We are pleased to present the regulatory framework for the insurance sector:

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The General Data Protection Regulation (GDPR)

What is the GDPR?

In 1995, the European Union released the European directive 95/46/CE relative to personal data protection. Unlike regulations, directives should be transposed into national to be applicable.

On 4 May 2016, the EU Regulation on Data Protection (GDPR) has been published in the Official Journal of the European Union. The GDPR has entered into force on 24 May 2016 and will replace the former 1995 EU Data Protection Directive and create a unified data protection law.

The General Data Protection Regulation will apply from 25 May 2018 directly across all 28 EU Member States after a two years implementation period. Under the new Regulation, Data Protection Authorities (DPAs) have investigative, corrective, advisory and authorization powers. They are entitled to impose administrative fines ranging from 2 to 4% of the groups worldwide annual turnover of the preceding financial year or EUR 10 to 20 million, whichever is higher for infringements of data subject rights, non-compliance with an order of the DPA or the obligations of the controller and processor.
The General Data Protection Regulation (GDPR)

What is personal data?

"Any information relating to an identified or identifiable natural person or data subject identified by reference to specific characteristics”.

<table>
<thead>
<tr>
<th>Relating</th>
<th>Identification</th>
<th>Data subject</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Content</td>
<td>• Direct</td>
<td>• Not dead</td>
<td>• Name</td>
</tr>
<tr>
<td>• Purpose</td>
<td>• Indirect</td>
<td>• Not unborn</td>
<td>• ID number</td>
</tr>
<tr>
<td>• Result</td>
<td></td>
<td>• Not legal person</td>
<td>• Location data</td>
</tr>
</tbody>
</table>

The vast majority of organisations deal with personal data.
The General Data Protection Regulation (GDPR)

What is processing personal data?

**Personal data lifecycle**

- **Collection**
  - Collection
  - Recording

- **Storage**
  - Organisation
  - Storage

- **Use**
  - Consultation
  - Retrieval
  - Use
  - Update
  - Modification
  - Combination
  - Linking
  - Alignment

- **Transfer**
  - Disclosure by transmission
  - Diffusion

- **Retention & Destruction**
  - Destruction
  - Erasure
  - Blocking
The General Data Protection Regulation (GDPR)
What will change against the former 1995 EU Data Protection Directive?
The General Data Protection Regulation (GDPR)
What will change against the former 1995 EU Data Protection Directive?

### Accountability

- Even though the GDPR abolishes the need of notifying the supervisory authorities, it will introduce the obligation to the controller as well as the processor to be able to demonstrate their compliance to the GDPR by imposing means (i.e. performing [data protection impact assessments](#), using [data protection by design and by default](#) approaches, ...)

- Companies will have to appoint a [Data Protection Officer](#) in certain cases (public authorities, when monitoring of data subjects on a large scale and when processing special categories of data).

### Enforcement

- Data Protection Authorities (DPAs) already have investigative, corrective, advisory and authorisation powers.

- Data Protection Authorities (DPAs) will be entitled to impose administrative fines ranging between 2 to 4% of the groups worldwide annual turnover of the preceding financial year or EUR 10 to 20 million, whichever is higher for infringements of data subject rights, non-compliance with an order of the DPA or the obligations of the controller and processor.

### Broader territorial scope

- The GDPR will not only apply to processing activities of data controllers and processors established in the EU or using equipment located in the EU, but also to those that are not established in the EU but whose activities consist of targeting data subjects in the EU.
The General Data Protection Regulation (GDPR)
What will change against the former 1995 EU Data Protection Directive?

<table>
<thead>
<tr>
<th>Expanded definitions</th>
<th>Data subjects rights</th>
<th>Consent</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The new regulation is more specific regarding definition of personal data which give less rise to interpretation. Personal data includes location data, IP addresses, online and technology identifiers.</td>
<td>• Existing rights are reinforced (access, rectification, deletion, objection to the processing).</td>
<td>• Spelled out more clearly and focus on ability of individuals to distinguish a consent.</td>
</tr>
<tr>
<td>• Pseudonymous data is data that does not allow for identification of data subjects without the use of additional data.</td>
<td>• The GDPR introduces the rights to erasure, restriction of processing, data portability and the right not be subject to data profiling.</td>
<td>• Special regime for children under 16 where consent will have to be given or authorised by the holder of parental responsibility over the child. This age may be lowered to 13 by member states.</td>
</tr>
<tr>
<td>• Sensitive data now also includes genetic and biometric data.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
The General Data Protection Regulation (GDPR)  
What will change against the former 1995 EU Data Protection Directive?

### Data breach notification
- Notify data breach to the DPA within 72h after becoming aware of it.
- Notify data breaches to affected data subjects without undue delay when likely to result in a high risk.
- Processor to report to respective customer-controllers.

### One-stop shop
- When activities in more than 1 EU country, the DPA of main establishment can act as lead DPA, supervising processing activities throughout the EU.
- Facilitates interaction for controllers and processors with lead DPA while other DPAs still have a say in cross-border operations through consistency and cooperation procedures.

### International data transfers
- BCRs as tools for data transfers outside the EU and EEA are now embedded in law.
- Approved codes of conduct and certifications are new tools, to be developed.
Impacts on the operating model
GPDR will mainly impact four layers of the operating model:

- **Governance, organisation & people**
  - Do I need a Data Protection Officer?
  - How do I perform a data protection impact assessment?
  - How can I transfer personal data to other data controllers or processors (in third countries)?

- **Processes**
  - How to introduce Privacy by Design?
  - How to ensure that a consent is freely given, specific, informed and unambiguous?

- **Data**
  - How can smart health devices be used when a customer has the right not to be subject to profiling?
  - How can I analyze global behavior based on personal data?
  - How can I use advanced fraud detection tools?

- **Technology**
  - What needs to be done to ensure the rights to portability and to erasure?
  - How to keep track (and proof) of customer consent and what needs to done in case of a withdrawal?
EMIR

EMIR or not EMIR?

EMIR Specialists

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EMIR is organized around three main pillars...

