



Brussels, 20.12.2017
COM(2017) 792 final

2017/0350 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive (EU) 2016/97 as regards the date of application of Member States'
transposition measures

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Directive (EU) 2016/97 ("IDD") provides an updated harmonised legal framework for the distribution of insurance and reinsurance products, including insurance-based investment products, in the Internal Market. It aims at ensuring a greater transparency of insurance distributors with regard to the price and costs of their products, better and more comprehensible product information and improved conduct of business rules, in particular with regard to advice. The new rules will be applicable to all distribution channels, including direct sales by insurance companies to create a level playing field for all distributors and guarantee uniform high standards of protection for consumers.

IDD entered into force on 23 February 2016 and Member States have until 23 February 2018 to transpose and apply its provisions, as referred to in Article 42 of the Directive. Therefore, by 23 February 2018, insurance distributors would be required to comply with the new rules.

On 21 September 2017, the Commission adopted two Delegated Regulations supplementing IDD with regard to product oversight and governance requirements for insurance undertakings and insurance distributors (POG Regulation) and to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products (IBIP Regulation). During the scrutiny period, the European Parliament pointed out that the industry might need more time to implement the technical and organisational changes required to comply with the Delegated Regulations. In its decisions to raise no objections to the Delegated Regulations, it asked the Commission to adopt a legislative proposal setting up a date of application at 1 October 2018 but did not request an extension of the transposition date for Directive 2016/97.¹ Sixteen Member States supported the European Parliament's proposal and further requested an extension of the transposition period until at least 1 October 2018.

According to the European Parliament and a number of Member States, the extended application will *inter alia* allow the insurance sector, which includes small operators such as one-person distribution businesses and small-scale insurance to better prepare for a correct and effective implementation of IDD with the full knowledge of the two Delegated Regulations and the applicable national transposition measures, ensuring legal certainty for all those concerned.

Given the exceptional circumstances and the very particular time frame of the dates of transposition and application of IDD and the application dates of the two Delegated Regulations, the Commission, therefore, agrees to act on the request from the European Parliament and Member States to extend the date from which Member States are to apply the laws, regulations and administrative provisions necessary to comply with IDD until 1 October 2018, notwithstanding the Commission's view that the industry has already been given considerable time to adapt, in order to give more time to the insurance industry to prepare for the application of the new provisions on insurance distribution.

Moreover, in view of this exceptional urgency in postponing the date of application, pursuant to the principle of sincere cooperation (Article 4(3) TEU), the Commission will invite national Parliaments to respond before the end of the eight-week period laid down in Protocol

¹ C(2017)06218 – 2017/2854(DEA); C(2017)06229 – 2017/2855(DEA), adopted on 25.10.2017.

No 2 and if possible to confirm by 19 January 2018 that they do not intend to send a reasoned opinion.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 53(1) and Article 62 of the TFEU.

- **Subsidiarity (for non-exclusive competence)**

According to the principle of subsidiarity, EU action may only be taken if the envisaged aims cannot be achieved by Member States alone. EU intervention is needed to improve the proper functioning of the internal market and avoid the distortion of competition in the field of securities markets. In this regard, the legislation that is being amended is adopted in full compliance with the principle of subsidiarity and any amendment thereto must be made through a Commission proposal.

- **Proportionality**

This EU action is necessary to achieve the objectives sought by IDD. The setting of an application date as proposed is necessary to allow for an efficient and orderly planning and implementation by all involved parties of the provisions at stake. This proposal will therefore ensure that the objectives of IDD can be attained.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

This proposal is not accompanied by a separate Impact Assessment, as an impact assessment for IDD has already been undertaken. This proposal does not alter IDD on substance and does not impose new obligations on insurance undertaking. It only aims at amending a date of application for the provisions of IDD to give the opportunity to the insurance sector to better apply those provisions.

4. BUDGETARY IMPLICATIONS

The proposal does not have a budgetary impact for the Commission.

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive (EU) 2016/97 of the European Parliament and of the Council³ harmonises national provisions concerning the distribution of insurance and reinsurance products and insurance-based investment products by insurance intermediaries, insurance companies, their employees, and ancillary insurance intermediaries in the Union.
- (2) Pursuant to Article 42 of Directive (EU) 2016/97, Member States have to bring into force the laws, regulations and administrative provisions necessary to comply with that Directive by 23 February 2018.
- (3) On 21 September 2017, the Commission adopted two Delegated Regulations supplementing Directive (EU) 2016/97, one with regard to product oversight and governance requirements for insurance undertakings and insurance distributors⁴, and one with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products⁵.
- (4) In its decisions to raise no objections to the Delegated Regulations referred to in recital 3⁶, the European Parliament invited the Commission to adopt a legislative

² OJ C , , p. .

³ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19).

⁴ [Commission Delegated Regulation (EU) .../... of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors (OJ C [...], [...], p. [...])].

⁵ [Commission Delegated Regulation (EU) .../... of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to conduct of business rules applicable to the distribution of the insurance-based investment products (OJ C [...], [...], p. [...])].

⁶ P8 TA-PROV(2017)0404 and P8 TA-PROV(2017)0405, adopted on 25.10.2017, Available at <http://www.europarl.europa>.

proposal setting 1 October 2018 as the date of application of the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2016/97, rather than 23 February 2018. The European Parliament substantiated that request by the need to give insurance undertakings and insurance distributors more time to better prepare for a correct and effective implementation of Directive (EU) 2016/97 and to implement the necessary technical and organisational changes to comply with the Delegated Regulations.

(5) Given the very short period of time left before the national laws, regulations and administrative provisions necessary to comply with Directive (EU) 2016/97 are to be brought into force, this Directive should enter into force without delay.

(6) Directive (EU) 2016/97 should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive (EU) 2016/97 is amended as follows:

(1) in Article 42, paragraph 1 is amended as follows:

(2) (a) the first subparagraph is replaced by the following:

(3) “By 23 February 2018, Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof.”;

(4) (b) the following subparagraph is added:

“Member States shall apply the measures referred to in the first subparagraph from 1 October 2018.”;

(5) in Article 44, the first paragraph is replaced by the following:

“Directive 2002/92/EC, as amended by the Directives listed in Annex II, Part A, to this Directive is repealed with effect from 1 October 2018, without prejudice to the obligations of the Member States relating to the time limits for the transposition into national law of the Directives set out in Annex II, Part B to this Directive.”.

Article 2

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

Article 3

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President