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**Bancassurance and the new EU Insurance Distribution Directive:
Difficulties faced by banks when selling insurance products**

Dissertation for Master in Law and Financial Markets

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March 2020

PLAGIARISM STATEMENT

I declare on my honour that the work I present is original and that all my citations are correctly identified, under article 20-A of the Regulation of the Second cycle of studies at NOVA School of Law. I am aware that the use of elements unidentified others constitutes a serious ethical and disciplinary fault.

ACKNOWLEDGEMENT

I would like to express my gratitude and appreciation to my advisor Professor Margarida Lima Rego for her expert advice and support me during this Master course.

I also would like to deliver special thanks to professors at the Master in Law and Financial Markets program for knowledge, skills and especially their enthusiasm and kindness helping me to understand well the lectures in Portuguese.

I wish to express my deepest acknowledge to my family for their unconditional support and encouragement throughout the lengthy period. Especially, I would like to thank my husband, Nguyen Tuan Hung who gives me a chance to study at NOVA University of Lisbon and who always spends the best things for me. His unconditional love and encouragement that makes me feel stronger. I also would like to thank Ms Nguyen Thi Phi Yen, Ms Nhu Hoa Quynh Nga and Mr Nguyen Bin for their encouragement and support.

I would like to thank my classmates in NOVA School of Law, especially, Wylian Almeida, Belarmino Cardoso, Desidério César, Ana Henriques, Nayda Almeida, Isabelle Gomes, Antonio Jorge, Luzolo Manuel, Kátya Caveto, José Lumango, Laura Olival for their warm welcome that help me to quickly adapt and feel comfortable with a new environment.

Finally, I would like to thank Ms Patrícia Nascimento and all staffs of Academic Service and Library at NOVA School of Law for their enthusiastic assistance during the time I study here.

RESUMO

Esta dissertação estuda o impacto da nova Diretiva da Distribuição de Seguros da UE (2016/97 / EU, DDS) na bancassurance, que se refere à venda de produtos de seguros por instituições bancárias. O principal objetivo é estudar, sob os novos requisitos da DDS, quais os desafios legais que os bancos enfrentam na distribuição de produtos de seguros. Para esse fim, estudamos os novos requisitos impostos pela DDS e comparamos com a anterior Diretiva da Mediação de Seguros (2002/92 / EU, DMS) em relação aos seguintes aspetos: requisitos de informação, conduta dos negócios e requisitos profissionais e organizacionais.

Descobrimos que, em geral, em comparação com a DMS, a nova DDS impõe requisitos mais rigorosos que os bancos devem cumprir. A DDS restringe as atividades de distribuição de seguros através dos bancos, proibindo os bancos de distribuírem produtos de seguros sob a forma de mediadores de seguros ligados ou auxiliares. De acordo com a nova DDS, os bancos agora são considerados mediadores de seguros e devem cumprir todos os importantes requisitos da DDS, incluindo: (i) realização de pelo menos 15 horas de formação profissional por ano para os seus funcionários; (ii) divulgação aos clientes de informações sobre remuneração (iii) cumprir requisitos de supervisão e governança de produtos, em particular, os bancos devem manter e organizar uma política de supervisão e governança de produtos ou acordos de distribuição de seguros, a fim de garantir que os seus produtos ou a sua distribuição de seguros atendam aos melhores interesses dos clientes e (iv) no caso de venda cruzada, os bancos devem especificar as necessidades e exigências dos clientes em relação aos produtos de seguros e oferecer aos clientes a capacidade de comprar produtos de seguros e outros produtos separadamente. Particularmente para os produtos de seguros baseados em investimentos (IBIPs), os bancos devem: i) fornecer aos clientes mais informações, incluindo relatório periódico de avaliação da adequação dos IBIPs, uma declaração de adequação e relatório periódico sobre a distribuição dos IBIPs; ii) estabelecer uma política de conflitos de interesse, (iii) avaliar os incentivo ou esquemas de incentivo; e (iv) avaliar a adequação ou inadequação dos IBIPs.

Palavras-chave: *Bancassurance, Diretiva da Distribuição de Seguros, Insurance Mediation Directive.*

ABSTRACT

This dissertation studies the impact of the new EU Insurance Distribution Directive (2016/97/EU, IDD) on the bancassurance which is referred to the selling of insurance products by banking institutions. The main objective is to study under the new requirements of the IDD what legal challenges banks will face in distributing insurance products. To this end, we study the new requirements imposed in the IDD and compare with the previous Insurance Mediation Directive (2002/92/EU, IMD) with respect to the following aspects: requirements on information, the conduct of business, and professional and organisational requirements.

We found that, in general, in comparison with the IMD, the new IDD places stricter requirements that banks must comply with. The IDD tightens the activities of insurance distribution through banks by prohibiting banks distributing insurance products under the form of tied or ancillary insurance intermediaries. Under the new IDD, banks are now considered as insurance intermediaries and must comply fully important IDD's requirements, including: (i) conducting at least 15 hours of professional training per year for their employees, (ii) disclosing customers with information concerning remuneration in relation to insurance contracts, (iii) conducting requirements of product oversight and governance, in particular, banks must maintain and arrange whether a products oversight and governance policy or insurance distribution arrangements in order to ensure that their insurance products or their insurance distribution will meet the best interest of customers, and (iv) in the case of cross-selling, banks must specify the demands and needs of customers in relation to insurance products, and offering customers the ability of buying insurance products and other products separately. Particularly, for insurance-based investment products (IBIPs), banks must i) provide customers with more information, including periodic report of assessment of the suitability of IBIPs, a suitability statement, and periodic report concerning distribution of IBIPs, ii) establish a conflicts of interest policy, (iii) assess inducement or inducement scheme, and (iv) assess the suitability or appropriateness of IBIPs.

Keywords: *Bancassurance, Insurance Distribution Directive, Insurance Mediation Directive.*

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LIST OF ABBREVIATION

CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
EIOPA	European Insurance and Occupational Pension Authority
IBIPs	Insurance-based investment products
IDD	Directive (EU) 2016/97 of the European Parliament and of the Council of 20 of January 2016 on Insurance Distribution
IMD	Directive (EU) 2002/92/EC of the European Parliament and the Council of 9 December 2002 on insurance mediation
MiFID II	Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
POG	Product Oversight and Governance

CHAPTER 1: INTRODUCTION

Bancassurance is an arrangement between a bank and an insurance company that allows the insurance company to sell its products to the bank's client base. This partnership arrangement can be profitable for both companies. Banks earn additional revenue by selling insurance products, and insurance companies expand their customer bases without increasing their sales force or paying agent and broker commissions.

Although bancassurance can benefit both banks and insurance companies, it has been developed differently in the world. In Europe, bancassurance has been developed since the 1980s and has been a major distribution channel of life insurance products in some mature insurance markets, such as France, Italy, Portugal and Spain. However, bancassurance has not received much attention in Canada.¹ On the other hand, bancassurance has gained a great interest in some countries in Asia-Pacific, the Middle East, Africa and Latin America.² Especially, for developing countries, bancassurance is considered as a valuable tool of insurance distribution and becoming the second distribution channel of life insurance products followed by insurance agents. Experts in the insurance and financial market believe that bancassurance will keep developing and gaining more market shares in such countries, such as Vietnam.

However, in the legal aspect, there exist some issues that arise in the context of selling insurance products through bancassurance. For instance, minimum deal term or exclusivity; authorisation; customer ownership and privacy, miss-selling exposure; risk-free and profit-related income; pricing, product and underwriting flexibility;

¹Lyle Adriano (2018), *IBAC commends separation of banking and insurance*, Insurance Business Canada, <https://www.insurancebusinessmag.com/ca/news/breaking-news/ibac-commends-separation-of-banking-and-insurance-106278.aspx>

² Swiss RE (2007), *'Bancassurance: Emerging Trends, Opportunities and Challenges'*, Sigma, no. 5/2007. Zurich: Swiss Reinsurance Company, Economic Research & Consulting, p.411.

investment in infrastructure; and contractual flexibility.³ In addition, banks were known as the main reason leading to the global financial crisis in 2008.⁴ In the context of strengthening customer protection in the financial industry sector, this raises a question of whether the activity of insurance distribution through banks should be strictly and differently regulated from other insurance intermediaries. To answer this question, we look into Europe that is in the second largest global insurance market.⁵ Europe is also the place bancassurance has the longest journey of formation and development with great success.⁶

Since 2008, the European Union has changed some important regulations on the insurance sector. Especially, the Solvency Directive II (2009/138/EC)⁷ and the Insurance Distribution Directive (2016/97/EU)⁸ (IDD) was issued in 2009 and 2016, respectively. On 1st October 2018, the European Member States completed the implementation of the IDD. The IDD officially replaced the Insurance Mediation Directive (2002/92/EU)⁹ (IMD). This arises a question of how the new regulations in the new IDD impact on the activity of insurance distribution in Europe in general and bancassurance activities in specific. The main concern is whether the European Commission will treat banks stricter than other insurance intermediaries.

³ Martin Membery and Sean Keyvan (2014), *The global bancassurance market*, Sidley Austin LLP, p. 29-31, <https://www.sidley.com/~media/files/publications/2014/06/the-global-bancassurance-market/files/view-article/fileattachment/1406-sidley-austin.pdf>.

⁴ Wikipedia, Financial crisis 2007-2008, https://en.wikipedia.org/wiki/Financial_crisis_of_2007%E2%80%932008.

⁵ *European Insurance-Key Facts* (2019), p.7, <https://www.insuranceeurope.eu/sites/default/files/attachments/European%20insurance%20%E2%80%94%20Key%20facts.pdf>

⁶ This can be seen in part 2.5 of chapter 2 of this dissertation.

⁷ In full: Directive (EU) 2009/138 of the European Parliament and the Council of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (hereinafter referred to as Solvency II)

⁸ In full: Directive (EU) 2016/97 of the European Parliament and of the Council of 20 of January 2016 on Insurance Distribution (hereinafter referred to as IDD)

⁹ In full: Directive (EU) 2002/92/EC of the European Parliament and the Council of 9 December 2002 on insurance mediation (hereinafter referred to as IMD).

Motivated by the above considerations, this dissertation discusses the changes in the new European Directive on insurance distribution of bancassurance operators, especially of banks. The main objective of this research studies whether banks in Europe might face any difficulties in selling insurance products under the new regulations. To this end, the dissertation will analyse and compare important requirements stated in the IMD and the IDD for banks on insurance distribution in Europe. In addition, the dissertation will compare the IDD's requirements for banks with other insurance distributors.

The dissertation is organized as follows. Chapter 2 provides an overview of bancassurance in Europe. First, the chapter introduces the basic definitions of bancassurance and discussing the advantages and disadvantages that bancassurance brings to insurers and bankers. Then, to understand the core principle of bancassurance and how bancassurance works, the dissertation studies the common bancassurance models that have developed in Europe, as well as their advantages and disadvantages. Next, we discuss popular bancassurance products based on the link between insurance and banking products. We also study the recent development of bancassurance in Europe through analysing data and information collected by European Insurance.¹⁰ The last part of this chapter introduces generally the European regulatory framework on bancassurance including the relevant Directives on the banking and insurance sector, for instance, the Capital Requirement Directive IV (2013/36/EU)¹¹, the Financial Conglomerates Directive (2002/87/EC)¹², the Solvency

¹⁰ Insurance Europe is the European Insurance and Reinsurance Federation. Through its 37 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monolines, mutuals and SMEs. <https://www.insuranceeurope.eu/about-us>.

¹¹ In full: Directive (EU) 2013/36/EU of the European and of the Council of 26 June 2013 on access to the activity of credit institution and the prudential supervision of credit and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC

¹² In full: Directive (EU) 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

Directive II, and the IDD to understand how bancassurance operators have been regulated in Europe.

Chapter 3 presents an insightful overview of the two recent important the European regulations on insurance distribution, namely, the IMD and the IDD. The chapter aims to have a general picture of the IMD and the IDD. In particular, it highlights the new provisions in the IDD to understand what are the main differences between the two Directives. To this end, firstly, we analyse the main requirements of the IMD and its limitations. Then, we will only focus on the new provisions of the IDD to understand how the IDD changes the activity of insurance distribution in Europe.

Chapter 4 studies further how the IDD's provisions affect directly to the insurance distribution activity of banks in Europe. This chapter focus on analysing the scope of the IDD, the rules on cross-selling, the professional and organisation requirements, the product oversight and governance, and the additional requirements concerning insurance-based investment products. The last part of the chapter indicates the important changes for the insurance distribution activities of banks.

Chapter 5 concludes under the new Directive, whether or not the banks might face more difficulties when distributing insurance products.

CHAPTER 2: BANCASSURANCE IN EUROPE

2.1 The principle concepts of bancassurance:

The term of bancassurance was originated from France and is used to indicate the simple distribution of insurance products through bank branches. Although the use of this term was started from the mid-1980s until now there is no formal and common legal definition of bancassurance.¹³ Consequently, the bancassurance concepts differ from one observer to another.

Some of the bancassurance definitions focus solely on distribution and cross-selling of insurance products in between banks and insurance companies, such as:

- “Bancassurance refers primarily to banks entering the insurance sector by offering insurance products to their retail customers”.¹⁴
- “Bancassurance is the process of using a bank’s customer relationships to sell life and non-life insurance products.”¹⁵
- “It is generally considered as encompassing the partnership or relationship between a bank, acting as an insurance agent or broker, and an insurance undertaking whereby the insurance undertaking uses the bank sales channel (namely, bank branches) to help drive the sale of products supplied by an insurer.”¹⁶

While other definitions underline the integration of banks and insurance companies in a single entity:

¹³EIOPA (2017), *The Report on Evaluation of the Structure of Insurance Intermediaries Markets in Europe*, p.12.