EMIR introduced the following risk mitigation techniques to reduce the operational risk of bilateral (non-centrally cleared) OTC derivative transactions:

- **Timely confirmation:**
  - **Portfolio compression**
  - **Portfolio reconciliation:**
  - **Dispute resolution:**
- **Daily valuation:** Counterparties must evaluate their contracts on a daily basis using a market-to-market method. Where this method cannot be used, a mark-to-model approach must be applied and the method must be calibrated and validated;

- **Exchange of Collateral:** Risk management procedures that require the timely, accurate and appropriately segregated exchange of collateral:
  - Daily exchange of Variation Margin (VM)
  - Exchange two-way Initial Margin (IM) to cover future exposure from a counterparty default

- **Reporting**
  - All OTC and ETD contracts should be reported to trade repositories on T+1
  - Collateral and valuation reporting

- **Clearing Obligations**
  - Standardized derivative contracts (IRS / CDS*) should be cleared through central counterparties in order to reduce the risk in the financial system

* As of March 2016

**Required starting from**

- **February 12th, 2014**
- **March / September 2013**
- **August 11th, 2014**
- **June 21st, 2016**
- **Phase in as from Q4 2016**

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* As of March 2016
What is EMIR?
Key Requirements Clearing

<table>
<thead>
<tr>
<th>Category</th>
<th>Type of entity</th>
<th>Starting date after RTS enter into force</th>
<th>Frontloading* impact</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>Clearing member</td>
<td>6 months</td>
<td>yes</td>
</tr>
<tr>
<td>Category 2</td>
<td>Financial counterparty with transaction volume above EUR 8 bn*</td>
<td>12 months</td>
<td>yes</td>
</tr>
<tr>
<td>Category 3</td>
<td>Financial counterparty with transaction volume below EUR 8 bn*</td>
<td>18 months</td>
<td>No</td>
</tr>
<tr>
<td>Category 4</td>
<td>Non financial counterparty above clearing threshold</td>
<td>3 years</td>
<td>No</td>
</tr>
</tbody>
</table>

Clearing requirement **exemption**: Financial institutions involved in the management of public debt, Pension funds will have a three years transition period, Intra-group transactions and Non-financial counterparties (below clearing threshold).

**Which Entity?**
The financial counterparties including Investment firm, Credit institutions, Insurers, UCITS, ManCos, AIF managed by AIFM and Non financial counterparty whose OTC derivatives position exceed a clearing threshold as follows:

**Which Products?**

**Bottom Up approach:**
- Competent authority authorises CCP to clear a class of OTC derivatives
- ESMA to review and authorise (within 6 months)

**Top Down approach:**
- ESMA identify contract which can be but not yet cleared by a CCP

Based on the draft RTS on the Clearing Obligation for Interest Rate OTC derivatives of 1 October 2014, the first contracts to clear will be:
- IRS
- Basis swap
- FRA
- OIS

The criteria to be followed in identifying class of contract subject to clearing:
- Degree of standardization
- Volume of trading and liquidity
- Availability of pricing information

*In average aggregate notional amount on non-centrally cleared derivatives for the 3 months prior to the rule coming into force.
8bn threshold applies at fund level when the counterparties are UCITS or AIFs.
What is EMIR?
Clearing exemption for Pension Scheme Arrangements (PSA)

Why?
- Under current arrangements, PSAs – which encompass all categories of pension funds – would have to source cash for central clearing.
- Given that PSAs hold neither significant amounts of cash nor highly liquid assets, imposing such a requirement on them would require very far-reaching and costly changes to their business model which could ultimately affect pensioners’ income.

Conditions
- The pension scheme arrangement must fall within one of the subparagraphs of Article 2(10) of EMIR:
  - Institutions for occupational retirement within the meaning of article 6(1) of Directive 2003/41/EC
  - Occupational retirement provisions referred to in Article 3 of Directive 2003/41/EC
  - Occupational retirement provisions businesses of life insurance undertakings covered by directive 2003/41/EC, provided that all assets and liabilities corresponding to the business are ring-fenced, managed and organized separately from the other activities of the insurance undertaking, without possibility of transfer
  - Any other authorized and supervised entities, or arrangements operating on a national basis, provided they are recognized under national law and their main purpose is to provide retirement benefits
  - The OTC derivative contract must be “…objectively measurable as reducing investment risks directly relating to the financial solvency of pension scheme arrangements…”.
- PSA still need apply all RMT, including exchange of collateral
- Granted by the competent authority upon request

Timeline?
- As per the delegated regulation, the clearing obligation shall not apply to PSA until 16 August 2017
## Margin requirements

**Initial and Variation margin introduction as from Q4 2016**

<table>
<thead>
<tr>
<th></th>
<th><strong>Initial Margin (IM)</strong></th>
<th><strong>Variation Margin (VM)</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>What</strong></td>
<td>• Buffer to protect against variations in the exposure, during the period between 2 different margin calls</td>
<td>• A guarantee to protect against exposure incurred by trading in derivatives based on the latest known market price of the underlying</td>
</tr>
<tr>
<td><strong>Governance</strong></td>
<td>• 2 different methods allowed</td>
<td>• Must follow mark-to-market or mark-to-model</td>
</tr>
<tr>
<td></td>
<td>• Strict documentation and governance requirements</td>
<td>• Strict documentation and governance requirements</td>
</tr>
<tr>
<td><strong>Exceptions</strong></td>
<td>• Intragroup transactions*</td>
<td>• Intragroup transactions*</td>
</tr>
<tr>
<td></td>
<td>• Certain physically settled FX transactions</td>
<td>• If at least one counterparty is NFC- and below de-minimis thresholds</td>
</tr>
<tr>
<td></td>
<td>• Amount to collect is less than € 50 Mio</td>
<td></td>
</tr>
<tr>
<td><strong>Re-use</strong></td>
<td>• Re-use of collateral collected as IM is not allowed</td>
<td>• No restrictions on re-use for cash and non-cash collateral under EMIR</td>
</tr>
<tr>
<td><strong>Collateral</strong></td>
<td>• Must be segregated</td>
<td>• Must be calculated and collected daily</td>
</tr>
<tr>
<td></td>
<td>• Must be calculated and collected regularly</td>
<td>• Deadline for collateral collection</td>
</tr>
<tr>
<td></td>
<td>• Limits on what is accepted</td>
<td>• Limits on what is accepted</td>
</tr>
<tr>
<td><strong>Minimum Transfer Amount</strong></td>
<td>• Sum of the minimum transfer amount per counterparty at group level of IM+VM cannot exceed € 500,000</td>
<td>• Sum of the minimum transfer amount per counterparty at group level of IM+VM cannot exceed € 500,000</td>
</tr>
</tbody>
</table>

* Subject to regulatory approval
What is EMIR?
Key Requirements Reporting

**Scope**
- **OTC and exchange traded derivative contracts, whether cleared or not**, must be reported to a TR no later than T+1 following the conclusion, modification or termination of the contract

**Who?**
- **No exemptions** - every counterparty, financial and non-financial, must report.
- Responsibility falls on both counterparties although counterparties can delegate reporting to a third party including CCPs

