

Regulatory and Supervisory Framework for Insurance Intermediation



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Foreword

Insurance intermediaries have a key role in the efficient functioning of insurance markets, and minimising information asymmetries and risk of adverse selection is an important consideration. Intermediaries can analyse the needs of insurance consumers, and advise on appropriate solutions and policies that fit these needs. As with all principal-agent relationships, the needs and goals of intermediaries and policyholders are sometimes different and sometimes conflicting.

This report examines how OECD and non-OECD countries are regulating and supervising insurance intermediation, focussing on market conduct rules as well as rules related to digitalisation of intermediation. It considers areas which require further investigation to address potential conflicts of interest.

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Executive Summary

Insurance intermediaries have a key role in the efficient functioning of insurance markets, and minimising information asymmetries and risk of adverse selection is an important consideration. Intermediaries can analyse the needs of insurance consumers, and advise on appropriate solutions and policies that fit these needs. Some intermediaries may offer 'after-sales' services (client service, claims and settlements). The increase in the use of technology for the provision of intermediation through digital channels is part of the evolution of the market, with new risks emerging under a largely heterogeneous regulatory framework.

As with all principal-agent relationships, the needs and goals of intermediaries and policyholders are sometimes different and sometimes conflicting. Remuneration agreements that involve variable compensation linked to a target, such as contingent commissions, can accentuate the risk of moral hazard leading to conflicts of interest.

Transparency and mandatory disclosure is arguably the most common way to protect insureds by helping overcome information asymmetries. Mandatory reporting around the existence of remuneration agreements that intermediaries have with the insurance undertaking is not a universal requirement for all countries participating in the OECD survey. Further efforts are required to ensure that well-designed and clear disclosure requirements around compensation arrangements are assured across jurisdictions, particularly in countries where the system is designed with intermediaries being independent.

Technology-enabled intermediation is transforming the way insurance is distributed, providing efficiency, convenience and speed, while at the same time giving rise to new sources of risks for insureds. Specific rules for digital intermediation are imposed in less than a third of countries responding to the OECD survey. Consumer protection safeguards may need to be considered by a wider range of countries when it comes to insurance distribution through emerging digital intermediation channels.

Online comparators/price aggregators and peer-to-peer or other InsurTech firms are not registered as separate categories in the majority of countries responding to the OECD survey, given that regulation tends to be developed technology-neutral. Instead, they fall under one of the traditional categories of intermediaries (most commonly brokers) and are required to follow the regulatory and supervisory framework applying to such categories. Robo-advisors are largely regarded as a tool integrated in the wider services offering of incumbent intermediaries, rather than end-to-end insurance distribution players on a standalone basis.

Price aggregators, the most widely adopted technology-enabled intermediation channel, allow consumers to act independently and in a convenient manner, while at the same time can stir up competition driven solely on price. An excessive focus by consumers on the price as the single criterion of their choice may become problematic when the aggregator does not provide clear information on all product features and exclusions in a consistent manner, or does not explain the differences in cover that may drive the price differential. Limitations in market coverage and policies captured by the price aggregator are not necessarily clear or understood by consumers and insureds may end up with coverage that does not meet their needs.

Increased transparency is therefore of particular importance for online aggregators and price comparison websites, where vertical integration by insurers is not necessarily accompanied by transparency around the relationship of the platform with controlling interests. Policyholder protection may be compromised if regulation is not applied equally to online price aggregators (or other tech-enabled insurance intermediation channels) as it does to brokers, or if the interests of such platforms are not clearly stated in their websites. Consumer awareness needs to also be strengthened around the nature and scope of the activity of such aggregators (e.g. market coverage, basis of comparison, exclusions, and absence of assessment of suitability of the product for each insurance consumer, for example).

For disclosure to be effective, insurance consumers should be able to understand the reporting provided by insurance intermediaries and act upon the information provided through the disclosure regime. Policymakers should consider measures such as simpler and comprehensible information provision that addresses the central problem of information disclosure and not limit their efforts to mandatory reporting. Improved levels of financial literacy can assist insurance consumers make decisions that are in their best interest, or identifying and shielding them from potential adverse choices.

Increased attention needs to be placed on safeguarding the fair treatment of the elderly and other vulnerable parts of the population in the distribution of insurance products and services. Although suitability requirements contribute to taking greater care for the individual circumstances of those that are vulnerable, policyholders could consider endorsing specific guidance, policies or good practices that improve the accessibility to products and services; or the provision of tailored products or processes that fit the particular circumstances of the elderly and the vulnerable. This becomes critical as more intermediation activity is shifted from traditional conventional to digital channels.

Given these developments, there is a clear need for the insurance regulators and supervisors to be aware and monitor developments in intermediation. Insurance regulators and supervisors should in particular surveillance developments related to remuneration, disclosure, as well as consider how best to protect vulnerable consumers.

1. Insurance intermediation: Regulatory/supervisory framework and market conduct

1.1. Introduction

Insurance intermediaries play a critical role in the efficient functioning of insurance markets by matching insurance products and services with consumer needs and reducing information asymmetries potentially present in an increasingly complex market.

As with most financial intermediation, insurance intermediaries' activities are affected by asymmetric information which may lead to market failures and potential conflicts of interest and this has led to the recognition and action by governments around the need to promote consumer protection for insurance consumers and develop appropriate market conduct rules. At the same time, questions have been raised around the effectiveness of regulatory tools vis-à-vis intermediaries, such as mandatory information disclosure, and whether they sufficiently address potential market failures.

The application of financial technology (FinTech) in insurance (InsurTech) may have a potentially transformational impact on the distribution of insurance. Such technologies affect insurance intermediation both through the digitalisation of direct insurance as well as through the emergence of new models of insurance distribution, such as price aggregators/online comparators; robo-advisors; and distribution-based insurance start-ups (e.g., peer-to-peer (P2P) insurance companies).¹

This report has been developed with input provided by 36 countries responding to the Questionnaire on the framework and business conduct of insurance intermediation.² Responses to the survey were received in Q3 and Q4 2018.³

The report examines the regulatory and supervisory framework of insurance intermediation for both traditional and emerging distribution channels, touching on definitions and status, activities, authorisation and other regulatory requirements. It focuses on market conduct by analysing representation of

¹ See [DAF/AS/WD(2016)13/REV1] Technology and innovation in the insurance sector, for more details.

² OECD Members: Austria, Belgium, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, United Kingdom and United States.

Non-OECD Members: Argentina, Brazil, Colombia, Costa Rica, Russia, South Africa, and Peru.

³ It should be noted that input by some EU member countries was provided before the actual implementation deadline of Directive (EU) 2016/97 (1 October 2018) and this was reflected some responses to the questionnaire. It should also be noted that the effective impact of the new EU framework can only be fully assessed once EU regulators have gained more experience in the application of the new rules.

intermediaries, remuneration as well as relevant requirements around transparency and disclosure. A special section is dedicated to intermediation for the elderly and other vulnerable parts of the population.

This report focuses on insurance intermediaries in the retail insurance market, and does not touch upon wholesale insurance intermediaries active in specialised markets (surplus lines) or reinsurance intermediaries acting as middlemen between insurers and reinsurers. It should also be noted that the report does not make a distinction between the different insurance lines, and in particular between non-life/ life insurance and life insurance with an investment element or insurance-based investment products, with the exception of certain questions. It should be noted that the insurance intermediation/distribution sector is very different in different markets, as well as within countries for different product lines or in different parts of the country/states and different nuances may exist in the use of terminology between different markets.

The draft report was discussed at the Committee meetings of June 2019 and delegates provided additional comments to the draft report. The final draft of the report incorporates comments received by delegates after the discussion and has been circulated for approval for declassification by the Committee .

2. Insurance intermediaries: definitions and regulatory regime

Intermediaries help insurance consumers to identify their specific insurance needs, translate these needs into coverage that corresponds to the profile, and match this with the appropriate insurance products. They provide services to insurance companies and consumers that facilitates the insurance placement process.

The types of insurance intermediary in the market varies depending on the jurisdiction, reflecting different activities undertaken by intermediaries, as well as the legal and regulatory frameworks applying to the distribution of insurance products.

2.1. Definitions, legal status and activities

The classification of intermediaries is generally based on their custom, contractual ties with insurers, and their role towards the insureds. However, the classification of intermediaries is not universal, and in some cases conflicting between countries, and can cause confusion. Thus, a number of jurisdictions apply an activity-based approach to intermediation instead of classifying the different types of intermediaries. For example, the regulatory framework in the EU (Directive 2016/97) defines 'insurance distribution' as 'the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance [...]'. In the US, the different types of intermediaries are not covered by statutory definitions and any person licensed to sell, solicit or negotiate insurance is an insurance producer.

Having said this, there are certain differences in characteristics of intermediaries that should be captured to highlight the confusion and clarify the activities that are being discussed in this report.

2.1.1. Agents

Tied agents are insurance intermediaries who are under a contractual obligation to conduct insurance distribution business exclusively for one or more insurance undertakings. Tied agents are characterised by the fact that they represent one or more insurers, without having an employment relationship with the insurer. Colombia, Mexico and Peru are exceptions to this pattern: tied agents in Mexico are linked to insurers through an employment relationship, while agents in Peru have the possibility to have an employment or service contract with the insurer. In Colombia, "dependent" agents are always employed by the insurer.⁴

Tied agents can inform and advise customers about available product options of a single insurer (*exclusive* or *captive agents*), or of multiple insurers for non-competing insurance lines (*multi-tied agents*). Multi-tied agents are prohibited from concurrently carrying out insurance mediation activities on behalf and in the interests of two or more insurers for contracts providing identical or similar insurance cover, as explicitly noted in the definition of Lithuanian tied agents, for example.

⁴ Estatuto Organico del Sistema Financiero EOSF Financial System Law, article 41.

Unlike tied agents, *independent agents* provide insurance mediation on behalf of several insurers without being legally or economically tied to a single specific insurance undertaking. In other words, they inform and advise customers about product options of multiple insurers with which they have agency contracts, without any obligation to represent the interests of any single insurance undertaking. There is a fine line between independent agents and brokers, and the main distinction between the two is linked to representation: agents represent the interests of the insurers, while brokers act on behalf and in the interest of the consumer (see Section 2.1.2).

The insurance agent category is not always broken down in independent and tied agents. In Poland, regulation provides for a unified category of agents on the basis of an agency agreement concluded with one or several insurers and entered in the register of agents. Similarly, in Italy, agents registered in the Register of insurance and reinsurance intermediaries are defined in the regulation as ‘intermediaries acting in the name of or on behalf of one or more insurance or reinsurance intermediaries’. In Norway, all agents are by definition dependent and therefore tied. Similarly, in Finland, agents always represent insurers, whether exclusively or not, and they are not considered to give independent advice to customers at any time. No distinction is therefore made between independent and tied agents. The same applies to insurance agents in Korea.⁵ Conversely, in Italy, contractual clauses requiring intermediaries or other distributors to conduct non-life insurance distribution business exclusively with one or more insurance undertakings are considered void.

In some countries, the definition of tied agents is related to the distribution of a particular line of insurance business. In Japan, tied agents are entrusted by life insurers to act as agents or intermediaries for the conclusion of insurance contracts on behalf of the insurance company. Tied financial agents in Slovenia can be contractually bound with a single insurance company pursuing only life assurance, or a single insurance company pursuing non-life insurance.

Interestingly, the definition of agents in Costa Rica makes a distinction between those agents who have the possibility to act on behalf and account of insurers, and those who can solely act on the account of insurers. In the former case, insured parties acquire contract rights and obligations with the insurer directly, while on the latter case the agent’s actions have to be validated by the insurer for contract and the rights derived from it to be legally enforceable.

In some countries, subordinate financial agents (e.g. Slovenia) or sub-agents (e.g. Belgium, Italy) act upon a written contract with a financial or insurance agent, respectively. Such intermediaries perform intermediation under the full and unconditional responsibility of another intermediary.

2.1.2. Brokers⁶

Brokers act as market-makers, helping insurance consumers select the most appropriate product from a range of competing offers covering any insurer willing to underwrite the specific risk in the market. Such selection is unconstrained as the broker is not acting in the name or on the account of any insurer and has no commitment to insurers. This is reflected in statutory definitions of brokers in a number of countries: in Austria, brokers provide advice based on the obligation to provide a fair analysis of the whole market; in Greece and Latvia, distribution of insurance products by brokers needs to be based on a fair analysis of a “sufficient number” of insurance contracts available in the market. In France, the above applies if the broker provides a personalised recommendation that benefits from an unbiased analysis.

⁵ Insurance Law Section 2, Insurance Business Act Paragraph 10, Article 2.

⁶ For the purposes of this report, brokers are retail ones. Wholesale brokers do not provide services to individual customers and instead negotiate insurance offerings with retail intermediaries.

Differentiation between independent agents and brokers

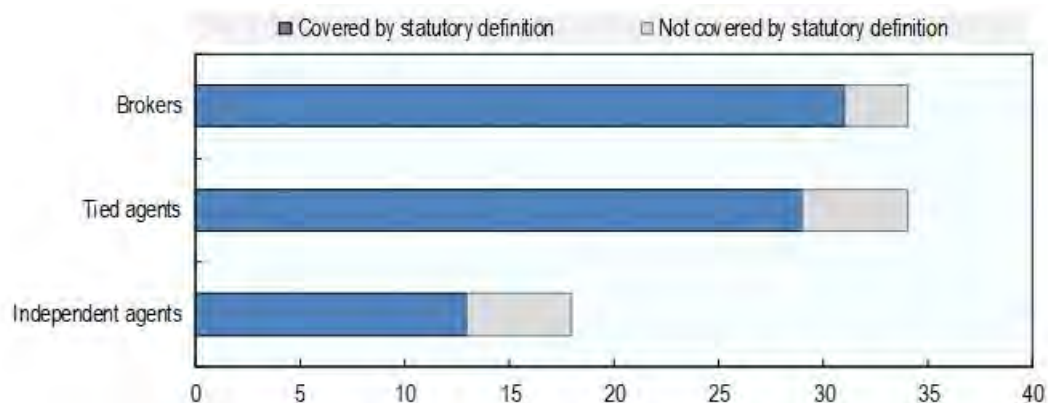
The distinction between independent agents and brokers is a very subtle one. In principle, agents represent the interests of the insurers, while brokers act on behalf and in the interest of the consumer. Brokers in Germany are defined by the fact that they act on behalf of the customer and are not under contractual obligation to conduct insurance distribution with one or more insurance undertakings. In Spain, brokers offer independent, professional and impartial advice to the insureds without maintaining contractual links with insurance undertakings. In Italy, brokers are defined as ‘intermediaries acting on behalf of their client without the power to represent insurance or reinsurance undertakings’.

Both agents and brokers, however, provide services to both insurers and policyholders.⁷ In the example of Chile, this is reflected in the statutory definition of brokers, who must assist individuals in the selection of the most appropriate coverage and throughout the term of the contract, while they must also assist the insurance company in the verification of the identity of contracting parties; the existence of insured goods; the provision of all information in their possession about the proposed risk.

As the boundaries between independent agents and brokers are blurry, in a number of jurisdictions independent agents are not covered by a separate statutory definition, as they are perceived to overlap with brokers (Figure 2.1). In the Czech Republic and Estonia, agents who are not bound by an exclusive contract with an insurer (*i.e.* non-tied agents) are considered to act as brokers. In Japan, insurance intermediation not carried out on behalf of the entrusting insurance company is considered to be a brokerage activity. The same applies to Costa Rican brokers who intermediate without acting on the behalf or account of one or several insurance companies, as is the case for Costa Rican insurance agents.

Figure 2.1. Agent-broker classification

In absolute number of countries



In some jurisdictions, such as Switzerland, brokers are referred to as “independent agents”, while the term “broker” itself does not exist in legal terms. The situation is similar in Israel, where another category of intermediaries, called “advisors”, provide independent advice to insureds on products of insurance companies with which they are not connected.

In Sweden, although there is no separate registration or license for the independent agent category of intermediaries, any insurance intermediary may provide advice based on an impartial and personal

⁷ Insurance intermediaries are a typical example of two-sided firms, which require both sides of the market on board to succeed ((Rochet and Tirole, 2003_[15]); (Cummins and Doherty, 2006_[16])).

analysis. Such intermediaries may not give any recommendations on own products or receive commission. The concept of "independence" is thus linked to the service rather than the type of insurance intermediary.

The taxonomy of intermediaries does not follow the textbook agent-broker divide. In France, *general insurance agents* act as tied agents and are subject to a contractual obligation to work exclusively with one or more insurers, while *insurance representatives* are holders of a mandate from an insurer who may or may not be contractually obliged to work exclusively with such insurer. When such insurance representatives are not subject to a contractual obligation to work with an insurer, they can be considered to be acting as independent agents.

In the US, any person licensed to sell, solicit or negotiate insurance is an *insurance producer*, and tied agents are not covered by a statutory definition. Insurance producers are defined as persons required to be licensed to sell, solicit or negotiate insurance.

Insurance companies in Argentina may grant *institorian mandates* (contracts) to both agents and brokers.⁸ In Chile, classification of intermediaries is centred around the pension system and related activity. Insurance intermediation is performed by pension agents (*asesores previsionales*) who assist members and beneficiaries of the pension system in making informed decisions.

In South Africa, the term broker in the insurance industry context is synonymous to an independent intermediary. Interestingly, the intermediary regulation⁹ does not distinguish between tied and independent intermediaries, as that distinction is made under the conduct of business regulation.¹⁰ The purpose of the distinction in the market conduct regulation is to allow for differentiated remuneration requirements to apply to the respective intermediary categories. Tied agents are *representatives* employed or mandated by an insurer for the purpose of rendering services as an intermediary, while independent agents, and therefore brokers, are defined by their independence.

Economic or other ties can exist between brokers and insurers, which can potentially undermine the impartiality of brokers' advice (see Section 4). According to market participants, in South Africa, there is a growing trend towards totally independent advisors who earn their income solely from fees for advice around the needs analysis or from general advice as to product types to meet these needs, without actually selling any particular product.

2.1.3. Direct writers

Insurance undertakings can also choose to act as insurance intermediaries and distribute insurance directly through its own marketing and sales employees. The European Union (EU) Directive on insurance intermediation (Directive (EU) 2016/97) brings insurance undertakings selling insurance products directly within the scope of the Directive and on a similar regulatory basis to insurance agents and brokers.¹¹ The IDD defines *insurance distributor* as any insurance intermediary, ancillary insurance intermediary or insurance undertaking (European Union, 2016_[11]).

As such, insurance undertakings distributing insurance products in EU countries are not necessarily covered by a separate definition (e.g. Estonia, Hungary, Sweden) and are treated as one of intermediary categories. This means that they are also subject to the obligations applying to other intermediaries, such as registration: in Hungary, insurance employees pursuing direct writing activity are registered under the

⁸ Brokers are represented by intermediaries who choose to establish companies with the sole purpose of carrying out intermediation activities, as set forth in Law 22400.

⁹ Financial Advisory and Intermediary Services Act, 2002 (FAIS Act).

¹⁰ Long-term Insurance Act, 1998 (LTIA) and Short-term Insurance Act, 1998 (STIA).

¹¹ Directive (EU) 2016/97 is a minimum harmonising directive and by consequence allows member states to go beyond its requirements.

Register of Insurance Intermediaries. In Italy, insurance employees pursuing direct writing activity must comply with the same professional and good repute requirement applicable to registered intermediaries, even if they are not registered under the Register of insurance and reinsurance intermediaries.

Registration as independent or tied financial agent is also required in cases where the insurer wishes to also distribute products other than their own, as is the case in the Slovak Republic.

In some countries, the employment relationship is the defining characteristic of direct writers. In Peru, insurance companies can directly market insurance policies through their personnel, provided that such personnel has an employment contract with the insurer.

In terms of activity, direct writing can also be product specific. In Brazil, it is mostly related to government contracts, while in Japan it is used for low value, short-term insurance. Banks and financial intermediaries

Banks and other financial intermediaries distribute insurance on the basis of an agency agreement with one or several insurance companies, leveraging their branch network and direct contact with customers. Insurance intermediation activity by banks and financial institutions is known as *bancassurance*.

Traditionally, banks have been offering insurance that is coupled with their lending activity, e.g. home insurance when extending mortgages. In a period of protracted low interest rates, banks and other financials have looked into expanding their insurance distribution activity as they seek new revenue sources in light of shrinking net interest margins. Bancassurance activity has grown across all regions in the period 2011-17, with the highest growth recorded in Latin America, where premiums grew by 12% for the period (McKinsey, 2019^[21]). Latin American and Asian banks focus their bancassurance activity on life insurance products, given the higher profit margins when compared to non-life, and capitalising on their access to information around insurance consumers' personal financial assets (McKinsey, 2019^[21]).