¹⁴Tobias C. Hoschaka (1994), *Bancassurance*, p.1.

¹⁵ Serap O. Gonulal, Nick Goulder, Rodney Lester, *Bancassurance: A Valuable Tool for Developing Insurance in Emerging Markets*, Policy Research Working Paper 6196, The World Bank - Financial and Private Sector Development Non-Bank Financial Institutions, 2012, p.2

¹⁶ EIOPA (2018), *The Report on Evaluation of the Structure of Insurance Intermediaries Markets in Europe*, p.12.

- “Bancassurance is the provision of and selling of banking and insurance products by the same organisation under the same roof.”¹⁷
- “It is a business strategy – most initiated by banks – that aims at associating banking and insurance activities within the same group, with a view to offer these services to common customers who, today, are mainly personal customers.”¹⁸

And finally, other broader definitions realise both the interlinkages of different financial services and distribution of these products.

- “As a rule, bancassurance can be described as a strategy adopted by banks or insurance companies aiming to operate the financial market in a more or less integrated manner. In practice, the term ‘bancassurance’ is consistently used to describe a new strategic orientation of financial institutions in private customer business.”¹⁹
- “In France, the word ‘bancassurance’ refers to credit institutions which have created an insurance activity.”²⁰

The bancassurance concepts stated above reflect the different degrees of integration of insurers and bankers that can vary from a simple distribution model to some types of a capital link between the two activities.²¹

2.2 Bancassurance models:

Banks and insurance companies can cooperate in many different models to conduct insurance business. The main two variables that distinguish the cooperation form are the percentage of financial ownership and the level of integration from strategies and

¹⁷ Elkington, W., *Bancassurance*, Chanered Building Societies Institute Journal, March 1993, 2-3, p.2

¹⁸ Tribune de l'Assurance, *Bancassurance Les Conquerants*, hors serie, Paris, 1993, p.6

¹⁹ Swiss Re, *Bancassurance*, No.2, Sigma, 1992, p.4.

²⁰ Yanick Bonnet and Pierre Arnal (2000), *Analysis and prospects of the French bancassurance market*, p.3.

²¹ Nadege genetary and Philip Molyneux, *Bancassurance*, 1st ed., Palgrave Macmillan, 1998, p.10.

management perspective.²² In the next follows we will discuss the most popular models adopted for the cooperation of the bank and insurance company in Europe, namely, partnership, joint venture, and captive.²³

2.2.1 Partnership:

A partnership also called as a cross-selling arrangement in the literature is a formal arrangement by two or more parties to manage and operate a business and share its profits.²⁴ Among the three models, the partnership is the simplest one in which a bank plays the role of an insurance intermediary that is similar to insurance agents or brokers. Through its branches, the bank sells insurance products for one or more insurance companies. In return, the insurance companies pay selling commissions or fees to the bank.

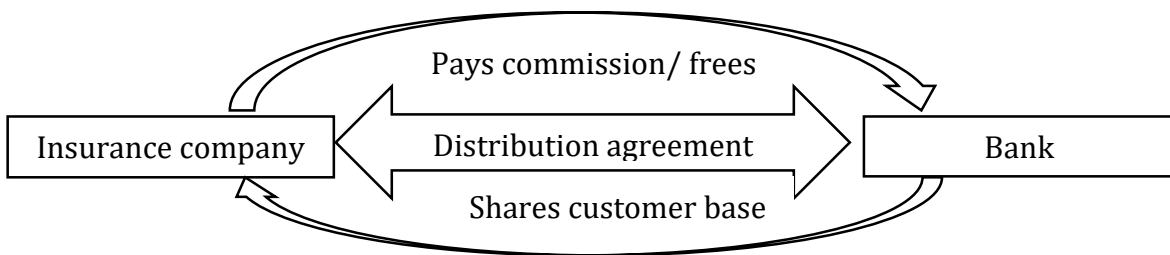


Diagram 1.1 *The partnership (cross-selling) model.*

2.2.2 Joint venture:

In general, a joint venture model is one kind of cooperation between independent partners in the literature, is a business arrangement in which two or more parties agree to pool their resources to establish a “joint venture company” to conduct a specific task.

²² Davis, S.I. (2007) ‘Bancassurance: *The Lessons of Global Experience in Banking and Insurance Collaboration*’, VRL Knowledge Bank Ltd

²³ Massimo Caratelli, *The Bancassurance Market in Europe*, in *Bancassurance in Europe: Past, Present and Future*, Franca Fiordelisi, Ornella Ricci (ed.), 2nd ed., Palgrave Macmillan, 2012, p.71.

²⁴ Investopedia, *Partnership*, <https://www.investopedia.com/terms/p/partnership.asp>.

A specific task can be a new project or other business activities that all parties are interested in. In this model, each participant is responsible for profits, losses and costs associated with it. However, the venture company is its own entity, separate from the participants' other business interest.²⁵ In the context of bancassurance, the joint venture is the result of the cooperation of a bank and an insurance company to constitute a new entity that is devoted to a bancassurance business. The venture company distributes insurance products only through the network of its banking parent.²⁶ In return, the joint venture company pay the distribution commissions and benefits from dividends to the bank.

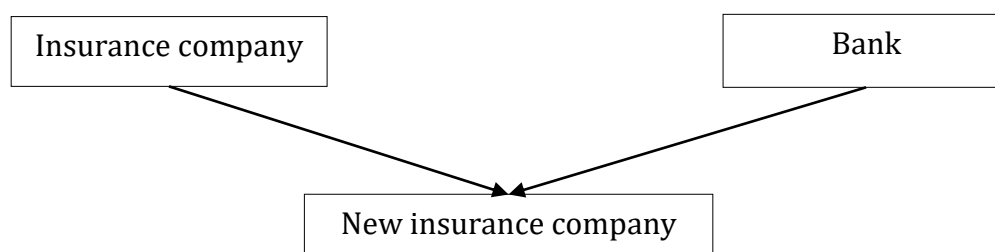


Diagram 1.2. A bank and an insurance company constitute a new entity in the joint venture.

2.2.3 Captive model:

In the captive model, the banking and the insurance activities are under the direction of a common owner. There are two possible cases that are illustrated in Diagram 1.3. In the first case, a bank establishes an insurance company as a subsidiary to realise an insurance business, or acquires a majority of an insurance company already operating on the market, with share ownership typically very high, often 100 per cent. The banking parent can control fully the insurance business and use the information at its disposal, designing products suitable for well-known customer's

²⁵ Investopedia, *Joint Venture*, <https://www.investopedia.com/terms/j/jointventure.asp>, August 2019.

²⁶ Mark Teunissen (2008), *Bancassurance: Tapping into the Banking Strength*, The Geneva Papers, 33, p.2

needs and avoiding the danger of new insurance products take sales away from the older insurance products (cannibalization).²⁷ In the second structure, the same holding company owns a bank and an insurance company with different levels of integration that are either a unique strategic design or little effort to coordinate the two activities.²⁸

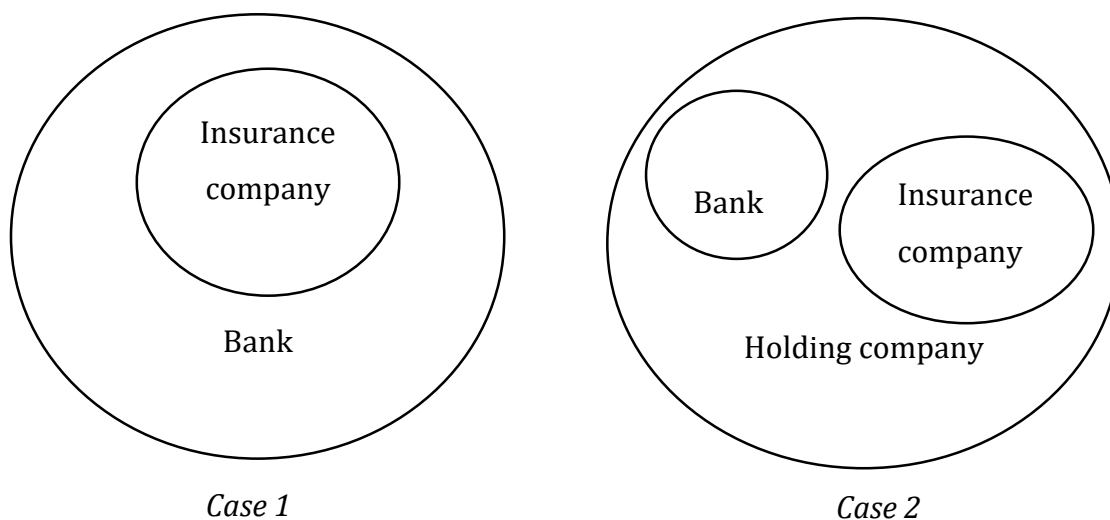


Diagram 1.3. *The different integration between banks and insurance companies in the captive model.*

2.2.4 The advantages and disadvantages of the bancassurance models:

In practice, there is no country in which bancassurance relied on a single form.²⁹ The specific socioeconomic, cultural and regulatory environment of the host country, as well as of the market framework and consumer preferences that are main factors affect the choice of the bancassurance models.³⁰ Furthermore, the major advantages and

²⁷ Berghendal, G. (1995), *The Profitability of Bancassurance for European Banks*, International Journal of Bank Marketing, XIII, 1, p. 27.

²⁸ Massimo Caratelli (2012), *The Bancassurance Market in Europe*, in *Bancassurance in Europe: Past, Present and Future*, Franca Fiordelisi, Ornella Ricci (ed.), p.20 and p.87.

²⁹ Same book, p. 84.

³⁰ Same book, p. 84.

disadvantages of each bancassurance model are bases for bankers and insurers to choose sufficient structures that are briefly presented in Table 1.1:

Table 1.1: *The main advantages and disadvantages of alternative bancassurance models.*

The models	Advantage	Disadvantage.
Cross-selling agreement	<ul style="list-style-type: none"> • Quick, simple and reversible. • Partners remain independent. 	<ul style="list-style-type: none"> • Provision of basic products. • Limited exploitation of synergies. • Possible conflicts of interest.
Cooperation between independent partners	<ul style="list-style-type: none"> • Enhancement of specific competences. • Partners remain independent. 	<ul style="list-style-type: none"> • Possibly clashing cultures • Problems of coordination and value sharing.
Control by ownership.	<ul style="list-style-type: none"> • Unique strategic design. • The maximum potential for synergies. 	<ul style="list-style-type: none"> • Long term capital commitment. • Complexity and agency problems.

Source: Franca Fiordelisi, Ornella Ricci (ed.), Bancassurance in Europe: Past, Present and Future, 2nd ed., Palgrave Macmillan, 2012, p.2

2.3 The advantages and disadvantages of bancassurance:

Bancassurance can be profitable for both banks and insurance companies. Banks earn additional revenue from broadening of products, while insurance companies can

approach potential customers without expanding their sale forces or pay commission to insurance agents or brokers. Additionally, banks and insurance companies can obtain the following attractive benefits, see Table 1.2.

Table 1.2: *The benefits of bancassurance for banks and insurance companies:*³¹

Banks	Insurance companies
<input checked="" type="checkbox"/> Have an additional and stable source of incomes, reduce banks' dependence on the interest margin;	<input checked="" type="checkbox"/> Access to banks' client database, usually more consistent;
<input checked="" type="checkbox"/> Expand the potential client portfolio;	<input checked="" type="checkbox"/> Reduce dependence on agents or brokers;
<input checked="" type="checkbox"/> Diversify the range of products and service as a manner of increasing the client's loyalty;	<input checked="" type="checkbox"/> Share certain categories of services with the banks;
<input checked="" type="checkbox"/> Reduce the capital requirement (compared to the undertaken risks) at the same level of incomes;	<input checked="" type="checkbox"/> Increase efficiency in the development of new products in partnership with the banks;
<input checked="" type="checkbox"/> Access to the funds of the life insurers, including for reasons of a fiscal nature.	<input checked="" type="checkbox"/> Quick access to new markets without being necessary to have their distribution network;
	<input checked="" type="checkbox"/> Obtain capital to increase solvency and to develop the business.

³¹ Wong, C., Cheung, L. (2002), *Bancassurance development in Asia – shifting into a higher gear*, Sigma No. 7/2002, Swiss Re. p.3-38.

However, the cooperation between banks and insurance companies to sell insurance products can rise the typical risks that are related to specific aspects of bancassurance activities. One of the most obvious risk that is banking staff lack sufficient knowledge about insurance products. Some insurance products, especially non-life insurance, are more complex and very different from banking products. Meanwhile, banking staffs are trained to mainly distribute banking products rather than insurance products. This risk can lead the customer to buy insurance products that are inappropriate with the customer's demands and needs. In addition, there are other risks that are shown in the following list:³²

- Investment risk in the bancassurance without a subsequent increase in revenues from this activity.
- Risk of losing a good brand.
- Risk of customer relationship management and the customer's needs identification.
- Risk of financial settlements between the cooperation entities.
- Risk of substitutability and complementarity of the products offered under bancassurance.
- Risk of solvency and liquidity loss as well as risk transfer, liquidity and solvency problems between cooperating banks and insurers.
- Risk of extensive competition between distribution channels.
- Risk of lack of acceptance for the bancassurance model by employees of cooperating companies.

2.4 Bancassurance products:

Bancassurance products are insurance products distributed by banks, as tied with banking products or standalone products. In general, a bancassurance product

³² D. Szewieczek (2013), *The risk of cooperation between banks and insurance companies*, *Studia Ekonomiczne*, 127, p. 147.

includes can be classified as low insurance content and high insurance content. A bancassurance product has high insurance content if it belongs to the non-life business. This type of product provides protection to the insured against unexpected events, such as accidents, disablement, critical illness, or unemployment. On the other hand, bancassurance product with low insurance content is also known as life insurances with investment elements. This type of insurance product plays a role as a saving product that is capable of providing the insured a return in the form of (i) reserve in the cases of death, life, surrender, or (ii) the transformation of the accumulated funds into annuities.

