

# **INSURANCE DISTRIBUTION DIRECTIVE – REPORT ANALYSING NATIONAL GENERAL GOOD RULES**

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European Insurance and  
Occupational Pensions Authority

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## EXECUTIVE SUMMARY

General good rules are provisions which are part of the legal system of the host Member State. The basic principle underlying the general good in the insurance sector is that an insurance undertaking or an insurance intermediary operating under the respective arrangements laid down by Solvency II<sup>1</sup> or the Insurance Distribution Directive (IDD)<sup>2</sup> is obliged to adapt its activities to the host Member State rules if the measures enforced against it serve the general good, irrespective of whether it carries on those activities through freedom of establishment (namely, as a branch) or under the freedom to provide services.

Neither the IDD, nor any other EU legislation or case-law of the European Court of Justice (CJEU) entail a precise definition of what constitutes “general good”. It is a concept which has evolved over several years and the European Commission has summarised the different conditions which have to be fulfilled so that a national general good provision can validly restrict or limit the freedom of establishment or freedom to provide services, in its interpretative Communication on freedom to provide services and the general good in the insurance sector<sup>3</sup>.

As noted in the Interpretative Communication, *“in minimum harmonising legislation [such as the IDD], the level of what is regarded as the general good depends first on the assessment made by the Member State and can vary substantially from one country to another according to national traditions and the objectives of the Member States”*<sup>4</sup>. In that respect, general good provisions are often introduced with the aim of seeking to achieve specific benefits such as protecting consumers or preventing regulatory arbitrage, and can cover a broad area of issues, including tax requirements.

However, at the same time, the quantity and diversity of general good rules can pose challenges for insurance distributors seeking to expand their activities to other Member States. For example, they may face higher entry costs as they have to solicit legal assistance to understand and comply with the different general good rules imposed on them. The high level of entry costs may, in turn, lead to reluctance on the part of insurance distributors to do cross-border business, leading to less competition and productivity in the internal market.

EIOPA has been tasked under Article 11(5) of the IDD with examining the general good rules published by Member States in the context of the proper functioning of the IDD and of the internal market. EIOPA has examined the different national general good provisions published by competent authorities (CAs) both in terms of their level of accessibility in the context of what constitutes “appropriate publication” under the IDD, but also carried out a thematic analysis of the different national rules to assess the extent to which they impact on the proper functioning of the IDD and the internal market.

In order to facilitate this more focused and targeted examination of national general good rules affecting cross-border insurance distribution, EIOPA has targeted general good provisions published by Member States which directly regulate the activity of “insurance distribution” such as conduct of business requirements, excluding other areas of law such as tax law and unfair competition law from its analysis.

As the majority of Member States completed the transposition process of the IDD only at the end of 2018, it is important to note that EIOPA was not able to fully assess the impact of the Member States’ introduction of general good rules on the proper functioning of the IDD and of the internal market. EIOPA’s main findings as at the date of 31 May 2019 can be summarised as follows:

- Out of the 28 CAs which have implemented the IDD, EIOPA identified 2 CAs (Finland, Netherlands) where further steps are necessary to ensure an appropriate publication of the national general good rules. In particular, the

<sup>1</sup> 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.

<sup>2</sup> [Directive \(EU\) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution \(recast\), OJ L 26, 2.2.2016, p. 19.](#)

<sup>3</sup> Commission Interpretative Communication - Freedom to provide services and the general good in the insurance sector, OJ C 43, 16.2.2000, p. 5.

<sup>4</sup> Section II 1., page 16 of the Commission Interpretative Communication

general good rules published by these CAs do not clearly distinguish the general good provisions published in accordance with Article 11(1) of the IDD.

- In addition, EIOPA identified 6 out of 28 CAs (Cyprus, Germany, Luxembourg, Poland, Slovenia, UK) which were currently in the process of updating their respective websites to ensure an appropriate publication of the national general good rules before the publication of this report.<sup>5</sup>
- 20 out of 28 CAs (Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, Estonia, France, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, Portugal, Romania, Slovakia, Sweden) ensure an appropriate publication, having clearly indicated on their websites all the general good rules in the sense of Article 11(1) of the IDD.
- Overall, there is still some scope for improving the visibility and accessibility of the pages on general good rules on some CAs' websites.
- It is recognised that the IDD is generally aimed at minimum harmonisation and includes 17 national options, 11 of which allow Member States exercising them to introduce general good rules in their context. This means that firms wishing to carry out cross-border business have to contend with new requirements over and above the general good rules applied by Member States in the pre-IDD era.
- The analysis of national general good rules by theme shows that there is a significant number of national general good rules which have been maintained or introduced in order to protect consumers in the area of product disclosure and transparency. Collectively, the quantity and level of diversity of information requirements contained in general good rules, can present significant challenges for entities seeking to carry out cross-border business in terms of additional entry costs.
- It is notable that, in some instances, Member States have published or are due to publish general good rules on registration and organisational requirements, which allow the CAs of the host Member States to impose additional requirements on incoming insurance distributors where those rules are under the competence of the home Member State under the IDD. This clearly has an impact on the proper functioning of the IDD and the Single Market, given the principle under the IDD that the "single registration" in the home Member State triggers the provision of the EU passport to the insurance distributor where the appropriate notification procedures have been followed.

In view of the aspects identified above, EIOPA is of the view that a number of follow-up actions are needed to ensure that general good rules are published appropriately and applied in a manner that ensures the proper functioning of the IDD and the internal market:

- with regard to the visibility and accessibility of general good rules, EIOPA will consider issuing recommendations on an individual basis to CAs as to how the information on general good rules should be published to enable passporting insurance distributors to easily access and understand such information;
- with regard to the high quantity and level of diversity of the general good rules, EIOPA will consult external stakeholders following publication of this report to gather input on any general good provisions which they consider to be disproportionate with regard to consumer protection and have an adverse impact on cross-border business activities;
- with regard to the general good rules imposed on incoming insurance distributors in areas of the home Member State competence such as registration and organisational requirements, EIOPA will analyse those specific cases further from a legal and supervisory perspective and, where appropriate, make use of the tools at its disposal under its Founding Regulation.

<sup>5</sup> As of 5 July 2019, Cyprus, Germany, Luxembourg, Poland and Slovenia ensured an appropriate publication of the national general good rules.

# INTRODUCTION

Under Article 11(5) of the IDD, 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.”

In line with the requirement for EIOPA to “examine” national general good rules, this report provides both a *factual description* of the types of rules which are published on the websites of the CAs and are applicable to insurance distribution activities, and a *general assessment*, facilitating the checking of main areas of divergence and impact of the general good provisions on the proper functioning of the IDD and the internal market more broadly.

The IDD is generally aimed at minimum harmonisation and this report also includes an analysis of the use of the various Member State options contained in the IDD, which allow Member States exercising them to introduce general good rules in their context, as well as the examination of the general accessibility of general good rules, and some overarching conclusions.

Under its founding Regulation, EIOPA is tasked, amongst others, with “*enhancing customer protection*”, but also “*preventing regulatory arbitrage and promoting equal conditions of competition*” for market participants. EIOPA has analysed national general good rules in this report, taking into account these strategic objectives, with a view to developing and strengthening the IDD’s regulatory framework for the protection of consumers.

## BACKGROUND

General good rules are provisions which are part of the legal system of the host Member State. The basic principle underlying the general good, in the insurance sector, is that an insurance undertaking or an insurance intermediary operating under the respective arrangements laid down in Solvency II or IDD is obliged to adapt its activities to the host Member State rules if the measures enforced against it serve the general good, irrespective of whether it carries on those activities through freedom of establishment (namely, as a branch) or under the freedom to provide services.

General good provisions are often introduced with the aim of seeking to achieve specific benefits such as protecting consumers or preventing regulatory arbitrage. They can cover a broad area of issues, including tax requirements. However, at the same time, the quantity and diversity of additional requirements can pose challenges for insurance distributors seeking to expand their activities to other Member States. For example, insurance distributors may face higher entry costs as they have to solicit legal assistance to understand and comply with the different general good rules imposed on them. This applies, in particular, to SMEs as they often do not have the legal expertise available to work out the differences in the national provisions.

As noted by the Commission, the high level of entry costs may, in turn, lead to reluctance on the part of insurance distributors to do cross-border business, leading to less competition and productivity in the internal market.

Neither the IDD, nor any other European legislation or case-law from the CJEU entail a precise definition of what general good rules consist of. As stated in the Interpretative Communication, the CJEU has “never provided a definition of the general good, preferring instead to maintain its evolving nature”.