**What?**
- **Common data** - class of derivative, contract details and terms, mark-to-market valuation and contract modifications (Common data only needs to be reported by one counterparty)
- **Counterparty data** - Information on both counterparties, reported separately by each counterparty or their appointed reporting entity
- **Information on collateral exchanged** by the counterparties must be reported.
- **Mark-to-market valuations** of the contract must be updated and reported
- **Record keeping**: Counterparties must retain records of all derivative contracts (and modifications) for at least 5 years
- **Future additional fields** including collateral amount split in variation and initial margin, posted and received.
Solvency II faces strong criticism from European insurers. Professionals point out the increased volatility of the regime compared to Solvency I, its dissuasive effect on investments in some asset classes and the capital burden it places on (re)insurers in a low interest rates – low margin environment.
Solvency II - Review of specific items in the Delegated Regulation
Focus on the SCR standard formula review

The European Commission mandates EIOPA to provide technical advice on the review of specific items of the Solvency Capital Requirement standard formula by 31 October 2017. Here is a schematic illustration of the main topics and SCR (sub)modules impacted:

- Proportionate and simplified application of the requirements
  - Improvements for the existing simplifications and propositions for further simplifications
  - Refinements to the simplification regarding the look-through approach (extension of scope and reduction of the reliance on external ratings)
  - Suggestions for simpler structures, respecting the existing scope

- Removal of unintended technical inconsistencies
  - Develop further the framework for the use of alternative credit assessments
  - Report on methods, judgements and practices in assessing the adjustment of the loss absorbing capacity of deferred taxes
  - Review of methods and/or assumptions and/or standard parameters
  - Review of the methods and assumptions regarding the risk margin, in particular the cost-of-capital rate
  - Assess the differences between the banking and the insurance frameworks as regards:
    - exposures guaranteed by a third party
    - exposures to regional governments and local authorities
    - the classification of own funds items

Base Erosion and Profit Shifting
Towards more transparency and more coherence

L'OCDE sonne la fin de la récréation
L'Organisation de coopération et de développement économiques a annoncé vouloir s'attaquer concrètement à l'optimisation fiscale. Un premier bon en avant, malgré le pessimisme des ONG.

Multinationales: le coup de bâton fiscal de l'OCDE

Global crackdown on company tax avoidance unveiled
Base Erosion and Profit Shifting
A 15-point Action Plan
## The EU answer to BEPS

Best in class approach

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
<th>Description</th>
<th>Year</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Exchange of info on Tax Rulings</td>
<td>8 Dec 2015</td>
<td>Exchange of information in relation to cross-border tax rulings &amp; APAs</td>
<td>2017</td>
<td>No specific rules for the insurance industry</td>
</tr>
<tr>
<td>Country by Country Reporting</td>
<td>25 May 2016</td>
<td>Country-by-country reporting between tax authorities on key tax related information</td>
<td>2017</td>
<td>Turnover &gt; EUR 750m, No specific rules for the insurance industry</td>
</tr>
<tr>
<td>Anti-Tax Avoidance</td>
<td>12 July 2016</td>
<td>CFC rules, Interest limitation, Hybrids, Exit taxation and GAAR</td>
<td>From 2019</td>
<td>CFC rules (mainly reinsurance), Other rules should have a limited impact</td>
</tr>
<tr>
<td>Tax Treaties Recommendation</td>
<td>28 Jan 2016</td>
<td>Permanent Establishment (PE), Access to Tax Treaties</td>
<td>?</td>
<td>Evolution of discussions regarding PE must be closely followed up</td>
</tr>
</tbody>
</table>
The EU answer to BEPS

Action 7 - Extension of the concept of Permanent Establishment

|-------------------------------------------------------|------------------------------------------|-------------|

Profits of a Company resident in a State are in principle exclusively taxable in that State, unless it carries on business in another State through a Permanent Establishment (PE) situated therein.

**Fixed Place of Business**

<table>
<thead>
<tr>
<th>Art. 5(1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed place of business through which the business of an enterprise is wholly or partly carried on (e.g. branch)</td>
</tr>
</tbody>
</table>

**Dependent Agent**

<table>
<thead>
<tr>
<th>Art. 5(5)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A person who acts on behalf of an enterprise and has, and habitually exercises, in a State an authority to conclude contracts in the name of the enterprise</td>
</tr>
</tbody>
</table>

**Independent Agent**

<table>
<thead>
<tr>
<th>Art. 5(6)</th>
</tr>
</thead>
<tbody>
<tr>
<td>A broker, general commission agent or any other agent of an independent status provided that such persons are acting in the ordinary course of their business. Special rules may apply for insurance business in some tax treaties.</td>
</tr>
</tbody>
</table>

**Nature of the activities**

<table>
<thead>
<tr>
<th>Art. 5(4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>List of specific activity exemptions which does not constitute a PE (e.g. preparatory and auxiliary activities)</td>
</tr>
</tbody>
</table>
The EU answer to BEPS
Action 7 - Extension of the concept of Permanent Establishment

BEPS Concerns in relation to current PE taxation rules

**Dependent Agent**

*Commissionaire arrangements* where:

- A Company can sell products in a State without having there a taxable presence via a PE; and

- Dependent Agent cannot be taxed on the profits derived from the sales as it does not own the products - its taxation being limited to the remuneration it received for the services rendered (e.g. commission)

**Independent Agent**

- Arrangements where the person that habitually exercises an authority to conclude contracts constitutes an Independent Agent to which Art. 5(6) exception applies even though it is closely related to the foreign enterprise on behalf of which it is acting.

Revised Model Tax Convention after BEPS Review

Extension of the PE definition to capture situations where a Dependent Agent not only has the authority to conclude contracts, **BUT also habitually plays the principal role leading to the conclusion of contracts** that are:

- routinely concluded without material modification by the enterprise; and,

- concluded in the name of the enterprise, or contracts that are for the transfer of the ownership of (or right to use) property owned (or used) by the enterprise, or contracts that are for the provision of services by the enterprise

Additional comments on the factors to be considered to determine if an agent is independent or not:

- Activities (almost) exclusively performed on behalf of one or closely related enterprise(s)?
- Entrepreneurial risk borne by the agent?
- Detailed instructions received from the principal?
- etc.
How Luxembourg reacts to BEPS
Main drivers of the corporate tax reform for 2017

**REDUCTION IN NOMINAL TAX RATE**
- 27% in 2017
- 26% from 2018
- CIT & MBT components

**TRANSFER PRICING**
- New rules inspired from BEPS Actions 8-10 re. TP

**LIMITATION CARRIED FORWARD TAX LOSSES**
- Limitation to 17 years for tax losses realized from FY17

Source: EU Commission and Deloitte
How should you react to this new environment?

