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CEIOPS' Report on the Implementation of the Insurance Mediation Directive's Key Provisions

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Introduction

In 2002 the Insurance Mediation Directive ("IMD") was adopted by the European Parliament and the Council of the European Union[1]. The three main objectives of the IMD were clear: First, the introduction of a single passport, meaning that the insurance intermediary ("IIM") registers with the home Member State which then informs the concerned host Member State of the IIM's intention to offer cross-border services or to establish a branch operation. Second, the protection of the consumer at European level, by establishing professional requirements for the IIMs, by obliging them to provide information before the conclusion of contracts, and by the setting up of complaints procedures. Third, the establishment of good cooperation between the competent authorities of the home and host Member States.

In 2006, CEIOPS concluded the Luxembourg Protocol[2], which developed the procedure for the exchange of information and co-operation in the supervision of cross-border activities of the IIMs and to facilitate their single registration in the EU. The Luxembourg Protocol also promoted a consistent implementation of the registration and notification procedures by the presentation of special templates for those procedures. It also covered consumer protection, in particular with the publication of a list mentioning the bodies/ institutions competent for receiving complaints and the procedures for settling complaints out-of-court.

Following this, CEIOPS decided to provide a status report of the implementation of the key provisions of the IMD and mandated its Insurance Mediation Expert Group ("IMEG") to carry out this task.

The report is based on a questionnaire sent to IMEG Members in September 2006. Its first aim is to indicate how the different key provisions of the IMD were implemented in the different Member States and in light of this, to identify areas where further efforts are needed.

In addition, the report aims at facilitating further convergence in the effective implementation of the directive by sharing experience in applying the IMD, and at identifying best practice or proposals for amending or clarifying the Directive and/or the Luxembourg Protocol.

The report starts with some general remarks on the national implementation laws and the national competent authorities. It then follows the structure of the IMD,

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1Directive 2002/92/EC of the European Parliament and the Council of 9 December 2002 on Insurance Mediation.

2 Hyperlink to the web page: http://www.ceiops.org/content/view/19/23/

focusing mainly on the key issues. The report summarizes the answers to the questionnaire. Only when relevant, an overview of the answers and specific examples are provided. Further details on national differences are left to the report's five annexes. Annex 1 gives the national implementation laws and their English translation. Annex 2 gives extensive information on the different national categories of IIMs. Annex 3 covers the national "general good" provisions. Annex 4 deals with the sanctions. Annex 5 covers the complaints and out-of court settlement procedures.

I. General remarks

1. To date, all Member States[3] have implemented the IMD. For practical reasons, most national implementation laws have been translated into English and made (or will be made) available on the national web sites.

Annex 1 of this report includes the list of the different national implementation laws with a direct hyperlink to the original legal document and – if available – to the English translation.

2. In all Member States, with the exception of Austria, France, Germany, Greece and Sweden, one Competent Authority only is empowered to ensure the implementation of the IMD.

In Austria, the Competent Authority for supervising intermediaries (excluding bank intermediaries) is the Federal Ministry of Economics and Labour and its locally competent district administrative authorities (Bezirksverwaltungsbehörde). If the insurance intermediary is a bank the competent authority is the Finanzmarktaufsichtsbehörde (FMA – Austrian Financial Market Authority). Banks need the approval of the FMA if they want to start insurance mediation. Furthermore the FMA supervises their compliance with the information requirements for intermediaries. For this the FMA carries out on-site inspections.

In France, there are 2 competent authorities, ORIAS[4] (Organisme pour le Registre des Intermédiaires en Assurances) and ACAM (Authorité de Contrôle des Assurances et des Mutuelles). The first organization is responsible for the registration and notification of passporting rights, the latter for the supervision of insurance undertakings and IIMs. Article L. 514-4-I of the French Insurance Code requests ACAM to inform the competent authority for registration (ORIAS) of any infringement likely to lead to the removal from the register or when enacting a sanction against an IIM. Under Article L 514-4 (II), the registration authority

3 EU and EEA Member States

4 ORIAS took over the activity previously done by the Association de la Liste des Courtiers d'assurance (ALCA).

(ORIAS) supplies the supervisory authority (ACAM) with the information the former requires.

In Germany, the Chambers of Industry and Commerce (IHK) are in charge of the execution of the law implementing the IMD, i.e. the IHK register the IIM and, if necessary remove them from the register.
The Association of German Chambers of Industry and Commerce (DIHK) is the single information point in the sense of Art. 3 (2) IMD. The DIHK is also the competent authority for the cooperation with the other Competent Authorities (e.g. notifications etc.).
The Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) is the supervisory authority for credit institutes and insurance companies. In this case, the supervision of the insurance companies pertains to supervising the companies' IIM.

In Greece, the Directorate of Insurance Enterprises and Actuaries is not the only competent authority in Greece. The Register is kept in the locally competent chamber of commerce of the head office of the intermediary. The Central Association of Chambers organizes and keeps a central general register and data of all the categories of the intermediaries.

In Sweden, Finansinspektionen (The Swedish Financial Supervisory Authority) is responsible for the authorization and supervision of IIM, while Bolagsverket (The Swedish Companies Registration Office) is responsible for the registration of IIM. They are public authorities and collaborate closely on a regular basis (meetings etc.).

