

Country-by-country analysis - Austria

Annex IX to the Report on the application of the
Insurance Distribution Directive (IDD)

Consumer Protection Department
EIOPA REGULAR USE
EIOPA-BoS-21/584
06 January 2022

Note:

Powers of national competent authorities (NCAs):

In January 2021, EIOPA launched an online survey addressed to NCAs to gather input as to whether they are sufficiently empowered to carry out their tasks. The following information is based on the responses from the Austrian Financial Market Authority (FMA) and the Federal Ministry for Digital and Economic Affairs (BMDW) to this survey.

The figures should be interpreted with some caution as insurance markets – including the number and type of insurance intermediaries operating therein – vary significantly across Members States, as well as the supervisory structure and framework. **There are, therefore, limits to the level of comparability of data.**

Changes in the EU insurance distribution market:

In February 2021, EIOPA launched a survey addressed to NCAs to gather information on the insurance intermediaries' market structure and patterns of cross-border activities. The following information is based on the responses from the Austrian Financial Market Authority (FMA) and the Federal Ministry for Digital and Economic Affairs (BMDW) to this survey.

The figures should be interpreted with some caution as there are differences as to how intermediaries are registered in their home Member State, in the national categories of insurance intermediaries and in the approaches by NCAs to collect data.

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Information on the insurance intermediaries' market structure and patterns of cross-border activity

General data of the national market (2020):

	Amounts	Share total EEA
Population (in 1000) ¹	8,901	2.0%
(Re)insurance GWP (in million) ²	19,113.73	1.2%
Number of (re)insurance undertakings ³	34	1.4%
Number of registered insurance intermediaries	18,385	2.1%

National competent authorities:

The Austrian Financial Market Authority (FMA) is the competent authority for the supervision of insurance distribution activities of insurance undertakings and credit institutions. With regard to banks as intermediaries, the full implementation of IDD into Austrian law was completed in June 2019.

¹ Based on eurostat data:

<https://ec.europa.eu/eurostat/documents/2995521/11081093/3-10072020-AP-EN.pdf/d2f799bf-4412-05cc-a357-7b49b93615f1>

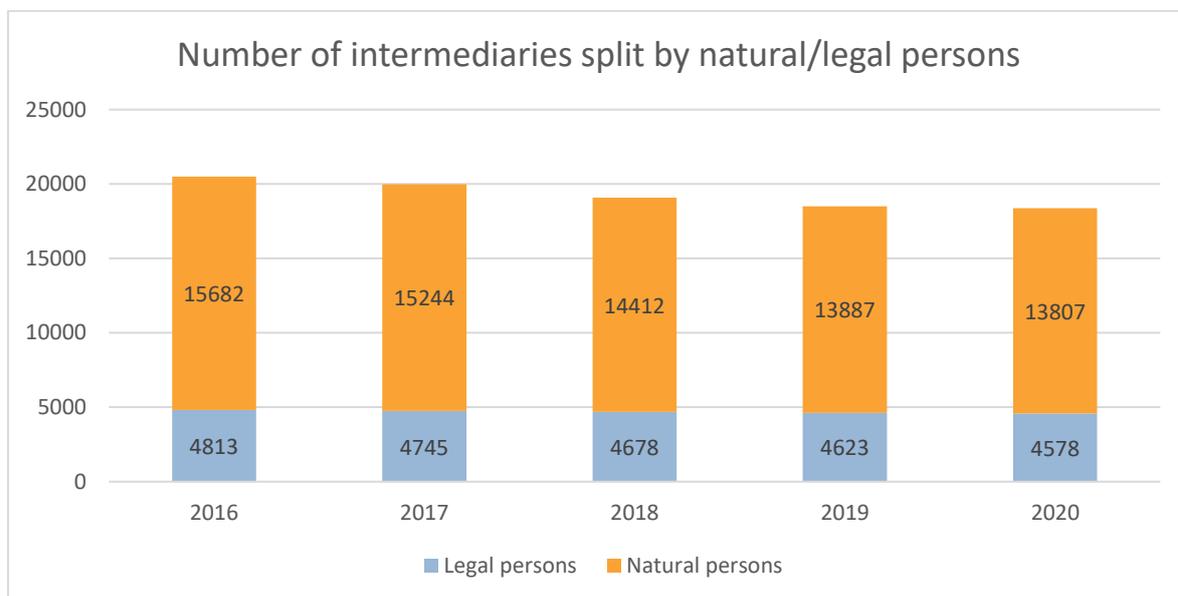
² (Re)insurance GWP includes life and non-life premiums generated by domestically registered undertakings year-end 2020 based on annually reported SII information:

https://www.eiopa.europa.eu/tools-and-data/insurance-statistics_en#Premiums,claimsandexpenses

