Official Journal of the European Union

L 26

English edition

Legislation

Volume 59

2 February 2016

Contents

[1] Text with EEA relevance

EN

Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

The titles of all other acts are printed in bold type and preceded by an asterisk.

I

(Legislative acts)

REGULATIONS

REGULATION (EU) 2016/93 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 January 2016

repealing certain acts from the Schengen acquis

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 77(2)(a),(b) and (d), Article 78(2)(e) and (g), Article 79(2)(c) and (d) and Article 87(2)(a) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure ([1]),

Whereas:

(1) Improving the transparency of Union law is an essential element of the better lawmaking strategy that the institutions of the Union are implementing. In that context, it is appropriate to repeal those acts which no longer serve any purpose.

(2) A number of acts belonging to the Schengen *acquis* are no longer relevant due to their temporary nature or because their content has been taken up by successive acts.

(3) Decision of the Executive Committee SCH/Com-ex (95) PV 1 rev. ([2]) referred to a very specific situation with regard to the prior consultation requested by Portugal *vis-à-vis* Indonesian visa applicants. That Decision became obsolete after the entry into force of Regulations (EC) No 810/2009 ([3]) and (EC) No 767/2008 ([4]) of the European Parliament and of the Council, which provide for new rules for the prior consultation of other Member States in relation to the issuance of visas.

(4) Decision of the Executive Committee SCH/Com-ex (95) 21 ([5]) provided for the obligation of Member States to exchange statistical information for better monitoring of migration at external borders. That Decision became obsolete after the entry into force of Council Regulation (EC) No 2007/2004 ([6]), which entrusts Frontex with the tasks of carrying out risk analyses regarding emerging risks and the current state of affairs at the external borders, and of developing and operating information systems enabling the exchange of such information.

([1]) Position of the European Parliament of 24 November 2015 (not yet published in the Official Journal) and decision of the Council of 14 December 2015.

([2]) Decision of the Executive Committee of 5 May 1995 on common visa policy. Decision contained in the minutes of the meeting of the Executive Committee held in Brussels on 28 April 1995 (SCH/Com-ex (95) PV 1 rev.) (OJ L 239, 22.9.2000, p. 175).

([3]) Regulation (EC) No 810/2009 of the European Parliament and of the Council of 13 July 2009 establishing a Community Code on Visas (Visa Code) (OJ L 243, 15.9.2009, p. 1).

([4]) Regulation (EC) No 767/2008 of the European Parliament and of the Council of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) (OJ L 218, 13.8.2008, p. 60).

([5]) Decision of the Executive Committee of 20 December 1995 on the swift exchange between the Schengen States of statistical and specific data on possible malfunctions at the external borders (SCH/Com-ex (95) 21) (OJ L 239, 22.9.2000, p. 176).

([6]) Council Regulation (EC) No 2007/2004 of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (OJ L 349, 25.11.2004, p. 1).

(5) Decision of the Executive Committee SCH/Com-ex (96) 13 rev. 1 ([1]) established the principles regulating the rights and obligations of representing and represented Member States in respect of the issuance of Schengen visas in third countries where not all Schengen States are represented. That Decision became obsolete after the entry into force of Regulation (EC) No 810/2009, which provides for new rules on the representation arrangements in situations where a Member State agrees to represent another Member State for the purpose of examining applications and issuing visas on behalf of that Member State.

(6) Decision of the Executive Committee SCH/Com-ex (97) 39 rev. ([2]) approved the guiding principles for means of proof and indicative evidence under readmission agreements between Schengen States. That Decision became obsolete after the entry into force of Council Regulation (EC) No 343/2003 ([3]) and of Commission Regulation (EC) No 1560/2003 ([4]), which provide for the elements of proof and circumstantial evidence that are to be used for determining the Member State responsible for examining the application for asylum.

(7) Decision of the Executive Committee SCH/Com-ex (98) 1 rev. 2 ([5]) provided for a number of measures aimed to increase the efficiency of checks at external borders. That Decision became obsolete after the entry into force of Regulation (EC) No 562/2006 of the European Parliament and of the Council ([6]), which sets out the rules on crossing external borders, and of Regulation (EC) No 2007/2004, which entrusts Frontex with the task of facilitating the application of Community measures relating to the management of external borders by ensuring the coordination of Member States' actions in the implementation of those measures.

(8) Decision of the Executive Committee SCH/Com-ex (98) 18 rev. ([7]) provided for a procedure to be followed by the Schengen States experiencing serious difficulties in obtaining a *laissez-passer* to repatriate illegal foreign nationals. It also provided for the possibility to investigate, at the Union level, the need for using other means of a more binding nature against the countries posing problems in that regard. That Decision became obsolete after the Union concluded readmission agreements with a number of third countries. Those agreements set out the specific obligations and procedures to be complied with by the authorities of the third countries and of Member States with regard to the repatriation of foreign nationals who are irregularly residing in the Union.

(9) Decision of the Executive Committee SCH/Com-ex (98) 21 ([8]) approved common rules for affixing stamps to the passports of all visa applicants as a means of preventing the same person from lodging multiple or successive visa applications. That Decision became obsolete after the entry into force of Regulation (EC) No 810/2009, which provided for a new set of rules for issuing visas and for stamping an applicant's travel document.

(10) Decision of the Executive Committee SCH/Com-ex (98) 37 def. 2 ([9]) established a set of measures aimed to establish an integrated approach for stepping up the fight against illegal migration. Those measures were put into effect by the

([1]) Decision of the Executive Committee of 27 June 1996 on the principles for issuing Schengen visas in accordance with Article 30(1)(a) of the Convention implementing the Schengen Agreement (SCH/Com-ex (96) 13 rev. 1) (OJ L 239, 22.9.2000, p. 180).

([2]) Decision of the Executive Committee of 15 December 1997 on the guiding principles for means of proof and indicative evidence within the framework of readmission agreements between Schengen States (SCH/Com-ex (97) 39 rev.) (OJ L 239, 22.9.2000, p. 188).

([3]) Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 50, 25.2.2003, p. 1).

([4]) Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ L 222, 5.9.2003, p. 3).

([5]) Decision of the Executive Committee of 21 April 1998 on the activities of the Task Force (SCH/Com-ex (98) 1 rev. 2) (OJ L 239, 22.9.2000, p. 191).

([6]) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

([7]) Decision of the Executive Committee of 23 June 1998 on measures to be taken in respect of countries posing problems with regard to the issue of documents required for expulsion from the Schengen territory (SCH/Com-ex (98) 18 rev.) (OJ L 239, 22.9.2000, p. 197).

([8]) Decision of the Executive Committee of 23 June 1998 on the stamping of passports of visa applicants (SCH/Com-ex (98) 21) (OJ L 239, 22.9.2000, p. 200).

([9]) Decision of the Executive Committee of 27 October 1998 on the adoption of measures to fight illegal immigration (SCH/Com-ex (98) 37 def. 2) (OJ L 239, 22.9.2000, p. 203).

Decision of the Central Group of 27 October 1998 on the adoption of measures to fight illegal immigration (SCH/C (98) 117). Those Decisions became obsolete after the entry into force of Council Regulation (EC) No 377/2004 ([1]), which establishes the common framework for posting immigration liaison officers in third countries, Regulation (EC) No 562/2006, which provides for a set of common measures on the control of external borders, and Council Decision 2009/371/JHA ([2]), which entrusts Europol with specific tasks related to the exchange of information, including on countering irregular migration.

(11) Decision of the Executive Committee SCH/Com-ex (98) 59 rev. ([3]) provided for a set of guidelines for the coordinated deployment of document advisers for air and maritime traffic to consular representations of Member States with the aim to strengthen the combating of illegal immigration. That Decision became obsolete after the entry into force of Regulation (EC) No 377/2004, which establishes new rules for the deployment of liaison officers in third countries.

(12) Decision of the Executive Committee SCH/Com-ex (99) 7 Rev 2 ([4]) approved a plan for Member States' reciprocal secondment of liaison officers to advise and assist in the performance of security and checking tasks at external borders. That Decision became obsolete after the entry into force of Regulation (EC) No 562/2006 and Regulation (EC) No 2007/2004, which together introduced a new legal framework for cooperation between Member States with regard to the control of external borders, including secondment of liaison officers.

(13) Council Regulation (EC) No 189/2008 ([5]) established specifications relevant to certain SIS II tests aimed to demonstrate that central SIS II, the communication infrastructure and the interactions between central SIS II and the national systems (N.SIS II) work in accordance with the technical and functional requirements set out in the SIS II legal instruments. That Regulation lost its legal effect once the SIS II became operational on 9 April 2013.

(14) For reasons of legal certainty and clarity, those obsolete Decisions and Regulation should be repealed.

(15) Since the objective of this Regulation, namely the repeal of a number of obsolete Union acts belonging to the Schengen *acquis* cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(16) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, annexed to the TEU and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation, whether it will implement it in its national law.

(17) This Regulation constitutes a development of provisions of the Schengen *acquis* in which the United Kingdom does not take part, in accordance with Council Decision 2000/365/EC ([6]); the United Kingdom is therefore not taking part in its adoption and is not bound by it or subject to its application.

(18) This Regulation constitutes a development of provisions of the Schengen *acquis* in which Ireland does not take part, in accordance with Council Decision 2002/192/EC ([7]); Ireland is therefore not taking part in its adoption and is not bound by it or subject to its application.

(19) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and

([1]) Council Regulation (EC) No 377/2004 of 19 February 2004 on the creation of an immigration liaison officers network (OJ L 64, 2.3.2004, p. 1).
([2]) Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).
([3]) Decision of the Executive Committee of 16 December 1998 on coordinated deployment of document advisers (SCH/Com-ex (98) 59 rev.) (OJ L 239, 22.9.2000, p. 308).
([4]) Decision of the Executive Committee of 28 April 1999 on liaison officers (SCH/Com-ex (99) 7 Rev. 2) (OJ L 239, 22.9.2000, p. 411).
([5]) Council Regulation (EC) No 189/2008 of 18 February 2008 on the tests of the second generation Schengen Information System (SIS II) (OJ L 57, 1.3.2008, p. 1).
([6]) Council Decision 2000/365/EC of 29 May 2000 concerning the request of the United Kingdom of Great Britain and Northern Ireland to take part in some of the provisions of the Schengen acquis (OJ L 131, 1.6.2000, p. 43).
([7]) Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20).

development of the Schengen *acquis* ([1]) which fall within the area referred to in Article 1 of Council Decision 1999/437/EC ([2]).

(20) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ([3]), which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decisions 2008/146/EC ([4]) and 2008/149/JHA ([5]).

(21) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ([6]) relating to the abolition of checks at internal borders and movement of persons, which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decisions 2011/349/EU ([7]) and 2011/350/EU ([8]),

HAVE ADOPTED THIS REGULATION:

Article 1

Repeal of obsolete acts

The following acts are repealed:

— Decision SCH/Com-ex (95) PV 1 rev. (visa policy),

— Decision SCH/Com-ex (95) 21 (exchange of statistical information),

— Decision SCH/Com-ex (96) 13 rev. 1 (issuance of Schengen visas),

— Decision SCH/Com-ex (97) 39 rev. (evidence under readmission agreements),

— Decision SCH/Com-ex (98) 1 rev. 2 (task force);

— Decision SCH/Com-ex (98) 18 rev. (difficulties in obtaining *laissez-passer*),

— Decision SCH/Com-ex (98) 21 (stamping of passports),

— Decision SCH/Com-ex (98) 37 def. 2 (fight against illegal immigration),

([1]) OJ L 176, 10.7.1999, p. 36.
([2]) Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis (OJ L 176, 10.7.1999, p. 31).
([3]) OJ L 53, 27.2.2008, p. 52.
([4]) Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 1).
([5]) Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 50).
([6]) OJ L 160, 18.6.2011, p. 21.
([7]) Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).
([8]) Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

— Decision SCH/C (98) 117 (fight against illegal immigration),

— Decision SCH/Com-ex (98) 59 rev. (document advisers),

— Decision SCH/Com-ex (99) 7 Rev. 2 (liaison officers), and

— Regulation (EC) No 189/2008 (SIS II tests).

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 20 January 2016.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A.G. KOENDERS

REGULATION (EU) 2016/94 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 January 2016

repealing certain acts from the Schengen *acquis* in the field of police cooperation and judicial cooperation in criminal matters

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 82(1)(d) and Article 87(2)(a) and (c) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure ([1]),

Whereas:

(1) Improving the transparency of Union law is an essential element of the better lawmaking strategy that the institutions of the Union are implementing. In that context, it is appropriate to repeal those acts which no longer serve any purpose.

(2) A number of acts adopted in the field of police cooperation and judicial cooperation in criminal matters and belonging to the Schengen *acquis* are no longer relevant due to their temporary nature or because their content has been taken up by successive acts.

(3) Decision of the Executive Committee SCH/Com-ex (93) 14 ([2]) aimed to improve practical judicial cooperation for combating drug trafficking only for cases of refusal of cooperation by a Member State. That Decision became obsolete after the entry into force of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union established by Council Act 2000/C-197/01 ([3]),which provides for deeper cooperation among Member States in the field of mutual assistance on all offences and therefore also on drug trafficking.

(4) Declaration of the Executive Committee SCH/Com-ex (97) decl. 13, rev. 2 ([4]) addressed the abduction of minors and the unlawful removal of a minor by one of the parents from the person to whom the right of custody has been granted. That Declaration became obsolete after the entry into force of Regulation (EC) No 562/2006 of the European Parliament and of the Council ([5]) and Commission Implementing Decision 2013/115/EU ([6]), which provide for new rules on the check of minors crossing an external border and in relation to the corresponding activities of the Sirene bureaus.

(5) Decision of the Executive Committee SCH/Com-ex (98) 52 ([7]) adopted the Schengen handbook on cross-border police cooperation assisting Member States in carrying out cross-border operations. That Decision became obsolete after the handbook's content was included in the updated catalogue of recommendations for the correct application of the Schengen *acquis* and best practices in police cooperation, handbook on cross-border operations and compendium on law enforcement liaison officers.

([1]) Position of the European Parliament of 24 November 2015 (not yet published in the Official Journal) and decision of the Council of 14 December 2015.

([2]) Decision of the Executive Committee of 14 December 1993 on improving practical judicial cooperation for combating drug trafficking (SCH/Com-ex (93) 14) (OJ L 239, 22.9.2000, p. 427).

([3]) Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12.7.2000, p. 1).

([4]) Declaration of the Executive Committee of 9 February 1998 on the abduction of minors (SCH/Com-ex (97) decl. 13, rev. 2) (OJ L 239, 22.9.2000, p. 436).

([5]) Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ L 105, 13.4.2006, p. 1).

([6]) Commission Implementing Decision 2013/115/EU of 26 February 2013 on the Sirene Manual and other implementing measures for the second generation Schengen Information System (SIS II) (OJ L 71, 14.3.2013, p. 1).

([7]) Decision of the Executive Committee of 16 December 1998 on the Handbook on cross-border police cooperation (SCH/Com-ex (98) 52) (OJ L 239, 22.9.2000, p. 408).