- Substance
- Documentation
- Assess Tax Risk & Opportunities
VAT

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VAT

Agenda

• Director fees: VAT circular n° 781

• Independent Group of Persons: challenge by the Commission

• Unit-Linked Insurance Products: internal funds management and VAT exemption
Director Fees
VAT Circular n° 781

1. VAT Circular n° 781 issued on 30 September 2016:
   - Taxation of all director fees (17%), including those paid to individuals
   - Whatever the “qualification”: (service) fees, tantièmes, jetons de présence
     Except:
     - Employees or other person retroceding his remuneration
     - € 25,000 per year
     - “Honorary” directorship (Art. 44§1(w) LTVA)

2. Directors of investment funds and other entities within the scope of Art. 44§1(d): possible VAT exemption (ManCos are not listed by Art. 44§1(d) LTVA)

3. Grand-fathering clause: 1 January 2017

4. Deduction of director fees for corporate tax: NO

5. Practical impacts: compliance obligations (and deduction?)
Director Fees
VAT Circular n° 781

Non-resident directors?
- VAT to be self-assessed by VAT taxable companies on fees paid to non-Luxembourg resident directors (EU and non-EU) = “B2B” principle (“reverse-charge” mechanism)

VAT deduction by The company?
- YES: Industrial or Trading companies
- NO (or partly): Insurance Companies, Banks, Holdings & Financing entities, PSFs... = an additional final cost

Others?
- Who will support the additional VAT when not deductible?
  Discussions to be undertaken during next board meeting
- Comprehensive list of “frequently asked questions” available, in French, on the Luxembourg VAT Authorities’ website www.aed.public.lu

Penalties?
- YES: Articles 77 to 80 LTVA
Luxembourg Independent Group of Persons
Current Regime

Conditions:
• The IGP can only provide support services to its members.
• The members must undertake a VAT exempt or non-business activity and may only have additional taxable activities accounting for a maximum of 30% of their overall turnover.
• The IGP may only claim from its members the exact reimbursement of their proportion of the common expenses (i.e. no margin allowed)
• The IGP may not make supplies of goods.
• It is possible to include members established in other EU Member States, however, in such cases more stringent conditions would apply.

Advantages:
• VAT exemption applied to the support services provided by the IGP to its members.
• The input VAT paid or self-assessed by the IGP is transferred to each member (recoverable by that member subject to its own input tax deduction position)
The European Commission brought infringement proceedings procedure against Luxembourg in respect of Luxembourg’s transposition of the EU IGP exemption (Case C-274/15) on 8 June 2015.

The main points concerning this matter remain:

- **Eligibility of members**: The legislation applicable in Luxembourg does not restrict the VAT exemption only to services provided by an independent group of persons and directly necessary for activities undertaken by its members which are not liable to VAT or are exempt.

- **Allocation out of scope**: A member of an independent group of persons acquires goods and services from a third party in his own name, but on behalf of the group, the transaction by which that member assigns such expenditure to the group falls outside the scope of VAT.

- **Deductibility of input VAT**: The members of an independent group of persons whose turnover partly derives from taxable activities may deduct the VAT invoiced to the independent group of persons for its purchases of goods or services from a third party from the VAT which they themselves are liable to pay.

The dates for the key stages are:

- 8 June 2015: Lodging of the application
- 30 June 2016: Hearings
- 6 October 2016: Advocate General opinion
- At the beginning of 2017?: Judgement
Under Luxembourg VAT Law, fund management services exemption is provided by the Article 44 (1) (d):

"Are exempted from VAT in the limits and under the conditions provided by Grand Ducal-Decree:

[...]

d. the management of:

i. Investment funds and pension funds, subject to the supervision of the CSSF (i.e. the Luxembourg Commission for the Supervision of the Financial Sector) or the CAA (i.e. the Luxembourg Insurance Commission);

ii. Undertakings similar to the ones referred to in point (i) of other EU Member States and subject to the supervision of a supervisory body from another EU Member State similar to the CSSF or CAA;

iii. Securitisation vehicles covered by the law of 22 March 2004 and similar vehicles of other EU Member States;

iv. Alternative Investment Funds;"
Unit-linked insurance product
VAT treatment

Benefit from the VAT exemption the following professional retirement institution that are under the supervision of the CSSF or the CAA:

- Pension savings companies with variable capital (”SEPCAV”)
- Pension savings associations (”ASSEP”)
- Pension funds covered by the law of 6 December 1991 on the insurance industry

⇒ The Dedicated Internal Funds (DIF) are not listed as special investment funds in Luxembourg, and are consequently not eligible for the benefit of this exemption

⇒ Taxation at the standard rate for management
⇒ Taxation at the intermediate rate for custody
⇒ VAT is then a final cost
Unit-linked insurance product

VAT treatment

⇒ Opportunity for professional organisations to ask for more harmonization?

At least for **internal collective funds**, as they operate like “UCITS”: could management services benefit from a VAT exemption?

**Difference of interpretation** among member states for the exemption?

− Italy considers management services related to unit linked policies as VAT exempt (as they are related to SIF)

− Finland considers that discretionary investment management services provided in respect of insurance portfolios do not fall within the VAT exemption for the management of a SIF

VAT exemption would provide a **competitive advantage to Luxembourg**?

Need to undertake and continue a **positive lobbying**?
FATCA & CRS update

FATCA & CRS Specialist

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What’s new?
Regulatory milestones

**FATCA**
- **Due Diligence**
  - High-Value accounts (individuals)
  - Other accounts (individuals & entities)
- **Withholding**
  - Withholding on US FDAP payments paid to recalcitrant clients and NPFFIs

**Reporting**
- First exchange on reporting year 2014 (accounts balance or value)
- Second exchange on reporting year 2015 (accounts balance or value + gross amounts of income)
- Third exchange on reporting year 2016 (accounts balance or value + gross amounts of income + gross proceeds)
- Fourth exchange on reporting year 2017

**CRS**
- **Due Diligence**
  - High-Value accounts (individuals)
  - Other accounts (individuals & entities)
- **Withholding**
  - N/A
- **Entry into force**
  - First exchange on reporting year 2016 (accounts balance or value + gross amounts of income + gross proceeds)
  - Second exchange on reporting year 2017 (accounts balance or value + gross amounts of income + gross proceeds)

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Focus on latest CRS updates in Luxembourg