Based on the link between banking products and insurance content, bancassurance products can be divided into three main groups, including (i) products are directly linked to banking products; (ii) products are packaged with banking products, and (iii) products are non-bank-related.³³ They are discussed as follows.

The first type of insurance products is similar to the asset management service of banking products, for example, life assurance, traditional policies, or complimentary with banking products such as payment protection policies. Life assurance and traditional policies are the ones that satisfy the investment or pensions needs of customers with a high-saving and low-insurance content.³⁴ The policies normally provide a life or death coverage and pay-out guaranteed amount at the end of the policy according to the conditions set out in the contract. However, there are main differences between the asset management of life assurance and traditional policies. For life assurance, based on the usage of the premium pool and the value of policies depends on whether the performance of funds or share index, the life insurance assurance products can be formed as unit-linked or index-linked policies. Unit-linked life policies are policies in which their premium pool will be managed as (i) investment funds that are trusted by investment firms, or (ii) internal funds that are managed by insurance

³³ Maria Grazia Starita (2012), *Bancassurance products*, in *Bancassurance in Europe: Past, Present and Future*, Franco Fiordelisi and Ornella Ricci (ed.), p.42.

³⁴ Same book p.27.

companies and the value of the unit-linked policies will depend on the performance of such funds. Whereas, index-linked life policies are policies that their value is linked to the performance of financial markets, particularly, a share index. For the traditional policies, these bancassurance products are directly linked with-profit funds that are managed by the smoothing policy and the assignment of a series of regular bonuses. Particularly, insurance companies try to avoid changes in the size of the bonuses from one year to the next. Therefore, they hold back some of the profits from good years to boost the profit in bad years.³⁵

On the other hand, payment protection insurance is considered as products that are directly linked to banking products. Although this product does have a similar assessment service with banking products as life assurance or traditional policies, it is complimentary with banking products. Particularly, payment protection insurance ensures repayment of a credit that can be offered by a bank in the case of the insured dies, becomes ill or disabled, lose a job, or faces other circumstances, thus it may prevent the insured from earning income to service the debt.³⁶

The second is that packaged with banking products. Typical examples of this type of product include car insurance or home insurance. Thanks to their restricted insurance content, these products can provide a basic cover and linked with a banking account or mortgage. Particularly, car insurance provides linked with a banking account,³⁷ whereas home insurance can be packaged with a mortgage.³⁸

The last is bancassurance products that are non-bank-related products, such as travel insurance, health insurance, and pet insurance. In comparison with life assurance or traditional policies, these bancassurance products have high-insurance contents. However, the same with car insurance or home insurance, these non-bank-

³⁵ https://en.wikipedia.org/wiki/With-profits_policy

³⁶ https://en.wikipedia.org/wiki/Payment_protection_insurance

³⁷ Maria Grazia Starita (2012), *Bancassurance Products*, in *Bancassurance in Europe: Past, Present and Future*, Franco Fiordelisi and Ornella Ricci (ed.), p.46.

³⁸ Same book, p.45.

related products have restricted insurance content, thus, banks can offer their customers such products linked their banking account.

2.5 The development of bancassurance in Europe:

Bancassurance was developed originally in France. The French law 1984 early allowed credit institutions to widen their activities, banks thereby have been able to carry out activities related to the insurance sector.³⁹ The bancassurance development into three different periods: up to 1980, during the 1980s, and the 1990s.⁴⁰

Before 1980, banks started extending their activities by providing insurance guarantees which were linked to banks' activities rather than insurance, for instance, credit insurance for consumer credit and other loans (in France), building insurance and contents insurance for a mortgage (in Great Britain), insurances coverage for thefts at the point of withdrawals (in Italy).

After the 1980s, saving products were benefited from advantageous tax regimes and classified as life insurance products. The bank provided life insurance products with a saving function, such as annuity policies, endowments contracts.

Around the 1990s, the bank started providing insurance products linked to investment funds, pure life insurance and whole-life insurance policies. Figure 1.1 shows that during a decade from 1990 to 2000, the proportion of premium of life insurance distributed through banks in France increased continually and reached 61 per cent in 2000

³⁹ C. Blot, J. Creel, A. Delatte, F. Labondance, and S. Levasseur (2014), *Structure evaluations and reforms of the French banking and financial system since the 1980s: Relationship with the legal process of European integration*, Working Paper Series, No 66, Journal of Economic Literature, p. 9.

⁴⁰ Daniel, J.P. (1995,) *Les Enjeux de la Bancassurance* (Paris: Edition de Verneuil).

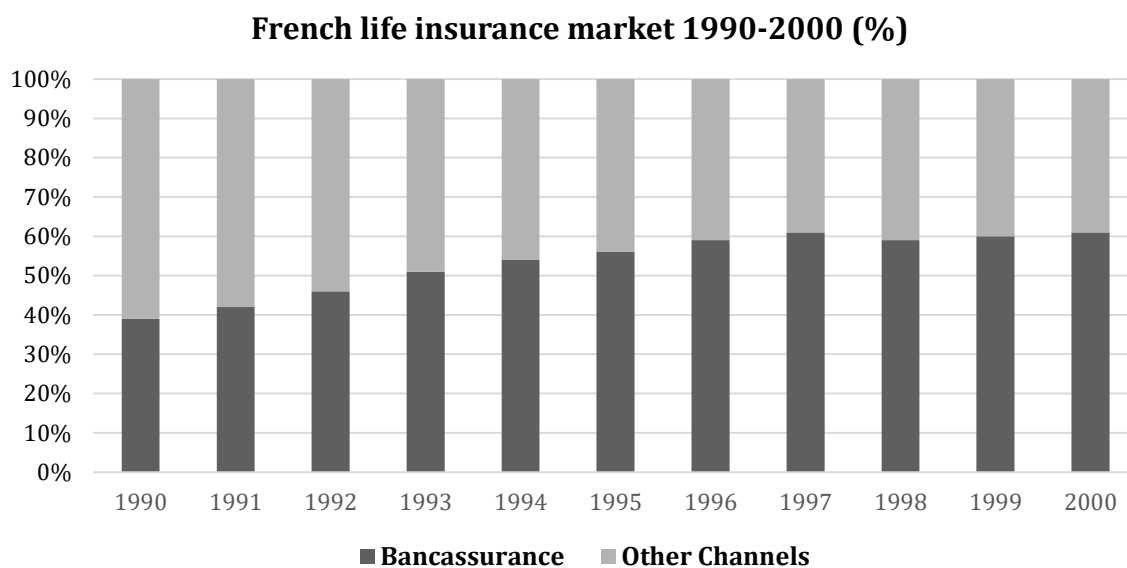


Figure 1.1. The premium of life insurance products distributed by banks in France from 1990 to 2000 (%).

Data Source: from French Insurance Federation.⁴¹

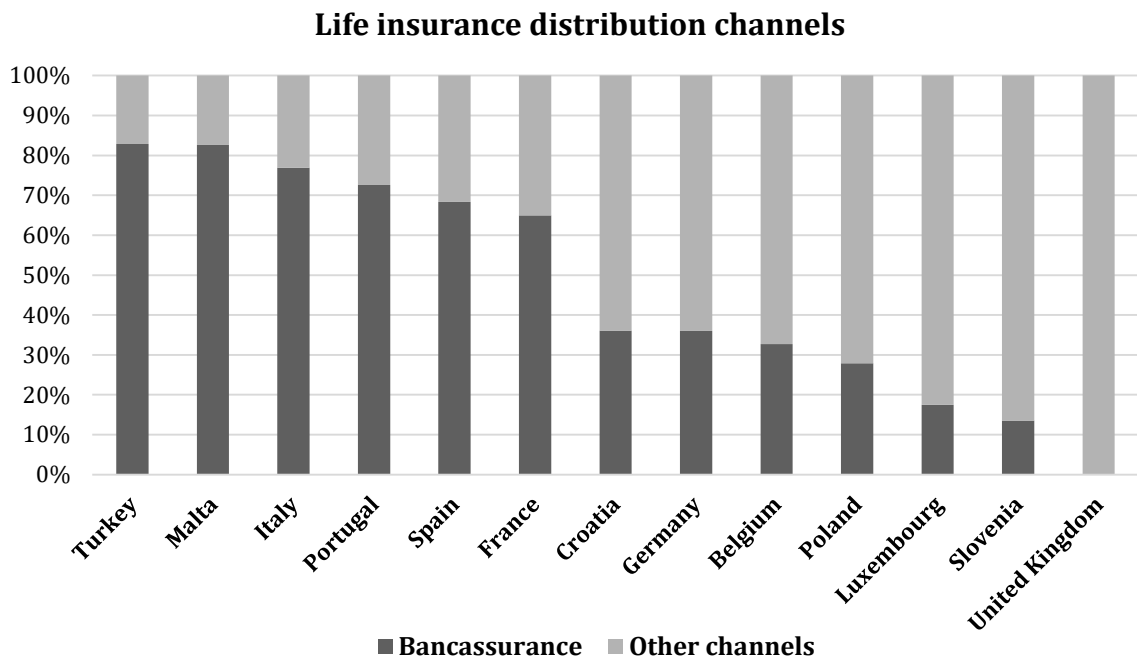
In recent years, bancassurance is still a major distribution channel of life insurance in some European countries, whereas, for the distribution of non-life insurance products, it is less common.⁴² Figure 1.2 shows that, in 2016, the Gross Writing Premium (GWP) of life bancassurance which accounted for more than 60 per cent, for instance, Turkey (83 per cent), Malta (82 per cent), Italy (76 per cent), Portugal (71 per cent), and France (65 per cent) whilst, the proportion of the GWP was less than 20 per cent. In the term of bancassurance products, unit-linked policies are the largest written contracts in many markets, with a penetration rate reaching more than 50 per cent in Italy, Belgium and France,⁴³ meanwhile, property insurance has observed penetration

⁴¹ Y. Bonnet, P. Arnal (2002), *Analysis and prospects of French bancassurance market*, p.2.

⁴² EIOPA (2018), *Insurance Distribution Directive - Evaluation of the Structure of Insurance Intermediaries Markets in Europe*, Luxembourg Publications Office of the European Union, p.12.

⁴³ Massimo Caratelli (2012), *The Bancassurance Market in Europe*, in *Bancassurance in Europe: Past, Present and Future*, Franca Fiordelisi, Ornella Ricci (ed.), p.62.

rates higher than in the other non-life sectors for the majority of the European markets.⁴⁴



⁴⁴ Massimo Caratelli (2012), *The Bancassurance Market in Europe*, in *Bancassurance in Europe: Past, Present and Future*, Franca Fiordelisi, Ornella Ricci (ed.), p.62.

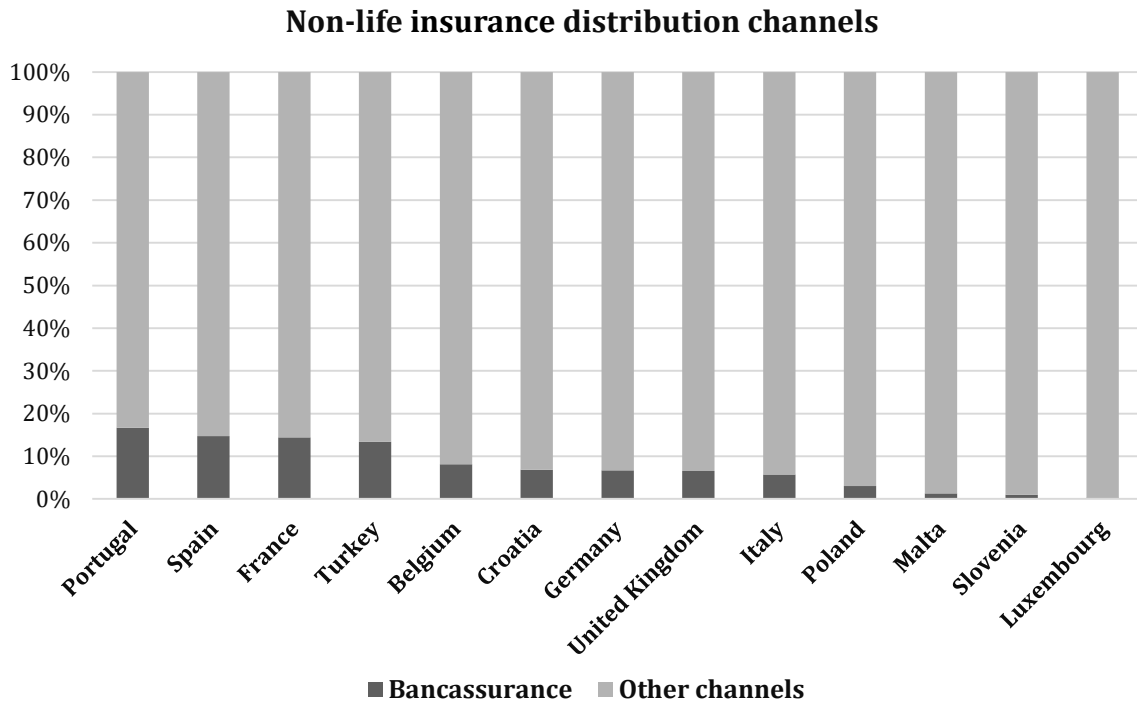


Figure 1.2. The proportion of the gross written premium (GWP) of life and non-life insurance distribution channels in Europe, 2016.