(6) Decision of the Executive Committee SCH/Com-ex (99)11 Rev. 2 ([1]) adopted an Agreement on Cooperation in Proceedings for Road Traffic Offences. That Agreement was concluded between certain Member States and also with two third states (Iceland and Norway). It is therefore not part of the Schengen *acquis*. In addition, it has never entered into force and none of the Member States has made a declaration under Article 20(3) of that Agreement regarding the application of the Agreement between those Member States having ratified it. Therefore, that Decision has no relevance and should be repealed.

(7) Council Decision 2008/173/JHA ([2]) set out the detailed scope, organisation, coordination and validation procedures for certain tests aiming to assess whether the Schengen Information System II (SIS II) complies with the technical and functional requirements as defined in the SIS II legal instruments. That Decision lost its legal effect once the SIS II became operational on 9 April 2013.

(8) For reasons of legal certainty and clarity, those obsolete Decisions and Declaration should be repealed.

(9) Since the objective of this Regulation, namely the repeal of a number of obsolete Union acts in the field of police cooperation and judicial cooperation in criminal matters and belonging to the Schengen *acquis*, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(10) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, annexed to the TEU and to the Treaty on the Functioning of the European Union (TFEU), Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen *acquis*, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation, whether it will implement it in its national law.

(11) This Regulation constitutes a development of the provisions of the Schengen *acquis* in which Ireland is taking part in accordance with Article 5(1) of Protocol No 19 on the Schengen *acquis* integrated into the framework of the European Union, annexed to the TEU and to the TFEU, and Article 6(2) of Council Decision 2002/192/EC ([3]).

(12) Following the notification made by the United Kingdom on 24 July 2013 in accordance with the first sentence of the first subparagraph of Article 10(4) of Protocol No 36 on transitional provisions, the obsolete Decisions and Declaration referred to above have ceased to apply to the United Kingdom as from 1 December 2014, pursuant to the second sentence of the first subparagraph of Article 10(4) of that Protocol. The United Kingdom is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(13) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latters' association with the implementation, application and development of the Schengen *acquis* ([4]) which fall within the area referred to in Article 1 of Council Decision 1999/437/EC ([5]).

(14) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Agreement concluded between the European Union, the European Community and the Swiss Confederation concerning the association of the Swiss Confederation with the implementation, application and development of the Schengen *acquis* ([6]), which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/149/JHA ([7]).

([1]) Decision of the Executive Committee of 28 April 1999 on the Agreement on cooperation in proceedings for road traffic offences (SCH/Com-ex (99)11 Rev. 2) (OJ L 239, 22.9.2000, p. 428).

([2]) Council Decision 2008/173/JHA of 18 February 2008 on the tests of the second generation Schengen Information System (SIS II) (OJ L 57, 1.3.2008, p. 14).

([3]) Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen *acquis* (OJ L 64, 7.3.2002, p. 20.)

([4]) OJ L 176, 10.7.1999, p. 36.

([5]) Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen *acquis* (OJ L 176, 10.7.1999, p. 31).

([6]) OJ L 53, 27.2.2008, p. 52.

([7]) Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* (OJ L 53, 27.2.2008, p. 50).

(15) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen *acquis* within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* ([1]), which fall within the area referred to in Article 1 of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/349/EU ([2]),

HAVE ADOPTED THIS REGULATION:

Article 1

Repeal of obsolete acts

The following acts are repealed:

— Decision SCH/Com-ex (93) 14 (combating drug trafficking),

— Declaration SCH/Com-ex (97) decl. 13, rev. 2 (abduction of minors),

— Decision Sch/Com-ex (98) 52 (police handbook),

— Decision SCH/Com-ex (99)11 Rev. 2 (road traffic offences), and

— Decision 2008/173/JHA (SIS II tests).

Article 2

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 20 January 2016.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A.G. KOENDERS

([1]) OJ L 160, 18.6.2011, p. 3.

([2]) Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis*, relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1).

REGULATION (EU) 2016/95 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 January 2016

repealing certain acts in the field of police cooperation and judicial cooperation in criminal matters

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 Articles 82(1), 83(1), 87(2) and 88(2) thereof,

Having regard to the proposal from the European Commission,

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

Acting in accordance with the ordinary legislative procedure ([1]),

Whereas:

(1) Improving the transparency of Union law is an essential element of the better law-making strategy that the institutions of the Union are implementing. In that context, it is appropriate to repeal those acts which no longer serve any purpose.

(2) A number of acts adopted in the field of police cooperation and judicial cooperation in criminal matters have become obsolete because their content has been taken up by successive acts.

(3) Council Joint Action 96/610/JHA ([2]) created a Directory of specialised counterterrorist competences, skills and expertise in order to make them more widely and readily available to agencies in all Member States. That Joint Action became obsolete after the entry into force of Council Decision 2009/371/JHA ([3]), which entrusts Europol with supporting and strengthening mutual cooperation between the law enforcement authorities of the Member States in preventing and combating terrorism and other forms of serious crime, and of Council Decision 2008/615/JHA ([4]), which introduced a new framework for cross-border cooperation on combating terrorism.

(4) Council Joint Action 96/699/JHA ([5]) designated the Europol Drugs Unit as the authority to which information from Member States concerning chemical profiling was to be transmitted. That Joint Action became obsolete after the entry into force of Decision 2009/371/JHA.

(5) Council Joint Action 96/747/JHA ([6]) aimed to strengthen the cooperation between Member States' law enforcement agencies by creating a directory of areas of specialised competencies, skills and expertise. That Joint Action became obsolete after the entry into force of Decision 2009/371/JHA, which entrusts Europol with the task of developing specialised knowledge of the investigative procedures of the Member States' competent authorities and to provide advice on investigations.

([1]) Position of the European Parliament of 24 November 2015 (not yet published in the Official Journal) and decision of the Council of 14 December 2015.

([2]) Joint Action 96/610/JHA of 15 October 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the creation and maintenance of a Directory of specialized counter-terrorist competences, skills and expertise to facilitate counter-terrorist cooperation between the Member States of the European Union (OJ L 273, 25.10.1996, p. 1).

([3]) Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol) (OJ L 121, 15.5.2009, p. 37).

([4]) Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (OJ L 210, 6.8.2008, p. 1).

([5]) Joint Action 96/699/JHA of 29 November 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the exchange of information on the chemical profiling of drugs to facilitate improved cooperation between Member States in combating illicit drug trafficking (OJ L 322, 12.12.1996, p. 5).

([6]) Joint Action 96/747/JHA of 29 November 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, concerning the creation and maintenance of a directory of specialized competences, skills and expertise in the fight against international organized crime, in order to facilitate law enforcement cooperation between the Member States of the European Union (OJ L 342, 31.12.1996, p. 2).

(6) Council Joint Action 96/750/JHA ([1]) aimed to reinforce the cooperation of the relevant authorities of the Member States in the fight against drug addiction and to call on Member States to approximate their laws to make them mutually compatible to the extent necessary to prevent and combat illegal drug trafficking in the Union. That Joint Action became obsolete after the entry into force of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union established by Council Act 2000/C-197/01 ([2]) and of Council Framework Decision 2004/757/JHA ([3]).

(7) Council Joint Action 97/339/JHA ([4]) allowed for cooperation and mandated information sharing between Member States regarding large scale events which are attended by large numbers of people from more than one Member State in order to maintain law and order, protect people and their property, and prevent criminal offences. That Joint Action became obsolete after the entry into force of Council Decisions 2008/615/JHA, 2002/348/JHA ([5]) and 2007/412/JHA ([6]), which provide for new rules on the exchange of non-personal and personal data and other forms of cooperation for maintaining public order and security for major events.

(8) Council Joint Action 97/372/JHA ([7]) aimed to increase information and intelligence sharing among customs authorities and other law enforcement authorities, in particular on drugs. That Joint Action became obsolete after the entry into force of Council Act 98/C-24/01 ([8]) drawing up the Convention on Mutual Assistance and Cooperation between Customs Administrations which introduced detailed rules on mutual assistance and cooperation between the Member States for preventing and detecting infringements of national customs provisions, of Council Decision 2009/917/JHA ([9]), which increases the effectiveness of the cooperation and control procedures of the customs authorities by setting up a customs information system, and of Decision 2009/371/JHA, which entrusts Europol with tasks aimed at supporting customs cooperation.

(9) The Convention of 17 June 1998 on Driving Disqualifications, as drawn up by Council Act 98/C-216/01 ([10]), was ratified by only seven Member States and has never entered into force. In addition, among those seven Member States, only Ireland and the United Kingdom made a declaration in accordance with Article 15(4) of that Convention which allowed the Convention to apply between them before its entry into force in all Member States. However, following notification by the United Kingdom on 24 July 2013 in accordance with the first sentence of the first subparagraph of Article 10(4) of Protocol No 36 on transitional provisions, that Council Act and that Convention have ceased to apply to the United Kingdom as from 1 December 2014, pursuant to the second sentence of the first subparagraph of Article 10(4) of that Protocol. As those instruments are no longer applicable between any of the Member States, they have lost their relevance in the Union *acquis* and should be repealed.

([1]) Joint Action 96/750/JHA of 17 December 1996 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking (OJ L 342, 31.12.1996, p. 6).

([2]) Council Act 2000/C-197/01 of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union (OJ C 197, 12.7.2000, p. 1).

([3]) Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ L 335, 11.11.2004, p. 8).

([4]) Joint Action 97/339/JHA of 26 May 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union with regard to cooperation on law and order and security (OJ L 147, 5.6.1997, p. 1).

([5]) Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension (OJ L 121, 8.5.2002, p. 1).

([6]) Council Decision 2007/412/JHA of 12 June 2007 amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension (OJ L 155, 15.6.2007, p. 76).

([7]) Joint Action 97/372/JHA of 9 June 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, for the refining of targeting criteria, selection methods, etc., and collection of customs and police information (OJ L 159, 17.6.1997, p. 1).

([8]) Council Act 98/C-24/01 of 18 December 1997 drawing up, on the basis of Article K3 of the Treaty on European Union, the Convention on mutual assistance and cooperation between customs administrations (OJ C 24, 23.1.1998, p. 1).

([9]) Council Decision 2009/917/JHA of 30 November 2009 on the use of information technology for customs purposes (OJ L 323, 10.12.2009, p. 20).

([10]) Council Act 98/C-216/01 of 17 June 1998 drawing up the Convention on Driving Disqualifications (OJ C 216, 10.7.1998, p. 1).

(10) Council Joint Action 98/427/JHA ([1]) established a system of exchange of good practice among Member States for executing requests for legal assistance in criminal matters. That Joint Action became obsolete after the entry into force of the Convention on Mutual Assistance in Criminal Matters between the Member States.

(11) Council Framework Decision 2008/978/JHA ([2]) on the European evidence warrant (EEW) was replaced by Directive 2014/41/EU of the European Parliament and of the Council ([3]) on the European Investigation Order (EIO) because the scope of the EEW was too limited. As the EIO will apply between 26 Member States and the EEW will remain applicable between the only two Member States which do not participate in the EIO, the EEW has, therefore, lost its usefulness as an instrument of cooperation in criminal matters and should be repealed.

(12) For reasons of legal certainty and clarity, those obsolete Joint Actions, that Convention, that Council Act and that Framework Decision should be repealed.

(13) Although Article 83(1) of the Treaty on the Functioning of the European Union (TFEU) provides for the adoption of directives, the choice of a regulation as an instrument for repealing Joint Action 96/750/JHA and Framework Decision 2008/978/JHA is appropriate because this Regulation does not establish minimum rules concerning the definition of criminal offences and sanctions, but only repeals obsolete acts without replacing them with new ones.

(14) Since the objective of this Regulation, namely the repeal of a number of obsolete Union acts in the field of police cooperation and judicial cooperation in criminal matters cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(15) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the TEU and to the TFEU, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(16) In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, Ireland has notified its wish to take part in the adoption and application of this Regulation.

(17) Following the notification made by the United Kingdom on 24 July 2013 in accordance with the first sentence of the first subparagraph of Article 10(4) of Protocol No 36 on transitional provisions, Joint Actions 96/610/JHA, 96/699/JHA, 96/747/JHA, 96/750/JHA, 97/339/JHA, 97/372/JHA and 98/427/JHA, and Council Act 98/C-216/01 have ceased to apply to the United Kingdom as from 1 December 2014, pursuant to the second sentence of the first subparagraph of Article 10(4) of that Protocol. The United Kingdom is therefore not taking part in the adoption of this Regulation with regard to those legal acts and is not bound by it or subject to its application. However, in accordance with the third sentence of the first subparagraph of Article 10(4) of that Protocol, Framework Decision 2008/978/JHA remained applicable in the United Kingdom as replaced by Directive 2014/41/EU. Therefore, in accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the TEU and to the TFEU, the United Kingdom has notified its wish to take part in the adoption and application of this Regulation,

HAVE ADOPTED THIS REGULATION:

Article 1

Repeal of obsolete acts

The following acts are repealed:

— Joint Action 96/610/JHA (directory of counter-terrorism competences),

([1]) Joint Action 98/427/JHA of 29 June 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on good practice in mutual legal in criminal matters (OJ L 191, 7.7.1998, p. 1).

([2]) Council Framework Decision 2008/978/JHA of 18 December 2008 on the European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters (OJ L 350, 30.12.2008, p. 72).

([3]) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters (OJ L 130, 1.5.2014, p. 1).

— Joint Action 96/699/JHA (chemical profiling of drugs),

— Joint Action 96/747/JHA (directory of competences on fight against organised crime),

— Joint Action 96/750/JHA (combatting drug addiction and trafficking),

— Joint Action 97/339/JHA (cooperation on law and order and security),

— Joint Action 97/372/JHA (cooperation between customs authorities),

— Council Act 98/C-216/01 and the Convention of 17 June 1998 (driving disqualifications),

— Joint Action 98/427/JHA (good practice in mutual legal assistance in criminal matters), and

— Framework Decision 2008/978/JHA (European evidence warrant).

Article 2

Transitional provision

Any European evidence warrant executed under Framework Decision 2008/978/JHA shall continue to be governed by that Framework Decision until the relevant criminal proceedings have been concluded with a definitive decision.

Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Strasbourg, 20 January 2016.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A.G. KOENDERS

REGULATION (EU) 2016/96 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 January 2016

amending Regulation (EU) No 1236/2010 laying down a scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries

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 43(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee ([1]),

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) Regulation (EU) No 1236/2010 of the European Parliament and of the Council ([3]) implements in Union law the provisions of the Scheme of control and enforcement ('the Scheme') established by a recommendation adopted by the North-East Atlantic Fisheries Commission (NEAFC) at its annual meeting on 15 November 2006, and subsequently amended by several recommendations at its annual meetings in November 2007, November 2008 and November 2009.

(2) At its annual meeting in November 2012, NEAFC adopted Recommendation 15:2013 amending Article 13 of the Scheme, concerning the communication of transhipments and of port of landing. At its subsequent annual meeting in November 2013, NEAFC adopted Recommendation 9:2014 amending Articles 1, 20 to 25 and 28 of the Scheme, concerning, respectively, the definitions, a number of provisions applying to port state control of foreign fishing vessels and the infringement procedures. At its annual meeting in November 2014, NEAFC adopted Recommendation 12:2015 amending Recommendation 9:2014 with respect to Articles 22 and 23 of the Scheme on port state control of foreign fishing vessels.