In its Interpretative Communication, the Commission reviewed the requirements developed by the CJEU, which a national provision has to satisfy, if it is to validly obstruct or limit the exercise of the freedom of establishment (FoE) and the freedom to provide services (FoS). These requirements are as follows<sup>6</sup> (noting that the list is not definitive and the CJEU reserves the right to add to it at any time):

- *it must come within a field which has not been harmonised* - for example, where a Member State imposes a level of consumer protection stricter than the one set by a minimum provision on an incoming entity carrying on insurance business on its territory, the proportionality test would have to be satisfied for it to comply with Community law;

6 Ibid. Chapter II, number 2, letter b

- *it must pursue an objective of the general good* – for example, the CJEU has acknowledged that national provisions in areas such as consumer protection, preservation of the good reputation of the national financial sector and prevention of fraud could be appropriate to pursue an objective of the general good;
- *it must be non-discriminatory* – for example, if a Member State imposes on an incoming entity measures which it does not impose or imposes more advantageously on its own insurance undertakings, it can be justified only on the grounds of public policy, public security and public health, economic grounds not forming part of the latter;
- *it must be objectively necessary* – for example, the CJEU checks whether certain measures, under cover of pursuit of an objective concerned with consumer protection, are not actually aimed at other objectives connected with the protection of the national market;
- *it must be proportionate to the objective pursued* – for example, the CJEU systematically examines whether the Member State did not have at its disposal measures with a less restrictive effect on trade; and
- *it is also necessary for the general-good objective not to be safeguarded by rules to which the provider of services is already subject in the Member State where he is established.*

In addition to the criteria set out above in the Interpretation Communication, Article 11(2)<sup>7</sup> provides a further criterion regarding how “general good” rules should be applied by Member States, namely “*the administrative burden stemming from [general good] provisions [should be] proportionate with regard to consumer protection*”.

## APPROACH TAKEN IN THIS REPORT

In determining the scope of its report examining national general good rules, EIOPA took the wording of Article 11(2) as a basis for its work. This refers to “*provisions **regulating insurance distribution** in addition to those set out in this Directive*”. EIOPA has chosen to target the focus of its report on general good provisions published by Member States which directly regulate the activity of “insurance distribution”. In order to facilitate this more focused and targeted examination of national general good rules affecting cross-border insurance distribution, **national provisions regulating other areas of law, such as tax law, unfair competition law, have been excluded from the scope of this report**<sup>8</sup>. In addition, whistleblowing rules, professional secrecy rules and legislation regarding the imposition of sanctions are not included in the scope of the report either, as these rules are directed to the CAs and not to insurance distributors<sup>9</sup>.

In terms of the scope of the general good rules published by Member States which have been examined by EIOPA, the following characteristics can be identified:

- They constitute national provisions that are imposed both on incoming insurance distributors doing cross-border business on the basis of the FoE or FoS and domestically registered insurance distributors.  
  
They could also include national provisions only imposed on incoming insurance distributors doing cross-border business on the basis of the FoE or the FoS. However, such rules would, in practice, be unacceptable as they would be considered discriminatory under EU law.  
  
Rules that only apply to domestically registered insurance distributors are excluded.
- They include existing national provisions which were already in force before the IDD was transposed and which are still applicable (e.g. general good rules that were already in force under the national rules implementing the Insurance Mediation Directive (IMD))<sup>10</sup>.
- They are not limited to general good rules applied to consumers only, but also cover general good rules directed to professional clients/SMEs and in relation to distribution of large risks in order to ensure a level playing field.

<sup>7</sup> Please note that hereinafter where Articles or Recitals are referred to in this Report, this refers to the relevant provision of the IDD, unless specifically indicated otherwise.

<sup>8</sup> It is recognised, however, that, on a day-to-day basis, those general good rules, which have been excluded from the scope of this report, such as tax law may impact the proper functioning of the IDD and the internal market.

<sup>9</sup> Article 11(3) also places a requirement on EIOPA to make information on general good rules available on its website, with all national rules categorised into different relevant areas of law. **Please note that the general good provisions published as PDF files on EIOPA's website also cover other areas of law, such as tax law, unfair competition law.**

<sup>10</sup> 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.



- Finally, the scope of the general good rules published by Member States also covers explicit legal options which allow Member States exercising them to introduce general good rules in their context (e.g. Articles 22(2), 29(3) and 30(3)) (see Annex I for an overview of all explicit legal options which allow Member States exercising them to introduce general good rules).

This is in line with Article 11(1) which makes clear that the information on general good rules published by Member States shall also include *“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”*.

**It is important to note that the scope of the report is intended to cover those general good provisions, which are either published on the respective CAs' websites in accordance with Article 11(1), or are supposed to be published on the CA's website since they are applied as general good rules in practice. For linguistic reasons, where this report refers to general good rules “published”, it includes general good rules which are supposed to be published by Member States since they are applied in practice by the CAs of the host Member State.**

# 1. ACCESSIBILITY OF NATIONAL GENERAL GOOD RULES

In accordance with Article 11(1), Member States shall “*ensure appropriate publication by their competent authorities of the relevant national legal provisions protecting the general good*”.

Article 11(3) also places a requirement on EIOPA to make information on general good rules available on its website, with all national rules categorised into different relevant areas of law. In addition, EIOPA has published on its website, hyperlinks to the websites of CAs where information on general good rules can be found<sup>11</sup>.

Finally, under Article 11(4), Member States have to establish “*a single point of contact responsible for providing information on ‘general good’ rules in their respective Member State*” and “*such a point of contact should be an appropriate competent authority*”.

The obligation of Member States to publish the general good rules has to be seen and interpreted in the context of the notification rules of Articles 4(2) and 6(2). As part of the notification process, the CA of the home Member State is required to communicate to the insurance intermediary the fact that information concerning the general good rules applicable in the host Member State is published on its website and also that the insurance intermediary must comply with those provisions in order to commence its business in the host Member State.

In contrast, under Solvency II, according to Article 146(3), the CA of the host Member State has to communicate them to the CA of the home Member State, which has to pass them on to the insurance undertaking.

According to Article 12(5) of the IMD, Member States have to communicate to the Commission stricter national provisions regarding information requirements. The Commission ensures that the information it receives (i.e. legislation) is also communicated to consumers and insurance intermediaries.

The publication and/or communication of information on general good rules relevant for exercising distribution ac-

tivities, as set out in Article 11(1), and other general good rules relevant for taking-up and pursuit of the business of insurance, in accordance with e.g. Article 156 or Article 180 of Solvency II, serves the purpose of providing insurance undertakings and insurance distributors with a clear picture about the general good rules they have to follow when doing insurance business and exercising distribution activities via FoE and/or FoS.

Considering this background, EIOPA would like to set out its basic expectations in terms of what constitutes “appropriate publication” of general good rules: In general, the pages/documents where information concerning the general good rules are published should clearly indicate all the general good rules in the sense of Article 11(1). This means:

- when general good rules referred to in IDD and Solvency II are published together in the same document or on the same page, it should be made clear which of them relate to IDD and which to Solvency II. When IDD-related general good rules are published together with other provisions applicable to incoming firms which are not general good rules (e. g. provisions transposing the IDD), it should be made clear which of them are general good rules;
- it should be clear which provisions are general good rules and which are not. For example, stating that the provisions published “may constitute provisions protecting the general good” or that “some of the provisions listed are general good rules” would not be sufficient;
- quoting compendia of national legislation without indicating the specific general good provisions of these acts would not be sufficient;
- the general good rules published should be up-to-date and include both the general good provisions implemented with the IDD and existing national provisions which were already in force before the IDD was transposed and which are still applicable;
- the general good rules should be easily accessible without the need to search on websites or click through several pages to access them;

<sup>11</sup> The information referred to in this paragraph can be accessed through the following hyperlink:

<https://eiopa.europa.eu/consumer-protection/general-good-provisions>

- › although not a legal requirement, it can be beneficial from a practical perspective to make information on general good rules available in English language.

As part of its analysis of national general good rules, EIOPA has looked at the websites of the CAs and assessed the level of accessibility for external stakeholders to those rules, taking into account the criteria outlined above.

It is important to note that, as of 31 May 2019, one EU Member State (Spain) and two EFTA States (Iceland and Norway) had not yet completed the implementation of the IDD. These particular Member States have not yet published general good rules implementing the IDD, but have published existing general good rules implementing the IMD (see country-by-country analysis in Annex III for further details).

In addition, it should be considered that the general good rules covered on the websites are based on a broader definition than the definition used for this report and included rules in the area of tax law, data protection, money laundering etc.

