



EUROPEAN COMMISSION

Strasbourg, 3.7.2012
COM(2012) 360 final

2012/0175 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on insurance mediation

(recast)

(Text with EEA relevance)

{SWD(2012) 191 final}
{SWD(2012) 192 final}

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, the European Parliament requested that the revision of IMD1 would take into account the ongoing revision of the Markets in Financial Instruments Directive (MiFID II)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 II.

1.1. Objectives of the proposal

The revised Directive (IMD2) seeks to improve regulation in the retail insurance market in an efficient manner. It aims at ensuring a level playing field between all

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.

participants 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 and measures for breach 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 the 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 with the PRIPs proposal on investment products' 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 IMD1 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.

IMD2 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 elements.

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

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 2010.⁵ During 2010-2011, the Commission Services regularly met with representatives of the insurance sector, consumer organisations and supervisors to discuss the forthcoming review. 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.⁶ 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. The large majority of the stakeholders present at these meetings supported the direction of the revision of IMD1 as outlined by the Commission Services.

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 website⁸. 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 products and for insurance investment products.⁹ Thirdly, the findings of a study seeking to assess the quality of advice being offered across the EU have been considered.¹⁰ A fourth study seeking insights from behavioural economics on the different factors relating to investor decision making has also been taken into account.¹¹

The 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.

⁵ https://www.ceiops.eu/fileadmin/tx_dam/files/publications/reports/IMD-advice-20101111/20101111-CEIOPS-Advice-on-IMD-Revision.pdf

⁶ The results are published: http://ec.europa.eu/internal_market/consultations/2010/insurance-mediation_en.htm

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

⁸ Cost 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). Some participants were unwilling or unable to provide precise estimation of costs. The Commission Services' assessment of data suggests some respondents provided figures that appear inflated without clear explanation or justification.

⁹ http://ec.europa.eu/internal_market/consultations/docs/2010/prips/costs_benefits_study_en.pdf

¹⁰ http://ec.europa.eu/consumers/rights/docs/investment_advice_study_en.pdf

¹¹ http://ec.europa.eu/consumers/strategy/consumer_behaviour_en.htm

Overall, the estimate of the 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.

The impact assessment work finished in 2012. The European Commission Impact Assessment Board's recommendations were taken on board especially concerning the impact on SME's. For instance, SME intermediaries which are currently outside the scope and which will be brought into scope by the current proposal are essentially businesses whose principal activity is other than insurance mediation (so mediation is purely ancillary to their main business such as travel agents or car rentals). These intermediaries will be subject to a light touch regime (declaration procedure, Article 4 of the current proposal) as a proportionate approach to the ancillary nature of the mediation they perform. In general, proportional requirements have been introduced to take account of SME's concerns and to respect the principle 'less complex products, less rules'. For instance, some investment products are wrapped as life insurance policies. A more stringent regime for the selling practices of those products (life insurance policies with investment elements (insurance investment products or insurance PRIPs)) will be introduced (Chapter VII).

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

The proposal is based on Article 53(1) and 62 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. It brings within its scope certain ancillary sellers and after-sales businesses such as loss adjusters and claims handlers. It clarifies the exercise of the freedom of establishment, of the freedom to provide services, and the powers of supervisory authorities of home and host Member States in this regard. 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 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 have been central in laying out these requirements.

In view of that principle the proposal differentiates between the different selling channels for insurance products and imposes less burdensome registration and professional qualification requirements on those selling simple insurance products. For example, the sellers of ancillary insurance products of low risk, such as car rentals and travel agents are subject to a simplified declaration procedure instead of registration as insurance intermediaries. The proposal also differentiates between the life insurance products and the general insurance products in respect of the remuneration transparency requirements. These proportionality measures are taken in view of the different levels of complexity and consumer risks related to the different insurance products and also in view of the intention to reduce the administrative burden for the SMEs selling insurance products.

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 currently not yet applicable; this proposal 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 will be repealed by Directive 2009/138/EC.

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 'de minimis' 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 constitute insurance mediation. 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 for investment products (Regulation on PRIPs).
- '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.
- 'Contingent commission' is defined as a commission where the amount payable is based on the achievement of agreed targets.
- '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. This single electronic register shall function as a portal linking back to national registers. 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 (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
- those whose activities are limited to the professional management of claims and to loss adjustment.

The declaration procedure mainly covers 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 reflect the provisions in Article 5 of IMD1, the revised MiFID proposal and the Luxembourg Protocol¹². They also address the division of competence between Home and Host Member State supervisors, particularly in situations where 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; 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

¹²

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

intermediation activities on an ancillary basis, or whose activities are limited to the professional management of claims, will be proportionate to the complexity of the product sold. Accordingly, Article 8 is not applied in full to such intermediaries.

The Commission is empowered to adopt delegated acts to specify the notion of adequate knowledge and ability.

Article 9 concerns the publication of general good rules. This article 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 10 to 12 restate the former Articles 7, 9 and 10, on competent authorities, exchange of information between Member States and complaints.

Article 13 concerns procedures for the out-of-court settlement of disputes involving customers, and strengthens the former Article 11 of IMD1, by requiring (rather than encouraging) Member States to set up procedures and ensure participation in them.

Article 14 concerns the restriction on the use of intermediaries. It extends the former 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 15 to 20 restate the disclosure requirements, the large risks exemption, the stricter provisions in ex-Article 12, and the information conditions of ex-Article 13. They also set out the following additional provisions:

- general principle for intermediaries that they should act in the best interest of their customers;
- similar information requirements for insurance undertakings;
- a requirement to disclose the basis and amount of the remuneration by insurance intermediaries;
- a requirement to disclose the amount of any variable remuneration received by the sales employees of insurance undertakings and intermediaries;
- a mandatory 'full disclosure' regime 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 a transitional period of 5 years. After the expiry of the 5 years transitional period, the full disclosure regime will automatically apply for the sale of non-life products as well. During the transitional period, the proposal differentiates between the life and non-life products. In case of the sale of life products, the remuneration (commission) tends to be higher. Also, life products are also closer to investment products and buying such a product constitutes a long-term investment. For non-life products, the situation is different. The remuneration is

usually lower (commission is about 5%-10% of the premium) and the product involves less risks. In most of the EU countries, consumer can switch to another, substitutable product very easily and on an affordable manner.

- an obligation on insurance undertakings and intermediaries to give the customer, prior to the 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 through a durable medium.

In terms of achieving higher consumer protection, these provisions offer higher transparency compared to the original Directive (2002/92/EC) regarding the nature, the structure and the amount of the intermediary's remuneration and provide clarity with regard to the principal-agent relationship, including how this may impact on advice. Consumer protection has moved forward significantly over the last years, and consumers are today increasingly information-seeking and cost-conscious. Disclosure of the different elements of the total price - including the intermediary's remuneration - will enable the customer to choose on the basis of insurance cover, linked services (for example if the intermediary does claims-handling) and price. This will further ensure suitable, cost-efficient products and intermediary services for consumers. Mandatory disclosure of remuneration should have positive effects on competition in insurance distribution as it would ensure that consumers receive wider information on products and costs, as well as possible conflicts of interest. It will be easier for consumers to compare insurance covers and prices between products sold through different distribution channels. Several EU Member States do already require remuneration disclosure for some insurance products, and MiFID II will require this for investment products. This new information will give consumers more complete information about what services the intermediary performs and what are the related costs. The remuneration disclosure must however be implemented in a way that the comparison between intermediaries and direct writers is ensured. Information about the price of cover as well as the distribution costs will provide comparability. In particular - for avoiding situations of conflict of interest insurance undertakings should also disclose the basis for the calculation of their employees' variable remuneration resulting from the sale of a product. These provisions furthermore address certain key problems related to cross-border provision of insurance intermediary services: lack of legal certainty and lack of comparability. If the harmonised legal framework is improved, intermediaries as well as their customers may more readily take the step of selling or buying insurance products cross-border. Improved disclosure will facilitate comparison between products and distribution channels (as mentioned above), which is today particularly difficult in cross-border trade situations.

Article 21 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 22 covers the scope of these additional provisions, applying them to an insurance intermediary or undertaking when they sell insurance investment products.

Article 23 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 24 is based on Article [23] of MiFID II. It sets out the MiFID II 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 25 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 26 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 27 requires publication of the sanctions or measures imposed for breaches.

Article 28 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 29 sets out the factors to take into account in imposing sanctions and measures, 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 or measures to the intermediary or undertaking, together with justification of that sanction.

Article 30 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 31 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 32 to 39 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 33 and 34* set out conditions applying to the Commission's power to adopt delegated acts as specified in the Directive, and *Article 35* provides a process for review and evaluation by the Commission of the Directive after its entry into force. This review shall in particular consider the impact of the disclosure rules in Article 17(2) on non-life insurance intermediaries that are small and medium-sized undertakings.

4. BUDGETARY IMPLICATION

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

The proposal has implications for the Community budget.

↓ 2002/92/EC (adapted)

2012/0175 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on insurance mediation

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~establishing the European Community~~ ☒ on the Functioning of the European Union ☒, and in particular Articles ~~47(2)~~ ☒ 53(1) ☒ and ~~Article 55~~ ☒ 62 ☒ thereof,

Having regard to the proposal from the European Commission,

↓ new

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

↓ 2002/92/EC

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

↓ new

After consulting the European Data Protection Supervisor,

↓ 2002/92/EC
⇒ new

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

Whereas:

↓ new

- (1) A number of amendments are to be made to Directive 2002/92/EC of the European Parliament and the Council of 9 December 2002 on insurance mediation¹³. In the interests of clarity, that Directive should be recast.
- (2) Since the main objective and subject-matter of this proposal is to harmonise national provisions concerning the mentioned areas, the proposal should be based on Article 53(1) and 62 TFEU. The form of a Directive is appropriate in order to enable the implementing provisions in the areas covered by this Directive, when necessary, to be adjusted to any existing specificities of the particular market and legal system in each Member State. This Directive should also aim at coordinating national rules concerning the access to the activity of insurance and reinsurance mediation including professional management of claims and loss adjusting, and is therefore based on Article 53(1) of the Treaty. In addition, since this is a sector offering services across the Union, this Directive is also based on Article 62 of the Treaty.

↓ 2002/92/EC recital 1 (adapted)

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

↓ 2002/92/EC recital 2

~~A first step to facilitate the exercise of freedom of establishment and freedom to provide services for insurance agents and brokers was made by 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 (ex ISIC Group 630) and, in particular, transitional measures in respect of those activities¹⁴.~~

↓ 2002/92/EC recital 3

~~Directive 77/92/EEC was to remain applicable until the entry into force of provisions coordinating national rules concerning the taking up and pursuit of the activities of insurance agents and brokers.~~

¹³ OJ L 9, 15.1.2003, p. 3.

¹⁴ OJ L 26, 31.1.1977, p. 12. Directive as last amended by the Act of Accession of 1994.