³ Number of (re)insurance undertakings includes the domestically registered undertakings. Based on SII information (see link above)

The Federal Ministry for Digital and Economic Affairs (BMDW) is the competent authority for the supervision of insurance intermediaries. This is within the Austrian constitutional organisation a matter of Art. 102 B-VG (Federal Constitutional Act), so called “indirect federal administration” with the Ministry as head, 9 regional governors and approximately more than 100 local district authorities of first instance.

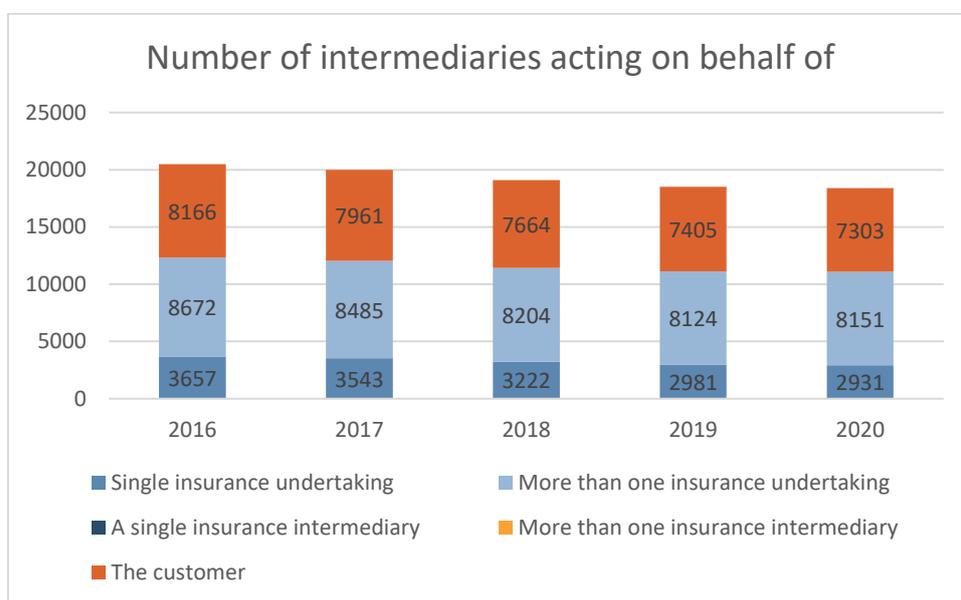
Registered insurance intermediaries split by natural and legal persons:



Online registration system:

There is the possibility to do the application to a trade under the Trade Act 1994 (Gewerbeordnung) fully online. Insurance intermediaries are a trade under the mentioned Act, therefore you can register yourself as an intermediary fully online according to Art. 3 IDD. The data of the registered trades and thus also of insurance intermediaries is being updated on a permanent basis.

Registered insurance intermediaries split by categories based on the activities of insurance intermediaries:



