Draft Regulatory Technical Standards

adapting the base euro amounts for professional indemnity insurance and for financial capacity of intermediaries under the Insurance Distribution Directive

EIOPA-BoS-23/517
30 June 2023

European Insurance and Occupational Pensions Authority

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1. BACKGROUND ON PROFESSIONAL INDEMNITY INSURANCE

PII is a form of liability insurance that typically covers the cost of compensating policyholders for claims, legal fees or subsequent legal remedies. Compensation for such losses can generally arise from acts, errors or omissions committed by insurance and reinsurance intermediaries (collectively referred to as 'insurance intermediaries' for the purposes of this document) during the course of conducting their business activities.

An insurance intermediary holding the required level of PII can provide a key prudential and consumer protection safeguard. The requirement for insurance intermediaries to hold PII covering the whole territory of the EU under the IDD helps to protect consumers by increasing the funds available to insurance intermediaries to meet customer claims arising from professional negligence. PII is a useful tool in ensuring that the risks associated with providing this service are properly managed. Claims against such insurance intermediaries for professional negligence often come from their customers, so PII strengthens consumer protection by providing a source other than the intermediary's capital from which claims may be met.

PII also benefits ancillary insurance intermediaries as, even though the IDD does not specify minimum amounts of PII cover which they should hold, it states that Members States should "require ancillary insurance intermediaries to hold PII or comparable guarantees at a level established by Member States taking into account the nature of the products sold and the activity carried out"[1]. Indeed, many ancillary insurance intermediaries and insurance intermediaries hold cover in excess of their regulatory obligations. It can be used to finance large and unexpected liability claims and thereby, to protect the assets of its owners. It normally covers both legal liability and defence costs, the sum of which may be so substantial in some cases that it may jeopardise the solvency of the ancillary insurance intermediary and smaller insurance intermediaries.

PII may be particularly valuable for smaller insurance intermediaries and ancillary insurance intermediaries, which might find it difficult or inappropriate to their business structure to hold large amounts of capital. It can operate in conjunction with market forces by using the commercial insurance market to help maintain the solvency of intermediaries that provide important retail services such as investment advice.

Furthermore, the IDD provides for specific national options to protect customers against the inability of the insurance, reinsurance or ancillary insurance intermediary to transfer the

[1] Article 10(5) of the IDD

premium to the insurance undertaking or to transfer the amount of claim or return premium to the insured. All these options, which are considered to be equally effective, play an important role in enhancing trust in insurance distribution. Among these options lies the possibility to require the intermediary to hold a minimum financial capacity[2].

[2] Article 10(6)(b) of the IDD includes a requirement for the intermediary to have financial capacity amounting, on a permanent basis, to 4 % of the sum of annual premiums received, subject to a minimum of EUR 18 750.

2. REVIEW CARRIED OUT AND CONSULTATION OF EIOPA'S STAKEHOLDER GROUP

Article 10(7) of the IDD states:

> *"EIOPA shall regularly review the amounts referred to in paragraphs 4 and 6 in order to take account of changes in the European index of consumer prices as published by Eurostat. The first review shall take place by 31 December 2017 and successive reviews shall take place every five years thereafter.*
>
> *EIOPA shall develop draft regulatory technical standards which adapt the base amount in euro referred to in paragraphs 4 and 6 by the percentage change in the index referred to in the first subparagraph of this paragraph over the period between 1 January 2013 and 31 December 2017 or between the last review date and the new review date and rounded up to the nearest multiple of EUR 10.*
>
> *EIOPA shall submit those draft regulatory technical standards to the Commission by 30 June 2018 and the successive draft regulatory technical standards every five years thereafter."*

As indicated above, the IDD foresees base amounts of PII cover and financial capacity to be held by insurance intermediaries. In this context, EIOPA is required to:

1. regularly review the minimum amounts for PII and financial capacity; and
2. develop draft RTS which adapt the base amount in euro.

In order to comply with this obligation, EIOPA carried out a review in 2017 of the amounts and submitted to the European Commission its draft RTS in June 2018. In November 2019, the Delegated Regulation (EU) 2019/1935 adapting the base euro amounts was published in the Official Journal of the EU indicating that:

- The base PII amounts of EUR 1 250 000 applying to each claim and in aggregate EUR 1 850 000 per year for all claims, as referred to Article 10(4), shall respectively be adapted to EUR 1 300 380 and EUR 1 924 560; and
- The base financial capacity amount of EUR 18 750, as referred to in Article 10(6), shall be adapted to EUR 19 510.