↓ 2002/92/EC recital 4

~~Commission Recommendation 92/48/EEC of 16 December 1991 on insurance intermediaries¹⁵ was largely followed by Member States and helped to bring closer together national provisions on the professional requirements and registration of insurance intermediaries.~~

↓ 2002/92/EC recital 9

⇒ new

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

↓ new

- (5) The application of Directive 2002/92/EC has shown that a number of provisions require further precision with a view to facilitating the exercise of insurance and reinsurance mediation and that the protection of consumers requires an extension of the scope of that Directive to all sales of insurance products, whether by insurance intermediaries or insurance undertakings. In respect of their sales, after-sales and claims processes insurance undertakings which sell directly insurance products, should be brought into the scope of the new Directive on a similar basis as insurance agents and brokers.
- (6) In order to guarantee that the same level of protection applies regardless of the channel through which consumers buy an insurance product, either directly from an insurance undertaking or indirectly from an intermediary, the scope of the Directive needs to cover not only insurance undertakings but other market participants who sell insurance products on an ancillary basis (e.g. travel agents and car rental companies, suppliers of goods not meeting conditions for the exemption).
- (7) This Directive should apply to persons whose activity consists of assisting (whether on behalf of a customer or an insurance undertaking) in the administration and performance of a contract of insurance or reinsurance, including the professional management of claims, or of loss adjusting or the expert appraisal of claims.
-

↓ 2002/92/EC recital 5

- (8) ~~However, F~~ There are still substantial differences between national provisions which create barriers to the taking-up and pursuit of the activities of insurance and

¹⁵ ~~OJ L 17, 28.1.1992, p. 32~~

reinsurance intermediaries in the internal market. It is therefore appropriate to replace Directive 77/92/EEC with a new directive.

↓ new

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

↓ 2002/92/EC recital 11 (adapted)
⇒ new

- (10) This Directive should apply to persons whose activity consists in ☒ of ☒ providing insurance ⇒ or reinsurance ⇐ mediation services to third parties for remuneration, which may be pecuniary or take some other form of agreed economic benefit tied to performance.
-

↓ new

- (11) This Directive should apply to persons whose activity consists of the provision of information on one or more contracts of insurance or reinsurance in response to criteria selected by the customer whether via a website or other means, or the provision of a ranking of insurance or reinsurance products or a discount on the price of a contract, when the customer is able to directly conclude an insurance contract at the end of the process; it should not apply to mere introducing activities consisting of the provision of data and information on potential policyholders to insurance or reinsurance intermediaries or undertakings or of information about insurance or reinsurance products or an insurance or reinsurance intermediary or undertaking to potential policyholders.
-

↓ 2002/92/EC recital 12

- (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.

↓ 2002/92/EC recital 13
⇒ new

- (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 ⇐.
-

↓ 2002/92/EC recital 10 (adapted)

- (14) This Directive ~~contains a definition of~~ ☒ defines ☒ 'tied insurance intermediary' ~~which takes into~~ ☒ to take ☒ account of the characteristics of certain Member States' markets and ~~whose purpose is to establish the conditions for registration applicable to such intermediaries. This definition is not intended to preclude Member States from having similar concepts in respect of insurance intermediaries who, while acting for and on behalf of an insurance undertaking and under the full responsibility of that undertaking, are entitled to collect premiums or amounts intended for the customer in accordance with the financial guarantees laid down by this Directive.~~
-

↓ 2002/92/EC recital 14
⇒ new

- (15) Insurance and reinsurance intermediaries ⇒ who are natural persons ⇐ should be registered with the competent authority of the Member State where they have their residence ~~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. Insurance intermediaries already registered in Member States shall not be required to register again under this Directive. ⇐
-

↓ 2002/92/EC recital 6 and recital 15 (adapted)
⇒ new

- (16) Insurance and reinsurance intermediaries should be able to avail themselves of the freedom of establishment and the freedom to provide services which are enshrined in the Treaty. ~~Such~~ ☒ 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.

↓ 2002/92/EC recital 16 (new)

- (17) ~~Appropriate sanctions are needed against persons exercising the activity of insurance or reinsurance mediation without being registered, against insurance or reinsurance undertakings using the services of unregistered intermediaries and against intermediaries not complying with national provisions adopted pursuant to this Directive.~~
-

↓ new

- (18) In order to enhance transparency and facilitate cross-border trade, EIOPA should establish, publish and keep up to date a single electronic database containing a record of each insurance and reinsurance intermediary which has notified an intention to exercise its freedom of establishment or to provide services. Member States should provide relevant information to EIOPA promptly to enable it to do this. This database should show a hyperlink to each relevant competent authority in each Member State. Each competent authority of each Member State should show on its website a hyperlink to this database.
- (19) The relative rights and responsibilities of home and host Member States in respect of the supervision of insurance and reinsurance intermediaries registered by them or carrying on insurance or reinsurance mediation activities within their territory in exercise of the rights of freedom of establishment or freedom to provide services, should be clearly established.
- (20) Member States should not apply the registration requirements to insurance intermediaries which conduct insurance mediation in relation to certain types of insurance contract on an ancillary basis or to professional management of claims, loss adjusting or expert appraisal of claims, provided that they comply with the requirements of this Directive as to knowledge and ability and good repute and the applicable information and conduct of business requirements, and a declaration of activity has been submitted to the competent authority.
-

↓ 2002/92/EC recital 7 (adapted)

- (21) The inability of insurance intermediaries to operate freely throughout the ~~Community~~ ☒ Union ☒ hinders the proper functioning of the single market in insurance.
-

↓ new

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

knowledge of persons carrying on the activities of the management of claims, loss adjusting or expert appraisal of claims needs to match the level of complexity of these activities. Continuing education should be ensured.

↓ 2002/92/EC recital 8
⇒ new

- (23) The coordination of national provisions on professional requirements and registration of persons taking up and pursuing the activity of insurance ⇒ or reinsurance ⇐ mediation can ~~therefore~~ contribute both to the completion of the single market for financial services and to the enhancement of customer protection in this field.

↓ new

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

- (25) A national qualification accredited to level 3 or above under the European Qualification Framework established under the Recommendation of the European Parliament and Council of 23 April 2008 on the establishment of the European Qualifications Framework for lifelong learning¹⁶ should be accepted by a host member state as demonstrating that an insurance or reinsurance intermediary meets the requirements of knowledge and ability which are a condition of registration in accordance with this Directive. This framework helps Member States, education institutions, employers and individuals compare qualifications across the Union's diverse education and training systems. This tool is essential for developing a employment market throughout the Union. This framework is not designed to replace national qualifications systems but to supplement the actions of the Member States by facilitating cooperation between them.

- (26) Despite the existing single passport systems for insurers and intermediaries, the European insurance market remains very fragmented. In order to facilitate cross-border business and enhance transparency for consumers, Member States shall ensure publication of the general good rules applicable in their territories, and a single electronic register and information on all Member States' general good rules applicable to insurance and reinsurance mediation should be made publicly available.

↓ 2002/92/EC recital 17

- (27) Cooperation and exchange of information between the competent authorities are essential in order to protect customers and ensure the soundness of insurance and reinsurance business in the single market.

¹⁶ OJ C 111. 6.5.2008.. p.1.

↓ 2002/92/EC recital 22 (adapted)
⇒ new

- (28) There is a need for ~~suitable~~ ☒ appropriate☒ and effective ⇒ out-of-court ⇐ complaint and redress procedures in the Member States in order to settle disputes between insurance intermediaries ⇒ or undertakings ⇐ and customers, using, where appropriate, existing procedures. ⇒ Effective out-of-court complaint and redress procedures should be available to deal with disputes concerning rights and obligations established under this Directive between insurance undertakings or persons selling or offering insurance products and customers. In order to enhance the effectiveness of out-of-court resolution of disputes procedures dealing with complaints submitted by customers, this Directive should provide that insurance undertakings or persons selling or offering insurance products have to participate in dispute resolution procedures, which do not result in a binding decision, instituted against themselves by customers and concerning rights and obligations established under this Directive. Such out-of-court resolution of disputes procedures would aim to achieve a quicker and less expensive settlement of disputes between insurance undertakings or persons selling or offering insurance products and customers and lightening of the burden on the court system. However, out-of-court resolution of disputes procedures should not prejudice the rights of the parties to such procedures to bring legal proceedings before courts. ⇐

↓ 2002/92/EC recital 23
⇒ new

Without prejudice to the right of customers to bring their action before the courts, Member States should ⇒ ensure that ADR entities dealing with disputes referred to under this Directive ⇐ ~~encourage public or private bodies established with a view to settling disputes out of court, to~~ cooperate in resolving cross-border disputes. ⇒ Member States should encourage ADR entities dealing with such disputes to become part of FIN-NET¹⁷. ⇐ ~~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 disputes¹⁸.~~

⇓ new

- (29) The expanding range of activities that many insurance intermediaries and undertakings carry on simultaneously has increased potential for conflicts of interest between those different activities and the interests of their customer. It is therefore necessary that

¹⁷ http://ec.europa.eu/internal_market/fin-net/index_en.htm

¹⁸ ~~OJ L 113, 13.4.1998, p. 31~~

Member States to provide for rules to ensure that such conflicts do not adversely affect the interests of the customer.

- (30) Consumers should be provided in advance with clear information about the status of the persons who sell the insurance product and about the remuneration which they receive. There is a need to introduce a mandatory status disclosure for European insurance intermediaries and insurance undertakings. This information should be given to the consumer at the pre-contractual stage. Its role is to show the relationship between the insurance undertaking and the intermediary (where applicable) as well as the structure and the content of the intermediaries' remuneration.
- (31) In order to mitigate conflicts of interest between the seller and the buyer of an insurance product, it is necessary to ensure sufficient disclosure of remuneration of insurance distributors. Accordingly, for life insurance products, the intermediary and the employee of the insurance intermediary or the insurance undertaking should be obliged to inform the customer about its remuneration, in advance of the sale. For other insurance products, subject to a transitional period of 5 years, the customer must be informed of the customer's right to request this information, which must be provided to the customer upon request.
- (32) In order to provide a customer with comparable information on the insurance mediation services provided regardless of whether the customer purchases through an intermediary, or directly from an insurance undertaking, and to avoid the distortion of competition by encouraging insurance undertakings to sell direct to customers rather than via intermediaries in order to avoid information requirements, insurance undertakings should also be required to provide information about remuneration to customers with whom they deal directly in the provision of insurance mediation services about the remuneration they receive for the sale of insurance products.
- (33) As the current proposal aims to enhance consumer protection, some of its provisions are only applicable in "business to consumer" (B2C) relationships, especially those which regulate conduct of business rules of insurance intermediaries or of other sellers of insurance products.
- (34) In order to avoid mis-selling cases, if necessary, the sale of insurance products should be accompanied with honest and professional advice.

