



EIOPA-CP-18-001
30 January 2018

Consultation Paper

on

the proposal for

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

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Responding to this paper

EIOPA welcomes comments on the Consultation Paper on the proposal for Regulatory Technical Standards which adapt the base euro amounts for professional indemnity insurance and financial capacity of intermediaries, as referred to in Article 10(4) and Article 10(6)(b), both of Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution¹ (hereinafter the “IDD”).

Comments are most helpful if they:

- respond to the question stated, where applicable;
- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

Please send your comments to EIOPA in the provided Template for Comments, by email CP-18-001@eiopa.europa.eu, by **27 April 2018**.

Contributions not provided in the template for comments, or sent to a different email address, or after the deadline will not be processed.

Publication of responses

Contributions received will be published on EIOPA’s public website unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.

Please note that EIOPA is subject to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents², and to EIOPA’s rules on public access to documents³.

Contributions will be made available at the end of the public consultation period.

Data protection

Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published. They will only be used to request clarifications if necessary on the information supplied.

¹ OJ L 26, 2.2.2016, p. 19.

² OJ L 145, 31.5.2001, p. 43.

³ Decision of the Management Board concerning public access to documents, available at: [https://eiopa.europa.eu/Publications/Administrative/Public-Access-\(EIOPA-MB-11-051\).pdf](https://eiopa.europa.eu/Publications/Administrative/Public-Access-(EIOPA-MB-11-051).pdf).

EIOPA, as a European Authority, will process any personal data in line with Regulation (EC) No 45/2001 on the protection of the individuals with regards to the processing of personal data by the Community institutions and bodies and on the free movement of such data. More information on data protection can be found at <https://eiopa.europa.eu/> under the heading 'Legal notice'.

Consultation Paper Overview & Next Steps

EIOPA carries out consultations in the case of drafting Regulatory Technical Standards in accordance with Article 10 of 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/EC⁴ (hereinafter "EIOPA's founding Regulation").

This Consultation Paper presents the draft Regulatory Technical Standards and explanatory text.

The analysis of the expected impact from the proposed policy is covered under section 2.3.

Next steps

EIOPA will consider the responses it receives to this Consultation Paper, and will finalise the draft Regulatory Technical Standards for submission to the Commission by 30 June 2018.

EIOPA is aware of the on-going political process, in particular the legislative proposal by the Commission to delay the application date of the IDD for firms until 1 October 2018. There is, however, currently no proposal on the table to amend the deadline of 30 June 2018 for EIOPA delivering the draft Regulatory Technical Standards to the Commission and EIOPA has received no indication from the Commission that it should delay this exercise.

⁴ OJ L331, 15.12.2010, p.48.

1. Background on Professional Indemnity Insurance and the review undertaken by EIOPA

1.1 General importance of professional indemnity insurance and financial capacity

Holding the required level of professional indemnity insurance ('PII') is a key prudential and consumer protection safeguard. 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 Consultation Paper) during the conducting of their business activities.

PII under the IDD helps to protect consumers by increasing the funds available to insurance intermediaries to meet consumer claims arising from the 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 firm's capital from which claims may be met.

PII also benefits ancillary insurance intermediaries as many ancillary insurance intermediaries hold PII whilst not being under any regulatory obligation to do so, or hold cover in excess of their regulatory obligations. It can be used to finance large and unexpected liability claims and thereby protect the assets of its owners. It normally covers both legal liability and the defence costs, the sum of which may be so substantial in some cases that it risks jeopardising the solvency of the ancillary insurance intermediary.

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 firms that provide important retail services such as investment advice.

Furthermore, IDD provides for specific national options to protect customers against the inability of the insurance, reinsurance or ancillary insurance intermediary to transfer the 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 efficient, play an important role for ensuring trust in insurance distribution. Among these options lies the provision for a minimum financial capacity of the insurance, reinsurance or ancillary insurance intermediary.

1.2 Review carried out and consultation of EIOPA's stakeholder group

Paragraph 7 of Article 10, 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.”