(3) Under Articles 12 and 15 of the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries, approved by Council Decision 81/608/EEC ([4]), Recommendation 15:2013 entered into force on 8 February 2013.

(4) Recommendation 9:2014, as amended by Recommendation 12:2015, entered into force on 1 July 2015. Since Recommendation 9:2014 became binding on the Contracting Parties on that date, it is appropriate to align the date of application of certain provisions of this Regulation with the date of application of that Recommendation.

(5) It is necessary to implement those Recommendations in Union law. Regulation (EU) No 1236/2010 should therefore be amended accordingly,

---

([1]) OJ C 332, 8.10.2015, p. 81.

([2]) Position of the European Parliament of 15 December 2015 (not yet published in the Official Journal) and decision of the Council of 15 January 2016.

([3]) Regulation (EU) No 1236/2010 of the European Parliament and of the Council of 15 December 2010 laying down a scheme of control and enforcement applicable in the area covered by the Convention on future multilateral cooperation in the North-East Atlantic fisheries and repealing Council Regulation (EC) No 2791/1999 (OJ L 348, 31.12.2010, p. 17).

([4]) Council Decision 81/608/EEC of 13 July 1981 concerning the conclusion of the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries (OJ L 227, 12.8.1981, p. 21).

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1236/2010 is amended as follows:

(1) Article 3 is amended as follows:

(a) point 6 is replaced by the following:

'6. "fishing activities" means fishing, including joint fishing operations, fish processing operations, the transhipment or landing of fishery resources or products thereof and any other commercial activity in preparation for, or related to, fishing, including packaging, transporting, refuelling or resupplying;';

(b) point 10 is replaced by the following:

'10. "non-Contracting Party vessel" means any vessel engaged in fishing activities that is not flagged in a Contracting Party, including vessels for which there are reasonable grounds for suspecting them to be without nationality;';

(c) point 13 is replaced by the following:

'13. "port" means any place on shore used for landing or for the provision of services in relation to, or in support of, fishing activities, or a place on or close to the shore designated by a Contracting Party for transhipping of fishery resources.';

(2) in point (d) of Article 9(1), the last sentence is replaced by the following:

'Without prejudice to Chapter IV, at least 24 hours before any landing, the receiving vessel shall report the total catch on board, the total weight to be landed, the name of the port and the estimated date and time of landing, regardless of whether the landing is to take place in a port inside or outside the Convention Area.';

(3) the title of Chapter IV is replaced by the following:

'PORT STATE CONTROL OF FISH CAUGHT BY VESSELS FLYING THE FLAG OF ANOTHER CONTRACTING PARTY';

(4) Article 22 is replaced by the following:

'Article 22

Scope

Without prejudice to Regulation (EC) No 1224/2009 and Council Regulation (EC) No 1005/2008 (*), the provisions set out in this Chapter shall apply to the use of ports of Member States by fishing vessels carrying on board fishery resources, caught in the Convention Area by fishing vessels flying the flag of another Contracting Party, that have not been previously landed or transhipped at a port.

(5) Article 23 is replaced by the following:

'Article 23

Designated ports

Member States shall designate and notify the Commission of ports where the landing or transhipment of fishery resources, caught in the Convention Area by fishing vessels flying the flag of another Contracting Party, or the provision of port services to such vessels are permitted. The Commission shall notify the NEAFC Secretary of those ports and of any changes to the list of ports designated at least 15 days before the change comes into force.

Landings and transhipments of fish caught in the Convention Area by fishing vessels flying the flag of another Contracting Party as well as the provision of port services to such vessels shall be allowed only in designated ports.';

(*) Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ L 286, 29.10.2008, p. 1).';

(6) Article 24 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. In accordance with Article 6 of Regulation (EC) No 1005/2008, when the master of a fishing vessel carrying fish referred to in Article 22 of this Regulation intends to call into a port, the master of the vessel, or his representative, shall notify the competent authorities of the Member State of the port he wishes to use no later than 3 working days before the estimated time of arrival.

However, a Member State may make provision for another notification period, taking into account, in particular, the type of processing of the fish caught or the distance between the fishing grounds and its ports. In such a case, the Member State shall inform the Commission, or the body designated by it, and the NEAFC Secretary thereof without delay.';

(b) in paragraph 2, the first subparagraph is replaced by the following:

'2. The prior notification referred to in paragraph 1 may be cancelled by the sender by notifying the competent authorities of the port that the master wished to use no later than 24 hours before the notified estimated time of arrival in that port.';

(7) Article 25 is amended as follows:

(a) the title is replaced by the following:

'Authorisation to land or tranship and of other use of port';

(b) in paragraph 1, the introductory part is replaced by the following:

'1. In response to a notification transmitted pursuant to Article 24, the flag state of the fishing vessel intending to land or tranship or, where the fishing vessel has engaged in transhipment operations outside Union waters, the flag state or states of the donor vessels, shall, by completing the prior notification referred to in Article 24, confirm that:';

(c) paragraph 2 is replaced by the following:

'2. Landing or transhipment operations may only start after authorisation has been given by the competent authorities of the port Member State by duly completing the prior notification referred to in Article 24. Such authorisation shall only be given if the confirmation from the flag state referred to in paragraph 1 has been received.';

(d) the following paragraph is inserted:

'3a. Landing, transhipment and other use of port shall not be authorised if the port Member State receives clear evidence that the catch on board was taken in contravention of applicable requirements of a Contracting Party in respect of areas under its national jurisdiction.';

(e) paragraph 4 is replaced by the following:

'4. The competent authorities of the port Member State shall without delay notify their decision on whether or not to authorise the landing, transhipment and other use of port to the master of the vessel or his representative and to the flag state of the vessel by completing as appropriate the prior notification referred to in Article 24 and shall inform the NEAFC Secretary thereof.';

(8) Article 26 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Each Member State shall carry out inspections of at least 5 % of landings or transhipments of fresh fish and at least 7,5 % of frozen fish in its ports during each reporting year, on the basis of risk management that takes into consideration the general guidelines outlined in Annex II.';

(b) the following paragraph is inserted:

'1a. Inspections shall be conducted in a fair, transparent and non-discriminatory manner and shall not constitute harassment of any vessel.';

(c) paragraph 2 is replaced by the following:

'2. Inspectors shall examine all relevant areas of the vessel in order to verify compliance with the relevant conservation and management measures. Inspections shall be conducted in accordance with the procedures laid down in Annex III.';

(d) the following paragraph is inserted:

'2a. Each Member State shall make all possible efforts to facilitate communication with the master or senior crew members of the vessel, including, where possible and where needed by ensuring that the inspector is accompanied by an interpreter.';

(e) the following paragraph is inserted:

'3a. National inspectors shall not interfere with the master's ability to communicate with the authorities of the flag state.';

(f) paragraph 4 is replaced by the following:

'4. The port Member State may invite inspectors of other Contracting Parties to accompany its own inspectors and observe the inspection.';

(9) in Article 29(2), the following sentence is added:

'Where appropriate, the Member State carrying out the inspection shall also communicate the findings of that inspection to the Contracting Party in whose waters the infringement took place and the state of which the vessel's master is a national.';

(10) the Annex becomes Annex I;

(11) a new Annex II is added as set out in Annex I to this Regulation;

(12) a new Annex III is added as set out in Annex II to this Regulation.

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

However, points 1 and 4 to 12 of Article 1 shall apply from 1 July 2015.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg, 20 January 2016.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A.G. KOENDERS

ANNEX I

The following Annex is added to Regulation (EU) No 1236/2010:

'ANNEX II

GENERAL GUIDELINES FOR RISK MANAGEMENT IN RELATION TO PORT MEMBER STATE CONTROL

Risk management means the systematic identification of risks and the implementation of all measures necessary for limiting the occurrence of those risks. This includes activities such as collecting data and information, analysing and assessing risks, preparing and taking action and regular monitoring and review of the process and its outcomes.

On the basis of its risk assessment, each port Member State defines its risk-management strategy to facilitate compliance with this Regulation. That strategy should encompass the identification, description and allocation of appropriate cost-effective control instruments and inspection means, in relation to the nature and the estimated level of each risk, and the achievement of target benchmarks.

Risk-assessment and management criteria are laid down for checking, inspection and verification activities in order to allow timely risk analyses and general assessments of relevant control and inspection information.

Individual fishing vessels, groups of fishing vessels, operators, and/or fishing activity, on different species and in different parts of the Convention Area are subject to control and inspections in accordance with the level of risk attributed, using, *inter alia*, the following general assumptions of risk-level criteria in relation to the port Member State control of landings and transhipments in port:

(a) catches taken by a non-Contracting Party vessel;

(b) frozen catches;

(c) catches of a large volume;

(d) catches previously transhipped at sea;

(e) catches taken outside the waters under the jurisdiction of Contracting Parties, i.e. in the Regulatory Area;

(f) catches taken both inside and outside the Convention Area;

(g) catches of high value species;

(h) catches of fishery resources for which there are particularly limited fishing opportunities;

(i) number of inspections previously carried out and number of detected infringements for a vessel and/or operator.'.

ANNEX II

The following Annex is added to Regulation (EU) No 1236/2010:

'ANNEX III

PORT MEMBER STATE INSPECTION PROCEDURES

National inspectors shall:

(a) verify that the vessel identification documentation on board and information relating to the owner of the vessel is true, complete and correct, including through appropriate contacts with the flag state or international records of vessels if necessary;

(b) verify that the vessel's flag and markings (e.g. name, external registration number, International Maritime Organisation (IMO) ship identification number, international radio call sign and other markings, main dimensions) are consistent with information contained in the documentation;

(c) verify that the authorisations for fishing and fishing-related activities are true, complete, correct and consistent with the information provided in accordance with Article 24;

(d) review all other relevant documentation and records held on board, including those in electronic format and vessel monitoring system (VMS) data from the flag state or relevant regional fisheries management organisations. Relevant documentation may include logbooks, catch, transhipment and trade documents, crew lists, stowage plans and drawings, descriptions of fish holds, and documents required pursuant to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES);

(e) examine all relevant fishing gear on board, including any gear stowed out of sight as well as related devices, and verify that they are in conformity with the conditions of the authorisations. The fishing gear shall also be checked to ensure that features such as the mesh and twine size, devices and attachments, dimensions and configuration of nets, pots, dredges, hook sizes and numbers are in conformity with applicable regulations and that the markings correspond to those authorised for the vessel;

(f) determine whether the fish on board were harvested in accordance with the applicable authorisations;

(g) monitor the entire discharge or transhipment and cross-check between the quantities by species recorded in the prior notice of landing and the quantities by species landed or transhipped;

(h) examine the fish, including by sampling, to determine their quantity and composition. In doing so, inspectors may open containers where the fish have been pre-packed and move the catch or containers to ascertain the integrity of fish holds. Such examination may include inspections of product type and determination of nominal weight;

(i) when the landing or transhipment is completed, verify and note the quantities by species of fish remaining on board;

(j) evaluate whether there is clear evidence for believing that a vessel has engaged in IUU fishing or fishing-related activities in support of such fishing;

(k) provide the master of the vessel with the report containing the result of the inspection, including possible measures that could be taken, to be signed by the inspector and the master. The master's signature on the report shall serve only as acknowledgment of the receipt of a copy of the report. The master shall be given the opportunity to add any comments or objection to the report, and, as appropriate, to contact the relevant authorities of the flag state, in particular where the master has serious difficulties in understanding the content of the report. A copy of the report shall be provided to the master; and

(l) arrange, where necessary and possible, for the translation of relevant documentation.'.

DIRECTIVES

DIRECTIVE (EU) 2016/97 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 January 2016

on insurance distribution (recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee ([1]),

Acting in accordance with the ordinary legislative procedure ([2]),

Whereas:

(1) A number of amendments are to be made to Directive 2002/92/EC of the European Parliament and of the Council ([3]). In the interests of clarity, that Directive should be recast.

(2) Since the main objective and subject matter of this recast is to harmonise national provisions concerning insurance and reinsurance distribution, and since those activities are carried out across the Union, this new Directive should be based on Article 53(1) and Article 62 of the Treaty on the Functioning of the European Union (TFEU). The form of a directive is appropriate in order to enable the implementing provisions in the areas covered by this Directive, when necessary, to be adjusted to any existing specificities of the particular market and legal system in each Member State. This Directive should also aim at coordinating national rules concerning access to the activities of insurance and reinsurance distribution.

(3) However, this Directive is aimed at minimum harmonisation and should therefore not preclude Member States from maintaining or introducing more stringent provisions in order to protect customers, provided that such provisions are consistent with Union law, including this Directive.

(4) Insurance and reinsurance intermediaries play a central role in the distribution of insurance and reinsurance products in the Union.

(5) 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 those persons or institutions be covered by this Directive.

(6) Consumers should benefit from the same level of protection despite the differences between distribution channels. In order to guarantee that the same level of protection applies and that the consumer can benefit from comparable standards, in particular in the area of the disclosure of information, a level playing field between distributors is essential.

(7) The application of Directive 2002/92/EC has shown that a number of provisions require further precision with a view to facilitating the exercise of insurance distribution and that the protection of consumers requires an extension of the scope of that Directive to all sales of insurance products. Insurance undertakings which sell insurance products directly should be brought within the scope of this Directive on a similar basis to insurance agents and brokers.

([1]) OJ C 44, 15.2.2013, p. 95.

([2]) Position of the European Parliament of 24 November 2015 (not yet published in the Official Journal) and decision of the Council of 14 December 2015.

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

(8) In order to guarantee that the same level of protection applies regardless of the channel through which customers buy an insurance product, either directly from an insurance undertaking or indirectly from an intermediary, the scope of this Directive needs to cover not only insurance undertakings or intermediaries, but also other market participants who sell insurance products on an ancillary basis, such as travel agents and car rental companies, unless they meet the conditions for exemption.

(9) There are still substantial differences between national provisions which create barriers to the taking-up and pursuit of the activities of insurance and reinsurance distribution in the internal market. There is a need to strengthen further the internal market and promote a true internal market for life and non-life insurance products and services.

(10) Current and recent financial turbulence has underlined the importance of ensuring effective consumer protection across all financial sectors. It is appropriate, therefore, to strengthen the confidence of customers and to make regulatory treatment of the distribution of insurance products more uniform in order to ensure an adequate level of customer protection across the Union. The level of consumer protection should be raised in relation to Directive 2002/92/EC in order to reduce the need for varying national measures. It is important to take into consideration the specific nature of insurance contracts in comparison to investment products regulated under Directive 2014/65/EU of the European Parliament and of the Council ([1]). The distribution of insurance contracts, including insurance-based investment products, should therefore be regulated under this Directive and be aligned with Directive 2014/65/EU. The minimum standards should be raised with regard to distribution rules and a level playing field should be created in respect of all insurance-based investment products.

(11) This Directive should apply to persons whose activity consists of providing insurance or reinsurance distribution services to third parties.

(12) This Directive should apply to persons whose activity consists of the provision of information on one or more contracts of insurance in response to criteria selected by the customer, whether via a website or other media, or the provision of a ranking of insurance products or a discount on the price of an insurance contract when the customer is able to directly or indirectly conclude an insurance contract at the end of the process. This Directive should not apply to websites managed by public authorities or consumers' associations which do not aim to conclude any contract but merely compare insurance products available on the market.