Since this is an exercise that has to be carried out every 5 years, EIOPA has conducted a review of the amounts and intends to submit draft RTS adapting the updated amounts to the European Commission by 30 June 2023.

The review conducted by EIOPA concludes that the European index for consumer prices (EICP)[3] has increased by [20.32%] (from 102.86 to [123.76], 2015=100) during the review period (from 1 January 2018 and 31 December 2022) and consequently changes are required. The EICP as published by Eurostat is the consumer price index as it is calculated in the European Union (EU), according to a harmonised approach and a single set of definitions. It comprises geographically the whole European Union and also covers Iceland, Liechtenstein and Norway.

EIOPA understands subparagraph 1 of Article 10(7) of the IDD as a review clause in its own right. In order to support the review process, EIOPA conducted a survey among its NCAs and Insurance and Reinsurance Stakeholder Group (IRSG). The survey covered:

1. The current national implementation of minimum amounts of PII cover;
2. The current market situation in terms of availability and cost of PII cover; and
3. The potential market impact of the estimated increase in the minimum amounts of PII cover.

The main findings from EIOPA's survey are mentioned in the following sections. Annex I includes a more detailed summary of the responses.

1. *The current national implementation of minimum amounts of PII cover*

The national legislation of the vast majority of Member States uses the current minimum PII levels foreseen under the IDD, adapted by Delegated Regulation (EU) 2019/1935. Only FR, LU, MT and NO have adopted national legislation stipulating amounts that are higher than the minimum PII levels at European level.

Some Member States have changed the scope of the requirement to hold PII by limiting it to insurance brokers (e. g. FI, LT)[4] or extending it to ancillary insurance intermediaries (e. g. FI, IE, IT, PL, PT).

In order to address concerns that very high policy deductibles[5] for PII cover, could lead to consumer detriment in the case of a large claim when the insurance intermediary does not have sufficient financial capacity to cover the deductible, eight Member States[6] have

[3] The European Index of Consumer Prices (EICP) was established pursuant to Regulation (EC) No 2494/95. This Regulation was repealed by Regulation (EU) 2016/792 of the European Parliament and of the Council of 11 May 2016 on harmonised indices of consumer prices and the house price index, and repealing Council Regulation (EC) No 2494/95, with effect from 1 January 2017. According to this Regulation, the HICP has been considered instead the EICP to calculate the updated minimum amounts.

[4] For insurance intermediaries other than insurance brokers, the undertaking on whose behalf the insurance intermediary is acting provides PII cover or a comparable guarantee, in line with Article 10(4), IDD.

[5] "Deductible" refers to the amount of money the policyholder has to pay toward an insured loss. The term is used by insurance undertakings as a threshold for policy payments. The term "deductible" is often used interchangeably with "excess".

[6] CZ, FR, GR, HU, LI (EEA member), LV, MT, SK.

introduced national legislation to adopt a maximum limit on the level of permissible policy deductibles.

Several Member States that do not stipulate a maximum limit on the level of permissible policy deductibles have adopted national rules to protect consumers in case the insurance intermediary does not have sufficient financial capacity to cover the deductible agreed with the insurance undertaking (see Annex I).[7]

2. Current market situation in terms of availability and cost of PII

Most NCAs are not aware of any current issues related to a hardening of national markets or lack of capacity resulting in challenges for insurance intermediaries to obtain PII. Furthermore, the vast majority of NCAs are not aware of the COVID-19 pandemic having had any significant impact on the availability/cost of PII for insurance intermediaries.

However, according to the IRSG, in IE and, to a lesser extent, in LT[8], insurance intermediaries are suffering material difficulties to obtain/maintain PII cover due to reduced availability or associated costs. The potential causes of this situation are mainly claims (actual or expected) related to COVID-19 coverage. This effect may have been compounded by hard market conditions strongly affecting several other insurance lines.

In IE, some consumer protection concerns were reported in relation to the absence of a requirement for an insurance intermediary to hold PII following withdrawal of the registration, to ensure there is PII cover in place for claims that become known following withdrawal of the registration. This is an issue that can be considered further in the Commission's review of the IDD.

In EE, LV, NO and SK, some insurance intermediaries face difficulties finding a local PII provider as the PII offered by domestic insurance undertakings is very limited or too expensive. As a result, some of these insurance intermediaries had to obtain PII from foreign insurance undertakings operating on a cross-border basis[9].

