



EUROPEAN COMMISSION

Brussels, XXX
[...] (2012) XXX draft

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on Insurance Intermediaries and the Sale of Insurance Products

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The Directive 2002/92/EC of the European Parliament and the Council on insurance mediation (IMD1)¹ is the only EU legislation which regulates the point of sale of insurance products so as to ensure the rights of the consumer. It was adopted on 9 December 2002 and had to be transposed by Member States by 15 January 2005. The Directive is a minimum harmonisation instrument containing high level principles and has been implemented in the 27 Member States in substantially different ways. The need to review IMD1 was already acknowledged during the implementation check carried out by the Commission in 2005-2008.

Current and recent financial turbulence has underlined the importance of ensuring effective consumer protection across all financial sectors. In November 2010, the G20 asked the OECD, the Financial Stability Board (FSB) and other relevant international organisations to develop common principles in the field of financial services in order to strengthen consumer protection. The draft G20 high level principles on financial consumer protection underline the need for proper regulation and/or supervision of all financial service providers and agents that deal directly with consumers. These principles stipulate that consumers should always benefit from comparable standards of consumer protection. The current review of IMD1 should be seen in the light of these guidelines and related international initiatives.

During the discussions in the European Parliament on the directive which regulates the risk-based approach to capitalisation and supervision of insurance undertakings (Solvency II)², adopted in 2009, a specific request was furthermore made to review IMD1. Some Members of the Parliament and some consumer organisations considered that there was a need for improved policyholder protection in the aftermath of the financial crisis and that selling practices for different insurance products could be improved. In particular, strong concerns have been raised with regard to the standards for the sale of life insurance products with investment elements. In order to ensure cross-sectoral consistency, it was requested that the revision of IMD1 would take into account the ongoing revision of the Markets in Financial Instruments Directive (MiFID)³. This means that, whenever the regulation of selling practices of life insurance products with investment elements is concerned, the proposal for a revised Directive (IMD2) should meet the same consumer protection standards as MiFID.

1.1. Objectives of the proposal

The revision of IMD1 seeks to improve regulation in the retail insurance market in an efficient manner. It aims at ensuring a level playing field between all participants

¹ JO L 9, p.3.

² Directive 2009/138/EC of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II), JO L 335, p.1

³ Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (Recast); COM(2011) 656 final.

involved in the selling of insurance products and at strengthening policyholder protection.

The overarching objectives of the current review are undistorted competition, consumer protection and market integration. In concrete terms, the IMD2 project should achieve the following improvements: expand the scope of application of IMD1 to all distribution channels (e.g. direct writers, car rentals, etc.); identify, manage and mitigate conflicts of interest; raise the level of harmonisation of administrative sanctions for infringements of key provisions of the current Directive; enhance the suitability and objectiveness of advice; ensure sellers' professional qualifications match the complexity of products sold; simplify and approximate the procedure for cross-border entry to insurance markets across the EU.

1.2. Consistency with other policies and objectives of the Union

The objectives of the proposal are consistent with the policies and objectives pursued by the Union. The Treaty provides for action to ensure the establishment and functioning of an internal market with a high level of consumer protection as well as the freedom to provide services.

The current proposal is tabled for adoption as part of a 'Consumer Retail Package' together the PRIPs proposal on product disclosures 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 PRIPs⁴), and provisions on selling practices will be included in the revisions of the IMD and MiFID.

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, MiFID II, and the PRIPs initiative.

IMD2 will regulate selling practices for all insurance products from general insurance products such as motor insurance, through to life insurance policies, including those which contain investment elements, e.g. unit-linked life insurance products.

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 IMD1 will be raised significantly. Some parts of the new Directive will be reinforced by Level 2 measures in order to align the rules with MiFID: in particular, in the chapter regulating the distribution of life insurance policies with investment elements⁵.

⁴ See the scope in the Impact Assessment on PRIPs: http://ec.europa.eu/internal_market/finservices-retail/docs/investment_products/29042009_impact_assessment_en.pdf

⁵ The IMD review is based on the "Lamfalussy process" (a four-level regulatory approach recommended by the Committee of Wise Men on the Regulation of European Securities Markets, chaired by Baron Alexandre Lamfalussy and adopted by the Stockholm European Council in March 2001 aiming at more effective securities markets regulation) as developed further by Regulation (EU) No 1034/2010 of the

2. RESULTS OF CONSULTATION WITH INTERESTED PARTIES AND IMPACT ASSESSMENT

The Commission Services requested advice from the European Insurance and Occupational Pensions Authority (EIOPA) (formerly CEIOPS) on numerous issues relating to the revision of the IMD. EIOPA's final report was delivered in November 2010.⁶ During 2010-2011, the Commission Services regularly met with representatives of the insurance sector, consumer organisations and supervisors to discuss the forthcoming review. On 10 December 2010, a public hearing was held on IMD2. The discussion focused on the scope of the Directive, information requirements for insurance intermediaries, conflicts of interests, cross-border trade, and professional qualification requirements.⁷ On 11 April 2011 a meeting was organised with experts from Member States and EIOPA to discuss the results of the public consultation and the possible structure and contents of IMD2.⁸ The large majority of the stakeholders present at these meetings supported the direction of the revision of IMD1 as outlined by the Commission Services. A public consultation relating to the IMD1 revision was carried out by the Commission Services from 26 November 2010 to 28 February 2011. The results of the consultation were also broadly supportive of the direction of the revision as outlined by the Commission Services.⁹

In line with its "Better Regulation" policy, the Commission conducted an impact assessment of policy alternatives. Several specific studies ordered by different Commission Services were used to prepare the impact assessment. Firstly, DG MARKT contracted PricewaterhouseCoopers (PWC) to conduct a study to provide a comprehensive overview of the functioning of insurance distribution in the EU. The report was finalised in July 2011 and published on the Commission's website¹⁰. Secondly, this proposal takes into account the results of a study commissioned in 2010 on the costs and benefits of potential changes to distribution rules for insurance

European Parliament and of the Council, establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority): at Level 1, the European Parliament and the Council adopt a directive in codecision which contains framework principles and which empowers the Commission acting at Level 2 to adopt delegated acts (Art 290 The Treaty on the Functioning of the European Union C 115/47) or implementing acts (Art 291 The Treaty on the Functioning of the European Union C 115/47). In the preparation of the delegated acts the Commission will consult with experts appointed by Member States. At the request of the Commission, EIOPA can advise the Commission on the technical details to be included in level 2 legislation. In addition, Level 1 legislation may empower EIOPA to develop draft regulatory or implementing technical standards according to Art 10 and 15 of the EIOPA Regulation which may be adopted by the Commission (subject to a right of objection by Council and Parliament in case of regulatory technical standards). At Level 3, EIOPA also works on recommendations, guidelines and compares regulatory practice by way of peer review to ensure consistent implementation and application of the rules adopted at Levels 1 and 2. Finally, the Commission checks Member States' compliance with EU legislation and may take legal action against non-compliant Member States.)

⁶ https://www.ceiops.eu/fileadmin/tx_dam/files/publications/reports/IMD-advice-20101111/20101111-CEIOPS-Advice-on-IMD-Revision.pdf

⁷ The minutes of the hearing could be found on the following website:
⁸ http://ec.europa.eu/internal_market/insurance/docs/mediation/20101210hearing/panel-summary_en.pdf.

⁹ The results are published: http://ec.europa.eu/internal_market/consultations/2010/insurance-mediation_en.htm

¹⁰ Costs analysis is based on figures given by the PwC study and revised by Commission Services. The study covered five Member States (BE, DE, FR, FI, UK) and some participants were unwilling or unable to provide precise estimation of costs. Commission Services' assessment of data suggests some respondents provided figures that appear inflated without clear explanation or justification.

products and for insurance investment products.¹¹ Thirdly, the findings of a study seeking to assess the quality of advice being offered across the EU have been considered.¹² A fourth study seeking insights from behavioural economics on the different factors relating to investor decision making has also been taken into account.¹³

Policy options discussed in the impact assessment were assessed against different criteria: market integration for market players, customer protection and confidence, a level playing field for various market players, and cost-effectiveness, i.e. the extent to which the options achieve the sought objectives and facilitate the operation of insurance markets in a cost-effective and efficient way.

Overall, the estimate of administrative burden on the basis of the above mentioned PWC study and industry statistics, reworked by the Commission Services, is that in view of the large number of undertakings affected (about 1 million), the proposal will result in a relatively moderate cost of, on average, about 730 euro per undertaking.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

The proposal is based on Article 53(1) of the TFEU. It will replace Directive 2002/92/EC and deals with the harmonisation of national provisions on insurance intermediaries and other sellers of insurance products, brings within scope certain ancillary sellers, and after-sales businesses such as loss adjusters and claims handlers, for the distribution of insurance products. It clarifies the exercise of the freedom of establishment and of the freedom to provide services, the powers of supervisory authorities of home and host Member States in this regard, as well as further harmonising conduct of business rules. The main objective and subject-matter of this proposal is to harmonise national provisions concerning conduct of business rules for all sellers of insurance products and other market entities present on insurance and reinsurance markets, the conditions for their governance, and their supervisory framework.

3.2. Subsidiarity and proportionality

According to the principle of subsidiarity (Article 5(3) of the TEU), action at EU level should be taken only when the aims envisaged cannot be achieved sufficiently by Member States alone and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the EU.