↓ 2002/92/EC recital 18 (adapted)

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

↓ 2002/92/EC recital 20 (adapted)
⇒ new

- (36) ⇒ Due to the increasing dependence of consumers on personal recommendations, it is appropriate to include a definition of advice. Before advice is provided, the insurance

intermediary or undertaking should assess the customer's needs, demands and its financial situation. ~~he~~ ☒ it ☒ is giving advice on products from a broad range of insurance undertakings, ~~he~~ ☒ it ☒ should carry out a fair and sufficiently wide-ranging analysis of the products available on the market. In addition, all ☒ insurance ☒ intermediaries ☒ and insurance undertakings ☒ should explain the reasons underpinning their advice.

↓ new

- (37) Prior to the conclusion of a contract, including in the case of non-advised sales, the customer should be given the relevant information about the insurance product to allow the customer to make an informed decision. The insurance intermediary should be able to explain to the customer the key features of the insurance products it sells.
- (38) Uniform rules should be laid down in order to give the person selling the insurance product a certain choice with regard to the medium in which all information is provided to the customer allowing for use of electronic communications where it is appropriate having regard to the circumstances of the transaction. However, the customer should be given the option to receive it on paper. In the interest of consumer access to information, all pre-contractual information should always be provided free of charge.
-

↓ 2002/92/EC recital 21

☒ new

- (39) 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 (see Annex I of the Directive) ☒ .
-

↓ 2002/92/EC recital 19 (adapted)

☒ new

- (40) This Directive should specify the ☒ minimum ☒ obligations which ☒ insurance undertakings and ☒ insurance intermediaries should have in providing information to customers. A Member State ~~may~~ ☒ should be able to ☒ in this area maintain or adopt more stringent provisions which may be imposed on insurance intermediaries ☒ and insurance undertakings ☒ independently of ~~their place of residence~~ ☒ the provisions of their home Member State ☒ where they are pursuing ☒ insurance ☒ mediation activities on its territory provided that any such more stringent provisions comply with ~~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)¹⁹. ☒ A Member State which proposes to apply

¹⁹ OJ L 138, 13.7.2000, p. 1.

and applies provisions regulating insurance intermediaries and the sale of insurance products in addition to those set out in this Directive should ensure that the administrative burden stemming from these provisions is proportionate for consumer protection. In the interest of consumer protection and in order to prevent mis-selling of insurance products, Member States should be permitted to apply exceptionally the more stringent requirements to such insurance intermediaries conducting insurance mediation on an ancillary basis if they consider it necessary and proportionate.↩

↓ new

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

(42) Contracts of insurance that involve investments are often made available to customers as potential alternatives or substitutes to investment products subject to Directive [MiFID II]²⁰. To deliver consistent investor protection and avoid the risk of regulatory arbitrage, it is important that retail investment products (insurance investment products as defined in the Regulation on key information documents for investment products) are subject to the same 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. The European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) should work together to achieve as much consistency as possible in the conduct of business standards for retail investment products that are subject to either [MiFID II] or to this Directive through guidelines. For insurance investment products, the standards of this Directive which are applicable to all insurance contracts (Chapter VII of this Directive), and the enhanced standards for insurance investment products are cumulative. Accordingly, persons carrying out insurance mediation in relation to insurance investment products should comply with

²⁰ Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (Recast); COM(2011) 656 final.

the conduct standards applicable to all insurance contracts as well as to the enhanced standards applicable to insurance investment products.

- (43) In order to ensure compliance with the provisions of this Directive by insurance undertakings and persons who pursue insurance mediation, and to ensure that they are subject to similar treatment across the Union, Member States should be required to provide for administrative sanctions and measures which are effective, proportionate and dissuasive. A review of existing powers and their practical application has been carried out with the aim of promoting convergence of sanctions and measures in the Commission Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial sector²¹. Therefore, administrative sanctions and measures laid down by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or measure, publication, key sanctioning powers and levels of administrative pecuniary sanctions.
- (44) In particular, the competent authorities should be empowered to impose pecuniary sanctions which are sufficiently high to offset the benefits that can be expected and to be dissuasive even for larger institutions and their managers.
- (45) In order to ensure a consistent application of sanctions across Member States, when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, Member States should be required to ensure that the competent authorities take into account all relevant circumstances.
- (46) In order to strengthen the dissuasive effect on the public at large and to inform about breaches of rules which may be detrimental to customer protection, sanctions and measures imposed should be published, except in certain well-defined circumstances. In order to ensure compliance with the principle of proportionality, sanctions and measures imposed should be published on an anonymous basis where publication would cause a disproportionate damage to the parties involved.
- (47) In order to detect potential breaches, the competent authorities should have the necessary investigatory powers, and should establish effective mechanisms to encourage reporting of potential or actual breaches.
- (48) This Directive should refer to both administrative sanctions and measures irrespective of their qualification as a sanction or a measure under national law.
- (49) This Directive should be without prejudice to any provisions in the laws of Member States in respect of criminal offences.
- (50) In order to attain the objectives set out in this Directive, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of details concerning notions of adequate knowledge and competence of the intermediary, management of conflicts of interest, conduct of business obligations in relation to insurance packaged retail investment products and procedures and forms for submitting information in relation to sanctions. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated

²¹ COM(2010)716.

acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (51) Technical standards in financial services should ensure consistent harmonisation and adequate protection of consumers across the Union. As a body with highly specialised expertise, it would be efficient and appropriate to entrust EIOPA with the elaboration of draft regulatory and implementing technical standards which do not involve policy choices, for submission to the Commission.
- (52) By means of delegated acts pursuant to Articles 290 and 291 of the Treaty on the Functioning of the European Union and in accordance with Articles 10 to 15 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority)²², the Commission should adopt delegated acts as set out in Articles [8] regarding notions of adequate knowledge and ability of the intermediary, Article [17 and 23] regarding management of conflicts of interest and Articles [24 and 25] regarding conduct of business obligations in relation to insurance packaged retail investment products as well as implementing technical standards as set out in Article [30] regarding procedures and forms for submitting information in relation to sanctions. These delegated acts and implementing technical standards should be developed in draft by EIOPA.
- (53) Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States²³ and Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data²⁴ shall govern the processing of personal data carried out by EIOPA within the framework of this Regulation, under the supervision of the European Data Protection Supervisor.
- (54) This Directive respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, as enshrined in the Treaty.
- (55) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (56) A review of this Directive should be carried out five years after the date on which this Directive enters into force in order to take account of market developments as well as

²² OJ L 331, 15.12.2010, p.48.

²³ OJ L 281, 23.11.1995, p. 31.

²⁴ OJ L 8, 12.1.2001, p. 1.

developments in other areas of Union law or Member States experiences in implementation of Union law, in particular with regard to products covered by Directive 2003/41/EC.

↓ 2002/92/EC recital 24 (adapted)

(57) Directive ~~77/92/EEC~~ ☒ 2002/92/EC ☒ should accordingly be repealed, ☒ . ☒

↓ new

(58) The obligation to transpose this Directive into national law should be confined to those provisions which represent an amendment of the substance of Directive 2002/92/EC. The obligation to transpose the provisions which are unchanged arises under Directive 2002/92/EC.

(59) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law of Directive 2002/92/EC,

↓ 2002/92/EC

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1 *Scope*

↓ 2002/92/EC (adapted)
⇒ new

1. This Directive lays down rules ~~for~~ ☒ concerning ☒ the taking-up and pursuit of the activities of insurance and reinsurance mediation, ⇒ including professional management of claims and loss adjusting, ⇐ by natural and legal persons which are established in a Member State or which wish to ~~become~~ ☒ be ☒ established there.

↓ 2002/92/EC

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;
-

↓ 2002/92/EC (adapted)

- (e) the insurance is complementary to ~~the product or service~~ ☒ goods ☒ supplied by any provider, where such insurance covers: ~~(i) the risk of breakdown, loss of or damage to the goods supplied by that provider, or~~ ☒ ; ☒
-

↓ 2002/92/EC (adapted)

⇒ new

- ~~(ii) damage to or loss of baggage and other risks linked to the travel booked with that provider, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel;~~
 - (f) the amount of the annual premium ⇒ for the insurance contract, when pro-rated to produce an annual amount, ⇐ does not exceed EUR 500 ☒ 600 ☒ and the total duration of the insurance contract, including any renewals, does not exceed five years.
-

↓ 2002/92/EC (adapted)

3. This Directive shall not apply to insurance and reinsurance mediation services provided in relation to risks and commitments located outside the ~~Community~~ ☒ Union ☒.

↓ 2002/92/EC ⇒ new

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.~~

↓ new

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.

↓ 2002/92/EC ⇒ new

Article 2

Definitions

For the purposes 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 ⇐;

↓ 2002/92/EC
⇒ new

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 such contracts, or of~~ assisting in the administration and performance of such contracts, in particular in the event of a claim ⇒ , and the activity of professional management of claims and loss adjusting ⇐. ~~These activities when undertaken by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking shall not be considered as insurance mediation.~~ ⇒ These activities shall be considered to be insurance mediation also if carried on by an insurance undertaking without the intervention of an insurance intermediary. ⇐
-

↓ new

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

↓ 2002/92/EC
⇒ new

- (a) ~~The provision of information on an incidental basis~~ ⇒ to a customer ⇐ in the context of another professional activity ~~provided that the purpose of that activity is not~~ ⇒ , if the provider does not take any additional steps ⇐ to assist the customer in concluding or performing an insurance contract, ~~the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as insurance mediation;~~
-

↓ new

- (b) the mere provision of data and information on potential policyholders to insurance intermediaries or insurance undertakings or of information about insurance products or an insurance intermediary or insurance undertaking to potential policyholders.
4. 'insurance investment product' means a contract of insurance which could be also classified as an "investment product" as defined in Article 2(a) of [Regulation on key information documents for investment products (PRIIPs Regulation)];

↓ 2002/92/EC
⇒ new

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

↓ 2002/92/EC
⇒ new

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 such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, ⇒ and the activity of professional management of claims and loss adjusting. ⇐ ~~These activities when undertaken by a reinsurance undertaking or an employee of a reinsurance undertaking who is acting under the responsibility of the reinsurance undertaking are not considered as reinsurance mediation~~ ⇒ These activities shall be considered to be reinsurance mediation also if carried on by a reinsurance undertaking without the intervention of a reinsurance intermediary. ⇐
-

↓ new

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

↓ 2002/92/EC

- (a) ~~The provision of information on an incidental basis in the context of another professional activity provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract, the management of claims of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims shall also not be considered as reinsurance mediation;~~
-

↓ new

- (b) the mere provision of data and information on potential policyholders to reinsurance intermediaries or reinsurance undertakings or of information about reinsurance products or a reinsurance intermediary or reinsurance undertaking to potential policyholders.