The complete list of the competent authorities regarding registration and notification is published on the web site of the European Commission (Hyperlink: Internal Market - INSURANCE - Insurance mediation).

II. Registration procedure

1. According to the IMD (Art. 3 (2)), the Member States may establish more than one register for insurance and reinsurance intermediaries provided that the criteria of the different registers are defined and that a single information point allows a quick and easy access to the information from the various registers.

The majority of the Member States decided to establish one register of insurance and reinsurance intermediaries.

5 Member States established different registers with a single easy and quick access information point: Cyprus provides 5 for natural persons and 5 for legal persons, Denmark 3, from which 2 registers (one for the insurance brokers and one for the subagents) are kept by the FSA and the third register for the insurance agents by

the Insurance Association. The Lithuanian Authority presents 2 registers, one for the insurance brokers and the other for tied IIM, and Malta 4. Norway established 5 registers, for the ancillary agent activities, insurance agencies, insurance brokerage firms and reinsurance brokerage firms and insurance agents. The latter is provided by Norwegian insurance undertakings.

Most of the Members States also provide an on-line register[5], including a facility to search by the name of the IIM and/or by registration number. For information from the register any interested party can in addition apply through the website or by E-mail, letter, telephone, fax and finally in person at the premises of the Competent Authority.[6]

To guarantee more accessibility, the headings of most (online) registers are not only mentioned in the national language, but also, in accordance to the Luxembourg Protocol, in English[7].

2. In six Member States (Denmark, Hungary, Latvia, Liechtenstein, Luxembourg and Poland), all the (licensed) natural persons working in an undertaking and pursuing the activity of insurance or reinsurance mediation (Art 3 (1) 3 IMD) are requested to register. Most of the time, if the registration of natural persons is required, it is limited to the persons within the management or the board of the directors and administrators of undertaking. In Denmark registration of natural persons is only required for persons registered as insurance brokers. In Cyprus and Finland a certain number of persons in accordance to the turnover of the legal person or the number of employees have to register.

3. In the vast majority of the Member States, insurance companies and/or other bodies collaborate with the competent authority in registering insurance and reinsurance intermediaries, and more in particular with regard to tied IIM. Insurance undertakings are for example allowed to verify the knowledge and ability of IIM, to check their good repute and to verify other requirements. Insurance undertakings often introduce the demand of registration of the IIM under their responsibilities. This is especially the case with regard to “tied insurance intermediaries”.

This collaboration instead does not exist in Liechtenstein, Luxembourg or has not occurred to date in Ireland, although the implementing regulation permits it.

4. The registers are updated mostly on an ongoing or daily basis. Other Competent Authorities up date their register weekly, monthly or once a fortnight.

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5 The links to the existing online registers of the CEIOPS Members and Observers and other non-member Competent Authorities which joined the Luxembourg Protocol are mentioned in the Annexes III- A and B of the Luxembourg Protocol.

6 For Germany, the topic is still under consideration in the Bundesrat.

7 Under preparation in Austria, Denmark, Finland, France, Germany, Liechtenstein, Poland and Slovakia.

This ongoing revision corresponds to the legal obligation for the registration authority to remove an IIM from the register once s/he does not fulfill the requirements of the register, as included in all national implementation laws.

As it appears in the following table, the provision to inform the host MS of the removal from the register by letter or electronic means has in general been transposed. Several Member States did not transpose this last provision explicitly in the implementation law, as the Authorities already organized this practice by letter or by letter and Email.

Member State	Legal provision to remove	Legal provision to inform host MS
Austria	§ 137c para 5 and § 87 Trade Act The competent authority is the district administrative authority (Bezirksverwaltungsbehörde, Magistrat)	137d Abs. 3 der Gewerbeordnung http://www.ris.bka.gv.at/bundesrecht The competent authority is the district administrative authority (Bezirksverwaltungsbehörde, Magistrat)
Belgium	Act of 27 March 1995 on insurance and reinsurance intermediation and the distribution of insurance (amended by the Act of 22 February 2006) Competent authority is the Banking, Finance and Insurance Commission (CBFA).	No legal obligation / usual practice
Cyprus	Section 179 (1) of the Insurance Services and Other Related Issues (Amendment) Law (No.5) of 2004 refers to the grounds for deletion from the Registers.	The obligation to inform the host Member States of the removal from the Register stems from Section 179 (4) of the Insurance Services and Other Related Issues (Amendment) Law (No.5) of 2004 which concerns insurance mediation.
Czech Republic	In the §17 of the Act No. 38/2004 Coll. on Insurance Intermediaries and on Independent Loss Adjusters The Czech National Bank is the competent authority to remove an IIM from register.	Obligation, but not by law.

