



Brussels, 5.12.2023
C(2023) 8171 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 5.12.2023

amending Directive (EU) 2016/97 of the European Parliament and of the Council as regards the regulatory technical standards adapting the base amounts in euro for professional indemnity insurance and for financial capacity of insurance, reinsurance and ancillary insurance intermediaries

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

According to Article 10(4) of Directive (EU) 2016/97, insurance and reinsurance intermediaries must 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 1 300 380 applying to each claim and in aggregate EUR 1 924 560 per year for all claims. Article 10(6) of Directive (EU) 2016/97 provides further that Member States shall take all necessary measures to protect customers against the inability of an 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. Such measure may include, inter alia, 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 19 510 (point (b) of the second subparagraph of Article 10(6) of Directive (EU) 2016/97). The amounts referred to in Article 10(4) and (6) of Directive (EU) 2016/97 are to be regularly reviewed in order to take account of changes in the European index of consumer prices as published by Eurostat, with the first review covering the period until 31 December 2017 and subsequent reviews occurring every five years thereafter.

Article 10(7) of Directive (EU) 2016/97 empowers the Commission to adopt, following submission of draft regulatory technical standards by the European Insurance and Occupational Pensions Authority (EIOPA), and in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010, delegated acts adapting the base amount in euro referred in Article 10(4) and (6) by the percentage change in the European index of consumer prices as published by Eurostat 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. This was done for the first time by Commission Delegated Regulation (EU) 2019/1935 for the period between 1 January 2013 and 31 December 2017.

On 30 June 2023, EIOPA submitted to the Commission draft regulatory technical standards adapting the updated base euro amounts for professional indemnity insurance and for financial capacity of intermediaries as required by Article 10(7) of Directive (EU) 2016/97, covering the period from 1 January 2018 to 31 December 2022.

In accordance with Article 10(1) of Regulation (EU) No 1094/2010 establishing the EIOPA, the Commission shall decide within three months of receipt of a draft regulatory technical standard whether to endorse the draft standard. The Commission may also endorse the draft standards in part only, or with amendments where the Union's interests so require, having regard to the specific procedure laid down in those provisions.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1094/2010, EIOPA carried out a public consultation on the draft regulatory technical standards. The consultation paper was published on the EIOPA website on 9 February 2023, and the consultation closed on 6 May 2023. In addition, EIOPA invited its Insurance and Reinsurance Stakeholder Group to provide feedback on the draft regulatory technical standards. EIOPA has published a final report on the public consultation explaining how the outcome of this consultation has been taken into account in the development of the final draft regulatory technical standards submitted to the Commission. This report is available at

https://www.eiopa.europa.eu/system/files/2023-07/EIOPA-BoS-23-253_Final_Report_Consultation_Paper-on_RTS_for_base_amounts_of_PII.pdf

Before submitting the draft regulatory technical standards to the Commission, EIOPA undertook, in accordance with the third subparagraph of Article 10(1) of Regulation (EU) No 1094/2010 an analysis of the potential related costs and benefits. It concluded that a possible increase in costs for intermediaries will be outweighed by the benefit of ensuring an adequate level of professional standards for insurance intermediaries and consumer protection by increasing the base amounts in line with inflation. The analysis is available at pages 11 to 12 of the Final Draft Regulatory Technical Standards document (https://www.eiopa.europa.eu/system/files/2023-07/EIOPA-BoS-23-253_Final_Report_Consultation_Paper-on_RTS_for_base_amounts_of_PII.pdf).

3. LEGAL ELEMENTS OF THE DELEGATED ACT

Article 1 of the delegated Regulation adapts the base amounts referred to in Article 10(4) and (6) of Directive (EU) 2016/97 to reflect the percentage increase of the European index of consumer prices produced for the Union by Eurostat.

Article 2 sets out the dates of entry into force and of application of the delegated Regulation, taking into account a transitional period of 6 months to allow Member States to adapt their national legislation and to give insurance and reinsurance intermediaries and their insurance providers time to take the necessary implementation measures.

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(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 January 2016 on insurance distribution¹, 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, reinsurance and ancillary insurance intermediaries to take into account the changes to the European index of consumer prices as published by Eurostat. From 1 January 2018 to 31 December 2022, the European index of consumer prices produced for the Union by Eurostat has increased by 20,32 %. It is therefore necessary to adapt the base amounts in euro for professional indemnity insurance and financial capacity of insurance, reinsurance and ancillary insurance intermediaries by that percentage increase.
- (2) Directive (EU) 2016/97 should therefore be amended accordingly.
- (3) To enable Member States to adapt the relevant base amounts in their national provisions and to give insurance, reinsurance and ancillary insurance intermediaries enough time to take the necessary implementation measures, the application of this Regulation should be deferred.
- (4) This Regulation is based on the draft regulatory technical standards submitted to the Commission by EIOPA.
- (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 established by Article 37 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council²,

¹ OJ L 26, 2.2.2016, p. 19.

² 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)

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Directive (EU) 2016/97

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

- (1) 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.’;
- (2) in paragraph 6, second subparagraph, 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

Entry into force and date of application

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

It shall apply from [Publications Office: please insert the date = 6 months after the date of entry into force].

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

Done at Brussels, 5.12.2023

For the Commission
The President
Ursula VON DER LEYEN