[7] CY, EE, FI, IT, LU, NO (EEA member), PL, PT, SI.

[8] However, the Bank of Lithuania indicated that it has not received lately any information from insurance market participants that there are material difficulties for insurance intermediaries to obtain PII cover in Lithuania and all 100 insurance brokerage companies in Lithuania have presented evidence of acquired PII coverage in timely manner.

[9] Competition and supply-side measures could improve the diversity of insurance undertakings and products available to insurance intermediaries in those markets where there seems to be very few insurance undertakings offering PII to insurance intermediaries.

3. Potential market impact of the estimated increase in the minimum amounts of PII cover

According to the input provided by the IRSG, the estimated increase in PII minimum amounts would not have a material impact in terms of availability of cover/cost of PII cover for insurance intermediaries in most Member States. However, there are other factors which are difficult to gauge (such as loss ratios, general professional indemnity insurance availability, insurance and reinsurance market conditions, etc.), which might also increase premiums or deductibles or reduce coverage availability.

It is important to bear in mind that some Member States (in particular, IE) are already experiencing problems in terms of availability of cover and associated costs and the projected increase would further aggravate the current situation, hence possibly leading to the withdrawal of smaller insurance intermediaries from the market.

The information obtained by IRSG regarding AT, BE, DE, ES, FR, IE, IT, LT and NL indicates that most of the claims are well below the current PII limits and claims reaching the thresholds or going above them only happen seldom.

The review concludes that based on the review date (31 December 2022), the base amounts of PII and minimum financial capacity should be changed as follows (rounded up to the nearest 10 EUR):

- The amount of EUR 1 300 380 is increased to EUR 1 564 610;
- The amount of EUR 1 924 560 is increased to EUR 2 315 610 and
- The amount of EUR 19 510 is increased to EUR 23 480.

3. BASE AMOUNTS FOR PROFESSIONAL INDEMNITY INSURANCE AND MINIMUM FINANCIAL CAPACITY

3.1 MINIMUM AMOUNTS OF PII COVER AND COMPARABLE FINANCIAL GUARANTEE, IN VIEW OF EIOPA'S REVIEW

Insurance intermediaries are required to hold PII covering the whole territory of the Union, or some other comparable guarantee against liability arising from professional negligence. The level of indemnity shall, according to the IDD, be at least EUR 1 300 380 for a single claim and, in aggregate, EUR 1 924 560 per year for all claims (unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions). An insurance intermediary, regardless of its size and irrespective of whether it actually operates in more than one Member State, must satisfy this requirement in order to be registered and to carry on insurance distribution in the EU.

However, the requirements are minimum limits of cover implying that Member States may add additional requirements under national law, and the Directive does not stipulate a maximum limit on the level of permissible policy excess on any policy. There are no provisions in the IDD permitting Member States to exempt intermediaries from the requirement to hold PII (other than where an intermediary holds a 'comparable guarantee'): in particular, capital resources are not permitted as an alternative to PII.

All insurance intermediaries and ancillary insurance intermediaries are required to have – depending on the implementation of the IDD by Member States – any one or more of the requirements listed in Article 10(6) (a)-(d) IDD, one of which is the minimum financial capacity amounting, on a permanent basis, to 4% of the sum of annual premiums received, subject to a minimum of EUR 19,510.

3.2 CALCULATION OF AMOUNTS OF PII COVER AND FINANCIAL CAPACITY

EIOPA has used the relative changes in the EICP to calculate the changes for the amounts in Article 10(4), IDD, and Article 10(6), IDD.

The European index of consumer prices as published by Eurostat has changed over the period between 1 January 2018 and 31 December 2022 by [20.32%].

The rate of change (indexed) published by Eurostat for the European Economic Area is as follows:

GEO/TIME	2017M12	2022M12
European Economic Area (EEA18-1995, EEA28-2004, EEA30-2007, EEA31-2013, EEA30-2020)	102.86	123.76

The index rate of end of December 2017 (102.86) is used in this calculation as a starting point for calculating the European index of consumer prices as of 1 January 2018. The indexed value for the European index of consumer prices end of December 2022 was 123.76. To calculate the relative change, the value of the index as of end of December 2022 is divided by the value of the index beginning of January 2018:

$(\text{Index}_{2022M12} / \text{Index}_{2017M12} - 1) * 100 = \text{relative change in \%}$

The European index of consumer prices as published by Eurostat, changed, therefore, in the period between 1 January 2018 and 31 December 2022 by 20.32%.