Denmark	According to Article 25 (2) the Finanstilsynet (FSA) is obliged to remove the insurance broker from the register of the FSA of insurance brokers. The FSA supervises that the register of insurance agents is updated like wise.	No legal obligation/ usual practice
Estonia	Estonian Insurance Activities Act § 146 Deletion of a broker from the list. Estonian Insurance Activities Act § 150 Deletion of an insurance agent from the list The competent authority is the Financial Supervision Authority.	In accordance to Insurance Activities Act § 158 (8), the Financial Supervision Authority is required to inform the financial supervision authority of the Contracting state of deletion of an intermediary from the list and of the sanctions imposed on the intermediary.
Finland	Sections 10 and 38 of the Act on Insurance Mediation. Insurance Supervisory Authority (ISA) is the competent authority.	ISA has a legal obligation to notify the competent authority of the host MS in which the insurance intermediary pursues business of the removal from the register, if ISA have informed said authority of the commencement of insurance mediation. Section 10 of the Act on Insurance Mediation.
France	Article L. 512-3- II of the French insurance code indicates that an IIM is removed from the register when he no longer fulfills the registration requirements. This is done under the competence of the Organisme pour le Registre des Intermédiaires en Assurances (ORIAS). Under Article L. 310-18-1 (6), the supervisory authority (ACAM) is empowered to request the removal of an IIM from the register when the IIM has infringed the provisions which are applicable.	Article L. 515-3 provides an obligation for ORIAS to inform MST competent authorities of the removal from the register.
Germany	§ 11a (3) Gewerbeordnung	§ 11a (6) no 4 Gewerbeordnung Bundesministerium für Wirtschaft und

	The locally competent IHK removes the IIM from the register.	Technologie (BMWI) is the competent authority, but has delegated to the DIHK.
Greece	The legal provisions can be found in article 3 of the Presidential Decree 190/2006. Ministry of Development/ Directorate of Insurance Undertakings and Actuarities is the competent authority.	The legal provisions can be found in the article 8 of the P.D.190/2006.
Hungary	Act LX of 2003 on Insurance Institutions and the Insurance Business Section *36.* (6) Section 40. (1),(6). Hungarian Financial Supervisory Authority is the competent authority.	
Iceland	Article 34 in mentioned Act. The Financial Supervisory Authority (FME) can revoke their operational license.	In Iceland there is a legal obligation to inform the host Member States/relevant authority of the removal (revoke) of a license/registration and an announcement is published in our Legal Gazette (Article 35 of the Law on Insurance Mediation no. 32/2005).
Ireland	Regulations 10 and 11 of the regulations implementing the IMD in Ireland (i.e. SI no 13 of 2005) set out the basis for the cancellation of an insurance intermediary's registration. Regulation 25 of those regulations puts an obligation on the Financial Regulator to establish and maintain a register of firms registered in accordance with the IMD.	Regulation 12 of the Regulations implementing the IMD in Ireland (i.e. SI no.13 of 2005) sets out that the Financial Regulator must notify relevant competent authorities of the cancellation of an intermediary's registration.
Italy	Art. 113 of legislative decree n. 209/2005. Istituto per la Vigilanza sulle Assicurazioni Private e di Interesse Collettivo (ISVAP) is the competent authority to	Art. 32 of ISVAP Regulation n. 5/2006 establishes an obligation for ISVAP to inform the host MS supervisory authorities involved of the names of the intermediaries removed from the register. Any communication shall be sent by ordinary mail.

	remove an IIM from the register.	
Latvia	Law on Activities of Insurance and Reinsurance Intermediaries (Art 11 (2)). The competent authority is the Financial and Capital Market Commission.	Law on Activities of Insurance and Reinsurance Intermediaries (Art 40). The competent authority is the Financial and Capital Market Commission
Liechtenstein	Art. 11 Insurance Mediation Law The Financial Market Authority is competent to remove an IIM from the register.	
Lithuania	Insurance Supervisory Commission (ISC) shall have the right to cancel the effect of the insurance broker company License, if there exists at least one of the grounds specified in the Insurance Law, Article 150 paragraph 2. Only licensed insurance broker companies are registered in the list provided on the Internet website of the ISC. ISC shall have the right to remove an insurance broker (natural person) from the list of insurance brokers, if there exists one of the grounds specified in the Law on insurance, Article 151 paragraph 5. ISC adopted the procedure for insurance undertakings (2004.03.16 Resolution No N-31 ON ADOPTION OF THE PROCEDURE FOR THE KEEPING OF THE LIST OF TIED INSURANCE INTERMEDIARIES, Official Gazette *Valstybės Žinios,* No 94-4246, 2003) for the keeping of the list of tied insurance intermediaries where mentioned legal provisions were specified. Appropriate amendments must be made within 5 working days in the data	There is an obligation to exchange information with competent authorities of host MS about sanctions applied to insurance intermediaries in the Law of insurance (Article 173.4). Actually ISC informs host MS about revoked licenses from Insurance broker companies.