↓ 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 ⇒ 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 recommendation to a customer, either upon their request or at the initiative of the insurance undertaking or the insurance intermediary;

↓ new

10. 'contingent commission' means a remuneration in the form of a commission where the amount payable is based on the achievement of agreed targets relating to the business placed by the intermediary with that insurer;

↓ 2002/92/EC

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

129. '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;

↓ 2002/92/EC (adapted)

⇒ new

~~1340.~~ '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 ⇐;

~~1412.~~ 'durable medium' means a durable medium ~~any instrument which enables the customer to store information addressed personally to him in a way accessible for future reference for a period of time adequate to the purposes of the information and which allows the unchanged reproduction of the information stored.~~ ⇒ as defined in Article 2(m) of Directive 2009/65/EC; ⇐ ~~In particular, durable medium covers floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes Internet sites, unless such sites meet the criteria specified in the first paragraph.~~

↓ new

(15) 'cross-selling practice' means the offering of an insurance service or product together with another service or product as part of a package or as a condition of taking another agreement or package;

(16) 'close links' means a situation referred to in Article 4(31) of Directive [MIFID II];

(17) 'primary place of business' means the location from where the main business is managed;

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

(19) 'tying practice' means the offering of one or more ancillary services with an insurance service or product in a package where this insurance service or product is not made available to the consumer separately.

(20) 'bundling practice' means the offering of one or more ancillary services with an insurance service or product in a package where this insurance service or product is also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ancillary services.

CHAPTER II

REGISTRATION REQUIREMENTS

Article 3 Registration

1. ⇒ Except as provided in Article 4, ⇐ Insurance and reinsurance intermediaries shall be registered with a competent authority ~~as defined in Article 7(2)~~, in their home Member State. ⇒ Insurance undertakings registered in Member States under Directive 73/239/EEC, Directive 2002/83/EC and Directive 2005/68/EC and their employees shall not be required to register again under this Directive. ⇐

Without prejudice to the first subparagraph, Member States may stipulate that insurance and reinsurance undertakings and other bodies may ~~collaborate~~ ☒ cooperate ☒ 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 ~~or~~, 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 intermediary or the undertaking shall be responsible for ensuring that it meets the conditions for registration set out in this Directive. In such a case, the person or entity accepting responsibility shall, having been informed by the Member States of the matters set out in paragraph 7 of this Article, sub-paragraphs (a) and (b), be satisfied as to the matter set out in paragraph 7 of this Article, 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
⇒ 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.

↓ 2002/92/EC (adapted)

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

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

↓ 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.

↓ 2002/92/EC

3. Member States shall see to it that a single information point is established allowing quick and easy access to information from these various registers, which shall be compiled electronically and kept constantly updated. This information point shall also provide the identification details of the competent authorities of each Member State referred to in paragraph 1, first subparagraph. The register shall indicate further the country or countries in which the intermediary conducts business under the rules on the freedom of establishment or on the freedom to provide services.
-

↓ new

4. EIOPA shall establish, publish on its website and keep up-to-date a single electronic register containing records of insurance and reinsurance intermediaries which have notified their intention to carry on cross-border business in accordance with Chapter IV. Member States shall provide relevant information to EIOPA promptly to enable it to do this. This register shall show a hyperlink to each relevant competent authority in each Member State. That register shall contain links to, and be accessible from, each of the Member States' competent authorities' websites.

↓ 2002/92/EC

~~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~~.

↓ new

5. Member States shall ensure that the competent authorities do not register an insurance or reinsurance intermediary unless it is satisfied that the intermediary meets the requirements laid down in Article 8.

↓ 2002/92/EC
⇒ new

~~4~~ The competent authorities may provide the insurance and reinsurance intermediaries with a document enabling any interested party by consultation of ⇒ any 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)~~ 16(a) and (b), and, in the case of a legal person, the name(s) of the natural person(s) referred to in the fourth subparagraph of paragraph 1 of this Article.

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

~~5. Registered insurance and reinsurance intermediaries shall be allowed to take up and pursue the activity of insurance and reinsurance mediation in the Community by means of both freedom of establishment and freedom to provide services.~~

↓ new

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

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

7. Member States shall ensure that their competent authorities request the following information from insurance and reinsurance intermediaries, as a condition of registration:
 - (a) to provide information to their competent authorities of the identities of shareholders or members, whether natural or legal persons, that have a holding in the intermediary that exceeds 10% and the amounts of those holdings;
 - (b) to provide information to their competent authorities of the identities of persons who have close links with the insurance or reinsurance intermediary;
 - (c) to demonstrate in a satisfactory manner that the holdings or close links do not prevent the effective exercise of the supervisory functions of the competent authority.
8. Member States shall ensure that the competent authorities refuse registration if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the insurance or reinsurance intermediary has close links, or difficulties involved in the enforcement of those laws, regulations or administrative provisions, prevent the effective exercise of their supervisory functions.

CHAPTER III

SIMPLIFIED REGISTRATION PROCEDURE – DECLARATION OF ACTIVITIES

Article 4

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

1. The registration requirements in Article 3 shall not apply to an insurance intermediary which conducts insurance mediation on an ancillary basis, provided that its activities meet all the following conditions:
 - (a) the principal professional activity of the insurance intermediary is other than insurance mediation;
 - (b) the insurance intermediary only mediates certain insurance products that are complementary to a product or service and clearly identifies them in the declaration;
 - (c) the insurance products concerned do not cover life assurance or liability risks, unless that cover is incidental to the main cover.

2. The registration requirements in Article 3 shall not apply to insurance intermediaries whose sole activity is professional management of claims or loss assessment services.
3. Any insurance intermediary who is subject to paragraphs 1 and 2 of this Article shall submit to the competent authority of its home Member State a declaration whereby it informs the competent authority of its identity, address and professional activities.
4. Intermediaries who are subject to paragraphs 1 and 2 of this Article shall be subject to the provisions of Chapters I, III, IV, V, VIII, IX and Articles 15 and 16 of this Directive.

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 services ⊗

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.~~

- (a) the name, address and any registration number of the intermediary;
- (b) the Member State or States in which the intermediary intends to operate;
- (c) the category of intermediary and, if applicable, the name of any insurance or reinsurance undertaking represented;
- (d) the relevant classes of insurance, if applicable;
- (e) demonstration of professional knowledge and ability.

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

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

3. The proof of the previous registration or declaration shall be established by evidence of registration issued or declaration received by the competent authority or body of the home Member State of the applicant, which the latter shall submit in support of his application presented to the host Member State.

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

Article 6

Exercise of the freedom of establishment

1. Member States shall require any insurance or reinsurance intermediary who intends to exercise his freedom of establishment to establish a branch within the territory of another Member State first to notify the competent authority of his home Member State and to provide it with the following information:

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

- (b) the Member State within the territory of which he plans to establish a branch or permanent presence;
 - (c) the category of intermediary and, if applicable, the name of any insurance or reinsurance undertaking represented ;
 - (d) the relevant classes of insurance, if applicable;
 - (e) a programme of operations setting out, the insurance or reinsurance mediation activities to be carried on and the organisational structure of the establishment; also indicating the identity of agents where the intermediary intends to use them ;
 - (f) the address in the host Member State from which documents may be obtained;
 - (g) the name of any person responsible for the management of the establishment or permanent presence.
2. Unless the competent authority of the home Member State has grounds for considering the organisational structure or the financial situation of the insurance or reinsurance intermediary to be inadequate, taking into account the mediation activities envisaged, it shall, within one month of receiving the information referred to in paragraph 1, communicate it to the competent authority of the host Member State, which shall acknowledge the receipt without delay. The home Member State shall inform the insurance or reinsurance intermediary in writing that the information has been received by the host Member State and that the insurance or reinsurance undertaking can commence its business in the host Member State.
3. Where the competent authority of the home Member State refuses to communicate the information to the competent authority of the host Member State, it shall give reasons for its refusal to the insurance or reinsurance intermediary within one month of receiving all the information referred to in paragraph 1.
4. In the event of a change in any of the particulars communicated in accordance with paragraph 1, an insurance or reinsurance intermediary shall give written notice of that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed of that change by the competent authority of the home Member State as soon as is practicable and no later than one month from the date of receipt of the information by the competent authority of the home Member State.

Article 7

Division of competence between home and host Member States

1. If an insurance intermediary's primary place of business is located in another Member State, then the competent authority of that other Member State may agree with the home Member State competent authority to act as if it were the home Member State competent authority with regard to the obligations in chapters VI, VII and VIII of this Directive. In the event of such an agreement, the home Member State competent authority shall notify the insurance intermediary and EIOPA without delay.

2. The competent authority of the host Member State shall assume responsibility for ensuring that the services provided by the establishment within its territory comply with the obligations laid down in Chapters VI and VII and in measures adopted pursuant thereto.

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

3. Where the host Member State has grounds for concluding that an insurance or reinsurance intermediary acting within its territory under the freedom to provide services or through an establishment is in breach of any obligation set out in this Directive it shall refer those findings to the competent authority of the home Member State which shall take the appropriate measures. In cases where, despite measures taken by the competent authority of the home Member State, an insurance or reinsurance intermediary persists in acting in a manner that is clearly prejudicial to the interests of host Member State consumers or the orderly functioning of insurance and reinsurance markets, the insurance or reinsurance intermediary shall be subject to the following measures:

- (a) the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures needed in order to protect consumers and the proper functioning of insurance and reinsurance markets including by preventing the offending insurance or reinsurance intermediaries from initiating any further transactions within its territory; the competent authority of the host Member State shall inform the Commission of such measures without undue delay;

- (b) the competent authority of the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010; in that case, EIOPA may act in accordance with the powers conferred on it by that Article in cases of a disagreement between the competent authorities of the host and home Member States.

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

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

- (a) the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate

measures needed in order to protect consumers and the proper functioning of the markets including by preventing the offending insurance or reinsurance intermediaries from initiating any further transactions within its territory; the competent authority of the host Member State shall inform the Commission of such measures without undue delay;

- (b) the competent authority of the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010; in that case, EIOPA may act in accordance with the powers conferred on it by that Article in cases of a disagreement between the competent authorities of the host and home Member States.

CHAPTER V

OTHER ORGANISATIONAL REQUIREMENTS

↓ 2002/92/EC
⇒ new

Article 48
Professional ⇒ and organisational ⇐ requirements

↓ 2002/92/EC
⇒ new

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 update their knowledge and ability through continuing professional development in order to maintain an adequate level of performance.

~~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~~ ⊗ in ⊗ 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.

↓ 2002/92/EC (adapted) ⇒ new

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.

↓ 2002/92/EC (adapted) ⇒ new

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. ⇒ EIOPA shall review ⇐ 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.~~

EIOPA shall develop draft regulatory standards which adapt the base amount in euro referred to in paragraphs 3 and 4 by the percentage change in that Index over the period between the entry into force of this Directive and the first review date or between the last review date and the new review date and rounded up to the nearest euro.