Most of the issues covered by the revision are already covered by the current IMD1 legal framework. Further, insurance markets are increasingly cross-border in nature. The conditions under which firms and operators can compete in this context, whether they be rules on transparency or customer protection, need to be comparable across

¹¹ http://ec.europa.eu/internal_market/consultations/docs/2010/priips/costs_benefits_study_en.pdf

¹² http://ec.europa.eu/consumers/rights/docs/investment_advice_study_en.pdf

¹³ http://ec.europa.eu/consumers/strategy/consumer_behaviour_en.htm

borders and are all at the core of IMD1 today. Action is now required at European level in order to update and modify the regulatory framework laid out by IMD1 in order to take into account developments in insurance markets since its implementation. Because of this integration, isolated national intervention would be far less efficient and would lead to a fragmentation of markets, resulting in regulatory arbitrage and distortion of competition.

EIOPA should play a key role in the implementation of the new EU-wide framework. Specific competences for EIOPA are necessary in order to improve the functioning of the insurance markets.

The proposal takes full account of the principle of proportionality, namely that EU action should be adequate to reach the objectives and not go beyond what is necessary. It is compatible with this principle, taking into account the right balance of the public interest at stake and the cost-efficiency of the measures: in particular, the need to balance customer protection, efficiency of the markets and costs for the industry has been central in laying out these requirements.

3.3. Compliance with Articles 290 and 291 TFEU

On 23 September 2009, the Commission adopted proposals for Regulations establishing EBA, EIOPA, and ESMA. In this respect the Commission refers to the Statements in relation to Articles 290 and 291 TFEU it made at the adoption of the Regulations establishing the European Supervisory Authorities, according to which: "As regards the process for the adoption of regulatory standards, the Commission emphasises the unique character of the financial services sector, following from the Lamfalussy structure and explicitly recognised in Declaration 39 to the TFEU. However, the Commission has serious doubts whether the restrictions on its role when adopting delegated acts and implementing measures are in line with Articles 290 and 291 TFEU."

3.4. References to other directives

Since Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) is not currently applied by Member States, this Directive refers to the definitions as laid down in Directive 73/239/EEC, Directive 2002/83/EC and Directive 2005/68/EC. Directives 73/239/EEC, 2002/83/EC and 2005/68/EC are repealed by Directive 2009/138/EC. References to the repealed Directives shall be construed as references to Directive 2009/138/EC and shall be read in accordance with the correlation table in Annex VII of that Directive.

3.5. Detailed explanation of the proposal

Chapter I – Scope and Definitions

Article 1 enlarges the scope of IMD1 to include sales of insurance contracts by insurance and reinsurance undertakings without the intervention of an insurance intermediary. It also covers claims management activities by and for insurance undertakings, loss adjusting and expert appraisal of claims.

The exclusion from the scope in IMD1 remains the same (seller of insurance policies ancillary to sale of goods, under 500 euro premium on an annualised basis and satisfying other criteria under the exemption) except that the premium limit on an annualised basis is increased to €600 pro rata (less than €2 per day). The above mentioned €2 is the amount of the premium per contract and per day. For instance, opticians selling complementary insurances on glasses still remain out of scope of the Directive.

The insurance policies sold ancillary to the sale of services fall in the scope of the Directive after the revision. This is for example the case of travel insurance policies sold by travel agents, general insurance policies sold by car rental companies and leasing companies.

Article 2 restates the definitions in IMD 1 with some changes and new definitions.

- "Insurance mediation" is extended to include the extension of scope in Article 1 and specifies that certain activities by insurance aggregator websites constitutes insurance intermediation. The activity of "introducing" is removed. "Reinsurance mediation" is amended likewise.
- "Insurance investment products" are defined to follow the definition of "investment product" in the Regulation on key information documents on investment products and amending Directives 2003/71/EC and 2009/65/EC (Regulation on PRIIPs).
- "Tied insurance intermediary" is extended to include intermediaries working under the responsibility of another insurance intermediary.
- "Advice" is defined as the provision of a personal recommendation to a customer, on request or otherwise.
- "Professional customer" is defined for the purposes of exclusion from the information provisions.
- "Cross-selling practice" defines a practice where two or more products are bundled together in a single sale.
- "Close links" defines arrangements with connected persons and arrangements which might affect a supervisor's ability to supervise effectively.
- "Remuneration" is defined to include not only payments (fees, commission, etc.) but also economic benefits of any kind.
- The definitions of "home Member State", "host Member State", "insurance intermediary", "reinsurance intermediary" and "durable medium" are the subject of clarifying amendments.

Chapter II - Registration requirements

Article 3 leaves the registration requirements of IMD1 largely unchanged, but requires the establishment of a single electronic register by EIOPA (linking of national databases) and requires disclosure of certain arrangements with other

persons. It also exempts from registration persons within the scope of the declaration procedure (see Article 4).

Chapter III - Declaration procedure

Article 4 establishes a simplified procedure which exempts two groups of persons from the registration procedure mentioned above, enabling them to carry on mediation activities by way of a simple declaration. They are

- those who conduct insurance mediation as an activity ancillary to their principal professional activity, and who meet certain other conditions, to make a declaration instead of registering (such as travel agents). Broadly, the other conditions are that the products are complementary to another product or service, do not cover life assurance or liability risks other than incidental cover, and are not insurance investment products. and
- those whose activities are limited to the professional management of claims and to loss adjustment.

In each case, the intermediary must act under an agreement by which an *insurance* undertaking or registered insurance intermediary takes responsibility for ensuring his compliance.

This means that the declaration procedure would cover travel agents, car rentals selling insurance products as well as loss adjusters and claim handlers.

Chapter IV - Freedom to provide services and freedom of establishment

Articles 5, 6, and 7 provisions reflect the provisions in Article 5 of IMD1, the revised MiFID proposal and the Luxembourg Protocol¹⁴. They also address the division of competence between Home and Host Member State supervisors, particularly in situations when an insurance or reinsurance intermediary is not meeting its obligations when transacting business in the Host Member State.

Chapter V – Other organisational measures

Article 8 sets out the professional and organisational requirements that comprise Article 4 in IMD1: requirement to have appropriate knowledge and ability (verified by the insurance undertaking or intermediary responsible for intermediaries using the declaration procedure); requirement to be of good repute; requirement to hold professional indemnity insurance and measures to protect against the intermediary's inability to transfer premium to the insurance undertaking or claims money or return premiums to the insured. It also includes a requirement for continuous professional development. In order to achieve a proportionate impact, the rules applying to those pursuing intermediation activities on an ancillary basis, or whose activities are limited to the professional management of claims, will be proportionate to the

14 Protocol Relating to the Cooperation of the Competent Authorities of the Member States of the European Union in Particular Concerning the Application of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on Insurance Mediation

complexity of the product sold. Accordingly, Article 8 is not applied in full to such intermediaries.

The Commission is empowered to adopt regulatory technical standards to specify the notion of adequate knowledge and ability, which EIOPA is to develop and submit to the Commission [6] months after the publication of the Directive.

Articles 9 and 10 provide for mutual recognition of:

- intermediaries' knowledge and ability, as evidenced by registration in another Member State subject to their previous activity not having ceased for a period greater than specified prior to the application;
- loss adjusters' and claim handlers' knowledge and ability, as evidenced by declaration procedure in another Member State; and
- foreign proof of professional qualifications for individuals who wish to register as intermediaries in another Member State.

The Commission is empowered to adopt regulatory technical standards to specify the period for which previous activity must not have ceased, which EIOPA is to develop and submit to the Commission [6] months after the publication of the Directive.

Article 11 concerns the publication of general good rules. This has changed from Article 6 in IMD1 and now requires Member States to publish the general good rules and requires EIOPA to collect and publish information about such rules (for an indicative exposition of the principles of general good in relation to the Third Insurance Directives, see the Commission's Interpretative Communication on freedom to provide services and the general good in the insurance sector 2000/C 43/03).

Articles 12 to 14 restate the former Articles 7, 9 and 10, on competent authorities, exchange of information between Member States and complaints.

Article 15 concerns procedures for the out-of-court settlement of disputes involving customers, and strengthens the position under Article 11 of IMD1, by requiring (rather than encouraging) Member States to set up procedures and ensure participation in them.

Article 16 concerns the restriction on the use of intermediaries. It extends Article 3(6) of IMD1 to reinsurance undertakings and insurance and reinsurance intermediaries, and takes into account the declaration procedure (see Article 4).

Chapter VI – Information requirements and conduct of business rules

Articles 17 to 21 restate the disclosure requirements, the large risks exemption and the stricter provisions exception in Article 12, and the information conditions of Article 13, and set out the following additional provisions:

- similar requirements are now imposed on insurance undertakings;

- disclosure of the basis and amount of the remuneration by insurance intermediaries;
- disclosure of the amount of variable remuneration receivable by the sales employees of insurance undertakings and intermediaries;
- a mandatory 'full disclosure' regime is envisaged for the sale of life insurance products and an 'on-request' regime (i.e. on customer's demand) for the sale of non-life products with transitional period of 3 years. After the expiry of 3 years transitional period, the full disclosure regime will automatically apply for the sale of non-life products as well. This will allow SMEs to prepare and adjust themselves to the legislative change and measure the impact of the suggested change in real life. This is in line with the views of most stakeholders (intermediaries, insurance industry) as well as EIOPA and, at the same time, ensures proportionality and flexibility towards SMEs. It will provide a useful midway balancing consumer groups' and intermediaries' as well as SME's interests.
- an obligation on insurance undertakings and intermediaries to give the customer, prior to conclusion of a contract, sufficient information about the insurance product to allow him to make an informed decision;
- a requirement that EIOPA ensures that information it receives relating to stricter national provisions is communicated to insurance undertakings, intermediaries and consumers; and
- further exceptions to the general requirement for information to be given in a durable medium.

Article 22 introduces a provision on bundling products together and requires that the customer be informed that the products may be purchased separately and be given certain information in this regard. It also requires EIOPA to develop, and thereafter update, guidelines for the supervision of such practices.

Chapter VII – Additional customer protection requirements in relation to insurance investment products

Article 23 covers the scope of these additional provisions, applying them to an insurance intermediary or undertaking when they sell insurance investment products .