The following is a summary of EIOPA's main findings as of 31 May 2019, listed in order of their significance:

- › 20 out of 28 CAs (Austria, Belgium, Bulgaria, Croatia, Czechia, Denmark, Estonia, France, Greece, Hungary, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Malta, Portugal, Romania, Slovakia, Sweden) which have implemented the IDD ensure an appropriate publication of the national general good rules, having clearly indicated on their website all the general good rules in the sense of Article 11(1).
- › EIOPA identified 2 out of 28 CAs (Finland, Netherlands) where further steps are necessary to ensure an appropriate publication of the national general good rules:
  - Whilst the website of the CA of Finland provides information on the general good rules for foreign EEA-insurance intermediaries in general, it does not clearly state the general good provisions in accordance with Article 11(1) of the IDD.
  - The document published on the website of the CA of the Netherlands does not refer to “general good provisions”, but to “provisions of general relevance for life and non-life insurers”. Furthermore, it does not make clear which of the general good provisions quoted relate to IDD and which to Solvency II.
- › In addition, EIOPA identified 6 out of 28 CAs (Cyprus, Germany, Luxembourg, Poland, Slovenia, UK) which were currently in the process of updating their websites to ensure an appropriate publication of the national general good rules before the publication of this report.<sup>12</sup>
- › Information concerning the national general good rules was generally published in English language, although in many cases the actual legal text of the general good provisions was made available only in local language.
- › Whilst CAs include on their websites, pages dedicated only to general good rules, the pages may be located in very distinct categories and sub-categories. Categories, under which information on general good rules was available include, for example: “licence”, “authorisation”, “legal framework”, “publications”, “consumer protection”, “supervision”, “cross-border activities”. The variety of categories reflect the different structures of the websites.
- › The number of clicks necessary to get from the homepage of the CA to the page/file with information on general good rules ranges from 1 click to 6 clicks. The range makes clear that some CAs displayed the rules prominently on their websites, while in other cases, visitors may have to search for a while until they find information on general good rules. For example, the websites of the CAs of Slovenia and Luxembourg allow the visitor to get to the page with information on general good provisions with only 1 click.
- › The average number of clicks of 3.4 indicates that the general good rules were generally not very well highlighted on the websites of the CAs. Therefore, there is room for improvement as to the visibility and accessibility of the pages on general good rules.
- › Many CAs include search engines on their websites allowing visitors to look for pages with information on general good rules. However, in some cases, the use of such tools is rather limited as general good rules are referred to in different ways. For example, visitors will not find “general good rules” through the search engine if they are referred to as “provisions of general relevance for life and non-life insurers”.

<sup>12</sup> As of 5 July 2019, Cyprus, Germany, Luxembourg, Poland and Slovenia ensured an appropriate publication of the national general good rules.

## 2. ANALYSIS OF NATIONAL GENERAL GOOD RULES BY THEME

This section provides a thematic summary of some of the general good rules published by Member States as referred to in Article 11(1). The general good rules have been categorised according to different chapters and articles under the IDD.

Historically, there was no obligation under the IMD to ensure “appropriate publication” of IDD-specific general good rules, hence CAs’ websites have typically included a mixture of IDD- and Solvency-II related general good rules and other provisions applicable to informing firms. This has changed with the introduction of Article 11(1), IDD. However, due to the nature of the general good rules which are published on CAs’ websites and were reported to EIOPA by 31 May 2019, some of the examples cited in this section may not be general good rules as referred to in Article 11(1), but may refer to general good rules according to Solvency II or to other provisions applicable to incoming firms which are not general good rules (e. g. provisions transposing the IDD).

**The examples cited in this section are non-exhaustive examples of national general good rules. A more comprehensive list of general good rules published by Member States is included in the country-by-country analysis of national general good rules in Annex III.**

**Due to insufficient detail and clarity on the information of the general good rules published (see Annex III), not all of them are quoted in this report. In addition, some Member States have published a very high number of general good rules and, therefore, in these cases, not all general good rules published are quoted in this report.**

**Where several Member States have published similar general good rules, these are grouped together and highlighted as an example.**

**The order and amount of details for the examples identified do not imply a ranking in terms of importance or in terms of their material impact on the functioning of the internal market.**

The IDD foresees 17 explicit legal options. 11 of these options allow Member States exercising them to introduce general good rules in their context. All the legal options which can introduce general good rules are listed in the table in Annex I. The two tables in Annex II indicate which Member State has exercised which legal options.

### 2.1 INFORMATION REQUIREMENTS AND CONDUCT OF BUSINESS RULES

This section refers to general good rules published by host Member States in the area of information requirements and conduct of business requirements. Recital 22 provides that, in relation to FoE business, “*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*”. It is worth noting that in relation to insurance undertakings, the split of home/host competences under Solvency II is specified both in respect of FoE and FoS business.

#### 2.1.1. ARTICLE 17 – GENERAL PRINCIPLE

Article 17(1) requires insurance distributors to always act “*honestly, fairly and professionally in accordance with the best interests of their customers*”. In addition, Article 17(2) stipulates that “*all information related to the subject of [the IDD], including marketing communications, addressed by the insurance distributor to customers or potential customers shall be fair, clear and not misleading*” and “*marketing communications shall always be clearly identifiable as such*”.

Some Member States go beyond these rules, requiring incoming insurance distributors and/or both incoming and domestic insurance distributors, to apply greater standards of care than those established in the IDD in the provision of their services and the treatment of customers. The following are some indicative examples:

- In Malta, insurance distributors must at all times carry out the regulated activities with utmost good

faith, integrity, due skill, care and diligence. Furthermore, insurance distributors must do everything which is reasonably possible to satisfy the needs and requirements of their customers and shall place the interests of those customers before all other considerations.

- › Ireland requires persons who perform certain senior management roles and specific functions to be competent, capable, honest, ethical, financially sound and to act with integrity.
- › In Hungary, insurance undertakings and intermediaries shall provide easily intelligible, clearly written, not misleading, fair and detailed information free of charge that is verifiable and documented, before an insurance contract is concluded.
- › In Greece, insurance and reinsurance distributors shall explain the terms and conditions of the contract they are recommending, advise customers of their rights and obligations and ensure that the information supplied to customers is timely, complete, correct, sufficient and relevant. Furthermore, insurance distributors shall not engage in unfair competition or unfair, unlawful or misleading acts and practices.
- › Austrian law foresees special rules for determining whether the delivery of unsolicited messages advertising an insurance contract is admissible. For example, calls for marketing purposes are only permitted with the prior consent of the policyholder.
- › In Denmark, a company may not contact anyone using electronic mail, an automated call system or fax for direct marketing unless he / she has given his prior consent. The consent must be able to be revoked easily and free of charge.
- › The Italian regulation foresees the obligation for distributors to gain the policyholder's explicit consent to the sending of commercial communications by means of distance communication techniques. The absence of a reply or of dissent cannot be construed as expressing consent on the part of the policyholder.

In addition, advertising of insurance undertakings' products shall be carried out by undertakings and intermediaries in compliance with the principles of fairness of information and with the content of the information documents and contractual terms of the relevant products.

- › In France, any correspondence and advertisement issued by an intermediary acting in that capacity shall mention the intermediary's name or corporate name,

business address and registration number. When this correspondence or advertisement is related to an insurance contract, it shall indicate the insurance company's corporate name as well.

- › In Romania, all intermediaries are strictly forbidden to promote or to advertise, on the basis of any kind of remuneration, the insurance products or the activities or any kind of actions of the insurance undertakings.
- › In Belgium, insurance distributors must restrict their activities to insurance products they (as well as the persons that are responsible for the insurance distribution or in contact with the customers) understand and are able to explain to clients, the essential features of the insurance products they commercialise.
- › In Bulgaria, it is prohibited to place signs, marks or other indications on the motor vehicle or in a visible position inside the vehicle or other property that directly or indirectly signify the existence of an insurance contract concluded for the same vehicle or for other property.