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

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

↓ new

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 33. Those delegated acts shall specify

- (a) the notion of adequate knowledge and ability of the intermediary when carrying on insurance mediation with its customers as referred to in paragraph 1 of this Article;
- (b) appropriate criteria for determining in particular the level of professional qualifications, experiences and skills required for carrying on insurance mediation;
- (c) the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to update their knowledge and ability through continuing professional development in order to maintain an adequate level of performance.

↓ 2002/92/EC

~~Article 5~~

~~Retention of acquired rights~~

~~Member States may provide that those persons who exercised a mediation activity before 1 September 2000, who were entered in a register and who had a level of training and~~

experience similar to that required by this Directive, shall be automatically entered in the register to be created, once the requirements set down in Article 4(3) and (4) are complied with.

↓ new

Article 9

Publication of general good rules

1. Member States shall take the necessary steps to ensure appropriate publication by their competent authorities of the relevant national legal provisions protecting the general good which are applicable to the carrying on of insurance and reinsurance mediation business in their territories.
 2. A Member State which proposes to apply and applies provisions regulating insurance intermediaries and the sale of insurance products in addition to those set out in this Directive shall ensure that the administrative burden stemming from these provisions is proportionate for consumer protection. The Member State shall continue to monitor these provisions to ensure they remain so.
 3. EIOPA shall present a standardised information sheet for general good rules to be completed by the competent authorities in each Member State. It shall include the hyperlinks to the websites of competent authorities where information on general good rules is published. Such information shall be updated by the national competent authorities on a regular basis and EIOPA shall make this information available on its website in the English, French and German languages, with all national general good rules categorised into different relevant areas of law.
 4. Member States shall establish a single point of contact responsible for providing information on general good rules in their respective Member State. Such a point of contact should be an appropriate competent authority.
 5. EIOPA shall examine in a report and inform the Commission about the general good rules published by Member States as referred to in this Article in the context of the proper functioning of this Directive and the Internal Market before X X 20XX [three years after the entry into force of the Directive].
-

↓ 2002/92/EC

Article ~~7~~10

Competent authorities

1. Member States shall designate the competent authorities empowered to ensure implementation of this Directive. They shall inform the Commission thereof, indicating any division of those duties.

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

↓ new

~~Article 8~~

~~Sanctions~~

~~1. Member States shall provide for appropriate sanctions in the event that a person exercising the activity of insurance or reinsurance mediation is not registered in a Member State and is not referred to in Article 1(2).~~

~~2. Member States shall provide for appropriate sanctions against insurance or reinsurance undertakings which use the insurance or reinsurance mediation services of persons who are not registered in a Member State and who are not referred to in Article 1(2).~~

~~3. Member States shall provide for appropriate sanctions in the event of an 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 must be properly justified and communicated to the intermediary concerned. Every such measure shall be subject to the right to apply to the courts in the Member State which adopted it.~~

↓ 2002/92/EC (adapted)
⇒ new

~~Article 9~~11

Exchange of information between Member States

1. The competent authorities of the various Member States shall cooperate in order to ensure the proper application of the provisions of this Directive.

2. The competent authorities shall exchange information on insurance and reinsurance intermediaries if they have been subject to a sanction referred to in ~~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~~12 *Complaints*

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

↓ 2002/92/EC

Article ~~11~~13 *Out-of-court redress*

↓ 2002/92/EC (adapted)
☒ new

1. Member States shall ~~encourage~~ ☒ ensure ☒ the setting-up of appropriate, ~~and~~ effective, ☒ impartial and independent ☒ complaints and redress procedures for the out-of-court settlement of disputes between insurance intermediaries and customers, ☒ and between insurance undertakings and customers, ☒ using existing bodies where appropriate. ☒ Member States shall further ensure that all insurance undertakings and insurance intermediaries participate in the procedures for the out-of-court settlement of disputes where the following conditions are met:
 - (a) the procedure results in decisions which are not binding;
 - (b) [the running of] the limitation period for bringing the dispute before a court is suspended for the duration of the procedure for alternative dispute resolution;
 - (c) the period of prescription of the claim is suspended for the duration of the procedure;

- (d) the procedure is free of charge or at moderate costs;
 - (e) electronic means are not the only means by which the parties can gain access to the procedure and;
 - (f) interim measures are possible in exceptional cases where the urgency of the situation so requires. ⇐
2. Member States shall ~~encourage~~ ☒ ensure that ☒ these bodies ~~to~~ cooperate in the resolution of cross-border disputes.

Article 16-14

~~Transposition~~

☒ Restriction on use of intermediaries ☒

↓ 2002/92/EC (adapted)

⇒ new

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 ~~and~~ ☒ 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

↓ 2002/92/EC (adapted)

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

↓ new

Article 15

General principle

1. Member States shall require that, when carrying out insurance mediation with or for customers, an insurance intermediary or insurance undertaking acts honestly, fairly and professionally in accordance with the best interests of its customers.
2. All information, including marketing communications, addressed by the insurance intermediary or insurance undertaking to customers or potential customers shall be

fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.

↓ 2002/92/EC
⇒ new

Article ~~12~~16
⇒ General ⇌ information provided by the insurance intermediary ⇌ or insurance undertaking ⇌

↓ new

Member States shall lay down rules ensuring that

- (a) prior to the conclusion of any insurance contract, an insurance intermediary - including tied ones- shall make the following disclosures to customers:
 - (i) its identity and address and that it is an insurance intermediary;
 - (ii) whether or not it provides any type of advice about the insurance products sold;

↓ 2002/92/EC

- (~~eiii~~) the procedures referred to in Article ~~10~~ 12 allowing customers and other interested parties to register complaints about insurance and reinsurance intermediaries and, ~~if appropriate,~~ about the out-of-court complaint and redress procedures referred to in Article ~~11~~, 13;

↓ new

- (iv) the register in which it has been included and the means for verifying that it has been registered; and
 - (v) whether the intermediary is representing the customer or is acting for and on behalf of the insurance undertaking;
- (b) prior to the conclusion of any insurance contract, an insurance undertaking shall make the following disclosures to customers:
 - (i) its identity and address and that it is an insurance undertaking;
 - (ii) whether or not it provides any type of advice about the insurance products sold;

- (iii) the procedures referred to in Article 12 allowing customers and other interested parties to register complaints about insurance undertakings and about the out-of-court complaint and redress procedures referred to in Article 13.

↓ 2002/92/EC (adapted)

Article 17

⊗ Conflicts of interest and transparency ⊗

↓ 2002/92/EC (adapted)

⇒ new

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

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

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

~~(ea)~~ whether ~~he~~ ⊗ it ⊗ has a holding, direct or indirect, representing more than 10% of the voting rights or of the capital in a given insurance undertaking;

~~(eb)~~ 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;

↓ 2002/92/EC (adapted)

⇒ new

~~(c) In addition, an insurance intermediary shall inform the customer, concerning~~ ⇒ in relation ⇐ to the contract ~~that is provided~~ ⊗ proposed ⊗, whether:

(i) ~~he~~ ⊗ it ⊗ gives advice ~~based on the obligation in paragraph 2 to provide~~ ⊗ on the basis of ⊗ a fair analysis, or

↓ 2002/92/EC (adapted)

(ii) ~~he~~ ⊗ it ⊗ is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. In that case, it shall, ~~at the customer's request,~~ provide the names of those insurance undertakings, or

- (iii) ~~he~~ ☐ it ☐ is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice ~~based on the obligation in paragraph 2 to provide~~ ☐ on the basis of ☐ a fair analysis. In that case, it shall, ~~at the customer's request,~~ provide the names of the insurance undertakings with which it may and does conduct business ~~=~~ ☐ ; ☐

~~In those cases where information is to be provided solely at the customer's request, the customer shall be informed that he has the right to request such information.~~

↓ new

- (d) the nature of the remuneration received in relation to the insurance contract;
- (e) whether in relation to the insurance contract, it works:
- (i) on the basis of a fee, that is the remuneration paid directly by the customer; or
- (ii) on the basis of a commission of any kind, that is the remuneration included in the insurance premium; or
- (iii) on the basis of a combination of both (i) and (ii);
- (f) if the intermediary will receive a fee or a commission of any kind, the full amount of the remuneration concerning the insurance products being offered or considered or, where the precise amount is not capable of being given, the basis of calculation of all the fee or commission or the combination of both;
- (g) if the amount of the commission is based on the achievement of agreed targets or thresholds relating to the business placed by the intermediary with an insurer, the targets or thresholds as well as the amounts payable on the achievement of them.
2. By derogation from paragraph 1 (f) for five years from the date on which this Directive comes into force, the intermediary of insurance contracts other than contracts in any of the classes specified in Annex I of Directive 2002/83/EC, shall, prior to the conclusion of any such insurance contract, if the intermediary is to be remunerated by a fee or commission,
- (a) provide the customer with the amount or, where the precise amount is not capable of being given, the basis of calculation of the fee or commission or the combination of both, if the customer so requests.
- (b) inform the customer of his right to request the information referred to in point (a).
3. The insurance undertaking or insurance intermediary shall also inform the customer about the nature and the basis of the calculation of any variable remuneration

received by any employee of theirs for distributing and managing the insurance product in question.

4. If any payments are made by the customer under the insurance contract after its conclusion, the insurance undertaking or intermediary shall also make the disclosures in accordance with this Article for each such payment.
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 33. Those delegated acts shall specify:
 - (a) appropriate criteria for determining how the remuneration of the intermediary - including contingent commission - shall be disclosed to the customer as referred to in paragraph 1 (f) and (g) and paragraph 2 of this Article;
 - (b) appropriate criteria for determining in particular the basis of calculation of all the fee or commission or the combination of both;
 - (c) the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to disclose their remuneration to the customer.

↓ 2002/92/EC (adapted)
⇒ new

Article ~~12~~18

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

- ~~31.~~ Prior to the conclusion of any specific contract, the insurance intermediary ⇐ – including tied ones – or insurance undertaking ⇐ shall ~~at least specify~~ ⇐ identify ⇐, in particular on the basis of information provided by the customer:
 - (a) the demands and the needs of that customer; ~~as well as~~
 - (b) ⇐ and shall specify to the customer ⇐ the underlying reasons for any advice ~~given~~ to the customer on a ~~given~~ ⇐ specified ⇐ insurance product ⇐, if given ⇐.
- ~~32.~~ These details ⇐ referred to in points (a) and (b) of paragraph 1 ⇐ shall be modulated according to the complexity of the insurance ~~contract~~ ⇐ product ⇐ being proposed ⇐ and the level of financial risk to the customer ⇐.

↓ 2002/92/EC (adapted)
⇒ new

- ~~33.~~ When the insurance intermediary ⇐ or the insurance undertaking ⇐ informs the customer that ~~he~~ ⇐ it ⇐ gives ~~his~~ ⇐ its ⇐ advice on the basis of a fair analysis, ~~he~~ ⇐ it ⇐ is obliged to give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable ~~him~~ ⇐ it ⇐

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

↓ new

4. Prior to the conclusion of a contract, whether or not advice is given, the insurance intermediary or insurance undertaking shall give the customer the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision, while taking into account the complexity of the insurance product and the type of customer.