Therefore, the amounts in Article 10(4), IDD, and Article 10(6), IDD, will need to reflect the changes to the EICP. Rounded up to the nearest multiple of EUR 10, the base amounts are as follows:

- The amount of EUR 1 300 380 is increased to EUR 1 564 610;
- The amount of EUR 1 924 560 is increased to EUR 2 315 610; and
- The amount of EUR 19 510 is increased to EUR 23 480.

3.3 EIOPA PROCESS AND DELIVERABLES (JUNE 2023)

The EIOPA Regulation[10] specifies that draft RTS have to be technical, should not imply strategic decisions or policy choices and that their content should be delimited by the legislative acts on which they are based.

In this case, the IDD provisions are understood as a mere mechanical adjustment of certain amounts based on a calculation method specified by the IDD. The IDD specifies not only the initial values, but also the arithmetical operation to be undertaken. Furthermore, the outcome should be rounded up to the nearest multiple of 10 EUR.

[10] Article 10(1) of the EIOPA Regulation: Regulatory technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based.

Analysis of costs and benefits

In accordance with Article 10(1) of the EIOPA Regulation, EIOPA is requested to analyse the potential related costs and benefits of the draft RTS. Since the concrete basis on which the referred amounts should be updated, was already prescribed in the IDD, it could be argued that no incremental costs are derived from the draft RTS itself. In any case, EIOPA considers it appropriate to acknowledge that the substantial increase of [20.32%] in the minimum PII amounts and minimum financial capacity due to the very high level of inflation will most likely have some impact on insurance distributors in terms of costs, not only as a one-off cost, but on an on-going basis. At the same time, the benefit of ensuring an adequate level of professional standards for insurance intermediaries and consumer protection by increasing the amounts for PII in line with the inflation, can help to outweigh these costs.

Regarding minimum amounts for PII cover, costs might be incurred due to the need to adapt, re-negotiate or conclude new contracts for PII cover. Furthermore, although the initial anecdotal evidence collected by IRSG from some Member States[11] suggests that the current claims levels rarely reach the minimum PII amounts currently stipulated under the IDD[12], it is possible that the increase of the minimum amounts could result in a rise in premiums to be paid by insurance intermediaries for their PII as insurance undertakings need to reflect in their premium calculation for PII policies the potential eventuality of a mis-selling incident. However, EIOPA so far has no clear evidence that an increase in the minimum PII amounts would result in substantive premium increases for PII cover.

In some Member States (in particular IE), the projected increase could further aggravate the current market situation characterised by reduced availability or associated costs, hence possibly leading to the exit of smaller insurance intermediaries from the market, a trend EIOPA has also seen in recent years in the report on the application of the IDD.[13]

The possible increase in premiums charged by insurance undertakings for PII could also impact how enforcement processes are carried out and how sanctions are imposed by NCAs on insurance intermediaries related to breaches of the IDD provision on PII. According to EIOPA's latest annual report on sanctions under the IDD[14], in 2021, more than one out of four IDD sanctions related to breaches of the IDD provision on PII. However, it should be noted that

[11] AT, BE, DE, ES, FR, IE, IT, LT, NL.

[12] The issue of the inter-relationship between the level of claims made and the minimum amounts of PII cover and whether those minimum amounts and the mechanism used to adjust those minimum amounts are justified is something that can only be fully addressed in a future review of the IDD.

[13] https://www.eiopa.europa.eu/media/news/eiopa-publishes-report-application-of-insurance-distribution-directive_en, pages 16 and 27.

[14] EIOPA publishes annual report on sanctions under the Insurance Distribution Directive in 2021 | Eiopa (europa.eu)

there is not a balanced picture across Member States, with the vast majority of such sanctions occurring in several Member States.[15]

EIOPA seeks to gather further input from stakeholders on the market impact from the estimated increase in the minimum amounts of PII cover through a consultation question in order to support EIOPA's final findings.

Regarding minimum financial capacity, opportunity costs are incurred by giving up the opportunity to use financial resources for other purposes as there is an obligation to meet the minimum financial capacity requirement. It should be noted that the increase of the minimum amount in Article 10(6)(b) will not have an impact for all intermediaries; in particular, there will be no additional costs for intermediaries in the following cases:

- where the 4% of the sum of annual premiums received by the intermediary exceeds the updated minimum amount; or
- where other forms of protection foreseen in Article 10(6)(a), (c)-(d) apply.