Source: Insurance Europe⁴⁵. <https://www.insuranceeurope.eu/insurancedata>

From the data mentioned above, bancassurance has developed differently among European countries. In Western Europe, bancassurance has been an important distribution channel for life insurance products, and it is now a growing vehicle for the non-life sector (Figure 1.3). In contrast, in many Central and Eastern European countries, the share markets of bancassurance do not exceed 40 per cent for life insurance, and 10 per cent for non-life insurance, for instance, two of the largest

⁴⁵ Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monolines, mutuals and SMEs. <https://www.insuranceeurope.eu/about-us>

European insurance markets that are Germany and the United Kingdom. To understand this, we can use three significant reasons indicated by Gilles Benoist:⁴⁶

- The first and most important is the differences in legislative and regulatory standards.
- Significant differences in tax systems and the structure of pension systems. For example, in France, life insurance products are very similar to banking products and also qualify for tax incentives. This makes them easy to sell insurance products by banking networks;
- Differences in the role of banks in the financial system. Bancassurance has made the biggest inroads into the market in countries where the banks play a significant role in the financial system, such as in Belgium, France and the Netherlands. Meanwhile, bancassurers have a smaller market share in those countries where everything revolves around the stock market, such as the United Kingdom.

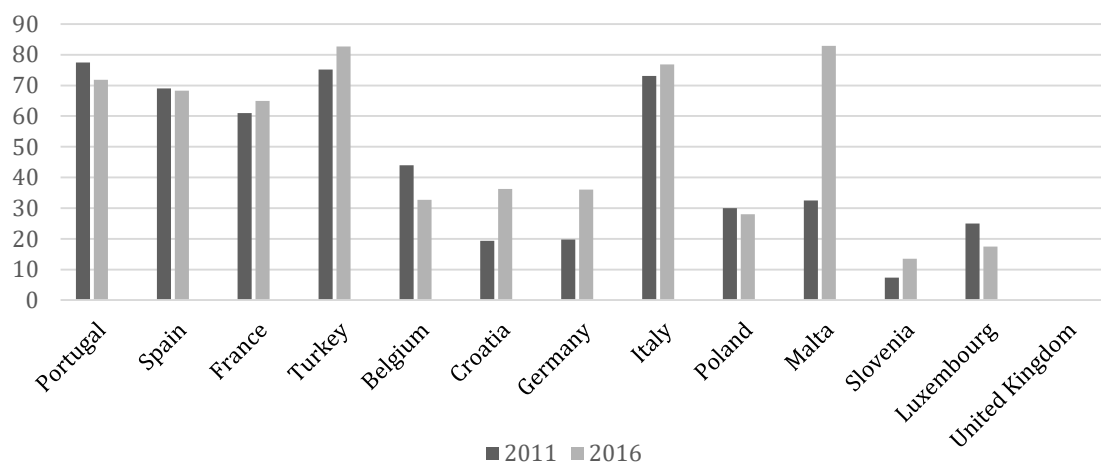
In addition, the figures mentioned above show that bancassurance has been more typical and successful with life insurance than non-life insurance. The key reason is that life insurance products are easy to commercialize for banks' sales personnel because of its similarity to investment and savings contracts provided by banks.⁴⁷ Furthermore, life instruments, for example, unit-linked policies, are also frequently guaranteed and supported by favourable tax treatment to encourage private provision for protection or retirement planning.⁴⁸ Nevertheless, figure 1.3 shows that bancassurance is developing constantly not only for life insurance but also for the non-life sector.

⁴⁶ Gilles Benoist (2002), *Bancassurance: The New Challenges*, The Geneva Paper on Risk and Insurance. Issues and Practice, Vol.27, No.3, pp. 296-303, p.297.

⁴⁷ Massimo Caratelli (2012), *The Bancassurance Market in Europe*, in *Bancassurance in Europe: Past, Present and Future*, Franca Fiordelisi, Ornella Ricci (ed.), p.65.

⁴⁸ Same book, p.65.

Life premiums by bancassurance channel in 2011 and 2016 (%)



Non-life premiums by bancassurance channel in 2011 and 2016 (%)

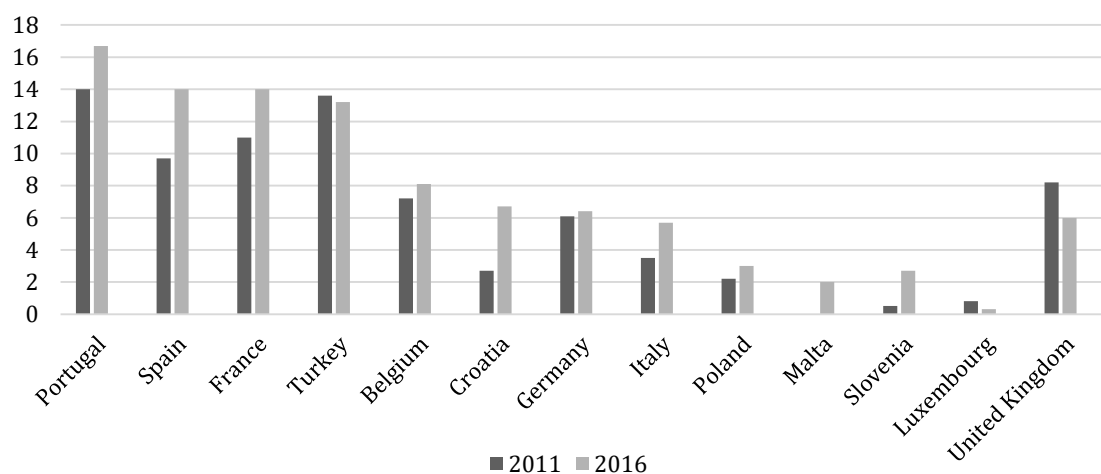


Figure 1.3. The proportion of the premium of life and non-life insurance distributed through bancassurance channel in Europe, 2011 and 2016. Data Source: European Insurance in Figure, 2014⁴⁹ and 2019⁵⁰.

⁴⁹ Insurance Europe (February 2014), *Statistics N° 48 European Insurance in Figure*, p.61, <http://www.biztositasizemle.hu/files/201402/european-insurance-in-figures-2.pdf>.

⁵⁰ The data available: <https://www.insuranceeurope.eu/insurancedata>

2.6 The recent European Insurance and Banking Regulatory Framework concerning Bancassurance:

2.6.1 The Capital Directive:

The opportunity to develop the bancassurance model was offered by the Second Banking Directive (89/646/EEC)⁵¹ which removed the existing barriers between different sectors of the financial services industry so that a credit institution can become a distribution channel of financial and insurance services.⁵² (Cranton 2000) At the moment, the rules on the activities of bank and banking prudential requirements are regulated by the Capital Requirement Directive IV.⁵³

2.6.2 The Financial Conglomerate Directive:

In the captive model of bancassurance, banks and insurance companies can be controlled by the same holding company. This integration of two sectors known as financial conglomerates which are financial groups including credit institutions, insurance undertakings and investment firms which provide services and products in different sectors of the financial markets.⁵⁴ The Financial Conglomerates Directive (2002/87/ECC) regulates financial activities of banks and insurance companies in financial conglomerates.⁵⁵ In particular, the Directive lays down rules for

⁵¹ In full: The Second Council Directive 89/646/EEC of 15 December 1989 on the coordination of laws, regulations and administrative provision relating up and pursuit of the business of credit institutions

⁵² Ross Cranton (2002), *Principles of Banking Law*, p. 32.

⁵³ Article 1 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

⁵⁴ Recital (2), Directive (EU) 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

⁵⁵ Recital (5) of Directive (EU) 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council.

supplementary supervisory on European financial conglomerates, such as solvency, risk concentration and intra-group transaction. The Directive was adopted on 16 December 2002, applied from 11 February 2003. European Union countries had to incorporate into national law by 10 August 2004. On 16 November 2011, it is amended by Directive 2011/89/EU.⁵⁶

2.6.3 The Solvency Directives:

Solvency Directives lay down rules on the taking-up the business of insurance and reinsurance. The first Directive on Solvency (73/239/EEC) was adopted on 24 July 1973 and then it was repealed by the Solvency Directive II. The second Solvency Directive was amended by the Directive 2014/51/EU⁵⁷ and became fully applicable to European insurers and reinsurers on 1 January 2016⁵⁸. The Solvency Directive II introduces a harmonised, sound and robust prudential framework for insurance firms in the European Union.⁵⁹ The Directive primarily provides the minimum capital requirement including a minimum amount and a standard formula for the calculation of solvency capital that European insurance and reinsurance companies must hold to reduce the risk of insolvency; establishes requirements for governance and supervision for risk management; and details requirements for disclosure and transparency.⁶⁰ Under the Directive, European insurers and reinsurers now comply with a higher capital requirement to permit timely intervention⁶¹; submit to supervisor

⁵⁶ Article 2, Directive 2011/89/EU of the European Parliament and Council of 16 November 2011 amending Directive 98/78/EC, 2002/87/EC and 2009/138/EC regards the supplementary supervision of financial entities in a financial conglomerate.

⁵⁷ Article 2 of Directive (EU) 2014/51/EU of the European Parliament and Council of 16 April 2014 amending Directive 2003/71/EC and 2009/138/EC and Regulations (EC) No 1060/2009, (EU) No 1096/2010 in respect of the powers of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

⁵⁸ Article 2(83), Directive (EU) 2014/51/EU.

⁵⁹ European Commission, *Solvency II Overview – Frequently asked questions*.

⁶⁰ Recital (65), Recital (70), and Article 129 of the Solvency II.

⁶¹ Article 17(2), Directive 73/239/EC of the European Parliament and the Council of 24 July 1973 on the coordination of laws regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance; and Article 129 (1, d) Solvency II.

authorities the necessary information for supervision⁶², and disclose some information to the public⁶³.

2.6.4 The Insurance Distribution Directive:

The rules for the taking-up and pursuit of the activities of insurance and reinsurance mediation regulated by the Insurance Mediation Directive (IMD) which was adopted on 9 December 2002, then amended by the Market in Financial Instrument Directive (2014/65/EU)⁶⁴ (MiFID II). However, since 1 October 2018, the activities of insurance and reinsurance distribution in the European Union has been regulated on the Insurance Distribution Directive (IDD). To enhance the single European insurance market and guarantee the highest level of customer protection, the IDD covers not only insurance undertakings or intermediaries but also other market participants who sell insurance products on an ancillary basis.⁶⁵ Under the IDD, insurance distributors must comply with additional requirements on information, organisation and disclosure. In addition, the European Commission also issued several regulations supplementing the specific provisions of the IDD:

- 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 (Commission Delegated Regulation (EU) 2017/2358);
- Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to information requirement and conduct of business rules

⁶² Article 35 of the Solvency II.

⁶³ Section 3, Chapter IV of the Solvency II.

⁶⁴ In full: Directive 2014/65/EU of the European Parliament and the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU. (hereinafter referred as to MiFID II).

⁶⁵ Recital (8) of the IDD.

applicable to the distribution of insurance-based investment products.
(Commission Delegated Regulation (EU) 2017/2359).

CHAPTER 3: THE NEW EU INSURANCE DISTRIBUTION DIRECTIVE

3.1 Introduction to the Insurance Mediation Directive:

For a long time, insurance intermediaries have been playing an important role in the distribution of insurance products.⁶⁶ However, in Europe, until the appearance of Insurance Mediation Directive (IMD, 2002), there was still substantial differences between European Member States' provision on regulating the activities of insurance and reinsurance intermediaries.⁶⁷ Thus, IMD aims to introduce a single passport in which the insurance intermediaries can be easier to offer cross-border services or establish a branch operation; enhance the customer protection at European level; and establish good cooperation between the competent authorities of the home and host Member States.⁶⁸ The IMD was fully into force on 14 January 2005 and repealed the Insurance Agents and Brokers Directive (77/92/EEC).⁶⁹

The IMD laid down the rules for the taking-up and pursuit of the activities of insurance mediation by a natural and legal person which are established or wish to become established in a Member State.⁷⁰ The Directive aims to guarantee not only the freedom of insurance intermediaries to establish and provide services but also the equality of treatment between operators and customer protection requires.⁷¹ The IMD set down significant requirements on registration, professional and information for insurance intermediaries.

⁶⁶ Recital (1) of the IMD.

⁶⁷ Recital (5) of the IMD.

⁶⁸ CEIOP (2007), *Report on the Implementation of the Insurance Mediation Directive's Key Provisions*, p.3.

⁶⁹ In full: Directive 77/92/EEC of 13 December 1976 on measures to facilitate the effective exercise of freedom to establish and freedom to provide services in respect of the activities of insurance agents and brokers.

⁷⁰ Article 1(1) of the IMD.

⁷¹ Recital (6) and Recital (9) of the IMD.

3.2 The scope of the Insurance Mediation Directive:

The Insurance Mediation Directive (IMD) regulates insurance mediation activities carried out by insurance intermediaries and tied insurance intermediaries. In particular, insurance intermediary is any natural or legal person, for remuneration, taking up or pursuing the following insurance mediation activities:⁷²

- Introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding insurance contracts, or
- Assisting in the administration and performance of insurance contracts, in particular in the event of a claim.

A tied insurance intermediary can be defined as follows:⁷³

- A person who carries out the activity of insurance mediation for and behalf of one or more insurance undertaking in the case that insurance products are not in competition. However, this person does not collect premiums or amounts intended for the customer and acts under the full responsibility of the insurance undertakings for insurance products which concern them respectively.
- A person who carries out the activity of insurance mediation in addition to his or her principal professional activity if the insurance is complementary to the goods or services supplied in the framework of this principal professional activity. In addition, this person does not collect premiums or the amount intended for the customer.

Additionally, the IMD excluded the following activities which are not considered as the insurance mediations:⁷⁴

⁷² Point (3) and (5), Article 2 of the IMD

⁷³ Article 2(7) of the IMD.

⁷⁴ Article 2(4) of the IMD.

- Insurance undertakings or employees who act under the responsibility of insurance undertakings carry out the insurance mediations;
- The provision of information of professional activity that is not to assist the customer in concluding or performing an insurance contract;
- The management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims.