↓ 2002/92/EC (adapted)
⇒ new

Article ~~12~~ 19

⇒ Information exemptions and flexibility clause ⇐

41. The information referred to in ~~paragraphs 1, 2 and 3~~ ⇐ Articles 16, 17 and 18 ⇐ need not be given when the insurance intermediary or insurance undertaking mediates in the insurance of large risks, ~~nor~~ in the case of mediation by reinsurance intermediaries ⇐ or reinsurance undertakings, or in relation to professional customers as specified in the Annex ⇐.
52. Member States may maintain or adopt stricter provisions regarding the information requirements referred to in ~~paragraph 1~~ ⇐ Articles 16, 17 and 18 ⇐ provided that such provisions comply with ~~Community~~ ⇐ Union ⇐ law. Member States shall communicate to ⇐ EIOPA and ⇐ the Commission ~~the~~ ⇐ such ⇐ national provisions ~~set out in the first subparagraph.~~
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, ~~and~~ insurance intermediaries ⇐ and insurance undertakings ⇐.

↓ 2002/92/EC (adapted)
⇒ new

Article ~~13~~ 20

Information conditions

1. All information to be provided ~~to customers~~ in accordance with Articles ~~12~~ ⇐ 16, 17 and 18 ⇐ shall be communicated ⇐ to the customers ⇐ :
- (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 ⇩

↓ 2002/92/EC

⇨ new

- (c) in an official language of the Member State ⇨ in which the risk is situated or the Member State ⇩ of the commitment or in any other language agreed by the parties. ⇨ It shall be provided free of charge. ⇩
-

↓ new

2. By way of derogation from paragraph 1(a), the information referred to in Articles 16, 17 and 18 may be provided to the customer in one of the following media:

(a) using a durable medium other than paper, where the conditions laid down in paragraph 4 are met; or

(b) by means of a website where the conditions laid down in paragraph 5 are met.

3. However, where the information referred to in Articles 16, 17 and 18 is provided using a durable medium other than paper or by means of a website, a paper copy shall be provided to the customer upon request and free of charge.

4. The information referred to in Articles 16, 17 and 18 may be provided using a durable medium other than paper if the following conditions are met:

(a) the use of the durable medium is appropriate in the context of the business conducted between the intermediary or insurance undertaking and the customer; and

(b) the customer has been given the choice between information on paper and the durable medium, and has chosen that other medium.

5. The information referred to in Articles 16, 17 and 18 may be provided by the means of a website if it is addressed personally to the customer or if the following conditions are met:

(a) the provision of the information referred to in Articles 16, 17 and 18 by means of a website is appropriate in the context of the business conducted between the intermediary or insurance undertaking and the customer;

(b) the customer has consented to the provision of the information referred to in Articles 16, 17 and 18 by means of a website;

(c) the customer has been notified electronically of the address of the website, and the place on the website where the information referred to in Articles 16, 17 and 18 can be accessed;

(d) it is ensured that the information referred to in Articles 16, 17 and 18 remains accessible on the website for such period of time as the customer reasonably need to consult it.

6. For the purposes of paragraph 4 and 5, the provision of information using a durable medium other than paper or by means of a website shall be regarded as appropriate in the context of the business conducted between the intermediary or insurance undertaking and the customer, if there is evidence that the customer has regular access to the Internet. The provision by the customer of an e-mail address for the purposes of that business shall be regarded as such evidence.

↓ 2002/92/EC (adapted)

⇒ new

7. 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 21

Cross-selling

1. Member States shall allow bundling practices but not tying practices.
2. When an insurance service or product is offered together with another service or product as a package, the insurance undertaking or, where applicable, the insurance intermediary shall offer and inform the customer that it is possible to buy the components of the package separately and shall provide information of the costs and charges of each component of the package that may be bought through or from it separately.
3. 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 16, 17 and 18 or paragraph 1 of this Article.

CHAPTER VII

ADDITIONAL CUSTOMER PROTECTION REQUIREMENTS IN RELATION TO INSURANCE INVESTMENT PRODUCTS

Article 22

Scope

This Chapter applies additional requirements to insurance mediation, when carried on in relation to the sale of insurance investment products by:

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

Article 23

Conflicts of interest

1. Member States shall require insurance intermediaries and insurance undertakings to take all appropriate steps to identify conflicts of interest between themselves, including their managers, employees and tied insurance intermediaries, or any person directly or indirectly linked to them by control and their customers or between one customer and another that arise in the course of carrying on insurance mediation.
2. Where steps taken by the insurance intermediary or insurance undertaking in compliance with Articles 15, 16 and 17 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 or sources of conflicts of interest to the customer before undertaking business on the customer's behalf.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 to specify :
 - (a) the steps and effective organisational and administrative arrangements 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) appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers of the insurance intermediary or insurance undertaking.

Article 24

General principles and information to customers

1. Member States shall require that, when carrying out insurance mediation with or for customers, an insurance intermediary or insurance undertaking acts honestly, fairly and professionally in accordance with the best interests of its customers and complies, in particular, with the principles set out in this Article and in Article 25.
2. All information, including marketing communications, addressed by the insurance intermediary or insurance undertaking to customers or potential customers shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such.
3. Appropriate information shall be provided to customers or potential customers about:
 - (a) the insurance intermediary or insurance undertaking and its services. When advice is provided, information shall specify whether the advice is provided on an independent basis and whether it is based on a broad or on a more restricted analysis of the market and shall indicate whether the insurance intermediary or insurance undertaking will provide the customer with the on-going assessment of the suitability of the insurance product recommended to the customer;
 - (b) insurance products and proposed investment strategies. This should include appropriate guidance on and warnings of the risks associated with investments in those products or in respect of particular investment strategies; and
 - (c) costs and associated charges.
4. The information referred to in this Article should be provided in a comprehensible form in such a manner that the customers or potential customers are reasonably able to understand the nature and risks of the specific insurance product that is being offered and, consequently, to take investment decisions on an informed basis. This information may be provided in a standardised format.
5. When the insurance intermediary or insurance undertaking informs the customer that insurance advice is provided on an independent basis, the insurance intermediary or insurance undertaking shall:
 - (a) assess a sufficiently large number of insurance products available on the market. The insurance products should be diversified with regard to their type and issuers or product providers and should not be limited to insurance products issued or provided by entities having close links with the insurance intermediary or insurance undertaking; and
 - (b) not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to customers.
6. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 concerning measures to ensure that insurance intermediaries and insurance undertakings comply with the principles set out in this Article when carrying on insurance mediation with their customers. Those delegated acts shall specify:

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

Article 25

Assessment of suitability and appropriateness and reporting to customers

1. When providing 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, as well as regarding the customer's or potential customer's financial situation and his investment objectives, on the basis of which the insurance intermediary or insurance undertaking should recommend the insurance products that are suitable for the customer or potential customer.
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 the customer's or potential customer's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the insurance intermediary or insurance undertaking to assess whether the insurance service or product envisaged is appropriate for the customer.

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

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

3. The insurance intermediary or insurance undertaking shall establish a record that includes a document or documents such as a contract which has been agreed between the insurance intermediary or insurance undertaking and the customer that set out the rights and obligations of the parties, and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.
4. The customer must receive from the insurance intermediary or insurance undertaking 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 delegated acts in accordance with Article 33 to ensure that insurance intermediaries and insurance undertakings comply with the principles set out in this Article when carrying on insurance mediation with their customers. Those delegated acts shall specify :
 - (a) the nature of the service(s) offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions;
 - (b) the nature of the products being offered or considered including different types of insurance products.

CHAPTER VIII

SANCTIONS AND MEASURES

Article 26

Administrative sanctions and measures

1. Member States shall ensure that their administrative sanctions and measures are effective, proportionate and dissuasive.
2. Member States shall ensure that where obligations apply to insurance or reinsurance undertakings or insurance or reinsurance intermediaries, in case of a breach, administrative sanctions and measures can be applied to the members of their management body, and any other natural or legal persons who, under national law, are responsible for a breach.
3. The competent authorities shall be given all investigatory powers that are necessary for the exercise of their functions. In the exercise of their sanctioning powers, the competent authorities shall cooperate closely to ensure that sanctions or measures produce the desired results and coordinate their action when dealing with cross border cases.

Article 27

Publication of sanctions

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

cause a disproportionate damage to the parties involved, the competent authorities shall publish the sanctions on an anonymous basis.

Article 28

Breaches

1. This article shall apply to the following:

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

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

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

where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year;

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

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

Article 29

Effective application of sanctions

1. Member States shall ensure that when determining the type of administrative sanctions or measures and the level of administrative pecuniary sanctions, the competent authorities shall take into account all relevant circumstances, including:
 - (a) the gravity and the duration of the breach;
 - (b) the degree of responsibility of the responsible natural or legal person;
 - (c) the financial strength of the responsible natural or legal person, as indicated by the total turnover of the responsible legal person or the annual income of the responsible natural person;
 - (d) the importance of profits gained or losses avoided by the responsible natural or legal person, insofar as they can be determined;
 - (e) the losses for third parties caused by the breach, insofar as they can be determined;
 - (f) the level of cooperation of the responsible natural or legal person with the competent authority; and
 - (g) previous breaches by the responsible natural or legal person.
2. EIOPA shall issue guidelines addressed to the competent authorities in accordance with Article 16 of Regulation No (EU) 1094/2010 on the types of administrative measures and sanctions and level of administrative pecuniary sanctions.
3. This Directive shall not affect the power of the host Member States to take appropriate measures to prevent or to penalise irregularities committed within their territories which are contrary to legal or regulatory provisions adopted in the interest of the general good. This shall include the possibility of preventing offending insurance or reinsurance intermediaries from initiating any further activities within their territories.

Article 30
Reporting of breaches

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

Article 31
Submitting information to EIOPA in relation to sanctions

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

EIOPA shall publish this information in an annual report.

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

EIOPA shall submit those draft implementing technical standards to the Commission by [XX/ insert concrete date 6 months after entry into force/application of this Directive].

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

CHAPTER ~~IV~~ IX

FINAL PROVISIONS

~~Article 14~~

~~Right to apply to the courts~~

~~Member States shall ensure that decisions taken in respect of an insurance intermediary, reinsurance intermediary or an insurance 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.~~

Article 32

Data Protection

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

Article 33

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 34 concerning Articles 8, 17, 23, 24 and 25.

Article 34

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 8, 17, 23, 24 and 25 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.
3. The delegation of powers referred to in Articles 8, 17, 23, 24 and 25 may be revoked at any time by the European Parliament or by the Council. A decision of revocation

shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 8, 17, 23, 24 and 25 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 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.