The IMD⁵ and IDD⁶, the latter repealing IMD with effect from 23 February 2018, foresee base amounts of PII cover to be held by insurance and reinsurance intermediaries (in the IMD, this is €1m per claim and €1.5m in aggregate per year for all claims; in the IDD, the amounts are €1.25m applying to each claim and in aggregate €1.85m per year for all claims).

EIOPA is required under the IDD to develop draft Regulatory Technical Standards, which adapts the base euro amounts for PII and financial capacity. These draft RTS have to be delivered to the Commission by 30 June 2018 (subparagraph 2 of Article 10(7), IDD).

EIOPA conducted a review of different aspects of the market for PII for insurance intermediaries and ancillary insurance intermediaries, which concluded that the European index for consumer prices (EICP)⁷ had increased by 4.03% (from 99.01 to 103.00, 2015=100) during the review period (from 1 January 2013 and 31 December 2017) 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 looked into different aspects of PII. It conducted a survey among its Member authorities, showing that no evidence or observations, which could have indicated a specific market failure arising from PII, were found.

Conducting the review, EIOPA did not find that PII was a barrier to enter the insurance intermediaries market in the EEA.

Furthermore, EIOPA did not find any evidence that evaluate relative changes in inflation as a measure for changes in the amounts of PII or minimum financial capacity. EIOPA looked at these aspects because it understands subparagraph 1 of Article 10(7), IDD, as a review clause in its own right.

In addition, EIOPA's Insurance and Reinsurance Stakeholder Group provided feedback. The feedback received from IRSG members was that:

⁵ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (OJ L 009 15.1.2003, p. 3), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02002L0092-20160223>

⁶ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19), <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32016L0097>

⁷ 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.

- Claims for PII vary from Member State to Member State. It is therefore difficult to obtain an overview of possible issues with the PII market. It seems especially difficult to find evidence regarding the adequacy of the minimum limits.
- Obtaining PII cover is generally not a significant barrier to enter the insurance intermediaries market.
- When comparing PII cover to a deposit guarantee scheme, the minimum amounts of PII for individual cases were too high and the aggregate amount too low.

The review concludes that based on the review date (31 December 2017), 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 1 250 000 is increased to EUR 1 300 370;
- The amount of EUR 1 850 000 is increased to EUR 1 924 550; and
- The amount of EUR 18 750 is increased to EUR 19 510.

2. Base amounts for PII and minimum financial capacity

2.1 Article 10(4), IDD, and Article 10(6), IDD, 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 IDD, be at least EUR 1 250 000 for a single claim and, in aggregate, EUR 1 850 000 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 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 intermediation 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 firms from the requirement to hold PII (other than where a firm 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 18 750.

2.2 Calculation of amounts

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 2013 and 31 December 2017 by 4.03%.

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

GEO/TIME	2012M12	2017M12
European Economic Area (EEA18-2004, EEA28-2006, EEA30-2013, EEA31)	99.01	103.00

The index rate of end of December 2012 (99.01) is used in this calculation as a starting point for calculating the European index of consumer prices as of 1 January 2013. The indexed value for the European index of consumer prices end of December 2017 was 103.00. To calculate the relative change, the value of the index as of end of December 2017 is divided by the value of the index beginning of January 2013:

$(\text{Index}_{2017M12} / \text{Index}_{2012M12} - 1) * 100 = \text{relative change in \%}$

The European index of consumer prices as published by Eurostat, changed, therefore, in the period between 1 January 2013 and 31 December 2017 by 4.03%.

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 1 250 000 is increased to EUR 1 300 370;
- The amount of EUR 1 850 000 is increased to EUR 1 924 550; and
- The amount of EUR 18 750 is increased to EUR 19 510.

2.3 EIOPA process and deliverables (June 2018)

EIOPA's founding Regulation specifies that regulatory technical standards 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.

Analysis of costs and benefits

In accordance with its founding Regulation⁸, 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 increase of PII amounts and minimum financial capacity will most likely increase costs for distributors, not only as a one-off cost, but on an on-going basis. At the same time, overarching consumer protection goals outweigh these costs.