Article 24 contains additional conflicts of interest provisions, requiring such conflicts to be identified. It gives the Commission power by delegated act to

- define steps that may be required to identify, prevent, manage and disclose such conflicts; and
- to establish criteria for specifying types of conflicts which may damage the interests of customers.

Article 25 is based on Article [23] of MiFID. It sets out the MiFID requirement to

- act honestly fairly and professionally in accordance with the best interests of customers;
- ensure that information is fair clear and not misleading;
- provide information about the insurance undertaking or intermediary and its services, in particular whether any advice is provided on an independent basis, about the scope of any market analysis, whether on-going suitability assessment will be provided, about proposed products and investment strategies, and about costs.

It also specifies the basis on which advice may be said to be independent, which includes a requirement as to the assessment of products on the market and a requirement not to accept remuneration from third parties.

The Commission is empowered to adopt delegated acts to ensure compliance with this article.

Article 26 sets out how suitability and appropriateness is to be assessed, and requires information to be obtained from the customer. For non-advised sales, the intermediary or undertaking must obtain information about a customer's knowledge and experience to determine the appropriateness of the product for him. For advised sales, it must obtain the customer's financial situation and investment objectives to determine suitability. Where a product is not appropriate or suitable, as the case may be, it must warn the customer of this. The seller must also keep records of the terms on which it will provide services to the customer, and provide reports to the customer. The Commission is empowered to adopt delegated acts to ensure compliance.

Chapter VIII – Sanctions

Article 27 requires Member States to ensure that effective, proportionate and dissuasive administrative sanctions and measures are taken by competent authorities for breach of the national provisions adopted pursuant to the Directive.

Administrative sanctions and measures must apply to those natural or legal persons which, under national law, are responsible for a breach.

Competent authorities must be given all necessary investigatory powers, and must co-operate on cross-border cases.

Article 28 requires publication of the sanctions or measures imposed for breaches.

Article 29 specifies certain breaches and sets out the administrative sanctions which apply to the intermediaries including withdrawal of registration, bans against persons responsible for the exercise of management functions, and pecuniary sanctions of up to twice as much as the benefit derived from the breach if that benefit can be determined.

Criminal sanctions are not covered by this proposal.

Article 30 sets out the factors to take account of in imposing sanctions, including benefits derived from the breach; losses caused to third parties, and the level of cooperation of the responsible person, and requires EIOPA to issue guidelines in respect of the sanctions. It also requires communication of any sanction to the intermediary or undertaking, together with justification of that sanction.

Article 31 requires effective mechanisms to encourage reporting of breaches and an appropriate protection for whistle-blowers and their personal data, as well as the protection of data of natural persons allegedly responsible for breaches.

Article 32 requires annual reporting of aggregate information regarding breaches to EIOPA as well as publication of that information by EIOPA. The Commission is empowered to adopt implementing technical standards in this respect, which EIOPA is to develop and submit to the Commission [6] months after the publication of the Directive.

Chapter IX – Final provisions

Articles 33 to 40 restate (updated where relevant) the final provisions in IMD1 concerning the right to apply to the courts, transposition and entry into force, repeal of prior legislation and addressees. In addition, *Articles 34 and 35* set out conditions applying to the Commission's power to adopt delegated acts as specified in the Directive, and *Article 36* provides a process for review and evaluation by the Commission of the Directive after its entry into force.

4. BUDGETARY IMPLICATION

The specific budget implications of the proposal relate to task allocated to EIOPA as specified in the legislative financial statements accompanying this proposal. Specific budgetary implications for the Commission are also assessed in the financial statement accompanying this proposal.

The proposal has implications for the Community budget.

↓ 2002/92/EC (adapted) ⇒ new

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on Insurance Intermediaries and the Sale of Insurance Products

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~establishing~~ on the Functioning of the European Union, and in particular ~~Article 47(2) and Article 55~~ ~~53(1)~~ thereof,

Having regard to the proposal from the Commission,

⇒ After transmission of the right legislative act to the national Parliaments, ⇐

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

⇒ After consulting the European Data Protection Supervisor, ⇐

Acting in accordance with ~~the procedure laid down in Article 251 of the Treaty~~(3) the ordinary legislative procedure ,

Whereas:

- (1) Insurance and reinsurance intermediaries play a central role in the distribution of insurance and reinsurance products in the ~~Community~~ Union.

- (2) Various types of persons or institutions, such as agents, brokers and "bancassurance" operators, insurance undertakings, travel agents and car rental companies can distribute insurance products. Equality of treatment between operators and customer protection requires that all these persons or institutions be covered by this Directive.

- (3) Since substantial amendments are to be made to Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, repealing Council Directive 77/92/EEC of 13 December 1976, on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers, that Directive should be recast in the interests of clarity.

- (4) 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 the Directive to all sales of insurance products, whether by insurance intermediaries or insurance undertakings. In respect of their sales, after-sales and claims processes, direct sellers should be brought into the scope of the new Directive on a similar basis to insurance agents and brokers.

↓ new

- (5) During the discussions in the European Parliament on Directive 2009/138/EC which introduces a risk-based approach in the supervision of insurance undertakings (Solvency II), adopted in 2009, a specific request was made to review Directive 2002/92/EC.

↓ new

- (6) There are still substantial differences between national provisions, which creates barriers to the taking-up and pursuit of the activities of insurance and reinsurance intermediaries in the internal market.

↓ new

- (7) Current and recent financial turbulence has underlined the importance of ensuring effective consumer protection across all financial sectors. It is appropriate therefore to strengthen the confidence of customers and to make regulatory treatment of the distribution of insurance products more uniform in order to ensure an adequate level of customer protection across the Union. Measures to protect customers should be adapted to the particularities of each category of customers (professional or otherwise).

↓ 2002/92/EC
⇒ new

- (8) ~~11~~ This Directive should apply to persons whose activity consists in 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.
- (9) 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.
- (10) This Directive should apply to persons whose activity consists of assisting (whether on behalf of a customer or an insurance undertaking) in the administration and

performance of a contract of insurance or reinsurance, including the professional management of claims, or of loss adjusting or the expert appraisal of claims.

- (11) ~~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, ~~nor the professional management of claims for an insurance or reinsurance undertaking, nor the loss adjusting and expert appraisal of claims.~~
- (12) ~~13~~This Directive should not apply to persons practising insurance mediation as an ancillary activity under certain ~~strict conditions~~ ⇒ restrictions regarding the policy, in particular the knowledge required to sell it, the risks covered and the amount of premium. ⇐

↓ new

- (13) Where an insurance or reinsurance undertaking or intermediary registered under this Directive outsources activity that constitutes insurance mediation activity the outsource provider should be required to meet the requirements of this Directive unless the undertaking or intermediary accepts regulatory responsibility for the outsource provider's intermediary activity as permitted by this Directive.

↓ new

- (14) This Directive defines "tied insurance intermediary" to take account the characteristics of certain Member States' markets and to establish conditions applicable to such intermediaries.

↓ new

- (15) Member States should designate competent authorities empowered to ensure implementation of this Directive.

↓ 2002/92/EC
⇒ new

- (16) ~~14~~Insurance and reinsurance intermediaries ⇒ who are natural persons ⇐ should be registered with the competent authority of the Member State where they have their residence ~~or their head office, provided that they meet strict professional requirements in relation to their competence, good repute, professional indemnity cover and financial capacity;~~ ⇒ 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. If an insurance intermediary's primary place of business is an office in another Member State, then the home Member State supervisor should be able to arrange with the host Member State supervisor for it to act as if it were the home Member State supervisor. ↩

↓ new

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

- (18) EIOPA should establish publish and keep up to date a single electronic register 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 shall provide relevant information to EIOPA promptly to enable it to do this. This register should also show a hyperlink to each relevant competent authority in each Member State. Also, each competent authority of each Member State should show on its website a hyperlink to this register.
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↓ new

- (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.
-

↓ new

- (20) Member States should not apply the registration requirements to insurance intermediaries which conduct insurance mediation in relation to certain types of insurance contract on an ancillary basis, to outsource providers, or to professional management of claims, loss adjusting or expert appraisal of claims, provided that one or more insurance undertakings or registered insurance intermediaries accepts responsibility for ensuring their compliance with the requirements of this Directive as to knowledge and ability and good repute and the applicable information and conduct of business requirements, and a declaration of activity has been submitted to the competent authority. Member States should be permitted to apply the registration

requirements to such insurance intermediaries conducting insurance mediation on an ancillary basis if they consider it necessary in the interests of consumer protection.

↓ new

(21) An insurance or reinsurance intermediary carries on an insurance mediation activity under “freedom of services” if:

(a) it carries on insurance or reinsurance mediation with or for a policyholder or potential policyholder who resides or is established in a Member State different from the home Member State of the intermediary; and

(b) any risk to be insured is situated in a Member State different from the home Member State of the intermediary.

An insurance or reinsurance intermediary is carrying on an insurance or reinsurance mediation activity under “freedom of establishment” if it maintains a permanent presence in a Member State different from its home Member State.

↓ new

(22) The inability of insurance intermediaries to operate freely throughout the Union hinders the proper functioning of the single market in insurance.

↓ new

(23) Member States should ensure that any insurance or reinsurance intermediary registered by, or who has made a declaration to, the competent authorities of another Member State in accordance with this Directive may freely perform insurance or reinsurance mediation activities within their territories in exercise of the right of freedom of services or the freedom of establishment, provided that such activities are covered by its registration or declaration in the home Member State. Member States should not impose any additional requirements on such an insurance or reinsurance intermediary which are not applicable to insurance or reinsurance intermediaries registered by, or who have made a declaration to, the host Member State.