Furthermore, the IMD does not apply to the persons who carry out the insurance mediation activities for an insurance contract that meets all the following conditions:

- The insurance contract only requires knowledge of the insurance cover that is provided;
- The insurance contract is not a life insurance contract;
- The insurance contract does not cover any liability risks;
- The principal professional activity of the person is other than insurance mediation;
- The insurance is complementary to the product or service supplied by any provider and such insurance covers: (1) the risk of breakdown, loss of or damage to goods supplied by that provider, or (2) damage to or loss of baggage and other risks linked to the travel booked with that provider, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel.
- The amount of the annual premium does not exceed EUR 500 and the total duration of the insurance contract, including any renewal, does not exceed five years.

3.3 The main requirements of the Insurance Mediation Directive:

3.3.1 Registration requirements:

Insurance intermediary and tied insurance intermediary must register with a competent authority of its home Member States when carrying out the activity of

insurance mediation within the Community.⁷⁵ In particular, insurance undertakings or associations of insurance undertakings must take responsibility to register for tied insurance intermediaries. The IMD did not apply registration requirements for natural persons who work in insurance undertakings and pursue the insurance mediation activities.⁷⁶

Under the IMD, the Member States established more than one register for insurance intermediaries. The Member States also established a single information point that provides the identification details of competent authorities of each Member States. This single information is compiled electronically and kept updated that allows insurance intermediaries to access information quickly and easily from these various registers.⁷⁷

3.3.2 Professional requirements:

The professional requirements include (i) the requirements on appropriate knowledge and ability concerning insurance products; (ii) a good repute; (iii) the professional indemnity insurance, and (iv) necessary measures on protecting the customer against the inability of insurance intermediary in transferring a premium and claim money between undertakings and the customers.

The IMD requires insurance undertakings to verify the knowledge and ability of insurance intermediaries if the principal professional activity of the insurance intermediaries is not the insurance mediation.⁷⁸ Furthermore, if necessary, the insurance undertakings need to provide those intermediaries with a training on insurance products.⁷⁹ Persons work in insurance undertakings, especially, (i) who are responsible for the mediation of insurance products, and (ii) who are directly involved

⁷⁵ Article 3(1) of the IMD.

⁷⁶ Article 3(1) of the IMD.

⁷⁷ Article 3(2) of the IMD.

⁷⁸ Para. 2, Article 4(1) of the IMD.

⁷⁹ Para. 3, Article 4(1) of the IMD.

in the insurance mediation must demonstrate their knowledge and ability necessary for the performance of their duties.⁸⁰

Insurance intermediaries must be a good repute. This means that they must have a clean police record regarding serious criminal offences that are linked to (i) crimes against property or other crimes related to financial activities and (ii) should not have previously been declared bankrupt unless the insurance intermediary is rehabilitated under national law.⁸¹ Besides, the insurance intermediaries must hold (i) the professional indemnity insurance that covers the whole territory of the Community or (ii) some other comparable guarantee against liability arising from professional negligence.⁸²

Furthermore, the IMD stipulates necessary measures to protect customers against the inability of insurance intermediaries regarding (i) the transfer of the premium to insurance undertakings or (ii) the transfer of the amount of claim or return premium to the insured. In particular, money that are paid by a customer to an insurance intermediary must be treated as having been paid to an insurance undertaking. Secondly, money that are paid by the insurance undertaking to the insurance intermediary must be not treated as having been paid to the customer until the customer receives them. The money of the customers are transferred via strictly segregated client accounts and these accounts are not used to reimburse other creditors in the event of bankruptcy. Furthermore, the insurance intermediaries are required to have a financial capacity amounting permanently.⁸³

⁸⁰ Para. 4, Article 4(1) of the IMD.

⁸¹ Para. 1, Article 4(2) of the IMD.

⁸² Article 4(3) of the IMD.

⁸³ Article 12(4) of the IMD.

3.3.3 Information requirements:

Prior to the conclusion of any specific contract, insurance intermediaries must provide to their customers with the following information:

- The identity and address;
- The register;
- The information concerning the ownership between the insurance intermediaries and undertakings;
- The procedures enabling customers and other interested parties to register the complaint and the out-of-court complaint and information on redress procedure.

In addition, the insurance intermediaries also inform the customers whether:

- They will advise the basic of a fair analysis of a sufficiently large number of insurance contracts available on the market;
- They are under or not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. In this case, if customers require, the insurance intermediaries must provide the name of those insurance undertakings.⁸⁴

The IMD requires the insurance intermediaries to specify the demands and needs of customers. Regarding requirements on advice, the insurance intermediaries must provide the customer with the underlying reasons for any advice on a given insurance product.

3.3.4 Insurance-based investment products:

On 12 May 2014, the Market in Financial Instrument Directive II (MiFID II) was adopted and it amended the IMD regarding insurance-based investment products (IBIPs). The MiFID II provides the definition of IBIPs. According to that, the IBIPs means

⁸⁴ Article 12(1) of the IMD.

that insurance products (i) offer a maturity or surrender value that is wholly or partially exposed, directly or indirectly, to market fluctuations and (ii) do not include non-life insurance products, life insurance contracts only cover death, injury, sickness or infirmity, pension products, occupational pension schemes, and individual pension products.⁸⁵

Furthermore, the IMD includes additional requirements to protect customers who buy IBIPs. Firstly, an insurance intermediary or undertaking must act honestly, fairly and professionally following the best interest of its customers. All information and marketing communication thereby shall be fair, clear, and not misleading. Secondly, to prevent conflicts of interests, the insurance intermediary or undertaking must maintain and operate effective organisation and administrative arrangements by taking all appropriate steps to identify the conflicts of interest between (i) their managers and employees, or any person directly or indirectly linked to them by control, and (ii) their customers or between one customer and another.⁸⁶ If the arrangements are insufficient, the insurance intermediary or undertaking must disclose customers the general nature or source of the conflicts of interest before undertaking business.

3.4 Reasons to revise the Insurance Mediation Directive:

Finance turbulence from the global financial crisis in 2008 had raised the need of protecting customer's benefits across all financial sectors.⁸⁷ In November 2010, the G20, an international forum for the governments and central bank governors from 19 countries and the European Union, asked the Organisation for Economic Co-operation and Development (OECD), the Financial Stability Board, and other relevant services to strengthen the customer protection. The G20 underlined the need for proper regulation, supervision of all financial service providers, and agents that deal directly

⁸⁵ Point (b), Article 91(1) of the MiFID II.

⁸⁶ Article 91(2) of the MiFID II.

⁸⁷ Point 1 of Proposal for a Directive of the European Parliament and of the Council on Insurance Mediation (recast) /* COM/2012/0360 final - 2012/0175 (COD) */.

with consumers.⁸⁸ This organisation also provided principles in which customers should always benefit from comparable standards of customer protection. Therefore, in order to ensure an adequate level of customer protection across the EU, the European regulation concerning insurance distribution should be more uniform,⁸⁹ and the IMD need to be reviewed along the line of these guideline and international initiatives.

On the other hand, revising the IMD aims to make it more appropriate with the new EU Directive regarding insurance. In particular, during the discussion in the European Parliament on the Solvency Directive II, adopted in 2009, a specific request was made to review the IDM. Some members of the Parliament and some consumer organisations considered that (i) there was a need for a further improvement in policyholder protection and (ii) in selling practices for different insurance products. Especially, some strong concerns have been raised regarding the standards for the sale of life insurance products with investment elements. To ensure cross-sectoral consistency, the European Parliament requested that the revision of the IMD should meet the same consumer protection standards as mentioned in the MiFID II.

In March 2007, the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS)⁹⁰ published a report indicating that there was a need for clarification on some terminology used in the IMD. In addition, some of the IMD's requirements were impractical from day-to-day supervision. The CEIOPS also intended to make suggestions for amending the IMD and the Luxembourg Protocol to (i) improve the regulation of cross-border services, and (ii) enhance consistent supervision of

⁸⁸ Point 1 of Proposal for a Directive of the European Parliament and of the Council on Insurance Mediation (recast) /* COM/2012/0360 final - 2012/0175 (COD) */.

⁸⁹ Recital (10) of the IDD.

⁹⁰ On January 2010, the CEOPS was replaced by the European Insurance and Occupational Pension Authority (EIOPA) by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority, amending Decision 716/2009/EC and repealing Commission Decision 2009/79/EC.

insurance intermediaries and for other amendments.⁹¹ Furthermore, in 2012, the CEIOPS published a consultation document on the review of the IMD. The consultation indicated the following key limitations of the IDM and key problems on insurance distribution that the revised IMD must focus on addressing:⁹²

- Firstly, the information provided to customers is dense, legalistic, full of jargon, and difficult to digest. The information given to customer varies significantly that depends on the insurance products and the prevailing regulatory requirements on insurance mediation of the Member States. Furthermore, customers are not always fully informed about their rights during the process of insurance mediation. This might lead to unsuitable advice and miss-buying and mis-selling of products that potentially generate relevant regulatory issues. Notably, the third generation of insurance directives (recast under the Solvency II), the E-Commerce Directive (2000/31/EC) and the Distance Marketing of Financial Service Directive (2002/65/EC) contain overlapping requirements in the area of pre-contractual information because of their different purposes and scopes. This could cause increase the administrative burden for the national supervisory authorities, insurance intermediaries, insurance undertakings and consumers.
- Secondly, rules on conflicts of interests and transparency of the IMD are unclear and insufficiently effective to prevent policyholders who buy unsuitable and overpriced products and less competitive markets. Article 12 contained a mixture of disclosure and conflicts of interest provisions that might lead to confusions. The IMD does not contain any provision on remunerations; and therefore, the Member States were free to impose their remuneration requirements on sellers of insurance products. Furthermore, the conduct of business and the attitudes to the application of general good rules in insurance

⁹¹ CEIOPS (2007), *Report on the implementation of the Insurance Mediation Directive's key provisions*, p.25.

⁹² CEIOPS (2012), *Consultation Document on the Review of the Insurance Mediation Directive*, Commission Staff Working Paper, pp.4-6.

intermediation diverge among the Member States. The IMD had not been completed its goal to create a Single Market for insurance intermediaries.

- Thirdly, the definition of the IMD's scope is unclear; and this leads to diverging interpretations concerning exemptions from the scope. The definition of insurance intermediation that was built on the activity-based principle seemed to conflict with the definition of the IMD and the whole set of related provisions. The IMD did not guarantee a real level playing field between all participants involved in the selling of insurance products, because it directly exempts insurance undertakings and their employees from its scope. Consequently, policyholders might receive less information and protection when directly buying insurance products from insurance undertakings. In addition, to guarantee a level playing field of all participant in the selling insurance products and to achieve effective consumer protection, it was also important to consider the current exemption for insurance intermediaries providing information to business customers in the large risks area.
- Finally, notification system of the IMD was burdensome and does not encourage cross-border insurance intermediaries. This directly narrowed the available choices of consumers and impacted negatively on the competitiveness of the insurance markets, the level of administrative burden and the final cost for consumers. The Commission services recognise this problem and request further improvements, modernisation and increased transparency.

3.5 Introduction to the Insurance Distribution Directive:

The Insurance Distribution Directive (IDD) is a revised version of IMD, where the former has a wider scope. After the process of revising in a four-year, the IDD was adopted on 2 February 2016. However, since 1 October 2018, the IDD has been entering in force and repealed the IMD. The main IDD's objectives are to ensure that customers can benefit from the same level of protection that applies when they buy insurance products from different distribution channels, and to strengthen further the

internal market and promote a true market for life and non-life products and services.⁹³ Therefore, the Directive inherits the main regulations of the IMD and introduces new provisions in order to fix the IMD's limitations.

3.6. A wider scope and new definitions:

The IDD applies to any natural or legal persons who take up and pursue the activities of insurance distribution in the EU, particularly, insurance undertakings, insurance intermediaries, and ancillary insurance intermediaries.⁹⁴ The IDD states that the insurance intermediaries are not the insurance undertakings or the ancillary insurance intermediaries; thus, the IDD provides clearer definition of the insurance intermediaries than the IMD.

The IDD replaces the definition of insurance mediation by the insurance distribution. As a consequence, the insurance mediation activities that were covered under the IMD are replaced by new ones, including advising and assisting activities through the website and other media. According to the new IDD, the insurance distribution implies that:⁹⁵

- The activity of advising, proposing, or other work that are preparatory to the conclusion of contracts of insurance, of concluding such contracts;
- The activities of assisting in the administration and performance of such contract. In particular, in the event of a claim, including the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or discount on the price of an insurance contract, when the

⁹³ Recital (6) and Recital (9) of the IDD.

⁹⁴ Article 1(1,2) of the IDD.

⁹⁵ Article 2(1) of the IDD.

customer can directly or indirectly conclude an insurance contract using a website or other media.

Furthermore, the IDD adds new two activities which are not considered to constitute the insurance distribution:⁹⁶

- The mere provision of data and information on potential policyholders to insurance intermediaries and undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance contract.
- The mere provision of information about insurance products, an insurance intermediary, an insurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract.

The IDD regulates the insurance distribution activities of insurance distributors who are insurance intermediaries, ancillary insurance intermediaries, and insurance undertakings.⁹⁷ According to the IDD, an insurance intermediary can be any natural or legal person but must possess the following characteristics: (i) he or she takes-up and pursues the activity of insurance distribution for remuneration, and (ii) is other than whether insurance undertaking⁹⁸ or the insurance undertaking's employees, or an ancillary insurance intermediary.⁹⁹

Ancillary insurance intermediary is referred as a natural person or a legal person, other than a credit institution or an investment firm¹⁰⁰, who for remuneration, takes up or pursue the activity of insurance distribution on the ancillary basis and satisfies the following conditions:

- His/her principal professional activity is other than insurance distribution;

⁹⁶ Article 2(2) of the IDD.