The minimum financial capacity helps to ensure that the distributor can transfer the premium to the insurance undertaking or can transfer the amount of claim or return premium to the insured. This is an important consumer protection aspect, which ultimately increases the trust of consumers in insurance distribution. At the same time, having a sound, financially secure insurance intermediary is also in the interests of insurance undertakings having an (often) on-going business relationship with an insurance intermediary. Alternative solutions to a minimum financial capacity are possible – for example, having an internal procedure that requires a deposit of the potential compensation directly to the customer's bank account.

Costs may also be incurred by those Member States that will need to adapt the relevant base amounts in their national provisions to implement the adaption of the IDD resulting from the Delegated Regulation to be adopted. N.B. The timing of the application of the European Commission Implementing Regulation, including the question of whether Member States and insurance distributors would have sufficient time to take the necessary implementation measures (e. g. insurance undertakings may need to adjust PII contracts to update the effective data from which on the new amounts will apply), is a matter ultimately for the European Commission and co-legislators to take a position on.

[15] For example, 99% of the PII sanctions were imposed by three Member States only. Further information on the numbers of sanctions imposed across all Member States can be found in the EIOPA annual report.

4. DRAFT REGULATORY TECHNICAL STANDARDS

Article 10 of the IDD mandates EIOPA to review the amounts of PII for insurance intermediaries and develop draft RTS which adapt the amounts foreseen as minimum coverage. The amounts shall be adjusted by RTS according to changes to the European index of consumer prices set by Eurostat.

This section contains the draft RTS.

EUROPEAN
COMMISSION

Brussels, XXX
[…](2022) XXX draft

COMMISSION DELEGATED REGULATION (EU) …/...

of XXX

amending Directive (EU) 2016/97 of the European Parliament and of the Council with regard to regulatory technical standards adapting the base euro amounts for professional indemnity insurance and for financial capacity of insurance and reinsurance intermediaries and repealing Commission Delegated Regulation (EU) 2019/1935

(Text with EEA relevance)

COMMISSION DELEGATED REGULATION (EU) …/...

of XXX

amending Directive (EU) 2016/97 of the European Parliament and of the Council with regard to regulatory technical standards adapting the base euro amounts for professional indemnity insurance and for financial capacity of insurance and reinsurance intermediaries and repealing Commission Delegated Regulation (EU) 2019/1935

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive (EU) 2016/97 of the European Parliament and of the Council of 20 Janaury 2016 on insurance distribution[1], and in particular Article 10(7) thereof,

Whereas:

(1) The European Insurance and Occupational Pensions Authority (EIOPA) is required to regularly review the base amounts for professional indemnity insurance and financial capacity of insurance and reinsurance intermediaries to take into account the changes to the European index of consumer prices as published by Eurostat. Over the period 1 January 2018 through 31 December 2022, the European index of consumer prices produced for the Union by Eurostat has increased by 20,32%. As a result, the abovementioned base amounts should be adapted by that percentage increase.

(2) Directive (EU) 2016/97 should therefore be amended accordingly.

(3) Commission Delegated Regulation (EU) 2019/1935[2] should therefore be repealed.

(4) This Regulation is based on the draft regulatory technical standards submitted by EIOPA to the Commission.

(5) EIOPA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Insurance and Reinsurance Stakeholder Group

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1 OJ L OJ L 26, 2.2.2016, p. 19.

2 Commission Delegated Regulation (EU) 2019/1935 of 13 May 2019 amending Directive (EU) 2016/97 of the European Parliament and of the Council with regard to regulatory technical standards adapting the base euro amounts for professional indemnity insurance and for financial capacity of insurance and reinsurance intermediaries (OJ L 301, 22.11.2019, p. 3.).

(6) established by Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council[3].

HAS ADOPTED THIS REGULATION:

Article 1

Article 10 of Directive (EU) 2016/97 is amended as follows:

(a) paragraph 4 is replaced by the following:

"4. Insurance and reinsurance intermediaries shall hold professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1 564 610 applying to each claim and in aggregate EUR 2 315 610 per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.';

(b) paragraph 6, point (b) is replaced by the following:

"(b) a requirement for the intermediary to have financial capacity amounting, on a permanent basis, to 4 % of the sum of annual premiums received, subject to a minimum of EUR 23 480;".

Article 2

Repeal

Commission Delegated Regulation (EU) 2019/1935 is repealed.