(13) This Directive should not apply to mere introducing activities consisting of the provision of data and information on potential policyholders to insurance or reinsurance intermediaries or undertakings or of information about insurance or reinsurance products or an insurance or reinsurance intermediary or undertaking to potential policyholders.

(14) This Directive should not apply to persons with another professional activity, such as tax experts, accountants or lawyers, who provide advice on insurance cover on an incidental basis in the course of that other professional activity, nor 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. This Directive should not apply to the professional management of claims on behalf of an insurance or reinsurance undertaking, nor to the loss adjusting and expert appraisal of claims.

(15) This Directive should not apply to persons practising insurance distribution as an ancillary activity where the premium does not exceed a certain amount and the risks covered are limited. Such insurance can be complementary to a good or to a service, including in relation to the risk of non-use of a service expected to be used at a certain point in time, such as a train journey, a gym subscription or a seasonal theatre pass, and other risks linked to travel such as travel cancellation or loss of baggage. However, in order to ensure that an adequate degree of consumer protection is always attached to the activity of insurance distribution, an insurance undertaking or insurance intermediary, carrying out the distribution activity through an ancillary insurance intermediary exempted from the requirements set out in this Directive, should ensure the fulfilment of certain basic requirements, such as the communication of its identity and of the way in which a complaint can be lodged, and that the demands and needs of the customer are considered.

([1]) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

(16) This Directive should ensure that the same level of consumer protection applies and that all consumers can benefit from comparable standards. This Directive should promote a level playing field and competition on equal terms between intermediaries, whether or not they are tied to an insurance undertaking. There is a benefit to consumers if insurance products are distributed through different channels and through intermediaries with different forms of cooperation with insurance undertakings, provided that they are required to apply similar rules on consumer protection. Such concerns should be taken into account by the Member States in the implementation of this Directive.

(17) This Directive should take into account the differences in the types of distribution channel. It should, for example, take into account the characteristics of insurance intermediaries who are under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings (tied insurance intermediaries) which exist in certain Member States' markets, and should establish appropriate and proportionate conditions applicable to the different types of distribution. In particular, Member States should be able to stipulate that the insurance or reinsurance distributor which is responsible for the activity of an insurance, reinsurance or ancillary insurance intermediary is to ensure that such intermediary meets the conditions for registration and is to register that intermediary.

(18) Insurance, reinsurance and ancillary insurance intermediaries who are natural persons should be registered with the competent authority of the Member State where they have their residence. With regard to those persons commuting on a daily basis between the Member State of their private residence and the Member State from which they carry out their distribution activity, i.e. their professional residence, the Member State of registration should be that of the professional residence. Those insurance, reinsurance and ancillary insurance intermediaries who are legal persons should be registered with the competent authority of the Member State where they have their registered office or, if under their national law they have no registered office, their head office. Member States should be able to allow other bodies to cooperate with competent authorities in the registration and regulation of insurance intermediaries. Insurance, reinsurance and ancillary insurance intermediaries should be registered provided that they meet strict professional requirements in relation to their ability, good repute, professional indemnity cover and financial capacity. Intermediaries already registered in Member States should not be required to register again under this Directive.

(19) The inability of insurance intermediaries to operate freely throughout the Union hinders the proper functioning of the internal market in insurance. This Directive is an important step towards an increased level of consumer protection and market integration.

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

(21) In order to ensure a high quality of service and effective consumer protection, home and host Member States should closely cooperate in the enforcement of the obligations set out in this Directive. Where insurance, reinsurance or ancillary insurance intermediaries pursue business in different Member States under the freedom to provide services, the competent authority of the home Member State should be responsible for ensuring compliance with the obligations set out in this Directive with regard to the entire business within the internal market. If the competent authority of a host Member State becomes aware of any breaches of obligations occurring within its territory, it should inform the competent authority of the home Member State which should then be obliged to take the appropriate measures. Such is the case, in particular, as regards breaches of the rules on good repute, professional knowledge and competence requirements or on the conduct of business. Moreover, the competent authority of the host Member State should be entitled to intervene if the home Member State fails to take appropriate measures or if the measures taken are insufficient.

(22) In the case of the establishment of a branch or a permanent presence in another Member State, it is appropriate to distribute responsibility for enforcement between home and host Member States. While responsibility for compliance with obligations affecting the business as a whole — such as the rules on professional requirements —

should remain with the competent authority of the home Member State under the same regime as in the case of provision of services, the competent authority of the host Member State should assume responsibility for enforcing the rules on information requirements and conduct of business with regard to the services provided within its territory. However, if the competent authority of a host Member State becomes aware of any breaches of obligations occurring within its territory with respect to which this Directive does not confer responsibility on the host Member State, it should inform the competent authority of the home Member State which should then be obliged to take the appropriate measures. Such is the case in particular as regards breaches of the rules on good repute, professional knowledge and competence requirements. Moreover, the competent authority of the host Member State should be entitled to intervene if the home Member State fails to take appropriate measures or if the measures taken are insufficient.

(23) The competent authorities of the Member States should have at their disposal all means necessary to ensure the orderly pursuit of business by insurance and reinsurance intermediaries and ancillary insurance intermediaries throughout the Union, whether pursued in accordance with the freedom of establishment or the freedom to provide services. In order to ensure the effectiveness of supervision, all actions taken by the competent authorities should be proportionate to the nature, scale and complexity of the risks inherent in the business of a particular distributor, regardless of the importance of the distributor concerned for the overall financial stability of the market.

(24) Member States should establish a single information point which gives access to their registers for insurance, reinsurance and ancillary insurance intermediaries. That single information point should also provide a hyperlink to each relevant competent authority in each Member State. In order to enhance transparency and facilitate cross-border trade, the European Insurance and Occupational Pensions Authority (EIOPA) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council ([1]) should establish, publish and keep up-to-date a single electronic database containing a record of each insurance, reinsurance and ancillary insurance intermediary which has notified an intention to exercise its freedom of establishment or to provide services. Member States should provide relevant information to EIOPA promptly to enable it to do this. The database should provide a hyperlink to each relevant competent authority in each Member State. Each competent authority of each Member State should provide on its website a hyperlink to the database.

(25) Any permanent presence of an intermediary in the territory of another Member State that is equivalent to a branch should be treated in the same way as a branch, unless the intermediary lawfully sets up the presence in another legal form. Such could be the case, depending on further circumstances, even where that presence does not formally take the form of a branch but consists merely of an office managed by the own staff of the intermediary or by a person who is independent but has permanent authority to act for the intermediary in the same way as an agency would.

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

(27) In order to deal with situations where an insurance or ancillary insurance intermediary is established in a Member State with the sole purpose of avoiding compliance with the rules of another Member State which is the place where it entirely or principally carries out its activity, the possibility for the host Member State to take precautionary measures may be an appropriate solution where its activity seriously endangers the proper functioning of the insurance and reinsurance market of the host Member State, and should not be prevented by this Directive. However, those measures should not be an obstacle to the freedom to provide services and the freedom of establishment, nor an access barrier to cross-border activity.

(28) It is important to guarantee a high level of professionalism and competence among insurance, reinsurance and ancillary insurance intermediaries and the employees of insurance and reinsurance undertakings who are involved in activities preparatory to, during and after the sales of insurance and reinsurance policies. Therefore, the professional

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

knowledge of intermediaries and ancillary insurance intermediaries and of the employees of insurance and reinsurance undertakings needs to match the level of complexity of those activities. Ancillary insurance intermediaries should be required to know the terms and conditions of the policies they distribute and, where applicable, rules on handling claims and complaints.

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

(30) The requirements relating to integrity contribute to a sound and reliable insurance sector and to the objective of the adequate protection of policyholders. Those requirements include having a clean criminal record or any other national equivalent in relation to certain offences such as offences under legislation on financial services, offences concerning dishonesty, fraud or financial crime and other offences under company law, bankruptcy law or insolvency law.

(31) It is equally important that relevant persons within the management structure of an insurance, reinsurance or ancillary insurance intermediary who are involved in the distribution of insurance or reinsurance products, as well as the relevant employees of an insurance or reinsurance distributor directly involved in insurance or reinsurance distribution, possess an appropriate level of knowledge and competence in relation to the distribution activity. The appropriateness of the level of knowledge and competence should be assured by the application of specific knowledge and professional requirements to those persons.

(32) Member States should not need to consider as relevant persons those managers or employees not directly involved in the distribution of insurance or reinsurance products. Concerning insurance and reinsurance intermediaries and undertakings, all employees directly involved in the distribution activity should be expected to possess an appropriate level of knowledge and competence, with certain exceptions, such as for those who are devoted solely to administrative tasks. Concerning ancillary insurance intermediaries, at least the persons responsible for ancillary insurance distribution should be considered among the relevant employees who are expected to possess an appropriate level of knowledge and competence. Where the insurance and reinsurance distributor is a legal person, the persons within the management structure in charge of executing policies and procedures relating to the activity of distribution of insurance or reinsurance products should also abide by appropriate knowledge and competence requirements. To that end, the person who is responsible for the activity of insurance or reinsurance distribution within the insurance, reinsurance and ancillary insurance intermediary should always abide by the knowledge and competence requirements.

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

(34) The coordination of national provisions on professional requirements and registration of persons taking up and pursuing the activity of insurance or reinsurance distribution can contribute both to the completion of the internal market for financial services and to the enhancement of consumer protection in this field.

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

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

(37) 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 internal market. The exchange of information should in particular be promoted, both in the process of registration and on an ongoing basis, with

reference to information concerning the good repute and the professional and knowledge competences of persons responsible for carrying out the activity of an insurance or reinsurance distributor.

(38) There is a need for appropriate and effective out-of-court complaint and redress procedures in the Member States in order to settle disputes between insurance distributors and customers using, where appropriate, existing procedures. Those procedures should be available to deal with disputes concerning rights and obligations under this Directive. Such out-of-court complaint and redress procedures should seek to achieve a quicker and less expensive settlement of disputes between insurance distributors and customers.

(39) 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 customers. It is therefore necessary to provide for rules to ensure that such conflicts of interest do not adversely affect the interests of the customer.

(40) Customers should be provided in advance with clear information about the status of the persons who sell insurance products and about the type of remuneration which they receive. Such information should be given to the customer at the pre-contractual stage. Its role is to show the relationship between the insurance undertaking and the intermediary, where applicable, as well as the type of the intermediary's remuneration.

(41) In order to provide a customer with information on the insurance distribution services provided, regardless of whether the customer purchases through an intermediary or directly from an insurance undertaking, and to avoid distortion of competition by encouraging insurance undertakings to sell directly to customers rather than via intermediaries in order to avoid information requirements, insurance undertakings should also be required to provide information to customers about the nature of the remuneration their employees receive for the sale of insurance products.

(42) Insurance intermediaries and insurance undertakings are subject to uniform requirements when distributing insurance-based investment products, as laid down in Regulation (EU) No 1286/2014 of the European Parliament and of the Council ([1]). In addition to the information required to be provided in the form of the key information document, distributors of insurance-based investment products should provide additional information detailing any cost of distribution that is not already included in the costs specified in the key information document, so as to enable the customer to understand the cumulative effect that those aggregate costs have on the return of the investment. This Directive should therefore lay down rules on provision of information on costs of the distribution service connected to the insurance-based investment products in question.

(43) As this Directive aims to enhance consumer protection, some of its provisions are only applicable in 'business to consumer' relationships, especially those which regulate conduct of business rules of insurance intermediaries or of other sellers of insurance products.

(44) In order to avoid cases of mis-selling, the sale of insurance products should always be accompanied by a demands-and-needs test on the basis of information obtained from the customer. Any insurance product proposed to the customer should always be consistent with the customer's demands and needs and be presented in a comprehensible form to allow that customer to make an informed decision.

(45) Where advice is provided prior to the sale of an insurance product, in addition to the duty to specify the customers' demands and needs, a personalised recommendation should be provided to the customer explaining why a particular product best meets the customer's insurance demands and needs.

(46) Member States should require that remuneration policies of insurance distributors in relation to their employees or representatives do not impair their ability to act in accordance with the best interests of customers or prevent them from making a suitable recommendation or presenting information in a form that is fair, clear and not misleading. Remuneration based on sales targets should not provide an incentive to recommend a particular product to the customer.

(47) It is essential for the customers to know whether they are dealing with an intermediary who gives advice on the basis of a fair and personal analysis. In order to assess whether the number of contracts and providers considered by the intermediary is sufficiently large to cater for a fair and personal analysis, appropriate consideration should be given, inter alia, to the needs of the customer, the number of providers in the market, the market share of those providers,

([1]) Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs) (OJ L 352, 9.12.2014, p. 1).

the number of relevant insurance products available from each provider, and the features of those products. This Directive should not prevent Member States from imposing the requirement that an insurance intermediary who wishes to give advice on the basis of a fair and personal analysis on an insurance contract gives such advice on all the insurance contracts that such an insurance intermediary distributes.

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

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

(50) Uniform rules should be laid down in order to give the customer the choice of medium in which information is provided, allowing for use of electronic communications where it is appropriate having regard to the circumstances of the transaction. However, the customer should be given the option to receive it on paper. In the interest of customer access to information, all pre-contractual information should be accessible free of charge.

(51) There is less of a need to require that such information be disclosed when the customer is seeking reinsurance or insurance cover for commercial and industrial risks, or solely for the purposes of distributing insurance-based investment products, when the customer is a professional client as defined in Directive 2014/65/EU.

(52) This Directive should specify the minimum obligations of insurance distributors in providing information to customers. A Member State should be able to maintain or adopt more stringent provisions in the area of information provision which may be imposed on insurance distributors independently of the provisions of their home Member State where such distributors are pursuing insurance distribution activities on that Member State's territory, provided that those more stringent provisions comply with Union law, including Directive 2000/31/EC of the European Parliament and of the Council ([1]). A Member State which proposes to apply and applies provisions regulating insurance distributors and the sale of insurance products in addition to those set out in this Directive should ensure that the administrative burden stemming from those provisions is proportionate with regard to consumer protection and remains limited.

(53) Cross-selling practices are a common strategy used by insurance distributors throughout the Union. They can provide benefits to customers but can also represent practices where the interests of customers are not adequately considered. This Directive should not prevent the distribution of multi-risk insurance policies.

(54) The provisions of this Directive concerning cross-selling should be without prejudice to the application of Union legislative acts providing for rules applicable to cross-selling practices in relation to certain categories of goods or services.

(55) In order to ensure that insurance products meet the needs of the target market, insurance undertakings and, in the Member States where insurance intermediaries manufacture insurance products for sale to customers, insurance intermediaries should maintain, operate and review a process for the approval of each insurance product. Where an insurance distributor advises on, or proposes, insurance products which it does not manufacture, it should in any case be able to understand the characteristics and identified target market of those products. This Directive should not limit the variety and flexibility of the approaches which undertakings use to develop new products.

(56) Insurance-based investment products are often made available to customers as potential alternatives or substitutes to investment products subject to Directive 2014/65/EU. To deliver consistent investor protection and avoid the risk of regulatory arbitrage, it is important that insurance-based investment products are subject, in addition to the conduct of business standards defined for all insurance products, to specific standards aimed at addressing the investment

([1]) Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce') (OJ L 178, 17.7.2000, p. 1).

element embedded in those products. Such specific standards should include provision of appropriate information, requirements for advice to be suitable and restrictions on remuneration.