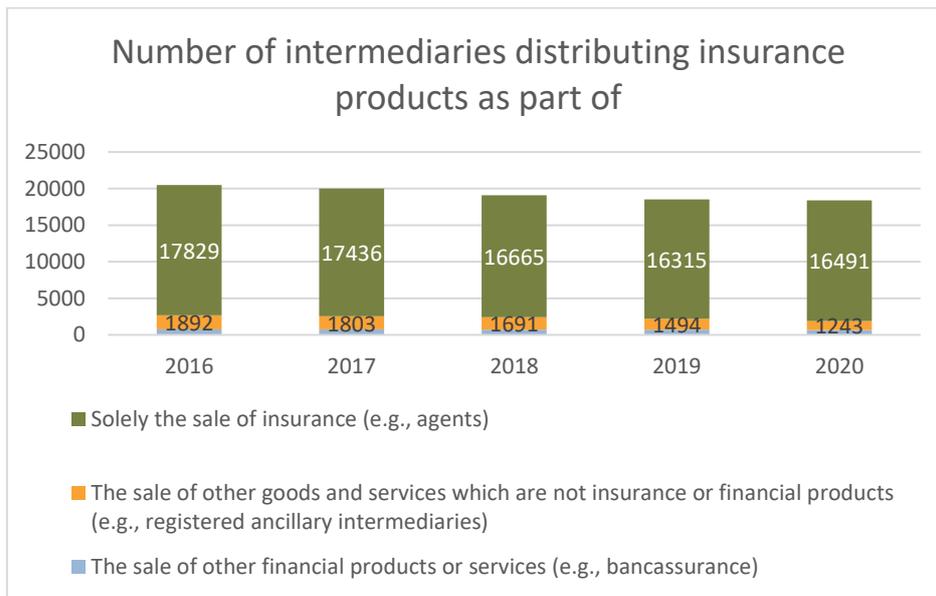
Comments provided by the NCA on the figures included in the chart above:

"Single insurance intermediary" and "More than one insurance intermediary" we have in the register (GISA) but do not register them differently to any other intermediaries; therefore we have no separate numbers of this type of intermediaries.

Registered insurance intermediaries split by categories based on the way in which they are paid:

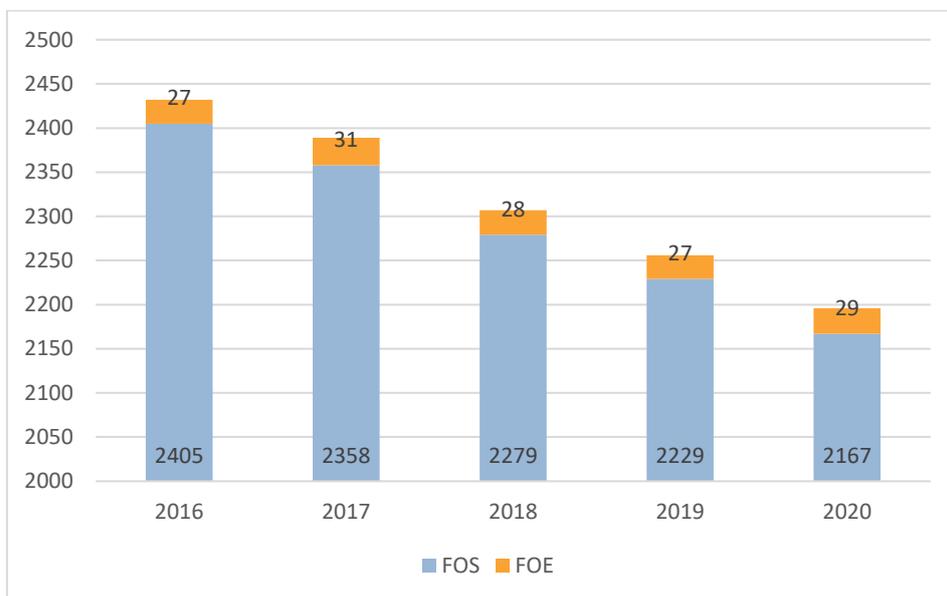
We only are often hearing that very most intermediaries are being paid by commission.

Registered insurance intermediaries split by categories based on the basis in which they sell insurance products:



Number of domestic insurance intermediaries with a passport to carry out insurance mediation activities under freedom to provide services (FOS) or under freedom of establishment (FOE)

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Number of insurance intermediaries with a passport to carry out insurance mediation activities under FOS or under FOE at the reference date 31.12.2020 split by host Member State:

<i>Host Member State</i>	<i>1. FOS</i>	<i>2. FOE</i>	<i>3. TOTAL</i>
<i>Austria</i>	0	0	0
<i>Belgium</i>	985	0	985
<i>Bulgaria</i>	167	0	167
<i>Cyprus</i>	968	0	968
<i>Croatia</i>	133	4	137
<i>Czech Republic</i>	1,138	2	1,140
<i>Denmark</i>	975	0	975
<i>Estonia</i>	964	1	965
<i>Finland</i>	968	0	968
<i>France</i>	1,005	0	1,005
<i>Germany</i>	1,944	15	1,959

