

Draft Proposed Structure of IMD2

**Draft Proposed structure of the amended version of
the Directive 2002/92/EC of the European Parliament and of the Council of 9 December
2002 on insurance and reinsurance intermediation and on direct distribution of insurance
and reinsurance**

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NB. Drafting suggestions, remarks and questions raised as well as suggested changes are marked in bold.

SUBJECT MATTER, SCOPE AND DEFINITIONS

Subject matter and scope

Subject matter

This Directive lays down rules concerning the following:

- 1. The taking-up and pursuit of the activities of insurance and reinsurance intermediation and**
- 2. The direct distribution of insurance or reinsurance.**

Scope

1. This Directive shall apply to any natural and legal persons undertaking the activity of insurance and reinsurance intermediation, which are established in a Member State or which wish to become established there.
2. This Directive shall apply to the activities of direct insurance and reinsurance distribution conducted by life and non life insurance undertakings.

Exemptions

1. This Directive shall not apply to persons providing mediation services for insurance contracts if all the following conditions are met:
 - (a) the insurance contract only requires knowledge of the insurance cover that is provided;
 - (b) the insurance contract is not a life assurance contract;
 - (c) the insurance contract does not cover any liability risks;
 - (d) the principal professional activity of the person is other than insurance mediation;
 - (e) the insurance is complementary to the product or service supplied by any provider, where such insurance covers:
 - (i) the risk of breakdown, loss of or damage **or the like** to goods supplied by that provider, or
 - (ii) ~~damage to or loss of baggage and other risks linked to the travel booked with that provider, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel;~~
 - (f) the amount of the annual premium does not exceed EUR **250/500/1000** and the total duration of the insurance contract, including any renewals, does not exceed **three /five** years.

The amount shall be reviewed regularly in order to take account of changes in the European Index of Consumer Prices as published by Eurostat. The first review shall take place five years after the entry into force of this Directive and the successive reviews every five years after the previous review date. The amount shall be adapted automatically by increasing the base amount in euro by the percentage change in that Index over the period between the entry into force of this Directive and the first review date or between the last review date and the new review date and rounded up to the nearest euro.

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

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

[This Directive shall not regulate insurance mediation activities carried out in third countries nor activities of Community insurance or reinsurance undertakings, as defined in First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance(8) and First Council Directive 79/267/EEC of 5 March 1979 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct life assurance(9), carried out through insurance intermediaries in third countries.]¹

Internal market clause

1. Host Member States may take measures to derogate from paragraph XX of Articles XX if the following conditions are fulfilled:

(a) the measures shall be:

(i) necessary for the protection of consumers;

(ii) taken against the activities on their territories of a given insurance intermediary which prejudice the objectives referred to in point (i) or which present a serious risk of prejudice to those objectives;

(iii) proportionate to those objectives;

(b) before taking the measures in question and without prejudice to court proceedings, including preliminary proceedings and acts carried out in the framework of a criminal investigation, the host Member State has notified the Commission and the home Member State of its intention to take such measures.

2. Without prejudice to the host Member State's possibility of proceeding with the measures in question, the Commission shall examine the compatibility of the notified measures with Community law in the shortest possible time; where it comes to the conclusion that the measure is incompatible with Community law, the Commission shall ask the Member State in question to refrain from taking the proposed measure or to put urgently an end to the measures in question.

Relations with third countries

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

Whenever it appears to the Commission, on the basis of information submitted to it under paragraph 1, that a third country does not grant Community insurance intermediaries effective market access comparable to that granted by the Community to insurance intermediaries from that third country, the Commission may submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community insurance intermediaries.

¹ Changes related to the entry into force of the Solvency II Directive will be introduced later.