	of the list published on the websites of the insurance undertakings.	
Luxembourg	The provision may be found in article 107 of the Implementation Law. The Commissariat aux Assurance is the competent authority.	No legal obligation/ usual practice
Malta	Article 16 and Article 41 of the Insurance Intermediaries Act (Cap 487). The Malta Financial Services Authority is the competent authority responsible for removing an IIM from the register.	Art 45 of the Insurance Intermediaries Act (Cap 487).
Netherlands	The provision is found in Section 1:107 of the Act on Financial Supervision (Wft). The Autoriteit Financiële Markten is the competent authority.	No legal obligation. This is common practice
Norway	Act no 41 on Insurance Mediation, section 9-3. The competent authority is Kredittilsynet (the FSA of Norway)	Regulation nr. 1257 section 4: Section 4 Kredittilsynet's duty of notification Should a credit institution, insurance company or management company whose head office is in Norway lose the right to carry on business, Kredittilsynet shall immediately notify this to the supervisory authorities in other EEA states where the institution carries on business. The same also applies in other cases where Kredittilsynet is duty bound to notify supervisory authorities in other EEA states in conformity with the Directives incorporated into the EEA Agreement Annex IX.
Poland	Agents: when an agent does not	Art. 17 par. 3 of Act on Insurance and

	fulfil the requirements, the insurance company shall apply for the removal of an agent from the register (removal as well as any other changes in the register are made by the supervisory body only upon applications of insurance companies) – see art. 42 par. 1 in connection with art. 9, 18 and 19 of Act on Insurance Mediation <u>Brokers:</u> when a broker does not fulfill the requirements, the license is withdrawn by the supervisory body and then broker is removed from the register – see art. 45 in connection with art. 34 par. 1 point 1 of Act on Insurance Mediation The competent body is the Polish Financial Supervision Authority which holds the register	Pension Supervision and the Spokesman for the Insured. No particular means are given.
Portugal	The Instituto de Seguros de Portugal must remove the IIM from register if he doesn't fulfill the requirements of IMD, in accordance with the decree law 144/2006, the national implementation law.	Art 56, nr. 1 d of the decree law 144/2006
Romania	Law 32/2000 - art. 39, point 3: Withdrawal of the licence for insurance brokers/the deletion from the register of intermediaries for the insurance agents. The Insurance Supervisory Commission is the competent authority.	In case of withdrawal of an authorization for the insurance brokers or cancellation of the intermediary from the register, the Insurance Supervisory Commission will notify the Competent authorities of the Member States where the intermediary is carry on business under the freedom of providing services or under the right of establishment (according to art. 36^5, Law 32/2000).
Slovakia	In Act No. 340/2005 Coll. on Insurance Mediation and Reinsurance Mediation and on the Amendment and Supplementation of Certain Acts	According to the Article 13 paragraph 6 of the Act No. 340/2005 Coll. on Insurance Mediation and Reinsurance Mediation and on the Amendment and Supplementation of Certain Acts if the Authority /National Bank

	The National Bank of Slovakia is the competent authority.	of Slovakia/ has cancelled a registration in the Register of a person with permanent residence or registered office in the territory of the Slovak Republic who has performed insurance mediation or reinsurance mediation also outside the territory of the Slovak Republic, it shall be obliged to inform the relevant supervisory authorities of other Member States or the relevant supervisory authorities of states other than Member States, in the territory of which insurance mediation or reinsurance mediation has been performed. The National Bank of Slovakia informs over mentioned supervisory authorities in writing.
Slovenia	Insurance Supervision Agency (ISA) has the right to remove an insurance intermediary licensed by ISA from the register when an insurance intermediary ceases to fulfill legal requirements. Only licensed intermediaries are registered in the list provided on the internet website of the ISA. ISA indirectly is obliged to remove the intermediary from the register when he does not fulfill the legal requirements: ART. 230. (7) says that ISA withdraw the intermediary license, when the intermediary cease to fulfill legal requirements. And ART. 231 (1) says that ISA supervises the register of an intermediaries, who, according to law, are authorized to perform the intermediary business.	There is no legal obligation to inform host MS. In fact ISA will inform host MS about removal of an intermediary licensed by ISA from the register.
Spain	If the intermediary is Spanish the Direccion General de Seguros y Fondos de Pensiones / Ministerio de Economía y Hacienda (DGSFP) has the competence to remove. Art 56 of the Law 26/2006: for important or very important	Law 26/2006 states in art. 40.3 that the DGSFP must inform the host MS about the cancellation or the registration of an intermediary who works in FOE or FOS and if he was the object of a sanction or another measure that supposes the cancellation.

	infringement of the law by Spanish intermediaries, DGSFP impose the remove from the register as a sanction.	
Sweden	The legal provision can be found in the Insurance Mediation Act. Finansinspektionen is the competent authority to withdraw the authorization and remove the IIM from the register.	Finansinspektionen can withdraw the authorization according to Chapter 8 section 2 in the Insurance Mediation Act. Finansinspektionen then has to notify Bolagsverket as soon as possible which (in practice) remove the intermediary from the public register (since they are two different authorities). The obligation to notify Bolagsverket is stated in Chapter 8 section 6 in the Insurance Mediation Act. Finansinspektionen also has to notify any Host Member State of the intermediary. This obligation is stated in Chapter 8 section 7 in the Insurance Mediation Act.
United Kingdom	FSMA Section 45 - Financial Services Authority (FSA) 's power to cancel or vary any regulated firm's permission on specified grounds. Sections 53, 54 and 55 procedure for doing so. The FSA must, once satisfied that it is no longer necessary to keep the permission in force, cancel it. When a firm's authorisation is removed, it can be removed from the register under FSMA s347(1). In respect of unauthorised persons who carry on insurance mediation activities, the FSA has the power to remove Appointed Representatives from the register under Article 95 of the Regulated Activities Order. All powers exercised in accordance with FSMA (FSA must maintain arrangements for enforcing the provisions of or made under FSMA, FSMA Schedule 1 Paragraph 6) domestic public law principles, the general principles	FSMA section 354 - duty on the FSA to take appropriate steps to cooperate with others; as a public authority, the FSA is bound to comply with Community law, and so must give effect to its duties under the IMD. (FSMA s.410 gives HM Treasury the power to compel the FSA to take actions required to implement a Community obligation of the UK).

	of Community law and in particular of respect for fundamental rights.	