Regarding amounts for PII, the increase of the minimum and aggregate insured amounts in Article 10(4) may result in a slight rise in premiums to be paid by insurance intermediaries for their professional indemnity insurance. Furthermore, costs might be incurred by adapting, re-negotiating or concluding contracts for professional indemnity insurance. At the same time, the benefit is ensuring adequate level of consumer protection by increasing the amounts for PII in line with the inflation.

Regarding minimum financial capacity, costs are incurred by not being able to invest this money and therefore losing out on potential returns on investments. It should be noted that the increase of the minimum amount in Article 10(6)(b) will not have an

⁸ Article 10 (1) of EIOPA Regulation

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 will 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 able intermediary is also in the interest of insurance undertakings having an (often) on-going business relationship. 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.

EIOPA will consider the responses it receives to this Consultation Paper, and will finalise the draft Regulatory Technical Standards for submission to the Commission by 30 June 2018.

2.4 Feedback sought via public consultation

According to subparagraph 3 of Article 10(1) of EIOPA's founding Regulation, EIOPA has to conduct open public consultations on draft regulatory technical standards, before submitting them to the Commission for adoption. Notwithstanding the fact that IDD prescribes the methods of calculating the amounts in the RTS, a public consultation is seen as an important step towards better regulation. Therefore, EIOPA is seeking public feedback on professional indemnity insurance and minimum financial capacity as well as the RTS.

EIOPA welcomes feedback on its review, especially if PII is seen by market participants as a barrier to enter the insurance intermediaries market. Furthermore, EIOPA is requesting feedback on evidence of any potential market failure with regard to PII. EIOPA will take the aforementioned feedback into account, especially when preparing the report according to Article 41(4), IDD.

In addition, EIOPA seeks feedback to analyse the potential related costs and benefits.

Finally, EIOPA is requesting feedback on the above calculation of amounts, while it has to be noted that the rules under IDD do not foresee any discretion on the methods of calculating these amounts.

Question 1: Do you have any comments on the proposed draft Regulatory Technical Standards adapting the base euro amounts for professional indemnity insurance and for financial capacity of intermediaries?

Question 2: Have you identified any specific issues with regard to the PII market?

3. Draft Technical Standard

Article 10, IDD stipulates that EIOPA should review the amounts of professional indemnity insurance (PII) for insurance and reinsurance intermediaries and develop draft Regulatory Technical Standards (RTS) that will adapt the amounts foreseen as minimum coverage. The amounts will 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, 29.6.2011
C(20..) yyy final

COMMISSION DELEGATED REGULATION (EU) No .../..

of []

COMMISSION DELEGATED REGULATION (EU) No .../...

of []

adapting the base euro amounts for professional indemnity insurance and for financial capacity of intermediaries under Directive (EU) 2016/97 of the European Parliament and of the Council

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 January 2016 on insurance distribution⁹, and in particular Article 10(7) thereof,

Whereas:

- (1) The base amounts for professional indemnity insurance and financial capacity need to be reviewed regularly to take into account the changes to the European index of consumer prices as published by Eurostat. The European index of consumer prices produced for the Union by Eurostat has increased over the period 1 January 2013 through 31 December 2017 by 4.03%. As a result, the abovementioned base amounts need to be changed by this percentage increase. The European Insurance and Occupational Pensions Authority (EIOPA) will review the base amounts again by 31 December 2022.
- (2) This Regulation is based on the draft regulatory technical standards submitted by EIOPA to the Commission.
- (3) 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 opinion of the Insurance and Reinsurance Stakeholder Group established by Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council¹⁰,

HAS ADOPTED THIS REGULATION:

Article 1

Base professionssinal-indeminty insurance amounts

The base amounts of EUR 1 250 000 and EUR 1 850 000, as referred to Article 10(4) of Directive (EU) 2016/97, shall respectively be adapted to EUR 1 300 370 and EUR 1 924 550.

⁹ OJ L 26, 2.2.2016, p. 19.

¹⁰ 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).

Article 2

Base financial capacity amount

The base amount of EUR 18 750, as referred to in Article 10(6) of Directive (EU) 2016/97, shall be adapted to EUR 19 510.

Article 3

Final provision

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

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

Done at Brussels,

*[For the Commission
The President]*

*[For the Commission
On behalf of the President]*

[Position]