Whenever it appears to the Commission, on the basis of information submitted to it under paragraph 1, that Community insurance intermediaries in a third country are not granted national treatment affording the same competitive opportunities as are available to domestic insurance intermediaries and that the conditions of effective market access are not fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances referred to in the first subparagraph, the Commission may decide, at any time and in addition to the initiation of negotiations, that the competent authorities of the Member States must limit or suspend their decisions regarding requests pending or future requests for registration and the acquisition of holdings by direct or indirect parent undertakings governed by the law of the third country in question. Such limitations or suspensions may not be applied to the setting-up of subsidiaries by insurance intermediaries duly authorised in the Community or by their subsidiaries, or to the acquisition of holdings in Community insurance intermediaries by such firms or subsidiaries. The duration of such measures may not exceed three months.

Before the end of the three-month period referred to in the second subparagraph and in the light of the results of the negotiations, the Commission may decide to extend these measures.

Whenever it appears to the Commission that one of the situations referred to in paragraphs 2 and 3 arises, the Member States shall inform it at its request:

- if any application for the registration of any intermediary which is the direct or indirect subsidiary of a parent undertaking governed by the law of the third country in question;
- whenever they are informed that such a parent undertaking proposes to acquire a holding in a Community insurance intermediary, in consequence of which the latter would become its subsidiary.

That obligation to provide information shall lapse whenever agreement is reached with the third country concerned or when the measures referred to in the second and third subparagraphs of paragraph 3 cease to apply.

Measures taken under this Article shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking-up or pursuit of the business of insurance intermediaries.

Exchange of information with third countries

Member States may conclude cooperation agreements providing for the exchange of information with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 9. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

Member States may transfer personal data to a third country in accordance to Chapter IV of Directive 95/46/EC².

² 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.

Member States may also conclude cooperation agreements providing for the exchange of information with third country authorities, bodies and natural or legal persons responsible for the liquidation and bankruptcy of insurance intermediaries.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have transmitted it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

The same provision applies to information provided by third country competent authorities.

Definitions

For the purpose of this Directive, **the following definitions shall apply:**

- 1. "insurance undertaking" shall be as defined by Article 13.1 of the Solvency II Directive.**
- 2. "reinsurance undertaking" shall be as defined by Article 13.4 of the Solvency II Directive**
3. "insurance intermediation" means the activities of introducing, **advising**, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

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

The activity of giving a potential client the contact details of an insurance intermediary or insurance undertaking provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract shall not be considered as insurance intermediation.

Purely general description of insurance products shall not be considered insurance mediation. Persons who just pass on data and information on potential policyholders to insurance intermediaries or insurance undertakings are not acting as insurance intermediaries. Websites which only give information as well as persons who just provide contact information of insurance intermediaries or insurance undertakings shall not fall under the scope of application of the present Directive.

Insurance mediation also includes activities in the context of offering and proposing solutions covering biometric risks in private and occupational pension schemes, which are directly or indirectly covered by products of undertakings which are subject to insurance supervision.

Prior to the conclusion of the contract, all sellers of insurance products shall provide insurance customers with sufficient and clear information to make informed decisions about the purchase of insurance products and about the nature of their services. (e.g. 'car rental companies').

4. "reinsurance intermediation" means the activities of introducing, **advising**, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim.

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

5. **“direct insurance or reinsurance distribution” means the activities of selling insurance and reinsurance products conducted by an insurance undertaking or an employee of an insurance undertaking who is acting under the responsibility of the insurance undertaking.**

6. "insurance intermediary" means any natural or legal person who, for remuneration, takes up or pursues insurance intermediation;

7. "reinsurance intermediary" means any natural or legal person who, for remuneration, takes up or pursues reinsurance intermediation;

8. "tied insurance intermediary" means any person who carries on the activity of insurance intermediation for and on behalf of one or more insurance undertakings in the case of insurance products which are not in competition but does not collect premiums or amounts intended for the customer and who acts under the full responsibility of those insurance undertakings for the products which concern them respectively.