III. Professional requirements (IMD, Art 4)

1. The answers to the questionnaire show that all Member States, except Ireland and the United Kingdom, divide Insurance Intermediaries into different categories. The Member States have, most of the time, adapted the knowledge and ability requirements to the different categories (see **Annex 2** – Categories of IIM).

It appears that the category of "tied insurance intermediary" as defined in the IMD is also provided in most of the Member States, although not always under the same denomination.

2. It is interesting to note that in most Members States insurance companies and other bodies cooperate in the application of professional requirements of the IIM, including tied intermediaries (IMD Art 4 (1)3) as well as in the control of good repute (IMD Art 4(2)2)8. In conjunction with the above mentioned cooperation at the registration, insurance undertakings organize appropriate training and professional updates, ensuring in this way the knowledge and ability of IIM. This also allows the insurance undertakings to monitor the good repute and the fit- and properness' requirements.

This collaboration instead does not exist in Liechtenstein, Luxembourg or has not occurred to date in Ireland, although the implementing regulation permits it.

3. With regard to insurance intermediaries which do not exercise mediation as a principal profession, 13 Member States[9] adopted a particular regulation to their knowledge and ability requirements as allowed by Art 4 (1) 2 of IMD.
Belgium, Germany, Hungary, Norway, Poland and Sweden decided in addition to apply lower level of professional requirements in specific cases.

4. To monitor the IIM's compliance with the professional requirements on a regular basis, the Member States conduct in general on-site inspections and impose reporting requirements, including annual financial statement reports and professional indemnity insurance policies. Initiatives are often started on the basis of complaints.

5. In all the Member States the minimum amount of the professional indemnity insurance coverage for the whole territory of the Community against liability arising

8 Only in Luxembourg there is no collaboration in the application of requirements of IIM, which are not exercising mediation as a principal activity, or in the checking of good repute.

9 Czech Republic, Denmark, Germany, Iceland, France, Lithuania, Liechtenstein, Malta, Netherlands, Norway, Poland, Slovenia and Sweden

from professional negligence is in accordance with the IMD, Art 4 (3), i.e. at least € 1 000 000 applying to each claim and in aggregate € 1 500 000 per year for all claims.

France and Luxembourg adopted slightly higher amounts per claim, and Belgium, France and Sweden request higher annual coverage.

Denmark, Lithuania, Norway, Sweden and the United Kingdom adopted in addition some special regulation. In Denmark the annual amount of the liability cover in aggregate for insurance broker firms employing more than 10 insurance brokers shall be at least 20 million Dkr (approximately € 3 million per year). Danish and Lithuanian tied agents are not obliged to insure their professional liability if the insurance company has concluded a professional liability insurance contract on behalf of the dependent intermediary. A Swedish tied insurance intermediary is not obliged to insure its professional liability, since the insurance company has taken on full responsibility for the IIM's actions. In Norway a special regulation has been adopted regarding insurance intermediary firms that have up to 10 insurance intermediaries. They are allowed to limit their total liability insurance cover upwards to EUR 1.5 million per year. Insurance intermediary firms that have more than 10 insurance intermediaries can limit their total liability insurance cover upwards to EUR 3 million per year. Finally, Sweden has different aggregated amounts depending on the size of the insurance mediation undertaking (2 million euros up to 10 insurance intermediaries, 3 million euros when 11-20 insurance intermediaries and 4 million euros when more than 20 insurance intermediaries). The United Kingdom requires its insurance intermediaries to make provision for cover in respect of all claims for which that intermediary may be liable, as a minimum in the limits required by the IMD, and specifies the excesses which an insurance intermediary may have (which may be higher within specified limits if the intermediary holds additional capital).

6. Regarding the professional indemnity insurance contract, all Member States, with the exception of Austria, do not explicitly forbid the provision of a deductible in this contract. To guarantee the protection of the customer some Member States[10] however regulate this possibility by limiting their maximum amount and/or others[11] by stipulating explicitly that this provision cannot be invoked against the customer.

7. To protect customers against the inability of the insurance intermediary to transfer the premium to the insurance undertaking or to transfer the amount of claim or return premium to the insured, the vast majority of the Member States adopted Art 4 (4) (a) and (c) for all categories of IIM:

10 Denmark, France, Hungary, Latvia, Liechtenstein, Malta, Poland and UK

11 Denmark, France, Finland, Iceland, Italy, Sweden

- Art 4 (4) (a) Provisions laid down by law or contract whereby monies paid by the customer to the intermediary are treated as having been paid to the undertaking, whereas monies paid by the undertaking to the intermediary are not treated as having been paid to the customer until the customer actually receives them;

- Art 4 (4) (c) A requirement that customers' monies shall be transferred via strictly segregated client accounts and that these accounts shall not be used to reimburse other creditors in the event of bankruptcy – only for life insurance contracts.