Banks active in insurance distribution fall, in most cases, under one of the defined types of intermediaries in most jurisdictions. The majority of jurisdictions examined in this report registers banks and financial intermediaries as tied agents or brokers (e.g. Austria, Belgium, Greece, Japan, South Africa, Sweden). In France, where this distribution channel has sizeable activity, there is no specific category for bancassurance and most financial institutions are found in the broker category. In Italy, banks and financial intermediaries distributing insurance products are registered both as banking/financial intermediaries as well as in a dedicated, separate section of the Register of insurance and reinsurance intermediaries.

In theory, banks could act as independent or tied agents (as is the case in Portugal), and in practice they fall under the tied agent category (e.g. Lithuania, Switzerland). This is reflected in regulation in the case of Latvian credit institutions wishing to pursue insurance mediation activity, as they are actually prohibited from providing advice or preparing an offer based on the analysis of offers.

Some countries impose restrictions on the type of products banks and financial intermediaries can distribute. In Costa Rica, they can only offer only self-issue insurance, subject to standardisation and mass marketing. In Brazil, a broker needs to be involved together with the banks or financial intermediaries.

In Slovenia, banks wishing to engage in insurance brokerage activities need to obtain authorisation from the Bank of Slovenia, on the basis of the prior opinion of the Insurance Supervision Agency. Ancillary insurance intermediaries

Ancillary insurance intermediaries are intermediaries other than credit institutions or financial intermediaries¹² who engage in insurance distribution activity not as their principal professional activity. Such intermediaries distribute insurance products which are complementary to the goods/services supplied as part of their main activity and which provide coverage to such goods/services.

¹² In Greece, agricultural partnerships are also excluded.

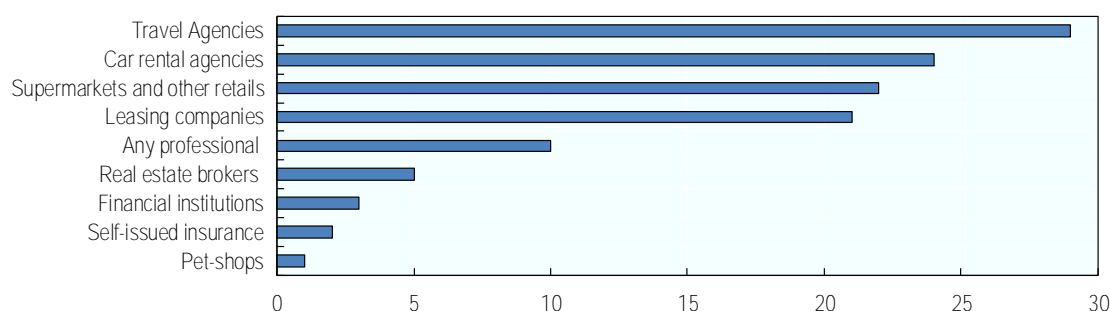
Travel agencies and car rental companies are the most common types of ancillary intermediaries (Figure 2.2). Other market participants eligible for such activity include supermarkets and other retails (e.g. for insurance related to the goods purchased/guarantees), leasing companies, real estate agents (e.g. credit or fire). Distribution of insurance by such intermediaries is limited to the type of insurance that is ancillary to the core business function.

In a small minority of responding countries, no professions outside the insurance industry can perform insurance intermediation services as ancillary activity (Argentina, Chile, Colombia and Japan). Conversely, in certain jurisdictions there is no limitations as to the type of profession that can provide insurance intermediation as an ancillary activity (Austria, Belgium, Estonia, France, Korea, Luxembourg, Portugal, South Africa, Switzerland and the UK).

In Mexico, ancillary intermediaries are employed by insurers through contracts of provision of services. Peruvian legislation defines ancillary intermediaries as *insurance marketers* and comprises those contracted by insurance companies to market their products. This category includes banks and other financials, who act on behalf of the insurance company. Liability is therefore held by the insurance companies who underwrite the policy.

Figure 2.2. Types of ancillary insurance intermediaries

In absolute number of countries



The two main elements that define ancillary insurance intermediaries relate to the fact that the professional activity is not insurance intermediation, and that the insurance products distributed are complementary to their product or service. In some jurisdictions, additional conditions apply for the definition of such activity: In Europe, the insurance products concerned should not cover life insurance or liability insurance risks, unless that cover complements the good or service which the intermediary provides as its principal professional activity (European Union, 2013^[3]).

Ancillary intermediaries required to register can do so either as brokers or agents of one or more insurance undertakings, unless they fall under an exception, in which case registration is not compulsory. In Europe, for instance, the supervisory framework applying to insurance distribution does not apply to ancillary insurance intermediaries when the insurance premium does not exceed a certain amount and the risks covered are limited.¹³ Even in cases where the ancillary intermediary is exempted from the regulation, minimum requirements for the protection of consumers apply under the responsibility of the insurance undertaking or the insurance intermediary pursuing the distribution business through exempted ancillaries (e.g. identification, information on complaint handling process). Registration is not required for exempted entities.

¹³ Exempted for insurance coverage for travel or goods/services supplied, that does not exceed EUR600 on a pro rata annual basis or EUR200 if the contract is entered into for up to three months.

The requirements applying to ancillary intermediaries are less stringent than the ones applying to general intermediaries in most of the respondent countries. Lighter requirements mostly relate to insurance knowledge and training (e.g. France, Italy, Korea, Luxembourg). In the US, ancillary intermediaries are required to take a course only on the insurance products that they will distribute to customers, rather than passing the full insurance examination. In addition, rather than using the terms *sell*, *solicit* and *negotiation*, ancillaries may be offering or disseminating information about the insurance products.

2.2. Authorisation of distribution activity and supervision

Entities wishing to pursue insurance intermediation must receive permission by the supervisory authority in the vast majority of jurisdictions and for most intermediary types. Such *authorisation* or *licensing* is granted provided that the intermediary fulfils certain criteria related to their capacity to mediate insurance.

All 36 jurisdictions responding to the OECD questionnaire require authorisation for brokers wishing to distribute insurance (Figure 2.3). In theory, it could be argued that tied agents could escape licensing as the insurance undertaking is responsible for the activity of the intermediaries and has to ensure that the intermediary meets all conditions. In practice, however, most jurisdictions require it for all types of agents.

Banks need to apply for a separate license as an insurance intermediary in more than half of responding countries that permit bancassurance. Insurers wishing to distribute insurance directly to customers can do this as part of their prudential licensing as an insurance undertaking (e.g. in Europe, according to the provisions of the Solvency II Directive). Following the entry into force of EU Directive 2016/97, any person directly involved in insurance distribution (whether within the management structure of insurance undertakings or employees) shall comply with professional and good reputation requirements. Ancillary intermediaries are exempted from licensing in EU countries when they meet the criteria set forth by Directive (EU) 2016/97.

There is no specific license for insurance aggregators or InsurTech companies in most countries, and such entities must be registered under one of the established/traditional insurance intermediary classes.

Figure 2.3. License/ registration requirements for insurance intermediaries

In percentage of total number of countries



Upon licensing/authorisation, intermediaries are registered in a registration system/ registry established by the supervisor in each jurisdiction. Such registration is subject to the fulfilment of requirements relating to financial capacity, professional competences, good reputation or other criteria, depending on the type of intermediary (see Section 2.2.1). The registrations are subject to a regular review by the supervisor. Intermediaries not required to obtain a license still need to be register for their activity in most countries.

All 36 countries responding to the OECD questionnaire have registries in place. In the EU, member states are required to establish an easily accessible online registration system. In the context of Directive (EU) 2016/97, EIOPA will establish a single electronic registry of intermediaries active on a cross-border basis in the EU.

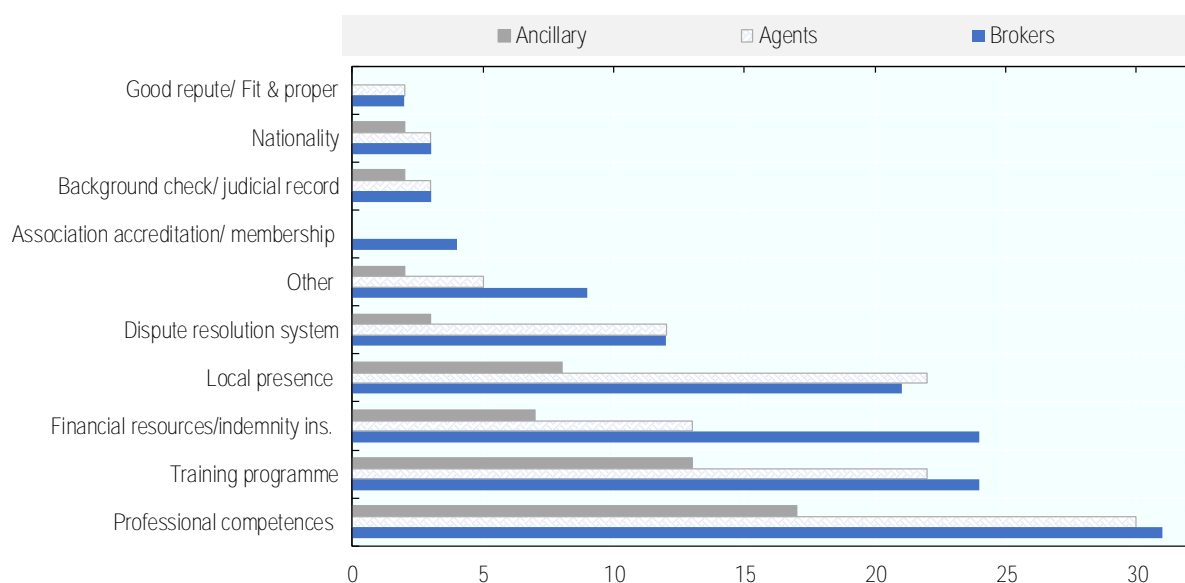
All registries reported in the questionnaire are accessible by consumers with the exception of four jurisdictions. In Japan and Korea insureds have no access to such registries, while in the Slovak Republic only some parts of the registry are accessible by the public. In the US, the NAIC's State Producer Licensing Database is a national registry of all licensed insurance intermediaries in the US. Although such database is not made available to consumers, each US jurisdiction can determine what information on licensed insurance intermediaries should be accessible to the insureds. Market participants in South Africa note that it is becoming increasingly important to clearly indicate within such registries what products and what product providers the intermediary is authorised to deal with.

1.1.1. Licensing/authorisation requirements

Although the requirements set by insurance regulators for the granting of a license/authorisation vary by intermediary type and by jurisdiction, a number of basic criteria apply universally for those pursuing insurance distribution activity (Figure 2.4).

Figure 2.4. Licensing requirements for brokers, agents and ancillary intermediaries

In absolute number of countries



Note: Data submitted by EU members before the implementation of EU Directive at the national level.

Intermediaries need to have adequate knowledge and ability to deliver the relevant insurance services. In Greece, all intermediaries active in the distribution of insurance-based investment products need to have a specific certificate. In Finland, brokers need to pass a specific exam in life and/or non-life insurance, while agents need only prove to the Finnish Supervisor (FIN-FSA) that they have sufficient knowledge of and competence in providing the specific type of insurance. In Italy, agents and brokers need to pass a specific exam on insurance (and/or reinsurance) mediation activity, while collaborators of agents/brokers/banks/financial intermediaries (e.g. sub-agents) and direct canvassers of insurance

undertakings are required to attend training courses; all insurance distributors need to update their professional competence through the attendance of annual courses.

The Slovenian regulator also requires prior professional experience of at least three months in insurance transactions, acquired on the basis of employment or other legal relationship with an insurance company/ agency/ brokerage company. By the same token, agents and brokers in most countries need to comply with annual professional training in most countries. In the EU, intermediaries need to have at least 15 hours of continuing professional development annually.

In South Africa, the regulator places the onus on product providers to oversee the conduct of independent brokers as well as tied intermediaries/agents, including proven proficiency and understanding of the specific product(s) being sold as well as conformance with other conduct issues. Licensing is therefore not seen as being solely the preserve of the regulator.

Local presence is not required in EU countries when exercising on a cross-border basis with other EU Members, as well as for Colombia, Israel, Korea, and South Africa. Conversely, presence in resident jurisdiction is obligatory for US intermediaries. Foreigners having resided in Colombia for less than one year cannot exercise insurance distribution. Slovenia is the only country with an additional requirement for language proficiency.

A requirement for financial resources needs to be verified in conjunction with holding of a professional indemnity insurance or other guarantee. Both of these measures intend to protect the insureds against the inability of an intermediary to return premium or claims to any of the parties involved in an insurance contract.

Intermediaries active in the EU have a permanent financial requirement of 4% of the sum of annual premiums received, subject to a minimum of EUR 18,750; alternatively, a guarantee fund needs to be set up or customer accounts need to be strictly segregated.

In addition to financial solvency, professional indemnity insurance is often a requirement for prudential and consumer protection purposes. Professional indemnity insurance is mandatory in EU members under the Directive (EU), and covers the cost of compensating policyholders for claims, legal fees or subsequent legal remedies for losses arising from acts, errors or omissions committed by the intermediary. Such liability insurance protects insureds by increasing the funds available to cover consumer claims arising from negligence and is thought to be particularly beneficial for smaller intermediaries and ancillaries who might find it difficult to hold large amounts of capital (EIOPA, 2018_[4]).

A liability declaration by the insurance company is an alternative type of guarantee for tied agents in particular, given their contractual relationship with the insurance undertaking.

A few countries impose an obligation for brokers and agents to have dispute resolution systems in place. Germany has made such a mechanism mandatory for all types of intermediaries.

Intermediaries must go through background and judicial record checks in Costa Rica, Greece, the US and Slovenia, while Directive (EU) 2016/97 imposes a 'good repute' requirement (Article 10, paragraph 3) to all EU member countries, which is transposed into national legislation. Indicatively, in France, the legislation prescribes an examination of 'good repute' which allows the single register (Organisme pour le registre unique des intermédiaires en assurance, banque et finance or ORIAS) to query the national criminal record for all intermediaries registered, in order to verify whether they satisfy such condition. In Italy, intermediaries are required to have a clean criminal record and to not have been declared bankrupt). In South Africa, there is a restriction on un-rehabilitated insolvent intermediaries to perform distribution activities, and operational capability is part of the fitness and propriety requirements.

Colombia has in place a fitness and propriety requirement aiming at preventing conflicts of interest: insurance agents or brokers cannot hold state positions or managerial positions in insurers when insurance premiums of such insurers exceed 20% of the total annual premiums of the agent.

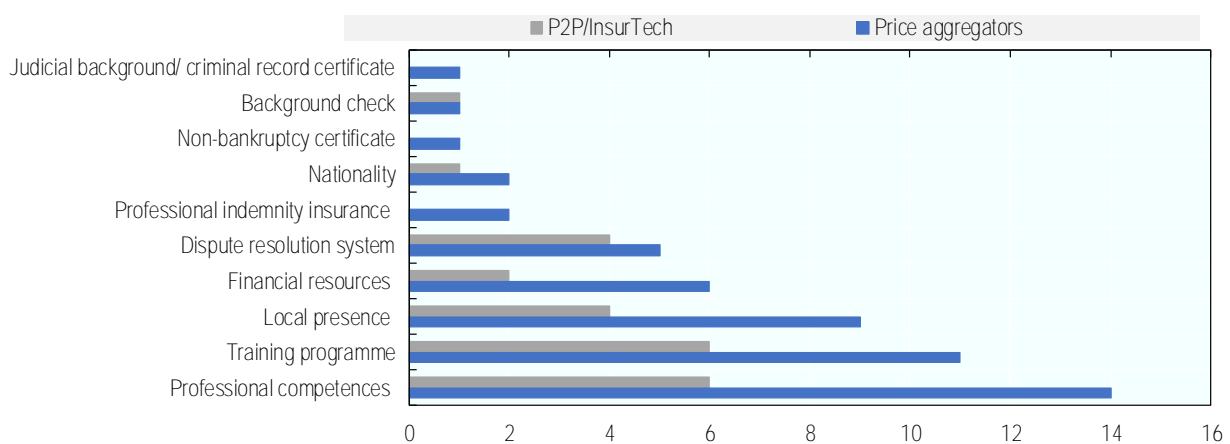
Other requirements for brokers, found in a small minority of countries, include internal control systems in place (e.g. Colombia); non-bankruptcy certification (e.g. Greece); and non-withdrawal of license within the previous five years (e.g. Slovenia). Colombia is the only responding country with a requirement on technological infrastructure of agents and brokers.

When it comes to ancillary intermediaries, in a few countries the insurance undertakings are responsible for assessing the suitability of ancillaries, as applies to tied agents in certain jurisdictions. In Greece, the insurer needs to provide the supervisor with a statement confirming that it is taking on full responsibility for the intermediary's actions, and that the intermediary meets the necessary knowledge and ability requirements. In Sweden and Italy, ancillaries need to have professional indemnity insurance covering the insurance distribution part of their activity, as required to other categories of intermediaries (see paragraph 52).

As price aggregators and InsurTech intermediaries are, in their vast majority, categorised as brokers or agents, the requirements applicable to them are also applied. As such, most responding countries apply professional competence and knowledge conditions to their authorisation, financial solvency and liability insurance provisions, as well as background checks. Interestingly, local presence remains a criterion for digitally-enabled intermediaries.

Figure 2.5. Licensing requirements for price aggregators and InsurTech

In absolute number of countries



In Australia, robo-advice providers to retail consumers, without the direct involvement of a human adviser, need to receive an Australian financial services licence. In the context of such licensing, the intermediary needs to have adequate technical and human resources to comply with their obligations (i.e. understand the rationale, risks and rules behind the algorithms used to generate the digital advice, and review the digital advice). License holders also need to monitor and test the algorithms used to generate the advice, including having appropriate controls and procedures to monitor and supervise these algorithms (Asic, 2016^[5]).

Similarly, robo-advisors in the US must be registered with the US Securities and Exchange Commission and are subject to requirements and obligations of the Investment Advisers Act of 1940. Many robo-advisors are also registered with the Financial Industry Regulatory Authority (FINRA) as member broker-dealers and are subject to applicable FINRA rules.

2.2.1. Supervision of intermediaries

Financial services providers and authorised agents, such as insurance intermediaries, "should be appropriately regulated and/or supervised, with account taken of relevant service and sector specific approaches", in line with the G20/OECD High-level Principles on Financial Consumer Protection (OECD, 2011^[6]), and IAIS ICPs 18 (Intermediaries) and 19 (Conduct of business) (International Association of Insurance Supervisors, 2018^[7]).

The activity of insurance brokers falls under the scope of the supervision in every jurisdictions responding to the OECD questionnaire where brokers are active. The same holds for agents in all but five countries: Colombia, Poland, the Russian Federation and Switzerland. For tied intermediaries, the insurer has direct responsibility for the intermediary's actions, and therefore an incentive to monitor that agents comply with the regulatory and supervisory requirements. Tied agents are thus supervised on an indirect basis via the insurance company they are tied to.

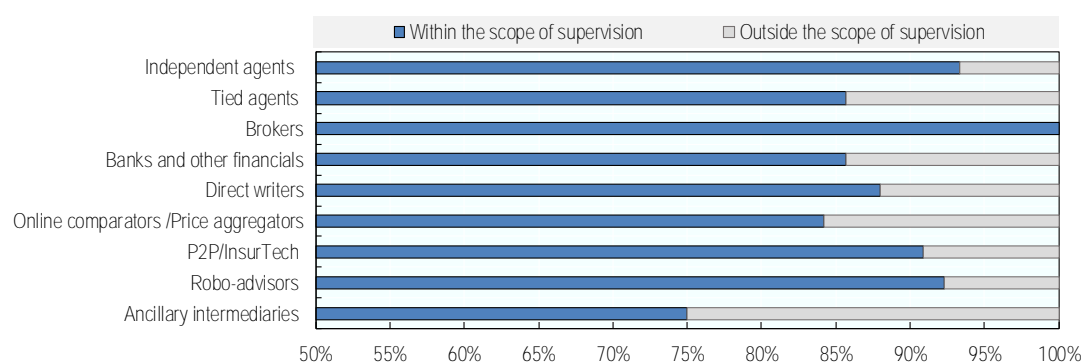
Supervision of banks, financials and digitally-enabled intermediaries active in insurance depends to a large extent on their classification in the different jurisdictions. Ancillary intermediaries are not always directly supervised for their insurance activity, and in a few cases the authorised insurance undertaking that uses ancillary intermediaries to distribute its insurance products is accountable for the actions of the intermediary and subject to supervision (e.g. UK).