Any person who carries on the activity of insurance mediation in addition to his principal professional activity is also considered as a tied insurance intermediary acting under the responsibility of one or several insurance undertakings for the products which concern them respectively if the insurance is complementary to the goods or services supplied in the framework of this principal professional activity and the person does not collect premiums or amounts intended for the customer;

9. "large risks" shall be as defined **by article 13 (27) of the Solvency II Directive;**

10. "home Member State" means:

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

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

11. "host Member State" means the Member State, **other than the Home member State,** in which an insurance or reinsurance intermediary has a branch **or maintain a permanent presence** or provides services; the Member State of the provision of services means **the Member State where the policyholder is established and where a risk related to an insurance contract is situated;**

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

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

~~In particular, durable medium covers floppy disks, CD-ROMs, DVDs and hard drives of personal computers on which electronic mail is stored, but it excludes Internet sites, unless such sites meet the criteria specified in the first paragraph.~~

“Durable medium” means any instrument which enables a client to store information addressed personally to that customer in a way accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored as defined in Article 3(m) of Directive 2008/48/EC.

14. "outsourcing" means an arrangement of any form between an insurance or reinsurance intermediary and a service provider, whether a supervised entity or not, by which that service

provider performs a process, a service or an activity, whether directly or by sub-outsourcing, which would otherwise be performed by the insurance or reinsurance intermediary itself.

15. "customer" means any natural person to whom insurance mediation is provided and small and microenterprises, as defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

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

17. "small and microenterprises" means companies as defined by Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

18. "insurance advice"³ means 1) that the distributor, on the basis of the information provided by the customer, provides guidance on whether an insurance product(s) fits the demands and the needs of that customer, and specifies these demands and needs as well as the underlying reasons for any such advice. *or 2) the provision of personal recommendations to a customer, either upon its request or at the initiative of the insurer or insurance intermediary, in respect of one or more transactions relating to insurance contracts; 3) or no definition.*

19. "fair analysis advice" means any advice which is carried out when the insurance intermediary has informed the customer that he gives his advice on the basis of a fair analysis, i.e. where that advice is given on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable him to make a recommendation, in accordance with professional criteria, regarding which insurance contract would meet the customer's needs.

20. "Non-advised sale" means any sale process which occurs where no insurance advice is provided to the customer.

21. "insurance product" means any financial product which is originated from any insurance undertaking defined by Article 13.1 of the Solvency II Directive.

³ Three possible options are mentioned here.

REGISTRATION REQUIREMENTS FOR THE TAKING UP AND PURSUIT OF THE ACTIVITIES OF INSURANCE AND REINSURANCE INTERMEDIATION AND OF DIRECT DISTRIBUTION OF INSURANCE AND REINSURANCE

REQUIREMENTS FOR INSURANCE AND REINSURANCE INTERMEDIARIES

Registration

1. Insurance and reinsurance intermediaries shall be registered with a competent authority as defined in Article 7(2), in their home Member State.

Without prejudice to the first subparagraph, Member States may stipulate that insurance and reinsurance undertakings and other bodies may collaborate with the competent authorities in registering insurance and reinsurance intermediaries and in the application of the requirements of Article 4 to such intermediaries. In particular, in the case of tied insurance intermediaries, they may be registered by an insurance undertaking or by an association of insurance undertakings under the supervision of a competent authority.

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

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

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

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

3. Member States shall ensure that registration of insurance intermediaries - including tied ones - and reinsurance intermediaries is made subject to the fulfilment of the professional requirements laid down in Article 4.

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

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

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

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

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

6. Member States shall ensure that insurance undertakings use the insurance and reinsurance mediation services only of registered insurance and reinsurance intermediaries and of the persons referred to in Article 1(2).

7. Member States shall establish online registration system. One option will be to link the national registers into a network.

Exercise of the freedom to provide services in other Member States

1. Member States shall ensure that any insurance or reinsurance intermediary registered by the competent authorities of another Member State in accordance with this Directive may freely perform insurance mediation activities within their territories, provided that such activities are covered by registration of the intermediary in his home Member State.

Member States shall not impose any additional requirements on such an insurance or reinsurance intermediary in respect of the matters covered by this Directive.