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<i>Greece</i>	979	1	980
<i>Hungary</i>	1,186	0	1,186
<i>Iceland</i>	947	0	947
<i>Ireland</i>	970	0	970
<i>Italy</i>	1,235	2	1,237
<i>Latvia</i>	967	0	967
<i>Liechtenstein</i>	1,111	0	1,111
<i>Lithuania</i>	967	0	967
<i>Luxembourg</i>	1,000	0	1,000
<i>Malta</i>	974	0	974
<i>Netherlands</i>	985	0	985
<i>Norway</i>	950	0	950
<i>Poland</i>	1,037	3	1,040
<i>Portugal</i>	967	0	967
<i>Romania</i>	186	3	189
<i>Slovakia</i>	1,132	2	1,134
<i>Slovenia</i>	1,146	2	1,148
<i>Spain</i>	987	0	987
<i>Sweden</i>	970	0	970
<i>Total EEA</i>	27,943	35	27,978
<i>Austria</i>	0	0	0

Information on the powers of the NCAs

Statutory powers to implement the IDD:

FMA:

I. The Austrian Insurance Supervision Act 2016 lays down the following statutory powers with respect to the implementation of the IDD:

- Objectives of supervision - Article 267 Insurance Supervision Act 2016
- Principles of supervision - Article 268 Insurance Supervision Act 2016
- Market monitoring - Article 268a Insurance Supervision Act 2016: “The FMA shall monitor the market for insurance products, including the market for ancillary insurance products that are marketed, distributed or sold in Austria or from Austria in addition to other products or services exclusively observing the public interests listed in Article 267 paras. 1 and 2.”
- Information, notification and presentation obligations - Article 272 Insurance Supervision Act 2016
- Supervisory review process - Article 273 Insurance Supervision Act 2016
- On-site inspection - Article 274 Insurance Supervision Act 2016:
“(1) The FMA may at any time inspect the business activities of the insurance and reinsurance undertakings on site.”
- Orders by the FMA - Article 275 Insurance Supervision Act 2016:
“(1) The FMA shall give any orders:
 1. which are necessary and appropriate to ensure compliance of the business activities with the provisions applicable to contractual insurance activities, in particular the provisions of this federal act, the implementing regulation (EU), Delegated Regulations (EU) 2017/2358 and 2017/2359 and the technical standards (EU);
 2. which are necessary and appropriate to remedy weaknesses or deficiencies identified in the supervisory review process; or
 3. which are necessary and appropriate to safeguard the interests of the policyholders and beneficiaries in order to ensure compliance with the recognised principles of orderly business activities of insurance and reinsurance undertakings.”“(3) Orders as referred to in para. 1 may, where appropriate, in addition to the insurance or reinsurance undertaking, also be addressed to:

1. the members of the management board or administrative board and the managing directors, as well as to persons controlling the undertaking;
2. to service providers to which functions or business activities have been outsourced, irrespective of whether the outsourcing required prior approval; or
3. the responsible natural person for a breach of obligations for insurance distribution.

(4) To prevent further breaches of obligations pursuant to Article 128 to Article 135d in the distribution of insurance-based investment products, the FMA may temporarily prohibit the member of the management board or the administrative board responsible for the breach of the obligation or the responsible executive directors of the insurance undertaking by means of an instruction from performing managerial duties at undertakings pursuant to Article 1 para. 1 nos. 1 to 5 and insurance distributors.”

- Transparency and accountability - Article 256 Insurance Supervision Act 2016: “(2) The FMA shall publish the relevant national legislation for the protection of the general good, to which the performance of insurance and reinsurance distribution by insurance and reinsurance undertakings in Austria are subject, including the information, to what extent Austria has decided to apply stricter rules than in Chapter V as well as pursuant to Article 29 (3) of Directive (EU) 2016/97 on its official website.

