financial stability of the market.***
- (55b) This Directive should not be too burdensome for small and medium-sized insurance undertakings. 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 undertakings and to the exercise of supervisory***

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> OJ C 369, 17.12.2011, p. 14.

*powers.*

- (56) A review of this Directive should be carried out *three* 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 *of the European Parliament and of the Council*<sup>1</sup>.
- (57) Directive 2002/92/EC should accordingly be repealed.
- (58) The obligation to transpose this Directive into national law should be confined to those provisions which represent an amendment of the substance of Directive 2002/92/EC. The obligation to transpose the provisions which are unchanged arises under Directive 2002/92/EC.
- (59) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of Directive 2002/92/EC,

HAVE ADOPTED THIS DIRECTIVE:

## CHAPTER I

### SCOPE AND DEFINITIONS

#### *Article 1* *Scope*

1. This Directive lays down rules concerning the taking-up and pursuit of the activities of insurance and reinsurance mediation, **■** by natural and legal persons which are established in a Member State or which wish to be established there.
2. This Directive shall not apply to persons providing mediation services for insurance contracts if all the following conditions are met:
  - (a) the insurance contract only requires knowledge of the insurance cover that is provided;
  - (b) the insurance contract is not a life assurance contract;
  - (c) the insurance contract does not cover any liability risks;
  - (d) the principal professional activity of the person is other than insurance mediation.

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<sup>1</sup> *Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003).*

- (e) the insurance is complementary to ***the supply of goods*** by any provider, where such insurance covers the risk of breakdown, loss of or damage to the goods supplied by that provider;
  - (f) the amount of the annual premium for the insurance contract, when pro-rated to produce an annual amount, does not exceed EUR 600.
3. This Directive shall not apply to insurance and reinsurance mediation services provided in relation to risks and commitments located outside the Union.

This Directive shall not affect a Member State's law in respect of insurance and reinsurance mediation business pursued by insurance and reinsurance undertakings or intermediaries established in a third country and operating on its territory under the principle of freedom to provide services, provided that equal treatment is guaranteed to all persons carrying out or authorised to carry out insurance and reinsurance mediation activities on that market.

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

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

- 3a. ***This Directive shall ensure that the same level of protection applies and that the consumer can benefit from comparable standards. This Directive shall 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 mediated through various channels and intermediaries with different forms of cooperation with insurance undertakings provided that they have to apply the similar rules on consumer protection. This shall be taken into account by the Member States in the implementation of this Directive.***

## *Article 2* *Definitions*

1. For the purposes of this Directive:
- (1) 'insurance undertaking' means ***an insurance undertaking as defined in Article 13(1) of Directive 2009/138/EC of the European Parliament and of the Council<sup>1</sup>***;
  - (2) 'reinsurance undertaking' means a ***reinsurance undertaking as defined in Article 13(4) of Directive 2009/138/***;
  - (3) 'insurance mediation' means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of insurance, concluding such contracts or assisting in the administration and performance of such contracts. ***The activities of***

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<sup>1</sup> ***Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009).***

*advising on, proposing or concluding contracts of insurance* shall be considered to be insurance mediation also if carried on by an *employee of an* insurance undertaking *in direct contact with the insured*, without the intervention of an insurance intermediary.

*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 the discounting of premiums, when at the end of the process the customer is able directly to conclude an insurance contract using a website or other media shall be considered to be insurance mediation.*

Neither of the following activities shall be considered to be insurance mediation for the purposes of this Directive:

- (a) the provision of information on an incidental basis to a customer in the context of another professional activity, if the provider does not take any additional steps to assist the customer in concluding or performing an insurance contract;
  - (b) the mere provision of data and information on potential policyholders to insurance intermediaries or insurance undertakings or of information about insurance products or an insurance intermediary or insurance undertaking to potential policyholders.
- (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) *occupational pension schemes that are officially recognised and that fall within the scope of Directive 2003/41/EC or Directive 2009/138/EC;*
  - (e) *individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;*
- (5) 'insurance intermediary' means a natural or legal person, other than an insurance undertaking *or its employees*, who, for remuneration, takes up or pursues reinsurance mediation;
- (6) 'reinsurance mediation' means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of *insurance or* 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 mediation for the purposes of this Directive:

- (a) the provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;
  - (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 or of information about reinsurance products or a reinsurance intermediary or reinsurance undertaking to potential policyholders.
- (7) 'reinsurance intermediary' means any natural or legal person, other than a reinsurance undertaking ***or its employees***, who, for remuneration, takes up or pursues reinsurance mediation;
- (8) 'tied insurance intermediary' means any person who carries on the activity of insurance mediation for and on behalf of one or ***, in the case of insurance products not in competition, several*** insurance undertakings or insurance intermediaries, ***but does not collect premiums or amounts intended for the customer*** and who acts under the full responsibility of those insurance undertakings or insurance intermediaries, provided that the insurance intermediaries under whose responsibility the person acts do not themselves act under the responsibility of another insurance undertaking or intermediary;
- Any person who carries out the activity of insurance mediation in addition to a principal professional activity shall also be considered to be a tied insurance intermediary acting under the responsibility of one or several insurance undertakings for the products which concern them respectively if the insurance is complementary to the goods supplied or to the services provided within the framework of that principal professional activity;***
- (9) 'advice' means the provision of a ***personal*** recommendation to a customer, either upon their request or at the initiative of the insurance undertaking or the insurance intermediary;
- (10) 'contingent commission' means ■ remuneration in the form of a commission ■ based on the achievement of ***pre-agreed*** targets ***or thresholds*** relating to the ***volume of*** business placed by the intermediary with ***the*** insurer;
- (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;

(14) 'durable medium' means a durable medium as defined in Article 2(m) of Directive 2009/65/EC of the European Parliament and of the Council<sup>1</sup>;



(16) 'close links' means a situation referred to in *Article 13(7)* 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 *or a benefit-in-kind* of any kind, *and any other incentives* offered or given in connection with insurance mediation activities;

(19) 'tying practice' means the offering *or the selling of an insurance product in a package with other distinct ancillary products or services where the* insurance product is not made available to the consumer separately;

(20) 'bundling practice' means the offering *or the selling of an insurance product* in a package *with other distinct ancillary products or services where the insurance* product is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services; **(20a)** *'product' means an insurance contract covering one or more risks*;

**(20b)** *'retail' means non-professional.*

2. *In order to guarantee that the same level of protection applies and that the consumer can benefit from comparable standards it is essential that this Directive promotes a level playing field and competition on equal terms between intermediaries whether they tied to an insurance undertaking or not. The Member States shall take into account the importance of promoting a level playing field and competition on equal terms in the implementation of this Directive.*

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<sup>1</sup> *Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009).*

## CHAPTER II

### REGISTRATION REQUIREMENTS

#### *Article 3 Registration*

1. Except as provided in Article 4, insurance and reinsurance intermediaries shall be registered with a competent authority **as referred to in Article 10(2)**, in their home Member State. Insurance **and reinsurance** undertakings registered in Member States under *Council Directive 73/239/EEC*<sup>1</sup>, *Directive 2002/83/EC of the European Parliament and of the Council*<sup>2</sup> and *Directive 2005/68/EC of the European Parliament and of the Council*<sup>3</sup> and their employees shall not be required to register again under this Directive.