↓ new

(24) It is important to guarantee a high level of professionalism and competence among insurance and reinsurance intermediaries and the employees of direct insurers who are involved in activities preparatory to, during and after the sales of insurance policies. Therefore, the professional knowledge of an intermediary, of the employees of direct insurers, and of car rental companies and travel agents needs to match the level of professional knowledge of persons carrying on the activities of the professional management of claims, loss adjusting or expert appraisal of claims also needs to match the level of

complexity of the product they are mediating. Continuing education should be ensured.

↓ new

- (25) 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.
-

↓ new

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

↓ new

- (27) 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 under this Directive. This framework helps Member States, education institutions, employers and individuals compare qualifications across the EU's diverse education and training systems. This tool is essential for developing a European employment market. This framework is not designed to replace national qualifications systems but to supplement the actions of the Member States by facilitating cooperation between them.
-

↓ new

- (28) 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.
-

↓ new

- (29) 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.

↓ 2002/92/EC (adapted)

- (30) ~~22~~ There is a need for suitable and effective 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.
- (31) ~~23~~ Without prejudice to the right of customers to bring their action before the courts, Member States should ~~encourage~~ ensure public or private bodies, established with a view to settling disputes out-of-court, to cooperate in resolving cross-border disputes. Such cooperation could for example be aimed at enabling customers to contact extra-judicial bodies established in their Member State of residence about complaints concerning insurance intermediaries established in other Member States. The setting up of the FIN-NET network provides increased assistance to consumers when they use cross-border services. The provisions on procedures should take into account Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes.

↓ new

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

↓ new

- (33) There is a need to introduce a mandatory status disclosure for European insurance intermediaries and insurance undertakings ("business card"). This should be given to the consumer at the pre-contractual stage. Its role is to show the relationship between the insurance undertaking and the intermediary (where applicable) as well as the structure and the content of the seller's remuneration.

↓ new

- (34) In order to mitigate conflicts of interest between the seller and the buyer of an insurance product, it is necessary to ensure sufficient disclosure of remuneration of insurance distributors. Accordingly, for life insurance products, the intermediary and the employee of the insurance intermediary or the insurance undertaking should be obliged to inform the customer about his remuneration, in advance of the sale. For other insurance products the customer must be informed of his right to request this information, which must be provided to him if he so requests.

↓ new

- (35) In order to provide a customer with comparable information on the insurance mediation services provided to him regardless of whether he purchases through an intermediary, or direct from an insurance undertaking, and to avoid the distortion of competition by encouraging insurance undertakings to sell direct to customers rather than via intermediaries in order to avoid information requirements, insurance undertakings should also be required to provide information to customers with whom they deal directly in the provision of insurance mediation services.

↓ new

- (36) It is essential for the customer to know whether he is dealing with an intermediary who is advising him on products from a broad range of insurance undertakings or on products provided by a specific number of insurance undertakings.

↓ new

- (37) Due to the increasing dependence of consumers on personal recommendations, it is appropriate to include a definition of advice. Before advice is provided, the insurance intermediary or undertaking should assess the customer's needs, demands and his financial situation. If the intermediary declares that he is giving advice on products from a broad range of insurance undertakings, he should carry out a fair and sufficiently wide-ranging analysis of the products available on the market. In addition, all insurance intermediaries and insurance undertakings should explain the reasons underpinning their advice.

↓ new

- (38) Prior to the conclusion of a contract, including in the case of non-advised sales, the customer should be given sufficient information about the insurance product to allow him to make an informed decision. The insurance intermediary should be able to explain to the customer the key features of the insurance products he sells.

↓ new

- (39) Information required to be given to customers should, in general, be given in a durable medium, except where the condition of a durable medium is not considered necessary to protect the rights of the customer. Accordingly, information of a general and non-personal nature should be permitted to be given on a website, and information of a personal nature that is not directly linked to the contractual rights of the customer should be permitted to be made available to the customer on a personal password-protected website, in each case whether or not the website comprises a durable

medium. Member States should be able to lay down detailed rules by which information can be presented and made available to the customer by alternative means to a durable medium, where permitted under this Directive.

↓ 2002/92/EC (adapted)

⇒ new

(40) ~~24~~ There is less of a need to require that such information be disclosed when the customer is ~~a company~~ seeking reinsurance or insurance cover for commercial and industrial risks ⇒ , or is a professional customer ⇐ .

(41) ~~19~~ This Directive should specify the obligations which ⇒ insurance undertakings and ⇐ insurance intermediaries should have in providing information to customers. A Member State may in this area maintain or adopt more stringent provisions which may be imposed on insurance intermediaries ⇒ and insurance undertakings ⇐ independently of ~~their place of residence~~ ⇒ the provisions of its home Member State ⇐ where they are pursuing ⇒ insurance ⇐ mediation activities on its territory provided that any such more stringent provisions comply with ~~Community~~ ⊗ Union ⊗ law, including Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (Directive on electronic commerce). 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.

↓ new

(42) Cross-selling practices are a common strategy for retail financial service providers throughout the Union. They can provide benefits to consumers but can also represent practices where the interest of consumers is not adequately considered. For instance, certain forms of cross-selling practices or products, namely tying practices where two or more financial services are sold together in a package and at least one of those services or products is not available separately, can distort competition and negatively affect consumers' mobility and their ability to make informed choices. An example of tying practices can be the necessary opening of current accounts when an insurance service is provided to a consumer in order to pay the premiums or the necessary conclusion of a motor insurance contract when a consumer credit is provided to a consumer in order to insure the financed car. While practices of bundling, where two or more financial services or products are sold together in a package, but each of the services can also be purchased separately, may also distort competition and negatively affect customer mobility and customers' ability to make informed choices, they at least leave choice to the customer and may therefore pose less risk to the compliance of insurance intermediaries with their obligations under this directive. The use of such practices should be carefully assessed in order to promote competition and consumer choice.

↓ new

- (43) Contracts of insurance that involve investments are often made available to customers as potential alternatives or substitutes to investment products subject to Directive [MiFID II]. To deliver consistent investor protection and avoid the risk of regulatory arbitrage, it is important that insurance packaged retail investment products (insurance investment products as defined in the Regulation on key information documents on investment products and amending Directives 2003/71/EC and 2009/65/EC) are subject to equivalent conduct of business standards: these include provision of appropriate information, requirements for advice to be suitable and restrictions on inducements, as well as requirements to manage conflicts of interest, and in the case of independent advisers, restrictions on the form of remuneration. Certain conduct of business and conflicts management requirements from Directive [MiFID II] should be therefore applied to insurance investment products by [Chapter VII] of this Directive. While delegated acts in regard to insurance investment products will need to take account of the specific nature of these products (for example, the fact that unlike some other investments, aspects of a product involving life cover may have to be personalised to the individual customer), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) should work together to achieve as much consistency as possible in the conduct of business standards for packaged retail investment products that are subject to either [MiFID II] or to this Directive. For insurance investment products, the standards in Chapter VI of this Directive which are applicable to all insurance contracts (subject to the exceptions set out in this Directive), and the enhanced standards for insurance investment products are cumulative. Accordingly, 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 .

↓ new

- (44) In order to ensure compliance by insurance undertakings and persons who pursue insurance mediation, and to ensure that they are subject to similar treatment across the Union, Member States should be required to provide for administrative sanctions and measures which are effective, proportionate and dissuasive. Therefore, administrative sanctions and measures set out by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or measure, publication, key sanctioning powers and levels of administrative pecuniary sanctions.

↓ new

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

↓ new

- (46) In order to ensure a consistent application of sanctions across Member States, when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, Member States should be required to ensure that, when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities take into account all relevant circumstances.

↓ new

- (47) In order to ensure that sanctions have a dissuasive effect on the public at large, sanctions should normally be published, except in certain well-defined circumstances.

↓ new

- (48) 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. These mechanisms should be without prejudice to adequate safeguards for accused persons. Appropriate procedures should be established to ensure the right of defence of the reported person to be heard before the adoption of a final decision concerning him as well as the right to seek remedy before a tribunal against a decision concerning him.

↓ new

- (49) This Directive should refer to both administrative sanctions and measures in order to cover all actions applied after a breach is committed, and which are intended to prevent further infringements, irrespective of their qualification as a sanction or a measure under national law.

↓ new

- (50) This Directive should be without prejudice to any provisions in the laws of Member States in respect of criminal offences.