2. Any insurance intermediary intending to carry on business for the first time in one or more Member States under the freedom to provide services shall communicate the following information to the competent authority of its home Member State:

- Name, address and registration number of the intermediary
- The only member State(s) in which it intends to operate
- Category of intermediary, if applicable (in case of an intermediary carrying out insurance mediation for and on behalf of an insurance undertaking, name of insurance undertaking(s) represented) and
- Authorised classes of insurance, if applicable

3. The competent authority of the home Member State shall, within one month of receiving the information, forward it to the competent authority of the host Member State designated in accordance with article XX, and inform the insurance intermediary accordingly. The insurance intermediary may then start to provide the insurance mediation activities concerned in the host Member state.

4. The competent authority of the host Member State shall, within one month from the date of receipt of the communication referred to in paragraph 3, communicate to the

intermediary any conditions under which, in the interests of the general good, the business concerned must be carried out within the territory of the host state.

Exercise of the right of establishment in other Member States

1. Member States shall ensure that insurance or reinsurance mediation activities may be provided within their territories in accordance with this Directive through the establishment of a branch or a permanent presence by an insurance or reinsurance intermediary provided that such activities are covered by registration of the intermediary in its home Member State.

Member States shall not impose any additional requirements on such an insurance or reinsurance intermediary in respect of the matters covered by this Directive.

2. Member States shall require any insurance and reinsurance intermediary intending to establish a branch or any permanent presence within the territory of another Member State first to notify the competent authority of its home Member State and to provide it with the following information:

- (a) name, address and registration number of the intermediary;**
- (b) the Member State within the territory of which it plans to establish a branch or a permanent presence;**
- (c) category of intermediary, if applicable (in case of an intermediary carrying out insurance mediation for and on behalf of an insurance undertaking, name of insurance undertaking(s) represented); and**
- (d) authorised class of insurance and activities in host Member State(s);**
- (e) the address in the host Member State from which documents may be obtained;**
- (f) the name(s) of the person(s) responsible for the management of the branch or the permanent presence.**

3. 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 or reinsurance intermediary, taking into account the mediation activities envisaged, it shall, within one month of receiving the information, communicate it to the competent authority of the host Member State designated in accordance with Article [7], and inform the insurance or reinsurance intermediary accordingly.

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

5. The competent authority of the host Member State shall, within one month from the date of receipt of the communication referred to in paragraph 3, communicate to the head office of the intermediary any conditions under which, in the interests of the general good, the business concerned must be carried on within the territory of the host state.

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

6. In the event of a change in any of the information communicated in accordance with paragraph 2, an insurance or reinsurance intermediary shall give written notice of that

change to the competent authority of the home Member State at least [one month before implementing the change]. The competent authority of the host Member State shall also be informed of that change by the competent authority of the home Member State as soon as is practicable and no later than one month from the date of receipt by the competent authority of the home Member State.

Professional requirements

1. Insurance and reinsurance intermediaries shall possess appropriate knowledge and ability, as determined by the home Member State of the intermediary.

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

Member States may provide that for the cases referred to in the second subparagraph of Article 3(1), the insurance undertaking shall verify that the knowledge and ability of the intermediaries are in conformity with the obligations set out in the first subparagraph of this paragraph and, if need be, shall provide such intermediaries with training which corresponds to the requirements concerning the products sold by the intermediaries.

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

Member States shall ensure that insurance and reinsurance intermediaries are required to take part in appropriate programmes of continuing education in order to maintain their theoretical knowledge, professional skills and values at a sufficiently high level, and that failure to respect the continuing education requirements is subject to appropriate penalties as referred to in Article [8 on sanctions for example].

2. Insurance and reinsurance intermediaries shall be of good repute. As a minimum, they shall have a clean police record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they should not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.

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

Member States need not apply the requirement referred to in the first subparagraph of this paragraph to all the natural persons who work in an undertaking and who pursue the activity of insurance and reinsurance mediation. Member States shall ensure that the management structure of such undertakings and any staff directly involved in insurance or reinsurance mediation fulfil that requirement.

3. Insurance and reinsurance intermediaries shall hold professional indemnity insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1000000 applying to each claim and in aggregate

EUR 1500000 per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.

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

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

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

(b) a requirement for insurance intermediaries to have financial capacity amounting, on a permanent basis, **to 4 % of the annual retained net revenue of the intermediary ~~sum of annual premiums received~~**, subject to a minimum of EUR 15000;

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

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

5. Pursuit of the activities of insurance and reinsurance mediation shall require that the professional requirements set out in this Article be fulfilled on permanent basis.