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

Member States may stipulate that, where an insurance or reinsurance intermediary acts under the responsibility of an insurance or reinsurance undertaking or intermediary, the **insurance** intermediary **shall not be required to provide the competent authority with the information in Article 3(7)(a) and (b) and the insurance** entity **responsible** shall **ensure that the insurance intermediary meets the conditions for registration and other provisions** set out in **this Directive**. Member States may also stipulate that the person or entity which takes responsibility for the intermediary shall register that intermediary.

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

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<sup>1</sup> *First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance (OJ L 228, 16.8.1973, p. 3).*

<sup>2</sup> *Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance (OJ L 345, 19.2.2002, p. 1).*

<sup>3</sup> *Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC (OJ L 323, 9.12.2005, p. 1).*

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

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

Member States shall establish an online registration system consisting of one single registration form available on an internet website, which should be easily accessible for insurance intermediaries and undertakings, and allowing the form to be completed directly online.

3. Member States shall see to it that a single information point is established allowing quick and easy access to information from these various registers, which shall be compiled electronically and kept constantly updated. This information point shall also provide the identification details of the competent authorities of each Member State referred to in paragraph 1, first subparagraph. The register shall indicate further the country or countries in which the intermediary conducts business under the rules on the freedom of establishment or on the freedom to provide services.
4. EIOPA shall establish, publish on its website and keep up-to-date a single electronic register containing records of insurance and reinsurance intermediaries which have notified their intention to carry on cross-border business in accordance with Chapter IV. Member States shall provide relevant information to EIOPA promptly to enable it to do this. This register shall show a hyperlink to each relevant competent authority in each Member State. That 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 established by Member States under Article 3(3).***

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

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

5. Member States shall ensure that the competent authorities do not register an insurance or reinsurance intermediary unless that the intermediary meets the requirements laid down in Article 8, ***or that another intermediary or undertaking will take responsibility for ensuring that the intermediary meets these requirements in accordance with subparagraph 3 of Article 3(1).***
  - 5a. ***Registered insurance and reinsurance intermediaries shall be allowed to take up and pursue the activity of insurance and reinsurance mediation in the Union by means of both***



*freedom of establishment and freedom to provide services.*

*An insurance intermediary is operating under Freedom to provide services if it intends to supply a policyholder, who is established in a Member State different from the one where the insurance intermediary is established, with an insurance contract relating to a risk situated in a Member States different from the Member State where the insurance intermediary is established.*

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

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

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

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

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

7. Member States shall ensure that their competent authorities request **evidence of** the following **as a condition of registration** from insurance and reinsurance intermediaries **other than for tied intermediaries and intermediaries where another insurance entity takes responsibility for ensuring that the intermediary meets these requirements in accordance with subparagraph 3 of Article 3(1)**.
  - (a) to provide information to their competent authorities of the identities of shareholders or members, whether natural or legal persons, that have a holding in the intermediary that exceeds 10% and the amounts of those holdings;
  - (b) to provide information to their competent authorities of the identities of persons who have close links with the insurance or reinsurance intermediary;
  - (c) to demonstrate in a satisfactory manner that the holdings or close links do not prevent the effective exercise of the supervisory functions of the competent authority.

**Member States shall ensure that their competent authorities require that insurance and reinsurance intermediaries to whom Article 3(7) applies inform them without undue delay where information provided under Article 3(7)(a) and (b) changes.**

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

- 8a. *Member States may provide that those persons who exercised a mediation activity before 1 January 2014, who were entered in a register and who had a level of training and experience similar to that required by this Directive, shall be automatically entered in the register to be created, once the requirements set down in Article 4(3) and (4) are complied with.*

## CHAPTER III

### SIMPLIFIED REGISTRATION PROCEDURE – DECLARATION OF ACTIVITIES

#### *Article 4*

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

1. The registration requirements in Article 3 shall not apply to an insurance intermediary which conducts insurance mediation on an ancillary basis, provided that its activities meet all the following conditions:
  - (a) the principal professional activity of the insurance intermediary is other than insurance mediation;
  - (b) the insurance intermediary only mediates certain insurance products that are complementary to a product or service and clearly identifies them in the declaration;
  - (c) 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*;
  - (ca) *the intermediary works under the responsibility of a registered intermediary.*
2. **I**
3. Any insurance intermediary who is subject to paragraphs 1 and 2 of this Article shall submit to the competent authority of its home Member State a declaration whereby it informs the competent authority of its identity, address and professional activities.
4. Intermediaries who are subject to paragraphs 1 and 2 of this Article shall be subject to the provisions of Chapters I, III, IV, V, VIII, IX and Articles 15 and 16 of this Directive.
- 4a. *Member States may apply the registration requirements in Article 3 to insurance intermediaries within the scope of Article 4, if they consider it necessary to do so in the interests of consumer protection.*

## CHAPTER IV

### FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT

#### *Article 5*

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

1. Any insurance or reinsurance intermediary who intends to carry on business within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the competent authority of his home Member State:
  - (a) the name, address and any registration number of the intermediary;
  - (b) the Member State or States in which the intermediary intends to operate;
  - (c) the category of intermediary and, if applicable, the name of any insurance or reinsurance undertaking represented;
  - (d) the relevant classes of insurance, if applicable;
  - (e) demonstration of professional knowledge and ability.

2. The competent authority of the home Member State shall, within one month of receiving the information referred to in paragraph 1, forward it to the competent authority of the host Member State, which shall acknowledge the receipt without delay. The home Member State shall inform the insurance or reinsurance intermediary in writing that the information has been received by the host Member State and that the insurance or reinsurance undertaking can commence its business in the host Member State.