↓ new

- (51) In order to attain the objectives set out in this Directive, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of details concerning notions of adequate knowledge and competence of the intermediary, management of conflicts of interest, conduct of business obligations in

relation to insurance packaged retail investment products and procedures and forms for submitting information in relation to sanctions. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

↓ new

- (52) Technical standards in financial services should ensure consistent harmonisation and adequate protection of consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust EIOPA with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.
-

↓ new

- (53) By means of delegated acts pursuant to Articles 290 and 291 of the Treaty on the Functioning of the European Union and in accordance with Articles 10 to 15 of Regulation (EU) No 1094/2010, the Commission should adopt regulatory technical standards as set out in Articles [8 and 9] regarding notions of adequate knowledge and ability of the intermediary, Article [24] regarding management of conflicts of interest and Articles [25 and 26] regarding conduct of business obligations in relation to insurance packaged retail investment products as well as implementing technical standards as set out in Article [32] regarding procedures and forms for submitting information in relation to sanctions. These regulatory technical standards and implementing technical standards should be developed in draft by EIOPA.
-

↓ new

- (54) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, notably: the right to the protection of personal data; the freedom to conduct a business; the right to consumer protection; the right to an effective remedy and to a fair trial and the right not to be tried or punished twice for the same offence; and has to be implemented in accordance with those rights and principles.
-

↓ new

- (55) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition

instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

↓ new

- (56) A review of this Directive should be carried out five years after the date on which this Directive enters into force in order to take account of market developments as well as developments in other areas of Union law or Member States experiences in implementation of Union law, in particular with regard to pension products.
-

↓ 2002/92/EC (adapted)
⇒ new

- (57) ~~24~~Directive ~~77/92/EEC~~ ⇒ 2002/92/EC ⇐ should accordingly be repealed.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1 *Scope*

1. This Directive lays down rules ~~for~~ concerning the taking up and pursuit of the ~~activities of insurance and reinsurance mediation~~, by natural and legal persons, including insurance and reinsurance undertakings, which are established in a Member State or which wish to become established there, of certain activities relating to the sale of contracts of insurance or reinsurance. These activities include assisting, whether on behalf of a customer or an insurance or reinsurance undertaking, in the administration and performance of such contracts, in particular in the event of a claim. Such assistance includes professional management of claims for an insurance or reinsurance undertaking and the loss adjusting and expert appraisal of claims.
2. This Directive shall not apply to persons providing mediation services for insurance contracts if all the following conditions are met:
 - (a) the insurance contract only requires knowledge of the insurance cover that is provided;
 - (b) the insurance contract is not a life assurance contract;
 - (c) the insurance contract does not cover any liability risks;
 - (d) the principal professional activity of the person is other than insurance mediation;
 - (e) the insurance is complementary to ~~the product or service~~ goods supplied by any provider, where such insurance covers the risk of breakdown, loss of or damage to the goods supplied by that provider; and
 - (f) the amount of the annual premium for the insurance contract, when prorated to produce an annual amount, does not exceed EUR 500 600.
3. This Directive shall not apply to insurance and reinsurance mediation services provided in relation to risks and commitments located outside the ~~Community~~ 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 ~~nor activities of Community insurance or reinsurance undertakings, as defined in 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(8) and First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct life assurance(9), carried out through insurance intermediaries in third countries.~~

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

Article 2 Definitions

For the purpose of this Directive:

1. "insurance undertaking" means an undertaking which has received official authorisation in accordance with Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC;
2. "reinsurance undertaking" means an undertaking ~~other than an insurance undertaking or a non member country insurance undertaking, the main business of which consists in accepting risks ceded by an insurance undertaking, a non member country insurance undertaking or other reinsurance undertakings;~~ ⇨ which has received official authorisation in accordance with Article 3 of Directive 2005/68/EC; ⇩
3. "insurance mediation" means the activities of ~~introducing~~ ⊗ advising ⊗ on, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, ~~or of concluding or of~~ ⇨ assisting in the conclusion ⇩ of such contracts or assisting in the administration and performance of such contracts, in particular in the event of a claim. These activities ⇨ (and those in the following sub-paragraph) are insurance mediation also if carried on by an insurance undertaking without the intervention of an insurance intermediary. ⇩

↓ new

Each of the following activities shall be considered to be insurance mediation for the purposes of this Directive:

- the provision of information on one or more contracts of insurance in response to criteria selected by the customer whether via a website or other means;

- the provision of a ranking of insurance 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;
- the management of claims of an insurance undertaking on a professional basis, loss adjusting and expert appraisal of claims.

↓ new

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

- 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;
- 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.

↓ new

4. "insurance investment product" means a contract of insurance which is also an "investment product" as defined in [reference number of PRIPs Regulation], applying the exclusions contained in Article 4 of, and the Annex to, that Regulation;

↓ 2002/92/EC (adapted)
⇒ new

- 5 "insurance intermediary" means any natural or legal person, ⇒ other than an insurance undertaking ⇐, who, for remuneration, takes up or pursues insurance mediation;

- ~~64~~ "reinsurance mediation" means the activities of ~~introducing~~ ⊗ advising on ⊗ , proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, ~~or~~ of concluding ⇒ or assisting in the conclusion of ⇐ such contracts or assisting in the administration and performance of such contracts, in particular in the event of a claim. These activities ⇒ (and those in the following sub-paragraph) are reinsurance mediation also if carried on by a reinsurance undertaking without the intervention of a reinsurance intermediary. ⇐

↓ new

Each of the following activities shall be considered to be reinsurance mediation for the purposes of this Directive:

- the provision of information on one or more contracts of reinsurance in response to criteria selected by the customer whether via a website or other means;
- the provision of a ranking of reinsurance products or a discount on the price of a contract, when the customer is able to directly conclude a reinsurance contract at the end of the process;
- the management of claims of a reinsurance undertaking on a professional basis, loss adjusting and expert appraisal of claims.

↓ new

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

- 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;
- 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.

↓ 2002/92/EC
⇒ new

76 "reinsurance intermediary" means any natural or legal person ⇒ other than a reinsurance undertaking, ⇐ who for remuneration, takes up or pursues reinsurance mediation;

87. "tied insurance intermediary" means any person who carries on the activity of insurance mediation for and on behalf of one or more insurance undertakings ~~in the case of insurance products which are not in competition but does not collect premiums or amounts intended for the customer~~ and ⇒ or insurance intermediaries ⇐, and who acts under the full responsibility of those insurance undertakings ~~for the products which concern them respectively~~ ⇒ 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 on the activity of insurance mediation in addition to his principal professional activity is also considered as 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 or services supplied in the framework of this principal professional activity and the person does not collect premiums or amounts intended for the customer;~~

↓ new

9. "advice" means the provision of a personal recommendations to a customer, either upon their request or at the initiative of the insurance undertaking or the insurance intermediary;

↓ 2002/92/EC (adapted)

⇒ new

~~108.~~ "large risks" shall be as defined by Article 5(d) of Directive 73/239/EEC;

~~119.~~ "home Member State" means:

- (a) where the intermediary is a natural person, the Member State in which his residence is situated ~~and in which he carries on business;~~
- (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;

~~1240.~~ "host Member State" means the Member State in which an insurance or reinsurance intermediary has a ~~branch~~ permanent presence or establishment or provides services and which is not its home Member State .

~~1344.~~ "competent authorities" means the authorities which each Member State designates under Article ~~7~~ 12;

~~1442.~~ "durable medium" means any instrument which enables ~~the~~ a customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate ~~to~~ for the purposes of the information and which allows the unchanged reproduction of the information stored;

↓ new

15. "professional customer" means a customer meeting the criteria laid down in the Annex;

↓ new

16. "cross-selling practice" means the offering of an insurance service or product together with another service or product as part of a package or as a condition of taking another agreement or package;

↓ new

17. "close links" means a situation in which two or more natural or legal persons are linked by:

(a) 'participation' which means the ownership, direct or by way of control, of 20% or more of the voting rights or capital of an undertaking;

(b) 'control' which means the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article (1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking, any subsidiary undertaking of a subsidiary undertaking also being considered a subsidiary of the parent undertaking which is at the head of those undertakings; or

(c) a situation in which they are permanently linked to one and the same person by a control relationship;

↓ new

18. "remuneration" means any commission, fee, charge or other payment, including an economic benefit of any kind, offered or given in connection with insurance mediation activities.

↓ 2002/92/EC
⇒ new

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 defined in Article 7(2)~~, in their home

Member State. ⇒ Insurance undertakings and their employees shall not be required to register under this Directive with the competent authority. ⇐

Without prejudice to the first subparagraph, Member States may stipulate that insurance and reinsurance undertakings and other bodies may collaborate with the competent authorities in registering insurance and reinsurance intermediaries and in the application of the requirements of Article 4 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.

↓ new

Member States may stipulate that, where an insurance or reinsurance intermediary acts under the responsibility of an insurance or reinsurance undertaking or of another registered insurance or reinsurance intermediary, the latter shall therefore be responsible for ensuring that he meets the conditions for registration set out in this Directive. In such a case, the person or entity accepting responsibility shall, having been informed of the matters set out in paragraph 7, sub-paragraphs (a) and (b), satisfy himself (or itself) as to the matter set out in paragraph 7, sub-paragraph (c). Member States may also stipulate that the person or entity which takes responsibility for the intermediary shall register that intermediary.

↓ 2002/92/EC (adapted)
⇒ new

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.

As regards legal persons, Member States shall register such 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 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~~ ☒ up-to-date ☒ . 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.

↓ new

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, thereby ensuring a better monitoring of the status of their registration.

↓ new

3. 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 4 of this Directive. That register shall contain links to, and be accessible from, each of the Member States' competent authorities' websites.
-

↓ 2002/92/EC

4. ~~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 ~~4~~ 8.

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

5. ~~4~~Member States shall ensure that the competent authorities do not permit an insurance or reinsurance intermediary to be added to the register unless it is satisfied that the intermediary meets the requirements laid down in Article 8 of this Directive.

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

That document shall at least provide the information specified in Article ~~12(1)(a) and (b)~~ 17(a) and (b), and, in the case of a legal person, the name(s) of the natural person(s) referred to in the fourth subparagraph of paragraph 1 of this Article.

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

↓ new

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

↓ new

7. Member States must 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.
-

↓ new

8. Member States shall ensure that their competent authorities require insurance and reinsurance intermediaries, as a condition of registration:

- (a) to inform 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 inform their competent authorities of the identities of persons who have close links with the insurance or reinsurance intermediary; and
- (c) to satisfy their competent authorities 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 the competent authorities shall 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.

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

That document shall at least provide the information specified in Article 17(a) and (b), and, in the case of a legal person, the name(s) of the natural person(s) referred to in the fourth subparagraph of paragraph 1 of this Article.