Art 4 (4) (b), regarding the requirement to have financial capacity amounting, on a permanent basis, to 4 % of the sum of annual premiums received, subject to a minimum of € 15 000, was instead mostly adopted with regard to brokers.

IV. Notification

1. Any insurance or reinsurance intermediary intending to carry on business for the first time in one or more Member State under the freedom to provide services or the freedom of establishment has to inform the Competent Authority of the Home Member State (IMD, Art 6 (1)).

The vast majority of the Host Member States wish to be informed in all cases of the intention of any IIM. Some Competent Authorities instead are only interested in being informed with regard to brokers (Norway) or only in the case of the establishment of a branch (Denmark, Finland, Latvia, Liechtenstein and Iceland[12]). Germany is the only Member State which does not want to be informed of any notification at all.

2. For the notification procedure, the home Member States request the information as mentioned in the Luxembourg Protocol and the templates[13] therein.

Only two Authorities request additional information, Slovakia needs the date of birth of the IIM, if an intermediary is a natural person, and the address of natural person representing the branch, if an intermediary operates under the freedom of establishment. The Danish FSA requests to see proof that the branch being set-up in Denmark has registered with the Danish Commerce and Companies Agency (www.eogs.dk).

3. Regarding payment of fees, only Germany, Greece, Portugal and Sweden as home Member States levy a fee for every request of notification. On the contrary, no fee is requested for notification by any host Member State.

12 Regarding compulsory insurance when providing services without an establishment)

13 www.ceiops.org

4. For practical reasons, most host Member States published, or will publish in the near future, the conditions under which, in the interest of the general good, the business must be carried on in their country (IMD Art 6 (3)). In **Annex 3** these conditions are described briefly when possible and the hyperlink to the web page where the conditions are published is mentioned when available.

V. Sanctions (IMD, Art 8)

1. The sanctions against infringements of the national implementation laws are mostly fines and penalties, which are imposed after unsuccessful warnings, reprimands, recommendations or instructions. Withdrawal of licences and deletion of the register entry are also very often applied.

2. The legal provisions are principally included in the national implementation laws, but are also to be found in more general penal/ civil codes (see **Annex 4**).

VI. Complaints and Out-of-Court Settlements (IMD, Art 9 and 11)

1. In the majority of the Member States, the customer can address his/her complaint to different organizations, including the Competent Authority under the IMD. The specific competences and order of appeal are laid down in the national implementation laws and specific consumer protection regulations.

In 14 Members States, either the Authority[14] under the IMD or a special Ombudsman[15] has the competence to receive and investigate complaints with regard to IIMs.

2. Out of court settlements procedures are not available [yet] in all Member States. The existing settlements procedures are organized either by the same authority/institution receiving the specific complaints on insurance intermediaries' issues, or by broader consumer protection institutions.

3. To complete the information already provided in the Luxembourg Protocol, **Annex 5** to this report comprises a brief description of the complaints and out-of court settlements procedures set up in the different Members States, with the necessary contact details.

VII. Information requirements for IIM (IMD, Art 12)

14 Austria, Cyprus, Czech Republic, Denmark, Greece, Italy, Liechtenstein, Luxembourg, Romania, Slovakia and Spain

15 Belgium, Ireland and UK

Before concluding any initial insurance contract, an insurance intermediary has to provide the customer with information as referred in Art 12, IMD. Some Member States adopted stricter provisions regarding the information, as presented in the following table:

Member State	Information required from IIM
Estonia	§ 141. Requirements for mediation of insurance contracts (1) Each time before the entry into an insurance contract and, if necessary, also before the amendment or extension of an insurance contract which has been entered into, an insurance broker shall: 1) inform the customer of the address and telephone numbers thereof; 2) inform the customer that the insurance broker offers insurance contracts on the basis of an independent analysis and refer to the list in which the insurance broker is entered by the Financial Supervision Authority and the possibility to check the entry made concerning the insurance broker; 3) inform the customer of any insurance undertaking, if it exists, in which the insurance broker has a qualifying holding and of any insurance undertaking or parent undertaking of an insurance undertaking which directly or indirectly owns 10 per cent or more of the insurance broker's shares or holds votes determined by shares or possesses any other right which makes it equally possible to exert influence over the management of the insurance broker; 4) specify, on the basis of information provided by the customer, the insurable interests and the demands for the insurance contract of that customer; 5) submit offers of a sufficient number of insurance undertakings to the customer for entry into the insurance contract; 6) recommend to the customer, on the basis of the offers specified in clause 5) of this subsection, an insurance contract which corresponds to the insurable interest and demands thereof best of all; 7) justify the advice and recommendations provided to the costumer with a thoroughness which corresponds to the complexity of the insurance contract; 8) introduce the conditions of the insurance contract to be entered into, particularly the size of the insurance premiums and the restrictions and exclusions relating to the contract; 9) inform the customer of the principles of compensation in the event of the occurrence of an insured event, including the court where the customer may file a claim on the basis of the insurance contract; 10) advise the customer on other issues relating to the insurance