(3) The FMA shall communicate the information pursuant to para. 2 to the Federal Minister for the Federal Ministry for Digital and Economic Affairs as the single point of contact pursuant to Article 11(4) of Directive (EU) 2016/97 responsible for providing information on ‘general good’ rules.

Publication of sanctions and measures - Article 256a Insurance Supervision Act 2016

- Communications to EIOPA - Article 258 Insurance Supervision Act 2016:
 - (3) If the FMA has published legally final imposed fines and measures pursuant to Article 256a for breaches against the obligations pursuant to Article 123a and Articles 127a to 135e, it shall inform EIOPA at the same time.
 - (4) Furthermore, the FMA shall also inform EIOPA about all fines and measures imposed for breaches against Article 123a and Articles 127a to 135e that were not published pursuant to Article 256a. If an appeal procedure was initiated, then the FMA shall also report this fact as well as the outcome of the appeal proceedings to the EIOPA.
- Administrative Sanctions: Chapter 13 - Penal provisions - Insurance Supervision Act 2016:

Insurance and reinsurance distribution - Article 322, Penal provisions with regard to legal persons

Article 323, Effective punishment of breaches Article 323a

- II. The Austrian Banking Act (Bankwesengesetz-BWG; <https://www.fma.gv.at/en/national/supervisory-laws/>) lays down the following statutory powers with respect to banks to ensure the implementation of the IDD:
 - Art 70 para. 1 no. 1: powers to obtain information (demand that credit institutions provide information on all business matters and inspect documents and data media)
 - Art 21 para. 5: on-site inspections in relation to the provisions relating to the performance of insurance mediations by credit institutions
 - Art 70 para. 4 no. 1: to restore legal compliance within a period of time which is appropriate in light of the circumstances under threat of a coercive penalty
 - Art 70 para. 4 no. 2: in cases of repeated or continued violations, the initial coercive penalty imposed must be enforced and the instruction repeated threatening a higher coercive penalty
 - Art 70 para. 4 no. 3: revoke the licence of the credit institution in cases where other measures cannot ensure the functioning of the credit institution
 - Art 98 para. 5d: the commitment of an administrative offence shall be punished by the FMA with a fine of up to EUR 700 000 or up to twice the amount of the benefit derived from the breach, to the extent that this can be quantified.
 - Art 99c para. 6: The publication of sanctions and measures according to Article 256a of the Insurance Supervision Act 2016 (Versicherungsaufsichtsgesetz 2016-VAG 2016; <https://www.fma.gv.at/en/national/supervisory-laws/>) shall apply to breaches.
 - Art 99f para 3: The FMA shall also notify EIOPA about all fines and measures imposed for breaches that were not published pursuant to Article 99c para. 6. If an appeal procedure was initiated, then the FMA shall also report this fact as well as the outcome of the appeal proceedings to the EIOPA.
 - Art 21 para 1 no. 8: A special FMA approval is required for the expansion of the purpose of business of the credit institution to include activities related to insurance mediation.

BMDW:

The amendment to the Trade Act (GewO) of Federal Law Gazette I No. 112/2018), together with new rules of conduct governing the business and its pursuit, are intended to implement in Austrian law Directive (EU) 2016/97 on insurance distribution regarding commercial insurance mediation.

Licensing for insurance intermediaries

In Austria, insurance intermediaries require a business licence.

They may operate only as insurance brokers or as insurance agents. Under Section 137 (2) of the Trade Act (GewO) of 1994, a person operating as an insurance intermediary is known as “Versicherungsvermittler”.

Applicable business licences are:

- under Section 94 (75) of the Trade Act: commercial investment advisory services – insurance mediation within the scope of life and accident insurance;
- under section 94 (76) of the Trade Act: insurance mediation (insurance agent, insurance broker and adviser in insurance matters); or
- Section 94 (76) in combination with Section 32 (6) of the Trade Act: sideline as insurance intermediary.

Registration of a business

The business needs to be registered with the applicable trade licensing authority (see Gewerbeanmeldung, german). Banks are permitted to obtain a licence, but need to file their application with the FMA

GISA: register of insurance intermediaries

Persons licensed to act as insurance intermediaries are registered in “Gewerbeinformationssystem Austria” (Austrian Business Licence Information System, GISA):

Notification - passporting

Provision transposing Art. 6-8 IDD can be found in Art. 137d (FoS) and Art. 137e (FoE) Trade Act 1994.