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

↓ new

CHAPTER III

DECLARATION PROCEDURE

Article 4

Declaration procedure for providing ancillary insurance mediation or the professional management of claims

1. Except in the circumstances set out in paragraph 5, the registration requirements in Article 3 shall not apply to an insurance intermediary who conducts insurance mediation on an ancillary basis, provided that its activities meet 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 is incidental to the main cover; and
 - (d) the insurance products concerned are not insurance packaged retail investment products
 - (e) and that it meets the condition in paragraph 2.
2. The condition referred to in paragraph 1 is that the insurance intermediary acts directly on behalf of or has entered into a specific agreement for the mediation of the insurance products concerned with one or several insurance undertaking(s) or registered insurance intermediaries, each of which accepts responsibility for ensuring compliance by the insurance intermediary with Article 8(1) of this Directive, and with Article 8(2) and Chapter VI of this Directive in relation to the products to which the agreement relates, and has submitted a declaration of activity complying with this Article to the competent authority of his home Member State.
3. Insurance intermediaries subject to paragraphs 1 and 2 of this Article shall not be subject to any requirements under Articles 3 and paragraphs 3 to 8 of Article 8 of this Directive.

4. Except in the circumstances set out in paragraph 5, the registration requirements in Article 3 shall not apply to a person which carries on only the activities of the professional management of claims, loss adjusting or expert appraisal of claims, provided that it submits a declaration of activity complying with this Article to the competent authority of its home member state. Such persons are subject to the provisions of Chapters I, III, IV, V, VIII, IX and Article 17 of this directive.
5. Member States may apply the registration requirements in Article 3 to insurance intermediaries conducting insurance mediation on an ancillary basis, whether or not their activities meet the conditions in paragraph 1 (a) to (d) of this Article, if they consider it necessary in the interests of consumer protection.

CHAPTER IV

FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT

↓ 2002/92/EC (adapted)
 ⇒ new

Article 65

~~Notification of establishment and services in other Member States~~

~~⇒ Exercise of the freedom to provide service ⇐~~

1. Any insurance or reinsurance intermediary ~~intending~~ ☒ who intends ☒ to carry on business ⇒ within the territory of another Member State ⇐ for the first time ~~in one or more Member States~~ under the freedom to provide services ~~or the freedom of establishment~~ shall ~~inform~~ ☒ communicate ☒ ⇒ the following information to ⇐ the competent ~~authorities~~ ☒ authority ☒ of ~~the~~ ☒ his ☒ home Member State:

~~Within a period of one month after such notification, those competent authorities shall inform the competent authorities of any host Member States wishing to know, of the intention of the insurance or reinsurance intermediary and shall at the same time inform the intermediary concerned.~~

~~The insurance or reinsurance intermediary may start business one month after the date on which he was informed by the competent authorities of the home Member State of the notification referred to in the second subparagraph. However, that intermediary may start business immediately if the host Member State does not wish to be informed of the fact.~~

- ~~2. Member States shall notify the Commission of their wish to be informed in accordance with paragraph 1. The Commission shall in turn notify all the Member States of this.~~

~~3. The competent authorities of the host Member State may take the necessary steps to ensure appropriate publication of the conditions under which, in the interest of the general good, the business concerned must be carried on in their territories.~~

↓ new

(a) the name, address and registration number (where applicable) of the intermediary;

(b) the Member State(s) in which he intends to operate;

(c) the category of intermediary, if applicable (in case of an intermediary carrying out insurance or reinsurance mediation for and on behalf of an insurance or reinsurance undertaking, name of the insurance or reinsurance undertaking(s) represented); and

(d) the relevant classes of insurance, if applicable.

2. The competent authority of the home Member State shall, within one month of receiving the information referred to in paragraph 2, forward it to the competent authority of the host Member State, and inform the insurance or reinsurance intermediary accordingly. The competent authority of the host Member State shall, within one month from the date of receipt of the communication referred to in paragraph 2, communicate to the head office of the intermediary any conditions under which, in the interests of the general good, the business concerned must be carried on within the territory of the host state.

On receipt of such a communication from the competent authority of the host Member State or, if earlier, the expiry of the one month period referred to in the first subparagraph, the intermediary may commence its business in the host Member State.

3. In the event of a change in any of the particulars communicated in accordance with paragraph 2, the insurance or reinsurance intermediary shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed of that change by the competent authority of the home Member State as soon as is practicable and no later than one month from the date of receipt of the information by the competent authority of the home Member State.

Article 6

Exercise of the freedom of establishment

1. Member States shall require any insurance or reinsurance intermediary who intends to exercise his freedom of establishment to establish a branch or permanent presence 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, if applicable (in case of an intermediary carrying out insurance or reinsurance mediation for and on behalf of an insurance or reinsurance undertaking, name of the insurance or reinsurance undertaking(s) represented);
- (d) the relevant classes of insurance, if applicable;
- (e) a programme of operations setting out, inter alia, the insurance or reinsurance mediation activities to be carried on and the organisational structure of the establishment; and indicating whether the intermediary intends to use agents and (if so) the identity of those agents;
- (f) the address in the host Member State from which documents may be obtained; and
- (g) the name(s) of the person(s) responsible for the management of the establishment or permanent presence.

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, communicate it to the competent authority of the host Member State, and inform the insurance or reinsurance intermediary accordingly.
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.
4. An insurance or reinsurance intermediary who operates in another Member State under freedom of establishment when its home Member State has not communicated that fact to the host member state may be subject to the administrative sanctions in Chapter VIII.
5. The competent authority of the host Member State shall, within one month from the date of receipt of the communication referred to in paragraph 2, communicate to the head office of the intermediary any conditions under which, in the interests of the general good, the business concerned must be carried on within the territory of the host state.

On receipt of such a communication from the competent authority of the host Member State or, if earlier, the expiry of the one month period referred to in the first subparagraph, the establishment or permanent presence may commence its business.

6. In the event of a change in any of the particulars communicated in accordance with paragraph 2, 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 supervisor of that other Member State may agree with the Home Member State Supervisor to act as if it were the Home Member State supervisor in respect of the obligations in chapters VI, VII and VIII of this Directive. In the event of such an agreement, the Home Member State supervisor shall notify the insurance intermediary and EIOPA without delay.
2. The competent authority of the Member State in which the establishment is located 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 Member State in which the establishment is located 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 and/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 which do not confer powers on the competent authority of the host Member State, 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 following shall apply:
 - (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 Commission shall be informed of such measures without undue delay; and
 - (b) in addition, 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.

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 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 irregular 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 following shall apply:

- (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 Commission shall be informed of such measures without undue delay; and
- (b) in addition, 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 2009/143. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

CHAPTER V

OTHER ORGANISATIONAL REQUIREMENTS

↓ 2002/92/EC
⇒ new

Article 48

Professional ⇒ and organisational ⇐ requirements

1. Insurance and reinsurance intermediaries, – ⇒ including those who pursue these activities on an ancillary basis, persons carrying on the activities of the professional management of claims, loss adjusting or expert appraisal of claims, 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, demonstrating appropriate professional experience relevant to the complexity of the products they are mediating. ⇐

↓ new

Member States shall ensure that insurance and reinsurance intermediaries and members of staff of insurance undertakings carrying out insurance mediation activities to update their knowledge and ability through continuing professional development in order to maintain an adequate level of performance.

↓ 2002/92/EC (adapted)
⇒ new

~~Home~~ Member States may adjust the required conditions with regard to knowledge and ability in line with the ⇒ particular ⇐ activity of insurance or reinsurance mediation and the products ~~distributed~~ ⊗ mediated ⊗, particularly if the principal professional activity of the intermediary is other than insurance mediation. In such cases, that intermediary may pursue an activity of insurance mediation only if an insurance intermediary fulfilling the conditions of this Article or an insurance undertaking assumes full responsibility for ~~his~~ ⊗ the intermediary's ⊗ actions.

Member States may provide that, for the cases referred to in the second subparagraph of Article 3(1), 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, they shall have a clean police record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they should not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.

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 ~~Community~~ Union or some other comparable guarantee against liability arising from professional negligence, for at least EUR ~~1000000~~ 1,120,000 applying to each claim and in aggregate EUR ~~1500000~~ 1,680,000 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 ~~15000~~ 16800;
 - (c) a requirement that customers' monies shall be transferred via strictly segregated ~~client~~ 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. The amounts referred to in paragraphs 3 and 4 shall be reviewed 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.

The amounts shall be adapted automatically by increasing the base amount in euro 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.

↓ new

8. Power is delegated to the Commission to adopt regulatory technical standards to specify the notion of adequate knowledge and ability of the intermediary as referred to in paragraph 1 in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1094/2010. EIOPA shall develop draft regulatory technical standards for this purpose. EIOPA shall submit those draft regulatory technical standards to the Commission [6] months after the publication of the Directive.
-

↓ new

Article 9

Mutual recognition of intermediaries' knowledge and ability

1. Member States shall permit access to and pursuit of the activity of insurance and reinsurance mediation on their territories, under the same conditions as apply to their nationals, to applicants possessing evidence of the knowledge and ability referred to in paragraph 1 of Article [8]. Member States shall accept previous experience in insurance or reinsurance mediation activity, as demonstrated by proof of registration or declaration in another Member State, as evidence of the required knowledge and ability, provided that the applicant has not ceased to pursue the previous insurance or reinsurance mediation for a defined period before the date when the application for the new registration or declaration is made.
2. 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 new Member State.
3. Power is delegated to the Commission to adopt regulatory technical standards to specify the period referred to in paragraph 1 in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1094/2010. EIOPA shall develop draft regulatory technical standards for this purpose. EIOPA shall submit those draft regulatory technical standards to the Commission [6] months after the publication of the Directive.

↓ new

Article 10

Recognition of foreign proof of professional qualifications within the scope of the freedom of establishment

Host Member States shall accept that, if an insurance or reinsurance intermediary can demonstrate that he has 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, he meets the requirements of knowledge and ability which are a condition of registration under this Directive.