(57) In order to ensure that any fee or commission or any non-monetary benefit in connection with the distribution of an insurance-based investment product paid to or paid by any party, except the customer or a person on behalf of the customer, does not have a detrimental impact on the quality of the relevant service to the customer, the insurance distributor should put in place appropriate and proportionate arrangements in order to avoid such detrimental impact. To that end, the insurance distributor should develop, adopt and regularly review policies and procedures relating to conflicts of interest with the aim of avoiding any detrimental impact on the quality of the relevant service to the customer and of ensuring that the customer is adequately informed about fees, commissions or benefits.

(58) In order to ensure compliance with the provisions of this Directive by insurance undertakings and persons who pursue insurance distribution, and to ensure that they are subject to similar treatment across the Union, Member States should be required to provide for administrative sanctions and other measures which are effective, proportionate and dissuasive. A review of existing powers and their practical application has been carried out with the aim of promoting convergence of sanctions and other measures in the Commission communication of 8 December 2010 on reinforcing sanctioning regimes in the financial services sector. Therefore, administrative sanctions and other measures laid down by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or other measure, and publication.

(59) Even though Member States are not prevented from laying down rules for administrative and criminal sanctions for the same breaches, Member States should not be required to lay down rules for administrative sanctions for the breaches of this Directive which are subject to national criminal law. In accordance with national law, Member States are not obliged to impose both administrative and criminal sanctions for the same offence, but they should be able to do so if their national law so permits. However, the maintenance of criminal sanctions instead of administrative sanctions for breaches of this Directive should not reduce or otherwise affect the ability of competent authorities to cooperate, access and exchange information in a timely way with competent authorities in other Member States for the purposes of this Directive, including after any referral of the relevant breaches to the competent judicial authorities for criminal prosecution.

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

(61) In order to deliver consistent investor protection and avoid the risk of regulatory arbitrage, it is important that, in the event of breaches related to the distribution of an insurance-based investment product, administrative sanctions and other measures set out by Member States are aligned to those set out in Regulation (EU) No 1286/2014.

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

(63) In order to ensure that decisions on breaches by competent authorities have a dissuasive effect on the public at large and to inform market participants about behaviour that is considered detrimental to customers, those decisions should be published, provided that the time period for lodging an appeal has passed and no appeal was lodged, unless such disclosure jeopardises the stability of financial markets or an ongoing investigation. Where national law provides for the publication of the sanction or other measure which is subject to an appeal, such information, as well as the outcome of the appeal, should also be published without undue delay. In any event, if publication of the sanction or other measure would cause disproportionate damage to the parties involved, the competent authority should be able to decide not to publish the sanction or other measure or to publish it anonymously.

(64) In order to detect potential breaches, the competent authorities should have the necessary investigatory powers, and should establish effective mechanisms, to enable reporting of potential or actual breaches.

(65) This Directive should refer to both administrative sanctions and other measures irrespective of their qualification as a sanction or other measure under national law.

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

(67) In order to attain the objectives set out in this Directive, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of product oversight and governance requirements for all products, and, in relation to the distribution of insurance-based investment products, the management of conflicts of interest, the conditions under which inducements can be paid or received, and assessment of suitability and appropriateness. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(68) Technical standards in financial services should ensure consistent harmonisation and adequate protection of consumers across the Union. As EIOPA is a body with highly specialised expertise, it should be entrusted solely with the drawing-up of draft regulatory and implementing technical standards which do not necessitate policy choices, for submission to the European Parliament, the Council and the Commission.

(69) In accordance with the common understanding on delegated acts between the European Parliament, the Council and the Commission, without prejudice to its further revision, the Commission should take into account the objection period as well as European Parliament and Council procedures concerning the date of transmission of the delegated act. Furthermore, in accordance with the Common Understanding on delegated acts, without prejudice to its further revision, and, where applicable, Regulation (EU) No 1094/2010, proper transparency and appropriate contacts with the European Parliament and with the Council should be ensured in advance of the adoption of the delegated act.

(70) Directive 95/46/EC of the European Parliament and of the Council ([1]) and Regulation (EC) No 45/2001 of the European Parliament and of the Council ([2]) should govern the processing of personal data carried out by EIOPA within the framework of this Directive, under the supervision of the European Data Protection Supervisor.

(71) 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 Treaties.

(72) This Directive should not be too burdensome for small and medium-sized insurance and reinsurance distributors. One of the tools by which to achieve that objective is the proper application of the proportionality principle. That principle should apply both to the requirements imposed on the insurance and reinsurance distributors and to the exercise of supervisory powers.

(73) A review of this Directive should be carried out five years after the date on which it enters into force in order to take account of market developments as well as developments in other areas of Union law or Member States' experiences in the implementation of Union law, in particular with regard to products covered by Directive 2003/41/EC of the European Parliament and of the Council ([3]).

(74) Directive 2002/92/EC should be repealed 24 months after the entry into force of this Directive. However, Chapter IIIA of Directive 2002/92/EC should be deleted with effect from the date of entry into force of this Directive.

(75) 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 that Directive.

(76) 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.

(77) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 and delivered an opinion on 23 November 2012 ([4]).

([1]) Directive 95/46/EC 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 (OJ L 281, 23.11.1995, p. 31).

([2]) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

([3]) Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ L 235, 23.9.2003, p. 10).

([4]) OJ C 100, 6.4.2013, p. 12.

(78) Since the objectives of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of its scale, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(79) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents, 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,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

Scope

1. This Directive lays down rules concerning the taking-up and pursuit of the activities of insurance and reinsurance distribution in the Union.

2. This Directive applies to any natural or legal person who is established in a Member State or who wishes to be established there in order to take up and pursue the distribution of insurance and reinsurance products.

3. This Directive shall not apply to ancillary insurance intermediaries carrying out insurance distribution activities where all the following conditions are met:

(a) the insurance is complementary to the good or service supplied by a provider, where such insurance covers:

(i) the risk of breakdown, loss of, or damage to, the good or the non-use of the service supplied by that provider; or

(ii) damage to, or loss of, baggage and other risks linked to travel booked with that provider;

(b) the amount of the premium paid for the insurance product does not exceed EUR 600 calculated on a *pro rata* annual basis;

(c) by way of derogation from point (b), where the insurance is complementary to a service referred to in point (a) and the duration of that service is equal to, or less than, three months, the amount of the premium paid per person does not exceed EUR 200.

4. Member States shall ensure that, when carrying out a distribution activity through an ancillary insurance intermediary who is exempted from the application of this Directive pursuant to paragraph 3, the insurance undertaking or insurance intermediary ensures that:

(a) information is made available to the customer, prior to the conclusion of the contract, about its identity and address and about the procedures referred to in Article 14 allowing customers and other interested parties to lodge complaints;

(b) appropriate and proportionate arrangements are in place to comply with Articles 17 and 24 and to consider the demands and needs of the customer before the proposal of the contract;

(c) the insurance product information document referred to in Article 20(5) is provided to the customer prior to the conclusion of the contract.

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

6. This Directive shall not apply to insurance and reinsurance distribution activities in relation to risks and commitments located outside the Union.

This Directive shall not affect a Member State's law in respect of insurance and reinsurance distribution activities 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 distribution activities on that market.

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

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

Article 2

Definitions

1. For the purposes of this Directive:

(1) 'insurance distribution' means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media;

(2) 'reinsurance distribution' means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of reinsurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including when carried out by a reinsurance undertaking without the intervention of a reinsurance intermediary;

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

(4) 'ancillary insurance intermediary' means any natural or legal person, other than a credit institution or an investment firm as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council ([1]), who, for remuneration, takes up or pursues the activity of insurance distribution on an ancillary basis, provided that all the following conditions are met:

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

(b) the natural or legal person only distributes certain insurance products that are complementary to a good or service;

(c) the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which the intermediary provides as its principal professional activity;

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

(6) 'insurance undertaking' means an undertaking as defined in Article 13 point 1 of Directive 2009/138/EC of the European Parliament and of the Council ([2]);

([1]) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

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

(7) 'reinsurance undertaking' means a reinsurance undertaking as defined in Article 13 point 4 of Directive 2009/138/EC;

(8) 'insurance distributor' means any insurance intermediary, ancillary insurance intermediary or insurance undertaking;

(9) 'remuneration' means any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities;

(10) 'home Member State' means:

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

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

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

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

(13) 'close links' means close links as defined in Article 13 point 17 of Directive 2009/138/EC;

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

(15) 'advice' means the provision of a personal recommendation to a customer, either upon their request or at the initiative of the insurance distributor, in respect of one or more insurance contracts;

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

(17) 'insurance-based investment product' means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations, and does not include:

(a) non-life insurance products as listed in Annex I to Directive 2009/138/EC (Classes of non-life insurance);

(b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or disability;

(c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;

(d) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC;

(e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;

(18) 'durable medium' means any instrument which:

(a) enables a customer to store information addressed personally to that customer in a way accessible for future reference and for a period of time adequate for the purposes of the information; and

(b) allows the unchanged reproduction of the information stored.

2. For the purposes of points (1) and (2) of paragraph 1, the following shall not be considered to constitute insurance distribution or reinsurance distribution:

(a) the provision of information on an incidental basis in the context of another professional activity where:

(i) the provider does not take any additional steps to assist in concluding or performing an insurance contract;

(ii) the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;

(b) the management of claims of an insurance undertaking or of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims;

(c) the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance intermediaries, insurance undertakings or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract;

(d) the mere provision of information about insurance or reinsurance products, an insurance intermediary, a reinsurance intermediary, an insurance undertaking or a reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract.

CHAPTER II

REGISTRATION REQUIREMENTS

Article 3

Registration

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

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

Without prejudice to the first subparagraph, Member States may stipulate that insurance and reinsurance undertakings and intermediaries and other bodies may cooperate with the competent authorities in registering insurance and reinsurance and ancillary insurance intermediaries and in the application of the requirements laid down in Article 10.

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

An insurance or reinsurance intermediary or an ancillary insurance intermediary may act under the responsibility of an insurance or reinsurance undertaking or another intermediary. In such a case, Member States may stipulate that the insurance or reinsurance undertaking or other intermediary shall be responsible for ensuring that the insurance or reinsurance intermediary or ancillary insurance intermediary meets the conditions for registration, including the conditions set out in point (c) of the first subparagraph of paragraph 6.

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

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

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

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

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

Member States shall establish an online registration system. That system shall be easily accessible and allow the registration form to be completed directly online.

3. In the event that there is more than one register in a Member State, that Member State shall establish a single information point allowing quick and easy access to information from those registers, which shall be compiled electronically and kept updated. The information point shall also provide the identification details of the competent authorities of the home Member State.

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

EIOPA shall have the right to access the data stored in the register referred to in the first subparagraph. EIOPA and the competent authorities shall have the right to modify such data. Data subjects whose personal details are stored on the register and exchanged shall have the right to access such stored data and the right to be appropriately informed.

EIOPA shall establish a website with hyperlinks to each single information point or, where applicable, register, established by Member States in accordance with paragraph 3.

Home Member States shall ensure that registration of insurance, reinsurance and ancillary insurance intermediaries is made subject to the fulfilment of the relevant requirements laid down in Article 10.

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

Home Member States shall ensure that insurance, reinsurance and ancillary insurance intermediaries who cease to fulfil the requirements laid down in Article 10 are removed from the register. Where applicable, the home Member State shall inform the host Member State of such removal.

5. Member States shall ensure that applications by intermediaries for inclusion in the register are dealt with within three months of the submission of a complete application, and that the applicant shall be notified promptly of the decision.

6. Member States shall ensure that all of the following information is requested as a condition of registration of insurance, reinsurance and ancillary insurance intermediaries:

(a) the identities of shareholders or members, whether natural or legal persons, that have a holding in the intermediary that exceeds 10 %, and the amounts of those holdings;

(b) the identities of persons who have close links with the intermediary;

(c) information that those holdings or close links do not prevent the effective exercise of the supervisory functions of the competent authority.

Member States shall ensure that intermediaries inform the competent authorities without undue delay of any change in the information provided under this paragraph.

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

CHAPTER III

FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT

Article 4

Exercise of the freedom to provide services

1. Any insurance, reinsurance or ancillary insurance intermediary who intends to carry on business within the territory of another Member State for the first time, under the freedom to provide services, shall communicate the following information to the competent authority of its home Member State:

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

(b) the Member State or Member States in which the intermediary intends to operate;

(c) the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented;

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

2. The competent authority of the home Member State shall, within one month of receiving the information referred to in paragraph 1, communicate that information to the competent authority of the host Member State, which shall acknowledge its receipt without delay. The competent authority of the home Member State shall inform the insurance, reinsurance or ancillary insurance intermediary in writing that the information has been received by the competent authority of the host Member State and that the intermediary can commence its business in the host Member State. Where applicable, at the same time, the competent authority of the home Member State shall communicate to the intermediary the fact that information concerning the legal provisions referred to in Article 11(1) applicable in the host Member State is available through the means referred to in Article 11(3) and (4) and also that the intermediary must comply with those provisions in order to commence its business in the host Member State.

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

Article 5

Breach of obligations when exercising the freedom to provide services

1. Where the competent authority of the host Member State has reason to consider that an insurance, reinsurance or ancillary insurance intermediary acting within its territory under the freedom to provide services is in breach of any obligation set out in this Directive, it shall communicate those considerations to the competent authority of the home Member State.

After assessing the information received pursuant to the first subparagraph, the competent authority of the home Member State shall, where applicable, and, if so, at the earliest opportunity, take appropriate measures to remedy the situation. It shall inform the competent authority of the host Member State of any such measures taken.

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

In addition, the competent authority of the home Member State or the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

2. Paragraph 1 shall not affect the power of the host Member State to take appropriate measures to prevent or penalise irregularities committed within its territory, in a situation where immediate action is necessary in order to protect the rights of consumers. This power shall include the possibility of preventing insurance, reinsurance and ancillary insurance intermediaries from carrying out new business within its territory.

3. Any measure adopted by the competent authorities of the host Member State under this Article shall be communicated to the insurance, reinsurance or ancillary insurance intermediary concerned in a well-reasoned document and notified to the competent authority of the home Member State, to EIOPA and to the Commission without undue delay.

Article 6

Exercise of the freedom of establishment

1. Member States shall ensure that any insurance, reinsurance or ancillary insurance intermediary that intends to exercise its freedom of establishment by establishing a branch or permanent presence within the territory of another Member State communicates that to the competent authority of its home Member State and provides that competent authority with the following information:

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

(b) the Member State within the territory of which the intermediary 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) the address in the host Member State from which documents may be obtained;

(f) the name of any person responsible for the management of the branch or permanent presence.

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

2. Unless the competent authority of the home Member State has reason to doubt the adequacy of the organisational structure or the financial situation of the insurance, reinsurance or ancillary insurance intermediary, taking into account the distribution activities envisaged, it shall, within one month of receiving the information referred to in paragraph 1, communicate that information to the competent authority of the host Member State, which shall acknowledge its receipt without delay. The competent authority of the home Member State shall inform the insurance, reinsurance or ancillary insurance intermediary in writing that the information has been received by the competent authority of the host Member State.