In France, there is no on-going supervision of all intermediaries (compared to insurance undertakings) but intermediaries are rather "subject to" supervision.¹⁴ In the US, each state insurance department is responsible for the supervision of intermediaries, covering their licensing and market conduct.

In a few countries, a self-regulatory regime applies and voluntary trade confederations exercise some regulatory authority (e.g. administering registration, investigating misconduct). Accreditation by the local association is a licensing requirement in Greece, Lithuania and the Russian Federation.

Figure 2.6. Supervision of insurance intermediary activity by type of intermediary

In percentage of total number of countries



All responding countries can impose sanctions to authorised intermediaries. The Polish and Russian supervisors can only apply sanctions to brokers. Although the range of interventions that supervisors can apply varies, most jurisdictions can issue fines against intermediaries who breach rules and regulations (market abuse, competition laws) and suspend or withdraw their license/authorisation. The Belgian and UK supervisors can bring criminal prosecutions to tackle financial crime (e.g. insider dealing, unauthorised business, false claims to be authorised). The Financial Conduct Authority in the UK can also apply to courts for injunctions, restitution orders, winding-up and other insolvency orders. Insurance intermediaries in the

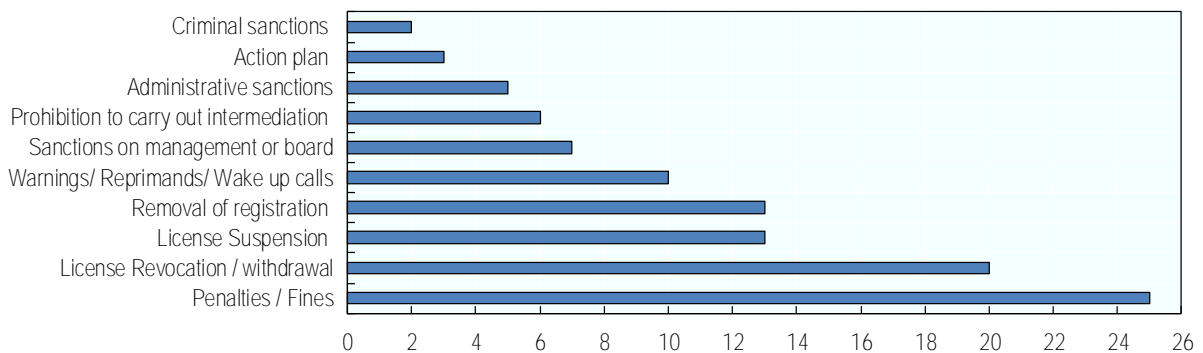
¹⁴ "Assujettis".

US may have their license suspended or revoked for using fraudulent, coercive, or dishonest practices in the conduct of business. In Italy, IVASS can apply administrative pecuniary sanctions, and other measures such as removal from the register, reprimands, cease and desist orders and temporary bans.

In the Czech Republic, Japan and the Slovak Republic, the supervisor may ask that appropriate measures and steps be taken towards compliance with regulation, possibly in the form of an action plan. Other sanctions include warnings, public announcements around disciplinary action and alerts about unauthorised firms. The UK supervisor can additionally request that web hosts deactivate associated websites.

Figure 2.7. Types of sanctions applicable to insurance intermediaries

In absolute number of countries



3. Emerging tech-based intermediation

Insurance intermediaries have, for many years, harnessed technology to optimise the speed, fluidity, efficiency and traceability of transactions in the insurance value chain and the overall market. The recent emergence of FinTech solutions has made the matching of insurance needs of policyholders with insurance products increasingly faster and more efficient, while providing more convenient and personalised offers to insureds who benefit from corresponding products. Increasing use of technological innovation responds to shifting consumer expectations, and allows traditional insurance intermediaries to leverage data and analytics to generate insights and better understand losses and underwriting risks. At the same time, according to market practitioners, the abundance of data that is made available through the application of digital technologies for insurance intermediation can be a double edged sword for insurance customers, as it may increase the risk of discrimination against certain categories of 'uninsurable' customers who may not be able to access certain insurance products because of the costs involved.

As the application of financial technology in insurance is still nascent, each InsurTech and technology-enabled proposition is different. However, a broad categorisation can be attempted in an effort to examine the regulatory framework applying to such intermediaries. It should be noted, however, that, at this stage of development of the market, most InsurTech and tech-based intermediaries are not pure InsurTech or end-to-end distributors. Instead, they are based on hybrid models or use innovative technology (e.g. robo-advice) in specific parts of the intermediation process.

3.1. Peer-to-peer (P2P) insurance and other InsurTech

Technology-enabled companies offering insurance distribution services through peer-to-peer (P2P) or other digital channels propose new models for the provision of insurance and new insurance services. Views differ over the potential of such companies to completely disintermediate the provision of insurance given the front-end (sales) and after-sales phase (client service, claims and settlements) that is required for an insurance policy.

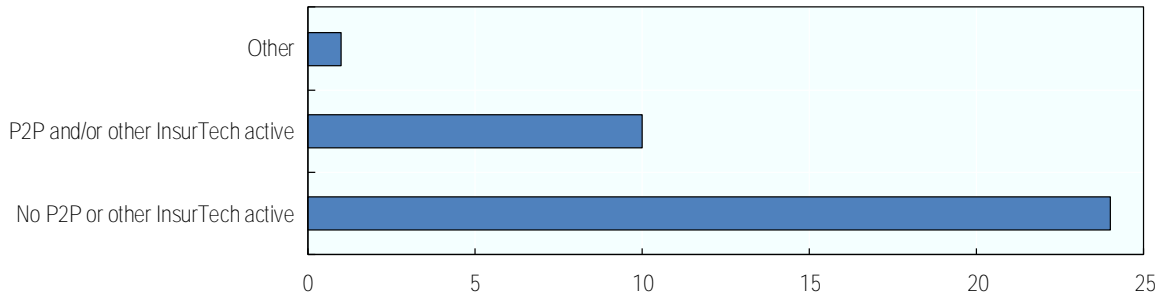
Although P2P and other InsurTechs do not intermediate in the more traditional sense, many of them hold brokering licenses and are authorised to operate as brokers in their respective jurisdictions (OECD, 2017^[8]). Guevara, Friendsurance, InsPeer, BIMA are examples of InsurTech start-ups providing new insurance services under different business models, all of which operate under brokerage licenses (OECD, 2017^[8]).

Some form of P2P and/or InsurTech activity in intermediation was reported in just 10 jurisdictions responding to the OECD questionnaire (Figure 3.1). In most cases, however, companies pursuing P2P or InsurTech activity are not registered as a separate category, and it is not possible to strictly separate InsurTech from traditional insurance provision at this stage of the market, which is not unexpected given that regulation tends to be developed technology neutral.

In addition, in some jurisdictions, the classification is based solely on the type of activity as insurance intermediation and not tracked by license type: in the US, for example, any individual selling, soliciting or negotiating insurance has to be licensed as an insurance producer. This makes it difficult to estimate the size of such activity. The bulk of P2P/InsurTech activity involves non-life and personal insurance coverage (Figure 3.2).

Figure 3.1. Existence of P2P or other InsurTech intermediation

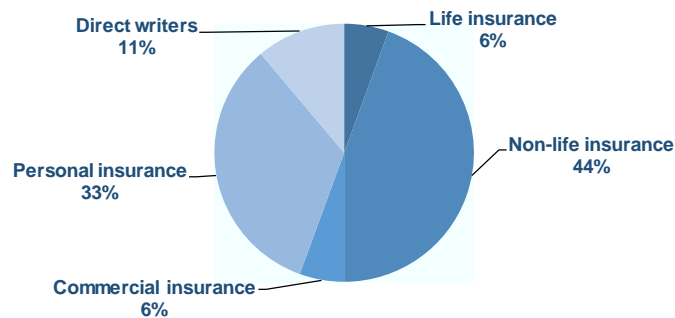
In absolute number of countries



Examples of hybrid forms are found in the UK and in Italy. In the UK, a number of ‘pseudo’ P2P start-ups are active in insurance intermediation but are backed by insurance undertakings, and therefore cannot be considered pure P2P players. Hybrid schemes of intermediation combining features of traditional insurance with elements of P2P schemes (such as bonuses and refunds to insureds in case of no claims at the end of the insurance period) are also found in the Italian market. Microinsurance and instant insurance sold by intermediaries through web platforms¹⁵ are other insurance lines distributed through online platforms in Italy.

Figure 3.2. P2P and InsurTech intermediation by insurance line

In percentage of total number of countries



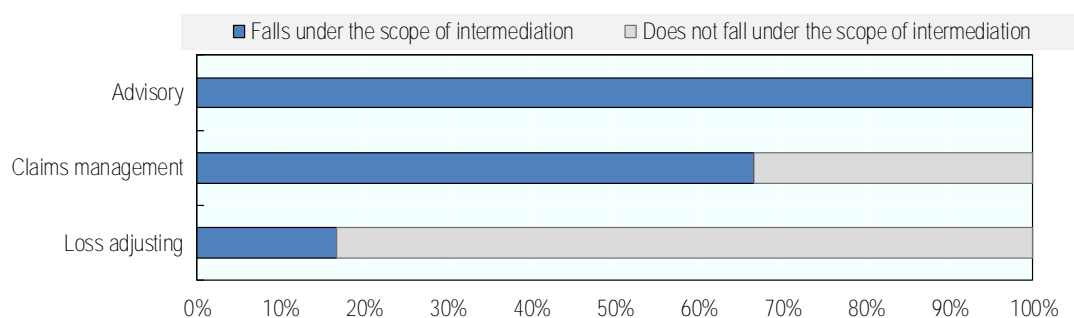
Similarly, in some jurisdictions any type of digitally-enabled intermediation is not perceived as a new type/class of intermediary (e.g. Mexico). Instead, it is regarded as a new channel for the distribution of insurance within traditional intermediary types. In these cases, insurance intermediaries are making use of digital technologies to complete existing channels.

In terms of activities that fall under the scope of InsurTech companies, all countries responding to the questionnaire with InsurTech activity allow for advisory by such intermediaries.

¹⁵ For examples of instance insurance see <https://insurtechnews.com/insights/the-first-instant-insurance-by-axa-italy-in-partnership-with-neosurance> and www.neosurance.eu/.

Figure 3.3. InsurTech activity under the scope of intermediation

In percentage of total number of countries



3.2. Price aggregators / Online price comparators

Price aggregators or online price comparators¹⁶ are digital platforms comparing insurance quotes and coverage, providing automated product comparison primarily based on price. Most price aggregators allow “click-through” to the carrier’s own site for actual contracting, acting as a third party intermediary facilitating the matching of demand with supply.

Some price aggregators are directly backed by insurers wishing to apply a multi-channel strategy in order to compete with emerging distribution channels and mitigate uncertainty derived from the increased use of FinTech-based insurance products.¹⁷ Such vertical integration without the necessary accompanying transparency about the ownership of the platform may expose insurers to certain risks. This is particularly relevant when platforms intentionally exclude specific insurance companies from the results, without disclosing such practice to prospective consumers.

Price aggregators gain revenue through advertising, sponsored listings, and referral /click-through commissions or success fees when prospective customers clicks through to an insurer’s website and purchases insurance. Such commissions are incorporated in the insurance premium quoted at each search, although in most cases not reported separately.

Online aggregators may be gaining market share at the expense of direct writers and some small traditional intermediaries *inter alia* by providing easier to compare pricing. According to market practitioners, traditional intermediaries are consolidating as fresh private equity capital and other investment enables the creation of second tier challenger intermediaries, such as aggregators and distributors through P2P channels. Traditional agents/brokers can be more easily substituted for insurance products that do not require high-quality advice, such as standardised motor or travel insurance. In some jurisdictions like France, price aggregators who are not registered as brokers can merely connect consumers with distributors; for the platform to provide any kind of advice or recommendation, even at the pre-sales stage, the aggregator is required to register as an insurance intermediary.

Price aggregators are used when the selection of insurance is made on the basis of price, or when price is the most important criterion for the selection of insurance amongst all other conditions. Such platforms offer mostly standardised, non-complex products for non-life insurance (e.g. motor, home, travel), where coverage is simpler, shorter, more homogeneous and thus easier to distribute. However, a selection solely on the basis of price even for standardised, non-complex insurance products could be detrimental to the

¹⁶ The terms are used interchangeably in this paper.

¹⁷ Examples include confused.com (part of the Admiral Group) and gocompare.com (owned by Esure) in the UK.

consumer. In addition, anecdotal evidence by market practitioners suggests that insurance consumers may benefit from contracting insurance through price aggregators for simple mass products, however, when a problem arises they seek the personal contact of an intermediary (e.g. illness in the case of health insurance, motoring offenses or claims in motor insurance or flood in house insurance, to name a few).

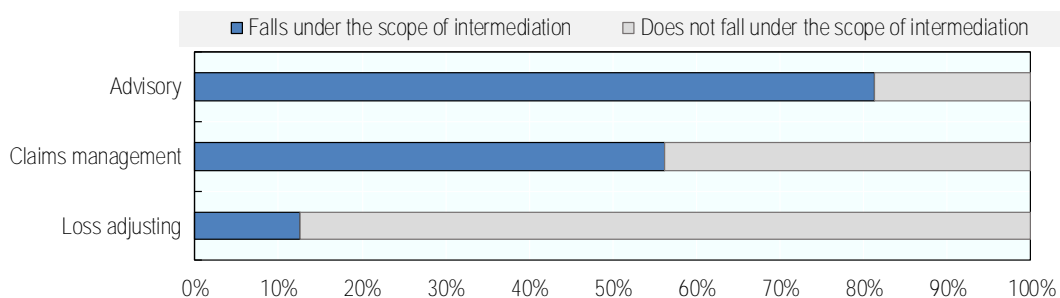
Based on a consumer outcomes analysis performed by the UK Treasury, price comparison websites have a net positive impact on consumers' access to insurance, despite the high level of expenditure spent on advertising and marketing (Financial Conduct Authority, 2019^[9]). New types of aggregators incorporating 'quality rankings', assessing products against standards and factoring in customer satisfaction to build a more balanced picture so as to go beyond price (e.g. <https://www.defaqto.com/>).

Price aggregators are most commonly registered as brokers (e.g. France, Italy, UK) or agents. In most responding jurisdictions, there is no separate legal definition for these platforms, and they are required to register and act under one of the categories of insurance intermediaries (*i.e.* as agents or brokers). Insofar as their activity qualifies as insurance distribution, online aggregators in most jurisdictions follow not just the typology but also the requirements of offline insurance intermediation. Switzerland is the exception to the above, as price aggregation is not considered to be an insurance intermediation activity in Switzerland in legal terms.

In the EU, Directive (EU) 2016/97 brings comparison websites under the definition of insurance distribution. In particular, the Directive refers to this activity as 'the provision of information concerning one or more insurance contracts in accordance with criteria selected by customers through a website or other media and the compilation of an insurance product ranking list, including price and product comparison, or a discount on the price of an insurance contract, when the customer is able to directly or indirectly conclude an insurance contract using a website or other media'.

Figure 3.4. Price aggregators and intermediation activity

In percentage of total number of countries



In the context of their information provision, online platforms collect important data about consumer preferences and profiles. Insurers could purchase such data off a price aggregator to enrich their actuarial assessment of risk (OECD, 2017^[8]). Online platforms should therefore provide clear information about how they intend to use prospective insureds' data and whether and how these will be safely stored and managed.

3.2.1. The importance of transparency for price aggregators

The increasing use of price aggregators for the distribution of insurance may stir up competition between insurance policies based solely on price. Consumers may focus more on the price as the single criterion of their choice, under the false assumption that all contracts proposed have the same terms and conditions (e.g. exclusions, excesses, other services offered) and differ only in price. This becomes problematic for

users when the aggregator does not provide clear information of all product features and exclusions in a consistent manner, or does not explain the differences in cover that may drive the price differential.

At the same time, insurers may have an incentive to “trim” their policies so as to achieve the lowest quote that will bring them on the top positions of the platform results.¹⁸ This may be achieved by excluding services that are of importance to the prospective insurance consumer and which exclusion may not always be understood upfront. For example, some of features may be marketed as add-ons to the insurance policy after the initial comparison instead of being part of the standard policy that is presented and compared upfront. This may result in consumers not being covered as they would have expected, i.e. purchasing products that do not meet their expectations and, ultimately, their needs. Clear information on the exact scope of the cover is therefore indispensable in intermediation through online platforms. A consistent, uniform way of comparing policies will allow customers to compare insurance coverage on a like-for-like basis.

Consumers using online insurance comparison sites may not necessarily understand that aggregators do not always compare all available option in the market. In Germany, while the degree of the websites’ market coverage is very high in the insurance market, some key providers are not included in the comparison and there are only a few websites which handle this piece of key information in a way that is sufficiently transparent for the consumer, e.g. by providing a negative list ((n.a.), 2019_[10]). Enhanced transparency around market coverage could include information on the number of products compared per insurance line, on the number and names of insurance companies included in the comparison and of criteria used in the analysis (EIOPA, 2014_[11]). Issues around market coverage and the basis of comparison of price aggregators are not pertinent solely in the insurance distribution market; a report by the German Competition Authority (Bundeskartellamt) on comparison websites identified such issues in comparison websites for hotels, energy and telecommunications services and pointed to a close link to regulation in the field of competition ((n.a.), 2019_[10]).

Differences in the structure of policies in niche markets, such as cyber insurance, give rise to additional issues in their distribution through price aggregators. For example, anecdotal evidence suggests that certain online comparison websites tend to prioritise policies that provide a listed coverage for disruptions at defined “outsourced service providers” over policies that include a broader coverage for any service provider based on the use of a broad definition of the policyholders “computer system”. Although the two terms are defined terms that provide coverage, the analytical software of the price aggregator does not specify whether “outsourced service providers” are included in the definition of a computer system, and only picks them up where they are separately defined.

Consumer awareness needs to be raised around the role of such platforms in insurance distribution: aggregators should provide a clear description of their activity to allow customers to understand the nature of the service provided and the basis of the proposed quotes of policies. In particular, aggregators should clarify to consumers that they are not necessarily assessing the suitability of the policy for each particular insurance consumer. Transparency is also important when it comes to information by the aggregator about claims management; the handling of complaints; the use of data provided by insurance consumers; as well as around its ownership. In jurisdictions where data on claims acceptances are made public by the supervisor, the incorporation of such data into comparison websites and their appearance in the results can help build a more balanced picture of the product offering that goes beyond price.

¹⁸ Anecdotal evidence by UK market participants confirms that insurers in the UK are allowing their policies to be ‘hollowed out’ and therefore lower priced as a consequence. This was primarily observed in private motor insurance and is now occurring both in household and online SME policies. At the same time, it could be argued that given that insurance is a trust-based product, customers are more likely to pick the product appearing higher up in the list, for a brand they recognise.

In addition to increased transparency and disclosure that needs to be provided by price aggregators, appropriate financial education efforts can also assist prospective customers in better understanding what to expect of price aggregators and how to balance price with quality of insurance product.

3.3. Robo-advisors

Robo-advisors backed by algorithms and machine learning technologies offer a personalised experience and the possibility for customer-centric advice tailored to the policyholder's income and needs, while benefiting from cost efficiencies derived by greater automation of processes. Unlike price aggregators which have proliferated in the past decade, much effort is still being made to develop sites that provide personalised financial guidance for insurance products with investment and/or saving components (OECD, 2017^[8]).

Robo-advisors are best suited to provide advice on more complex product offerings, such as investment allocation and retirement planning. The use of robo-advice in insurance is particularly relevant to unit-linked or other types of life insurance which have a saving or investment component. Indeed, life insurance accounts for a third of robo-advice in countries responding to the OECD questionnaire.

Robo-advisors used in responding countries are not pure end-to-end insurance distribution players operating on a standalone basis. Instead, they are digital advice platforms established by incumbent intermediaries, integrated as part of their wider service offering (hybrid robo-advisor). This may be partly driven by a demand-side preference for human interaction when it comes to more complex instruments. Indeed, according to a 2016 study by E-Trade Financial, a combination of robo-advice and personal advice is deemed to be optimal for the majority of age groups, which follows the pattern of robo-advice development by insurers (OECD, 2017^[8]).