### 2.1.2 ARTICLE 18 – GENERAL INFORMATION PROVIDED BY THE INSURANCE INTERMEDIARY OR INSURANCE UNDERTAKING

Article 18 requires certain information to be provided to the customer by the insurance intermediary or insurance undertaking before the conclusion of a contract. Many Member States have national provisions in place which stipulate that additional information must be given to the customer by incoming insurance distributors and/or both incoming and domestic insurance distributors. The following are some indicative examples:

- In Poland, insurance agents are required to show the power of attorney document to the client at the first operation. In addition, insurance brokers have to inform the client about their registration number in the register of insurance brokers and the manner of checking it. Insurance undertakings have to inform about the law applicable to the contract and provide information on complaints handling.
- In Malta, insurance distributors appointing tied insurance intermediaries or ancillary insurance intermediaries have to ensure that these identify themselves to clients and disclose the name of their principals, the capacity in which they are acting as well as indicate their enrolment number and show the company's business card.
- In Italy, in the case of distance selling, distributors are required to disclose to the customer their name, purpose of the call, main features of the product, total price and information on the remuneration received.
- In Denmark, insurance intermediaries and undertakings are required to inform consumers on their website and in advertisements whether they are a member of a guarantee scheme.
- In Sweden, before an insurance contract is agreed for which the Swedish law is not applicable, the insurance provider must disclose to the customer information about which national law is applicable.
- In the UK, ancillary insurance intermediaries are obliged to disclose to the customer whether they provide advice about the insurance products sold and whether they are representing the customer or are acting for and on behalf of the insurance undertaking. Ordinarily, in terms of Article 18(a), paragraph 5, ancillary insurance intermediaries are exempt from this requirement.
- In Hungary, ancillary insurance intermediaries provide information to clients that goes beyond what is required under IDD. For example, they have to disclose on whose behalf and responsibility they are acting as well the range of products they are entitled to sell.
- In Luxembourg and Italy, an intermediary acting on behalf of one or more insurance undertakings or intermediaries must inform the customer of the name of those insurance undertakings or intermediaries as well as, regarding intermediaries, the register of distributors in which those intermediaries are registered and their registration number.
- In Greece, the insurance undertaking shall provide an insurance application form to the distributors of its products. Prior to the conclusion of the insurance contract, distributors shall complete the application form on the basis of the data provided by the customer, have the customer sign it, and deliver the original to the insurance undertaking that assumes the risk and the copy to the customer. The application form includes, for example, the name, tax registration number and special registration number of the insurance intermediary that contacted directly the customer for the distribution of the insurance contract.
- In Ireland, the Consumer Protection Code provides that a regulated entity must draw up its terms of business and provide a copy to the customer prior to providing the first service. The information to be contained in the terms of business includes similar information requirements as outlined in Article 18 of IDD and additional information about the regulated entity.

### 2.1.3 ARTICLE 19 – CONFLICTS OF INTEREST AND TRANSPARENCY

Article 19 requires insurance intermediaries to provide information about their status and about the type of remuneration which they receive in order to show the relationship between the insurance undertaking and the intermediary. There are a number of national provisions on conflicts of interest and transparency which are in addition to those set out in this Article and have to be applied by incoming insurance distributors and/or both incoming and domestic insurance distributors. The following are some indicative examples:

- In Czechia, independent intermediaries must not intermediate individual insurance policies as an agent

and as a broker at the same time. Furthermore, insurance intermediaries registered in a home Member state other than Czechia, must not intermediate individual insurance policies on the basis of a contract with an insurance undertaking and a contract with a customer at the same time.

- › Similarly, in Poland, undertaking insurance agent activities and insurance broker activities at the same time is not permitted. Furthermore, the legislation prohibits the possession of shares of an insurance agent and a brokerage company at the same time.
- › In Italy, intermediaries that distribute motor liability and liability for craft contracts have to provide the policyholder the level of commission received by the undertaking in relation to the insurance contract and not only the nature of the remuneration as referred to in Article 19(i), letter d.
- › In Latvia, before entering into an insurance contract an insurance broker shall be obliged to provide the customer with timely information on the assessed insurance offers and the type of remuneration the insurance broker would receive from the respective insurer if the insurance contract were entered into.
- › In Sweden, insurance intermediaries are required to provide information about who is providing the compensation and how large the compensation is with respect to any insurance contract. If this is not possible, the customer shall be informed of the basis for calculating the compensation.
- › In Greece, if an insurance broker receives a fee from the customer, a written contract between them shall include the tax registration number of the insurance broker, the tax registration number of the customer, the time and method of payment of the fee and the exact amount of the fee or, if this is not possible, the basis and method of calculation of the fee. The broker shall deliver to the customer the contract prior to the conclusion of an insurance contract.
- › In France, insurance intermediaries or ancillary insurance intermediaries are not permitted to pass on the remuneration received for distribution activities to other persons who are not registered as Insurance intermediaries or ancillary insurance intermediaries. However, persons whose activity is only to connect the distributor and the potential policyholder are not considered as insurance intermediaries or ancillary insurance intermediaries, but can receive a commission for that mere connection.

In addition, insurance intermediaries who are not under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings, must inform the potential policyholder of the amount of the commission and of any remuneration received from an insurance company when the premium amount is higher than EUR 20,000. Besides, those intermediaries must give to the potential policyholder, the name(s) of the insurance undertaking(s) with whom they realised more than 33% of their annual revenue in the past year.

- › In Lithuania, insurance undertakings offering unit-linked insurance products are obligated to implement an investment direction management function which must effectively manage the investment directions in order to achieve the best results for the customer. The undertaking is not entitled to charge a fee for management of an investment direction if this service is not provided.
- › The UK extends the disclosure requirements for insurance intermediaries laid down in Article 19(i), letter c, to ancillary insurance intermediaries. In addition, the national legislation requires insurance intermediaries to make clear whether they are providing advice or just information as well as distinguishes between advice that is a personal recommendation and other advice.



## 2.1.4 ARTICLE 20 – ADVICE, AND STANDARDS FOR SALES WHERE NO ADVICE IS GIVEN

CAs have published a significant number of general good rules applicable to advised and non-advised sales (as referred to in Article 20) by incoming insurance distributors and/or both incoming and domestic insurance distributors. The following are some indicative examples of national rules in this sub-category:

- In Austria, the insurance distributor must obtain information from the policyholder, which is necessary to specify the customer's demands and needs and is responsible for the advice provided. In addition, the insurance undertaking is only freed from these obligations if the contract is distributed by an authorised third party and the insurance undertaking has no reason to assume that the policyholder is offered contracts that do not correspond to their demands and needs or that the third party advises the policyholder not properly.
- In UK legislation, there are several rules which go beyond what is proposed for in Article 20(1), for example:
  - firms providing advice must take reasonable care to ensure the suitability of its advice for any customer who is entitled to rely upon its judgement;
  - firms must meet additional tests when assessing whether the Payment Protection Insurance (PPI) policy is right for the customer; and
  - firms are required to meet an ongoing obligation to inform customers of any changes to information provided as part of the insurance distribution activity.
- In Italy, before policyholders sign a proposal or an insurance contract, distributors must ask for information regarding the personal characteristics and the insurance needs of the policyholder, which include, if applicable, specific information on age, health condition, profession, family status, financial and insurance condition and expectations as regards the signing of a contract, in terms of coverage and duration, also taking into account any insurance coverage already in effect, the type of risk, the characteristics and complexity of the proposed contract.

The refusal to provide one or more pieces of the information must be written down in a statement, to be enclosed to the proposal or to the policy, and

signed by the policyholder and by the distributor, containing a specific warning about the fact that this refusal shall undermine the possibility to select the contract tailored to the demands and needs of the policyholder.

Under Article 20(1), the insurance distributor shall specify, on the basis of information obtained from the customer, the demands and the needs of that customer. The scope of the demands and needs test is not prescribed in the IDD.

In addition, in relation to products which are not insurance-based investment products (IBIPs), there is no warning foreseen in the IDD, in case the customer refuses to provide the necessary information.

- In France, the distributor shall offer a contract which is consistent with and appropriate to potential policyholder's demands and needs, and have to specify concrete reasons for this proposal.

This rule differs from Article 20(1), subparagraph 1 and 2 in the fact that it requires that the demands and needs of the customer shall be specified in writing and that the distributor shall give the reason why the contract is consistent with and appropriate to those demands and needs.

- In Hungary, the insurance company has to obtain a statement from the client on what information has been received by the client in connection with the insurance policy in question prior to concluding the contract.
- In Belgium, the rules foreseen under Article 20(3) apply to situations where an insurance intermediary informs the customer that it gives its advice on the basis of a fair and personal analysis, or that the advice is given independently.
- In Spain, the insurance broker's advice must be facilitated on the basis of an objective 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 be adequate to meet the customer's needs. In any case, the objective analysis will be presumed when the insurance broker has analysed insurance contracts offered by at least three insurance undertaking which carry out business in that market, or when the insurance contract has been created specifically by the insurance broker and negotiated with, at least, three insurance undertakings which carry out business in that market, to offer it exclusively for his client.



According to Article 20, the Insurance Product Information Document (IPID) must be provided in relation to the distribution of non-life insurance products. In addition, as laid down in the 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)<sup>13</sup>, the Key Information Document (KID) must be drawn up for Packaged Retail and Insurance-based Investment Products (PRIIP), before a PRIIP is made available to retail investors.