Within one month of receipt of the information referred to in the first subparagraph of this paragraph, the competent authority of the host Member State shall communicate the legal provisions referred to in Article 11(1) through the means referred to in Article 11(3) and (4) which are applicable in its territory to the competent authority of the home Member State. The competent authority of the home Member State shall communicate that information to the intermediary and inform the intermediary that it may commence its business in the host Member State provided that it complies with those legal provisions.

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

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

A refusal as referred to in the first subparagraph or any failure by the competent authority of the home Member State to communicate the information referred to in paragraph 1 shall be subject to a right of appeal to the courts of the home Member State.

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

Article 7

Division of competence between home and host Member States

1. If an insurance, reinsurance or ancillary insurance intermediary's primary place of business is located in a Member State other than the home Member State, the competent authority of that other Member State may agree with the home Member State competent authority to act as if it were the home Member State competent authority with regard to the

provisions of Chapters IV, V, VI and VII. In the event of such an agreement, the home Member State competent authority shall notify the insurance, reinsurance or ancillary insurance intermediary and EIOPA without delay.

2. The competent authority of the host Member State shall have responsibility for ensuring that the services provided by the establishment within its territory comply with the obligations laid down in Chapters V and VI and with 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 needed to enable the competent authority to enforce the obligations under Chapters V and VI and measures adopted pursuant thereto with respect to the services or activities provided by the establishment within its territory.

Article 8

Breach of obligations when exercising the freedom of establishment

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

2. Where the competent authority of a host Member State has reason to consider that an insurance, reinsurance or ancillary insurance intermediary acting within its territory through an establishment is in breach of any obligation set out in this Directive, and where that competent authority does not have responsibility in accordance with Article 7(2), it shall refer those findings to the competent authority of the home Member State. After assessing the information received, the competent authority of the home Member State shall, where applicable and, if so, at the earliest opportunity take appropriate measures to remedy the situation. It shall inform the competent authority of the host Member State of any such measures taken.

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

In addition, the competent authority of the home Member State or of the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

4. Paragraphs 2 and 3 shall not affect the power of the host Member State to take appropriate and non-discriminatory measures to prevent or penalise irregularities committed within its territory, in situations where immediate action is strictly necessary, in order to protect the rights of consumers of the host Member State, and where equivalent measures of the home Member State are inadequate or lacking. In such situations, the host Member State shall have the possibility of preventing the insurance, reinsurance or ancillary insurance intermediary concerned from carrying out new business within its territory.

5. Any measure adopted by the competent authorities of the host Member State under this Article shall be communicated to the insurance, reinsurance or ancillary insurance intermediary concerned in a well-reasoned document and notified to the competent authority of the home Member State, to EIOPA and to the Commission without undue delay.

Article 9

Powers in relation to national provisions adopted in the interest of the general good

1. This Directive shall not affect the power of the host Member States to take appropriate and non-discriminatory measures to penalise irregularities committed within their territories which are contrary to their legal provisions referred to in Article 11(1), in so far as is strictly necessary. In such situations, host Member States shall have the possibility of preventing the insurance, reinsurance or ancillary insurance intermediary concerned from carrying out new business within its territory.

2. Moreover, this Directive shall not affect the power of the competent authority of the host Member State to take appropriate measures to prevent an insurance distributor established in another Member State from carrying out activity within its territory under the freedom to provide services or, where applicable, the freedom of establishment, where the relevant activity is entirely or principally directed towards the territory of the host Member State with the sole purpose of avoiding the legal provisions which would be applicable if that insurance distributor had its residence or registered office in that host Member State and, in addition, where its activity seriously endangers the proper functioning of insurance and reinsurance markets in the host Member State with respect to the protection of consumers. In such a case the competent authority of the host Member State, after informing the competent authority of the home Member State, may take, in respect of that insurance distributor, all the appropriate measures needed in order to protect the rights of consumers in the host Member State. The competent authorities involved may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010, and in such a case, EIOPA may act in accordance with the powers conferred on it by that Article in the event of a disagreement between the competent authorities of the host and home Member States.

CHAPTER IV

ORGANISATIONAL REQUIREMENTS

Article 10

Professional and organisational requirements

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

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

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

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

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

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

Insurance and reinsurance intermediaries shall demonstrate compliance with the relevant professional knowledge and competence requirements laid down in Annex I.

3. Natural persons working in an insurance or reinsurance undertaking, or insurance or reinsurance intermediary, who pursue insurance or reinsurance distribution shall be of good repute. As a minimum, they shall have a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they shall not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.

Member States may, in accordance with the third subparagraph of Article 3(1), allow the insurance or reinsurance distributor to check the good repute of its employees and, where appropriate, of its insurance or reinsurance intermediaries.

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

As regards ancillary insurance intermediaries, Member States shall ensure that the persons responsible for ancillary insurance distribution fulfil the requirement referred to in the first subparagraph.

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

5. Member States shall require that ancillary insurance intermediaries hold professional indemnity insurance or comparable guarantees at a level established by Member States taking into account the nature of the products sold and the activity carried out.

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

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

(a) provisions laid down by law or contract whereby monies paid by the customer to the intermediary are treated as having been paid to the undertaking, whereas monies paid by the undertaking to the intermediary are not treated as having been paid to the customer until the customer actually receives them;

(b) a requirement for the intermediary to have financial capacity amounting, on a permanent basis, to 4 % of the sum of annual premiums received, subject to a minimum of EUR 18 750;

(c) a requirement that customers' monies be transferred via strictly segregated customer accounts and that those accounts not be used to reimburse other creditors in the event of bankruptcy;

(d) a requirement that a guarantee fund be set up.

7. EIOPA shall regularly review the amounts referred to in paragraphs 4 and 6 in order to take account of changes in the European index of consumer prices as published by Eurostat. The first review shall take place by 31 December 2017 and successive reviews shall take place every five years thereafter.

EIOPA shall develop draft regulatory technical standards which adapt the base amount in euro referred to in paragraphs 4 and 6 by the percentage change in the index referred to in the first subparagraph of this paragraph over the period between 1 January 2013 and 31 December 2017 or between the last review date and the new review date and rounded up to the nearest multiple of EUR 10.

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

Power is conferred on the Commission to adopt the regulatory technical standards referred to in the second and third subparagraphs of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

8. To ensure compliance with the requirements in paragraphs 1, 2 and 3, insurance and reinsurance undertakings shall approve, implement and regularly review their internal policies and appropriate internal procedures.

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

Insurance and reinsurance undertakings shall establish, maintain and keep up-to-date records of all the relevant documentation regarding the application of paragraphs 1, 2 and 3. Insurance and reinsurance undertakings shall, upon request, make available the name of the person responsible for that function to the home Member State competent authority.

Article 11

Publication of 'general good' rules

1. Member States shall ensure appropriate publication by their competent authorities of the relevant national legal provisions protecting the general good, including information about whether and how the Member State has chosen to apply the stricter provisions provided for in Article 29(3), which are applicable to the carrying on of insurance and reinsurance distribution in their territories.

2. A Member State which proposes to apply and applies provisions regulating insurance distribution in addition to those set out in this Directive shall ensure that the administrative burden stemming from those provisions is proportionate with regard to consumer protection. The Member State shall continue to monitor those provisions to ensure they remain in conformity with this paragraph.

3. EIOPA shall include on its website the hyperlinks to the websites of competent authorities where information on 'general good' rules is published. Such information shall be updated by the national competent authorities on a regular basis and EIOPA shall make the information available on its website, with all national 'general good' rules categorised into different relevant areas of law.

4. Member States shall establish a single point of contact responsible for providing information on 'general good' rules in their respective Member State. Such a point of contact should be an appropriate competent authority.

5. EIOPA shall examine in a report, and inform the Commission about, the 'general good' rules published by Member States as referred to in this Article in the context of the proper functioning of this Directive and of the internal market before 23 February 2019.

Article 12

Competent authorities

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

2. The authorities referred to in paragraph 1 of this Article shall be either public authorities or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. They shall not be insurance or reinsurance undertakings or associations whose members directly or indirectly include insurance or reinsurance undertakings, or insurance or reinsurance intermediaries, without prejudice to the possibility of cooperation between competent authorities and other bodies where that is expressly provided for in Article 3(1).

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

Article 13

Cooperation and exchange of information between the competent authorities of Member States

1. The competent authorities of different Member States shall cooperate among themselves and exchange any relevant information on insurance and reinsurance distributors in order to ensure the proper application of this Directive.

2. In particular, in the process of registration and on an ongoing basis, the competent authorities shall share relevant information concerning the good repute, the professional knowledge and the competence of insurance and reinsurance distributors.

3. The competent authorities shall also exchange information on insurance and reinsurance distributors who have been subject to a sanction or other measure referred to in Chapter VII and such information is likely to lead to removal from the register of any such distributors.

4. All persons required to receive or divulge information in connection with this Directive shall be bound by professional secrecy, in the same manner as is laid down in Article 64 of Directive 2009/138/EC.

Article 14

Complaints

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

Article 15

Out-of-court redress

1. Member States shall ensure that adequate and effective, impartial and independent out-of-court complaint and redress procedures for the settlement of disputes between customers and insurance distributors concerning the rights and obligations arising under this Directive are established in accordance with the relevant Union legislative acts and national law, using existing bodies where appropriate. Member States shall ensure that such procedures are applicable, and the relevant body's competence effectively extends, to insurance distributors against whom the procedures are initiated.

2. Member States shall ensure that the bodies referred to in paragraph 1 cooperate in the resolution of cross-border disputes concerning rights and obligations arising under this Directive.

Article 16

Restriction on use of intermediaries

Member States shall ensure that, when using the services of the insurance, reinsurance or ancillary insurance intermediaries, insurance and reinsurance undertakings and intermediaries use the insurance and reinsurance distribution services only of registered insurance and reinsurance intermediaries or ancillary insurance intermediaries including those referred to in Article 1(3).

CHAPTER V

INFORMATION REQUIREMENTS AND CONDUCT OF BUSINESS RULES

Article 17

General principle

1. Member States shall ensure that, when carrying out insurance distribution, insurance distributors always act honestly, fairly and professionally in accordance with the best interests of their customers.

2. Without prejudice to Directive 2005/29/EC of the European Parliament and of the Council ([1]), Member States shall ensure that all information related to the subject of this Directive, including marketing communications, addressed by the insurance distributor to customers or potential customers shall be fair, clear and not misleading. Marketing communications shall always be clearly identifiable as such.

3. Member States shall ensure that insurance distributors are not remunerated or do not remunerate or assess the performance of their employees in a way that conflicts with their duty to act in accordance with the best interests of their customers. In particular, an insurance distributor shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs.

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

Article 18

General information provided by the insurance intermediary or insurance undertaking

Member States shall ensure that:

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

(i) its identity and address and that it is an insurance intermediary;

(ii) whether it provides advice about the insurance products sold;

(iii) the procedures referred to in Article 14 enabling customers and other interested parties to register complaints about insurance intermediaries and about the out-of-court complaint and redress procedures referred to in Article 15;

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

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

(b) in good time before the conclusion of an insurance contract, an insurance undertaking makes the following disclosures to customers:

(i) its identity and address and that it is an insurance undertaking;

(ii) whether it provides advice about the insurance products sold;

(iii) the procedures referred to in Article 14 enabling 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 15.

Article 19

Conflicts of interest and transparency

1. Member States shall ensure that in good time before the conclusion of an insurance contract, an insurance intermediary provides the customer with at least the following information:

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

(b) whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing 10 % or more of the voting rights or of the capital in the insurance intermediary;

(c) in relation to the contracts proposed or advised upon, whether:

(i) it gives advice on the basis of a fair and personal analysis;

(ii) it is under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings, in which case it is to provide the names of those insurance undertakings; or

(iii) it is not under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair and personal analysis, in which case it is to provide the names of the insurance undertakings with which it may and does conduct business;

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

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

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

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

(iii) on the basis of any other type of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract; or

(iv) on the basis of a combination of any type of remuneration set out at points (i), (ii) and (iii).

2. Where the fee is payable directly by the customer, the insurance intermediary shall inform the customer of the amount of the fee or, where that is not possible, of the method for calculating the fee.

3. If any payments, other than the ongoing premiums and scheduled payments, are made by the customer under the insurance contract after its conclusion, the insurance intermediary shall also make the disclosures in accordance with this Article for each such payment.

4. Member States shall ensure that in good time before the conclusion of an insurance contract, an insurance undertaking communicates to its customer the nature of the remuneration received by its employees in relation to the insurance contract.

5. If any payments, other than the ongoing premiums and scheduled payments, are made by the customer under the insurance contract after its conclusion, the insurance undertaking shall also make the disclosures in accordance with this Article for each such payment.

Article 20

Advice, and standards for sales where no advice is given

1. Prior to the conclusion of an insurance contract, the insurance distributor shall specify, on the basis of information obtained from the customer, the demands and the needs of that customer and shall provide the customer with objective information about the insurance product in a comprehensible form to allow that customer to make an informed decision.

Any contract proposed shall be consistent with the customer's insurance demands and needs.

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

2. The details referred to in paragraph 1 shall be modulated according to the complexity of the insurance product being proposed and the type of customer.

3. Where an insurance intermediary informs the customer that it gives its advice on the basis of a fair and personal analysis, it shall give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

4. Without prejudice to Articles 183 and 184 of Directive 2009/138/EC, prior to the conclusion of a contract, whether or not advice is given and irrespective of whether the insurance product is part of a package pursuant to Article 24 of this Directive, the insurance distributor shall provide the customer with 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.

5. In relation to the distribution of non-life insurance products as listed in Annex I to Directive 2009/138/EC, the information referred to in paragraph 4 of this Article shall be provided by way of a standardised insurance product information document on paper or on another durable medium.

6. The insurance product information document referred to in paragraph 5 shall be drawn up by the manufacturer of the non-life insurance product.

7. The insurance product information document shall:

(a) be a short and stand-alone document;

(b) be presented and laid out in a way that is clear and easy to read, using characters of a readable size;

(c) be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;

(d) be written in the official languages, or in one of the official languages, used in the part of the Member State where the insurance product is offered or, if agreed by the consumer and the distributor, in another language;

(e) be accurate and not misleading;

(f) contain the title 'insurance product information document' at the top of the first page;

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

Member States may stipulate that the insurance product information document is to be provided together with information required pursuant to other relevant Union legislative acts or national law on the condition that all the requirements set out in the first subparagraph are met.

8. The insurance product information document shall contain the following information:

(a) information about the type of insurance;

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

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

(d) main exclusions where claims cannot be made;

(e) obligations at the start of the contract;

(f) obligations during the term of the contract;

(g) obligations in the event that a claim is made;

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

(i) the means of terminating the contract.

9. EIOPA, after consulting national authorities and after consumer testing, shall develop draft implementing technical standards regarding a standardised presentation format of the insurance product information document specifying the details of the presentation of the information referred to in paragraph 8.

EIOPA shall submit those draft implementing technical standards to the Commission by 23 February 2017.

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

Article 21

Information provided by ancillary insurance intermediaries

Member States shall ensure that ancillary insurance intermediaries comply with points (i), (iii) and (iv) of Article 18(a) and point (d) of Article 19(1).