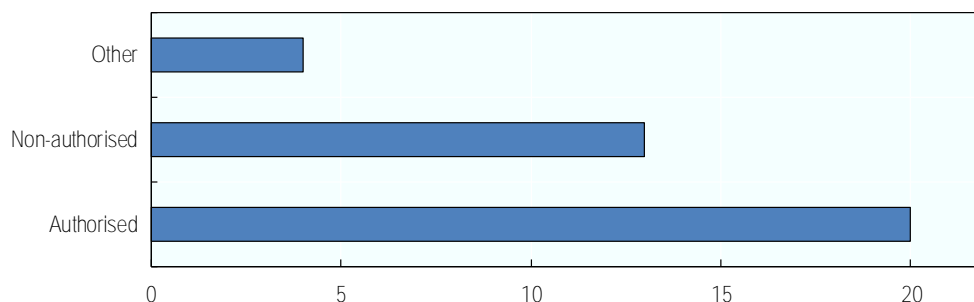
More than half of responding countries to the OECD questionnaire allow such activity for the distribution of insurance (Figure 3.5). Such activity is almost equally spread between life and non-life insurance lines, although such breakdown is based on a small sample of countries with reported activity (Figure 3.6).

In the vast majority of jurisdictions where robo-advice is authorised, there is no separate statutory definition or intermediary class for such channel. A technology-neutral approach to regulation explains this approach in countries like Sweden.

In South Africa, the provision of automated advice is defined in the FAIS Act regulating financial services and insurance as 'the furnishing of advice through an electronic medium that uses algorithms and technology without the direct involvement of a natural person'. Registered intermediaries using automated advice are required to indicate to the Supervisory Authority that they are engaged in such activity.

Figure 3.5. Use of robo-advisors in insurance distribution

In absolute number of countries



To the extent that the activity of a robo-advisor falls under the definition of insurance intermediation of the specific jurisdiction, the robo-advisor is required to register under one of the traditional intermediary types, most often as a broker. All rules applying to traditional intermediary classes will therefore apply to robo-advisors. The regulatory challenges of robo-advice are similar to the ones applying on traditional financial advice from human advisors, and therefore policymakers need to ensure that existing legislation applies with respect to the applicability of duty of care requirements, avoidance of conflicts of interest, transparency of disclosure and access to redress in the case of an unfair outcome for the consumer (OECD, 2017^[12]).

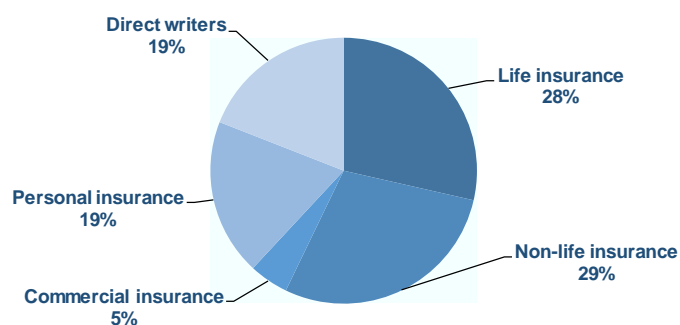
In addition, regulators and supervisors need to ensure that new challenges emerging from the use of robo-advice are addressed. These mainly pertain to the accuracy and robustness of the algorithms used by such platforms, and to the level of understanding of users of such channels. Flaws in the design and operation of algorithms underlying robo-advisors can create a risk of mis-selling (IAIS, 2018). In the UK, for example, firms wishing to use robo-advice in carrying out their regulated activities are expected to have tested the technology and to have in place a robust monitoring regime to ensure that there is no consumer detriment (OECD Questionnaire, 2019).

In South Africa, intermediaries need to have adequate and appropriate human resources in place, with the required competences to understand the technology applied in robo-advice. In addition, such intermediaries are required to have an in-house specialist who can intervene immediately in case of an issue with the algorithm underlying the robo-advisor, thus ensuring that the intermediary is not dependent on any external software provider.¹⁹

The absence of a specific framework for robo-advisors does not necessarily mean that such activity is prohibited. In Costa Rica, Chile, Italy, Korea, Mexico, the Russian Federation and Spain, the concept of robo-advice is not contemplated in regulation, however, intermediaries are not banned from using such technologies. For example, in Italy, despite the absence of specific license requirement for robo-advisors, any firm pursuing insurance/financial distribution business is required to be registered as an insurance/financial intermediary and to comply with the sectorial conduct of business rules.

Figure 3.6. Robo-advisor activity by insurance line

In percentage of total number of countries



Although the level of automation in robo-advice platforms or applications varies widely, virtually all robo-advisors increase accessibility of investing to a broader part of the market, targeting a larger audience, and to do so relatively cheaply than the existing channels (OECD, 2017^[12]). As such, increased use of robo-advice could assist in narrowing the protection gap of the lower income population as the cost of such services is lowered (OECD, 2017^[8]).

¹⁹ Roundtable discussion at the OECD Insurance and Private Pensions Committee on 5 December 2019.

3.4. Other digital intermediation channels: digital bancassurance, BigTech and industrials

3.4.1. Digital bancassurance

As fewer customers visit bank branches, banks have been slowly shifting some of their insurance distribution activity into the digital space. Banks and financial institutions active in insurance distribution leverage their wealth of insurance consumer data and analytics capabilities to offer personalised digital products.

The digital offering of bancassurance is mainly concentrated in non-life products which are less complex and easier to distribute through digital-only channels. According to a recent survey, digital bancassurance channels accounted for 19% of bancassurance non-life sales in 2017, and for only 2% of life insurance sales in a sample of 27 countries captured by the study²⁰ (McKinsey, 2019^[2]).

3.4.2. Insurance intermediation by BigTech

BigTech players such as Amazon, Google and Alibaba with large digital networks and solid customer bases can intermediate financial services effectively. The customer data generated through the various services provided by such platforms allows them to tailor their insurance offering and provide personalised products.

The provision of insurance intermediation by BigTech is less developed than other financial services (e.g. payments, lending), and in the majority of cases consists of some sort of partnership or joint-venture with an insurance undertaking (Table 3.1).

Table 3.1. Insurance intermediation by BigTechs

| | Alibaba | Tencent | Baidu | Google | Amazon | Apple | Mercado Libre |
|--------------------|---|---|---|--|--|---|--------------------|
| Insurance offering | 60% stake in Cathay Insurance China, founding stake in Zhong An Insurance | Online insurance service in life and property insurance | Joint venture with Allianz, and Hillhouse Capital announced | Insurance on Google Compare (discontinued) | Partnership with JPMorgan Chase and Berkshire Hathaway on health insurance | Cooperation with Allianz on cyber insurance discounts | Pilots run in 2018 |

Source: (Financial Stability Board, 2019^[13]).

Insurance distribution using online platforms of BigTech raises regulatory concerns over data privacy in the insurance market.

²⁰ The McKinsey study pulled 2017 data on the following geographies: Africa (Egypt, Morocco, and South Africa), Asia-Pacific (Australia, China, Hong Kong, India, Japan, Russia, Singapore, South Korea, and Thailand), Europe (Belgium, the Czech Republic, France, Germany, Greece, Hungary, Italy, the Netherlands, Poland, Portugal, Spain, and the United Kingdom), Latin America (Brazil and Mexico), and the United States.

3.5. Regulatory requirements applying to digital intermediation

Despite the rapid growth of insurance intermediation through digital channels, less than a third of countries responding to the OECD questionnaire have specific rules for the promotion and/or provision of insurance intermediation services through digital channels. Such rules cover data confidentiality, marketing, security requirements, information disclosure, and technical and human capabilities adapted for the use of digital channels. They apply over and above other requirements of intermediation, as in the majority of countries regulation applies to insurance distribution irrespective of the channel used.

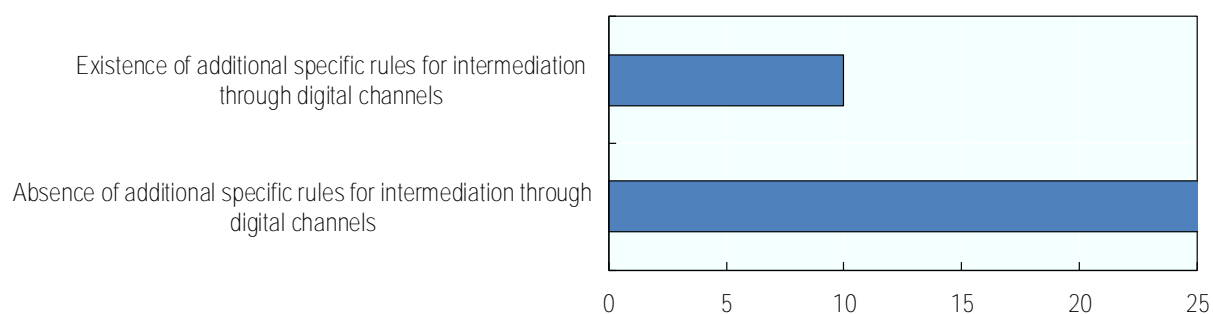
All types of insurance intermediaries should operate under the same or comparable regulatory/supervisory framework. Conversely, non-regulated intermediation activities carry significant risks for consumer and could cause reputational or other damage to the entire sector.

EU member countries require online insurance distributors to provide customers with the appropriate information on the selling process, so as to avoid unsolicited or mis-sold contracts, as well as to comply with a duty of advice (where such duty exists in national law) by providing fair and correct advice based on the true needs of the insurance consumer.²¹ Information provided should be transparent and clear and comprehensible to the customer. Directive (EU) 2016/97 provides detailed rules of conduct and disclosure obligations which apply to all channels of intermediation, including through digital channels (e.g. the duty to always act honestly, fairly and professionally in accordance with the best interest of the customers, or to take all appropriate steps to prevent, identify, mitigate and manage conflict of interests, or to give pre-contractual information on the product/the intermediary/remuneration received for the offered contract). According to regulators of EU member countries, given that the new regulatory framework has only been applied since 1 October 2018, the effective impact of the new framework can only be fully assessed once more experience in the application of the new rules has been gained.

In South Africa, intermediaries providing automated advice must have adequate and appropriate human resources with the required competences to understand the underlying technology and algorithms used in robo-advice, as well as policies and procedures in place to monitor, review and test algorithms and filters used. Intermediaries need to also have adequate and sufficient technological resources to maintain and protect information integrity of security of confidential insurance consumer data.

Figure 3.7. Specific rules and requirements for digital intermediation

In absolute number of countries



Chile and France impose minimum security requirements necessary for the distribution of insurance through electronic channels. Operational and security requirements are even more important when the platform is established and maintained by a third-party provider. In Mexico, distributors using digital

²¹ In accordance with EIOPA recommendations on Sale of products via the internet of insurance and pension products (EIOPA-BoS-14/198 Opinion issued on 7 January 2015).

channels need to inform insurance consumers about the risks inherent to the realisation of a digital operation linked to technology, in addition to other more standard disclosure requirements.

In Korea, there are specific conditions for the use of digital signatures by insurance consumers.²² A signature of a policyholder can be replaced as a form of digital signature only where it meets specific requirements. Where the insurance policy is issued in electronic form, the intermediary is required to confirm whether the policyholder has received the details of the policy, and shall issue them in written form, too, if the policyholder requests so.

In Italy, regulation provides specific rules around distance selling of insurance, including through digital channels, such as prohibition of discrimination, marketing of unsolicited contracts, rules on unsolicited commercial communications, commercial communications by means of distance communication, comparison websites, and registration of internet domains (see Box 3.2). Furthermore, enhanced information requirements in Italy and in the rest of the EU, prescribed by Directive (EU) 2016/97, include the requirement for the intermediary pursuing business through the internet/ social network/ application, to ensure that the website, the social network profiles and the applications contain clear and visible information and data to identify himself, provide all contact details, disclose the fact that the intermediary is under the supervision of the supervisor and provide contact information for complaints registration and out-of-court procedures. Rules around information transmission may also include possible obligations for the retention of insurance consumer information and documentation for a defined number of years after the termination of the contract (e.g. Costa Rica).

Box 3.1. Digital health insurance in Italy

In 2016, IVASS conducted a thematic review on the Italian digital health insurance market. The main findings in terms of supervision were linked to the use of Big Data in the provision of this insurance line through digital channels.

Despite significant advantages envisaged for patients (e.g. storage of medical prescriptions, diagnostic tests, hospital admissions) and for doctors/hospitals (e.g. easy and precise reconstruction of the state of health), the review revealed that the digital channel can pose significant risks such as for security and privacy.

The study emphasised that particular attention should be paid in terms of transparency, information gathering, and data security, which, in the context of health, are particularly important from a privacy and consumer protection perspective.

Furthermore, the supervisor should verify that the advantages offered to customers by digital health insurance products and services are not associated with discriminatory practices by insurers in the selection of insureds, for example by violating mutuality, which is the cardinal principle on which insurance is funded.

When it comes to promotion and marketing of insurance through social media and social networks, the French insurance supervisor has issued specific guidance with recommendation around the identification of the social media account and the provision of details around the intermediary, the contents and their dissemination, as well as storage of related data and information (ACPR and BDF, 2016_[14]). In Italy, for intermediation through the internet or social media, the home page or a specific page directly accessible through the home page, must contain in a clear and visible manner the following information: identification data of the intermediary, number of enrolment in the Register and address of the website where the details of the related enrolment are available; head office and branches – if any; contact details, information on

²² Paragraph 4, Article 43, Enforcement Decree of the Insurance Business Act.

the supervisory authority; and contact information for submitting complaints and the right of the policyholder to avail him/herself of other out-of-court redress systems as set forth in the applicable laws.

Box 3.2. Internet-based insurance distribution and price aggregators in Italy

In Italy, regulation provides details on the type of information to be provided to policyholders before they are bound by a distance proposal or contract (Article 121 of Code of Private Insurance and Article 73 of IVASS Regulation n. 40 of 2 August 2018). Such information intends to inform the customer on the provider of the contract and on the main information on the insurance cover proposed.

Distributors who carry out activities for the promotion and placement of insurance products through websites are required to be the owners of the internet domain. The intermediary's website, social network profiles and applications used for the promotion and the placement of insurance products, shall contain on the home page, or on a specific page directly accessible from the home page, in a clear and visible manner, specific information for the customer.

Specific rules of conduct and disclosure obligation are to be observed in the offering of comparison services on insurance contracts, and distributors are required to:

- indicate the data related to the comparative market share and the list of insurance undertakings with which they have signed agreements for the comparison of policies; if the service is provided through websites, this information is to be made available on the home page or on another page of the site that is directly accessible from the home page;
- guarantee that the number of undertakings advertised for comparison corresponds to that of the undertakings actually compared;
- in case of non-quotation of one or more of the undertakings for which comparison is declared, an explanation must be given and the missing quotations must be provided to the consumer, also at a later stage;
- provide comparisons based not only on price but also on the policy's key features, presenting them according to a standard which facilitates comparison among the various offers;
- establish processes for the identification of the policyholder's insurance needs and quotation of the guarantees so as to produce a range of products all meeting the needs expressed by the policyholder;
- adopt operating methods suitable to avoid forced combinations of ancillary coverages for motor liability insurance contracts and mechanisms for the automatic attribution of non-requested guarantees for which the intent to join (opt-out) has not been expressly stated;
- guarantee the transparency of the remunerations recognised by each of the undertakings to the intermediary for the comparative service, as well as the remunerations recognised by the undertakings, for each policy, if a contract is concluded in compliance with the provisions of article 120-bis of the Code;
- comply with the regulatory provisions of disseminating advertising communications and guarantee the confidentiality of the information acquired.

According to market practitioners, intermediaries need to maintain operational robustness and data storage integrity at all times. This involves the secure and appropriate handling and storing of information and data,

supported by resilient and sustainable systems and strong contingency plans to cover for potential data breaches.²³

Given that digital intermediaries may be provided on a cross-border basis from companies that may be based in a country different to the home country of the consumer, close cooperation needs to be ensured between the respective supervisory authorities in case of potential legal infringements and banning of cross-border solicitation.

Table 3.2. Additional requirements applying to digital intermediation

| Requirement | Brazil | Chile | Costa Rica | France | Italy | Korea | Mexico | United Kingdom | South Africa |
|--|--------|-------|------------|--------|-------|-------|--------|----------------|--------------|
| Additional disclosure requirements | | | | | x | | | | |
| Requirement of electronic signature | | | | | | x | | | |
| Operational requirements, including in relation to system capacity | | | | | | | | | x |
| Appropriate monitoring and testing of the algorithms and filters used | | | | | | | | x | x |
| Establishment, implementation and maintainance of adequate policies and procedures | | | | | | | | x | x |
| Adequate and appropriate human resources and competences | | | | | | | | | x |
| Data storage, confidentiality and integrity | | | x | x | | x | | | x |
| Information transmission and custody | | | x | | | | x | | |
| Minimum security requirements for intermediation through electronic means | | x | | x | | | | | |
| Marketing / advertising | x | | | x | | | x | | |

²³ Roundtable discussion at the OECD Insurance and Private Pensions Committee on 5 December 2019.

4. Remuneration, representation and disclosure arrangements in insurance intermediation

This section describes representation and remuneration of agents and brokers. It also looks into disclosure requirements applying to intermediaries and the role of transparency in addressing any potential conflicts of interest and enhancing consumer protection.

4.1. Representation and remuneration of agents/brokers

4.1.1. Representation

Although the definition of agents and brokers determines that they are acting on behalf of the insurer and the consumer, respectively, the perception about who intermediaries represent is not as clear-cut (Figure 4.1). Even tied agents are not always thought to act for and on behalf of the insurer alone, and similarly, brokers are perceived to a certain extent as acting on behalf of both the insurer and the insurance consumer.

In practice, all intermediaries provide services to both insurers and policyholders. Brokers are defined as being independent from insurance undertakings and acting on behalf of the consumer, however, they actually provide a number of services directly to insurers. Both agents and brokers play a role in the premium collection and claim handling processes, to the benefit of both insurer and insurance consumer, providing a more efficient and convenient process.

Insurance intermediaries are a typical example of two-sided firms, which require both sides of the market “on board” to succeed (Rochet and Tirole, 2003^[15]; Cummins and Doherty, 2006^[16])²⁴. This may explain why perceptions around whom the insurance intermediaries represents differ significantly across countries, and why intermediaries are thought to represent both sides by a non-negligible number of countries (see Figure 4.1). The results can also be partly explained by the lack of harmonised classification and related definitions of insurance intermediaries across countries as well as in some countries. For example, in Sweden there is no broker class of intermediary and all types of intermediaries act on behalf of either insurer or consumer or both.

It is often difficult to decide whether an intermediary is acting as a broker or an agent, i.e. whether he represents the interests of the insured or the insurer, even in legal terms and in court.²⁵ In addition to blurry definitions and representation, the legal relationships among insured, insurer, and intermediary, even in a

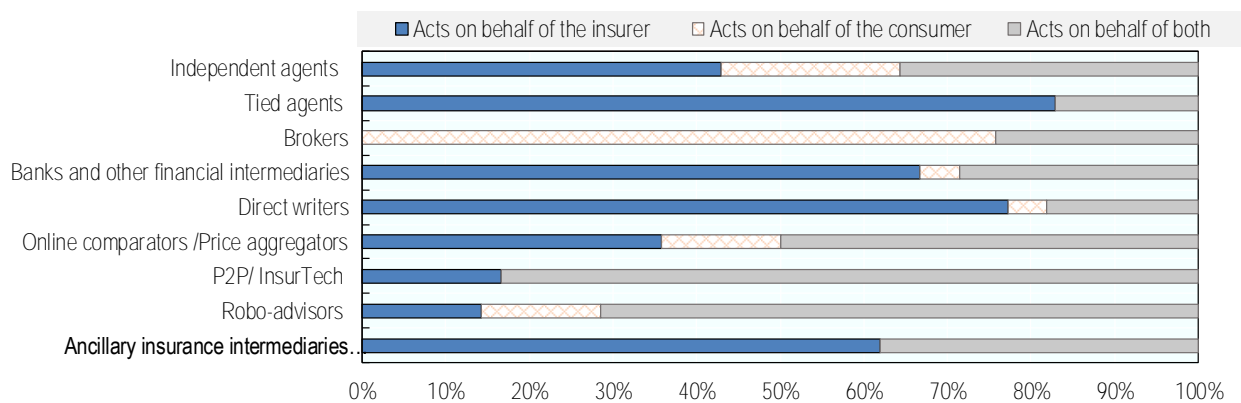
²⁴ Two-sided markets defined by Rochet and Tirole as markets in which one or several platforms enable interactions between end-users, and try to get the two (or multiple) sides “on board” by appropriately charging each side.

²⁵ For examples of cases, see <https://www.courtlistener.com/opinion/1693279/quirk-v-anthony/>

single transaction, can be inconsistent (Beh and Willis, 2009^[17]). Indeed, the judicial treatment of claims against intermediaries is inconstant and it is argued that it can be difficult for courts to determine 'to whom the intermediary owes its duties'.

