Insurance distribution. Recast

2012/0175(COD) - 03/11/2015 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the **supplementary report** by Werner LANGEN (EPP, DE) on the proposal for a directive of the European Parliament and of the Council on insurance mediation (recast).

The committee recommended that Parliament's position adopted at first reading following the ordinary legislative procedure should amend the Commission proposal as follows:

Scope: this Directive lays down rules concerning the taking-up and pursuit of the activities of **insurance and reinsurance distribution** in the Union. However, it is aimed at **minimum harmonisation** and should therefore not preclude Member States from maintaining or introducing more stringent provisions in order to protect customers.

This Directive should **not apply to persons practising insurance distribution as an ancillary activity** where the premium does not exceed a certain amount and the risks covered are limited

However, an insurance distributor, carrying out the distribution activity through an ancillary insurance intermediary exempted from the requirements set out in this Directive, should ensure the fulfilment of certain basic requirements, such as the communication of its identity and of the way in which a complaint can be lodged, and that the demands and needs of the customer are considered.

Registration: insurance, reinsurance, and ancillary insurance intermediaries shall be registered with a competent authority in their home Member State.

Freedom to provide services and freedom of establishment: Members introduced new measures concerning the **breach of obligations when exercising the freedom to provide services**.

Where the competent authority of the host Member State has reason to consider that an insurance, reinsurance or ancillary insurance intermediary acting within its territory under the freedom to provide services is in breach of any obligation set out in this Directive, it shall communicate those considerations to the competent authority of the home Member State. If the competent authority of a host Member State becomes aware of any breaches of obligations occurring within its territory, it should inform the competent authority of the home Member State which should then be obliged to take the appropriate measures. **The competent authority of the host Member State should be entitled to intervene** if the home Member State fails to take appropriate measures or if the measures taken are insufficient.

Moreover, this Directive shall not affect the power of the competent authority of the host Member State to take appropriate measures to prevent an insurance distributor established in another Member State from carrying out activity within its territory under the freedom to provide services or, where applicable, the freedom of establishment, where the relevant activity is entirely or principally directed towards the territory of the host Member State with the sole purpose of **avoiding the legal provisions** which would be applicable if that insurance distributor had its residence or registered office in that host Member State.

Professional and organisational requirements: home Member States shall ensure that insurance and reinsurance distributors and employees of insurance and reinsurance undertakings carrying out insurance or reinsurance distribution activities possess appropriate knowledge and ability in order to complete their tasks and perform their duties adequately.

Home Member States shall have in place and publish **mechanisms to effectively control and assess** the knowledge and competence of insurance and reinsurance intermediaries and employees of insurance and reinsurance undertakings and employees of insurance intermediaries, taking into account the nature of the products sold, the type of distributor, the role they perform, and the activity carried out within the insurance or reinsurance distributor.

Home Member States may require that the successful completion of the training and development requirements is proven by obtaining a **certificate.**

Insurance and reinsurance intermediaries shall demonstrate **compliance with the relevant professional knowledge** and competence requirements as laid down in the Annex.

Professional indemnity insurance: insurance and reinsurance intermediaries shall hold professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, for at least **EUR 1 250 000** applying to each claim and in aggregate **EUR 1 850 000** per year for all claims.

There is a requirement for insurance intermediaries to have financial capacity amounting, on a permanent basis, to 4 % of the sum of annual premiums received, subject to a minimum of **EUR 18 750**.

Out-of-court redress: Member States shall ensure that adequate and effective, impartial and independent out-of-court complaint and redress procedures for the settlement of disputes between customers and insurance distributors concerning the rights and obligations arising under this Directive are established in accordance with the relevant Union and national legislation, using existing bodies where appropriate.

Conflicts of interest and transparency: an amendment stipulated that Member States shall ensure that in good time before the conclusion of an insurance contract, an insurance undertaking communicates to its customer the **nature of the remuneration received** by its employees in relation to the insurance contract.

Where the **fee** is payable directly by the customer, the insurance intermediary shall inform the customer of the amount of the fee or, where this is not possible, of the method for calculating the fee.

Advice: prior to the conclusion of an insurance contract, the insurance distributor shall specify, on the basis of information obtained from the customer, the demands and the needs of that customer and shall **provide the customer with objective information about the insurance product in a comprehensible form** to allow that customer to make an informed decision.

Any contract proposed shall be **consistent with the customer's insurance demands and needs**.

Where **advice** is provided prior to the conclusion of any specific contract, the insurance distributor shall provide the customer with a personalised recommendation explaining why a particular product would best meet the customer's demands and needs.

In relation to the **distribution of non-life insurance products,** the information shall be provided by way of a **standardised insurance product information document** on paper or on another durable medium.

Cross-selling: when an insurance product is offered together with an ancillary product or service which is not insurance, **as part of a package or the same agreement**, the insurance distributor shall inform the customer whether it is possible to buy the different components separately and, if so, shall provide an adequate description of the different components of the agreement or package as well as separate evidence of the costs and charges of each component.

Product oversight and governance requirements: in order to ensure that insurance products meet the needs of the target market, insurance undertakings and, in the jurisdictions concerned, insurance intermediaries manufacturing insurance products for sale to customers, should maintain, operate and review a **process for the approval of each insurance product**.

Information to customers as regards the distribution of insurance-based investment products: appropriate information shall be provided in good time, prior to the conclusion of a contract, to customers or potential customers with regard to the distribution of insurance-based investment products, and to all **costs and related charges**.

The information shall be provided in a comprehensible form in such a manner that customers or potential customers are reasonably able to **understand the nature and risks** concerning the insurance-based investment product offered and, consequently, to take investment decisions on an informed basis.

Sanctions: without prejudice to the supervisory powers of competent authorities and the right of Member States to provide for and impose criminal sanctions, Member States shall ensure that their competent authorities may impose **administrative sanctions and other measures applicable to all infringements** of the national provisions transposing this Directive, and shall take all measures necessary to ensure that they are implemented.

Reporting infractions: in order to ensure that decisions on breaches by competent authorities have a **dissuasive effect** on the public at large and to inform market participants about behaviour that is considered detrimental to customers, those decisions should be **published**, provided that the time period for lodging an appeal has passed and no appeal was lodged, unless such disclosure jeopardises the stability of insurance or reinsurance markets. Where national law provides for the publication of the sanction or other measure which is subject to an appeal, such sanction or other measure, as well as the outcome of the appeal, should also be published without undue delay.

In any event, if publication of the sanction or other measure would cause **disproportionate damage** to the parties involved, the competent authority should be able to decide not to publish the sanction or other measure or to publish it anonymously.