	contract; 11)[16] inform the customer of the right to demand that the insurance broker disclose the amount of the brokerage charged for the mediated insurance contract. (2) Subsection (1) of this section does not apply to representatives of insurance brokers who mediate insurance contracts specified in subsections 427 (2) or (3) of the Law of Obligations Act.
Finland	There exists no additional information requirements except that in order to give the right picture of its insurance mediation services, an IIM registered in another member state of the EEA than Finland must specify in its marketing, as needed, the insurance undertakings whose products it exclusively mediates and whether it provides information on the basis of a fair analysis (Section 22, subsection 5 of the Act on Insurance Mediation).
France	Notwithstanding other provisions of general interest, see in particular the following provisions: - Disclosure of commissions: if asked by a customer, brokers who prevail that they provide a fair analysis must disclose their commission for each commercial contract with premium over 20 000 € (art. R. 511-3) - additional elements for information :In addition to the element mentioned in article 12(1), brokers who provide a fair analysis according to art.12 (e)(i), must give the name of the insurance company or group of insurance companies with which they realized a turnover exceeding 33% of their total turnover generated by the IIM activity during the past year. - Correspondences and advertisement: IIM are to provide their name, address and registration number in each and every correspondence or advertisement, whatever the support. When the correspondence or advertisement concerns the underwriting of a contract, the name of the insurance company is also to be mentioned (art. R. 520-3)
Germany	In divergence from Art 12 (1) the intermediary has to provide the customer with the information of Art. 12 (1) not only prior to the conclusion of any initial insurance contract, but already at the first intermediation activity. In divergence from Art 12 (1) (e) (ii) and (iii) the IIM shall provide the names of the insurance undertakings irrespective of the

16 The subsection 11 changed from the January 20th 2007 and stipulated as follows:
"11) inform the customer about the size of the commission, including also the size of commission received from Insurance company. [note; not official translation: exact legal wording translation into English is not yet published].

	customer's request.
Hungary	It may be not the question of IMD, but it is worth to mention, that in Hungary in case of life insurance, before a life assurance contract is concluded the insurance company and the insurance intermediary shall assess customer demand or shall interview the client in order to ascertain the needs and requirements of the client (Insurance Act Section 166 (1)) and have to provide for the client a product guide (Section 166 (3) and Schedule No. 10 of Act LX of 2003).
Ireland	The stricter requirements adopted are considered to be general good requirements. Information disclosure requirements are set out in the Consumer Code issued by the Financial Regulator.
Italy	In accordance with art. 12 of the IMD the following obligations have been envisaged: - to furnish policyholders – prior to the conclusion of the contract – with a statement containing not only the information required by the directive, but also further information pertaining to the intermediary, aimed to inform policyholders of the new measures protecting them (in particular: existence of a professional indemnity insurance coverage, separation of funds, and membership of the Insurance and Reinsurance Brokers' Guarantee Fund); - the obligation to deliver – at their first contact with the policyholder – a summary document enabling the policyholder to immediately perceive the main behavioural obligations envisaged for intermediaries by the various laws and regulations regulating the insurance mediation activity.
Latvia	Additionally, the Law On Activities of Insurance and Reinsurance Intermediaries provides for that an insurance intermediary shall immediately make known on the basis of a request of a customer the amount of remuneration of the insurance intermediary for the concrete insurance contract offered.
Malta	IIM are also required to disclose the information contained in Annex III (A) to the Life Assurance Directive 2002/83/EC, information when the insurance undertaking underwriting the contract is Lloyd's and also particular information when the contract of insurance is a unit linked policy.
Netherlands	There are several requirements on information to the customer of which the most important is the Financial Leaflet. The IIM has to provide the consumer with a Financial Leaflet for complex products such as life-insurance. This Financial Leaflet has to contain a Risk Indicator. Information about the Risk indicator is found in the brochure A Quantative Risk Indicator for Financial Products. Details will be published at the website www.afm.nl

Norway	The customer shall be provided with information about: - the size of the commission and/or other remuneration that the insurance intermediary receives from the insurance provider in connection with the conclusion of a contract concerning insurance, - the size of the commission or other remuneration that the insurance intermediary will demand from the principal. - the charge the policyholder is required to pay to the Norwegian Natural Perils Pool. The intermediary firm shall moreover have the same duty to inform as an insurance undertaking that practises activities in Norway has according to Act relating to Insurance Contracts.
Poland	An insurance agent shall inform a client about: - the scope of the agent's activity, indicating the branch (life or non-life) and classes of insurance; - the amount of the maximum sum of insurance for which the insurance agent may conclude a single insurance contract; - the territorial scope of an insurance agent's activity. Moreover an insurance agent shall present to the client, at the first act within the scope of agency activity and at every request, the document of the power of attorney. A natural person performing agency acts shall also present a document entitling then to act on behalf on an insurance agent. In case of brokers a natural person performing brokerage acts shall also present a document entitling then to act on behalf on a broker.
Portugal	1. Prior to the conclusion of any initial insurance contract, and, if necessary, upon amendment or renewal thereof, an insurance intermediary shall provide the customer with at least the following information: a) Its identity and address; b) The register in which he/she has been included and the means for verifying that he has been registered; c) Whether he/she has a holding, direct or indirect, representing more than 10 % of the voting rights or of the capital in a given insurance undertaking; d) Whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing more than 10 % of the voting rights or of the capital in the insurance intermediary; e) Whether or not he/she is authorized to receive premiums in order to be delivered to the insurance undertaking; f) Whether its intervention terminates upon signature of the insurance contract or whether its intervention involves the provision of assistance in the administration and performance of such contract during the period of its validity; g) Where applicable, the fact of being an employee of an insurance undertaking;