6. Member States may reinforce the requirements set out in this Article or add other requirements for insurance and reinsurance intermediaries registered within their jurisdiction.

7. The amounts referred to in paragraphs 3 and 4 shall be reviewed regularly in order to take account of changes in the European Index of Consumer Prices as published by Eurostat. The first review shall take place five years after the entry into force of this Directive and the successive reviews every five years after the previous review date.

The amounts shall be adapted automatically by increasing the base amount in euro by the percentage change in that Index over the period between the entry into force of this Directive and the first review date or between the last review date and the new review date and rounded up to the nearest euro.

Mutual recognition clause of intermediaries' knowledge and ability and professional experience

Member States shall permit access to and pursuit of the activity of insurance mediation as defined in Article XX on their territories, under the same conditions as apply to its nationals, to applicants possessing the attestation of professional competence/experience or evidence of the knowledge and ability referred to in paragraph 1 of Article XX.

The pursuit of the previous insurance or reinsurance intermediation activity shall not have ceased for a defined period before the date when the application for the new registration is made.

The proof of the previous registration shall be established by a certificate, issued by the Competent Authority or body of the Home Member state of the applicant, which the latter shall submit in support of his application presented to the new Member State.

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

Member States shall ensure that insurance intermediaries who have proven that they have the necessary knowledge and the necessary skills and competences to carry out insurance mediation activities by means of their national qualification accredited according to EQF standards obtain a proof of professional aptitude which entitles them to get a permission and registration in the host Member State of the European Union or the EEA if all other requirements for authorization are met.

Qualification level 3 or above is required according to the EQF. Accredited national proofs of professional aptitude shall ensure that the required methodological competences have been taught in order to ensure that the intermediaries will be able to acquire the technical and legal knowledge that is indispensable to work as an insurance intermediary in a host Member State.

Competent authorities

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

Sanctions

1. Member States shall provide for appropriate sanctions in the event that a person exercising the activity of insurance or reinsurance mediation is not registered in a Member State and is not referred to in Article 1(2).
2. Member States shall provide for appropriate sanctions against insurance or reinsurance undertakings which use the insurance or reinsurance mediation services of persons who are not registered in a Member State and who are not referred to in Article 1(2).
3. Member States shall provide for appropriate sanctions in the event of an insurance or reinsurance intermediary's failure to comply with national provisions adopted pursuant to this Directive.
6. This Directive shall not affect the power of the host Member States to take appropriate measures to prevent or to penalise irregularities committed within their territories which are contrary to legal or regulatory provisions adopted in the interest of the general good. This shall include the possibility of preventing offending insurance or reinsurance intermediaries from initiating any further activities within their territories.
7. Any measure adopted involving sanctions or restrictions on the activities of an insurance or reinsurance intermediary must be properly justified and communicated to the intermediary concerned. Every such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

New provisions will be proposed in line with the Commission communication on sanctions.

Outsourcing activity

1. **Member States shall ensure that insurance and reinsurance intermediaries remain fully responsible for discharging all of their obligations under this Directive when they outsource functions or any insurance or reinsurance mediation activities.**
2. **Outsourcing of critical or important operational functions or activities shall not be undertaken in such a way as to lead to any of the following:**
 - materially impairing the quality of the system of governance of the intermediary concerned;
 - unduly increasing the operational risk;
 - impairing the ability of the supervisory authorities to monitor the compliance of the intermediary with its obligations;

-undermining and satisfactory service to policy holders.

Any outsource company performing insurance mediation activities as defined in this Directive would need to be registered.

REQUIREMENTS FOR INSURANCE AND REINSURANCE UNDERTAKINGS

Professional requirements

In the cases where insurance undertakings sell their products directly, without the use of an intermediary, Member States shall ensure that all persons directly involved in the sale of insurance products demonstrate the knowledge and the ability necessary for the performance of their duties.