↓ new

Article ~~11~~

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 conditions 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 public authority or supervisor.
5. EIOPA shall examine in a report **and inform the Commission** about the general good rules published by Member States as referred to in this Article in the context of the proper functioning of this Directive and the Internal Market before X X 20XX [three years after the entry into force of the Directive].

Article ~~7~~12
Competent authorities

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

Article ~~9~~13
Exchange of information between Member States

1. The competent authorities of the various Member States shall cooperate in order to ensure the proper application of the provisions of this Directive.
2. The competent authorities shall exchange information on insurance and reinsurance intermediaries if they have been subject to a sanction referred to in ~~Article 8(3) or a measure referred to in Article 8(4)~~ 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 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)(10)~~ and Article 15 of 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)(11).

Article ~~10~~14
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.

Article ~~11~~15
Out-of-court redress

Member States shall ~~encourage~~ ☒ ensure ☒ the setting-up of appropriate and effective complaints and redress procedures for the out-of-court settlement of disputes between insurance ⇒ or reinsurance ⇐ 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 and reinsurance intermediaries participate in the procedures for the out-of-court settlement of disputes ⇐ Member States shall ~~encourage~~ ☒ ensure that ☒ these bodies ~~to~~ cooperate in the resolution of cross-border disputes.

Article ~~3(6)~~16
⇒ Restriction on use of intermediaries ⇐

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

CHAPTER ~~VI~~ III

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

Article ~~12(1)~~17
⇒ General ⇐ information provided by the insurance intermediary ⇒ or insurance undertaking ⇐

~~Prior to the conclusion of any initial insurance contract, and, if necessary, upon amendment or renewal thereof, an insurance intermediary shall provide the customer with at least the following information:~~

~~(a) his identity and address;~~

~~(b) the register in which he has been included and the means for verifying that he has been registered;~~

↓ new

1. Member States shall lay down rules ensuring that when carrying out insurance mediation:

(a) an insurance intermediary shall make the following disclosures to customers:

(i) his identity and address;

(ii) whether or not advice is given;

↓ 2002/92/EC

(iii) the procedures referred to in Article ~~10~~ 15 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 ~~11~~ 16;

↓ new

(iv) the register in which he has been included and the means for verifying that he has been registered; and

(v) whether the intermediary is representing the customer or is acting for and on behalf of the insurance undertaking.

(b) an insurance undertaking shall make the following disclosures to customers:

(i) its identity and address;

(ii) whether or not advice is given;

(iii) the procedures referred to in Article 15 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 16; and

(iv) that it is an insurance undertaking.

↓ new

Article 18

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:

↓ 2002/92/EC

(a) whether he 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;

↓ new

- (c) in relation to the contract proposed, whether:

↓ 2002/92/EC

- (i) he gives advice on the basis of a fair analysis, or
- (ii) he is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. In that case, he shall, at the customer's request, provide the names of those insurance undertakings, or
- (iii) he 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 analysis. In that case, he shall, at the customer's request, provide the names of the insurance undertakings with which he may and does conduct business;

↓ new

- (d) the nature of the remuneration received in relation to the insurance contract;

- (e) whether in relation to the insurance contract, he works:

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

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

(iii) on a combination of both (i) and (ii); and

- (f) if the intermediary will receive a fee or commission, the amount or (where the precise amount is not capable of being given) the basis of calculation of the fee or commission or the combination of both.

2. This paragraph applies instead of paragraph 1 (f) for three years from the date on which this Directive comes into force to insurance contracts other than contracts in any of the classes specified in Annex I of Directive 2002/83/EC. Prior to the conclusion of any such insurance contract, if the intermediary is to be remunerated by a fee or commission,

(a) it shall provide the customer with the amount or (where the precise amount is not capable of being given) the basis of calculation of the fee or commission or the combination of both, if the customer so requests.

(b) it shall inform the customer of his right to request this information.

3. In accordance with the requirements of this Article, the insurance undertaking or insurance intermediary shall also inform the customer about the nature and the amount or (where the precise amount is not capable of being given) the basis of the calculation of any variable remuneration received by any employee of theirs for distributing the insurance product in question.

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

↓ new

Article 19

Advice, and standards for sales where no advice is given

↓ 2002/92/EC

1. Prior to the conclusion of any specific contract, the insurance intermediary or insurance undertaking shall at least specify, in particular 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 to the customer on a specified insurance product, if given.

↓ new

These details should be modulated according to the complexity of the insurance product being proposed and the level of financial risk to the customer.

↓ 2002/92/EC

2. When the insurance intermediary and the insurance undertaking informs the customer that he gives his advice on the basis of a fair analysis, he is obliged to give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable him to make a recommendation, in

accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

↓ new

3. Prior to the conclusion of a contract, whether or not advice is given, the insurance intermediary or insurance undertaking shall give the customer sufficient information about the insurance product to allow him to make an informed decision.
-

↓ new

Article 20

Information exemptions and flexibility clause

↓ 2002/92/EC (adapted)

⇒ new

1. The information referred to in ~~paragraphs 1, 2 and 3~~ Articles 17, 18 and 19 need not be given when the insurance intermediary or undertaking mediates in the insurance of large risks, in the case of mediation by reinsurance intermediaries or undertakings, or in relation to professional customers as specified in the Annex to this Directive.
 2. Member States may maintain or adopt stricter provisions regarding the information requirements referred to in ~~paragraph 1~~ Articles 17, 18 and 19 provided that such provisions comply with Union law Member States shall communicate to EIOPA and the Commission such national provisions.
-

↓ 2002/92/EC (adapted)

⇒ new

3. In order to establish a high level of transparency by all appropriate means, the ~~Commission~~ EIOPA shall ensure that the information it receives relating to national provisions is also communicated to consumers, insurance intermediaries and insurance undertakings.

↓ 2002/92/EC (adapted)
⇒ new

Article ~~13~~21
Information conditions

1. All information to be provided to customers in accordance with Articles ~~12~~17, 18 and 19 shall be communicated:
 - (a) on paper or on any other durable medium available and accessible to the customer;
 - (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.

2. By way of derogation from paragraph 1(a), the information referred to in Articles ~~12~~17, 18 and 19 may be provided ⇒ on a website (whether or not that website is a durable medium) to the extent that this information is of a general and non-personal nature. Also, information of a personal nature that is not directly linked to the contractual rights of the customer may be made available to that customer on a personal password-protected website (whether or not that website is a durable medium). Member States may lay down detailed rules by which information can be presented and made available to the customer by alternative means to paper and other durable medium, where permitted by this paragraph. ⇐ orally where the customer requests it, or where immediate cover is necessary. In those cases, the information shall be provided to the customer in accordance with paragraph 1 immediately after the conclusion of the insurance contract.

⇓ new

3. By way of derogation from paragraph 1(a), the information referred to in Articles 17, 18 and 19 may be provided orally where the customer requests it, or where immediate cover is necessary. In those cases, the information shall be provided to the customer in accordance with paragraph 1 or 2 immediately after the conclusion of the insurance contract.

↓ 2002/92/EC (adapted)
⇒ new

- ~~43~~. In the case of telephone selling, the prior information given to the customer shall be in accordance with ~~Community~~ ☒ Union ☒ rules applicable to the distance marketing of consumer financial services. Moreover, information shall be provided

to the customer in accordance with paragraph 1 ⇔ or 2 ⇐ immediately after the conclusion of the insurance contract.

↓ new

Article 22

Cross-selling

1. When an insurance service or product is offered together with another service or product as a package, the insurance undertaking or, where applicable, the insurance intermediary shall inform the customer that it is possible to buy the components of the package separately and shall provide information of the costs and charges of each component of the package that may be bought through or from it separately. [Where applicable? ,] the insurance undertaking or insurance intermediary shall state that the components offered together with the insurance service or product as part of the package may be purchased from another provider.
 2. EIOPA shall develop, by 31 December [20XX] at the latest, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations set out in Articles 17, 18 and 19 or the first paragraph of this Article.
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↓ new

CHAPTER VII

ADDITIONAL CUSTOMER PROTECTION REQUIREMENTS IN RELATION TO INSURANCE INVESTMENT PRODUCTS

Article 23

Scope

This Chapter applies additional requirements to insurance mediation, when carried on in relation to the sale of insurance investment products (that is, excluding assisting in the administration and performance of contracts of insurance) by:

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

Article 24
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 on insurance mediation.
2. Where steps taken by the insurance intermediary or insurance undertaking in compliance with Article 17 and 18 are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of customers and potential customers arising from conflicts of interest will be prevented, the insurance intermediary or insurance undertaking shall clearly disclose the general nature and/or sources of conflicts of interest to the customer before undertaking business on his behalf.
3. The Commission shall be empowered to adopt by means of delegated acts in accordance with Article 34 measures to:
 - (a) define the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when providing insurance mediation;
 - (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 25
General principles and information to customers

1. Member States shall require that, when carrying out insurance mediation with or for customers, an insurance intermediary or insurance undertaking acts honestly, fairly and professionally in accordance with the best interests of his customers and complies, in particular, with the principles set out in this Article and in Article 26.
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:
 - (a) the insurance intermediary or insurance undertaking and its services. When advice is provided, information shall specify whether the advice is provided on an independent basis and whether it is based on a broad or on a more restricted analysis of the market and shall indicate whether the insurance intermediary or insurance undertaking will provide the customer with the on-going assessment of the suitability of the insurance product recommended to him;

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

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

4. 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:

- (a) shall assess a sufficiently large number of insurance products available on the market. The insurance products should be diversified with regard to their type and issuers or product providers and should not be limited to insurance products issued or provided by entities having close links with the insurance intermediary or insurance undertaking; and
- (b) shall not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to customers.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article [34] concerning measures to ensure that insurance intermediaries and insurance undertakings comply with the principles set out in this Article when carrying on insurance mediation with their customers. Those delegated acts shall take into account:

- (a) the nature of the service(s) offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions; and
- (b) the nature of the products being offered or considered including different types of insurance products.