⁹⁷ Article 2(8) of the IDD.

⁹⁸ As defined in Article 13(1,4) of the Solvency II.

⁹⁹ Article 2(3) of the IDD.

¹⁰⁰ As defined in points (1) and (4) of Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

- She or he only distributes insurance products that are complementary to goods or services.
- The insurance products he or she distributes do not cover life assurance or liability risks, unless these insurance products are (i) considered as complementary products with the goods or services, and (ii) provided as the principal professional activity of ancillary insurance intermediaries.

Notably, any ancillary insurance intermediaries who meet the following conditions will be excluded from the obligation of full compliance to the IDD's requirements:¹⁰¹

- If they provide insurance products that cover the risk of breakdown, loss of, or damage to, the good or the non-use of the service; or damage to, or loss of, baggage and other risks linked to travel;
- The amount of the premium paid for the insurance products provided by the ancillary insurance intermediaries does not exceed EUR 600 - the amount is calculated on a pro-rate annual basis;
- In the circumstances where the insurance product is complementary to the service and the duration of that service is equal to, or less than, three months, the amount of the premium paid per person does not exceed EUR 200.

However, insurance undertaking or intermediary who distributes its products through the ancillary insurance intermediaries stated above must comply with the following the IDD's requirements:¹⁰²

- They must provide customers with their identity and address and the information of the complaint procedure in which the customers and other interested parties can register complaints about insurance distributors;
- They must ensure appropriate and proportionate arrangements to comply with the general principle on providing information, rules on cross-selling, and

¹⁰¹ Article 1(3) of the IDD.

¹⁰² Article 1(4) of the IDD.

to consider the demands and needs of the customer before the proposal of the contract;

- They must provide the customers with the insurance product information document

3.7 The main new requirements of the Insurance Distribution Directive:

3.7.1 Registration requirements:

The IDD also sets down a condition for the registration of insurance distribution activities. According to this condition, an insurance intermediary or an ancillary insurance intermediary must provide its authority competent of home Member State the following information:¹⁰³

- The identities of shareholders or members who hold at least 10 per cent in the intermediaries, and the amounts of those holdings;
- The identities of persons who have close links with the intermediary;
- Information that those holdings or close links do not prevent the effective exercise of the supervisory functions of the competent authority.

A part from the information mentioned above, when insurance distributors establish a branch or a permanent presence within territory of another Member State in the first time, they must communicate with and provide their home Member State with information regarding the host Member State and their insurance distribution activity.¹⁰⁴

According to the IDD, insurance intermediaries and ancillary insurance intermediaries must register insurance distribution activity. Insurance undertakings who distribute insurance products directly do not need to register their activity of insurance distribution. However, insurance undertakings must register and ensure the

¹⁰³ Article 3(6) of the IDD.

¹⁰⁴ Article 6(1) of the IDD.

conditions for an insurance intermediary or an ancillary insurance intermediary who acts under their responsibility.¹⁰⁵ Insurance intermediaries now can distribute their insurance products through an ancillary insurance intermediary. The insurance intermediaries must register and ensure that the ancillary insurance intermediary comply with the requirements of the IDD.¹⁰⁶ It is important to stress that this is a new point of the IDD because under the IMD only insurance undertakings can use insurance intermediaries or tied insurance intermediaries to sell their insurance products.

Under the IDD, the registration procedure of the insurance distribution activity becomes more transparent and convenient for insurance distributors. Specifically, the IDD requires Member States to establish an online registration system that is easily to access and allows the registration form to be completed directly online.¹⁰⁷ Along with that, the EIOPA establishes and publishes on its website, and keep up-to-date a single electronic register that contain records. These records include information concerning insurance and ancillary insurance intermediaries who have noticed their intention to carry on cross-border business.¹⁰⁸ Additionally, the EIOPA establishes a website with hyperlinks of each single information point or, where applicable, register, established by the Member States.¹⁰⁹ Especially, the IDD lays down cases where the competent authority can refuse the registration of insurance distributor that was not specified under the IMD.¹¹⁰

The registration requirement is an important obligation that insurance distributors must comply with. If insurance distributors breach this obligation, the IDD requires competent authorities of Member States to apply administrative sanctions, including (i) issuing an order requiring the insurance distributors to cease the conduct and to

¹⁰⁵ Article 3(1) of the IDD.

¹⁰⁶ Article 3(1) of the IDD.

¹⁰⁷ Article 3(2) of the IDD.

¹⁰⁸ Article 3(4) of the IDD.

¹⁰⁹ Article 3(4) of the IDD.

¹¹⁰ Article 3(7) of the IDD.

desist from a repetition of the conduct and (ii) withdrawing the registration of insurance intermediaries and ancillary insurance intermediaries.¹¹¹

3.7.2 Professional and organisation requirements:

To ensure insurance distributors and their employees possess appropriate knowledge and ability of insurance distribution activities, the IDD stipulates three main requirements including (1) continuing professional training and development requirements; (2) verifying the knowledge and ability in the line with the particular activity of insurance distributor and the products distributed; and (3) demonstrating the knowledge and ability concerning insurance products and insurance distribution. According to the IDD, ancillary insurance intermediaries must comply with fewer the IDD's professional requirements, in comparison with insurance undertakings and intermediaries.

Under the new IDD, employees of insurance undertakings and intermediaries are required to have at least 15 hours training per year. The contents of the training include the nature of the products sold, the type of distributor, the role they perform, and the activity carried out within the insurance distributor. The successful completion of the training can be proven by a given certificate.¹¹² However, the training requirements will not apply for employees of ancillary insurance intermediaries. Therefore, insurance undertakings or intermediaries will verify the knowledge and ability of ancillary insurance intermediaries act under their responsibility.¹¹³

Furthermore, the training requirements will not apply for all the natural persons who work in insurance undertakings or intermediaries. These persons include (i) the relevant persons within the management structure of the insurance undertakings who are responsible for distribution, and (ii) those are directly involved in insurance distribution. However, these persons must demonstrate their professional knowledge

¹¹¹ Article 32(1) of the IDD.

¹¹² Para. 3, Article 10(2) of the IDD.

¹¹³ Para. 4, Article 10 (2) of the IDD.

and ability necessary for the performance of their duties. The IDD specifies the minimum professional knowledge and competence concerning life insurance, non-life insurance, and investment-based insurance products. Furthermore, insurance undertakings must establish, maintain, and keep up-to-date records of all the documentation concerning professional requirements.¹¹⁴

Finally, the IDD increases the amount of professional indemnity insurance and financial capacity. That is, insurance undertakings or intermediaries must hold at least EUR 1.25 million for each claim, and in aggregate EUR 1.85 million per year for all claims. For the financial capacity, they must hold at least EUR 18.75 thousand. Whereas, ancillary insurance intermediaries comply with particular regulations of Member States.¹¹⁵

3.7.3 Information requirements and conduct of business rules:

a. New general principle and general information:

The IDD sets down a general principle in providing information, and other important rules for conducts of insurance business that include the rule of cross-selling, and the standards for non-advice sales. The information provided to a customer can be divided into the general information and the information concerning conflicts of interest and transparency.

Regarding to the general principle on providing information, insurance distributors must act honestly, fairly, and professionally following the best interest of the customer. In addition, all information provided to the customer must be fair, clear and not misleading. Marketing communications must be identifiable. Insurance distribution must not conflict with a customer's interest, particularly, the insurance distributors must not allow to make any arrangement by way of remuneration and sales targets.¹¹⁶

¹¹⁴ Article 10(8) of the IDD.

¹¹⁵ Article 10(5) of the IDD.

¹¹⁶ Article 17 of the IDD.

According to the IDD, in a good time prior to concluding an insurance contract, insurance distributors must provide different general information to their customers. In comparison with the IMD, insurance must provide customer with the following additional disclosures:¹¹⁷

- insurance distributors must inform customers whether it is an insurance intermediary or an insurance undertaking or an ancillary insurance intermediary.
- Insurance undertaking and the intermediary must inform customers whether they provide advice about the insurance products sold.
- Insurance intermediary must notify the customer whether it is representing the customer or is acting for and on behalf of the insurance undertaking.

b. New disclosure requirements on information concerning conflicts of interest and transparency:

According to the IDD, prior to concluding an insurance contract, insurance intermediaries must provide customers with the following additional information:

- The nature of remuneration is associated with the insurance contract.¹¹⁸
- The working basis of the insurance contract, particularly, whether the contract works based on fees or commission or another type of remuneration or combination of those remunerations;¹¹⁹
- In the case that the fee is payable directly by customers, the insurance intermediaries must inform the customers the amount of the fee or, if that is not possible, the method for calculating the fee.¹²⁰

¹¹⁷ Article 18 of the IDD.

¹¹⁸ Point (d) of Article 19(1) and Article 19(4) of the IDD.

¹¹⁹ Point (e) of Article 19(1) of the IDD.

¹²⁰ Article 19(2) of the IDD.

Furthermore, insurance intermediaries and undertakings must disclose information of any payments other than the ongoing premiums and scheduled payments that are made by customers under an insurance contract after its conclusion.¹²¹ However, for ancillary insurance intermediaries, they must only disclose the nature of remuneration in relation to an insurance contract.

c. New standards for advice and sales where no advice is given:

The IDD requires insurance distributors (i) to ensure that a contract proposed must be consistent with the demands and needs of customers, and (ii) to provide the customers with a standard insurance product information document of a non-life insurance product.¹²² When providing an advice to customers, insurance distributors also must provide a personalised recommendation explaining why a particular product would best meet the customer's demands and needs.

d. Information conditions:

The new IDD also regulates the means of providing information; that includes through out printed papers, durable medium, and websites. Specifically, the IDD adds conditions regarding the use of durable medium and websites. According to these conditions, insurance distributors must ensure that the use of a durable medium or a website must be appropriate in the context of the business conducted between them and their customers. Additionally, for the durable medium, insurance distributors must ensure that they are given to customers a free choice of getting information via paper or a durable medium, and customers decides to choose the latter. Whereas, if the information is provided through websites, insurance distributors must comply with the following additional conditions:

- The customer has consented that the information is provided through websites;

¹²¹ Article 19(3) of the IDD.

¹²² Article 20(6, 7, 8), IDD.

- The customer has been notified electronically of the address of websites, and the place on the websites where that information can be accessed;
- The customers can access information on the website whenever they need to consult it for certain reasons.

Furthermore, if customers require, insurance distributors must provide the customers, without fees, printed copies of the general information¹²³, the information concerning the conflicts of interest and transparency¹²⁴, and the insurance product information document¹²⁵ that are already given through a durable medium or a website.¹²⁶

Finally, if insurance distributors fail to comply with the conduct of business requirement concerning any insurance products other than the IBIPs, then competent authorities of Member States must issue an order requiring insurance distributors to cease the conduct and to desist from a repetition of the conduct and withdraw the registration of insurance distributors.¹²⁷

3.7.4 New additional requirements concerning IBIPs:

The additional requirements concerning IBIPs were mentioned in the MiFID II that amended the IMD in 2014. The IDD retains the definition of IBIPs and the main requirements concerning conflicts of interests. Furthermore, the IDD provides new requirements relating to the disclosure of conflicts of interest, the additional information, reporting to customers, especially, assessment of the suitability and appropriateness of IBIPs. In addition, if insurance distributors fail to comply with the conduct of business requirements concerning IBIPs, then a competent authority of

¹²³ Referred to Article 18 of the IDD.

¹²⁴ Referred to Article 19 of the IDD.

¹²⁵ Referred to Article 20 of the IDD.

¹²⁶ Article 23(3) of the IDD.

¹²⁷ Article 32(1) of the IDD.

Member States must apply administrative sanctions and the maximum administrative pecuniary sanction.¹²⁸

a. Conflicts of interest:

The disclosure of conflicts of interest: According to the IDD, the disclosure includes sufficient details to enable customers to make an informed decision concerning the insurance distribution activities in the context of which the conflict of interest arises.¹²⁹ Particularly, the disclosure must (i) provide a specific description of the conflict of interest in question; (ii) explain the general nature and sources of the conflict of interest; (iii) explain the risk to the consumer that arise as a result of the conflict of interest and the steps undertaken to mitigate those risks; and (iv) clearly state that the organisational and administrative arrangements are not sufficient to ensure that risk of damage to interests of the customer will be prevented.¹³⁰

An effective organisation and administrative arrangements: The IDD specifies requirements regarding an effective organisation and administrative arrangements. Insurance undertakings and intermediaries must ensure that the arrangements are proportionate to the activities performed, the insurance products sold, and the type of distribution.¹³¹ Specifically, they must establish, implement, and maintain conflicts of interest policy. In addition, they must assess inducement or inducement scheme.

The conflicts of interest policy must be set out in writing and include (i) references to the specific insurance distribution activities carried out, the circumstances which constitute or may rise to a conflict of interest that are entailed a risk of damage to the interests of one or more customers and, (ii) procedures and measures to manage conflicts and to prevent them from damaging the interest of the customers. ¹³²

¹²⁸ Article 32(2) of the IDD.

¹²⁹ Article 28(2) of the IDD.

¹³⁰ Article 6(2) of the Commission Delegated Regulation (EU) 2017/2359.

¹³¹ Article 27 of the IDD.

¹³² Article 4(2) of the Commission Delegated Regulation (EU) 2017/2359.

Insurance undertakings and intermediaries must assess and periodically review, on a basis at least annually basis, the conflicts of interest policy, and take all appropriate measures to address deficiencies.¹³³

In addition, insurance intermediaries and undertakings must keep and regularly update a record of the situations in which (i) the conflicts of interest entailing a risk of damage to the interest of a customer has arisen or, (ii) in the case of ongoing service or activity may arise. Senior manager of the insurance intermediaries or undertakings must receive written reports on that situations, at least annually.