Figure 4.1. On whose behalf does each insurance intermediary act?

In percentage of total number of countries



Note: In the UK, direct writers only represent themselves and ancillary insurance intermediaries are acting as the agent of the insurer, representing the insurer.

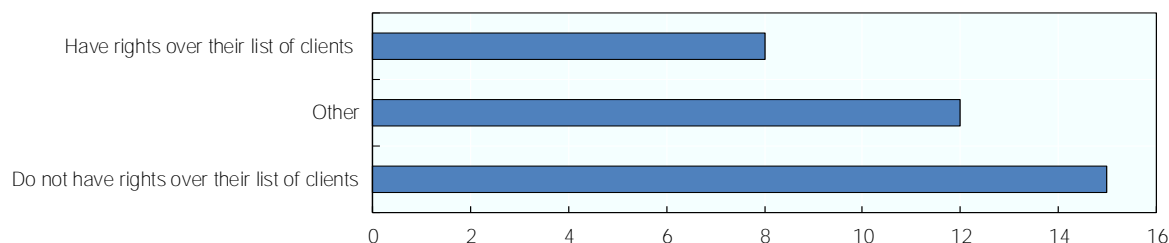
Intermediaries representing the insureds could, in theory, be expected to have ownership of their client relationship and contacts. Ownership of the list of clients (insurance consumers) could be somehow associated with representation, as intermediaries acting on behalf of insurance customers may wish to withhold information around personal customer details from insurers. Ownership of the client list, and therefore of policy renewals, allows intermediaries to capitalise on the investment made for the acquisition of the insurance customer. Academic research suggests that ownership of the client list leads to higher investment by intermediaries, reflected in higher incentives to design and choose appropriate policies, and higher efficiency when dealing with claims settlement (Grossman and Hart, 1986^[18]).

In the majority of countries responding to the OECD questionnaire, intermediaries do not have rights over their list of insurance consumers, which means they are not rightful owners of their expirations, or renewals, and the insurer can solicit these insurance consumers directly (see Figure 4.2). In South Africa, insurance undertakings can have access to all information on insureds in order to be able to satisfy their contractual relationship with the consumer, as stated in legislation. Conversely, in Mexico, independent intermediaries can transfer their lists and the rights derived from their portfolio of policies to other agents. In Germany, for example, intermediaries have generally no right to hold back the list of their clients (and by consequence the corresponding renewals) from insurers, unless agreed otherwise contractually.

More often than not, ownership of the client list is not covered by regulation and depends on the specific contract that the producer signs with an insurance company (e.g. Austria, Denmark, Finland, Greece, Sweden, US).

Figure 4.2. Intermediary rights over the list of clients (insurance consumers)

In absolute number of countries



4.1.2. Remuneration and incentives

Insurance markets, as with other financial transactions, are characterised by information asymmetries between the two sides of the market. Insurance customers have private information around their own riskiness and behaviour, while intermediaries have a better understanding of the characteristics of the products, the costs and the past performance of the insurer, particularly around claims settlement.²⁶ Insurance customers do not have much information around product features, the quality or the impartiality of the advice received, and cannot assess the suitability of the product for their needs. Such asymmetries can lead to adverse selection with financial consequences for both sides. It is therefore essential for intermediaries to provide impartial advice that serves the insurance consumers' interests in the best possible way.

As with all principal – agent relationships, the desires and goals of the principal (insured) and the agent (intermediary) are often different and sometimes conflicting, and it can be difficult for the principal to verify that the agent has behaved appropriately (Fama et al., 1980^[19]). Information asymmetries make such verification harder for the principal and can give rise to conflicts of interest in case the intermediary acts on the basis of self-interest.

Remuneration arrangements can give rise to conflicts of interest between intermediaries and the insurance consumers, heightening the risk of moral hazard and potentially resulting in the provision of biased advice to prospective insurance consumers. The incentives of intermediaries can be distorted by remuneration arrangements when these conflict with the duty to act in accordance with the insureds' best interests and/or when these are not communicated in a clear way.

Variable remuneration, such as contingent commissions based on the volume and/or profitability of the business placed with an insurer, have long been debated as a potential source of conflicts of interest for intermediaries (Cummins and Doherty, 2006^[16]; Fitzpatrick, 2006^[20]; Wade, 2015^[21]; Schwarcz, 2006^[22]; Colquitt, McCullough and Sommer, 2011^[23]; Inderst, 2015^[24]; AIRMIC, 2009^[25]; Ghosh and Hilliard, 2012^[26]). Compensation-related risk of conflict is also observed when the profit margins of the intermediaries are linked to add-on products, and in particular when there are risks of products not being transparent or being poorly understood by insurance consumers (see Annex IV).

What is more, it could be argued that, in theory, for brokers to safeguard their independence, remuneration should be solely paid by insurance customers. In practice, this would be detrimental to the customer as the remuneration burden would lie solely with them, and inconsistent with the fact that brokers provide services to both insurers and insureds. Where advisory fees are not charged to low income population, as is the case in South Africa, there is no incentive for the intermediary to be active in such market segments

²⁶ It should be noted that, according to market participants, intermediaries are often not paid for pre-sale or after-sales services provided in terms of risk mitigation and management consultancy, and the remuneration they may receive for the insurance placement may cover the cost of these services.

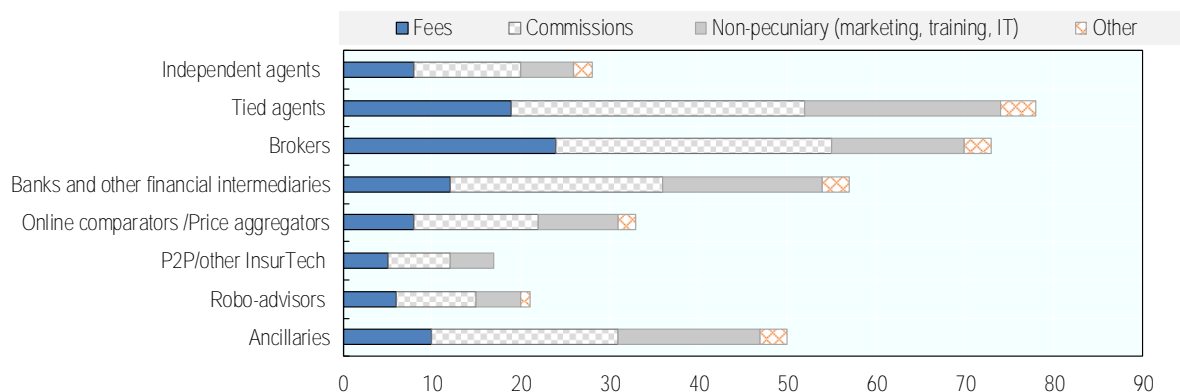
and a pure advice-based remuneration model becomes unsustainable; commissions can therefore have a positive impact in such markets by incentivising intermediaries to become active in the sector, however, it is argued that such commission has to be paid by the product supplier instead of the customer. In addition, the South African regulator is planning to introduce a requirement for intermediaries to inform customers about their advisory fees, and a right for customers to refuse to pay such advisory fees.²⁷

There are significant variations in remuneration types and structures for insurance intermediation (see Figure 4.3). The most common types are fees charged to the customer, commissions agreed with the insurer and expressed as percentages of the premium paid by the insureds, or a combination of these two. Commissions (both premium-based and contingent ones) are in most cases incorporated in the insurance premium in order to compensate the intermediaries for the customer acquisition costs and are not necessarily visible by the insured. In some cases, these costs are prorated in the premium of all contracts, thus there is no cost advantage or incentive for customers to directly contact the insurer (Eckardt, 2002^[27]).

Intermediaries may also receive non-monetary compensation, in the form of benefit linked to the activity of intermediation (IT assistance, training, marketing support) or other soft incentives (e.g. trips). In Germany, inappropriate incentives may also arise if the amount of the commission, bonus payment or other benefit/incentive for the conclusion of an individual contract is linked to achieving sales volumes (volume sales targets) within a particular period (e.g. a calendar year), at least if these have been promised in advance to the insurance intermediary/employees. Such additional benefit should also be made contingent on the achievement of qualitative targets, e.g. lapse rate or claims ratio (BaFin Circular, 2018).

Figure 4.3. Remuneration arrangement by type of intermediary

In number of countries, aggregate level



Brokers can be paid by the insurance consumer or the insurance undertaking in over a third of the countries responding to the OECD questionnaire (Figure 4.4).

Five of the countries responding to the OECD questionnaire have a model whereby the broker is solely paid by the consumer: Denmark, Finland, Norway, Peru and the Slovak Republic (Table 4.1). In Greece, the law implementing the EU Directive in the national framework introduced a limitation in the cooperation and remuneration of brokers with agents. In particular, brokers can only cooperate with brokers and agents only with agents, and as such, insurance brokers cannot share commissions with insurance agents and vice versa.

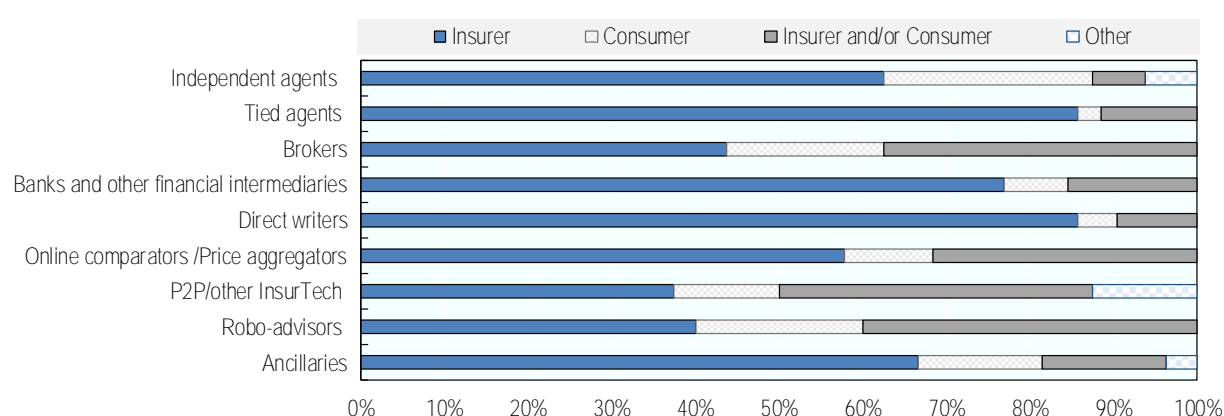
²⁷ Roundtable discussion at the OECD Insurance and Private Pensions Committee on 5 December 2019.

In countries of the EU, and in accordance with the EU Insurance Distribution Directive, intermediaries' remuneration that may conflict with the duty to act in accordance with their customers' best interests rule is prohibited.

Other countries have restrictions to the types of remuneration permitted in intermediation. In Costa Rica, brokers are not allowed to receive any remuneration from the insurance undertaking other than premium-based commissions. In Hungary, brokers must have in place internal policies which ensures that remuneration arrangements will not lead to conflicts of interest. In Austria, France, Italy and the rest of the EU, in accordance with EU Directive 2016/97, insurance regulation specifically prohibits insurers from providing remuneration for distribution or sales targets that could provide an incentive for the intermediary to recommend or offer a specific insurance product when an alternative insurance product would correspond better to the needs of the policyholder.

Figure 4.4. Who pays for the intermediary

In percentage of total number of countries



Certain jurisdictions impose caps on the amount of commissions an intermediary can receive. In the Russian Federation, compulsory insurance brokerage commission cannot exceed 10% of the premium (and this ceiling is defined by the Government). In Germany, a commission cap is imposed in mediation of substitutive health insurance contracts. In Sweden, and only for insurance with an investment component, up-front commissions are prohibited. In Israel, the commission that independent agents receive from institutional investors must be equal for all products and all institutions.

Interestingly, in South Africa, intermediation regulation does not distinguish between tied and independent intermediaries, however, that distinction is made under the conduct of business regulation in order to allow for differentiated remuneration requirements to apply when the intermediary is acting on behalf of the insurer. The South-African Financial Sector Conduct Authority also intends to re-classify the actual physical collection of premiums by intermediaries as 'outsourced activity' instead of 'intermediation service', as the latter is subject to regulated commission caps (Financial Sector Conduct Authority, 2019^[28]).

Table 4.1. Broker remuneration, representation and independence

| | REMUNERATION | | | | REPRESENTATION | | | | INDEPENDENCE | |
|----------------|--------------|-------------------------|----------|-------|----------------|-------------------------|----------|-------|--------------|-------|
| | INSURER | INSURER AND/OR CONSUMER | CONSUMER | OTHER | INSURER | INSURER AND/OR CONSUMER | CONSUMER | OTHER | YES | OTHER |
| Argentina | x | | | | | | | x | x | |
| Austria | | x | | | | | x | | x | |
| Brazil | x | | | | | | x | | x | |
| Chile | x | | | | | | x | | x | |
| Colombia | x | | | | | | x | | x | |
| Costa Rica | x | | | | | | x | | x | |
| Czech Republic | | | | x | | x | | | | x |
| Denmark | | | x | | | | x | | x | |
| Estonia | | x | | | | | x | | x | |
| Finland | | | x | | | | x | | x | |
| France | x | | | | | | x | | x | |
| Germany | x | | | | | | x | | x | |
| Greece | | x | | | | | x | | x | |
| Hungary | | x | | | | | x | | x | |
| Italy | | x | | | | | x | | x | |
| Japan | x | | | | | | x | | x | |
| Korea | x | | | | | x | | | x | |
| Latvia | x | | | | | | x | | x | |
| Lithuania | | | | x | | x | | | | x |

| | REMUNERATION | | | | REPRESENTATION | | | | INDEPENDENCE | |
|--------------------|--------------|-------------------------|----------|-------|----------------|-------------------------|----------|-------|--------------|-------|
| | INSURER | INSURER AND/OR CONSUMER | CONSUMER | OTHER | INSURER | INSURER AND/OR CONSUMER | CONSUMER | OTHER | YES | OTHER |
| Luxembourg | | x | | | | | x | | x | |
| Mexico | x | | | | | x | | | x | |
| Norway | | | x | | | | x | | x | |
| Peru | | | x | | | | x | | x | |
| Poland | | x | | | | | x | | x | |
| Portugal | | x | | | | | x | | x | |
| Russian Federation | | x | | | | X | | | x | |
| Slovak Republic | | | x | | | | x | | x | |
| Slovenia | | | x | | | | x | | x | |
| South Africa | x | | | | | x | | | x | |
| Spain | | x | | | | | x | | x | |
| United Kingdom | | x | | | | x | | | x | |
| United States | | | | x | | | x | | | x |

Note: Independence responses based on the question on whether insurance intermediaries are independent from insurance companies in each jurisdiction.

Contingent commissions

Contingent commissions are paid to intermediaries as compensation based on the volume of policies written (e.g. upon reaching a target volume of policies written); on the profitability of the business placed with an insurer; the persistency of the business; or some combination of the above (Ghosh and Hilliard, 2012^[26]).

Contingent commissions are thought to create incentives to place a large book of business (likely to suffer lower than average losses due to greater diversification), which would steer business towards particular favoured insurers and possibly misrepresent the interest of policyholders. Intermediaries may choose to pursue their personal objectives, linked to variable remuneration and the achievement of pre-defined targets, as is the case with contingent commissions, at the expense of the insured, potentially offering non-optimal products to the insureds. The intermediary's interest in the commission may conflict with the customer's interest in obtaining the best possible advice, i.e. open and unbiased and not aimed at a particular outcome or at the conclusion of a particular contract (BaFin Circular, 2018).

Contingent commissions came under increased scrutiny following the 2004 lawsuit of New York Attorney General Eliot Spitzer against an insurance broker and other involved insurance companies, calling for the elimination of some forms of contingent commissions (Fitzpatrick, 2006^[20]). The investigation revealed the vulnerabilities of insureds to undisclosed practices of insurers and intermediaries when it comes to rewards earned based on the volume or profitability of the intermediary's business placed with a specific insurer and which may incentivise intermediaries to steer business towards specific insurers.

On the other hand, contingent commissions are argued to be a useful tool to align incentives between the intermediary and the insurer to alleviate adverse selection (Rothschild and Stiglitz, 1976^[29]; Cummins and Doherty, 2006^[16]). Brokers are incentivised to provide to insurers accurate information about their policyholders, reducing the information asymmetry and providing confidence to insurers in the selection and take up of risks. These are thought to be most useful for complex coverages (e.g. commercial property and casualty insurance) where complexity is high and information asymmetries the most severe.

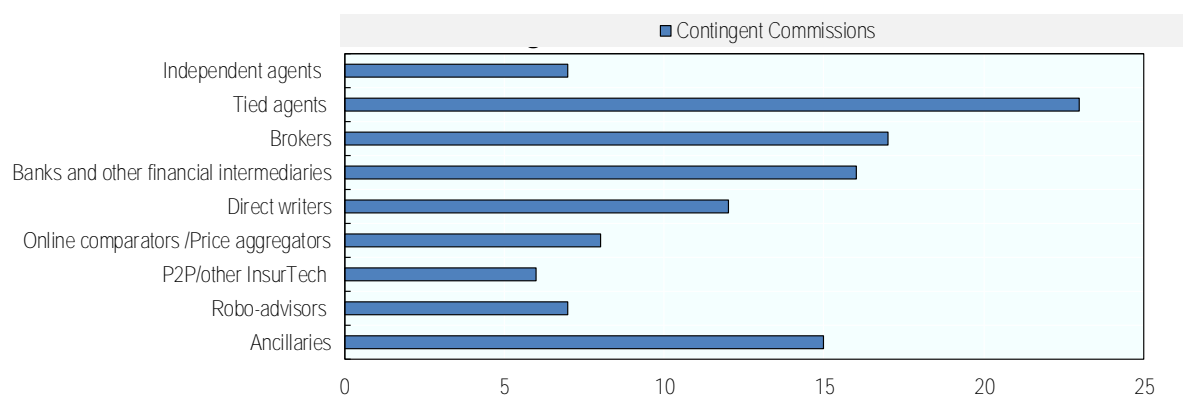
In addition, variable compensation has been argued to indirectly encourage intermediaries to consider the long-term performance of insurers, to the ultimate benefit of the policyholder (Fitzpatrick, 2006^[20]). Empirical evidence suggests that the use of commissions is negatively related to the combined ratio in property-liability insurance, suggesting a related possible improvement in the insurer performance, which can ultimately benefit policyholders (Regan and Kleffner, 2010^[30]).

Contingent commissions are banned in Costa Rica and Peru for all intermediaries and in Korea for bancassurance. They are restricted in South Africa through the regulation covering the amount and form of intermediary remuneration. There is no form of restriction around contingent commissions in 29 countries responding to the OECD questionnaire (Figure 4.5).

In Germany, contingent commissions were restricted until recently and are now prohibited if they are in conflict with the duty of the intermediary to act in the best interests of the customer, in line with other EU countries. This is monitored by ongoing supervision, desktop research and on-site inspections of the supervisor, as well as customer complaints and/or indications from whistle-blowers. The introduction of a possible limit in commission payments or further guidance around these are currently under consideration.

Figure 4.5. Existence of contingent commissions by type of intermediary

In absolute number of countries



In South Africa, there is also a prohibition on sign-on bonuses offered to an intermediary, as historically these bonuses resulted in the broker 'signed-on' shifting its whole book of business to an insurer.

In Australia, the recent report of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry identified conflicts between legal duties and self-interest underpinning variable remuneration mechanisms as one of the immediate mechanisms causing misconduct and poor management of non-financial risks (Royal Commission into Misconduct in the Banking, 2019^[31])(see Box 4.1). Caps on commissions already exist for some financial products, such as life insurance in Australia. The report calls for a reduction in conflicted arrangements in intermediary remuneration by further reducing the cap on commissions and the ultimate removal of variable commissions on life insurance products (upfront and trailing commission and other volume-based benefits). In addition, all ongoing fee arrangements must be renewed annually by the insurance consumer for all products.²⁸

4.1.3. Independence of intermediaries

The ability of an insurance intermediary to act objectively and independently towards the insured is important given that this may be the expectation of the policyholder. Independent intermediaries are expected to provide undistorted, impartial advice that serves the insurance consumer's interests in the best possible way.