Sanctions

Sanctions are covered under Art. 366c (IBIPS) and Art. 367 nr. 58 Trade Act.

Supervisory forces of Trade Authority

According to Art. 333 Trade Act 1994 for all this there is a competency of the Trade Authority which is in general the local district authority.

According to Art. 338 Trade Act 1994 it has the following competencies:

Section 338. (1) Insofar as this is necessary for the implementation of the commercial regulations, the organs of the authorities responsible for the implementation of these regulations as well as the experts consulted by these authorities are entitled to enter and inspect companies and their storage rooms during operating hours and to inspect the Inventory and inspect all business documents and secure evidence. The company owner or his deputy must be informed at the latest when entering the company or the storage rooms. Insofar as the organs of the public security service have to participate in the implementation of this federal law in accordance with Section 336, the traders must, upon request, show them all official documents relevant for the exercise of the trade and hand them over for inspection. If a person is suspected of having committed an administrative offense in accordance with Section 366 (1), items 1, 2, 3, 10 and Section 367, item 8, this person must identify himself / herself to the public security service.

(2) Insofar as this is necessary for the implementation of the commercial regulations, the business owner or his deputy shall enable the bodies of the authorities named in Paragraph 1 and the experts consulted by these authorities to enter and inspect the business and the storage rooms as well as the instructions to comply with these bodies for commissioning or decommissioning and for the operation of machines and equipment and for performing operational tasks; Furthermore, he must provide the authorities named in Paragraph 1 with the necessary information, submit the necessary documents and, if necessary, provide insight into the records of the inventory as well as the incoming and outgoing goods.

(3) Insofar as this is necessary for the enforcement of the commercial regulations, the organs of the authorities responsible for enforcing these regulations as well as the experts consulted by these authorities are also entitled to take samples to the extent absolutely necessary. A written confirmation of the sampling and, if requested, a counter-sample must be given to the business owner or his deputy. At the request of the business owner, the federal government has to pay compensation to be determined by the competent authority in the amount of the cost price for the sample taken, if this is more than € 36 amounts. Compensation does not apply if, on the basis of this sample, a measure pursuant to Section 69 (4) or Section 360 has been taken or a specific person has been punished or if the sample has been determined to expire.

4) The organs of the authorities named in Paragraph 1 must ensure, when performing official acts in accordance with Paragraphs 1 and 2, that any disturbance or hindrance to operations that is not absolutely necessary is avoided.

(5) The information received in accordance with Paragraph 2, last half-sentence, may only be used for the implementation of commercial regulations.

(6) The provisions of the Labor Inspection Act 1993, Federal Law Gazette No. 27/1993, are not affected by this federal act.

(7) The organs of the authorities responsible for the implementation of the commercial regulations are entitled to notify the competent authorities if, in the course of their work, they come to the justified suspicion that there is a violation of labor law, social security law or tax law regulations.

X(8) The Federal Ministry of Science, Research and Economy and the FMA work together to provide mutual assistance in the implementation of the provisions on insurance brokerage and loan brokerage under this Federal Act as well as under the BWG and the Insurance Supervision Act 2016, Federal Law Gazette I No. 34/2015. The authority has to cooperate with the other bodies named in Art. 22 B-VG in the implementation of the commercial law provisions. The authority must put in place appropriate systematic, effective procedures (mechanisms) that enable domestic cooperation and coordination in the development and implementation of strategies and measures to combat money laundering and the financing of terrorism.

Extent to which NCAs have not been sufficiently empowered to ensure the implementation of the IDD:

BMDW: In regard to mystery shopping this could require an extra legal basis additional to the existing law. So if there should be a special intention to practicing special forms of supervision for IDD it would be a good idea to enter this in any new amendment to IDD.

FMA: The FMA has been sufficiently empowered to ensure the implementation of the IDD (see the list of statutory powers the FMA has received to ensure the implementation of the IDD).