Article 26

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 field relevant to the specific type of product or service, his financial situation and his investment objectives so as to enable the insurance intermediary or insurance undertaking to recommend to the customer or potential customer the insurance products that are suitable for him.
2. Member States shall ensure that insurance intermediaries and insurance undertakings, when carrying on insurance mediation in relation to sales where no

advice is given, ask the customer or potential customer to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the insurance intermediary or insurance undertaking to assess whether the insurance service or product envisaged is appropriate for the customer.

Where the insurance intermediary or insurance undertaking considers, on the basis of the information received under the previous subparagraph, that the product or service is not appropriate to the customer or potential customer, the insurance intermediary or insurance undertaking shall warn the customer or potential customer. This warning may be provided in a standardised format.

Where customers or potential customers do not provide the information referred to 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 the insurance intermediary or insurance undertaking is not in a position to determine whether the service or product envisaged is appropriate for them. This warning may be provided in a standardised format.

3. The insurance intermediary or insurance undertaking shall establish a record that includes a document or documents agreed between the insurance intermediary or insurance undertaking and the customer that set out the rights and obligations of the parties, and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.
4. The customer must receive from the insurance intermediary or insurance undertaking adequate reports on the service provided to its customers. These reports shall include periodic communications to customers, taking into account the type and the complexity of insurance products involved and the nature of the service provided to the customer and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer. When providing advice, the insurance intermediary or insurance undertaking shall specify how the advice given meets the personal characteristics of the customer.
5. The Commission shall be empowered to adopt by means of delegated acts in accordance with Article 34 measures to ensure that insurance intermediaries and insurance undertakings comply with the principles set out in this Article when carrying on insurance mediation with their customers. Those delegated acts shall take into account:
 - (a) the nature of the service(s) offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions; and
 - (b) the nature of the products being offered or considered including different types of insurance products.

CHAPTER VIII

SANCTIONS

Article 27

Administrative sanctions

1. Member States shall ensure that their competent authorities may take the appropriate administrative sanctions and measures, including those specified in Article 29 where the national provisions adopted in the implementation of this Directive have not been complied with and shall ensure that they are applied. Member States shall ensure that these measures are effective, proportionate and dissuasive.
2. Member States shall ensure that where obligations apply to insurance or reinsurance undertakings or insurance or reinsurance intermediaries, in case of a breach, administrative sanctions and measures can be applied to the members of their management body, and any other natural or legal persons who, under national law, are responsible for a breach.
3. The competent authorities shall be given all investigatory powers that are necessary for the exercise of their functions. In the exercise of their sanctioning powers, the competent authorities shall cooperate closely to ensure that sanctions or measures produce the desired results and coordinate their action when dealing with cross border cases.

Article 28

Publication of sanctions

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

Article 29

Breaches and sanctions

1. Member States shall ensure that the following breaches of the requirements of this Directive is sanctioned:
 - (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 either being registered under Article 3 or 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; and
- (g) a failure by an insurance undertaking or intermediary to ensure that an insurance intermediary in respect of whom a declaration under Article 4 has been made does not breach the provisions of this Directive applicable to such intermediary, to the extent to which the insurance undertaking or intermediary has taken responsibility for his compliance.

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

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

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

(g) administrative pecuniary sanctions of up to twice the amount of the benefit derived from the breach where that benefit can be determined.

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.

The provisions of this Directive are without prejudice to any provisions in the laws of Member States in respect of criminal offences.

Article 30

Effective application of sanctions

1. Member States shall ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including:

(a) the gravity and the duration of the breach;

(b) the degree of responsibility of the responsible natural or legal person;

(c) the financial strength of the responsible natural or legal person, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;

(d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;

(e) the losses for third parties caused by the breach, insofar as they can be determined;

(f) the level of cooperation of the responsible natural or legal person with the competent authority; and

(g) previous breaches by the responsible natural or legal person.

2. EIOPA shall issue guidelines addressed to the competent authorities in accordance with Article 16 of Regulation No (EU) 1094/2010 on the types of administrative measures and sanctions and level of administrative pecuniary sanctions.

3. Member States shall provide for appropriate sanctions in the event of an insurance or reinsurance undertaking or insurance or reinsurance intermediary's failure to comply with national provisions adopted pursuant to this Directive.

4. 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.

5. Any measure adopted involving sanctions or restrictions on the activities of an insurance or reinsurance intermediary or insurance or reinsurance undertaking must be properly justified and communicated to the insurance or reinsurance intermediary or insurance or reinsurance undertaking concerned. Every such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

Article 31

Reporting of breaches

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

Article 32

Submitting information to EIOPA in relation to sanctions

1. Member States shall provide EIOPA annually with aggregated information regarding all administrative measures or administrative sanctions imposed in accordance with Article 27.

EIOPA shall publish this information in an annual report.

2. Power is conferred on the Commission to adopt implementing technical standards concerning the procedures and forms for submitting information as referred to in this Article, in accordance with Article 15 of Regulation (EU) No 1094/2010.

EIOPA shall develop those implementing technical standards in draft and submit those draft implementing technical standards to the Commission [6] months after the publication of the Directive.

↓ 2002/92/EC
⇒ new

CHAPTER ~~IV~~ IX

FINAL PROVISIONS

Article ~~14~~33

Right to apply to the courts

Member States shall ensure that decisions taken in respect of an insurance intermediary, reinsurance intermediary or an insurance ⇒ or reinsurance ⇐ undertaking under the laws, regulations and administrative provisions adopted in accordance with this Directive may be subject to the right to apply to the courts.

↓ new

Article 34

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 35 concerning Articles 8, 9, 24, 25, 26 and 32.

↓ new

Article 35

Exercise of the Commission's power to adopt delegated acts

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 34 shall be conferred for an indeterminate period of time from the date of entry into force of this Directive.
3. The delegation of powers referred to in Article 34 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 34 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

↓ new

Article 36

Review and evaluation

1. Five years after the entry into force of this Directive, the Commission shall review this Directive. The review shall include a general survey of the practical application of rules laid down in this Directive taking due account of developments in the retail investment products markets as well as experiences acquired in practical application of this Directive and Regulation on key information documents on investment products and amending Directives 2003/71/EC and 2009/65/EC and MIFID II. The review shall reflect on a possible extension of the scope of this Directive to other investment products including on pension products as well as pension schemes falling under the scope of Directive 2003/41/EC.
2. After consulting the Joint Committee of European Supervisory Authorities, the Commission shall submit a report to the European Parliament and the Council, accompanied, if appropriate, by a legislative proposal.
3. By X X 20XX [four years after the entry into force of the Directive], and at least at on a two-year basis thereafter, EIOPA shall prepare a report on the application of this Directive. EIOPA shall consult ESMA before making public its report. In a report to be prepared by X X 20XX [two years after the entry into force of the Directive], EIOPA shall undertake an evaluation of the structure of insurance intermediaries' markets.
4. In a report to be prepared by EIOPA by X X 20XX [four years after the entry into force of the Directive], shall examine whether the competent authorities referred to in Article 12(1) are sufficiently empowered and have adequate resources to carry out their tasks.
5. In a report to be prepared by EIOPA by X X 20XX [four years after the entry into force of the Directive], shall examine at least the following issues:
 - (a) the changes in the insurance intermediaries' market structure;

(b) the changes in the patterns of cross-border activity;

(c) an interim assessment on the improvement of quality of advice and selling methods and the impact of this Directive on small and medium-sized enterprises .

6. In this report, to be prepared by X X 20XX [four years after the entry into force of the Regulation], EIOPA shall undertake an evaluation of the impact of this Directive.

7. In the light of that report, the Commission shall take the steps it considers appropriate as a result of its findings.

↓ 2002/92/EC (adapted)
⇒ new

Article ~~15~~37
Repeal

~~Directive 77/92/EEC~~ ⇒ Directive 2002/92/EC ⇐ is hereby repealed with effect from the date referred to in Article ~~16(1)~~ 38. ⇒ References to Directive 2002/92/EC shall be construed as references to this Directive. References to terms defined in, or Articles of, Directive 2002/92/EC shall be construed as references to the equivalent term defined in, or Article of, this Directive. ⇐

Article ~~16~~38
Transposition

~~1.~~ Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before [date]. They shall forthwith inform the Commission thereof. ~~These measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.~~

~~2.~~ ~~Member States shall communicate to the Commission the text of the laws, regulations and administrative provisions which they adopt in the field governed by this Directive. In that communication they shall provide a table indicating the national provisions corresponding to this Directive.~~

Article ~~17~~39
Entry into force

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

Article ~~18~~40
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX
PROFESSIONAL CUSTOMERS

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

1. Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a non-Member State:
 - (a) Credit institutions;
 - (b) Insurance and reinsurance intermediaries and investment firms;
 - (c) Other authorised or regulated financial institutions;
 - (d) Insurance and reinsurance undertakings;
 - (e) Collective investment schemes and management companies of such schemes;
 - (f) Pension funds and management companies of such funds;
 - (g) Commodity and commodity derivatives dealers;
 - (h) Locals;
 - (i) Other institutional investors;
2. Large undertakings meeting two of the following size requirements on a company basis:
 - balance sheet total: EUR 20,000,000
 - net turnover: EUR 40,000,000
 - own funds: EUR 2,000,000.
3. National and regional governments, including public bodies that manage public debt at national or regional level, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.

4. Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions. The entities mentioned above are considered to be professionals. They must however be allowed to request non-professional treatment and firms may agree to provide a higher level of protection. Where the customer of a firm is an undertaking referred to above, the firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the customer is deemed to be a professional customer, and will be treated as such unless the firm and the customer agree otherwise. The firm must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

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