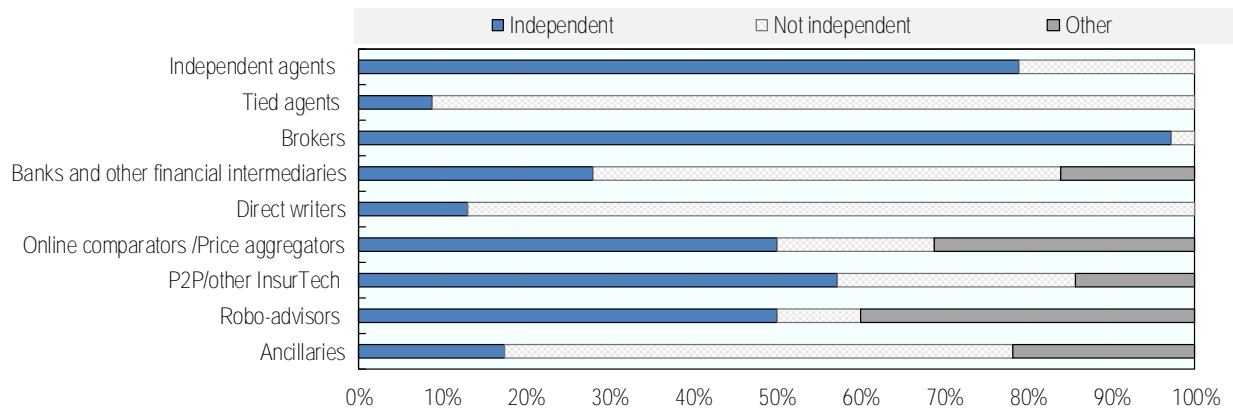
As discussed in Section 2.1.2., the distinction between independent agents and brokers is a very subtle one. In principle, agents represent the interests of the insurers, while brokers act on behalf of and in the interest of consumers. In practice, however, it is difficult to evaluate the extent to which this basis is actualised, especially since they tend to provide services to both the insured and the insurer (e.g. collection of premium, policyholder communication, claims handling).

Brokers are considered to be independent by most respondents to the OECD questionnaire (Figure 4.6), and more so relative to other intermediary types.

²⁸ It should be noted that, according to market participants, the majority of cases of reported misconduct relate to life insurance, add-insurance (insurance products sold by motor dealers when selling a new car), consumer credit insurance sold by financial institutions and insurance with an investment component, rather than general insurance products/distributors.

Figure 4.6. Are intermediaries independent?

In percentage of total number of countries



Note: Responses to the question on whether insurance intermediaries are independent from insurance companies in each jurisdiction.

In Denmark, agents or brokers using a designation that gives the impression that the intermediary is independent must solely represent the customer and act in the interests of each customer without being influenced by their own or by third party interests. In the case of Denmark, additional rules apply and independent intermediaries must not have any links to other insurance distributors (e.g. remuneration, ownership, employment or other) that could potentially distort the impartiality of the intermediary's advice.

Box 4.1. Independence of financial advisors and misrepresentation in Australia

In Australia, a financial advisor can use the words 'independent', 'impartial' or 'unbiased' if all of the following conditions are satisfied:

- The financial adviser does not receive commissions (other than commissions rebated in full to the insurance consumer); any form of remuneration calculated on the basis of the volume of business placed by the adviser with a product issuer; or any other gift or benefit from a product issuer that may reasonably be expected to influence the adviser;
- Neither the financial adviser's employer, nor any person on behalf of whom the adviser provides financial services, receives any of those benefits;
- The financial adviser operates free from direct or indirect restrictions relating to the financial products in respect of which he or she provides financial services; and
- The financial adviser operates without any conflicts of interest that might arise from his or her associations or relationships with issuers of financial products; and be reasonably expected to influence the adviser in carrying on a financial services business or providing financial services.

No requirement existed for financial advisers to disclose their lack of independence in case the above requirements are not satisfied, with risks of misrepresentation.

A Commission was established in December 2017 by the Governor-General of the Commonwealth of Australia, and Kenneth Madison Hayne AC QC, former High Court Judge, was tasked to conduct an inquiry on misconduct in the banking, superannuation and financial services industry. The Commission's final report was published in February 2019 and contains 76 recommendations, in four areas: (i) the connection between conduct and reward; (ii) the

asymmetry of power and information between financial services entities and their customers; (iii) the effect of conflicts between duty and interest; and (iv) holding entities to account.

The Commission issued a recommendation for the law to be amended so as to provide for such disclosure requirement, obliging financial advisors to explain “simply and concisely why the adviser is not independent, impartial and unbiased”.

The Commission’s report includes a number of recommendations proposed to tackle conflicts of interest in financial services and are designed to alter the objective of the regulator from managing conflicts to eliminating them. These include limits on variable remuneration, increased accountability and the extension of best interest duties, among other proposals.

Source: Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry (Royal Commission into Misconduct in the Banking, 2019^[31]).

4.2. Disclosure and other supervisory measures

Transparency and mandatory disclosure is arguably the most common way to protect the insureds from potential conflicts of interest by helping overcome agency problems related to information asymmetries. Obligations for information provision by insurance intermediaries to their insurance consumers is an important tool in the regulators’ arsenal as it can promote consumer choice, harness market discipline and ensure regulatory accountability (Schwarcz, 2006^[22]).

Mandatory disclosure requirements around the compensation structure and remuneration arrangements between intermediaries and insurers (Figure 4.7), but also disclosure around other sources of potential conflicts, such as ownership or other control by insurers on the intermediary or vice versa (Figure 4.8), can mitigate risks of misrepresentation by intermediaries. Conversely, the absence of disclosure obligation around the compensation arrangements that brokers may have in place with insurers may unintentionally lead to such misrepresentation (Figure 4.7).

Figure 4.7. Existence of mandatory disclosure requirements around broker remuneration arrangements with insurers

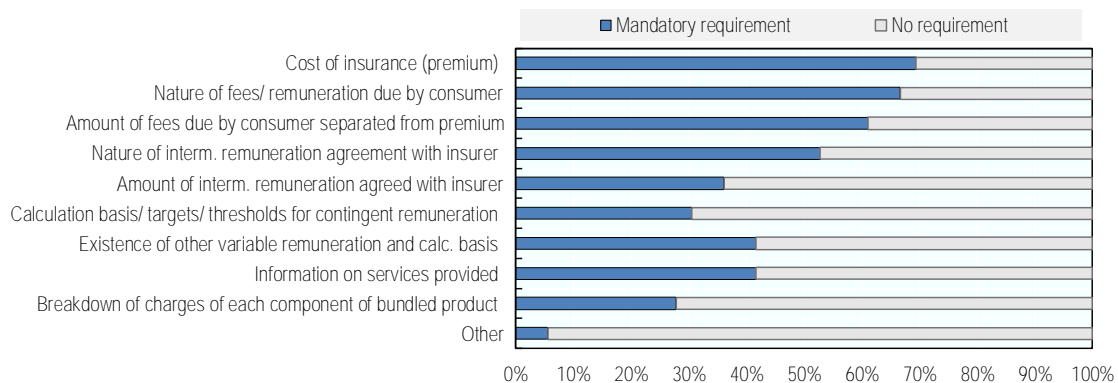
| WHO PAYS? | BROKER PERCEIVED AS INDEPENDENT | | | | | | OTHER |
|------------|---------------------------------|--------------|------------|-------------------------|---------|----------|-----------------|
| | INSURER | | | INSURER AND/OR CONSUMER | | CONSUMER | OTHER |
| | Argentina | France | Mexico | Austria | Poland | Denmark | Slovak Republic |
| Brazil | Germany | Slovenia | Estonia | Portugal | Finland | | Lithuania |
| Colombia | Japan | South Africa | Italy | Russian Federation | Greece | | United States |
| Costa Rica | Korea | | Hungary | Spain | Peru | | |
| Chile | Latvia | | Luxembourg | United Kingdom | Norway | | |

■ Absence of mandatory disclosure requirement around remuneration agreement with insurer

Note: For jurisdictions where the broker is considered independent under Table 4.1. Responses from EU members without disclosure requirements were received prior to the full transposition of EU Insurance Distribution Directive, therefore their responses may change at the time of drafting of this report.

Figure 4.8. Broker information requirements around remuneration

In percentage of total number of countries



Nineteen out of 36 countries responding to the OECD survey have a mandatory disclosure requirement for the existence of any remuneration agreement that the intermediary has with the insurance undertaking. Of these, two thirds need to report the amount of remuneration received. Fifteen countries have mandatory reporting obligations around the existence of other variable remuneration (e.g. contingent commissions) and the calculation basis or targets linked to such remuneration. Belgium, Brazil, Korea and Slovenia have no disclosure requirements around remuneration arrangements, while Latvia has such requirements in place only for brokers.

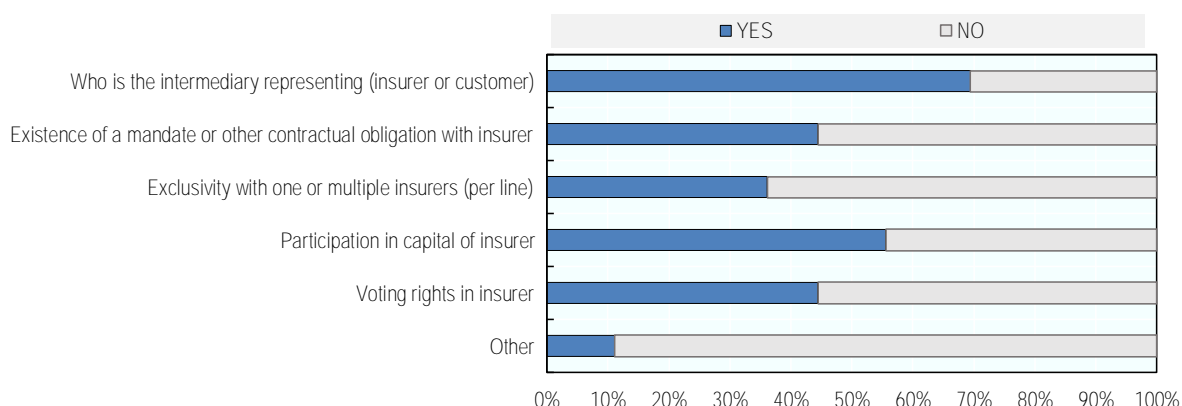
In the EU, Directive (EU) 2016/97 requires the intermediary to disclose to the customer the nature of the remuneration received in relation to the insurance contract and, in case of a fee paid directly by the customer, also the amount of the fee (or, where that is not possible, the method for calculating such fee). Additional disclosure requirements related to remuneration apply in some of the EU member countries. In Italy, for example, regulation provides additional requirements requiring the disclosure of (i) the level of commissions received by intermediaries for the distribution of motor vehicle and craft insurance; (ii) any remuneration received and the amount of the remuneration paid by the insurance undertaking to banks, credit institutions and financial intermediaries (both in absolute terms and as a percentage of the total amount) for the distribution of insurance contracts linked to mortgage loans or other credit agreements.

In the US, the NAIC model law requires that when insurance intermediaries ('producers') or their affiliates receive any compensation from the customer for the placement of insurance or represents the customer with respect to that placement, the intermediary is required to actually obtain the customer's documented acknowledgment that such compensation will be received, prior to the customer's purchase of insurance. The intermediary has to disclose the amount of compensation from the insurer or other third party for that placement, and if the amount of compensation is not known at the time of disclosure, the intermediary shall disclose the specific method for calculating the compensation and, if possible, a reasonable estimate of the amount.²⁹

²⁹ These NAIC provisions have not been adopted by all US states.

Figure 4.9. Broker information requirements around representation and mandate

In percentage of total number of countries



4.2.1. Disclosure requirements and digital intermediation

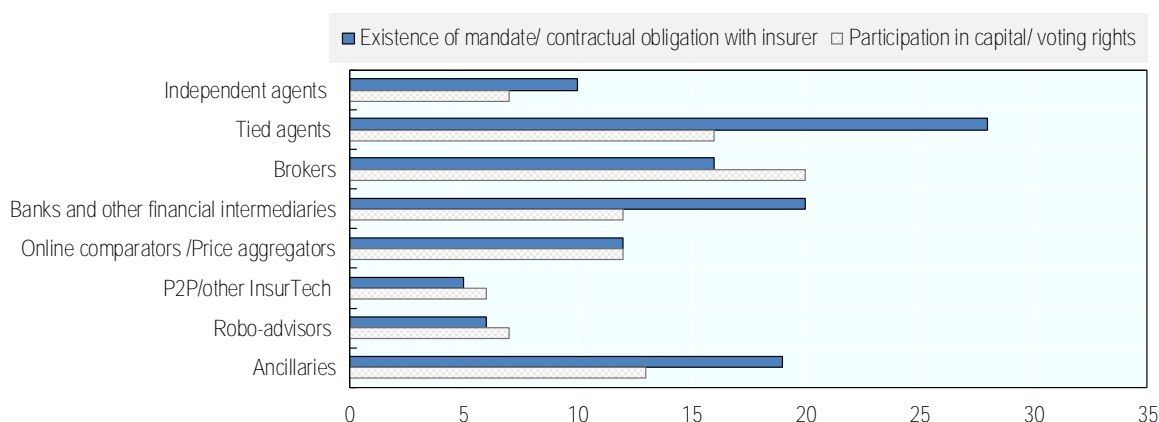
Disclosure requirements need to apply to traditional and digital channels of intermediation alike, in order to ensure the same level of policyholder protection irrespective of type of intermediation involved.

Information around ownership is particularly pertinent when it comes to digital intermediation through price aggregators. Online price comparison sites are in many cases owned or controlled by insurance undertakings and this could potentially induce biases or some impartiality in the results provided by aggregators. Clear disclosure of such interests is therefore of paramount importance in case of digital channels of intermediation. However, the OECD survey points to a small proportion of jurisdictions imposing such mandatory reporting (Figure 4.10).

Good practices around disclosure of such interests could include the reporting of names of affiliated or connected companies to the aggregator and explanation of controls in place to manage conflicts, as well as potential contractual options to other providers of insurance to audit such controls, in case of concern (Financial Conduct Authority, 2014^[32]) (FCA, 2014).

Figure 4.10. Disclosure requirements around contractual or ownership link with insurer

In absolute number of countries



With that in mind, and following a thematic review of comparison websites in the Italian insurance market, IVASS Regulation n. 40/2018 implementing Directive (EU) 2016/97 introduced specific rules for intermediaries pursuing intermediation through online comparison websites. According to such regulation, intermediaries providing information around one or more insurance contracts through their websites or through other means, are required to:

Provide data related to the comparative market share and the list of insurance undertakings with which they have signed agreements for the comparison of policies; if the service is provided through websites, this information shall be made available on the home page or on another page of the website that is directly accessible from the home page;

Guarantee that the number of undertakings advertised for comparison corresponds to that of the undertakings actually compared;

In case of non-quotation of one or more of the undertakings for which comparison is declared, an explanation must be given and the missing quotations must be provided to the consumer, also at a later stage;

Provide comparisons based not only on price but also on the policy's key features, presenting them according to a standard which facilitates comparison among the various offers;

Establish processes for the identification of the policyholder's insurance needs and quotation of the coverage so as to produce a range of products that meet the needs expressed by the policyholder;

Adopt operating methods suitable to avoid forced combinations of ancillary coverages for motor liability insurance contracts and mechanisms for the automatic attribution of non-requested coverage for which the intent to join (opt-out) has not been expressly stated;

Guarantee the transparency of the remuneration recognised by each of the undertakings to the intermediary for the comparative service, as well as the remuneration recognised by the undertakings, for each policy;

Provide fair information when disseminating advertising communications;

Guarantee the confidentiality of information, where appropriate.

4.2.2. Is mandatory disclosure sufficient on its own?

A stream of academic research argues that mandatory disclosure as a regulatory requirement fails to accomplish its objective. This can be because recipients of information do not always read the disclosed information, and even if it is read, it may not always be understood. Policyholders may get overloaded by information or they may not transform information into knowledge to act on when making a decision about a product or service. Critics of mandatory disclosure also argue that measures of mandatory disclosure may not be optimal from a cost-benefit standpoint, given the burden of reporting for intermediaries, particularly when the scope of disclosure is broader than what is thought necessary by the industry.

More importantly, the fact that intermediaries are obliged to disclose a potential conflict does not prevent them from acting upon it, and they may even be given 'moral license' to act upon it (Cain, Loewenstein and Moore, 2003^[33]). Similarly, the customer may be less careful in his decision-making because of the sentiment of false safety, thereby reducing their level of caution and self-protection (Ben-Shahar and Schneider, 2010^[34]).

Although disclosure is broadly accepted as a mitigant to risks of conflicts, transparency alone may not be sufficient to prevent adverse effects of misconduct on policyholders. Proponents of an outright ban on contingent commission arrangements argue that even if policyholders are informed and indeed understand the remuneration arrangements and that intermediaries may face a potential conflict, they cannot on their

own ‘police the quality of the advice they receive or calculate the costs of such limitations’ (Schwarcz, 2006^[22]).

Indeed, a 2014 review of retail distribution of investment products in the UK showed that information disclosure in relation to remuneration and the nature of the advice offered is not sufficient on its own, and consumers can still be confused as to the charges they are paying and the differences between independent and restricted advice. According to the same study, whilst consumers’ understanding may improve as firms’ application of the disclosure obligations improve across the board, the complexity of charging structures and the manner in which this information is communicated may increase consumer search costs and limit the effectiveness with which consumers engage with the market (Economics, 2014^[35]).

For mandatory disclosure to be effective, policyholders should be able to understand the reporting provided and act upon it. As Commissioner Hayne notes in the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry in Australia, *“By itself, simple disclosure of conflicts of interest, is insufficient as a means of managing them. The whole regime of disclosure presupposes that what is given to a consumer in writing will be read, and if read, will be understood. Often, that presupposition is wrong”* (Royal Commission into Misconduct in the Banking, 2019^[31]).

Anecdotal evidence in some jurisdictions suggests that insurance consumers often perceive the information provided as too extensive for them to be able to cope with. The risk of insurance consumers being inundated with too much information is exacerbated by the ease of sharing vast amounts of information through the use of technology. Based on findings of behavioural research, information provided in a concise, salient and user-friendly way is more likely to encourage consumers to engage with that information (CGAP, 2014^[36]). It is therefore proposed by some regulators that less information that focusses on the main points is more valuable to the customer than comprehensive, extensive information that does not attract the attention of the customer.

In order to ensure that policyholders are better able to understand and act upon the information provided through mandatory reporting by intermediaries, policymakers should consider measures such as simpler and comprehensible information provision that addresses the central problem of information disclosure and not limit their efforts to mandatory reporting.

4.2.3. Other supervisory tools to tackle potential conflict of interest

In addition to mandatory disclosure requirements, supervisors have additional tools that they use in order to prevent potential conflicts of interest by intermediaries.

Insurance intermediaries have an obligation to act in the best interests of their clients (insurance consumers) in almost all countries responding to the OECD questionnaire. This is in line with the G20/OECD High-Level Principles on Financial Consumer Protection in Principle 6: Responsible Business Conduct of Financial Services Providers and Authorised Agents. Also, in IAIS’ ICP 19: Conduct of Business, insurance products must be marketed and sold in a manner that is aligned with the interests and needs of customers. The EU Insurance Distribution Directive endorses such principle in its Article 17 - 1.³⁰

In Peru this obligation exists for brokers but not for other intermediaries (banks/other financial intermediaries and ancillary intermediaries who act similar to tied agents in Peru) as they may only work for one insurance company and not necessarily have the best insurance product for the customer. Nevertheless, Peruvian regulation establishes requirements around the provision of clear and concise information about the insurance products being offered.

³⁰ Member States shall ensure that, when carrying out insurance distribution, insurance distributors always act honestly, fairly and professionally in accordance with the best interests of their customers.

In the Czech Republic, Lithuania and Peru, for instance, intermediaries have to principle to implement measures (e.g. risk management processes) to avoid conflicts of interest, without having specific measures prescribed in the regulatory framework. Similarly, the supervisory framework of Greece and Luxembourg places emphasis on the elimination of any conflicts of interest, with disclosure seen as only one means.

Insurance regulators have broad enforcement authority over intermediaries, to prevent intermediaries from acting in a fraudulent, coercive or dishonest way. Behaviour that does not fit into the conduct of business may result in license suspension, revocation, or fine in the US.

Supervisors mitigate risks of conflicts as part of their risk-based supervisory approach. This includes offsite monitoring; on-site visits; and sampling of actual insurance consumer files to examine whether appropriate disclosures to consumers have been made.