However, notwithstanding the policyholder information requirements provided for in Solvency II,<sup>14</sup> there is no requirement foreseen in any EU legislation to provide the customer with a standardised information document in relation to an insurance product which is neither an insurance-based investment product (IBIP) nor a non-life insurance product, inviting Member States to fill this gap with an additional information document regulated on a national level. Some examples include:

- In Italy, a distributor of life insurance products other than IBIPs shall deliver to the policyholder, a short document, drawn up by the manufacturer, that contains the main aspects of the IPID.
- Similarly, in Croatia, the national legislation stipulates that the IPID shall be provided also in relation to the distribution of other life insurance products (excluding IBIPs).
- In Germany, the IPID must be provided in relation to the distribution of other life insurance products (excluding IBIPs) as well. However, when it is provided to other life insurance products, it must also include information on the premium, the acquisition and distribution costs as well as the administrative costs and other costs.
- In Austria, in relation to the distribution of pure protection life insurance contracts according to Article 2(17), letter b, the policyholder must be provided with a standardised information sheet which contains the same information as the IPID. Furthermore, the information listed in Article 20(8) must be provided in relation to all insurance contracts.
- In Denmark, the independent insurance intermediary must determine the terms of cooperation with the customer, including the benefits the intermedi-

ary shall deliver, the amount the customer must pay, the term of the agreement and to what extent the liability insurance of the intermediary does not cover the agreed benefits.

According to Article 20(7), subparagraph 2, Member States may stipulate that the IPID is to be provided together with information required pursuant to other relevant Union legislative acts or national law. The Member States which have exercised this option have implemented it word-for-word into national legislation (without providing any additional details).

### 2.1.5 ARTICLE 21 – INFORMATION PROVIDED BY ANCILLARY INSURANCE INTERMEDIARIES

Article 21 specifies the information to be provided to the customer by ancillary insurance intermediaries before the conclusion of a contract. Only a small number of Member States have national provisions in place which stipulate that additional information must be given to the customer by incoming ancillary insurance intermediaries and/or both incoming and domestic ancillary insurance intermediaries. The following are some indicative examples of national rules in this sub-category:

- In Ireland, ancillary intermediaries are required to comply with the same national requirements on conflicts of interest, provision of information (terms of business) and knowing your customer and suitability for non-life products as other insurance distributors.
- In Hungary, ancillary insurance intermediaries are obliged to provide additional information besides the information provided according to IDD, including on whose behalf and responsibility the intermediary is acting, the range of the insurance products which are entitled to sell by the intermediary itself and the availability of a wider range of insurance products to customers through other insurance sales channels and whether it provides - within the available framework - advice on the sales of the insurance products.
- In Italy, ancillary insurance intermediaries are required to comply with some additional information rules besides the information provided pursuant Article 21 of IDD, as required for other distributors/intermediaries (information on the undertaking/intermediary on whose behalf and responsibility the ancillary insurance intermediary is acting, information on measures aimed at protecting customers pursuant to Article 10(6) of the IDD, as for example

<sup>13</sup> OJ L 352, 9.12.2014, p. 1.

<sup>14</sup> Title II, Chapter I, Section 5, Information for policyholders

the fact that they are covered by the professional indemnity insurance, information on the main rules of conduct imposed on intermediaries in accordance with the Italian regulation implementing IDD, and specific information to be provided to policyholders before they are bound by a distance proposal or contract)

## 2.1.6 ARTICLE 22 – INFORMATION EXEMPTIONS AND FLEXIBILITY CLAUSE

Article 22 provides for a number of legal options which allows for stricter provisions than those foreseen under the IDD, including stricter information requirements, mandatory advice for the sales of any insurance product and limitation or prohibition of remuneration paid to insurance distributors in relation to the distribution of insurance products.

According to Article 22(1), subparagraph 2, 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. The Member States which have exercised this option have implemented it word-for-word into national legislation (without providing any additional details).

A high number of general good rules are based on the legal option of Article 22(2), subparagraph 1-2 which allows Member States to adopt stricter provisions regarding the information requirements referred to in Chapter V and applicable to incoming insurance distributors and/or both incoming and domestic insurance distributors. Many of these rules were already mentioned in Section 2.1, but examples of those of them that do not fit in any of the subsections of Section 2.1 are listed below:

- In Malta, insurance distributors providing distribution services from a place of business accessible to the public are required to display the licensing, authorisation, enrolment or registration or an official copy thereof, issued by the competent authority granting such authorisation, enrolment or registration in a prominent place to which the public has access.
- In Denmark, an insurance distributor must enter or confirm all significant agreements with consumers on paper or on a durable medium. An agreement must contain a description of the essential rights and duties of the parties and of the financial services covered by the agreement.

- In Ireland, a renewal notification must be provided at least 15 days before a non-life insurance policy is due for renewal. In the case of motor insurance, certain specified information must be provided, including whether the policy is comprehensive, third party, fire and theft, or third party only, cost of optional cover, fees and charges, and a certificate of no claims discount awarded.

- Similarly, in Denmark, in relation to non-life contracts, an insurance undertaking must no later than 30 days before the insurance period expires, notify the customer of any significant changes to the insurance agreement that is unfavourable to the customer.

- Also in Denmark, non-life insurance undertakings have to inform the customer on an annual basis about the non-life insurance contracts that the consumer has with the undertaking.

- In Hungary, the insurance company shall supply information with respect to any changes in the data provided prior to the conclusion of the contract any time when the contract is amended or renewed, except if an insurance intermediary is involved in the conclusion of the insurance contract or in connection with reinsurance contracts and insurance contracts covering large exposures.

The IDD does not require insurance undertakings/intermediaries to provide the customer with a renewal notification or information on changes to the insurance agreement.

Article 22(2), subparagraph 3 allows Member States to make the provision of advice mandatory for the sales of any insurance product, or for certain types of insurance products. This option has been used in various ways. These are some indicative examples:

- In Estonia, each time before the entry into an insurance contract and in case of recognisable necessity also before the amendment of an insurance contract, an insurance undertaking shall recommend, from among the insurance contracts offered, an insurance contract which is the best match for the insurable interests and requirements of the client and provide the client with sufficient explanations in accordance with the complexity of the insurance contract and type of the client so that the client would be able to make an informed decision regarding the entry into the insurance contract.
- In Luxembourg, where this legal option has been used as well, the law foresees that customers may

agree to waive the advice individually in writing and prior to any act of distribution.

- In Austria, advice is compulsory except in relation to the insurance of large risks. Similarly to Luxembourg, only at the explicit wish of the customer, the advice can be omitted.

Article 22(3) enables Member States to 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. The following are some indicative examples of how this option has been used by Member States:

- In Denmark, the independent intermediary is not allowed to receive commission or other payments from another insurance distributor unless the commission or other payment is directly forwarded to the customer.
- In the Netherlands, a financial service provider must not directly or indirectly pay or receive commissions for mediating or advising on a payment protection insurance, complex product, mortgages, individual occupational disability insurance, term life insurance and funeral insurance.
- In Poland, the policyholder of a group insurance, or the person acting on behalf of the policyholder, may not receive any remuneration or other benefits associated with offering the insurance cover or any activities related to performance of the insurance contract (excluding employees insurance).

Furthermore, in relation to unit-linked and certain life insurance contracts concluded for periods longer than 5 years, the agent's commission shall be split equally for at least 5 years. If the unit-linked insurance is concluded for less than 5 years, the commission shall be split equally for the period.

- Similarly, in Czechia, in relation to life insurance policies, the payment of the commission to the insurance intermediary is delayed so as to ensure it is not paid all at once, but spread evenly over the first 60 months from the date of conclusion of the contract.
- Finland exercised the legal option in terms of Article 22(3) as well, but allows insurance brokers and ancillary insurance brokers to receive any commission or fee only from their clients.
- In Romania, the acceptance or receipt of fees, commissions or other monetary or non-monetary bene-

fits paid for insurance distributors by any third party, in relation with insurance distribution of insurance products is forbidden. The third party excludes the customer, the insurance undertaking or the insurance intermediary.

- In Slovakia, the receipt of any remuneration, both financial or non-financial, or payment from a (potential) client by an insurance intermediary is prohibited.

## 2.1.7 ARTICLE 23 – INFORMATION CONDITIONS

Only a small number of Member States have published general good rules on information conditions according to Article 23 applicable to incoming insurance distributors and/or both incoming and domestic insurance distributors. The following are some non-exhaustive examples of national provisions:

- In Austria, it has to be specified in which way the right to choose between paper and a durable medium in relation to Article 23(2) concerning information after the conclusion of the contract, has to be granted and consent has to be expressed. The agreement of electronic communication requires the express consent of the policyholder, which must be declared separately. It may be revoked at any time by either party. The policyholder must be informed of this right before approval.

Furthermore, the national legislation defines that, in line with Article 23(5), letter d, the insurance undertaking has to provide permanently on the announced place of the website, the insurance conditions during the entire term of the contract and statements and other information during the period in which they are significant.