Member States shall ensure that all persons directly involved in the sale of insurance products are required to take part in appropriate programmes of continuing education in order to maintain their theoretical knowledge, professional skills and values at a sufficiently high level, and that failure to respect the continuing education requirements is subject to appropriate penalties as referred to in Article [8 on sanctions for example].

Exchange of information between Member States

1. The competent authorities of the various Member States shall cooperate in order to ensure the proper application of the provisions of this Directive.
2. The competent authorities shall exchange information on insurance and reinsurance intermediaries if they have been subject to a sanction referred to in Article 8(3) or a measure referred to in Article 8(4) and such information is likely to lead to removal from the register of such intermediaries. The competent authorities may also exchange any relevant information at the request of an authority.
3. All persons required to receive or divulge information in connection with this Directive shall be bound by professional secrecy, in the same manner **as is laid down in Article XXX of Solvency II Directive**.

Complaints

Member States shall ensure that procedures are set up which allow customers and other interested parties, especially consumer associations, to register complaints about insurance and reinsurance intermediaries. In all cases complaints shall receive replies, as it **as is laid down in Article XXX of Solvency II Directive**.

Out-of-court redress

1. Member States shall encourage the setting-up of appropriate and effective complaints and redress procedures for the out-of-court settlement of disputes between insurance intermediaries, **insurance undertakings** and customers, using existing bodies where appropriate.
2. Member States shall encourage these bodies to cooperate in the resolution of cross-border disputes.

INFORMATION REQUIREMENTS AND CONDUCT OF BUSINESS RULES

INSURANCE INTERMEDIARIES

1. **Member States shall require insurance intermediaries to act honestly, fairly and professionally in accordance with the best interests and requirements of their customers.**
2. **Insurance intermediaries shall identify, manage and mitigate conflicts of interest, in particular:**

2.1 Prior to the conclusion of the contract, insurance intermediaries shall provide insurance customers with sufficient and clear information to make informed decisions about the purchase of insurance products and about the nature of their services;

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

(a) His identity and address;

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

(c) Whether he has a holding, direct or indirect, representing more than 10 % of the voting rights or of the capital in a given insurance undertaking;

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

(e) The nature of the remuneration they receive for intermediating the insurance contract;

(f) Whether for intermediating the insurance contract, the intermediary works:

1. on the basis of a fee, and /or

2. whether the remuneration is included in the insurance premium, and/or ,

3. whether the intermediary works on a combination of both (a) and (b).

When the intermediary receives a fee, he shall inform the client about the amount or the basis of calculation of the fee. ⁴

Upon request of the client, the intermediary shall inform the client about the amount or about the basis of the calculation of the remuneration for the intermediation. ⁵

(g) the procedures referred to in ex-Article 10 allowing customers and other interested parties to register complaints about insurance and reinsurance intermediaries and, if appropriate, about the out-of-court complaint and redress procedures referred to in ex- Article 11.

(h) In addition, an insurance intermediary shall inform the customer, concerning the contract that is provided, whether:

he gives advice based on the obligation in paragraph 2 to provide a fair analysis, or

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

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

- **he has underwriting powers and delegated authorities in relation to the contract.**

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

3. When the insurance intermediary informs the customer that he gives his advice on the basis of a fair analysis, he is obliged to give that advice on the basis of an analysis of a sufficiently large number of

⁴ *Shall the Commission introduce a provision explicitly prohibiting the use of 'netquoting' system? Shall the Commission introduce a provision allowing Member State to maintain the possibility to prohibit commissions?*

⁵ *More detailed provisions on these issues will be introduced later.*

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

4. Prior to the conclusion of any specific contract, the insurance intermediary shall at least specify, in particular on the basis of information provided by the customer, the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on a given insurance product. These details shall be modulated according to the complexity of the insurance contract being proposed.

5. In case of plurality of insurance intermediaries, the client is always provided with the information of Article XXX (current Article) by the intermediary who is in direct contact with him.

It is the responsibility of the other intermediaries in the chain to always provide the intermediary who is in direct contact with the client, with the information necessary to the provision of information referred to in Article XXX (current Article).