Insurance intermediaries and undertakings must assess inducement or inducement scheme whether it has a detrimental impact on the quality of the relevant service to the customer by performing overall analysis including the relevant factors which may increase or decrease the risk of detrimental impact on the quality of the relevant service to the customer, and any organisational measures taken by insurance companies or insurance intermediaries carrying out distribution activities to prevent the risk of detrimental impact.¹³⁴ Inducement means any fee, commission, or any non-monetary benefit provided by or to insurance distributors in connection with the distribution of an insurance-based investment product, to or by any party except the customer involved in the transaction in question or a person acting on behalf of that customer.¹³⁵ Inducement scheme means a set of rules governing the payment of inducements, including the conditions under which the inducements are paid.¹³⁶

Identification of conflicts of interest: Under the IDD, insurance undertakings and intermediaries must ensure that they proceed in the same way on the identification of conflict of interest between a customer and another.¹³⁷

¹³³ Article 4(1) of the Commission Delegated Regulation (EU) 2017/2359.

¹³⁴ Article 8(2) of the Commission Delegated Regulation (EU) 2017/2359.

¹³⁵ Article 2(2) of the Commission Delegated Regulation (EU) 2017/2359.

¹³⁶ Article 2(3) of the Commission Delegated Regulation (EU) 2017/2359.

¹³⁷ Para. 2, Article 3(1) of the Commission Delegated Regulation (EU) 2017/2359.

b. Additional information provided to customers:

In addition to general information, insurance undertakings and intermediaries must provide to customers with additional information:¹³⁸

- A periodic assessment of the suitability of IBIPs when the IBIPs sold with an advice. The insurance distributors must ensure that the periodic report contains updated information, stating how the IBIPs meets the customer's preferences, objectives, and other characteristics of customers.¹³⁹ Insurance undertakings or intermediaries must review the suitability of the recommended IBIPs at least annually. This review can be done more frequently; however, it depends on the characteristic of customers and the nature of the recommended IBIPs.
- The guidance on, and warnings of the risks associated with the IBIPs or in respect of particular investment strategies proposed.
- The information concerning the cost of advice, where relevant, the cost of the IBIPs recommended or marketed to customers; how customers may pay for it, encompassing any third party payments. The information of all costs and charges in connection with the distribution of the IBIPs will be in an aggregated form. If customers request, insurance intermediaries or undertakings must provide an itemised breakdown of the cost and charges based regularly, at least annually, during the life cycle of the investment.¹⁴⁰

In addition, insurance undertakings and intermediaries must provide the customer with the following documents:

- A record including documents agreed between an insurance intermediary or undertaking and customers that set out the rights and obligations of the

¹³⁸ Article 29(1) of the IDD.

¹³⁹ Para. 6, Article 30(5) of the IDD.

¹⁴⁰ Article 29 of the IDD.

parties, and the other terms on which the intermediary or undertaking will provide services to the customer.¹⁴¹ The record will be retained in medium and the storage of information in an accessible way for future reference by the competent authority.¹⁴²

- Adequate reports on a durable medium including periodic communications to customers, the type and the complexity of IBIPs involved and the nature of the service provided, where applicable, the cost associated with the transaction, and service undertaken on behalf of customers.¹⁴³ The periodic report shall be provided at least annually.¹⁴⁴
- A suitability statement on a durable medium before the conclusion of the contract in the case the advice is given. The suitability statement will specify the advice given and how that advice meets the preferences, objectives and other characteristics of the customer.¹⁴⁵ Furthermore, when selling IBIPs with distance communication, the insurance undertakings or intermediaries must provide a suitability statement immediately after a customer is bound by an insurance contract. They must ensure that the customer has consented to receive the suitability statement without undue delay after the conclusion of the contract and has been given the option of delaying the conclusion of the contract to receive the suitability statement in advance of such conclusion.¹⁴⁶

c. New requirements of assessment of suitability or appropriateness of IBIPs:

Under the IDD, when selling IBIPs with a given advice, insurance undertakings or intermediaries must assess the suitability of IBIPs. However, in the case of non-advice they must assess the appropriateness of IBIPs.

¹⁴¹ Article 30(4) of the IDD.

¹⁴² Article 19(4) of the Commission Delegated Regulation (EU) 2017/2359.

¹⁴³ Para. 1, Article 30(5) of the IDD.

¹⁴⁴ Article 18(3) of the Commission Delegated Regulation (EU) 2017/2359.

¹⁴⁵ Para. 2, Article 30(5) of the IDD.

¹⁴⁶ Para. 3, Article 30(5) of the IDD.

To assess the suitability of IBIPs, insurance undertakings or intermediaries must obtain information from customers and potential customers, including (i) customers' knowledge and experience in the investment field relevant to the specific type of product or service; (ii) customers' financial situation, particularly, the person's ability to bear losses; (iii) customers' investment objectives, particularly, person's risk tolerance.¹⁴⁷ The insurance undertakings or intermediaries can determine the extent of the information to be collected from customers and potential customers.¹⁴⁸ For group insurance, they must establish, implement and record policy for group insurance. The policy aims to determine who shall be subject to the assessment of the suitability of IBIPs. This policy also contains rules, stating how that assessment will be done in practice, whose information about knowledge, experience, financial situation and investment objectives shall be collected.

Additionally, when gathering information from customers, insurance undertakings and intermediaries must ensure that they will (i) not create ambiguity or confusion about their responsibility in the process of assessing the suitability of IBIPs, and (ii) inform customers clearly and simply that the reason for assessing suitability is to enable them to act in the customer's best interest.¹⁴⁹ They also must ensure the reliability of the information that they collect from customers and potential customers for assessing the suitability of IBIPs.¹⁵⁰

When IBIPs sold without advice, insurance undertakings or intermediaries must assess the appropriateness of these products by asking customers their information regarding their knowledge and experience in the investment field relevant to the specific type of products and service offered or demanded. In addition, insurance undertakings or intermediaries must provide a standard form to warn the customers that the product is not appropriate. Furthermore, when the customers do not provide

¹⁴⁷ Article 30(1) of the IDD.

¹⁴⁸ Article 9(1) of the Commission Delegated Regulation (EU) 2017/2359.

¹⁴⁹ Article 11 of the Commission Delegated Regulation (EU) 2017/2359.

¹⁵⁰ Article 10(1) of the Commission Delegated Regulation (EU) 2017/2359.

their information or the information provided is insufficient, the insurance undertakings or intermediaries must warn the customers that they are not in a position to determine whether product envisaged is appropriate for them.¹⁵¹ However, insurance undertakings or intermediaries do not need to ask information from customers, and warn the inappropriateness of IBIPs to customers, if they meet the all following conditions: (i) the IBIPs are non-complex and not difficult for customers to understand; (ii) the insurance distribution activity is carried out at the initiative of the customers; (iii) the customers informed the insurance distributors are not required to assess the appropriateness of the IBIPs, and the insurance distributors comply with obligation on article 27 (Prevention of conflicts of interest) and Article 28 (Conflicts of interest).¹⁵²

3.7.5 Rules on cross-selling:

According to article 24 of the IDD, cross-selling means that insurance products sold together with another product or service are not insurance and as a part of a package or the same agreement.

There are two distinct cases of cross-selling. Firstly, it is an insurance product offered together with an ancillary product or service. Secondly, it is an insurance product that is ancillary with another product or service. In both cases, insurance distributors who practice cross-selling must inform or offer customers a possibility of buying different components separately. However, this rule is not applied in the case of an insurance product is ancillary to an investment service or activity¹⁵³, a credit agreement¹⁵⁴, or payment accounts¹⁵⁵. Additionally, for the first case, when customers

¹⁵¹ Article 30(2) of the IDD.

¹⁵² Article 30(3) of the IDD.

¹⁵³ As defined in point 2 of Article 4(1) of the MiFID II.

¹⁵⁴ As defined in Article 4(3) of Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreement for consumers relating to residential immovable property and amending Directive 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010.

¹⁵⁵ As defined in Article 2(3) of Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basis features (hereinafter referred to as Payment Account Directive).

can buy the products separately, insurance distributors must provide customers with the following additional information:

- An adequate description of the different components of the agreement or package, separate evidence of the costs and charges of each component;
- In the case of a risk or an insurance coverage is resulting from such an agreement or package offered to customers is different from that associated with the components taken separately, the insurance distributor must provide an adequate description of the different components of the agreement or package and how their interaction modifies the risk or the insurance coverage.

Furthermore, insurance distributors must specify the demands and needs of customers concerning insurance products.

3.7.6 Oversight and governance insurance products:

The IDD imposes rules on products' oversight and governance (POG) that are applied to insurance undertakings or intermediaries who are (i) manufacturers of any insurance products; and (ii) distributors advising on, or proposing insurance products that they do not manufacture.¹⁵⁶ According to that, manufacturers must operate and review a product approval process, whereas, distributors must establish and review insurance distribution arrangements.

A product approval process must (i) be proportionate and appropriate to the nature of an insurance product, and (ii) specify an identified target market for each product.¹⁵⁷ The product approval process includes measures and procedures for designing, monitoring, reviewing, and distributing insurance products, as well as corrective actions for insurance products that are detrimental to customers. It must be set out in a written document and named as "product oversight and governance policy". This policy is made available to manufacture's body or structure that are responsible for the

¹⁵⁶ Article 2 of the Commission Delegated Regulation (EU) 2017/2358.

¹⁵⁷ Article 25(1) of the IDD.

manufacturing of insurance products. To ensure that the process is still valid and up to date, manufacturers must regularly review their products' approval process and amend the approval process where necessary.

Product distribution arrangements must contain appropriate measures and procedures to obtain from manufacturers all appropriate information on insurance products that they intend to offer their customers, and to fully comprehend those insurance products. Therefore, manufacturers must make available all appropriate information on insurance products and the product approval process to insurance distributors who are not manufacturers.¹⁵⁸ The product distribution arrangements must be set out in a written document and available to the relevant staff of the insurance distributors.

a. **Designing:**

According to POG rules, the activity of designing of insurance products must include the activity of identifying target market and the activity of testing insurance products. In general, manufacturers must ensure that their designing of insurance product must (i) take into account the objectives, interests and characteristics of customers; (ii) not adversely affect customers; and (iii) prevent or mitigate customers' detriment. This implies that manufacturers must focus on customer protection at the beginning of the life cycle of an insurance product.

Target market: manufacturers must identify a target market at a sufficiently granular level and take into account the characteristics, risk profile, complexity, and the nature of insurance products. Manufacturers must ensure their staffs who are involved in the activity of designing and manufacturing of insurance products have necessary skills, knowledge, and expertise to properly understand insurance products. Additionally, they must ensure the interest, objectives and characteristics of customers

¹⁵⁸ Article 25(1) of the IDD.

are belong to the target market. Manufacturers must use their identified target market to assess and test their insurance products.

Product testing: the activity of testing insurance products aims to assess whether insurance products meet the identified needs, objectives, and characteristics of target market. Therefore, manufacturers must not design and bring insurance products to the market if insurance products are not compatible with the target market. Manufacturers must test insurance products in the following situations: (i) before bringing insurance products to the market, or (ii) significantly adapting insurance products, or (iii) the target market has significantly changed. Manufacturers can test their products in a qualitative manner or in a quantitative manner. For the latter, it depends on the type and nature of an insurance product and the related risk of detriment to customers

b. **Monitoring, reviewing and corrective actions:**

Manufacturers must monitor and review insurance products that they have brought to the market. Particularly, the manufacturers must identify (i) events that could materially affect the main features, and (ii) the risk coverage or the guarantees of an insurance product; and (iii) any circumstances related to insurance products that may adversely affect customers. Manufacturers must assess whether insurance products remain consistent with their identified target market, and if they are distributed to the target market or are reaching customers outside the target market.

Monitoring: Manufacturers must continuously monitor insurance products. The activity of monitoring is a permanent process, and requires manufacturers to remain alerted to crucial events that would substantially affect the main features of insurance products. Therefore, manufacturers should set up an alert system to define a process under which the insurance business units who monitor certain information will report to monitoring managers the occurrence of alert situations.¹⁵⁹

¹⁵⁹ Pierpaolo Marano (2019), *The Product Oversight and Governance and Liabilities*, in *Distribution of Insurance-Based Investment Products: The EU Regulation and the Liabilities*, Pierpaolo Marano, Ioannis Rokas (ed.), Springer, p.80,

Reviewing: Manufacturers must review regularly their insurance products. Manufacturers can determine appropriate intervals for their regular review. This is based on the nature of the products, and the target market, or events that could materially affect the potential risk to customers.¹⁶⁰ This allows manufacturers to adjust the frequency of the review process to adapt with changes in timing of the internal design product, the size, scale, and complexity of the insurance undertaking and of the different products it manufactures.¹⁶¹ According to the POG rules, manufacturers play a main role in the review process. However, insurance distributors must also coordinate with the manufacturers by means of providing them relevant sales information, and information on their regular reviews of the products distribution arrangements.¹⁶²

Corrective actions: After the monitoring and the review process, manufacturers must (i) take appropriate actions to mitigate circumstances that are related to insurance products and prevent further occurrences of the detrimental event; and (ii) inform promptly concerned insurance distributors and customers about the remedial action taken. Besides that, when insurance distributors become aware (i) an event that could materially affect the potential guarantees to the identified target market; or (ii) insurance products might cause detriment to customers, they must promptly inform with manufacturers.¹⁶³ Manufacturers are free to decide steps, as well as specific appropriate actions to be taken to correct insurance products.¹⁶⁴ However, they must

¹⁶⁰ EIOPA, Final Report on Consultation Paper no. 16/006 on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive, p.41.

¹⁶¹ Same Final Report, p.41.

¹⁶² Article 10(6) of the Commission Delegated Regulation (EU), 2017/2358.