- In Malta, certain requirements have to be fulfilled when insurance distribution activities are carried out over the internet. For example, the information presented on the website must be kept up to date and, when communicating with a client by means of a website, it must be ensured to have arrangements in place to record all information disclosed to the client, including dated logs of such disclosures.
- In Italy, specific rules are applicable to intermediaries' website, social network profiles and applications used for the promotion and the placement of insurance products. Furthermore, there are specific rules of conduct and disclosure obligation to be observed in the offering of comparison services on insurance contracts.

## 2.1.8 ARTICLE 24 – CROSS-SELLING

Article 24(7) allows Member States to 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. A small number of Member States have made use of this option to apply it to incoming insurance distributors and/or both incoming and domestic insurance distributors. The following are some non-exhaustive examples:

- In Czechia, it is possible to sell goods or provide services tied to concluding or amending an insurance policy contract only if the customer is able to buy the insurance policy also separately. The legislation is similar to the wording of Article 24(3), but extends the rule without it being necessary to examine whether the insurance product is an ancillary or non-ancillary product.
- In Latvia, the CA is entitled to prohibit the offering of an insurance product together with a product or service other than insurance on an ancillary basis, as part of an insurance package or a contract offered by the insurance distributor where this may adversely affect the interests of the customer.

## 2.1.9 ARTICLE 25 – PRODUCT OVERSIGHT AND GOVERNANCE REQUIREMENTS

The UK and France are the only two Member States which have implemented additional requirements in relation to the product oversight and governance requirements foreseen under Article 25, which are applicable to incoming insurance distributors and/or both incoming and domestic insurance distributors:

- According to Article 3(4) of the Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors<sup>15</sup>, firms must outline their mutual responsibilities in a written agreement, when they collaborate to manufacture an insurance product. Under the UK insurance legislation, this rule is extended to cover cases where a manufacturer collaborating on the creation

of a product with a person who is not subject to the directive.

Furthermore, they are required to analyse charging structures to ensure they are in the interests of customers.

In addition, distributors have to take reasonable steps to obtain information on the product's design when distributing products that were not manufactured by a firm to which the requirements apply.

- In France, intermediaries who distribute IBIPs, shall draw up agreements with the insurance undertakings with which they work. These agreements shall determine, *inter alia*, the conditions under which the intermediary shall be required to submit all promotional documents to the insurance undertaking, prior to their distribution, to enable the insurance undertaking to verify their compliance with the insurance contract.

## 2.2 ADDITIONAL REQUIREMENTS IN RELATION TO INSURANCE-BASED INVESTMENT PRODUCTS

### 2.2.1 ARTICLE 27 AND ARTICLE 28 – CONFLICTS OF INTEREST

Articles 27 and 28 requires insurance undertakings and intermediaries to prevent, identify, manage and disclose conflicts of interests in relation to the distribution of IBIPs. There are some national provisions on conflicts of interest in relation to the distribution of IBIPs which are in addition to those set out in Articles 27 and 28 and are applicable to incoming insurance distributors and/or both incoming and domestic insurance distributors. The following are some indicative examples:

- In Belgium, Bulgaria, Italy and the UK, the rules on conflicts of interests laid down in Article 27 and 28 apply not only in relation to IBIPs, but to all products.
- In addition, where the MiFID II<sup>16</sup> requirements on conflicts of interest go beyond the IDD rules, the UK has levelled up to the MiFID II requirements. The UK has also retained stricter national provisions on conflicts of interest which were already in force before IDD was implemented.

<sup>15</sup> OJ L 341, 20.12.2017, p. 1.

<sup>16</sup> 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.

- In Malta, when distributing IBIPs, insurance distributors are required to disclose, at any time the client requests it, further details of the conflicts of interest policy it has in place, in a durable medium or by means of a website.

## 2.2.2 ARTICLE 29 – INFORMATION TO CUSTOMERS

Article 29 defines the information that shall be provided prior to the conclusion of a contract, to customers with regard to the distribution of IBIPs. In addition, it provides for a number of legal options which allows for stricter provisions than those foreseen under the IDD, including mandatory advice for the sales of any IBIPs, restriction or prohibition of remuneration from third parties in relation to the provision of insurance advice and rules on independent advice. The following are some indicative examples of general good rules in this sub-category which are applicable to incoming insurance distributors and/or both incoming and domestic insurance distributors:

- In Czechia, in relation to IBIPs where policyholders bear investment risks, insurance undertakings and intermediaries must provide customers with personalised information in standardised form in relation to the policy they are concluding, in addition to the KID and the information listed in Article 29(1).
- In Belgium, the information on all costs and related charges stipulated in Article 29(1), letter c, must not only be provided in relation to IBIPs, but in relation to any insurance product.
- In the UK, clients must be provided with additional information on costs and associated charges, including the total price to be paid in connection with the life policy or the insurance distribution activity, including all related fees, commissions, charges and expenses, and all taxes payable via the firm or, if an exact price cannot be indicated, the basis for the calculation of the total price.
- In Sweden, insurance intermediaries have to provide the customer with additional information on the insurance agreement, not just the information set out in Article 29(1).

According to Article 29(1), subparagraph 3 Member States may allow the information referred to in this paragraph to be provided in a standardised format. The Member States which have exercised this option have implemented it word-for-word into national legislation (without providing any additional details).

Article 29(3), subparagraphs 1 and 2, allows Member States to 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. Many Member States have made use of this option. The following are some indicative examples of how this option was used by Member States:

- There are several rules in the UK which limit the way in which distributors may be remunerated for advice on life insurance policies. For example, subject to certain exceptions, a firm must only be remunerated for the personal recommendation by adviser charges and not solicit or accept any other commissions, remuneration or benefit of any kind in connection with the firm's business of advising or any other related services.
- In Hungary, there are requirements with regard to the volume and payment frequency of commissions in connection with IBIPs, and obligatory elements of commission contracts. For example, the amount of commission paid in connection with an IBIP may not exceed the amount of the premium the insurance company has received by the time of payment of the commission.

Article 29(3), subparagraph 3 allows Member States to make the provision of advice mandatory for the sales of any IBIPs, or for certain types of them. Several Member States have made use of this legal option. The following are some indicative examples of how this option was used by Member States:

- In Czechia, advice is mandatory for the sale of any IBIP and a recommendation is mandatory for the sale of any other product, following the demands and needs of the customer. However, if advice is provided in relation to any other product, the same rules apply as for the sale of IBIPs.
- In Estonia, where advice is mandatory for the sale of any insurance product according to Article 22(2), subparagraph 3, the requirement for providing a recommendation need not be adhered to in case of a unit-linked life insurance contract, allowing insurance undertakings to undertake an appropriateness assessment.

Under Article 29(3), subparagraph 4, 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. Several Member States have executed this option. This is an indicative example of how this option was exercised:

- In Sweden, it is prohibited for intermediaries providing advice on the basis of a fair and personal analysis to include their own products or products of an entity with close links with the intermediary, while Article 29(3), subparagraph 4 only states that the provision of advice by intermediaries shall not be limited to such products. In addition, the national provision applies to all insurance distribution and not just IBIPs.

### 2.2.3 ARTICLE 30 – ASSESSMENT OF SUITABILITY AND APPROPRIATENESS AND REPORTING TO CUSTOMERS

Articles 30(1) and 30(2) requires insurance intermediaries and insurance undertakings to conduct an assessment of suitability or appropriateness in relation to the sale of IBIPs and stipulate certain reporting requirements laid down in Article 30(5). Several Member States have implemented additional requirements applicable to incoming insurance distributors and/or both incoming and domestic insurance distributors. The following are some indicative examples:

- According to Article 30(1), the insurance intermediary or undertaking is responsible for providing the advice and undertaking the suitability assessment. In Austria, the insurance undertaking is only free of this obligation if the insurance undertaking has no reason to assume that the third party advises the policyholder not properly.
- In France, the assessment of appropriateness has to take into account the financial situation and the investment objectives of the client. Article 30(2) only requires taking into account the knowledge and experience of the customer in the investment field.

Under Article 30(3), Member States are allowed to derogate from the obligations referred to in Article 30(2), allowing insurance intermediaries or undertakings to carry out insurance distribution activities without the need to conduct an appropriate assessment if certain conditions

are met.<sup>17</sup> Member States which have exercised this option have implemented it word-for-word into national legislation (without providing any additional details).

Article 30(4) requires insurance intermediaries and insurance undertakings to 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. There are some national provisions on record-keeping which are in addition to those set out in Article 30(4) and are applicable to incoming insurance distributors and/or both incoming and domestic insurance distributors.