Most common supervisory tools to monitor the IDD implementation (1=least common; 5=most common)

Tools FMA	Insurance undertakings	Insurance intermediaries
Market monitoring	3	2

Data-driven market monitoring, beyond complaints data analysis	3	3
Thematic reviews	5	4
Mystery shopping	No powers	No powers
On-site inspections	4	5
Off-site monitoring	4	3
Consumer focus groups	n/a	n/a
Product oversight activities	3	2
Consumer research	n/a	n/a
Investigations stemming out of complaints	3	4
Other <i>a priori</i> supervisory activities (e.g., fit&proper assessments)	2	2

Tools BMDW	Insurance undertakings	Insurance intermediaries
Market monitoring	n/a	2
Data-driven market monitoring, beyond complaints data analysis	n/a	2
Thematic reviews	n/a	2
Mystery shopping	No powers	No powers
On-site inspections	n/a	3
Off-site monitoring	n/a	3

Consumer focus groups	n/a	n/a
Product oversight activities	n/a	n/a
Consumer research	n/a	n/a
Investigations stemming out of complaints	n/a	4
Other <i>a priori</i> supervisory activities (e.g., fit&proper assessments)	n/a	5

Comments by NCAs on supervisory tools referred to in the table above:

- FMA: Currently, the FMA has no legal powers to perform mystery shopping. Further, our current supervisory measures, especially on-site visits, provide us with a good picture regarding potential misconduct and thus we have not observed an urgent need for mystery shopping so far. Nevertheless mystery shopping can be a helpful additional tool to detect business conduct deficiencies.
- BMDW: Currently, the Trade Authorities have no expressed legal powers to perform mystery shopping. As far as we are informed mystery shopping is a tool mostly used rather by consumer organisations so far. We also agree that mystery shopping can be a helpful tool to detect business conduct deficiencies.

Supervisory tools adopted before and following IDD implementation:

Cells marked in **blue** means "**yes**" and cells marked in **grey** means "**no**". For example, the fact that the cell relating to "Thematic reviews" and "Adopted before IDD implementation" is marked blue for FMA means that the FMA has adopted thematic reviews before the implementation of the IDD.

Tools adopted by FMA	Adopted before IDD	Adopted following IDD implementation	Is planning to adopt this or next year	Would like to adopt but is not

	implemen- tation			empowered to adopt
Market monitoring				
Data-driven market monitoring, beyond complaints data analysis				
Thematic reviews				
Mystery shopping				
On-site inspections				
Off-site monitoring				
Product oversight activities				
Consumer focus groups				
Consumer research				
Investigations stemming out of complaints				
Other <i>a priori</i> supervisory activities (e.g., fit & proper assessments) – indicate below				

Tools adopted by BMDW	Adopted before IDD implemen- tation	Adopted following IDD implementation	Is planning to adopt this or next year	Would like to adopt but is not empowered to adopt
Market monitoring				
Data-driven market monitoring, beyond complaints data analysis				
Thematic reviews				

Mystery shopping				
On-site inspections				
Off-site monitoring				
Product oversight activities				
Consumer focus groups				
Consumer research				
Investigations stemming out of complaints				
Other <i>a priori</i> supervisory activities (e.g., fit & proper assessments) – indicate below				

Comment by NCA on supervisory tools referred to in the table above:

- FMA: Almost all of the supervisory tools which we have indicated to use have already been used for conduct supervision before the implementation of IDD. Only the special focus on product oversight activities was adopted during the implementation phase of the IDD. The market monitoring activities have been increased following the implementation of the IDD.
- BMDW: The indicated tools are standard tools under the Trade Act 1994 which we are always using for all trades under the Trade Act 1994, and also already were using for the supervision of insurance intermediaries under IMD transposition rules. The other *a priori* supervisory tools are a general instrument under the Trade Act 1994 as for all regulated trades - as insurance intermediation one is (Art. 94 nr. 75 and nr. 76 Trade Act) - to get started with it, is required evidence of a qualification. For the required qualifications there exist detailed general rules (Zugangsverordnungen = regulations on access) and detailed regulations on the content of exams to be passed (Prüfungsordnungen), all of which being fully in line with the annex to IDD on qualifications. Furthermore there exist detailed rules for the content of the necessary continuous training according to IDD, also fully in line with IDD annex.

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