<table>
<thead>
<tr>
<th>Focus on latest CRS updates</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FI Scope</strong></td>
</tr>
<tr>
<td>No list of exempt entities in Luxembourg</td>
</tr>
<tr>
<td><strong>Criteria</strong></td>
</tr>
<tr>
<td>List of participating jurisdictions and exempt products published in Grand Ducal Decree of 15 March 2016, as amended through the Grand Ducal Decree of 23 July 2016 – Participating jurisdictions based on MCAA approach (without the USA)</td>
</tr>
<tr>
<td><strong>Due diligence on new clients</strong></td>
</tr>
</tbody>
</table>
| Wider approach for documentation  
(option to require TINs in self-certification for non-reportable persons, or not) |
| **Due diligence on existing clients** |
| Procedures for New Accounts may be applied to Pre-existing accounts  
High Value Accounts procedures may be applied to Low Value Accounts |
| **Reporting**                |
| No “wider approach” for reporting  
(not an option for Reporting FIs to transmit data on reportable and non-reportable accounts; only data on reportable accounts shall be transmitted to the Luxembourg tax authorities). |
New principles under CRS

**Reportable Jurisdictions**

The **Reportable Jurisdictions** are the jurisdictions that have:
- Reached agreement with the EU to exchange information according to the CRS or;
- Reached an agreement with Luxembourg that requires this country to send information to them under the CRS

⇒ list of **Reportable Jurisdictions** to be published by the different Jurisdictions.

**Luxembourg highlight:**

In Luxembourg, the list of Reportable Jurisdictions has not yet been published but is expected to be published by the end of 2016 through a second Grand-Ducal Decree.

**Impact for the financial institutions**

List of countries for which a reporting has to be performed by the financial institutions.

---

**Participating Jurisdictions**

The **Participating Jurisdictions** are, from a Luxembourg perspective, the jurisdictions that have signed the MCAA at OECD level

⇒ List of **Participating Jurisdictions** to be published by the different Jurisdictions (approach regarding definition of the notion could be different)

**Luxembourg highlight:**

In Luxembourg, the list of Participating Jurisdictions has been published through the Grand-Ducal Decree of 15 March 2016, updated through the Grand Ducal Decree of July 23, 2016.

The list currently contains **81 Jurisdictions** (the list will need to be regularly updated in order to include those additional jurisdictions having signed the CRS Multilateral Competent Authority Agreement).

**NB:** The United States have been removed from this list as it does not comply with the requirements to be considered a Participating Jurisdiction within the context of Luxembourg’s CRS regulations.

**Impact for the financial institutions**

No deemed Passive NFE concept to be applied for “Investment Entities” resident in Participating Jurisdictions.
The OECD has put online a tool to verify which countries will be reportable jurisdictions:

https://www.oecd.org/tax/automatic-exchange/international-framework-for-the-crs/exchange-relationships

(note the tool seems not really stable as sometimes it appears, sometimes not...)

According to this tool, 46 countries would be reportable in the hands of Luxembourg FI, amongst which some surprises such as Mexico... (we are still awaiting the Grand Ducal Decree with the list of Reportable Jurisdictions though to obtain confirmation, so do not take this list as final for the time being):

- **Reportable jurisdictions by 2017**
  - "Early adopters" – Deemed to participate to first exchanges by 2017 on calendar year 2016
  - Jurisdictions deemed to undertake first exchanges by 2018 on calendar year 2017
Reporting process
Reporting process value chain

**Data extraction**
- Extraction of reportable clients and related information (name, address, TIN/GIIN, etc.)
- Extraction of accounts linked to reportable clients (account number, balance, etc.)
- Extraction of payments linked to accounts
- Extraction of reportable population based on their FATCA/CRS statuses.

**Data formatting**
- Information to be reported for CRS must be formatted to satisfy current IRS/OECD XML schema requirements.
- Detailed specifications available:
  - on the Luxembourg tax authorities portal for FATCA purposes ([http://www.impotsdirects.public.lu/echanges_electroniques/FATCA/index.html#tei](http://www.impotsdirects.public.lu/echanges_electroniques/FATCA/index.html#tei)).

**XML generation**
- Technical aspects for CRS remain close to FATCA with slight changes.
- Technical identifiers must be stored to be re-used during correcting process.
- Reporting file must be generated following IRS(ACD)/OECD specifications and verified against XSD schema file to ensure its validity.

**Report submission**
- XML reporting files must be submitted to the Luxembourg Tax Authorities according to local specifications.
- In Luxembourg, both SOFiE (from Six Payment Services) and E-File (from FundSquare) can be used.
- Submission to local tax authorities must be performed for 30/06/N+1
  - By 31/08/2015 for FATCA purposes
  - By 30/06/2017 for CRS purposes

**NB** - Phased approach for FATCA reporting:
- 2014 – account balance
- 2015 – account balance and payments
- 2016 – account balance, payments and gross proceeds.
Data protection: what does it mean in practice?

Obligation 1
Implement internal procedures regarding data protection obligations, in function of strategic choices made.

Obligation 2
Ensure the notification (through a dedicated form) of the Luxembourg National Commission for Data Protection is done or updated if required.

Obligation 3
Ensure protected persons are notified.

Laws:
- Data protection Law on 2 August 2002
- Law of 18 December 2015 ("Luxembourg CRS Law") and
- Law of 24 July 2015 (« FATCA Law »)

This notification will include the security safeguards as to personal data held, (2) the moments on which protected persons are informed and how the (3) information access and (4) rectification rights can be exercised.
Data protection requirements

The Reporting Financial Institution (FI) shall notify each individual on which personal data is collected (including Controlling Persons) that this data shall be collected and reported in accordance with the law of 24 July 2015 (FATCA) and 18 December 2015 (CRS).

In accordance with article 26 of the modified data protection law of 2 August 2002, Luxembourg Reporting FI must notify that*:

1. The Luxembourg Financial Institution is responsible of the processing of personal data as a data controller within the meaning of the data protection law.

2. Personal data will be used for purposes of the CRS law.

3. The data may be communicated to the Luxembourg tax authorities and to the relevant authorities of a Reportable Jurisdiction.

4. The Reportable Person is required to provide any additional information required under the Law. Consequences of a lack of reply (e.g. annual reporting obligation in 1 or several jurisdictions where un-remediated indicia exist, need to be mentioned).

5. The individual shall have the right to access his personal data and the right to have it rectified where relevant.

6. Data shall not be stored for longer than necessary in accordance with all laws applicable to the data controller regarding the statute of limitation.

* Data protection provisions apply as from the moment data is collected, and legal documentation should be reviewed to ascertain whether this is sufficiently covered.
Data protection: strategic choices

- Preexisting clients
  - Separate notification
  - Where applied, Self-certification including notification
  - Controlling persons covered through signature or not

- New clients
  - Separate notification
  - Self-Certification including notification
  - Controlling persons covered through signature or not
  - Notification as from the moment data is collected ➔ As soon as possible

Under the data protection law: penalties up to EUR 125,000 and imprisonment up to one year (1).