Article 3

Entry into force and date of application

This Regulation shall enter into force on the […] day following that of its publication in the *Official Journal of the European Union*.

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3 Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

It shall apply from […].

This Regulation shall be binding in its entirety and directly applicable in all Member States

Done at Brussels,

For the Commission
The President
[…]

ANNEX I: DETAILED SUMMARY OF SURVEY TO SUPPORT THE REVIEW PROCESS

This Annex complements section 2 and provides a detailed summary of the main findings of EIOPA's survey addressed to its NCAs and IRSG to support the review process.

1. **<u>The current national implementation of minimum amounts of PII cover</u>**

FR, LU, MT and NO have higher PII minimum levels

The national legislation of a vast majority of Member States[18] use the current minimum PII levels foreseen under the IDD. Only FR, LU, MT and NO have adopted national legislation stipulating amounts that are <u>higher</u> than the minimum PII levels under the IDD:

- FR:[19]
  - €1 500 000 / per claim (+199 620 compared with IDD PII minimum levels)
  - €2 000 000 / per year all claims (+75 440)
- LU:[20]
  - €1 310 000 / per claim (+9 620)
  - €1 930 000 / per year all claims (+5 440)
- MT:[21]
  - €1 300 500 / per claim (+120)
  - €2 000 000 / per year all claims (+75 440)
- NO: [22]
  - For insurance intermediaries that have more than 10 employees which perform insurance distribution, the total annual coverage of PII can be limited upwards to an amount in Norwegian kroner corresponding to €3 903 000
  - Finanstilsynet may decide (in individual cases) that an insurance intermediary shall be required to hold PII with a higher amount

Change in the scope of the PII requirements

According to Article 10(4) of the IDD, insurance intermediaries shall hold PII, unless such insurance or comparable guarantee is already provided by an undertaking on whose behalf the insurance intermediary is acting. On the basis of this provision, some Member States (e.

[18] AT, BE, BG, CY, CZ, DE, DK, EE, ES, FI, GR, HR, HU, IE, IS (EEA member), IT, LI (EEA member), LV, NL, NO (EEA member), PL, PT, RO, SE, SI, SK

[19] Article A.512-4 of the French Insurance Code

[20] Article 6, paragraph 1 of the Commissariat aux Assurances Regulation No 19/01 of 26 February 2019 on insurance and reinsurance distribution, as amended

[21] Paragraph 1.9.6 of Chapter 1 of the Insurance Distribution Rules

[22] Regulation 22 December 2021 on Insurance Intermediation article 3-1 paragraphs 3 and 4

g. FI[23] and LT) require only insurance brokers to hold PII. In LT, in the case of insurance agents and ancillary insurance intermediaries, the insurance undertaking responsible for the registration of the insurance intermediary assumes an obligation to fully indemnity the loss which occurred due to the failure by the insurance intermediary to perform his duties or due to the improper performance of such duties.

According to Article 10(2), subparagraph 4 of the IDD, Member States shall adjust the required conditions with regard to knowledge and ability in line with the particular activity of insurance or reinsurance distributors and the products distributed, particularly in the case of ancillary insurance intermediaries. In addition, according to Article 10(5) of the IDD, Member States shall require that ancillary insurance intermediaries hold PII or comparable guarantees at a level established by Member States taking into account the nature of the products sold and the activity carried out. On the basis of these provisions, some Member States (e. g. FI, IE, IT, PL and PT) have extended the requirement to hold PII to ancillary insurance intermediaries:

- IE and IT have imposed the minimum PII levels foreseen under the IDD on ancillary insurance intermediaries
- In PL, ancillary insurance intermediaries are obliged to hold PII with minimum amount equal to indicated in the IDD or to hold comparable guarantee
- PT legislation[24] establishes that ancillary insurance intermediaries must hold PII of at least EUR 600 000 applying to each claim and in aggregate EUR 900 000 per year for all claims
- In FI[25], the amount of PII provided by an ancillary insurance broker shall be proportionate to the quality and extent of the business in distributing insurance

Some Member States stipulate a maximum limit on the level of permissible policy deductibles

The IDD requires insurance intermediaries to have financial capacity amounting, on a permanent basis, to 4 % of the sum of annual premiums received, subject to a minimum of EUR 19 510. In order to limit the impact of an increase in minimum amounts of PII on the cost of PII cover, insurance undertakings could offer PII policies with higher deductibles. Since the IDD does not stipulate a maximum limit on the level of permissible policy deductibles, very high deductibles could lead to consumer detriment in the case of a large claim when the intermediary has no sufficient financial capacity to cover the deductible.