- In Belgium, the requirement to establish a record that includes the document agreed between the insurance intermediary or undertaking and the customer that set out the rights and obligations of the parties as laid down in Article 30(4) has been extended to all insurance product, not only IBIPs.

In addition, distributors of insurance products have to keep a record of any insurance distribution activity carried out to enable the FSMA to verify compliance with the obligations towards clients. The data shall be retained for a period of five years and, if the FSMA so requests, for a period of seven years.

- In the UK firms are required to meet a 5-year minimum term for retention of records about suitability and appropriateness which may be longer than the Delegated Regulation (EU) 2017/2359 requirement to hold the records for at least the duration of the relationship between the firm and the customer.
- In Malta, the record referred to in Article 30(4) should not exclude or restrict any legal liability or duty of care to a client as well as any other duty to act with skill, care and diligence which is owed to the client.

<sup>17</sup> It is interesting to note that, according to Article 30(3), subparagraph 2, 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



## 2.3 SCOPE, REGISTRATION AND ORGANISATIONAL REQUIREMENTS

This section refers to general good rules published by host Member States in the area of scope, registration and organisational requirements which, depending on the context, are either applicable to both incoming insurance distributors and domestic insurance distributors or exclusively to incoming insurance distributors.

It should be noted in this context, that recital 20 provides that *“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”*.

Furthermore, recital 22 provides that, in relation to FoE business, *“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”*.<sup>18</sup>

### 2.3.1 ARTICLE 1 AND 2 – SCOPE AND DEFINITIONS

The substantive scope of the IDD is set out in Articles 1 and 2 thereof, including, in particular, a broad notion of “insurance distribution”. A small number of Member States have published general good rules, which are either also applicable to incoming insurance distributors or exclusively to incoming insurance distributors, which deviate from the scope and definitions of IDD provided for in Article 1 and 2. The following are some indicative examples:

- In Belgium, for an ancillary insurance intermediary to be exempted from the Directive, the amount of the premium paid for the insurance product must not exceed EUR 200, taxes excluded, calculated on a pro rata annual basis. In contrast, Article 1(3), letter b foresees a threshold of EUR 600.

Furthermore, Belgium extends the definition of IBI-Ps foreseen under Article 2(1), number 17 to other similar insurance products, such as certain pension products.

### 2.3.2 ARTICLE 3 – REGISTRATION REQUIREMENTS

Registration requirements are considered a home State competence under Article 3. Some Member States apply additional registration requirements to entities doing FoE/FoS business<sup>19</sup> on their territories. The following are some indicative examples (N.B. These examples only cover registration requirements imposed on entities registered in another Member State exercising FoE/FoS. Registration requirements that only apply to domestically registered insurance distributors are not covered):

- In Estonia, insurance agents (including all agents who act as ancillary insurance intermediaries and agents who are named in Article 1(3)) act under the responsibility of an insurance undertaking. An insurance agent shall be entered in the list of intermediaries by an insurance undertaking whom the agent represents.
- In Romania, if entities choose to distribute through a local network – local intermediaries when doing FoE business, they have to ensure that those intermediaries fulfil the conditions of registration as they are stipulated in the Romanian primary law and secondary legislation. This responsibility of the entities is similar to the Romanian entities, including the registration's procedure and the supervision of the local intermediaries' activity during the collaboration period. Moreover, in the primary law, there are specified measures and sanctions against the insurance undertakings and independent intermediaries for the dependent intermediaries' activity.

Consequently, there are requirements for the continuous professional training of the collaborators of the FoE entities. Before registration, the FoE entities have to verify if the local intermediaries have successfully completed their initial training programme and, during the collaboration, if the local intermediaries comply with the continuous training requirements laid down in Romanian secondary legislation.

In addition, Romania introduces a separation between FoS and FoE by defining when the distributors' activity is exercised on a temporary basis. Foreign in-

<sup>18</sup> Section 3 of Chapter VIII of Solvency II and the Decision on the collaboration of the insurance supervisory authorities, EIOPA-BoS-17/014, 30 January 2017, provide further guidance on the competencies of the supervisory authorities of the host and home Member State.

<sup>19</sup> N.B. this Section.

insurance distributors, including insurers carrying out activity in Romania on the basis of FoS need to meet certain requirements. Their cooperation with local intermediaries must be based on reverse solicitation and the duration of that cooperation cannot be more than three years.

- In Latvia, insurance and reinsurance brokers shall be registered in the register of insurance and reinsurance brokers maintained by the Financial and Capital Market Commission.

Furthermore, insurance agents shall be registered in the register of insurance agents maintained by an insurance merchant or a branch of a foreign insurer.

Moreover, ancillary insurance intermediaries shall be registered in the register of ancillary insurance intermediaries maintained by an insurance merchant, a branch of a foreign insurer or an insurance broker.

### 2.3.3. ORGANISATIONAL REQUIREMENTS

#### 2.3.3.1 ARTICLE 10 – PROFESSIONAL AND ORGANISATIONAL REQUIREMENTS

Professional and organisational requirements are considered a home State competence under Article 10. Some Member States have chosen to impose these requirements on entities doing FoE/FoS business only or in addition to domestic entities. The following are some indicative examples (N.B. These examples only cover professional and organisational requirements imposed on entities registered in another Member State exercising FoE/FoS. Professional and organisational requirements that only apply to domestically registered insurance distributors are not covered):

- In the UK, ancillary insurance intermediaries as well as other insurance distributors must comply with continued professional training and development requirements. Article 10(2) foresees that these requirements are only to be met by insurance/reinsurance intermediaries and employees of insurance/reinsurance undertakings/intermediaries.

Furthermore, all insurance distributors (not just insurance undertakings) must establish, maintain and keep up-to-date records of their compliance with Article 10(1) to (3).

- In Luxembourg, the CA determines through a regulation the practical modalities of the arrangements created in order to check and evaluate the professionals' knowledge and ability.

The insurance and reinsurance undertakings established in LU (= LU registered and FoE in LU) must keep a record of the training performed by their staff active in direct sales (this does also apply to the staff of the EEA branches of LU registered undertakings) or registered as their insurance agents. Insurance brokers must also keep such a record for their staff registered as sub-brokers and managers.

Each year, before the 31st of January, each such undertaking or brokerage firm has to communicate to the CAA the names of their staff not having fulfilled the legal requirements, who will take the final decision.

- In Lithuania, insurance, reinsurance and insurance brokerage companies are responsible for ensuring their employees (for insurance companies – also the employees of insurance agents companies) have sufficient knowledge and competence.

The control and assessment of the knowledge and competence of insurance distributors shall be performed according to the rules and procedures defined by the particular company.

The competence of a particular insurance distributor shall be proved by the relevant document (e.g. certificate) or by way of an examination (e.g. a test).

The development of the competence shall be performed by the attendance of relevant training events (e.g. seminars) as well as self-development (e.g. textbooks). Self-development shall not exceed 30 percent of all the development.

All the required knowledge and competence topics shall be covered at least once in 3 years.

- In Malta, national rules provide more details as to how insurance and reinsurance distributors abide by the requirement to transfer customers' monies via strictly segregated customer accounts as set out in Article 10(6), letter c. This provision is applied only in the context of FoE.
- According to Article 10(8), insurance and reinsurance undertakings shall approve, implement and regularly review their internal policies and appropriate internal procedures to ensure compliance with the professional and organisation requirements. Sweden extends the scope of this provision to all insurance distributors.
- In Estonia, the opportunity to acquire knowledge in the field of insurance shall be ensured for insurance agents by an insurance undertaking whose insurance



contracts are mediated by these persons. In addition, insurance or reinsurance distributors are allowed to check the good repute of their employees and, where appropriate, of their insurance intermediaries.

- › In Latvia, the person responsible for an insurance or reinsurance intermediary or for an ancillary insurance intermediary and the employee directly involved in the distribution of insurance and reinsurance has good repute, if such person is not subject to certain conditions, as well as no circumstances have been identified which, while continuing to perform duties related to the distribution of insurance or reinsurance, may harm the reputation of the insurance or reinsurance distributor, may result in the risk of being involved in illegal activities by the insurance and reinsurance distributor or threaten the rights or interests of customers.

### 2.3.3.2 ARTICLE 14 – COMPLAINTS

Article 14 obliges Member States to “*ensure that procedures are set up which allow customers and other interested parties to register complaints about insurance and reinsurance distributors. In addition, it is foreseen that, in all cases, complainants shall receive replies*”. A number of Member States have published additional general good rules in relation to this sub-category. The following are some indicative examples:

- › Bulgaria and Poland require that every complaint shall be answered within 30 days from filing; Italy grants 45 days. IDD does not specify the date until which a complaint must be replied to.
- › Hungary prescribes detailed rules on complaint handling of insurance companies, including deadlines for the response, rules on the quality and content of responses. In addition, there are rules on the recording of complaints and the minimum requirements in relation to the complaints handling policy.
- › In Italy, insurance undertakings and intermediaries must have internal procedures for complaints-handling too, including deadlines for the response and recording of complaints, based on the fair treatment of insured persons, policyholders, beneficiaries and injured parties, which aims to ensure the proper and timely handling of complaints.