Under the FATCA and CRS laws: penalties up to EUR 250,000.

(1) EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 imposes penalties up to 20 million euros, or an equivalent of 4% of the annual turnover of the data controller. The Regulation shall apply from 25 May 2018.
Appendix
Entity accounts treated as Reportable Persons under the CRS

<table>
<thead>
<tr>
<th>Reportable Account</th>
<th>Reportable Person</th>
</tr>
</thead>
<tbody>
<tr>
<td>The term “Reportable Account” means an account held by one or more Reportable Persons or by a Passive NFE with one or more Controlling Persons that is a Reportable Person, provided it has been identified as such pursuant to the due diligence procedures.</td>
<td>The term “Reportable Person” means an individual or Entity that is resident in a Reportable Jurisdiction other than:</td>
</tr>
<tr>
<td>ii. a corporation the stock of which is regularly traded on one or more established securities markets;</td>
<td>i. a corporation the stock of which is regularly traded on one or more established securities markets;</td>
</tr>
<tr>
<td>iii. a Governmental Entity;</td>
<td>ii. any corporation that is a Related Entity of a corporation described in clause (i);</td>
</tr>
<tr>
<td>iv. an International Organization;</td>
<td>iii. a Governmental Entity;</td>
</tr>
<tr>
<td>v. a Central Bank; or</td>
<td>iv. an International Organization;</td>
</tr>
<tr>
<td>vi. a Financial Institution.</td>
<td>v. a Central Bank; or</td>
</tr>
</tbody>
</table>

Entity accounts treated as Reportable Persons under the CRS

- Entities classified as Active NFE tax resident in a Reportable Jurisdiction other than:
  1. A corporation that is a publicly traded or an affiliate of a publicly traded corporation
  2. A Government Entity
  3. An international Organization
  4. A Central Bank

- Entities classified as Passive NFE tax resident in a Reportable Jurisdiction

- Entities classified as Passive NFE (whether tax resident in a Reportable Jurisdiction or not) with Controlling Persons tax residents in Reportable Jurisdictions (if any of the Controlling Persons of a Passive NFE is a Reportable Person, then the account must be treated as a Reportable Account).

- Professionally managed investment entities located in a non-Participating Jurisdiction, deemed Passive NFEs with one or several controlling persons tax resident in a Reportable Jurisdiction
Classification of entity clients - CRS

The CRS, as well as FATCA, make a distinction between the type of clients to be analysed. Each type has its own approach and documentation process as follows:

- Depositary Institutions
- Custodial Institutions
- Investment Entities
- Specified Insurance Companies
- Governmental entities and their pension funds*
- International Organisations*
- Central Banks*
- Certain Retirement Funds
- Qualified Credit Card Issuers
- Exempt Collective Investment Vehicles
- Trustee Documented Trusts
- Other low-risk Financial Institutions

Financial Institutions ?

Yes

No

Non Financial Entities

Active NFE

- Less than 50% of the NFE’s gross income is passive income and
- Less than 50% of the assets held by the NFE are assets that produce or are held for the production of passive income
- Or certain other categories.

Passive NFE

- NFE that is not an Active NFE
- A professionally managed Investment Entity in a country that is not considered as a Participating Jurisdiction

- Other Active NFE
- Entities regularly traded on an established securities market and related entities
- Governmental Entities
- International Organisations
- Central Banks
- Entities wholly owned by the one or more of the foregoing

- Other Non Reportable NFE
- Entities wholly owned by the one or more of the foregoing

- Reportable / Non-Reportable NFE***
- Non Reportable NFE

- Reportable / Non-reportable NFE*** with Reportable Controlling Persons
- Non Reportable NFE

Reportable / Non-reportable NFE*** with Non Reportable Controlling Persons

* Other than with respect to a payment that is derived from an obligation held in connection with a commercial financial activity of a type engaged in by a Specified Insurance Company, Custodial Institution, or Depositary Institution

** Any natural person that holds directly or indirectly more than 25% of the shares or voting rights of an Entity as a beneficial owner or exercises control over the management of the Entity.

*** NFE are reportable in case they are identified as tax resident of a Reportable Jurisdiction

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Classification of individual clients - CRS

The CRS, as well as FATCA, make a distinction between the type of clients to be analysed. Each type has its own approach and documentation process. The confirmation / certification of the tax residence of the individual clients is detailed as follows:

**Individual clients**

**Pre-existing account***

- **High Value account*** (>1 million USD)
  - Electronic search for indicia
  - Paper search for indicia if the FI does have all necessary fields in its system

- **Low value account** (< 1 million USD) as at 31/12/15
  - Electronic search for indicia

**New account (as of 01/01/2016)**

- **Self-certification mandatory** at account opening

**CRS indicia:**
- Identification of the Account Holder as a resident of a foreign jurisdiction;
- Current mailing or residence address (including a post office box) in a foreign jurisdiction;
- One or more telephone numbers in a foreign jurisdiction and no telephone number in Luxembourg;
- Currently effective power of attorney or signatory authority granted to a person with an address in a foreign jurisdiction; or
- A “hold mail” instruction or “in-care-of” address in a foreign jurisdiction if no other address on file for the Account Holder.

**Tax residence determined:**
- from each indicia pointing to a different jurisdiction
- unless confirmed in a self-certification (to the extent that its reasonableness has been checked with AML/KYC information on file) / proof of evidence. / no reasons to know

---

* High Value Accounts are Pre-existing Individual Accounts with an aggregate balance or value that exceeds, as of 31 December 2015, or 31 December of any subsequent year, an amount denominated in euro or other currency that corresponds to USD 1 000 000.
Classification of entity clients - CRS

The CRS, as well as FATCA, make a distinction between the type of clients to be analysed. Each type has its own approach and documentation process. The identification of the tax residence of the entity clients is detailed as follows:

- **Pre-existing account**
  - Accounts subject to review
  - Determination of the tax residence based on:
    - AML/KYC information on file
    - A confirmed self-certification

- **New account (as of 01/01/2016)**
  - Accounts <250,000 USD as at 31/12/15
    - Not required to be reviewed, identified or reported - optional -
  - Self-certification mandatory at account opening
  - Determination of the CRS status:
    - Financial Institution
    - Active NFE
    - Passive NFE

  For Passive NFE:
  - Identification of the Controlling Persons
  - Determination of the tax residence of those Controlling Persons

  Tax residence determined:
  - For all entities which have to be classified
  - For each Controlling Person of Passive NFES with their own self-certification

  Tax residence and CRS status from the self-certification (to the extent that its reasonableness has been checked with AML/KYC information in file) / no reasons to know

---

The **Wider Approach** has been confirmed in the CRS law and Reporting Financial Institutions are allowed to:
- Apply New Accounts due diligence on Preexisting Accounts and
- Apply the Due Diligence of High Value Accounts to Low Value Accounts.
- Financial Institutions can obtain information from Account Holders resident in a Non-Participating Jurisdiction.
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Partner
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AML
Fast evolving tax environment (CRS, FATCA, etc.)