Article 22

Information exemptions and flexibility clause

1. The information referred to in Articles 18, 19 and 20 need not be provided when the insurance distributor carries out distribution activities in relation to the insurance of large risks.

Member States may provide that the information referred to in Articles 29 and 30 of this Directive need not be provided to a professional client as defined in point (10) of Article 4(1) of Directive 2014/65/EU.

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

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

In particular, Member States may make the provision of advice referred to in the third subparagraph of Article 20(1) mandatory for the sales of any insurance product, or for certain types of insurance products. In such a case, such stricter national provisions shall be complied with by insurance distributors, including those operating under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers having their habitual residence or establishment in that Member State.

3. Member States may limit or prohibit the acceptance or receipt of fees, commissions or other monetary or non-monetary benefits paid or provided to insurance distributors by any third party, or a person acting on behalf of a third party, in relation to the distribution of insurance products.

4. In order to establish a high level of transparency by all appropriate means, EIOPA shall ensure that the information it receives relating to national provisions is also communicated to customers, and to insurance and reinsurance distributors.

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

Article 23

Information conditions

1. All information to be provided in accordance with Articles 18, 19, 20 and 29 shall be communicated to the customer:

(a) on paper;

(b) in a clear and accurate manner, comprehensible to the customer;

(c) in an official language of the Member State in which the risk is situated or of the Member State of the commitment or in any other language agreed upon by the parties; and

(d) free of charge.

2. By way of derogation from point (a) of paragraph 1 of this Article, the information referred to in Articles 18, 19, 20 and 29 may be provided to the customer on one of the following media:

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

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

3. However, where the information referred to in Articles 18, 19, 20 and 29 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 18, 19, 20 and 29 may be provided using a durable medium other than paper if the following conditions are met:

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

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

5. The information referred to in Articles 18, 19, 20 and 29 may be provided by means of a website if it is addressed personally to the customer or if the following conditions are met:

(a) the provision of that information by means of a website is appropriate in the context of the business conducted between the insurance distributor and the customer;

(b) the customer has consented to the provision of that information 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 that information can be accessed;

(d) it is ensured that that information remains accessible on the website for such period of time as the customer may reasonably need to consult it.

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

7. In the case of telephone selling, the information given to the customer by the insurance distributor prior to the conclusion of the contract, including the insurance product information document, shall be provided in accordance with Union rules applicable to the distance marketing of consumer financial services. Moreover, even if the customer has chosen to obtain prior information on a durable medium other than paper in accordance with paragraph 4, information shall be provided by the insurance distributor to the customer in accordance with paragraph 1 or paragraph 2 immediately after the conclusion of the insurance contract.

Article 24

Cross-selling

1. When an insurance product is offered together with an ancillary product or service which is not insurance, as part of a package or the same agreement, the insurance distributor shall inform the customer whether it is possible to buy the different components separately and, if so, shall provide an adequate description of the different components of the agreement or package as well as separate evidence of the costs and charges of each component.

2. In the circumstances referred to in paragraph 1, and where the risk or the insurance coverage resulting from such an agreement or package offered to a customer is different from that associated with the components taken separately, the insurance distributor shall provide an adequate description of the different components of the agreement or package and the way in which their interaction modifies the risk or the insurance coverage.

3. Where an insurance product is ancillary to a good or a service which is not insurance, as part of a package or the same agreement, the insurance distributor shall offer the customer the possibility of buying the good or service separately. This paragraph shall not apply where an insurance product is ancillary to an investment service or activity as defined in point 2 of Article 4(1) of Directive 2014/65/EU, a credit agreement as defined in point 3 of Article 4 of Directive 2014/17/EU of the European Parliament and of the Council ([1]), or a payment account as defined in point 3 of Article 2 of Directive 2014/92/EU of the European Parliament and of the Council ([2]).

4. EIOPA may develop guidelines for the assessment and the supervision of cross-selling practices indicating situations in which cross-selling practices are not compliant with the obligations laid down in Article 17.

5. This Article shall not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).

6. In the cases referred to in paragraphs 1 and 3, Member States shall ensure that an insurance distributor specifies the demands and needs of the customer in relation to the insurance products that form part of the overall package or the same agreement.

7. Member States may maintain or adopt additional stricter measures or intervene on a case-by-case basis to prohibit the sale of insurance together with an ancillary service or product which is not insurance, as part of a package or the same agreement, when they can demonstrate that such practices are detrimental to consumers.

Article 25

Product oversight and governance requirements

1. Insurance undertakings, as well as intermediaries which manufacture any insurance product for sale to customers, shall maintain, operate and review a process for the approval of each insurance product, or significant adaptations of an existing insurance product, before it is marketed or distributed to customers.

The product approval process shall be proportionate and appropriate to the nature of the insurance product.

The product approval process shall specify an identified target market for each product, ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market, and take reasonable steps to ensure that the insurance product is distributed to the identified target market.

([1]) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 (OJ L 60, 28.2.2014, p. 34).

([2]) Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features (OJ L 257, 28.8.2014, p. 214).

The insurance undertaking shall understand and regularly review the insurance products it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the product remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

Insurance undertakings, as well as intermediaries which manufacture insurance products, shall make available to distributors all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product.

Where an insurance distributor advises on, or proposes, insurance products which it does not manufacture, it shall have in place adequate arrangements to obtain the information referred to in the fifth subparagraph and to understand the characteristics and identified target market of each insurance product.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 38 to further specify the principles set out in this Article, taking into account in a proportionate way the activities performed, the nature of the insurance products sold and the nature of the distributor.

3. The policies, processes and arrangements referred to in this Article shall be without prejudice to all other requirements under this Directive including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interest, and inducements.

4. This Article shall not apply to insurance products which consist of the insurance of large risks.

CHAPTER VI

ADDITIONAL REQUIREMENTS IN RELATION TO INSURANCE-BASED INVESTMENT PRODUCTS

Article 26

Scope of additional requirements

This Chapter establishes requirements additional to those applicable to insurance distribution in accordance with Articles 17, 18, 19 and 20, where the insurance distribution is carried out in relation to the sale of insurance-based investment products by any of the following:

(a) an insurance intermediary;

(b) an insurance undertaking.

Article 27

Prevention of conflicts of interest

Without prejudice to Article 17, an insurance intermediary or an insurance undertaking carrying on the distribution of insurance-based investment products shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as determined under Article 28 from adversely affecting the interests of its customers. Those arrangements shall be proportionate to the activities performed, the insurance products sold and the type of the distributor.

Article 28

Conflicts of interest

1. Member States shall ensure that insurance intermediaries and insurance undertakings take all appropriate steps to identify conflicts of interest between themselves, including their managers and employees, or any person directly or indirectly linked to them by control, and their customers or between one customer and another, that arise in the course of carrying out any insurance distribution activities.

2. Where organisational or administrative arrangements made by the insurance intermediary or insurance undertaking in accordance with Article 27 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented, the insurance intermediary or insurance undertaking shall clearly disclose to the customer the general nature or sources of the conflicts of interest, in good time before the conclusion of an insurance contract.

3. By way of derogation from Article 23(1), the disclosure referred to in paragraph 2 of this Article shall:

(a) be made on a durable medium; and

(b) include sufficient detail, taking into account the nature of the customer, to enable that customer to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 38 in order to:

(a) define the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when carrying out insurance distribution activities;

(b) establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers of the insurance intermediary or insurance undertaking.

Article 29

Information to customers

1. Without prejudice to Article 18 and Article 19(1) and (2), appropriate information shall be provided in good time, prior to the conclusion of a contract, to customers or potential customers with regard to the distribution of insurance-based investment products, and with regard to all costs and related charges. That information shall include at least the following:

(a) when advice is provided, whether the insurance intermediary or insurance undertaking will provide the customer with a periodic assessment of the suitability of the insurance-based investment products recommended to that customer, referred to in Article 30;

(b) as regards the information on insurance-based investment products and proposed investment strategies, appropriate guidance on, and warnings of, the risks associated with the insurance-based investment products or in respect of particular investment strategies proposed;

(c) as regards the information on all costs and related charges to be disclosed, information relating to the distribution of the insurance-based investment product, including the cost of advice, where relevant, the cost of the insurance-based investment product recommended or marketed to the customer and how the customer may pay for it, also encompassing any third party payments.

The information about all costs and charges, including costs and charges in connection with the distribution of the insurance-based investment product, which are not caused by the occurrence of underlying market risk, shall be in aggregated form to allow the customer to understand the overall cost as well as the cumulative effect on the return of the investment, and, where the customer so requests, an itemised breakdown of the costs and charges shall be provided. Where applicable, such information shall be provided to the customer on a regular basis, at least annually, during the life cycle of the investment.

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

2. Without prejudice to points (d) and (e) of Article 19(1), Article 19(3) and Article 22(3), Member States shall ensure that insurance intermediaries or insurance undertakings are regarded as fulfilling their obligations under Article 17(1), Article 27 or Article 28 where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, to or by any party except the customer or a person on behalf of the customer only where the payment or benefit:

(a) does not have a detrimental impact on the quality of the relevant service to the customer; and

(b) does not impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its customers.

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

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

Member States may make the provision of advice referred to in Article 30 mandatory for the sales of any insurance-based investment products, or for certain types of them.

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

The stricter requirements of a Member State referred to in this paragraph have to be complied with by all insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers having their habitual residence or establishment in that Member State.

4. Without prejudice to paragraph 3 of this Article, the Commission shall be empowered to adopt delegated acts in accordance with Article 38 to specify:

(a) the criteria for assessing whether inducements paid or received by an insurance intermediary or an insurance undertaking have a detrimental impact on the quality of the relevant service to the customer;

(b) the criteria for assessing compliance of insurance intermediaries and insurance undertakings paying or receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer.

5. The delegated acts referred to in paragraph 4 shall take into account:

(a) the nature of the services offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions;

(b) the nature of the products being offered or considered, including different types of insurance-based investment products.

Article 30

Assessment of suitability and appropriateness and reporting to customers

1. Without prejudice to Article 20(1), when providing advice on an insurance-based investment product, the insurance intermediary or insurance undertaking shall also obtain the necessary information regarding the customer's or potential customer's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation including that person's ability to bear losses, and that person's investment objectives, including that person's risk tolerance, so as to enable the insurance intermediary or the insurance undertaking to recommend to the customer or potential customer the insurance-based investment products that are suitable for that person and that, in particular, are in accordance with that person's risk tolerance and ability to bear losses.

Member States shall ensure that where an insurance intermediary or insurance undertaking provides investment advice recommending a package of services or products bundled pursuant to Article 24, the overall bundled package is suitable.

2. Without prejudice to Article 20(1), Member States shall ensure that an insurance intermediary or insurance undertaking, when carrying out insurance distribution activities other than those referred to in paragraph 1 of this Article, in relation to sales where no advice is given, asks the customer or potential customer to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the insurance intermediary or the insurance undertaking to assess whether the insurance service or product envisaged is appropriate for the customer. Where a bundle of services or products is envisaged pursuant to Article 24, the assessment shall consider whether the overall bundled package is appropriate.

Where the insurance intermediary or insurance undertaking considers, on the basis of the information received under the first subparagraph, that the product is not appropriate for the customer or potential customer, the insurance intermediary or insurance undertaking shall warn the customer or potential customer to that effect. That 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 it is not in a position to determine whether the product envisaged is appropriate for them. That warning may be provided in a standardised format.

3. Without prejudice to Article 20(1), where no advice is given in relation to insurance-based investment products, Member States may derogate from the obligations referred to in paragraph 2 of this Article, allowing insurance intermediaries or insurance undertakings to carry out insurance distribution activities within their territories without the need to obtain the information or make the determination provided for in paragraph 2 of this Article where all the following conditions are met:

(a) the activities refer to either of the following insurance-based investment products:

(i) contracts which only provide investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU and do not incorporate a structure which makes it difficult for the customer to understand the risks involved; or

(ii) other non-complex insurance-based investments for the purpose of this paragraph;

(b) the insurance distribution activity is carried out at the initiative of the customer or potential customer;

(c) the customer or potential customer has been clearly informed that, in the provision of the insurance distribution activity, the insurance intermediary or the insurance undertaking is not required to assess the appropriateness of the insurance-based investment product or insurance distribution activity provided or offered and that the customer or potential customer does not benefit from the corresponding protection of the relevant conduct of business rules. Such a warning may be provided in a standardised format;

(d) the insurance intermediary or insurance undertaking complies with its obligations under Articles 27 and 28.

All insurance intermediaries or insurance undertakings, including those operating under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers having their habitual residence or establishment in a Member State which does not make use of the derogation referred to in this paragraph shall comply with the applicable provisions in that Member State.

4. The insurance intermediary or insurance undertaking shall establish a record that includes the document or documents agreed between the insurance intermediary or insurance undertaking and the customer that set out the rights and obligations of the parties, and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

5. The insurance intermediary or insurance undertaking shall provide the customer with adequate reports on the service provided on a durable medium. Those reports shall include periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.

When providing advice on an insurance-based investment product, the insurance intermediary or the insurance undertaking shall, prior to the conclusion of the contract, provide the customer with a suitability statement on a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the customer. The conditions set out in Article 23(1) to (4) shall apply.

Where the contract is concluded using a means of distance communication which prevents the prior delivery of the suitability statement, the insurance intermediary or the insurance undertaking may provide the suitability statement on a durable medium immediately after the customer is bound by any contract, provided both of the following conditions are met:

(a) the customer has consented to receiving the suitability statement without undue delay after the conclusion of the contract; and

(b) the insurance intermediary or insurance undertaking has given the customer the option of delaying the conclusion of the contract in order to receive the suitability statement in advance of such conclusion.

Where an insurance intermediary or an insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the insurance-based investment product meets the customer's preferences, objectives and other characteristics of the customer.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 38 to further specify how insurance intermediaries and insurance undertakings are to comply with the principles set out in this Article when carrying out insurance distribution activities with their customers, including with regard to the information to be obtained when assessing the suitability and appropriateness of insurance-based investment products for their customers, the criteria to assess non-complex insurance-based investment products for the purposes of point (ii) of point (a) of paragraph 3 of this Article, and the content and format of records and agreements for the provision of services to customers and of periodic reports to customers on the services provided. Those delegated acts shall take into account:

(a) the nature of the services offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions;

(b) the nature of the products being offered or considered including different types of insurance-based investment products;

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

7. By 23 August 2017, EIOPA shall develop guidelines, and thereafter update them periodically, for the assessment of insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved as referred to in point (i) of point (a) of paragraph 3.

8. EIOPA may develop guidelines, and thereafter update them periodically, for the assessment of insurance-based investment products being classified as non complex for the purpose of point (ii) of point (a) of paragraph 3, taking into account the delegated acts adopted under paragraph 6.

CHAPTER VII

SANCTIONS AND OTHER MEASURES

Article 31

Administrative sanctions and other measures

1. Without prejudice to the supervisory powers of competent authorities and the right of Member States to provide for and impose criminal sanctions, Member States shall ensure that their competent authorities may impose administrative sanctions and other measures applicable to all infringements of the national provisions implementing this Directive, and shall take all measures necessary to ensure that they are implemented. Member States shall ensure that their administrative sanctions and other measures are effective, proportionate and dissuasive.