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

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

#### ***4a. A registered insurance or reinsurance intermediary carries on an insurance mediation***

*activity under the 'freedom of services' if:*

- (a) *it carries on insurance or reinsurance mediation with or for a policyholder who resides or is established in a Member State different from the home Member State of the intermediary;*
- (b) *any risk to be insured is situated in a Member State different from the home Member State of the intermediary;*
- (c) *it complies with paragraphs 1 and 4.*

#### *Article 6*

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

1. Member States shall require any insurance or reinsurance intermediary who intends to exercise his freedom of establishment to establish a branch within the territory of another Member State first to notify the competent authority of his home Member State and to provide it with the following information:
  - (a) the name, address and registration number, where applicable, of the intermediary;
  - (b) the Member State within the territory of which he plans to establish a branch or permanent presence;
  - (c) the category of intermediary and, if applicable, the name of any insurance or reinsurance undertaking represented ;
  - (d) the relevant classes of insurance, if applicable;
  - (e) a programme of operations setting out, the insurance or reinsurance mediation activities to be carried on and the organisational structure of the establishment; also indicating the identity of agents where the intermediary intends to use them ;
  - (f) the address in the host Member State from which documents may be obtained;
  - (g) the name of any person responsible for the management of the establishment or permanent presence.
- 1a. *An insurance intermediary is operating under freedom of establishment if it carries on business in a host Member State for an indefinite period via a permanent presence in that Member State.***
2. Unless the competent authority of the home Member State has grounds for considering the organisational structure or the financial situation of the insurance or reinsurance intermediary to be inadequate, taking into account the mediation activities envisaged, it shall, within one month of receiving the information referred to in paragraph 1, communicate it to the competent authority of the host Member State, which shall acknowledge the receipt without delay. The home Member State shall inform the insurance or reinsurance intermediary in writing that the information has been received by the host Member State and that the insurance or reinsurance undertaking can commence its business in the host Member State.
3. Where the competent authority of the home Member State refuses to communicate the

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

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

#### *Article 7*

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

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

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

3. Where the host Member State has grounds for concluding that an insurance or reinsurance intermediary acting within its territory under the freedom to provide services or through an establishment is in breach of any obligation set out in this Directive it shall refer those findings to the competent authority of the home Member State which shall take the appropriate measures. In cases where, despite measures taken by the competent authority of the home Member State, an insurance or reinsurance intermediary persists in acting in a manner that is clearly prejudicial to the interests of host Member State consumers or the orderly functioning of insurance and reinsurance markets, the insurance or reinsurance intermediary shall be subject to the following measures:
  - (a) the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures needed in order to protect consumers and the proper functioning of insurance and reinsurance markets including by preventing the offending insurance or reinsurance intermediaries from initiating any further transactions within its territory; the competent authority of the host Member State shall inform the Commission of such measures without undue delay;
  - (b) the competent authority of the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No

1094/2010; in that case, EIOPA may act in accordance with the powers conferred on it by that Article in cases of a disagreement between the competent authorities of the host and home Member States.

4. Where the competent authorities of a host Member State ascertain that an insurance or reinsurance intermediary who has an establishment within its territory is in breach of the legal or regulatory provisions adopted in that Member State pursuant to those provisions of this Directive which confer powers on the host Member State's competent authorities, those authorities shall require the insurance or reinsurance intermediary concerned to put an end to this situation.

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

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

## CHAPTER V

### OTHER ORGANISATIONAL REQUIREMENTS

#### *Article 8*

#### *Professional and organisational requirements*

1. Insurance and reinsurance intermediaries, **■** and members of staff of insurance undertakings carrying out insurance mediation activities, shall possess appropriate knowledge and ability, as determined by the home Member State of the intermediary or undertaking, to complete their tasks and perform their duties adequately **■**.

Member States shall ensure that **■** members of staff *of insurance and reinsurance intermediaries and insurance undertakings, which pursue insurance mediation as principal professional activity, regularly* update their knowledge and ability *appropriate to the function they are performing and the relevant market*.

*To ensure that these provisions are complied with a continuing professional development*

*and sufficient and appropriate training to their staff of at least 200 hours in a five-year period, or a proportional number of hours where it is not their principal activity, needs to be fulfilled. Member States shall also make public the criteria they have established in order for staff to meet their competence requirements. Such criteria shall include a list of any qualifications they recognise.*

*To that end, Member States shall have in place mechanisms to control, assess, and certify the knowledge and skills through independent bodies.*

Member States *shall* adjust the required conditions with regard to knowledge and ability in line with the particular activity of insurance or reinsurance mediation and the products mediated, particularly if the principal professional activity of the intermediary is other than insurance mediation. ■ Member States may provide that in the cases referred to in the second subparagraph of Article 3(1) *and with regard to the employees of insurance companies engaged in insurance mediation*, the insurance undertaking or intermediary shall verify that the knowledge and ability of the intermediaries are in conformity with the obligations set out in the first subparagraph of this paragraph and, if need be, shall provide such intermediaries with training which corresponds to the requirements concerning the products sold by the intermediaries.

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

2. Insurance and reinsurance intermediaries and members of staff of insurance undertakings carrying out insurance mediation activities shall be of good repute. As a minimum, *those directly involved in the marketing or selling of the product* shall have a clean police record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities ■.

Member States may, in accordance with the provisions of the second subparagraph of Article 3(1), allow the insurance undertaking to check the good repute of insurance intermediaries.

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 undertaking or insurance and reinsurance intermediary and who pursue the activity of insurance and reinsurance mediation. Member States shall ensure that the management structure of such undertakings and any staff directly involved in insurance or reinsurance mediation fulfil that requirement.

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.

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

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

- (a) provisions laid down by law or contract whereby monies paid by the customer to the intermediary are treated as having been paid to the undertaking, whereas monies paid by the undertaking to the intermediary are not treated as having been paid to the customer until the customer actually receives them;
  - (b) a requirement for insurance intermediaries to have financial capacity amounting, on a permanent basis, to 4 % of the sum of annual premiums received, subject to a minimum of **EUR 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.
5. Pursuit of the activities of insurance and reinsurance mediation shall require that the professional requirements set out in this Article be fulfilled on a permanent basis.
6. Member States may reinforce the requirements set out in this Article or add other requirements for insurance and reinsurance intermediaries registered within their jurisdiction.
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 five years after the entry into force of this Directive and the successive reviews every five years after the previous review date.