¹⁶³ Article 11 of the Commission Delegated Regulation (EU) 2017/2358.

¹⁶⁴ According to the Final Consultation Report no. 16/006, the appropriate actions could be the following (the list is not exhaustive):

- *the provision of any relevant information on the event and its consequences on the product to the customer, or the distributors of the product if the firm does not offer directly the product to the customer;*
- *changing the product approval process;*
- *changing the product;*
- *proposing a new product to the customer;*
- *changing the target market;*

ensure their changes to insurance products that are consistent with the already existing market, and do not have an adverse impact on the customers to which the product has been sold already.¹⁶⁵

c. **Distributing:**

Regarding POG's requirements on distributing of insurance products, manufacturers must (i) select distribution channels that are appropriate with the identified target market; (ii) provide insurance distributors with all appropriate information; and (iii) monitor insurance distributors act in accordance with the objective of a product approval process, and take appropriate remedial actions when the distribution is not in accordance with the objective of their product approval process. To select the appropriate distribution channels, manufacturers must take into account the particular characteristics of the relevant insurance products.

Manufacturers must ensure staffs of insurance distributors who must understand the characteristics of insurance products, and also have the appropriate skills to distribute the products correctly, such as employees of banks or ancillary insurance intermediaries. The manufacturers must provide the insurance distributors with clear, complete and updated information on the insurance products, the identified target market and the suggested distribution strategy. Additionally, they need to coordinate with the insurance distributors to provide professional training for these staffs.

For insurance distributors, their body or structure are responsible for insurance distribution will endorse and be ultimately responsible for establishing, implementing and reviewing product distribution arrangements and continuously verify internal compliance with those arrangements. They can determine the appropriate intervals for

-
- *stopping further issuance of the product;*
 - *contacting the distributor to discuss a modification of the distribution process;*
 - *terminating the relationship with the distributor;*
 - *informing the relevant competent authority; or*
 - *informing the customer.*

¹⁶⁵ EIOPA (February 2017), Final Report on Consultation Paper no. 16/006 on Technical Advice on possible delegated acts concerning the Insurance Distribution Directive, p.43.

the regular review of their product distribution arrangements and ensure that those arrangements are still valid and up to date. They must verify insurance products are distributed to the identified target market. Where appropriate, insurance distributors need to amend the product distribution arrangements.

In addition, insurance distributors must ensure any specific distribution strategy must be in accordance with the distribution strategy of manufacturers of insurance products. Where appropriate, they need to amend their distribution strategy for the insurance products in the case that they become aware (i) insurance products are not in line with the interests, objectives and characteristics of their identified market or; (ii) other product-related circumstances that may adversely affect customers.

3.7.7 The competence between the home and host Member State:

The IDD splits the competence between regulators of host and home Member State on measuring any breaches of the IDD's obligations when an insurance or ancillary insurance intermediary exercises its freedom to establish and provide services in the Community. In principle, any breach of the IDD that needs to be referred back to the competent authority of home Member State who must take responsibility to measure. Competent authorities of the host and home Member State must inform for each other of any such measures taken.¹⁶⁶

Under the new IDD, the jurisdiction of the host Member State's regulator can be granted. Specifically, when measures that are taken by home Member State are not enough, host Member State can take appropriate and stricter measures to prevent further irregularities and prevent the intermediaries from continuing to carry on new business with its territory. Additionally, the host Member State can act as the home Member State if the primary place of business of an insurance or ancillary insurance intermediary located in the host Member State other than its home Member State.¹⁶⁷ In this case, to ensure that insurance or ancillary insurance intermediaries comply with

¹⁶⁶ Para. 2 and 3 of Article 5 (1) and Article 8(2,3) of the IDD.

¹⁶⁷ Article 7 of the IDD.

the obligations of the IDD, competent authorities of the host Member State have right to (i) examine establishment arrangements, (ii) request changes as are needed to enforce the obligation concerning information, conduct of business rules, the additional requirements concerning IBIPs, and (iii) measure adopted pursuant thereto concerning the services or activities provided the establishment within its territory.¹⁶⁸

CHAPTER 4: DISCUSSION

4.1 The scope of the IDD:

Under the IDD, banks are no longer considered as tied insurance intermediaries or ancillary insurance intermediaries. Therefore, banks must register their insurance distribution activities as insurance agents and comply fully the IDD's requirements.

Before the IDD, there are two options in which banks can become tied insurance intermediaries. The first option is defined for banks who carry out the activity of insurance mediation for and on behalf of one or more insurance undertakings. In this

¹⁶⁸ Article 7(2) of the IDD.

context, they act under the full responsibility of those insurance undertakings for insurance products. Under the IDD, this kind of tied insurance intermediary is now must be registered as insurance agents.

The second option is for banks who act under the responsibility of one or several insurance undertakings for insurance products. These insurance products are complementary to a good or a service supplied in the framework of the banks' principal professional activity. According to the IDD, this kind of tied insurance intermediaries must be considered as ancillary insurance intermediaries. However, according to the IDD, ancillary insurance intermediaries cannot be credit institutions. This means that the banks can carry out distributing insurance products based on an ancillary basis as insurance agents, and comply fully the IDD's requirements.

Before the IDD applied, the IMD requires fewer responsibilities for banks than insurance agents. For example, banks do not need to comply with IMD's requirements on information and professional, and rules on conducts of business. Instead, insurance companies carrying on insurance business through banks, must ensure conditions for banks to comply with these IMD's requirements. Therefore, under the IDD, banks who have been registered as tied insurance intermediaries might be affected than those who have been registered as insurance agents. Thus, banks registered as tied insurance intermediaries must adjust their activities in distributing insurance products in order to comply with the new requirements for insurance agents that are not compulsory under the IMD. These requirements include information requirements, the conduct of business requirements, and products oversight governance.

4.2 The rule on cross-selling:

According to the IDD, when banks offer an ancillary insurance product together with main product and service which are not an investment activity or service, a credit agreement, or a payment account, they must also give customers a choice to buy individual components separately. This means that customers can deny to buy the

ancillary insurance product if they found that is not necessary for their demands. For banks, this is the stricter requirement. It prevents banks to offer unnecessary and unwanted insurance products to their customers. In addition, to ensure that ancillary insurance products are appropriate with customers, banks must specify the demands and needs of customers in relation to insurance products that form a part of the overall package or the same agreement. This implies that banks must respect the customer's choice and understand their customers' demands and needs better rather than merely focussing on sales of insurance products, and commission obtained from insurance companies.

4.3 The professional and organisation requirements:

Prior to the IDD, insurance companies who cooperate with banks to sell insurance products verify the knowledge and ability of banks concerning insurance products.¹⁶⁹ In addition, if necessary, the insurance companies can provide the banks a training service to help banks to have appropriate knowledge and ability concerning insurance products.

However, under the IDD, banks now must comply with stricter and more specific professional requirements. Specifically, banks must ensure their employees have at least 15 hours of training about insurance products and insurance distribution per year. The contents of the training should include the nature of insurance products, the type of insurance intermediaries of banks, the role of the employees, and the activity carried out within the banks. Regarding the format of the training, the IDD does not provide any specific requirements; and therefore, it can be flexible and adaptable including course, e-learning or mentoring.¹⁷⁰ The successful completion of the training and development requirements can be proven by obtaining a certificate. The IDD does not stipulate the particular roles of insurance undertakings on conducting the

¹⁶⁹ Para 3 of Article 4(1) of the IMD.

¹⁷⁰ Nic De Maesschalck (2017), *The Insurance Distribution Directive: What does it change for intermediaries and for others?* in *Insurance Regulation in the European Union: Solvency II and Beyond*, p. 67.

continuing professional training for employees of insurance intermediaries. Therefore, banks and insurance companies are free to discuss and manage their particular roles in conducting the training according to their agreement.

The continuing professional training requirements might increase the operational costs for banks. As a consequence, this might increase the cost of insurance products through fees or taxes.¹⁷¹ Furthermore, banks need to arrange actively their specific role in conducting the training and coordinate with insurance companies to train their employees effectively.

4.4 The information duties and conducts of business requirements:

According to the new IDD, banks must provide customers information on insurance products, an insurance contract, and information on banks and insurers. Compared with the IMD, banks must provide customers more information. Especially, banks now must provide customers the nature of any fees and benefits paid by the third party, as well as the working basis of insurance contracts. Besides that, they must ensure their the information that be provided through durable medium or websites must comply with the new conditions of the IDD.

In addition, depending on the types of insurance products and the insurance distribution with or without advice, the information provided to customers can be different. For instance, in the case of sale with advice, banks must provide customers a personalised recommendation explaining why insurance products would best meet the customer's demands and needs. If insurance products are IBIPs, banks must provide customers a suitability statement, a periodic assessment of the suitability of IBIPs, records, and reports concerning IBIPs. Therefore, before concluding any

¹⁷¹ Annette Hofmann, Julia K. Neumann, and David Pooser (2018), *Plea for Uniform Regulation and Challenges of Implementing the New Insurance Distribution Directive*, The Geneva Papers, 43, 740-769, p. 765.

insurance contract, banks must inform customers whether or not they will be received an advice during the sale of insurance products.

Furthermore, banks must provide customers a document about the insurance products that include the relevant information concerning the complexity of insurance products and type of customers. Especially, when distributing non-life insurance products, banks must provide customers another document that must be drawn up by manufacturers.

To ensure that the recommended insurance products are appropriate with customers, banks need to specify the demands and needs of the customers for each specific insurance product. This requirement applies to all types of insurance products, all types of insurance distributors, as well as to cross-sell, sale with or without the advice that were mentioned in the IMD. However, the IDD requires more than that. That is, when selling IBIPs, banks must conduct the assessment of the suitability or appropriateness of IBIPs. Additionally, when gathering necessary information from customers to assess the suitability of IBIPs, banks also need to comply with the additional requirements that mentioned in Section 3.7.4 (b). Therefore, banks need to determine exactly necessary information that they must provide to their customers to ensure that customers are not overloaded by unnecessary information.

Regarding the conduct of business requirements concerning IBIPs, banks now must comply with more requirements such as establishing the conflicts of interest policy; and assessing inducement or inducement scheme to prevent the conflicts of interest of customers. These requirements are new for banks.

4.5 Product oversight and governance:

POG rules apply to the entire life cycle of all types of insurance products regardless life or non-life insurance products. Banks must comply with the POG rules when they are distributors or co-manufacturers of an insurance product.

For banks who are distributors of insurance products, they must establish, regularly review product distribution arrangements, and keep informing promptly with manufacturers to ensure that their distribution strategy is in line with the target market of manufacturers and the benefits of customers. Especially, banks need to collaborate with manufacturers to review insurance products. Specifically, they must provide the manufacturers the necessary information concerning insurance products whenever the manufacturers require.

In the case that both banks and insurance companies are manufacturers of insurance products, banks are considered as co-manufacturers and must comply with POG's requirements for manufacturers. However, particular requirements for banks depend on an agreement between the banks and the insurance companies.

Because of the POG's rules for manufacturers banks are now under a pressure to change their strategy in conducting insurance bussines. That is, since now banks must focus on real values that those products bring to their customers rather than focusing only on values for their shareholders, directors and senior managers.¹⁷² Besides that, the POG might create additional costs in manifacturing insurance products as both banks and insurance companies must set up an adequate POG process and adjust their IT systems. The additional cost might be taken into account in the pricing of their insurance products. As a result, insurance products might become more expensive for customers.¹⁷³

¹⁷² Pierpaolo Marano (2019), *The Product Oversight and Governance Standards and Liabilities*, in *Distribution of Insurance-based Investment Products-The EU Regulation and the Liabilities*, P. Marano, I. Rokas (ed.), p. 66.

¹⁷³ Thomas Kohne and Christoph Brommelmeyer (2018), *The new Insurance Distribution Regulation in the EU – A critical assessment from a legal and economic perspective*, *The Geneva Papers*, 43, p. 726.

CHAPTER 5: CONCLUSION

This dissertation presented a comprehensive study of bancassurance in Europe and possible impacts of the new EU Insurance Distribution Directive (IDD) on the bancassurance activities.

Banks and insurance companies can cooperate to conduct insurance business under many different bancassurance models. The difference between the models relies on the integration level of banking and insurance activities. However, in general, all models have a common characteristic, that is, insurance companies are in charge of designing insurance products, while banks are responsible for selling insurance products. In return, insurance companies pay back commissions to banks.

The new IDD aims to give more protection to insurance customers. Specifically, the Directive provides stricter and more standardised requirements than the IMD. The scope of the IDD covers all types of insurance distributors. The IDD regulates not only the distribution activities but also the manufacturing activities of insurance products. The new IDD implies that banks, ancillary insurance intermediaries, other insurance intermediaries, and manufacturers must ensure that their insurance products meet the best of customers' benefits. Furthermore, insurance distribution activities must be able to prevent and mitigate the conflicts of interest that are detrimental to customers.

According to the new IDD, it can be concluded that there is no longer different between banks and other insurance intermediaries. This, because under the new IDD, banks must register their insurance distribution as insurance intermediaries. In comparison with the previous requirements of the IMD, we found that the IDD tightens the activities of insurance distribution of banks through prohibiting banks to become tied or ancillary insurance intermediaries and providing stricter requirements that banks must comply with. For instance, banks must disclose more information concerning conflicts of interest and transparency to their customers, must conduct annually professional training for their employees, and comply with stricter rules on

cross-selling, as well as rules on insurance product oversight and governance. Besides, for banks who distribute IBIPs, they must comply with the additional requirements relating to IBIPs.

However, so far, we found no study or particular complaints from banks stating that the new IDD places more difficulties and barriers in distributing insurance products to customers. This might be due to the fact that the new IDD has only been applying for two years (since 2018), thus, it might take more time to have a full assessment.

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