2. Member States may decide not to lay down rules on administrative sanctions under this Directive for infringements which are subject to criminal sanctions under their national law. In that case, Member States shall communicate to the Commission the relevant criminal law provisions.

3. Competent authorities shall exercise their supervisory powers, including investigatory powers and powers to impose sanctions provided for in this Chapter, in accordance with their national legal frameworks in any of the following ways:

(a) directly;

(b) in collaboration with other authorities;

(c) by application to the competent judicial authorities.

4. Member States shall ensure that where obligations apply to insurance or reinsurance distributors, in the event of a breach of any such obligation, administrative sanctions against, and other measures with regard to, the members of their management or supervisory body, and any other natural or legal persons who, under national law, are responsible for such breach, can be applied.

5. Member States shall ensure that administrative sanctions and other measures taken in accordance with this Article are subject to a right of appeal.

6. The competent authorities shall be given all investigatory powers that are necessary for the exercise of their functions. In the exercise of their powers to impose administrative sanctions and other measures, the competent authorities shall cooperate closely to ensure that those sanctions and measures produce the desired results and coordinate their action when dealing with cross-border cases, while ensuring that the conditions are met for legitimate data processing in accordance with Directive 95/46/EC and Regulation (EC) No 45/2001.

Where Member States have chosen, in accordance with paragraph 2 of this Article, to lay down criminal sanctions for infringements of the provisions referred to in Article 33, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to:

(a) liaise with judicial authorities within their territory to receive specific information relating to criminal investigations or proceedings commenced for possible infringements under this Directive; and

(b) provide such information to other competent authorities and EIOPA to fulfil their obligation to cooperate with each other and with EIOPA for the purposes of this Directive.

Article 32

Publication of sanctions and other measures

1. Member States shall ensure that the competent authorities publish any administrative sanction or other measure that has been imposed for breaches of the national provisions implementing this Directive and against which no appeal was lodged in time, without undue delay, including information on the type and nature of the breach and the identity of persons responsible for it. However, where the publication of the identity of the legal persons, or identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data or where publication jeopardises the stability of financial markets or an ongoing investigation, the competent authority may decide to defer publication, not to publish, or to publish the sanctions on an anonymous basis.

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

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

Article 33

Breaches, and sanctions and other measures

1. This Article shall apply to at least the following:

(a) persons who fail to register their distribution activities in accordance with Article 3;

(b) an insurance or reinsurance undertaking or insurance or reinsurance intermediary using the insurance or reinsurance distribution services of persons referred to in point (a);

(c) an insurance, reinsurance or ancillary insurance intermediary who obtained a registration through false statements or any other irregular means in breach of Article 3;

(d) an insurance distributor who fails to meet the provisions of Article 10;

(e) an insurance undertaking or insurance intermediary failing to comply with conduct of business requirements set out in Chapters V and VI, in relation to the distribution of insurance-based investment products;

(f) an insurance distributor who fails to comply with conduct of business requirements set out in Chapter V, in relation to any insurance product other than those referred to in point (e).

2. In the event of any of the breaches referred to in point (e) of paragraph 1, Member States shall ensure that the competent authorities have the power to impose, in accordance with national law, at least the following administrative sanctions and other measures:

(a) a public statement, which indicates the responsible natural or legal person and the nature of the breach;

(b) an order requiring the responsible natural or legal person to cease the conduct and to desist from a repetition of that conduct;

(c) in the case of an insurance intermediary, withdrawal of the registration referred to in Article 3;

(d) a temporary ban on the exercise of management functions in insurance intermediaries or insurance undertakings imposed against any member of the management body of the insurance intermediary or insurance undertaking who is held responsible;

(e) in the case of a legal person, the following maximum administrative pecuniary sanctions:

(i) at least EUR 5 000 000 or up to 5 % of the total annual turnover according to the last available accounts approved by the management body, or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of entry into force of this Directive. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU of the European Parliament and of the Council ([1]), the relevant total turnover shall be the total annual turnover according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking; or

(ii) up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined;

(f) in the case of a natural person, the following maximum administrative pecuniary sanctions:

(i) at least EUR 700 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of entry into force of this Directive; or

(ii) up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined.

3. In the event of any of the breaches referred to in points (a) to (d) and (f) of paragraph 1, Member States shall ensure that the competent authorities have the power to impose, in accordance with national law, at least the following administrative sanctions and other measures:

(a) an order requiring the responsible natural or legal person to cease the conduct and to desist from a repetition of that conduct;

(b) in the case of an insurance, reinsurance or ancillary insurance intermediary, withdrawal of the registration referred to in Article 3.

4. Member States may empower competent authorities to provide for additional sanctions or other measures and for levels of administrative pecuniary sanctions which are higher than those provided for in this Article.

Article 34

Effective application of sanctions and other measures

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

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

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

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

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

(e) the losses for customers and third parties caused by the breach, in so far as they can be determined;

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

(g) measures taken by the responsible natural or legal person to prevent repetition of the breach; and

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

([1]) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

Article 35

Reporting of breaches

1. Member States shall ensure that the competent authorities establish effective mechanisms to enable and encourage the reporting to them of possible or actual breaches of national provisions implementing this Directive.

2. The mechanisms referred to in paragraph 1 shall include at least:

(a) specific procedures for the receipt of reports and their follow-up;

(b) appropriate protection, at least against retaliation, discrimination or other types of unfair treatment, for employees of insurance or reinsurance distributors and, where possible, for other persons, who report infringements committed within those entities; and

(c) protection of the identity of both the person who reports the breach and the natural person who is allegedly responsible for the breach, at all stages of the procedure unless such disclosure is required by national law in the context of further investigation or subsequent administrative or judicial proceedings.

Article 36

Submitting information to EIOPA in relation to sanctions and other measures

1. Competent authorities shall inform EIOPA of all administrative sanctions and other measures imposed but not published in accordance with Article 32(1).

2. Competent authorities shall provide EIOPA annually with aggregated information regarding all administrative sanctions and other measures imposed in accordance with Article 31.

EIOPA shall publish that information in an annual report.

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

CHAPTER VIII

FINAL PROVISIONS

Article 37

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 38

Delegated acts

The Commission shall be empowered to adopt delegated acts in accordance with Article 39 concerning Articles 25, 28, 29 and 30.

Article 39

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 25, 28, 29 and 30 shall be conferred on the Commission for an indeterminate period of time from 22 February 2016.

3. The delegation of powers referred to in Articles 25, 28, 29 and 30 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 25, 28, 29 and 30 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

Article 40

Transitional period

Member States shall ensure that intermediaries already registered under Directive 2002/92/EC comply with the relevant provisions of national law implementing Article 10(1) of this Directive by 23 February 2019.

Article 41

Review and evaluation

1. By 23 February 2021, the Commission shall submit to the European Parliament and to the Council a report on the application of Article 1. Such report shall include an assessment, on the basis of information received from the Member States and EIOPA pursuant to Article 1(5), of whether the scope of this Directive, including the exception in Article 1(3), remains appropriate with regard to the level of consumer protection, the proportionality of treatment between different insurance distributors and the administrative burden imposed on competent authorities and insurance distribution channels.

2. By 23 February 2021, the Commission shall review this Directive. The review shall include a general survey of the practical application of rules under this Directive taking due account of developments in the retail investment products markets as well as experiences acquired in the practical application of this Directive and of Regulation (EU) No 1286/2014 and Directive 2014/65/EU. The review shall include an evaluation of whether the specific conduct of business rules for the distribution of insurance-based investment products set out in Chapter VI of this Directive deliver appropriate and proportionate results, taking into account the need to ensure a sufficient level of consumer protection consistent with the investor protection standards applicable under Directive 2014/65/EU and the specific characteristics of insurance-based investment products and the specific nature of their distribution channels. The review shall also reflect upon a possible application of the provisions of this Directive to products falling under the scope of Directive 2003/41/EC. Such review shall also include a specific analysis of the impact of Article 19 of this Directive, taking into account the situation of competition in the market of insurance distribution for contracts other than contracts in any of the classes specified in Annex II to Directive 2009/138/EC and the impact of the obligations referred to in Article 19 of this Directive on insurance intermediaries which are small and medium sized enterprises.

3. After consulting the Joint Committee of European Supervisory Authorities, the Commission shall submit a first report to the European Parliament and the Council.

4. By 23 February 2020, and at least every two years thereafter, EIOPA shall prepare a further report on the application of this Directive. EIOPA shall consult the European Securities and Markets Authority before making public its report.

5. In a third report to be prepared by 23 February 2018, EIOPA shall undertake an evaluation of the structure of insurance intermediaries' markets.

6. The report to be prepared by EIOPA by 23 February 2020 referred to in paragraph 4 shall examine whether the competent authorities referred to in Article 12(1) are sufficiently empowered and have adequate resources to carry out their tasks.

7. The report referred to in paragraph 4 shall examine at least the following issues:

(a) any changes in the insurance intermediaries' market structure;

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

(c) 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.

8. The report referred to in paragraph 4 shall also include an evaluation by EIOPA of the impact of this Directive.

Article 42

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 23 February 2018. They shall forthwith communicate to the Commission the text of those provisions.

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

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 43

Amendment of Directive 2002/92/EC

Chapter IIIA of Directive 2002/92/EC is deleted with effect from 23 February 2016.

Article 44

Repeal

Directive 2002/92/EC, as amended by the Directives listed in Annex II, Part A, is repealed with effect from 23 February 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.

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex III.

Article 45

Entry into force

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

Article 46

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 20 January 2016.

For the European Parliament	*For the Council*
The President	*The President*
M. SCHULZ	A.G. KOENDERS

ANNEX I

MINIMUM PROFESSIONAL KNOWLEDGE AND COMPETENCE REQUIREMENTS

(as referred to in Article 10(2)

I Non-life risks classified under classes 1 to 18 in Part A of Annex I to Directive 2009/138/EC:

(a) minimum necessary knowledge of terms and conditions of policies offered, including ancillary risks if covered by such policies;

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

(c) minimum necessary knowledge of claims handling;

(d) minimum necessary knowledge of complaints handling;

(e) minimum necessary knowledge of assessing customer needs;

(f) minimum necessary knowledge of the insurance market;

(g) minimum necessary knowledge of business ethics standards; and

(h) minimum necessary financial competency.

II Insurance-based investment products:

(a) minimum necessary knowledge of insurance-based investment products, including terms and conditions and net premiums and, where applicable, guaranteed and non-guaranteed benefits;

(b) minimum necessary knowledge of advantages and disadvantages of different investment options for policyholders;

(c) minimum necessary knowledge of financial risks borne by policyholders;

(d) minimum necessary knowledge of policies covering life risks and other savings products;

(e) minimum necessary knowledge of organisation and benefits guaranteed by the pension system;

(f) minimum necessary knowledge of applicable laws governing the distribution of insurance products, such as consumer protection law and relevant tax law;

(g) minimum necessary knowledge of the insurance market and of the saving products market;

(h) minimum necessary knowledge of complaints handling;

(i) minimum necessary knowledge of assessing customer needs;

(j) conflicts of interest management;

(k) minimum necessary knowledge of business ethics standards; and

(l) minimum necessary financial competency.

III Life risks classified in Annex II to Directive 2009/138/EC:

(a) minimum necessary knowledge of policies including terms, conditions, the guaranteed benefits and, where applicable, ancillary risks;

(b) minimum necessary knowledge of organisation and benefits guaranteed by the pension system of the relevant Member State;

(c) knowledge of applicable insurance contract law, consumer protection law, data protection law, anti-money laundering law and, where applicable, relevant tax law and relevant social and labour law;

(d) minimum necessary knowledge of the insurance and other relevant financial services markets;

(e) minimum necessary knowledge of complaints handling;

(f) minimum necessary knowledge of assessing consumer needs;

(g) conflicts of interest management;

(h) minimum necessary knowledge of business ethics standards; and

(i) minimum necessary financial competency.

ANNEX II

PART A

Repealed Directive with list of its successive amendments

Directive 2002/92/EC of the European Parliament and of the Council (OJ L 9, 15.1.2003, p. 3).

Directive 2014/65/EU of the European Parliament and of the Council (OJ L 173, 12.6.2014, p. 349).

Directive (EU) 2016/97 of the European Parliament and of the Council (OJ L 26, 2.2.2016, p. 19).

PART B

Time limits for transposition into national law referred to in Article 44

Directive	Time limit for transposition of amending Directives
2014/65/EU	3.7.2016
(EU) 2016/97	22.2.2016 (as regards amendment of Directive 2002/92/EC in accordance with Article 43 of this Directive) 23.2.2018 (as regards transposition of this Directive in accordance with Article 42)

ANNEX III

Correlation table

Directive 2002/92/EC	This Directive
Article 1(1)	Article 1(1) and (2)
Article 1(2)	Article 1(3) and (4)
Article 1(3)	Article 1(6)
Article 2 point (1)	Article 2(1) point (6)
Article 2 point (2)	Article 2(1) point (7)
Article 2 point (3)	Article 2(1) point (1) and Article 2(2)
Article 2 point (4)	Article 2(1) point (2) and Article 2(2)
Article 2 point (5)	Article 2(1) point (3)
Article 2 point (6)	Article 2(1) point (5)
Article 2 point (7)	—
Article 2 point (8)	Article 2(1) point (16)
Article 2 point (9)	Article 2(1) point (10)
Article 2 point (10)	Article 2(1) point (11)
Article 2 point (11)	—
Article 2 point (12)	Article 2(1) point (18)
Article 2 point (13)	Article 2(1) point (17)
Article 3(1)	Article 3(1)
Article 3(2)	Article 3(2) and (3)
Article 3(3)	Article 3(4)
Article 3(4)	—
Article 3(5)	—
Article 3(6)	Article 16
Article 4(1)	Article 10(1) and (2)
Article 4(2)	Article 10(3)
Article 4(3)	Article 10(4)
Article 4(4)	Article 10(6)
Article 4(5)	—
Article 4(6)	—
Article 4(7)	Article 10(7)
Article 5	Article 40
Article 6(1)	Articles 4 and 6
Article 6(2)	—
Article 6(3)	Article 11(1)
Article 7	Article 12
Article 8	Articles 5, 7, 31 to 36

Directive 2002/92/EC	This Directive
Article 9	Article 13
Article 10	Article 14
Article 11	Article 15
Article 12(1) point (a)	Article 18 points (a)(i), (b)(i)
Article 12(1) point (b)	Article 18 point (a)(iv)
Article 12(1) point (c)	Article 19(1) point (a)
Article 12(1) point (d)	Article 19(1) point (b)
Article 12(1) point (e)	Articles 18 points (a)(iii), (b)(iii) and 19(1) point (c)
Article 12(2)	Article 20(3)
Article 12(3)	Article 20(1)
Article 12(4)	Article 22(1)
Article 12(5)	Article 22(2) and (4)
Article 13	Article 23
Article 14	—
Article 15	—
Article 16	—
Article 17	—

ISSN 1977-0677 (electronic edition)
ISSN 1725-2555 (paper edition)

Publications Office of the European Union
2985 Luxembourg
LUXEMBOURG

EN