The national legislation of a majority of Member States do not stipulate a maximum limit on the level of permissible policy deductibles.[26] However, the following Member States have

[23] Act on insurance distribution (234/2018), section 58
[24] Article 20(1)(c) of Law no. 7/2019, of 16 January
[25] Section 58 of Act on insurance distribution (234/2018)
[26] AT, BE, BG, DE, DK, EE, ES, FI, HR, IE, IS (EEA member), IT, LU, NL, NO (EEA member), PL, PT, RO, SE, SI

introduced national legislation to adopt maximum deductibles in order to address the concerns indicated above:

- CZ: Approximately 200 EUR (CZK 5,000) or 1 % of benefit (whichever is higher)[27]
- HU: 4,950 EUR (HUF 2,000,000) per insured event[28]
- LV: 10,000 EUR[29]
- GR: 19,510 EUR[30]
- MT: 23,300 EUR and not exceeding 0.5% of indemnity limit[31]
- SK: 1% of the insurance benefit amount[32]
- LI: 10% of the insurance amount[33]
- FR: 20% of compensation amount per claim / insured event, unenforceable against injured parties[34]

Several Member States that do not stipulate a maximum limit on the level of permissible policy deductibles have adopted national rules to protect consumers in case the insurance intermediary does not have sufficient financial capacity to cover the deductible agreed with the insurance undertaking:

- In CY, FI, NO[35], PT[36] and SI[37], the insurance undertaking must pay an insurance compensation to the injured party without subtracting the deductible and may recover the deductible amount from the insurance intermediary
- In IT[38], LU[39] and PT[40], any deductible or excess must be unenforceable by the insurance undertaking against injured parties, to whom damages must be paid for in full up to the amounts of cover
- In EE, when inspecting insurance contracts, Finantsinspektsioon checks that the deductible is in proportion to the insurance broker's own funds and does not place customers in a situation where the insurance broker does not have enough resources to compensate for the possible loss
- In PL, the national framework does not provide the possibility to use deductibles in PII

[27] § 13 para. 2 of the Act No 170/2018 Coll, on Insurance Distribution
[28] Section 5 (1)-(2) of the Government Decree No. 44/2015 on the minimum content requirements of the PII of multiple agents and broker
[29] Article 28, Paragraph five of the Insurance and Reinsurance Distribution Law
[30] Bank of Greece Executive Committee's Act 167/2020 (Art. 2)
[31] Paragraph 1.9.7 of Chapter 1 of the Insurance Distribution Rules
[32] § 30 (2) of Act No. 186/2009 Coll.
[33] Art. 17 para. 1 lit. e Insurance Distribution Act
[34] Article A512-4 of the French Insurance Code. The maximum deductible of 20% of the compensation amount is optional. There is no requirement for the PII contract to include this deductible in its coverage
[35] Act 22 December 2021 on Insurance Intermediation § 7-4
[36] Article 26 of Regulatory Standard no. 13/2020-R, of 30 December
[37] IA-1, Article 568
[38] Article 11, par. 2, lett. c) of IVASS Regulation no. 40/2018
[39] Article 6, paragraph 2, of the Commissariat aux Assurances Regulation No 19/01 of 26 February 2019 on insurance and reinsurance distribution, as amended
[40] Article 26 of Regulatory Standard no. 13/2020-R, of 30 December

2. Current market situation in terms of availability and cost of PII cover

Most NCAs not aware of challenges for insurance intermediaries to obtain PII

A majority of NCAs[41] is not aware of any current issues related to a hardening of national markets or lack of capacity resulting in challenges for insurance intermediaries to obtain PII. Some NCAs have reported the following observations:

- In LT, according to the statistics provided by insurance companies, in 2021, the amount of premiums for PII increased by 28% compared to 2020 data[42]
- In EE, LV, NO and SK, some insurance intermediaries face difficulties finding a local PII provider as the PII offer by domestic insurance undertakings is very limited or too expensive[43]. As a result, some of these insurance intermediaries had to obtain PII from insurance undertakings authorised in other Member States
- DE has reported that the liability situation of insurance intermediaries becomes increasingly more challenging by current and planned regulations, making possible a hardening of the market in the next years. In addition, when requesting coverage above the minimum PII levels, reinsurers act more carefully at the moment
- In MT, national legislation includes a provision that the PII cover should also cover loss of documents. The limit associated to this cover has made it more difficult for insurance intermediaries to provide adequate cover. Furthermore, it is to be noted that due to the hardening of national markets, the professional indemnity cover for insurance intermediaries has increased and this especially affects smaller intermediaries
- In IE, some consumer protection concerns were reported in relation to the absence of a requirement for an intermediary to hold PII post revocation, to ensure there is PII cover in place for complaints that become known post revocation. This issue is under consideration to identify potential course of action. This is an issue that can be considered further in the Commission's review of the IDD