4th AML Directive bis

- Tax crime will become a primary offence of money laundering
- Definition of tax crime is to be confirmed but Luxembourg 2017 draft budget includes a definition of (i) “fraude fiscale”, (ii) “fraude fiscale aggravée” and (iii) “escroquerie fiscale”
- Comments/recommendations/interpretations from regulators (e.g. EBA, CSSF, etc.) are still pending
- Applicable as from: (i) January 2017 in domestic tax law and (ii) June 2017 for the directive

What does it mean in practice for you?
PRIIPs

PRIIPs Specialist

Florent Anders
Senior Consultant
Direct line: +352 451 45 4955
Mobile phone: +352 661 451 922
Email: fanders@deloitte.lu
Setting the scene: PRIIPs summary

What is the contribution of PRIIPs’ Regulation?
- PRIIPs, Packaged Retail and Insurance based Investment Products, is the first regulation on a European level to deal with pre contractual information.

What are the objectives of PRIIPs’ Regulation?
- Promote the emergence of a single European insurance market
- Ensure the comparability between similar products
- Improve transparency and increase investors confidence
- Harmonize the framework of administrative and financial penalties on a Europe-wide basis

How does PRIIPs’ Regulation attempt to achieve these objectives?
- By defining a KID (Key Information Document) with standard format and content
- By making it compulsory to provide this KID prior to any proposal or a contract
Setting the scene: PRIIPs summary

**PRIIPs**

- Structured deposits (but not deposits linked solely to interest rates).
- Products with capital and/or return guarantees
- All investment funds, including UCITS and retail AIF, whether closed ended or open ended

**ASSET MANAGEMENT**

- SPVs, holding companies
- Structured deposits (but not deposits linked solely to interest rates).
- Products with capital and/or return guarantees
- Derivative instruments

**BANKING**

- Unit-linked life insurance
- EUR fund with Profit sharing
- Certain pension products
Setting the scene: PRIIPs summary

A person advising on, or selling, a PRIIP shall provide retail investors with the KID in good time before those retail investors are bound by any contract or offer relating to that PRIIP.

- Maximum 3 A4 pages
- Stand alone
- Consistent with marketing information
- Easy to read, accurate and not misleading
- Should be available in the language of the retail investor
- Regular review of the content.
- Revised version to be made available promptly.

Where applicable, a comprehension alert.
PRIIPs timeline

- **Adoption of the regulation**: Past RTS draft process (rejected)
- **Technical specification process**: 1 Year delay and confirmation of new RTS
- **Entry into force**: Draft new RTS (6 weeks)
- **Review after 4 years**: Scrutiny period (2+1 months)
- **End of exemptions for UCITS**: New
KID – Different possibilities
Three scenarios in a nutshell

Scenario 1
- 1 KID per contract

- Production of a single KID about the overall PRIIP (including the chosen investment option)

or

Scenario 2
- 1 KID per option

- Production of a single KID combining generic and specific information in relation to each Investment option.

or

Scenario 3
Multi-option products (« MOPs »)
- 1 generic KID
- X specific « Mini KIDs »

- Production of a single generic KID about the overall PRIIP and disclose specific information about each underlying option

• A switch from one scenario to the other may also be envisaged
• All scenario are permissible as per the RTS
KID contents

1. Comprehension alert
2. Identity information
3. “What is this product?”
4. “What are the risks and what could I get in return?”
5. “What happens if [name of the PRIIP manufacturer] is unable to pay out?”
6. “What are the costs?”
7. “How long should I hold it and can I take money out early?”
8. “How can I complain?”
9. “Other relevant information”

Investment €1,000

<table>
<thead>
<tr>
<th>Scenarios</th>
<th>1 year</th>
<th>2 years</th>
<th>3 years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Unfavourable</td>
<td>€989</td>
<td>€987</td>
<td>€981</td>
</tr>
<tr>
<td>Average return each year</td>
<td>-3%</td>
<td>-5%</td>
<td>-7%</td>
</tr>
<tr>
<td>Moderate scenario</td>
<td>€1,030</td>
<td>€1,005</td>
<td>€1,159</td>
</tr>
<tr>
<td>Average return each year</td>
<td>3%</td>
<td>5%</td>
<td>7%</td>
</tr>
<tr>
<td>Favourable</td>
<td>€1,100</td>
<td>€1,110</td>
<td>€1,330</td>
</tr>
<tr>
<td>Average return each year</td>
<td>10%</td>
<td>10%</td>
<td>6%</td>
</tr>
</tbody>
</table>

[Note: all figures in the table are for illustration purposes only]

This table shows the money you could get back over the next [recommended holding period], years, under different scenarios, assuming that you invest €1,000 per year.

The scenarios shown are a simplification of possible outcomes. You can use these scenarios to compare with the scenarios of other products, because they are calculated under similar conditions.

The scenarios presented are not an exact indicator of future performance, but an estimation to that effect. The amount you get will vary depending on how the market performs and how long you keep the investment/product.

For the favourable scenario a rise in the market of 7% is shown. So if the market goes up by 7% the money you get back will not rise equally with the market not rise any longer (canceled). If the market goes up by 7%, the money you get back (not rise not equal to 7% of the market not rise any longer (canceled) will not drop as much as the market gains.

The financial statement is based on historical prices and is not based on the future performance of the product.

The figures shown take into account all costs associated with the product, but they do not include all the costs that you pay to your advisor or distributor, and do not take into account your personal tax situation, which may have impact on what you get back.

For a more complete overview of the assumptions that were made in producing the performance scenarios, please see our website.

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IDD

IDD Specialists

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Insurance Distribution Directive (IDD)
Overall context in a nutshell

Who?

- This Directive applies to any natural or legal person who is established in a Member State or who wishes to be established there in order to pursue the distribution of insurance and reinsurance products (Insurance undertakings, products’ manufacturers, distributors)

What?

- The activities of insurance and reinsurance distribution in the European Union
- Customer protection in ensuring that insurance products meet the needs of the target market
- Mitigating mis-selling

Why?

- To strengthen the internal market by harmonizing national provisions and ensuring fair competition regarding insurance and reinsurance distribution that are carried out within the Union
- To improve industry reputation due to higher trust by customers by putting the clients’ characteristics, objectives and interests first following the recent financial turbulence

How?