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 the entry into force of this Directive and the first review date or between the last review date and the new review date and rounded up to the nearest euro.

EIOPA shall submit those draft regulatory technical standards to the Commission five years after the entry into force of this Directive and the successive reviews every five years after the previous review date.

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.

8. **Member States** shall specify
- (a) the notion of adequate knowledge and ability of the intermediary **and members of staff of insurance undertakings** when carrying on insurance mediation with its customers as referred to in paragraph 1 of this Article;
  - (b) appropriate criteria for determining in particular the level of professional qualifications, experiences and skills required for carrying on insurance mediation;



- (c) the steps that insurance intermediaries and *member of staff of* insurance undertakings might reasonably be expected to take to update their knowledge and ability through continuing professional development in order to maintain an adequate level of performance.

**8a. *Where a home Member State registers an insurance intermediary which has obtained professional qualifications or experience in another member state, it shall take into consideration the qualifications and experience, having regard to Directive 2005/36/EC of the European Parliament and <sup>1</sup> of the Council and the level of the qualification as it is defined under the European Qualifications Framework for lifelong learning established under the Recommendation of the European Parliament and Council<sup>2</sup>.***

#### Article 9

##### *Publication of general good rules*

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

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<sup>1</sup> *Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).*

<sup>2</sup> *Recommendation of the European Parliament and of the Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning (OJ C 111, 6.5.2008, p.1).*

*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**.
3. The competent authorities shall possess all the powers necessary for the performance of their duties. Where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate closely so that they can discharge their respective duties effectively.

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

1. The competent authorities of the various Member States shall cooperate in order to ensure the proper application of the provisions of this Directive.
2. The competent authorities shall exchange information on insurance and reinsurance intermediaries if they have been subject to a *penalty* referred to in Chapter VIII and such information is likely to lead to removal from the register of such intermediaries. The competent authorities may also exchange any relevant information at the request of an authority.
3. All persons required to receive or divulge information in connection with this Directive shall be bound by professional secrecy, in the same manner as is laid down in Article 16 of Council Directive 92/49/EEC<sup>1</sup> and Article 15 of Council Directive 92/96/EEC<sup>2</sup>.

*Article 12*  
*Complaints*

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

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<sup>1</sup> *Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ L 228, 11.8.1992, p. 1).*

<sup>2</sup> *Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ L 360, 9.12.1992, p. 1).*

*Article 13*  
*Out-of-court redress*

1. ***In accordance with Directive .../.../EU of the European Parliament and of the Council<sup>1</sup> and Regulation .../.../EU of the European Parliament and of the Council<sup>2</sup> Member States shall ensure the setting-up of appropriate effective impartial and independent complaints and redress procedures for the out-of-court settlement of disputes between insurance intermediaries and customers, and between insurance undertakings and customers, using existing bodies where appropriate. Member States shall further ensure that all insurance undertakings and insurance intermediaries participate in the procedures for the out-of-court settlement of disputes where the procedure results in decisions which *may be binding for the intermediary or the insurance undertaking, as appropriate, and the client.****

2. Member States shall ensure that these bodies cooperate in the resolution of cross-border disputes.
- 2a. ***Member States shall ensure that insurance intermediaries established on their territories inform consumers about the name, address and website address of the ADR entities by which they are covered and which are competent to deal with potential disputes between themselves and consumers.***
- 2b. ***Insurance intermediaries within the Union engaging in online and cross-border online sales shall inform consumers about the ADR platform, if applicable and about their email address. This information shall be made easily, directly, prominently and permanently accessible on the insurance intermediaries' website and if the offer is made by e-mail or another textual message transmitted by electronic means, in that message. It shall include an electronic link to the ADR platform's homepage. Insurance intermediaries shall also inform consumers about the ADR platform when the consumer submits a complaint to the insurance intermediary, a consumer complaint handling system operated by the insurance intermediary or to a company ombudsman.***
- 2c. ***Where a customer initiates a procedure for alternative dispute resolution laid down in national law against an insurance intermediary or insurance undertaking with regard to a dispute concerning rights and obligations established under this Directive, the insurance intermediary or insurance undertaking shall be required to participate in that procedure.***
- 2d. ***For the purposes of the application of this Directive the competent authorities shall cooperate with each other and with the entities responsible for out-of-court complaint and redress procedures referred to in this Article and to the extent permitted by Union legislative acts in force.***

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<sup>1</sup> Directive .../.../EU of the European Parliament and of the Council of ... on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR) (OJ ...).

<sup>2</sup> Regulation .../.../EU of the European Parliament and of the Council of ... on online dispute resolution for consumer disputes (Regulation on consumer ODR) (OJ ...).

*Article 14*  
*Restriction on use of intermediaries*

Member States shall ensure that, **when using the services of the insurance or reinsurance intermediaries established in the Union, insurance and reinsurance undertakings and intermediaries use the insurance and reinsurance mediation services only of registered insurance and reinsurance intermediaries or of the persons referred to in Article 1(2) or of the persons who have fulfilled the declaration procedure referred to in Article 4.**

## CHAPTER VI

### INFORMATION REQUIREMENTS AND CONDUCT OF BUSINESS RULES

*Article 15*  
General principle

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

*Article 16*  
*General information provided by the insurance intermediary or insurance undertaking*

Member States shall lay down rules ensuring that

- (a) prior to the conclusion of any insurance contract, **or if there is any material change in the data in the disclosure to customers related to the intermediary after conclusion of an insurance contract**, an insurance intermediary - including tied ones- shall make the following disclosures to customers:
  - (i) its identity and address and that it is an insurance intermediary;
  - (ii) whether or not it provides any type of advice about the insurance products sold;
  - (iii) the procedures referred to in Article 12 allowing customers and other interested parties to register complaints about insurance and reinsurance intermediaries and about the out-of-court complaint and redress procedures referred to in Article 13;
  - (iv) the register in which it has been included and the means for verifying that it has been registered; and

- (v) whether the intermediary is representing the customer or is acting for and on behalf of the insurance undertaking;
- (b) prior to the conclusion of any insurance contract, an insurance undertaking shall make the following disclosures to customers:
- (i) its identity and address and that it is an insurance undertaking;
  - (ii) whether or not it provides any type of advice about the insurance products sold;
  - (iii) the procedures referred to in Article 12 allowing customers and other interested parties to register complaints about insurance undertakings and about the out-of-court complaint and redress procedures referred to in Article 13.