IRSG: Most Member States are not experiencing problems regarding PII availability or its cost

Based upon initial anecdotal evidence gathered by IRSG, most EU Member States are not experiencing problems regarding PII availability or its cost. While more study is necessary, out of those where the IRSG obtained information, there are two, IE and LT[44], particularly the

[41] 23 NCAs

[42] This data does not include data of insurance companies operating in Lithuania under Freedom to Provide Services (FoS)

[43] The PII offer by domestic insurance undertakings may be limited because they do not have a large enough portfolio to spread the potential risk sufficiently without the price of the product becoming too expensive).

[44] However, the Bank of Lithuania indicated that it has not received lately any information from insurance market participants that there are material difficulties for insurance intermediaries to obtain PII cover in Lithuania and all 100 insurance brokerage companies in Lithuania have presented evidence of acquired PII coverage in timely manner.

former, where insurance intermediaries are suffering material difficulties to obtain/maintain PII cover, due to reduced availability or associated costs. It is important to note that this situation might also be taking place in other Member States where the IRSG lacks information.

The causes of this situation are mostly due to claims (actual or expected) related to COVID-19 coverage. This effect may have been compounded by hard market conditions strongly distressing several other insurance lines (directors and officers liability insurance, general liability insurance, property insurance, etc.)

Also relevant to note that due to COVID-19, many/most PII policies at renewal began to include very wide exclusions concerning pandemic or transmissible viruses/diseases, etc., hence reducing insurance intermediaries' protection. This could end up producing further material impact because most policies provide "claims made" cover and (in some markets) new COVID-19 related cases continue to be filed at courts.

Most NCAs are not aware of COVID-19 impacting PII availability

The vast majority of NCAs are not aware of COVID-19 having any impact on the availability/cost of PII for insurance intermediaries[45]. Some Member States have reported the following observations:

- In MT, the impact on the availability/cost of PII on insurance intermediaries started arising in 2018/19 before COVID-19. Market capacity was reduced and it became more difficult for insurance intermediaries to find appropriate PII cover. Whilst COVID-19 was not the main driving factor to reduce market capacity, COVID-19 exacerbated it further
- GR has noticed that a general exclusion in coverage in case of losses linked/related to COVID-19 or other pandemics is applied to PII policies
- In DE, one reason given for the partial limitation of high coverages, above the minimum threshold, are the implications of COVID-19. Insurers are concerned about a possible increase of claims due to insufficient or complete lack of consultation/advice or the liability of intermediaries because of possible mis-selling of business interruption policies

[45] 28 NCAs

3. **<u>Potential market impact of the estimated increase in the minimum amounts of PII cover</u>**

IRSG: Increase in PII limits would not have a material effect in terms of cover availability/cost for insurance intermediaries in most Member States

Based on the input provided by the IRSG, the estimated increase in PII limits would not have a material effect in terms of cover availability/cost for insurance intermediaries in most Member States, however, there are other factors which are difficult to gauge (such as loss ratios, general professional indemnity availability, insurance and reinsurance market conditions, etc.), which might also increase premiums or deductibles or reduce coverage availability.

It is very important to bear in mind that some Member States (in particular IE) are already experiencing problems in terms of availability and associated costs and the projected increase would further aggravate the current situation, hence possibly leading to the exit of smaller insurance intermediaries from the market.

Another matter to perhaps take in consideration is that PII limits seem to have adapted to the specificities of each Member State, to take into consideration the particularities and level of potential claims. Accordingly, in many cases this has (voluntarily) translated into limits higher than those currently imposed by the IDD.

IRSG: Most of the current claims levels are well below the current PII minimum limits

The information obtained by IRSG regarding AT, BE, DE, ES, FR, IE, IT, LT and NL indicate that most of the claims are well below the current PII limits and claims reaching the thresholds or going above them only happen seldom.

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