In some countries, the requirements around prevention of conflicts are proportional to the complexity of the product, or to the competence (and prudence) expected by the intermediary. In Estonia, for example, brokers are required to establish a procedure for the management and prevention of conflicts of interest related to the remuneration of brokers, by defining legal, technical and organisational measures to identify, manage and prevent such conflicts. The size and structure of the insurance broker and the nature, scale and complexity of commercial activities is to be taken into account when designing such process.

Intermediaries active in insurance-based investment product distribution in the EU are required to have effective organisational and administrative arrangements in place with a view to detect, prevent and mitigate risks stemming from conflicts of interest. These arrangements shall be proportionate to the activities performed, the insurance products sold and the type of the distributor. Where such arrangements are not sufficient to ensure, with reasonable confidence, that the risk of damage to the interests of policyholders can be prevented, the insurance undertaking must clearly disclose to the policyholder details around the nature and source of conflicts prior to the conclusion of the insurance contract, to enable the insurance consumer to make an informed decision (EU, 2018). Some member countries, such as Italy, have chosen to apply the abovementioned stricter rules on conflicts of interest not only to insurance-based investment products, but to all insurance products.

The Italian regulation implementing Directive (EU) 2016/97 prohibits intermediaries from directly or indirectly becoming beneficiary of insurance benefits and distributor of the relevant individual or collective contract at the same time. In addition, the activity of intermediation is incompatible with the post of director/general manager/auditor/ collaborator/person responsible for key functions at a principal insurance undertaking.

In South Africa, intermediaries must disclose any direct or indirect holding of shares in the insurer's capital, or any equivalent substantial financial interest in the insurer. They must also report instances where they have received more than 30% of their total compensation from one single supplier. In Italy and other EU member states, the law implementing Directive (EU) 2016/97 requires intermediaries to disclose to the customer, in good time before the conclusion of an insurance contract, whether they have a direct or indirect holding, representing 10% or more of the voting rights/capital in a given insurance undertaking and whether an insurance undertaking or parent undertaking of a given insurance undertaking has a direct or indirect holding, representing 10% or more of the voting rights/capital in the insurance intermediary.

5. Insurance intermediation for the elderly or other vulnerable parts of the population

Insurance consumers in vulnerable situations may face potential detriment when they are less familiar with the market or a complex product. Such detriment may be driven by the fact that intermediaries' practices and policies are designed mostly for the average consumer and not necessarily adjusted to risks and competences of more vulnerable parts of the population. The reduced ability of the vulnerable to make financial decisions and poor selection of insurance products can have significant and sometimes long-term effects on the insureds.

The definition of vulnerability varies, and it depends not only on the consumer characteristics but also on the interaction between the consumer and the firm behaviour or practices (European Commission, 2011^[37]). The UK Financial Conduct Authority defines a vulnerable consumer as "someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care" (Financial Conduct Authority, 2015^[38]). These may include people with physical disability or mental health issues, the elderly, people with caring responsibilities, or those with a sudden change in circumstances (e.g. bereavement).

Vulnerability of older-aged people is associated with physical or cognitive impairment, e.g. sensory problems affecting their hearing or sight or dementia. Vulnerability in the elderly is particularly high when it comes to channels using new technologies, as older-aged people may not necessarily be comfortable with such means of intermediation. This becomes critical as more insurance intermediation activity is being shifted from traditional to digital channels. Market participants argue that the use of technology in insurance intermediation adds a potential for enhanced risk, when this is not managed appropriately, particularly when it comes to vulnerable clients.

For insurance intermediation services to be provided in a fair way, particular action may be required when services are extended to the elderly or other vulnerable parts of the population. Such action may encompass specific guidance, policies or good practices that look into the communication of insureds with providers; accessibility to products or services; or the provision of tailored services and processes that fit their particular circumstances. The results of the OECD survey indicate that only six jurisdictions have specific guidance in place for the provision of insurance intermediation to the elderly and vulnerable parts of the population (Figure 5.1).

In Japan, the Supervisory Guidelines provide for suitability and accountability rules for older-aged customers which require insurance intermediaries to have sales procedures that take account of the attribute of the elderly. According to these procedures, intermediaries shall request the attendance of family members of the insured, provide sufficient time for consideration, and confirm the will of the vulnerable by members of the staff different to the ones initially solicited. In Korea, intermediaries are obliged to call insurance customers and provide advice over the phone as a follow up on any delivery of information in

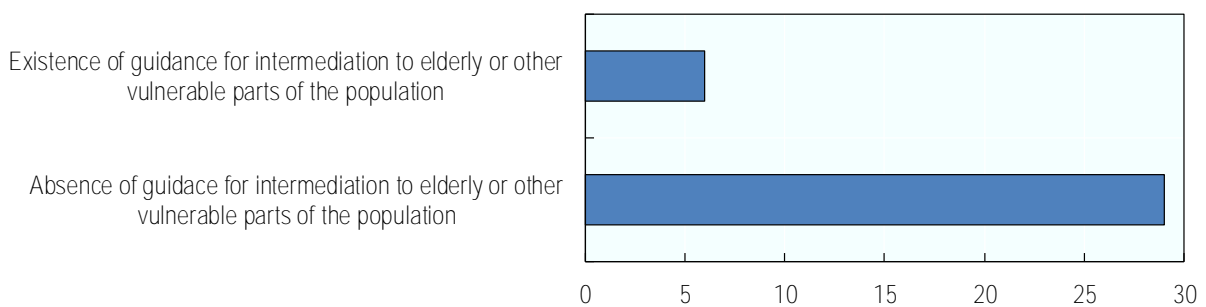
written form. In Mexico, specific treatment is required for some insurance lines (mass insurance, micro-insurance and standardised basic products).

Research by the UK FCA has shown that there are issues around the provision of fair financial services to the vulnerable at every stage of the process, from high-level policy, through system design, to product design and availability and ways that staff implement policies and distribute financial products. To that end, the FCA has issued a Practitioners' Pack to help firms better understand how to generate better outcomes for consumers in vulnerable circumstances (Financial Conduct Authority, 2015^[38]). Interestingly, safeguarding customers from fraud and financial abuse, and data protection are seen to create potential barriers to the protection of the vulnerable by the FCA (Financial Conduct Authority, 2017^[39]). As such, it is argued that judgement needs to be applied by financial services providers more than "hard and fast rules".

Additional safeguards may include the provision of cooling-off periods prior to the conclusion of a contract; alerts and warnings to prospective insurance consumers on digital channels when a complex product has been selected; or even barriers to entry with tests on knowledge and understanding of products.

Figure 5.1. Guidance for intermediation to the elderly and other vulnerable

In absolute number of countries



Other countries, such as South Africa, have general requirements around the suitability of services provided to each customer, indirectly incorporating the vulnerable within the general requirements applying to all customers. The same applies to EU countries (e.g. Italy) where contracts proposed have to be in line with the policyholder's demands and needs (see Section 5.1).

5.1. Suitability requirements

The EU Insurance Distribution Directive (EU 2016/97) requires the assessment of appropriateness and suitability of insurance products for customers, together with enhanced customer information and record keeping requirements. The statement of suitability has to present how the advice has been tailored to the preferences, objectives and other characteristics of the retail investor. Age could be a relevant criterion here as well.

In the UE, the Packaged Retail and Insurance-based Investment Products (PRIIPs) regulation (for insurance-based investment products) also focuses on the specific needs of potential consumers (EU, 2014^[40]). Even though the legislator does not name the elderly or vulnerable as a separate category of factor, insurance distributors are required to assess the individual situation of the potential consumer when disclosing information and/or providing advice. For example, the PRIIPs regulation requires intermediaries who share with potential consumers the product information document (KID), to assess the time needed for the consumer to consider the KID, taking into account *inter alia* the complexity of the product;

knowledge; and experience of the consumer.³¹ An individual assessment has to be undertaken by the intermediary, involving age as a possible relevant criterion.

In EU member countries, based on the abovementioned regulations, the product approval process of the intermediary should also specify an identified target market for each product, ensuring that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market. Insurance undertakings have to ensure that insurance products are only distributed to the identified target market.

Suitability requirements are particularly pertinent when it comes to complex insurance products (e.g. with an investment component), and to those distributed through digital channels. Complex products susceptible to market risk require a minimum level of financial knowledge, and whether consumers understand the related risks depends on their knowledge and experience with financial products. It should be noted that, according to market practitioners, the assessment of suitability through digital channels may be more cumbersome; pre-populated forms that need to be filled in electronically can be difficult to navigate for some consumers (e.g. elderly), and this is perhaps why digital and human intervention is thought to be currently the norm in the market for such assessment.

Consistent with ICP 19 (Conduct of Business), any advice provided to insurance customers should take into consideration the customer's disclosed circumstances (International Association of Insurance Supervisors, 2018^[7]). The risk that the consumer has not fully understood the product exists even when information has been properly disclosed, particularly when intermediation is performed through digital channels. Online questionnaires, filters and chatbots are designed to address such risk to some extent.

Insurance intermediaries are required to assess the customer's risk profile in two thirds of the responding jurisdictions to the OECD Questionnaire. Out of them, eight apply such requirements only to products with an investment component. In the US, the Suitability in Annuity Transactions Model Regulation (#275) serves as a basis for the regulatory framework prescribing that the sale of annuities needs to ensure that products sold to consumers are suitable for them, based on a review of their needs. Model #275 sets forth standards and procedures for recommending annuity products to consumers to ensure their insurance and financial objectives are appropriately addressed.³² In Norway, intermediaries can use the risk profile assessment from the previous insurer of the customer instead of performing the assessment anew.

In the distribution of insurance-based investment products, intermediaries in the EU should obtain the necessary information around the policyholder's knowledge and experience in relation to the specific type of investment proposed; the person's financial situation including his/her ability to bear losses; the person's investment objectives; and risk tolerance. The intermediary shall use the information to assess whether the insurance service/product envisaged is appropriate for the policyholder. Interestingly, the Italian regulation implementing Directive (EU) 2016/97 provides that the advice given when distributing insurance-based investment products shall not economically affect customers.

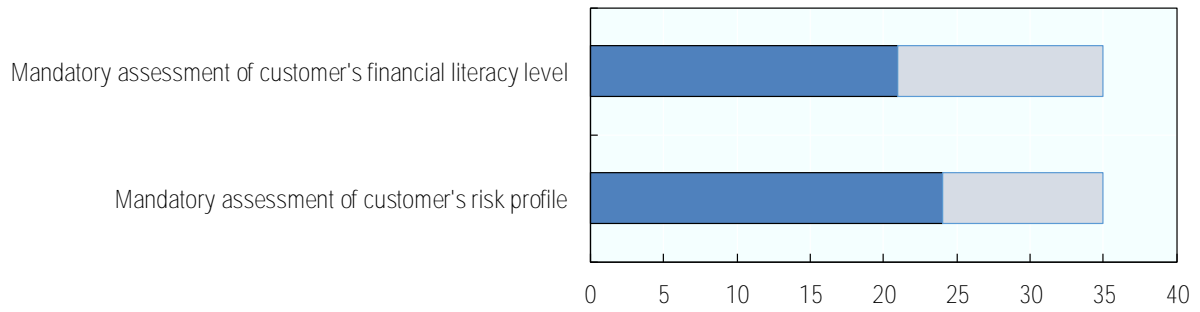
Notably, in South Africa, financial services providers are required to ensure that their intermediaries are able to assess whether it is appropriate to offer or provide an insurance consumer a particular service or product taking into account the needs, circumstances, risk tolerance and capacity of the consumer, as well as the consumer's capacity to understand the features and complexity of the service or product.

³¹ Such document needs to describe the type of consumer the product for which the product is designed, and therefore would need to specify the consumer's age to the extent relevant.

³² The Annuity Suitability (A) Working Group was appointed in 2017 to review and revise, as necessary, Model #275, to promote greater uniformity across NAIC-member jurisdictions and expects to finish the update in 2019.

Figure 5.2. Requirement to assess risk profile and financial literacy level of customers

In absolute number of countries



6. Implications for policymakers

Insurance intermediaries have a key role in the efficient functioning of insurance markets, as information asymmetries and risk of adverse selection may have negative consequences for both sides. The increase in the use of technology for the provision of intermediation through digital channels is part of the evolution of the market, with new risks emerging under a largely heterogeneous regulatory framework.

As with all principal-agent relationships, the desires and goals of intermediaries and policyholders may be different and sometimes conflicting. Remuneration agreements that involve variable compensation linked to a target, such as contingent commissions, can accentuate the risk of moral hazard and may give rise to conflicts of interest.

Transparency and mandatory disclosure is arguably the most common way to protect insureds by helping overcome information asymmetries. Mandatory reporting around the existence of remuneration agreements that intermediaries have with the insurance undertaking is not a universal requirement for all countries participating in the OECD survey. Further efforts are required to ensure that well-designed and clear disclosure requirements around compensation arrangements is assured across jurisdictions including on a mandatory basis, particularly in countries where the system is designed with intermediaries being independent.

Specific rules for digital intermediation are only imposed in less than a third of countries responding to the OECD survey. It should be noted, however, that the European Commission is due to submit to the European Parliament and to the Council a report by 23 February 2021 to assess whether the new framework (Directive (EU) 2016/97) remains appropriate with regard to the level of consumer protection, the proportionality of treatment between different insurance distributors and the administrative burden imposed on competent authorities and insurance distribution channels. Additional regulatory requirements covering the use of innovative technologies in the distribution of insurance (e.g. algorithms, data use and protection) are already being tested in a number of jurisdictions. Consumer protection safeguards may need to be considered by a wider range of countries when it comes to insurance distribution through emerging digital intermediation channels.

Increased transparency is of particular importance for online aggregators and price comparison websites, where vertical integration by insurers is not necessarily accompanied by transparency around the relationship of the platform with controlling interests. Policyholder protection may be compromised if regulation is not applied equally to online price aggregators (or other tech-enabled insurance intermediation channels) as it does to brokers, or if the interests of such platforms are not clearly stated in their websites.

The increasing use of price aggregators for the distribution of insurance may stir up competition between insurance policies based solely on price and insurers may have an incentive to “trim” their policies so as to achieve the lowest quote that will bring them on the top positions of the platform results. Clear information on the exact scope of the cover is therefore indispensable in intermediation through online platforms to ensure that consumers purchase products that meet their needs and expectations. Consumer awareness needs to also be strengthened around the nature and scope of the activity of such aggregators (e.g. market coverage, basis of comparison, exclusions, and absence of assessment of suitability of the product for each insurance consumer, for example).

For disclosure to be effective, insurance consumers should be able to understand the reporting provided and act upon it. Improved levels of financial literacy can assist insurance consumers make decisions that are in their best interest, or identifying and shielding them from potential adverse choices.

Increased attention needs to be placed on safeguarding the fair treatment of the elderly and other vulnerable parts of the population in the distribution of insurance products and services. Although suitability requirements contribute to taking greater care for the individual circumstances of those that are vulnerable, policyholders could consider endorsing specific guidance, policies or good practices that improve the accessibility to products and services; or the provision of tailored products or processes that fit the particular circumstances of the elderly and the vulnerable. This becomes critical as more intermediation activity is shifted from traditional conventional to digital channels.

Given the rise of digital channels in insurance intermediation, it is worthwhile to carefully consider whether the neutrality of regulation to technology can be maintained. All actors involved in insurance intermediation/distribution should fall under the scope of regulation and supervision, regardless of the means through which insurance distribution is performed. The way in which technology can impact and change consumer behaviour has not been adequately analysed, and should be an important consideration for policymakers going forward.

Given these developments, there is a clear need for the insurance regulators and supervisors to be aware and monitor developments in intermediation. Insurance regulators and supervisors should in particular surveillance developments related to remuneration, disclosure, as well as consider how best to protect vulnerable consumers.

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Annex A.

I. Intermediation activity by insurance line

Aside from restrictions applying to ancillary insurance, most countries responding to the OECD questionnaire allow all types of intermediaries to mediate across all lines of insurance. In some cases, specific professional competences are a prerequisite for the distribution of specific types of insurance. For example, Finland and Greece require specific tests/certificates for the licensing of insurance with investment components (see Section 4.1). In Italy, the qualifying examination for the registration as an agent or a broker is divided into three modules, depending on the activity the intermediary intends to perform (a. insurance; b. reinsurance; and c. insurance and reinsurance). As such, professional training for other categories of intermediaries and professional update for all intermediaries (including agents and brokers) must be pertinent and adequate to the activities that will be carried out and, in particular, to the contracts that will be distributed.

In a number of jurisdictions, licenses are specialised and linked to one or several types of insurance. In Luxembourg, licences can concern either life or non-life insurance products, while in Portugal and Sweden they can be linked to both at the same time.³³ In the UK, although licenses relate to specific lines of insurance, the supervisor has flexibility to apply special restrictions or limits in the authorisation provided to intermediaries, so that they can only sell some types of insurance if there is a risk of consumer detriment. In South Africa, different licensing is required for different types of products/markets, and anyone may operate in these activities, provided that they are suitably licensed and comply with the relevant requirements.

Restrictions can also apply in terms of competition between firms, and in Estonia it is possible for agents to perform intermediation in different lines of business provided that the distributed insurance contracts are not competing.

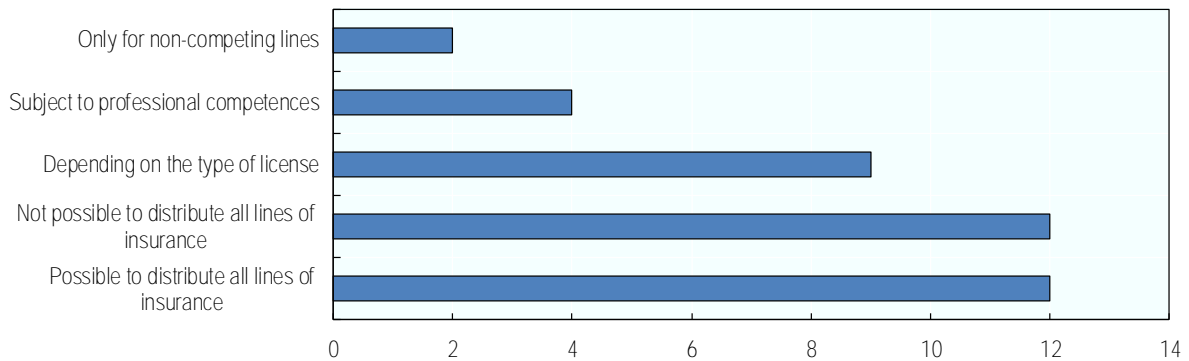
Restrictions applying to the distribution of commercial insurance by intermediaries are the most common ones, and no common underlying reason can be observed: in Brazil, tied agents cannot distribute commercial insurance, while in Chile and Slovenia the same applies to independent agents and banks, respectively. In Colombia, Latvia, Norway and Portugal, no insurance intermediary can distribute commercial insurance. In Israel, only brokers can perform such activity.

Similarly, personal insurance cannot be distributed by independent agents in Chile, independent agents or banks in Israel. In Colombia, Latvia and Portugal, none of the intermediary categories can mediate personal insurance products.

³³ In addition to standard license requirements, the Swedish FSA also requires an annual test of sufficient professional knowledge within the areas of expertise of the intermediary.

Figure A A.1. Possibility to intermediaries to provide services by line of insurance

In absolute number of countries



Note: Results not to be accounted for on aggregate level, as overlaps exist for some countries.

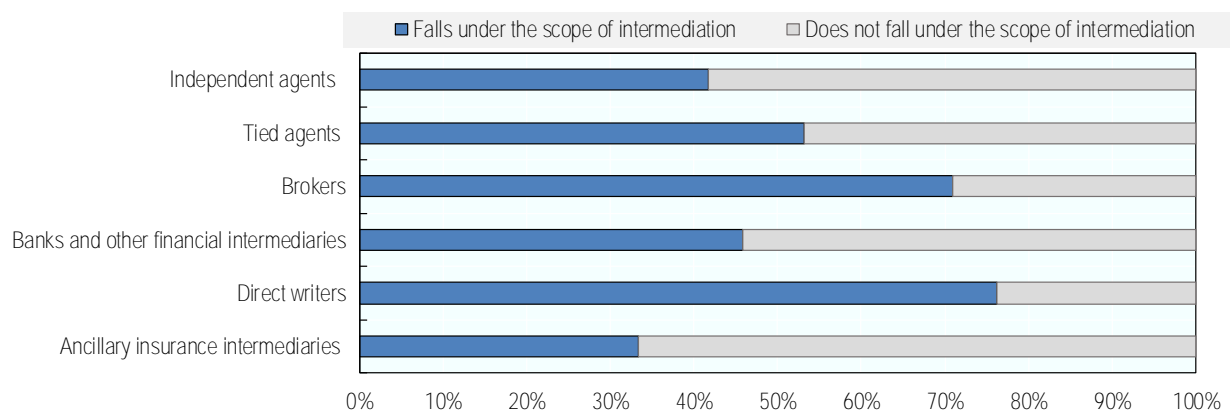
II. Authorised activities by insurance line

In addition to acting as middlemen between insureds and insurers and distribute insurance products, intermediaries provide a number of additional services to insureds and insurers, depending on the jurisdiction. These mainly consist of assisting insureds with their claims process, loss adjusting for the insurance undertaking, collection of underwriting data for insurers or actual underwriting on behalf of the insurance company.