	h) The customer's right to request information on the remuneration that the intermediary will receive for provision of the mediation service and, in conformity, supply him with such information, at his request; i) The procedures to complain to the Instituto de Seguros de Portugal, allowing policyholders and other interested parties to register complaints about insurance and reinsurance intermediaries and, if appropriate, about the out-of-court complaint and redress procedures. 2 - In addition, an insurance intermediary shall inform the customer, concerning the contract that is provided, whether: a) He/she gives advice based on the obligation to provide a fair analysis; or b) He /she is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings or other insurance intermediaries; or c) He/She is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings or insurance intermediaries and does not give advice based on the obligation to provide a fair analysis; d) If other insurance intermediaries take part in the contract, identifying them. 3 – In the cases specified in paragraphs b) and c) of the previous point, the insurance intermediary shall inform the customer of his right to request information provide the names of the insurance undertakings and insurance intermediaries with which he conducts business, and in conformity will supply such information at the customer's request. 4 - When the insurance intermediary informs the customer that he/she gives his advice on the basis of a fair analysis, he/she is obliged to give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, in order to enable him/her to make a recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs. 5 - Prior to the conclusion of any specific contract, the insurance intermediary shall, in particular on the basis of information provided by the customer, and the complexity of the insurance contract being proposed, at least specify the demands and the needs of that customer as well as the underlying reasons for any advice given to the customer on a given insurance product.
Romania	The information provided by the insurance intermediaries are elaborated at art.33, point 3 in the Law 32/2000 and the subsequent norm, the Order 3111/2004, regarding the information provided to the customers by the insurers and the insurance intermediaries.

Sweden	The Insurance Mediation Act states that the IIM also shall provide the customer with information on •the price of the insurance mediation service (remuneration, commission etc.) •the terms and conditions of the PII that the customer need to know in the event of a claim, and •the fact that Finansinspektionen is the supervisory authority (since there are two different competent authorities)
UK	1) Requirements also apply to insurers when selling through their own sales forces – the definition of "insurance intermediary" includes insurers selling directly. 2) Disclosure of fees to all customers. 3) A rule preventing excessive charges to retail customers. 4) Life policies: Provision of fees and commission statement to private customers. 5) Disclosure of information on compensation arrangements. 6) Use of a prescribed format for disclosing the article 12 information on life policies to private customers. 7) Requirements for firms to maintain records of why a recommendation was made for advised sales. 8) Commission disclosure on request for commercial customers of non-investment insurance contracts. 9) Disclosure required on overseas business for UK private customers.

Conclusion

The implementation of the IMD in national legislation of all Member States has been completed. Furthermore, most national laws for implementing the Directive are also available in English (see Annex 1)

With regard to the registration procedure, the survey has shown that most registers are, or will soon be, online, with headings both in the national language and in English, according to the templates proposed in the Luxembourg Protocol.

The competent authorities update the registers on an ongoing basis in line with national provisions to remove IIMs if they no longer fulfil the registration requirements. However, there is still a need for further action in some Member States to codify the current practice of informing the host Member States of the removal of an IIM, to completely comply with the Directive.

Regarding the notification procedure, the survey showed that all Member States except Germany want to be informed of an IIM's intention to provide services or

establish a branch in their country. The majority of the Competent Authorities have published or will publish the national “general good” provisions on their websites (see Annex 3).

The survey results also show that the IMD’s goal of achieving a high level consumer protection has been achieved in all Member States. IIMs are required to provide comprehensive information to the customer before contracts are signed. Complaints procedures are organised by the Competent Authorities or by specific bodies dedicated to this matter. Member States are also beginning to establish out-of-court settlement procedures to handle complaints.

Member States also indirectly provide consumer protection by monitoring the professional requirements of the IIM, at registration and on an ongoing basis, and by imposing sanctions if the law is infringed.

In conclusion, all Member States adopted at least the minimum standards provided for in the IMD. However, in a few cases, Member States adopted stricter regulations, for example, by requiring a higher amount of professional indemnity insurance coverage or by requiring that additional information be given to the customer.

Furthermore, the analysis of the survey responses indicates that there is a need for clarification on some terminology used in the IMD and in addition, that some of the IMD’s requirements are impractical from the point of view of day-to-day supervision.

Tackling those issues is beyond the scope of the current report, but CEIOPS intends to make suggestions for amending the IMD and the Luxembourg Protocol with a view to improving the regulation of cross-border services and enhancing consistent supervision of IIMs and for other amendments.