*Article 17*  
*Conflicts of interest and transparency*

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

- (ea) *whether in relation to the insurance contract, the source of remuneration is:*
- (i) *the policyholder;*
  - (ii) *the insurance undertaking;*
  - (iii) *another insurance intermediary;*
  - (iv) *a combination of points (i), (ii) and (iii);*

*Additional information may be required by the Member States in accordance with Article 17a;*

■

2. *The consumer has the right to request additional detailed information as referred to in paragraph 1(e a).*
3. The insurance undertaking, *when selling insurance directly to customers*, shall inform the customer ■ whether any variable remuneration is paid to employees for distributing and managing the insurance product in question.

■

- 5a. *In cases of conflict of interest and to stimulate fair competition, the consumer shall be provided with information about relevant quantitative elements as regards, the concepts referred to in the paragraph 1(ea) and paragraph 3 of this Article and on the same conditions. In accordance with Article 16 of Regulation (EU) No 1094/2010, EIOPA shall develop, by 31 December 2015 and update periodically, guidelines to ensure consistent application of this Article.*

#### *Article 17 a* *Disclosure of information*

*Member States may introduce or retain additional disclosure requirements for insurance mediators and insurance undertakings concerning the amount of remuneration, fees, commissions or non-monetary benefits in relation to the provision of intermediation provided that the Member State upholds a level playing field between all distribution channels, does not distort competition, and complies with Union law, and that the resulting administrative burdens remain proportional to the intended level of consumer protection.*

#### *Article 18* *Advice, and standards for sales* ■

1. *Where advice is provided* prior to the conclusion of any specific contract, the insurance intermediary – including tied ones – or insurance undertaking shall *specify*, on the basis of information provided by the customer:
- (a) the demands and the needs of that customer;

(b) the underlying reasons for any advice *given* to the customer on a specified insurance product

2. The details referred to in points (a) and (b) of paragraph 1 shall be modulated according to the complexity of the insurance product being proposed and the level of financial risk to the customer *regardless of the distribution route selected*.

3. When the insurance intermediary or the insurance undertaking gives *advice on the basis of fair analysis*, it is obliged to give that advice on the basis of *a fair* analysis of a sufficiently large number of insurance contracts available on the market, to enable it to make a *personal* recommendation *in the best interest of the consumer*, in accordance with professional criteria, regarding which insurance contract would *most suitable* to meet the customer's needs.

4. Prior to the conclusion of a contract, whether or not advice is given, the insurance intermediary or insurance undertaking shall *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. *It shall be provided in a standardised information sheet by way of a product information document (PID) in plain language. It shall contain at least the following information:*

(a) *information about the type of insurance;*

(b) *a description of the risks insured and excluded risks;*

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

(d) *exclusions;*

(e) *obligations at the start of the contract;*

(f) *obligations during the term of the contract;*

(g) *obligations in case of a claim made;*

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

(i) *the means of terminating the contract.*

4a. *Paragraph 4 shall not apply to:*

(a) *investment products as defined in Article 4a of Regulation .../.../EU of the European Parliament and of the Council<sup>1</sup>; or*

(b) *the sale of insurance investment products referred to in Chapter VII of this Directive.*

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<sup>1</sup> *Regulation .../.../EU of the European Parliament and of the Council on key information documents for investment products (OJ ...).*

*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 intermediary or insurance undertaking mediates in the insurance of large risks, in the case of mediation by reinsurance intermediaries or reinsurance undertakings, or in relation to professional customers as specified in the Annex.
2. Member States may maintain or adopt stricter provisions regarding the information requirements referred to in Articles 16, 17 and 18 provided that such provisions comply with Union law. Member States shall communicate to EIOPA and the Commission such national provisions.
  - 2a. ***Member States which maintain or adopt stricter provisions applying to insurance intermediaries shall ensure that those provisions respect level playing field principles and that the administrative burden stemming from these provisions is proportionate relative to the consumer protection benefits.***
3. In order to establish a high level of transparency by all appropriate means, EIOPA shall ensure that the information it receives relating to national provisions is also communicated to consumers insurance intermediaries and insurance undertakings.

*Article 20*  
*Information conditions*

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



- (b) the customer has been given the choice between information on paper and in the durable medium, and has chosen that other medium.
5. The information referred to in Articles 16, 17 and 18 may be provided by the means of a website if it is addressed personally to the customer or if the following conditions are met:
- (a) the provision of the information referred to in Articles 16, 17 and 18 by means of a website is appropriate in the context of the business conducted between the intermediary or insurance undertaking and the customer;
  - (b) the customer has consented to the provision of the information referred to in Articles 16, 17 and 18 by means of a website;
  - (c) the customer has been notified electronically of the address of the website, and the place on the website where the information referred to in Articles 16, 17 and 18 can be accessed;
  - (d) it is ensured that the information referred to in Articles 16, 17 and 18 remains accessible on the website for such period of time as the customer reasonably need to consult it.
6. For the purposes of paragraph 4 and 5, the provision of information using a durable medium other than paper or by means of a website shall be regarded as appropriate in the context of the business conducted between the intermediary or insurance undertaking and the customer, if there is evidence that the customer has regular access to the Internet. The provision by the customer of an e-mail address for the purposes of that business shall be regarded as such evidence.
7. In the case of telephone selling, the prior information given to the customer shall be in accordance with Union rules applicable to the distance marketing of consumer financial services. Moreover, ***after 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 21a**  
***Tying and bundling practices***

- 1. ***When insurance is offered together with another service or ancillary product as part of a package or the same agreement or package, the insurance intermediary or insurance undertaking shall inform and offer the customer the possibility of buying the different components jointly or separately provide for a separate evidence of the premium or prices of each component. This shall not prevent the mediation of insurance products with different levels of insurance coverage or multi insurance risk policies.***
- 2. ***Where the risks resulting from such an agreement or package offered to a customer are likely to be different from the risks associated with the components taken separately, the insurance intermediary or insurance undertaking shall, upon the customer's request, provide an adequate description of the different components of the agreement or package and the way in which its interaction alters the risks.***

3. *EIOPA, in cooperation with the European Supervisory Authority (European Banking Authority) ESMA, through the Joint Committee of the European Supervisory Authorities, shall develop by ...\* [OJ please insert date: 18 months after the date of entry into force of this Directive], and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices do not comply with Article 15(1).*
4. *Member States shall ensure that where an insurance intermediary or insurance undertaking provides advice it ensures that the overall package of insurance products meets the demands and needs of the customer.*
5. *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 another service or product as part of a package or as a condition for the same agreement or package when they can demonstrate that such practices are detrimental to consumers.*

## CHAPTER VII

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

#### *Article 22*

##### *Scope*

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

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

#### *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, employees and tied insurance intermediaries, or any person directly or indirectly linked to them by control and their customers or between one customer and another that arise in the course of carrying *out any* insurance mediation *activities*.
2. Where *organisational or administrative arrangements made* by the insurance intermediary or insurance undertaking in *accordance* with Article 15, 16 and 17 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 *and* sources of conflicts of interest, *as appropriate*, to the customer before undertaking business on *its* behalf.
  - 2a. *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 mediation 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 *or* insurance undertakings might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when *carrying out* insurance mediation *activities*;
  - (b) *establish* appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers of the insurance intermediary or insurance undertaking.

