Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) (Text with EEA relevance)

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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

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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.

(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[(4)]. 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.

(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

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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[(5)] 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