Advisory services fall under the scope of insurance intermediation in almost all jurisdictions responding to the OECD questionnaire. The approach starts to differ when it comes to claims management (Figure A A.2) i.e. receiving, submitting or processing insureds' claims against an insurance supplier.

Figure A A.2. Claims management and insurance intermediation

In percentage of total number of countries



Agents and brokers are well-placed to provide underwriting information and services to insurers as they have a good understanding of the risk characteristics of policyholders. Indeed, the provision of such information is thought to be recognised in agents' and brokers' compensation (Cummins and Doherty, 2006^[16]). Such services are thought to benefit also policyholders by allowing for an optimal matching of

needs with coverage. Underwriting services on behalf of the insurer fall under the scope of insurance intermediation in c. half of responding countries (Figure A A.3).

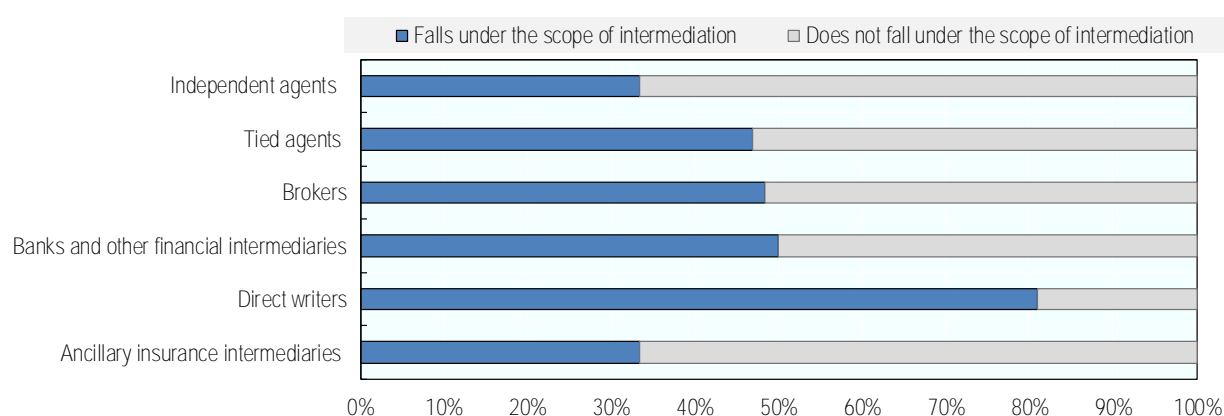
Brokers are thought to have a greater capacity to provide sophisticated services around complex insurance offerings, design specific coverage, model and price more complex types of risk, negotiate and place such coverage with insurers and provide loss control services.

Loss adjusting services meet the definition of insurance intermediation services in just over 15% of responding countries for brokers and in less than 10% of responding countries for agents.

Licensed insurance intermediaries are not necessarily automatically authorised to provide reinsurance intermediation services. Indeed, reinsurance distribution falls under the scope of brokers for half of responding countries and in less than that when it comes to agents.

Figure A A.3. Underwriting services and insurance intermediation

In percentage of total number of countries



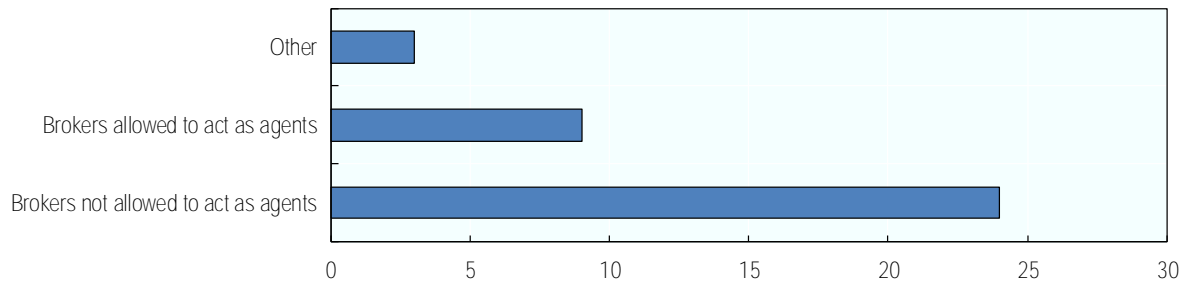
III. Can insurance brokers act as agents?

Insurance brokers cannot act as agents in the majority of jurisdictions responding to the OECD questionnaire. This is linked to and safeguarded by their registration and licensing as either an agent or a broker, as is the case in Italy, Korea, and the US, for example. In Lithuania, the regulation is clearly defining that brokers must always act in the interests of the policyholder, the insured person, the beneficiary or the injured third party. In the case of Peru, brokers cannot act as agents in order not to lose their independence, however, they can have a contractual agreement with insurers to promote and sell products different to the ones related to their activity as brokers.

Conversely, in France and Sweden agents are allowed to act as brokers. This is mainly derived by the difference in the way regulation defines the different types of intermediation activity in these jurisdictions. In Austria, while civil law differentiates between brokers and agents, trade law provides a permission to act both as a broker and as an agent. This option may be abolished in the process of transposing the EU Insurance Distribution Directive.

Figure A A.4. Are brokers allowed to act as agents?

In absolute number of countries

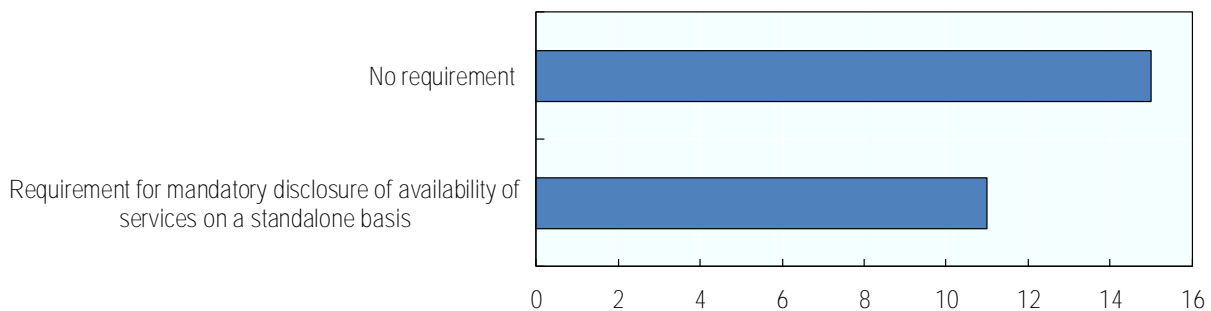


IV. Product governance requirements

Product governance and monitoring responsibilities can support intermediation activity in the best interests of the customers, by allowing intermediaries to identify the target market, ensure and monitor the suitability of the products for the target market and distribute them in accordance with customers' best interests. The European Insurance Distribution Directive instils such requirement and requires a process for the approval of each new insurance product before it is marketed or distributed to customers, and for changes in existing products (Article 25). The distribution strategy should be consistent with the identified target market and its characteristics, and reviewed regularly.

Figure A A.5. Existence of product governance and monitoring responsibilities

In absolute number of countries



Expanded oversight and governance responsibilities assigned to intermediaries through the implementation of product monitoring processes are essentially intending to prevent them from selling products that customers do not need. South Africa has in place comprehensive fitness and propriety requirements for the sale of financial products and services, imposing control and monitoring mechanisms to ensure that intermediaries assess whether it is appropriate to offer or provide an insurance consumer a particular financial service or product taking into account the needs, circumstances, risk tolerance and capacity of the insurance consumer and the consumer's capacity to understand the features and complexity of the service or product.

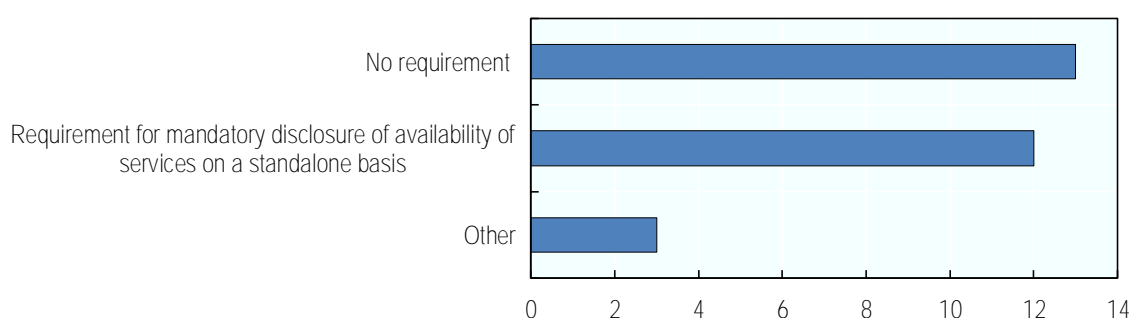
V. Requirements applying to bundled insurance offerings and add-on products/services³⁴

Insurance products are sometimes distributed in a 'bundled' form, where two products are tied-in a single packaged offering, often accompanied by a premium discount. With the exception of Brazil, Chile and Latvia, such offering is permitted in all countries responding to the OECD questionnaire. In the US, such bundling is not allowed for major products such as home and auto insurance; however, an insurance company may offer a multi-line discount for a consumer purchasing multiple products. The sale of commercial lines multi-peril policies is permitted and actually preferred to eliminate any potential coverage gaps in the US.

The challenge is such offerings is whether the intermediary has the obligation to notify the customer about the possibility to buy the different components of the offering separately and if yes, whether there is adequate information provided about each of the components of the bundle, together with the premium and other fees linked to each component. Such requirement is introduced in the EU with the Insurance Distribution Directive (Article 24), however, remains inexistent in over half of the jurisdictions participating in the OECD survey.

Figure A A.6. **Disclosure on bundled products'** availability on a standalone basis

In absolute number of countries



The same considerations apply when insurance is offered together with a non-insurance ancillary product or service as part of one packaged offering (cross-selling). Intermediaries are allowed to provide insurance services tied to other, non-insurance, products or services (e.g. home insurance and mortgages), where the components of such offer are not available to be purchased on a standalone basis, in the majority of countries responding to the OECD questionnaire. This means that intermediaries in these countries are allowed to make the offering of some products/services dependent on the entry into an insurance offering attached to the main product. The EU Insurance Distribution Directive is introducing an obligation for insurance being offered as an add-on to a non-insurance good or service: the insurance distributor must offer the customer the opportunity to buy that good or service separately.

In Estonia, whether intermediaries are allowed to implement such dependence depends on whether insurance is the main or the ancillary product. In Finland, this is not allowed in the case of consumers, but it is allowed in the case of non-consumers. In Switzerland, cross-selling practices play only a marginal role. In Peru, there is an overall ban in cross-selling and brokers are not allowed to provide insurance services tied to non-insurance products or services. In Korea, banks are prohibited from using loans as a means to

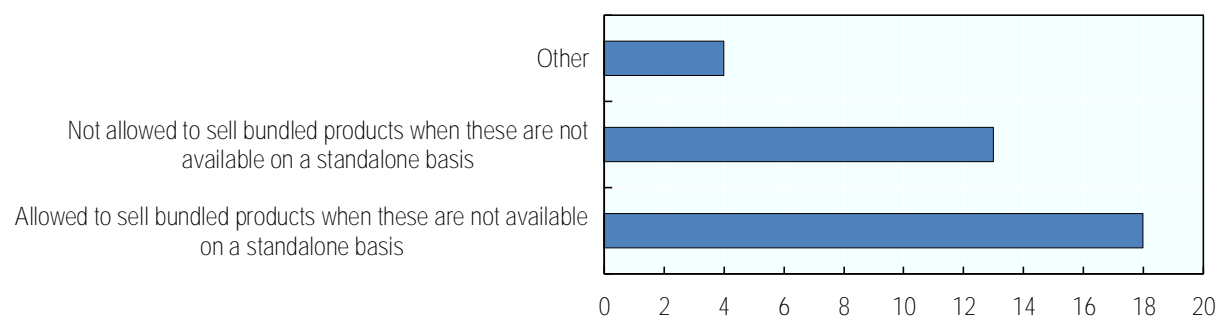
³⁴ Bundled insurance products are discussed separate to add-on insurance products offered as add-ons to non-insurance products as in the former case the interaction of the two insurance components may affect the associated risk of the insurance coverage relative to the risk when each of the components are taken separately.

sell insurance policies. In Australia, the Hayne Commission proposed a ban on unsolicited offer or sale (“hawking”) of insurance products.

In countries where cross-selling is allowed, the insurance intermediary has an obligation to inform the customer about the availability of the insurance part of the offering on a standalone basis and the relevant terms in all but four countries. Such mandatory disclosure requirement is not available in Japan, Luxembourg, Russian Federation and South Africa. In South Africa, insurance intermediaries are not allowed to sell insurance products as a compulsory part of the sale of a non-insurance product, and when an offering comprises several different components of cover these will be specified separately with the costs clearly split out.

Figure A A.7. Cross-selling of insurance products

In absolute number of countries



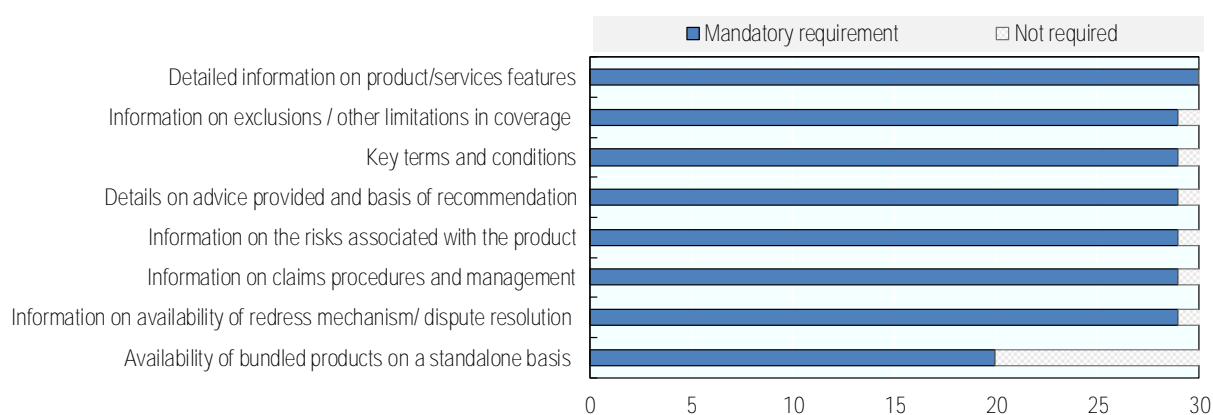
Issues around the sale of add-on products are particularly pertinent in digital distribution of insurance (e.g. travel insurance offered with air tickets). A study by the UK Financial Conduct Authority has revealed that selling a product as an add-on often leads to consumers purchasing products that were of poor value and not what they need, with add-ons being a popular characteristic of online price aggregators (Financial Conduct Authority, 2014^[32]). The FCA addressed this issue by banning opt-out mechanisms for the sale of add-on products and enhancing the information requirements attached to such offerings.

VI. Disclosure requirements on product information

Intermediaries are required to provide appropriate information about a policy, in good time and in a comprehensible form, so the customer can make an informed decision. This is in line with IAIS ICP 19 which requires insurers and intermediaries to provide timely, clear and adequate pre-contractual and contractual information to customers (IAIS, 2018). The vast majority of countries responding to the OECD questionnaire impose mandatory disclosure requirements around product information and risks across the full range of intermediaries (Figure A A.8).

Figure A A.8. Mandatory disclosure requirements around product information and risks

In absolute number of countries

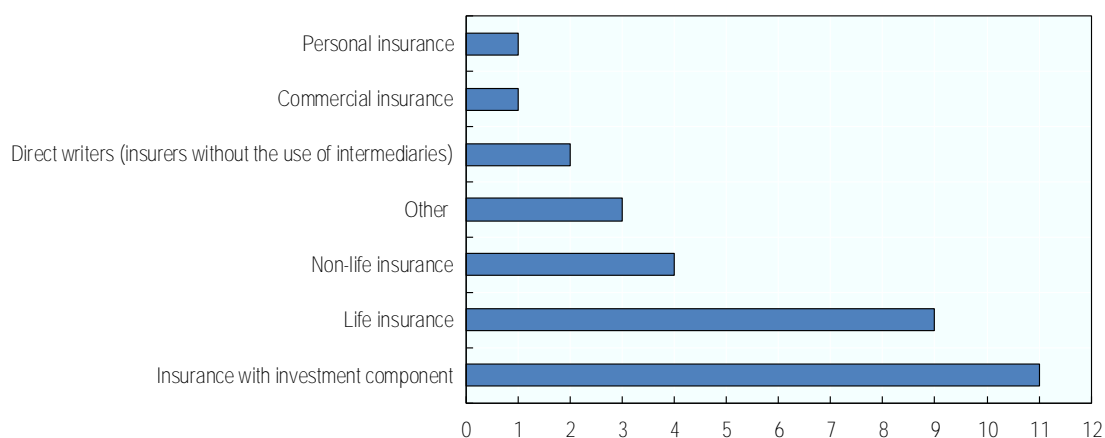


Although disclosure requirements apply to all insurance lines in 20 countries responding to the OECD survey, a third of the countries imposes reporting obligations specific to some products (Figure A A.9). Such requirements are generally stricter for asset-based products such as annuities and whole life insurance and for investment-based insurance products.

In the US, required disclosures are based upon the insurance product being sold and not the insurance intermediary license type. Required disclosures vary by type of insurance product, and are generally more robust for asset-based products such as annuities and whole life insurance.

Figure A A.9. Disclosure requirements applying to specific types of insurance

In absolute number of countries

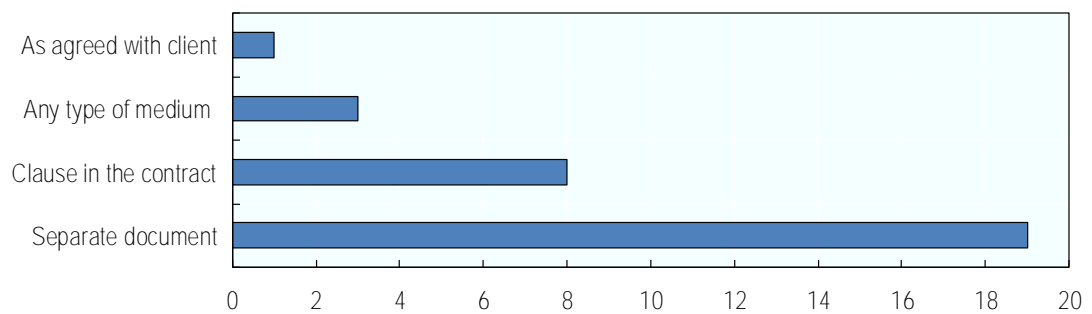


Disclosure requirements in the US are placed upon the risk-bearing entity rather than the insurance intermediary, however, the insurance intermediary may fulfil some of these disclosure requirements. For example, an insurance consumer purchasing an annuity must be provided an Annuity Buyers Guide and a consumer of life insurance must be provided a life Insurance Buyer's Guide. In addition, a policy summary must be provided, including the name and address of the insurance intermediary, the name and address of the risk-bearing entity, the annual premium, and guaranteed cash surrender values.

Disclosure requirements apply prior to contract execution in 28 jurisdictions responding to the OECD survey. Following the implementation of the EU Insurance Distribution Directive, pre-contractual disclosure for non-life insurance products must be in the form of a standardised insurance product information document (IPID) with specific content (i.e. a summary of the insurance cover, the main risks insured, the insured sum, the geographical scope, where applicable, a summary of the excluded risks). Indeed, the information is provided in a separate document in the majority of responding countries.

Figure A A.10. In what form is the information provided to policyholders

In absolute number of countries



VII. Cross-border provision of insurance intermediation

In terms of cross-border provision of insurance intermediation, the information collected is patchy. This may be due to the fact that there is a lack of data availability at the home jurisdiction of cross-border providers of insurance intermediation about this part of their activity.

The regulatory and supervisory framework of insurance intermediation on a cross-border basis and the relevant activity data is an area that may warrant some further research and analysis.

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