- Minimum harmonisation not precluding any Member state from maintaining or introducing more stringent provisions in order to protect customers, provided that they are consistent with EU law, this Directive included.
- Following the EIOPA’s delegated acts

When?

- Publication of IDD in the EU Official Journal
- Proposition of EIOPA’s delegated acts
- Today
- Proposition of EIOPA’s draft for the IPID
- IDD entry into force
- IDD transposition into national law
Insurance Distribution Directive (IDD)

Key elements

1. Products Oversight & Governance arrangements
2. Conflicts of interests
3. Inducements
4. Insurance Product Information Document
5. Suitability & Appropriateness profiles
## Products Oversight & Governance arrangements

The POG’s impacts on the insurance product’s life-cycle

<table>
<thead>
<tr>
<th>Product design</th>
<th>Product manufacturing</th>
<th>Product distribution</th>
<th>Product monitoring</th>
</tr>
</thead>
<tbody>
<tr>
<td>Owners</td>
<td>Manufacturers</td>
<td>Manufacturers</td>
<td>Distributors</td>
</tr>
<tr>
<td><strong>Activities</strong></td>
<td><strong>Activities</strong></td>
<td><strong>Activities</strong></td>
<td><strong>Activities</strong></td>
</tr>
<tr>
<td>Identification of target market’s interests, objectives</td>
<td>Manufacturing of the insurance product</td>
<td>Product distribution</td>
<td>Assessment of the evolution of the products’ characteristics and their consistency with the initially identified target market</td>
</tr>
<tr>
<td>Product definition and design meeting the target market characteristics</td>
<td></td>
<td>Management of conflicts of interests</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Possibility to sell products outside the target market under specific conditions</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Documenting &amp; keeping all relevant actions taken to ensure compliance with the POG for a period of 5 years</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Elements required</th>
<th>N/A</th>
<th>N/A</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Activities</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Identification of the product’s characteristics (risks, costs)</td>
<td>Information sharing (product, target market, conflicts of interests)</td>
<td>Distribution channels &amp; strategy selected</td>
<td></td>
</tr>
</tbody>
</table>
Conflicts of interests
What to disclose to customers before a contract is concluded?

<table>
<thead>
<tr>
<th>Information relative to the insurance intermediary</th>
<th>Information relative to the nature of the remuneration received by the intermediary</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Whether it has a <strong>holding</strong> of at least 10% of the voting rights/capital <strong>in an insurance undertaking</strong> or vice versa</td>
<td>Whether the remuneration is received on the basis of:</td>
</tr>
<tr>
<td>• Whether it is under a contractual obligation to conduct insurance distribution business with <strong>exclusivity</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• A <strong>fee</strong> paid directly by the customer;</td>
</tr>
<tr>
<td></td>
<td>• A <strong>commission</strong> included in the insurance premium</td>
</tr>
<tr>
<td></td>
<td>• Any other type of remuneration</td>
</tr>
<tr>
<td>Where the fee is payable directly by the customer, <strong>the amount of the fee</strong> or, the <strong>method for calculating it.</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Insurance-Based Investments Products’ specificities**
Where organizational arrangements to **manage conflicts of interest** are **not** sufficient to **ensure**, with reasonable confidence, the **prevention of risks** of damage to customers’ interests.

The insurance intermediary/undertaking shall **disclose** the **nature/sources** of the **conflicts of interest**

• in good time **before** the **contract** is **concluded**
• on a **durable medium**
• with **sufficient details**

The Commission shall be empowered to adopt **delegated acts**

• **Defining** the **steps** for insurance distributors to identify, prevent, manage and disclose **conflicts of interest**
• **Establishing criteria** for determining the types of conflicts of interest whose existence may damage customers’ interests
Inducements

Actions to prevent detrimental impacts from happening

<table>
<thead>
<tr>
<th>Inducements that could lead to detrimental impacts</th>
<th>Actions to prevent detrimental impacts from happening</th>
</tr>
</thead>
<tbody>
<tr>
<td>• If it encourages to recommend a product that is not the most suitable one</td>
<td>• Base the inducement mainly on qualitative criteria</td>
</tr>
<tr>
<td>• If it is based on quantitative commercial criteria</td>
<td>• Inform customers about the fees, commissions and benefits</td>
</tr>
<tr>
<td>• If its value is disproportionate with the products value</td>
<td>• Create an inducement scheme that allows:</td>
</tr>
<tr>
<td>• If it is mainly paid up-front</td>
<td>• The inducement to be claimed back in case of harmed customer</td>
</tr>
<tr>
<td></td>
<td>• The inducement to be refunded if the product became quickly surrendered</td>
</tr>
<tr>
<td></td>
<td>• Document every inducement’s assessment in a durable medium</td>
</tr>
<tr>
<td></td>
<td>• Use inducements to finance training on insurance products or regulatory/ethical standards</td>
</tr>
</tbody>
</table>

Avoiding conflicts of interests
Insurance Product Information Document

The IPID form and content’s requirements

- **Stand-alone** document
- **Accurate** not misleading
- **Short** document

Written in the **official languages** used in the Member States of the product’s distribution or another one agreed with the customer

Presented and laid out in a way that is **clear** and **easy to read**, using characters of readable size

Contain the title “**insurance product information document**” at the top of the first page

No less **comprehensible** in the event that having originally been produced in colour it is **printed** or **photocopied** in black and white

Include a statement that complete **pre-contractual information** on the product is provided in **other documents**

**Insurance Product Information Document**

- The insurance type
- A summary of the insurance coverage
- The means of payment of premiums
- The duration of payments
- Main exclusions where claims cannot be made
- Obligations at the start, during the contract and in case a claim is made
- Terms of the contract (start & end dates)
- Means of terminating the contract
Suitability & Appropriateness profiles
Information to obtain from customers before contracting

If an advice is given on an IBIP

• His/her **knowledge** and **experience** in the investment field relevant to the specific type of product or service,
• His/her **financial situation** including that person’s **ability to bear losses**, 
• His/her **investment objectives**, including that person’s **risk tolerance**

- Complete information enables the insurance undertaking/intermediary to deliver a **suitability statement** on a **durable medium** specifying the advice given and how that advice meets their objectives and characteristics.

⚠️ Warn customers if:
- the product is not appropriate for them
- not sufficient information has been provided for the appropriateness to be analyzed

If no advice is given on an IBIP

• His/her **knowledge** and **experience** in the investment field relevant to the specific type of product or service offered or demanded

- Complete information ensures the IBIPs’ **appropriateness assessment** relatively to the customers

Derogation to this information collection is possible under specific conditions

In case the product advised is a bundle, the overall bundled package must be suitable/appropriate.
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