#### *Article 24*

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

1. Member States shall *ensure* that, when carrying out insurance mediation *activities*, an insurance intermediary or insurance undertaking acts honestly, fairly and professionally in accordance with the best interests of its customers and complies, in particular, with the principles set out in this Article and in Article 25.
  2. All information, including marketing communications, addressed by the insurance intermediary or insurance undertaking to customers or potential customers shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.
  3. Appropriate information shall be provided to customers or potential customers about *the following*:
    - (a) the insurance intermediary or insurance undertaking and its services: *when* advice is provided, information shall specify whether the advice is provided on an independent basis and whether it is based on a broad or on a more restricted analysis of the market and shall indicate whether the insurance intermediary or insurance undertaking will provide the customer with the on-going assessment of the suitability of the *insurance-based investment* product recommended to *customers*;
    - (b) *insurance-based investment* products and proposed investment strategies: *this* should include appropriate guidance on and warnings of the risks associated with investments in those *instruments* or in respect of particular investment strategies; **█**
- (ba) *all costs and associated charges relating to insurance intermediation or ancillary services which must include the cost of advice, where relevant, the cost of the financial instrument recommended or marketed to the client and how the client may pay for it, also encompassing any third-party payments; [Am. 8]3a. The information concerning all costs and charges, including costs and charges in connection with the intermediation service and the insurance product, which are not caused by the occurrence of underlying*

*market risk, shall be aggregated to allow the client to understand the overall cost as well as the cumulative effect on return of the investment, and where the client so requests, an itemised breakdown. Where applicable, such information shall be provided to the client on a regular basis, at least annually, during the life of the investment.*

*The information referred to in the first subparagraph and in paragraph 6a shall be provided in a comprehensible form in such a manner that clients or potential clients are reasonably able to understand the nature and risks of the investment service and of the specific type of insurance investment product that is being offered and, consequently, to take investment decisions on an informed basis. Member States may allow that information to be provided in a standardised format. [Am. 9]*

4. The information referred to in *paragraphs 2 and 3* should be provided in a comprehensible form in such a manner that customers or potential customers are reasonably able to understand the nature and risks of the specific *type of insurance-based investment* product that is being offered and, consequently, to take investment decisions on an informed basis. This information may be provided in a standardised format *in accordance with Article 18(4)*.
5. *Member States shall require that when* the insurance intermediary or insurance undertaking informs the customer that insurance advice is provided on an independent basis the insurance intermediary or insurance undertaking *shall disclose to the customer the nature of the remuneration received in relation to the insurance contract:*
  - (a) *the range of insurance products on which the recommendation will be based and, in particular, whether the range is limited to insurance products issued or provided by entities having close links with the intermediary who represents the customer;*
- 5a. *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 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 .*
- 5b. *An insurance intermediary shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as defined in Article 23 from adversely affecting the interests of its clients.*

*An insurance company which manufactures financial instruments for sale to clients shall maintain, operate and review a process for the approval of each insurance product or significant adaptations of existing insurance products before it is marketed or distributed to clients.*

*The product approval process shall specify an identified target market of end clients within the relevant category of clients for each product and ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market.*

*The insurance company shall also regularly review financial instruments offered or marketed by the firm, 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. [Am. 11]*

6. EIOPA shall develop by ...\* [OJ please insert date: 18 months after the date of entry into force of this Directive], and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations in paragraph 1.

■

7. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 **to specify the principles with which** insurance intermediaries and insurance undertakings **must** comply ■ when carrying **out** insurance mediation **activities** with their customers. 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;

#### Article 25

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

1. When providing advice the insurance intermediary or insurance undertaking shall obtain the necessary information regarding the customer's or potential customer's knowledge and experience in the **investment** field relevant to the specific type of product ■, the customer's or potential customer's financial situation and ■ investment objectives **so as to enable** the insurance intermediary or insurance undertaking **to recommend to the customer or potential customer** the insurance **mediation activities or insurance-based investment** products that are suitable for the customer or potential customer.
2. Member States shall ensure that insurance intermediaries and insurance undertakings, when carrying **out** insurance mediation **activities other than those referred to in paragraph 1**, ask the customer or potential customer to provide information regarding **his** knowledge and experience in the investment field relevant to the specific type of **insurance-based investment** product ■ offered or demanded so as to enable the insurance intermediary or insurance undertaking to assess whether the insurance **mediation activity or insurance-based** product envisaged is appropriate for the customer.

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

- 2a. *Member States shall allow insurance intermediaries or insurance undertakings when carrying out insurance mediation activities that consist only of executing customer orders, to provide those activities to their customers without the need to obtain the information or make the determination provided for in paragraph 2 where all the following conditions are met:*
- (a) *the activities refer to either of the following insurance-based investment products:*
    - (i) *contracts which only provide investment exposure to the financial instruments deemed non-complex under Directive .../.../EU [MiFID] 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 mediation activity is carried out at the initiative of the customer or potential customer;*
  - (c) *the customer or potential customer has been clearly informed, whether or not in a standardised format, that in the provision of this insurance mediation activity, the insurance intermediary or insurance undertaking is not required to assess the appropriateness of the insurance-based investment product or insurance mediation 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;*
  - (d) *the insurance intermediary or insurance undertaking complies with its obligations under Article 23.*
3. The insurance intermediary or insurance undertaking shall establish a record that includes *the* document or documents **■** agreed between *itself* 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 *carry out insurance mediation activities for* 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 *insurance mediation activity* provided **■**. These 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 *insurance mediation activity carried out for* the customer and shall include, where applicable, the costs associated with the *activities* undertaken on behalf of the customer. **■**