Article 35

Review and evaluation

1. Five years after the entry into force of this Directive, the Commission shall review this Directive. The review shall include a general survey of the practical application of rules laid down in this Directive taking due account of developments in the retail investment products markets as well as experiences acquired in practical application of this Directive and Regulation on key information documents for investment products and [MIFID II]. The review shall reflect on a possible application of the provisions of this Directive to products falling under the scope of Directive 2003/41/EC. This review shall also include a specific analysis of the impact of Article 17(2), taking into account the situation of competition on the market of intermediation services for contracts other than contracts in any of the classes specified in Annex I of Directive 2002/83/EC and the impact of the obligations referred to in Article 17(2) on insurance intermediaries which are small and medium sized enterprises.
2. After consulting the Joint Committee of European Supervisory Authorities, the Commission shall submit a first report to the European Parliament and the Council.
3. By X X 20XX [four years after the entry into force of the Directive], and at least on a two-year basis thereafter, EIOPA shall prepare a second report on the application of this Directive. EIOPA shall consult ESMA before making public its report.
4. In a third report to be prepared by X X 20XX [two years after the entry into force of the Directive], EIOPA shall undertake an evaluation of the structure of insurance intermediaries' markets.
5. A report to be prepared by EIOPA by X X 20XX [four years after the entry into force of the Directive] as referred to in paragraph 3 shall examine whether the competent authorities referred to in Article 10(1) are sufficiently empowered and have adequate resources to carry out their tasks.
6. The report referred to in paragraph 3 shall examine at least the following issues:

- (a) the changes in the insurance intermediaries' market structure;
- (b) the changes in the patterns of cross-border activity;
- (c) an interim assessment on the improvement of quality of advice and selling methods and the impact of this Directive on insurance intermediaries which are small and medium-sized enterprises .

7. That same report shall also include an evaluation by EIOPA of the impact of this Directive.

↓ 2002/92/EC (adapted)
⇒ new

Article 16 Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with ~~this Directive before 15 January 2005~~ ⇒ Articles [1-39] and Annex I of the Directive by [date] at the latest ⇐. They shall forthwith ~~inform~~ ⇐ communicate to ⇐ the Commission ~~thereof~~ ⇒ the text of those provisions ⇐.

~~These measures~~ ⇒ When Member States adopt those provisions, they ⇐ shall contain a reference to this Directive or ~~shall~~ be accompanied by such a reference on the occasion of their official publication. ⇒ They shall also include a statement that references in existing laws, regulations and administrative provisions to the directive repealed by this Directive shall be construed as references to this Directive ⇐ ~~The methods of making~~ ⇒ Member States shall determine how ⇐ such reference ~~shall be laid down by the Member States~~ ⇒ is to be made and how that statement is to be formulated ⇐.

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

Article 15 Repeal

Directive ~~77/92/EEC~~ ⇐ 2002/92/EC ⇐ is ~~hereby~~ repealed with effect from [date of adoption 20XX] ~~the date referred to in Article 16(1)~~ ⇒ , without prejudice to the obligations of the Member States relating to the time-limit for transposition into national law of that Directive. ⇐

↓ new

References to the repealed Directive shall be construed as references to this Directive.

↓ 2002/92/EC (adapted)
⇒ new

Article ~~17~~¹⁷³⁸
Entry into force

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

↓ 2002/92/EC

Article ~~18~~¹⁸³⁹
Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

For the European Parliament

For the Council

ANNEX I

PROFESSIONAL CUSTOMERS

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

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

transactions. The entities mentioned above are considered to be professionals. They must however be allowed to request non-professional treatment and firms may agree to provide a higher level of protection. Where the customer of a firm is an undertaking referred to above, the firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the customer is deemed to be a professional customer, and will be treated as such unless the firm and the customer agree otherwise. The firm must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

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

ANNEX II

EXPLANATORY DOCUMENTS

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

With regard to this Directive, the Commission considers the transmission of such documents to be justified for the following reasons:

Complexity of the Directive and of the sector concerned:

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

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

Consistency and interrelation with other initiatives:

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

The new IMD would continue to have the features of a "minimum harmonisation" legal instrument. This means that Member States may decide to go further if necessary for the purposes of consumer protection. However, the minimum standards of IMD will be raised significantly. Some parts of the new Directive will be reinforced by Level 2 measures in order to align the rules with MiFID II: in particular, in the chapter regulating the distribution of life insurance policies with investment elements (hereafter: insurance investments - see below). This aims to harmonise the sales of investment insurances across the EU through Level 2 measures²⁵. This is an innovation as compared to the text of the original Directive. It is important that the Commission shall be in a position to compare the resulting situations in the various Member States and thus properly carry out its task of overseeing the application of Union law. Moreover, a revision clause is considered in the directive and, in order to be able to collect all relevant information on the functioning of those rules, the Commission will need to be able to monitor their implementation from the outset.

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

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

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

On the basis of the above, the Commission believes that the requirement to provide explanatory documents in the case of the proposed Directive is proportionate and does not go

²⁵

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 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.

beyond what is necessary to achieve the objective to carry out efficiently the task of overseeing accurate transposition.

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned in the ABM/ABB structure

1.3. Nature of the proposal/initiative

1.4. Objective(s)

1.5. Grounds for the proposal/initiative

1.6. Duration and financial impact

1.7. Management method(s) envisaged

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

2.2. Management and control system

2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

3.2. Estimated impact on expenditure

3.2.1. *Summary of estimated impact on expenditure*

3.2.2. *Estimated impact on operational appropriations*

3.2.3. *Estimated impact on appropriations of an administrative nature*

3.2.4. *Compatibility with the current multiannual financial framework*

3.2.5. *Third-party participation in financing*

3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Directive of the European Parliament and of the Council on Insurance Mediation (IMD2) repealing the Directive 2002/92/EC on Insurance Mediation (IMD1)

1.2. Policy area(s) concerned in the ABM/ABB structure²⁶

Internal Market – Financial markets

1.3. Nature of the proposal/initiative

☒ The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to a new action following a pilot project/preparatory action²⁷

☐ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to an action redirected towards a new action

1.4. Objectives

1.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

to increase the safety and the efficiency of the financial markets; to boost the internal market for financial services.

1.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

to create a level playing field; to reduce conflicts of interest; to improve advice for complex products; to reduce the burden for cross-border entry.

²⁶ ABM: Activity-Based Management – ABB: Activity-Based Budgeting.

²⁷ As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The proposal aims at: extending the scope of application of IMD to all distribution channels; identifying, managing and mitigating conflicts of interest; raising the level of harmonisation of administrative sanctions for infringements of sales rules; enhancing the suitability and the objectiveness of advice; ensuring sellers' professional qualifications match the complexity of products sold; simplifying and approximating the procedure for cross-border entry to markets across the EU.

1.4.4. Indicators of results and impact

Specify the indicators for monitoring implementation of the proposal/initiative.

Reports should be prepared on consumer protection; progress made in achieving undistorted competition; developments on cross-border business, impact of the proposed measures on insurance markets.

1.5 Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

As a result of the application of the revised Directive in Member States:

- The new rules would broaden consumer choice and quality of service received.
- Improved information and increased transparency are likely to lead to better competition and benefit efficient intermediaries.
- The authorisation and supervision of insurance intermediaries and other sellers of insurance products would be harmonised and the coordination between national supervisors would be improved.
- All sellers of insurance products operating in the EU would be regulated appropriately, taken into account proportionality and the need of SMEs.
- Professional qualifications for all sellers of insurances will match the complexity of the product sold.
- More cross-border entry is predicted.
- Sanctioning regime would be increased by creating an appropriate and harmonised framework to prevent and address key violations of the Directive.

1.5.2. Added value of EU involvement

1) A regulatory patchwork can lead to increased administrative costs and regulatory arbitrage.

2) A lack of action at EU level will likely result in an increase in the number of cases of mis-selling of insurance products.

1.5.3. Lessons learned from similar experiences in the past

Sale practices of pure investment products are already regulated by the Market in Financial Instruments Directive (MiFID), while those substitutable investment-based insurances will also be regulated in a similar manner at EU level once the IMD 2 proposal is approved. MiFID has resulted in more competition between financial instruments, more choice for investors and better consumer protection rules.

1.5.4. Coherence and possible synergy with other relevant instruments

The proposed review of the IMD follows the reform programme proposed by the European Commission in its Communication Driving European Recovery, the 'Europe 2020 Strategy' for smart, sustainable and inclusive growth. It is also coherent and consistent with the PRIPs initiative, MiFID II proposal and Solvency II.

1.6 Duration and financial impact

☒ Proposal/initiative of **limited duration**²⁸

– ☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

– X Financial impact from 2014 to 2016

☐ Proposal/initiative of **unlimited duration**

– Implementation with a start-up period from YYYY to YYYY,

– followed by full-scale operation.

1.7. Management mode(s) envisaged²⁹

☐ Centralised direct management by the Commission

☐ **Centralised indirect management** with the delegation of implementation tasks to:

– ☐ executive agencies

– ☒ bodies set up by the Communities³⁰

– ☐ national public-sector bodies/bodies with public-service mission

– ☐ persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation

☐ **Shared management** with the Member States

☐ Decentralised management with third countries

☐ Joint management with international organisations (*to be specified*)

If more than one management mode is indicated, please provide details in the "Comments" section.

Comments

--

²⁸ The proposal is of unlimited duration but after the initial 3 years period (during which EIOPA has more one-off tasks) EIOPA's permanent new tasks should be ensured by means of redeployment.

²⁹ Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

³⁰ As referred to in Article 185 of the Financial Regulation.

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

Article 81 of the draft Regulation establishing the European Insurance and Occupational Pension Authority (EIOPA) provides for the evaluation of the experience acquired at a result of the operation of EIOPA within three years from the effective start of its operation. To this end, the Commission will publish a general report that will be forwarded to the European Parliament and to the Council.

2.2. Management and control system

2.2.1. Risk(s) identified

The additional resource to EIOPA foreseen as a result of the current proposal is needed in order to allow EIOPA to carry out its competences and notably its role in:

- Establishing, publishing and keeping up to date a single electronic register;
- Ensuring harmonisation and coordination of rules of the IMD 2 by drafting regulatory standards;
- Reinforcing and ensuring consistent application of national regulatory powers by issuing guidelines and by drafting implementing technical standards;
- Gathering and publishing information in relation to sanctions and general good rules;
- Monitoring and evaluation of the proposal (3 reports).

The lack of this resource could not ensure a timely and efficient fulfilment of the role of EIOPA.

2.2.2. Control method(s) envisaged

Management and control systems as provided for in the EIOPA Regulation will apply also with regard to the role of EIOPA according to the present proposal.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) shall apply to the EIOPA without any restriction.