6. The information referred to in paragraphs 2, 3, 4 and 5 need not be given when the insurance intermediary mediates in the insurance of large risks, nor in the case of mediation by reinsurance intermediaries.

7. Member States may maintain or adopt stricter provisions regarding the information requirements referred to in paragraph 1, provided that such provisions comply with Community law.

Member States shall communicate to the Commission the national provisions set out in the first subparagraph.

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

INSURANCE UNDERTAKINGS

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

- The identity and address of the insurance undertaking he/she represents**
- His/her status of employee of the insurance undertaking and that fact that he/she can sell only the products of this undertaking;**
- The procedures referred to in Article XXX allowing customers and other interested parties to register complaints about insurance undertakings and, if appropriate, about the out-of-court complaint and redress procedures referred to in Article XXX.**
- Upon request of the customer, the amount of remuneration and costs in relation to distribution, marketing and administration of the contract of insurance.**

2. Prior to the conclusion of any specific contract, he/she shall at least specify, in particular on the basis of information provided by the customer, the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on a given insurance product. These details shall be modulated according to the complexity of the insurance contract being proposed.

3. Insurance undertakings or their employees shall identify, manage and mitigate conflicts of interest. Before the conclusion of the contract, insurance undertakings or their employees shall provide insurance customers with sufficient and clear information to make informed decisions about the purchase of insurance products and about the nature of their services;

4. Member States may maintain or adopt stricter provisions regarding the information requirements referred to in paragraph 1, provided that such provisions comply with Community law.

Member States shall communicate to the Commission the national provisions set out in the first subparagraph.

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

INFORMATION CONDITIONS

1. All information to be provided to customers in accordance with Article 12 shall be communicated:

- (a) on paper or on any other durable medium available and accessible to the customer;
- (b) in a clear and accurate manner, comprehensible to the customer;
- (c) in an official language of the Member State of the commitment or in any other language agreed by the parties.

2. By way of derogation from paragraph 1(a), the information referred to in Article 12 may be provided orally where the customer requests it, or where immediate cover is necessary. In those cases, the information shall be provided to the customer in accordance with paragraph 1 immediately after the conclusion of the insurance contract.

3. In the case of telephone selling, the prior information given to the customer shall be in accordance with Community rules applicable to the distance marketing of consumer financial services. Moreover, information shall be provided to the customer in accordance with paragraph 1 immediately after the conclusion of the insurance contract.

Advice standards

1. For the purposes of this Directive, 'advice' constitutes a separate service from the sales of an insurance policy. Such a service can only be marketed as advice when the remuneration of the individual providing the service is transparent to the customer.

2. Member States shall ensure that the insurer or the insurance intermediary informs the customer, in the context of a given transaction, whether or not advice is being or will be provided. This may be done through additional pre-contractual information.

Where advice is provided to customers, in addition to the requirements set out in Articles X and Y (previous articles) , Member States shall ensure that the insurer or the insurance intermediary:

(a) consider a sufficiently large number of insurance policies available on the market so as to enable the recommendation of the most suitable insurance policies for the customer's needs, financial situation and personal circumstances;

(b) obtain the necessary information regarding the customer's personal and financial situation, his preferences and objectives so as to enable the recommendation of suitable insurance policy . Such an assessment shall be based on information that is up to date at that moment in time and on reasonable assumptions as to the customer's situation over the term of the proposed insurance policy.

SPECIFIC REQUIREMENTS FOR THE DISTRIBUTION OF INSURANCE PRIPS

FINAL PROVISIONS

Right to apply to the courts

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

Amendments

Directive 2002/92/EC is hereby amended with effect from the date referred to in Article XXX.

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before XXXXXXXX . They shall forthwith inform the Commission thereof.

These measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

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

Addressees

This Directive is addressed to the Member States.

Review clause

The Commission shall undertake a review five years after the entry into force of this Directive. The review shall consider the effectiveness and appropriateness of the provisions on consumers and the internal market.

The review shall include the following:

(subject matters)

Entry into force

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

Done at Brussels , XXXXXXXX

For the European Parliament

The President