## 2.4 OTHER THEMES

Several Member States have published general good rules which cannot be assigned to any of the categories or sub-categories of this Section. The following are some non-exhaustive examples:

- › In Denmark, if a claim is reported in paper or in another durable medium, the insurance undertaking must refuse the claim on paper or on another durable medium, unless the customers clearly states that a refusal may be notified otherwise.

In addition, when an independent insurance intermediary obtains offers of insurance contracts for the customer from one or more insurance distributors, the independent insurance intermediary must provide information to the insurance distributor necessary for the insurance distributor to determine the price of the insurance.

Also, when distributing certain pension schemes, the independent insurance intermediary must when obtaining offers, inform the insurance distributor about the amount of the fee agreed between the customer and the independent insurance intermediary.

Furthermore, if an independent insurance intermediary has received a power of attorney from the customer, the power of attorney must be concluded on paper or on another durable medium.

- › In Bulgaria, where an insurance undertaking or intermediary receives a cash payment of an insurance premium or a contribution, it shall issue to the beneficiary of the insurance services a document certifying the receipt of the payment.

Furthermore, an insurance intermediary that has received payment of an insurance premium or instalment shall notify the insurer on the same day of the received amount, its grounds and amount, and shall transfer it to the benefit of the insurer within one month after receipt of the payment.

Moreover, a payment from an insurer to a beneficiary of insurance services through an insurance intermediary or another person shall be allowed only on the basis of an explicit written power of attorney with notarised signatures regarding the respective insurance claim or payment, which contains a statement that the beneficiary of insurance services is informed of the right to receive the payment personally.

- › In Ireland, where a regulated entity deals with a person who is acting for a consumer under a power of

attorney, the regulated entity must: a) obtain a certified copy of the power of attorney; b) ensure that the power of attorney allows the person to act on the consumer's behalf; and c) operate within the limitations set out in the power of attorney.

- › In Belgium, insurance companies are under an obligation to provide insurance distributors that distribute their insurance products the information that is necessary to permit compliance with the IDD framework.
- › In Czechia, national rules require to calculate the acquisition costs into the surrender value of IBIPs during the first 5 years of validity of such an insurance as being only 1/60 per each month of the validity. The aim is to stimulate insurance undertakings to prevent miss-selling cases by sharing the costs.
- › In Portugal, insurance distributors have to submit in due time all the information required by the Portuguese competent authority, ASF, and report amendments to the information provided to ASF under the fulfilment of the applicable duties.

In addition, insurance, reinsurance and ancillary insurance intermediaries are required to evidence the respective registration as an intermediary if requested by a customer or potential customer.

- › In Hungary, insurance companies offering unit-linked life insurance policies shall notify the CA of the asset funds it offers with such life insurance policies within fifteen working days from the day they were introduced. The notification shall indicate the name of the asset fund and the underlying investment policy.

In addition, the national legislation requires that terms and conditions of an insurance contract must cover certain minimum elements, such as a definition of the insured event, the procedure and deadline for reporting losses and the documents insurance undertakings require for payment of settlement for losses and costs in connection with a claim.

- › In Italy, the PRIIP manufacturer, or the person who sells PRIIPs, must transmit to the Italian financial markets regulator, CONSOB, the key information document drawn up in conformity to what is established by Regulation (EU) No 1286/2014, before the PRIIP in question is marketed in Italy.
- › The PRIIP manufacturer from Croatia or the person selling a PRIIP in Croatia is obliged to notify the Croatian competent authority, HANFA, of the key information document for PRIIPs marketed in Croatia. In addition, HANFA prescribes time limits and the means of such notification.

- › In Finland, the legislation requires the ex-ante notification of the key information document by the PRIIP manufacturer or the person selling a PRIIP to the competent authority for PRIIPs marketed in that Member State as well.

- › The French insurance code provides that the employer or principal shall be legally liable for damage caused by the fault, carelessness or negligence of his employees or agents acting in said capacity.
- › In Germany, insurance undertakings and intermediaries are prohibited from granting or promising special allowances to policyholders, insured persons or beneficiaries under an insurance contract.

Another rule stipulates that, as soon as the insurance intermediary (advisor) informs the insurance undertaking that he or she has provided the policyholder with an insurance that includes in the premium a benefit for the insurance mediation (gross rate), the insurance undertaking is obliged to transfer an equivalent of the benefit to the policyholder without delay by reducing the premium.

# ANNEX I: LIST OF IDD OPTIONS WHICH ALLOW MEMBER STATES EXERCISING THEM TO INTRODUCE GENERAL GOOD RULES IN THEIR CONTEXT

	IDD article	Key aspect of the option	IDD article text
1	20(7), subparagraph 2	Provision of the IPID together with other information	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.
2	22(1), subparagraph 2	Information exemption for professional clients	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.
3	22(2), subparagraph 1-2	Stricter information requirements and COB rules	<p>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.</p> <p>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.</p>
4	22(2), subparagraph 3	Mandatory advice for any insurance product, or for certain types of insurance products	<p>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.</p> <p>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.</p>
5	22(3)	Remuneration restriction for any insurance product	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.
6	24(7)	Cross-selling	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.
7	29(1), subparagraph 3	Standardised information	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.
8	29(3), subparagraph 1-2	Remuneration restriction for IBIPs	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.

IDD article	Key aspect of the option	IDD article text
9 29(3), subparagraph 3	Mandatory advice for IBIPs	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.
10 29(3), subparagraph 4	Independent advice	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.
11 30(3)	Execution only	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...

## ANNEX II: OPTIONS EXERCISED ACCORDING TO MEMBER STATE

### Key

	A Member State has exercised the option when implementing the IDD
	A Member State has completed the implementation of IDD, but has chosen not to exercise the option
	A Member State has not yet completed the implementation of the IDD and, therefore, the decision on which options will be exercised has not yet been taken

IDD article	Key aspect of the option	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR	HU	IE
20(7), subparagraph 2	Provision of the IPID together with other information															
22(1), subparagraph 2	Information exemption for professional clients															
22(2), subparagraph 1-2	Stricter information requirements and COB rules															
22(2), subparagraph 3	Mandatory advice for any insurance product, or for certain types of insurance products															
22(3)	Remuneration restriction for any insurance product															
24(7)	Cross-selling															
29(1), subparagraph 3	Standardised information															
29(3), subparagraph 1-2	Remuneration restriction for IBIPs															
29(3), subparagraph 3	Mandatory advice for IBIPs															
29(3), subparagraph 4	Independent advice															
30(3)	Execution only															

IDD article	Key aspect of the option	IS	IT	LI	LT	LU	LV	MT	NL	NO	PL	PT	RO	SE	SI	SK	UK
20(7), subparagraph 2	Provision of the IPID together with other information																
22(1), subparagraph 2	Information exemption for professional clients																
22(2), subparagraph 1-2	Stricter information requirements and COB rules																
22(2), subparagraph 3	Mandatory advice for any insurance product, or for certain types of insurance products																
22(3)	Remuneration restriction for any insurance product																
24(7)	Cross-selling																
29(1), subparagraph 3	Standardised information		*														
29(3), subparagraph 1-2	Remuneration restriction for IBIPs		*														
29(3), subparagraph 3	Mandatory advice for IBIPs		*														
29(3), subparagraph 4	Independent advice																
30(3)	Execution only																

\* As regards the 3 options on IBIPs as referred to in Art. 29, par. 1 sub. 3 (standardised information), 29, par. 3, subpar. 1-2 (remuneration restriction for IBIPs) and 29, par. 3, subpar. 3 (Mandatory advice for certain types of IBIPs), the list of general good rules published on IVASS website is not exhaustive, also taking into account that - as reported in the disclaimer published on the website together with the list - the Italian Insurance Code, in implementing IDD, exercised those options giving IVASS the power to complete the legal framework on IBIPs by issuing specific regulations in cooperation with CONSOB. For example, as regards the option stated by art. 29, par. 3, subpar. 3 IDD, according to Art. 121-sexies, par. 5, of Private Insurance Code, the IVASS regulation on inducements between insurance intermediaries and financial intermediaries is going to be adopted in accordance with the regulations introduced in this field by MiFID2 Directive and in accordance with directly applicable EU rules. Therefore, the Italian list of general good rules will be up-dated as soon as the legal framework on IBIPs is completed.

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