EIOPA shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-

Fraud Office (OLAF) and shall immediately adopt appropriate provisions for all EIOPA staff.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description.....]	Diff./non-diff. (31)	from EFTA ³² countries	from candidate countries ³³	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
	12.0403.01 [EIOPA – Subsidy under Titles 1 and 2 (Staff and administrative expenditure)]	Diff.	YES	NO	NO	NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

³¹ Diff. = Differentiated appropriations / Non-diff. = Non-Differentiated Appropriations

³² EFTA: European Free Trade Association.

³³ Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

Heading of multiannual financial framework:	Number	Competitiveness for Growth and Employment
--	---------------	--

DG: MARKT			Year 2014 ³⁴	Year 2015	Year 2016		... enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
• Operational appropriations										
12.0404.01	Commitments	(1)	0,302	0,271	0,271					0,844
	Payments	(2)	0,302	0,271	0,271					0,844
Appropriations of an administrative nature financed from the envelope for specific programmes ³⁵										
Number of budget line		(3)								
TOTAL appropriations for DG MARKT	Commitments	=1+1a +3	0,302	0,271	0,271					0,844
	Payments	=2+2a +3	0,302	0,271	0,271					0,844

³⁴ Year N is the year in which implementation of the proposal/initiative starts.

³⁵ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)	0,302	0,271	0,271					0,844
	Payments	(5)	0,302	0,271	0,271					0,844
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADING 1A of the multiannual financial framework	Commitments	=4+ 6	0,302	0,271	0,271					0,844
	Payments	=5+ 6	0,302	0,271	0,271					0,844

Comments:

After the initial 3 years period (2014-2016), during which EIOPA will have more one-off tasks, the situation will have to be reassessed in order to set the appropriate level of human resources actually needed to fulfil the tasks covered by this Directive and examine possible redeployment.

The operational appropriations above are related to the specific tasks allocated to EIOPA according to the proposal:

1) Tasks related to establishing, publishing and keeping up to date a single electronic database

EIOPA should establish, publish and keep up to date a single electronic database containing a record of each insurance and reinsurance intermediary which has notified an intention to exercise its freedom of establishment or to provide services. Member States shall provide relevant information to EIOPA to enable it to manage such a register. This register should also show a hyperlink to each Member State's competent authority.

2) Tasks related to harmonisation and coordination of rules of the IMD 2 by drafting standards (5 delegated acts and permanent tasks)

EIOPA should work together to achieve as much consistency as possible in the conduct of business standards for retail investment products that are subject to either MiFID II Directive or to IMD2 Directive.

EIOPA will have to draft five delegated acts regarding

- 1) the content of adequate professional knowledge and ability of the intermediary;
- 2) conflicts of interests linked to the sale of insurance investment products,
- 3) general principles and information to customers in relation to the sale of insurance investment products;
- 4) detailed suitability and appropriateness test for the sale of insurance investment products,
- 5) how the remuneration- including contingent commission - is disclosed to the customer.

Permanent task

EIOPA will also have a number of other permanent tasks, e.g. intervening in case of disagreements between home and host supervisory authorities, particularly in situations when an insurance or reinsurance intermediary is not meeting its obligations when transacting business in the Host Member State.

- 3) Tasks related to consistent application of national regulatory powers by issuing guidelines and by drafting implementing technical standards (1 implementing standard, 2 guidelines, permanent tasks)

EIOPA will have to draft implementing technical standards concerning the procedures and forms for submitting information in relation to administrative measures and sanctions imposed by Member States.

EIOPA will also have to issue guidelines regarding supervision of cross-selling (tying) practices. It will have to issue guidelines on the types of administrative measures, sanctions and the level of administrative pecuniary sanctions.

- 4) Tasks related to gathering and publishing information (repository and permanent tasks)

EIOPA will have to present a standardised information sheet for general good rules to be completed by the competent authorities in each Member State.

It will also have some *permanent tasks*:

EIOPA will have to collect and publish information about general good rules. It will have to ensure that information it receives relating to stricter national provisions on information requirements and conflicts of interests is communicated to insurance undertakings, intermediaries and consumers. It shall publish information on sanction in its annual report as well.

5) Tasks related to the monitoring and evaluation of the proposal (3 reports)

EIOPA will have to produce two reports on the application of this Directive (one is after 4 year of the entry into force, the other one is after 6 years). In these reports, EIOPA shall undertake an evaluation of the structure of insurance intermediaries' markets. EIOPA shall examine whether the competent authorities are sufficiently empowered and have adequate resources to carry out their tasks. EIOPA will have to examine in a separate report whether the existing general good rules comply with the aim of the Internal Market.

Heading of multiannual financial framework:	5	" Administrative expenditure "
--	----------	--------------------------------

EUR million (to 3 decimal places)

		Year 2014	Year 2015	Year 2016					TOTAL
DG:MARKT									
• Human resources		0	0	0					
• Other administrative expenditure		0	0	0					
TOTAL DG MARKT	Appropriations	0	0	0					

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	0	0	0					
--	--------------------------------------	---	---	---	--	--	--	--	--

EUR million (to 3 decimal places)

		Year 2014 ³⁶	Year 2015	Year 2016					TOTAL
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	0,302	0,271	0,271					0,844
	Payments	0,302	0,271	0,271					0,844

³⁶ Year N is the year in which implementation of the proposal/initiative starts.

3.2.2. *Estimated impact on operational appropriations*

- ☐ The proposal/initiative does not require the use of operational appropriations
- ☒ The proposal/initiative requires the use of operational appropriations, as explained below:

The specific objectives of the proposal are set out under 1.4.2. They will be reached through the legislative measures proposed, to be implemented at national level, and through the involvement of EIOPA. While it is not possible to attribute concrete numerical outputs to each operational objective, EIOPA's role and its contribution to the objectives of the proposal are described in detail in section 3.2.1.

3.2.3. *Estimated impact on appropriations of an administrative nature*

3.2.3.1. Summary

- ☒ The proposal/initiative does not require the use of administrative appropriations
- ☐ The proposal/initiative requires the use of administrative appropriations, as explained below:

3.2.3.2. Estimated requirements of human resources

- ☒ The proposal/initiative does not require the use of human resources
- ☐ The proposal/initiative requires the use of human resources, as explained below:

Comment:

No additional human and administrative resources will be needed in DG MARKT as a result of the proposal. Resources currently deployed to follow directive 2002/92/EC will continue to do so.

3.2.4. Compatibility with the current multiannual financial framework

- ☒ Proposal/initiative is compatible with the proposed MFF 2014-2020 ☐ Proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

The proposal provides for extra tasks to be carried out by EIOPA. This will require additional resources under budget line 12.0403.01. This is already included in the proposed multiannual financial framework 2014-2020.

- ☐ Proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework³⁷.

3.2.5. Third-party contributions

- ☐ The proposal/initiative does not provide for co-financing by third parties
- ☒ The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year 2014	Year 2015	Year 2016					Total
Member States via EU national supervisors *	0,452	0,407	0,407					1,266
TOTAL appropriations cofinanced	0,452	0,407	0,407					1,266

* Estimation based on current financing mechanism in EIOPA regulation (Member States 60%, Community 40%)

³⁷ See points 19 and 24 of the Interinstitutional Agreement.

3.3. Estimated impact on revenue

- ☒ Proposal/initiative has no financial impact on revenue.
- ☐ Proposal/initiative has the following financial impact:
 - ☐ on own resources
 - ☐ on miscellaneous revenue

Annex to the Legislative Financial Statement for a proposal for Directive of the European Parliament and of the Council on Insurance Intermediaries and the Sale of Insurance Products repealing the Directive 2002/92/EC on insurance mediation (IMD)

The costs related to tasks to be carried out by EIOPA have been estimated for staff expenditure (Title 1), in conformity with the cost classification in the EIOPA draft budget for 2012 submitted to the Commission. The proposal of the Commission includes provisions for EIOPA to develop and draft 5 delegated acts and 1 implementing technical standard. In addition, EIOPA will also have to develop 2 guidelines, mainly to ensure cooperation between authorities and 3 reports to monitor and evaluate the effectiveness of the Directive, will hold the register of intermediaries who intend to go cross-border and will have a number of other permanent tasks. It has been assumed that the Directive will enter into force in late 2013, and therefore the additional EIOPA resources are required from 2014. Additional staff has been estimated for the technical standards, guidelines and reports to be produced by EIOPA; and for other permanent tasks. As regards the nature of positions, the successful and timely delivery of new technical standards will require, in particular, additional policy, legal and impact assessment officers.

The following assumptions were applied to assess the impact on number of FTEs required to develop delegated acts, technical standards, guidelines and reports:

1. One policy officer drafts on average 1,5 delegated acts/technical standards a year and the same policy officer can draft the related guidelines or reports. Their jobs will also include tasks related to gathering and publishing information and permanent tasks (see above). This implies that 4 policy officers are needed;
2. One impact assessment officer is needed for the technical standards above;
3. One legal officer is needed for the technical standards and a guideline above.

This means an additional 6 FTEs are needed from 2014.

It was assumed that this increase in FTEs will be maintained in 2015 and 2016 since the standards will most likely be finalised only in 2015 and amendments may be required in 2016.

Other assumptions:

1. Based on the distribution of FTEs in 2012 draft budget, the additional 6 FTEs are assumed to be comprised of 4 temporary agents (74%), 1 seconded national expert (16%) and 1 contractual agent (10%);
2. Average annual salary costs for different categories of personnel are based on DG BUDG guidance;
3. Salary weighting coefficient for Frankfurt of 0,948;
4. Training costs assumed at €1,000 per FTE per year;
5. Mission costs of €10,000, estimated based on 2012 draft budget for missions per headcount;

6. Recruiting-related costs (travel, hotel, medical examinations, installation and other allowances, removal costs, etc.) of €12,700, estimated based on 2012 draft budget for recruiting per new headcount.

The method of calculating the increase in the required budget for the next three years is presented in more detail in table below. The calculation reflects the fact that the Community budget funds 40% of the costs.

Cost types	Calculations	Amount (in thousands)			
		2014	2015	2016	total
Title 1: Staff expenditure:					
11 Salaries and allowances					
- of which temporary agents	=4*127*0,948	482	482	482	1446
- of SNEs	=1*73*0,948	69	69	69	207
- of which contract agents	=1*64*0,948	61	61	61	183
12 Expenditure related to recruitment	=6*12,7	76			76
	=6*10	60	60	60	180
13 Mission expenses					
	=6*1	6	6	6	18
15 Training					
Total title 1 : Staff expenditure		754	678	678	2,110
Of which Community contribution (40%)		302	271	271	844
Of which Member State contribution (60%)		452	407	407	1,266

The following table presents the proposed establishment plan for the four temporary agent positions.

↓ new

Function group and grade	Temporary posts
AC 16	
AC 15	
AC 14	
AC 13	
AC 12	
AC 11	
AC 10	
AD 9	1
AD 8	1
AD 7	2
AD 6	
AD 5	
AD total	4