*When providing advice, the insurance intermediary or insurance undertaking shall, before the insurance-based investment product is arranged with the customer, 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.*

*Where the agreement is concluded using a means of distance communication which prevents the prior delivery of the suitability assessment, the insurance intermediary or insurance undertaking can provide the written statement on suitability in a durable medium immediately after the customer is bound by any agreement.*

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 to **specify the principles with which** insurance intermediaries and insurance undertakings **must** comply **■** when carrying **out** insurance mediation **activities to** their customers. 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 **financial instruments and banking deposits referred to in Article 1(2) of Directive .../.../EU [MiFID]**;
- (ba) *the retail or professional nature of the customer or potential customer.*
- 5a. *EIOPA shall develop by ...\* [OJ please insert date: 18 months after the date of entry into force of this Directive], and update periodically, guidelines for the assessment of insurance-based investment products incorporating a structure which makes it difficult for the customer to understand the risk involved in accordance with paragraph 3(a).*

## CHAPTER VIII

### PENALTIES AND OTHER MEASURES

#### *Article 26*

#### *Administrative penalties and other measures*

1. Member States shall ensure that their administrative *penalties* and *other* measures are effective, proportionate and dissuasive.
2. Member States shall ensure that where obligations apply to insurance or reinsurance undertakings or insurance or reinsurance intermediaries, in case of a breach, administrative *penalties* and *other* measures can be applied to the members of their management body, and any other natural or legal persons who, under national law, are responsible for a breach.
3. The competent authorities shall be given all investigatory powers that are necessary for the exercise of their functions. In the exercise of their [...] powers *to impose penalties*, the

competent authorities shall cooperate closely to ensure that *penalties* or *other* measures 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. The competent authorities may request documents or other information under a formal decision, which shall indicate the legal basis for the request for information, the deadline for compliance and the right of the recipient to seek a judicial review of the decision.***

*Article 27*  
*Publication of penalties*

Member States shall provide that the competent authority publishes any *penalty* or *other* measure that has been imposed for breaches of the provisions of the national provisions adopted in the implementation of this Directive ■ including information on the type and nature of the breach and the identity of persons responsible for it, ***only if the penalty or other measure has become final and is not subject to appeal or judicial review.*** Where the publication would cause a disproportionate damage to the parties involved, the competent authorities shall publish the *penalties* on an anonymous basis.

*Article 28*  
*Breaches*

1. This article shall apply to the following:
  - (a) an insurance or reinsurance intermediary who is not registered in a Member State and who does not fall within Article 1(2) or Article 4;
  - (b) a person providing ancillary insurance activities without having submitted a declaration as laid down in Article 4, or who has submitted such a declaration but in respect of whom the requirements set out in Article 4 are not met;
  - (c) an insurance or reinsurance undertaking or insurance or reinsurance intermediary using the insurance or reinsurance mediation services of persons who are neither registered in a Member State nor referred to in Article 1(2), and who have not submitted a declaration under Article 4;
  - (d) an insurance or reinsurance intermediary having obtained a registration through false statements or any other irregular means in breach of Article 3;
  - (e) an insurance or reinsurance intermediary or insurance undertaking failing to meet the provisions of Article 8;
  - (f) an insurance undertaking or insurance or reinsurance intermediary failing to comply with conduct of business requirements in accordance with Chapter VI and VII.
2. Member States shall ensure that in the cases referred to in paragraph 1, the administrative *penalties* and *other* measures that can be applied include at least the following:



- (a) a public statement, which indicates the natural or legal person and the nature of the breach;
- (b) an order requiring the natural or legal person to cease the conduct and to desist from a repetition of that conduct;
- (c) in case of an insurance or reinsurance intermediary, withdrawal of registration in accordance with Article 3;
- (d) a **temporary** ban against any member of the management body of the insurance or reinsurance intermediary or insurance or reinsurance undertaking **■**, who is held responsible, to exercise functions in insurance intermediaries or reinsurance intermediaries, or insurance or reinsurance undertakings;
- (e) in case of a legal person, administrative pecuniary *penalties* of up to 10 % of the total annual turnover of the legal person in the preceding business year; where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year;
- (f) in case of a natural person, administrative pecuniary *penalties* of up to 5 000 000 EUR, or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry into force of this Directive; and

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

*Article 29*  
*Effective application of penalties*

1. Member States shall ensure that when determining the type of administrative *penalties* or *other* measures and the level of administrative pecuniary *penalties*, 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 third parties caused by the breach, insofar as they can be determined;
  - (f) the level of cooperation of the responsible natural or legal person with the competent authority; and
  - (g) previous breaches by the responsible natural or legal person.

3. This Directive shall not affect the power of the host Member States to take appropriate measures to prevent or to penalise irregularities committed within their territories which are contrary to legal or regulatory provisions adopted in the interest of the general good. This shall include the possibility of preventing offending insurance or reinsurance intermediaries from initiating any further activities within their territories. ■

*Article 30*  
*Reporting of breaches*

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

***The identity of the persons reporting and allegedly responsible for the breach shall remain confidential at every stage, unless the disclosure thereof is required under national law for the purpose of subsequent inquiries or legal proceedings.***

*Article 31*  
*Submitting information to EIOPA in relation to penalties*

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

***Competent authorities*** shall provide EIOPA annually with aggregated information regarding all administrative measures or administrative *penalties* imposed in accordance with Article 26.

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

EIOPA shall submit those draft implementing technical standards to the Commission by ...\*[OJ please insert date: six months after entry into force of this Directive].

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

## CHAPTER IX

### FINAL PROVISIONS

#### *Article 32*

##### *Data Protection*

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

#### *Article 33*

##### *Delegated acts*

The Commission shall be empowered to adopt delegated acts in accordance with Article 34 concerning Articles 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 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 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 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*  
*Further provisions for draft regulatory technical standards*

1. *Notwithstanding any time limit provided for the submission of draft regulatory technical standards to the Commission, the Commission shall submit its drafts in intervals of of 12, 18 or 24 months.*
2. *The Commission shall not adopt regulatory technical standards where the scrutiny time of the European Parliament is reduced to less than two months, including any extension, because of recess.*
3. *The European Supervisory Authorities may consult the European Parliament during the drafting stages of the regulatory technical standards, particularly where there are concerns regarding the scope of this Directive.*
4. *Where the competent committee of the European Parliament has rejected regulatory technical standards and there are less than two weeks before the following plenary part-session, the European Parliament may extend its time for scrutiny until the plenary part-session thereafter.*
5. *Where regulatory technical standards have been rejected and the identified issues are of limited scope, the Commission may adopt an expedited timetable for delivering a revised draft regulatory technical standard.*
6. *The Commission shall ensure that all queries of the European Parliament that are formally raised formally via the Chair of the competent committee are answered promptly before the adoption of the draft regulatory technical standards.*

*Article 35*  
*Review and evaluation*

1. *By ...\* [OJ please insert date: five years after the date of entry into force of this Directive.], the Commission shall review █ 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 [on key information documents for investment products] and Directive .../.../EU [MIFID II]. █ This **examination** shall also include a specific analysis of the impact of Article 17(2), taking into account the situation of competition on the market of intermediation services for contracts other than contracts in any of the classes specified in Annex I of Directive 2002/83/EC and the impact of the obligations referred to in Article 17(2) on insurance intermediaries which are small and medium sized enterprises.*
2. *After consulting the Joint Committee of European Supervisory Authorities, the Commission shall submit **its findings** to the European Parliament and **to** the Council.*
- █
5. *The Commission shall examine whether the competent authorities referred to in Article 10(1) are sufficiently empowered and have adequate resources to carry out their tasks.*
- █

*Article 36*  
*Transposition*

1. Member States shall ***adopt and publish, by ...\* [OJ please insert date: 18 months after the date of entry into force of this Directive]***, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those measures.

***Where the documents accompanying notification of transposition measures provided by the Member States are not sufficient to assess fully the compliance of those measures with certain provisions of this Directive, the Commission may, upon EIOPA's request and with a view to carrying out its tasks under Regulation (EU) No 1094/2010, or on its own initiative, require Member States to provide more detailed information regarding the transposition of this Directive and the implementation of those measures.***

- 1a. ***Member States shall apply the measures referred to in paragraph 1 from ...\* [OJ please insert date: 18 months after the date of entry into force of this Directive].***

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*  
*Repeal*

Directive 2002/92/EC is repealed with effect from ...\* ***[OJ please insert date: 18 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 *that 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*

**ANNEX I**  
**PROFESSIONAL CUSTOMERS**

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

1. ***Insurance and reinsurance undertakings;***

■

***1a. Insurance and reinsurance intermediaries.***

2. Large undertakings meeting two of the following size requirements on a company basis:

- balance sheet total: EUR 20,000,000
- net turnover: EUR 40,000,000
- own funds: EUR 2,000,000.

3. National ■ governments ■.

■

## ANNEX II

### EXPLANATORY DOCUMENTS

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 Commission considers the transmission of such documents to be justified for the following reasons:

#### Complexity of the Directive and of the sector concerned:

The field of insurance and distribution of insurance products is particularly complicated and can be very technical from the point of view of professionals who are not specialised in it. In the absence of well-structured explanatory documents, the task of overseeing the transposition would be disproportionately time-consuming. The current proposal represents a review where the text of the Insurance Mediation Directives (IMD) was recasted. Even though many of the provisions have not changed as to their substance, a number of new provisions have been introduced, and a number of existing provisions have been revised or deleted. The structure, form, and presentation of the texts are completely new. The new structure has been necessary to give a clearer and more logical order to the legal provisions but it will result in the need for a structured approach during the transposition supervision.

Some of the provisions of the proposed Directive may potentially have an impact on a number of areas of the national legal order such as the company, commercial or tax law or other legislative areas in the Member States. It may also affect secondary national law including Acts and general conduct of business rules for Financial or Insurance Intermediaries. The interrelation of matters with all these neighbouring fields may mean, depending on the system in the Member States, that some provisions are implemented by means of new or already existing rules from those fields, a clear view of which should be available.

#### Consistency and interrelation with other initiatives:

The current proposal is tabled for adoption as part of a 'Consumer Retail Package' together with the PRIPs proposal on product disclosures (Regulation on key information documents on investment products and amending Directives 2003/71/EC and 2009/65/EC) and UCITS V. The PRIPs initiative aims at ensuring a coherent horizontal approach to product disclosure with regard to investment products and insurance products with investment elements (so-called insurance investments), and provisions on selling practices will be included in the revisions of the IMD and MiFID (Markets in Financial Instruments Directive). The proposal is furthermore consistent with, and complementary to, other EU legislation and policies, particularly in the areas of consumer protection, investor protection and prudential supervision, such as Solvency II (Directive 2009/138/EC), MiFID II (the recast of MiFID), and the above mentioned PRIPs initiative.

The new IMD would continue to have the features of a "minimum harmonisation" legal instrument. This means that Member States may decide to go further if necessary for the purposes of consumer protection. However, the minimum standards of IMD will be raised significantly. ■ Moreover, a revision clause is considered in the directive and, in order to be able to collect all relevant



information on the functioning of those rules, the Commission will need to be able to monitor their implementation from the outset.

Chapter on insurance investment: The text of the proposal features a Chapter introducing additional customer protection requirements in relation to insurance investment products.

There is a strong political will to put such provisions in place but, at the same time, there is very little experience as this is a new area. Therefore, it is of high importance that the Commission receives transposition documents on how the Member States have given effect to such provisions.

***The specificities of non-life insurance products must however be taken into account in the Level 2 guidelines. In line with the analogous principle in MIFID II Article 3, there should be considered an analogous regime for insurances when implementing the Directive at national level and in the joint committee's guidelines. Persons carrying out insurance mediation in relation to insurance investment products should comply with the conduct standards applicable to all insurance contracts as well as to the enhanced standards applicable to insurance investment products. Anyone intermediating in insurance investment products must be registered as an insurance intermediary.***

Low estimated additional administrative burden stemming from requesting explanatory documents from Member States: As mentioned above, the current text has been in place since 2002 (when the original Directive was adopted). Therefore, it will not be burdensome for Member States to notify their implementing provisions as they have normally been notifying most of them for quite some time already. The estimated low additional administrative burden of requesting explanatory documents from Member States regarding the new parts of the Directive is proportionate and necessary for the Commission to carry out its task of overseeing the application of Union law.

On the basis of the above, the Commission believes that the requirement to provide explanatory documents in the case of the proposed Directive is proportionate and does not go beyond what is necessary to achieve the objective to carry out efficiently the task of overseeing accurate transposition.