

Insurance distribution. Recast

2012/0175(COD) - 20/01/2016 - Final act

PURPOSE: to establish new rules on insurance distribution in order to improve consumer protection.

LEGISLATIVE ACT: Directive (EU) 2016/97 of the European Parliament and of the Council on insurance distribution (recast).

CONTENT: the Directive establishes **new rules on insurance distribution, improving consumer protection for insurance products**. It seeks to:

- improve retail insurance regulation in a manner that will facilitate market integration;
- establish the conditions necessary for fair competition between distributors of insurance products;
- strengthen policyholder protection, in particular with regard to life insurance products with an investment element.

The new Directive recasts and repeals directive 2002/92/EC on insurance mediation. 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.

Scope: the Directive applies to any natural or legal person who is established in a Member State or who wishes to be established there in order to take up and pursue the distribution of insurance and reinsurance products. It shall cover **not only insurance undertakings or intermediaries, but also other market participants** who sell insurance products on an ancillary basis, such as travel agents and car rental companies, unless they meet the conditions for exemption.

Exemptions: the Directive will not apply to ancillary insurance intermediaries carrying out insurance distribution activities when, for example, the insurance is complementary to the good or service supplied by a provider, where it covers damage to, or loss of, baggage and other risks linked to travel booked with that provider, or where the amount of the premium paid for the insurance product **does not exceed EUR 600** calculated on a pro rata annual basis.

An insurance undertaking or insurance intermediary, 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: the Directive stipulates that insurance, reinsurance, and ancillary insurance intermediaries shall be **registered with a competent authority in their home Member State**. Insurance, reinsurance and ancillary insurance intermediaries should be registered provided that they meet strict professional requirements in relation to their ability, good repute, professional indemnity cover and financial capacity.

Member States shall ensure that the **registers** specify the names of the natural persons within the management of the insurance or reinsurance distributor who are responsible for the insurance or reinsurance distribution. The registers shall further indicate the Member States in which the intermediary conducts business under the rules on the freedom of establishment or on the freedom to provide services.

Member States shall establish an **online registration system**. That system shall be easily accessible and allow the registration form to be completed directly online. In the event that there is more than one register in a Member State, that Member State shall establish a **single information point** allowing quick

and easy access to information from those registers, which shall be compiled electronically and kept updated.

The European Insurance and Occupational Pensions Authority (EIOPA) shall have the right to access the data stored in the register. It shall establish, publish on its website and keep up-to-date a **single electronic register** containing records of insurance, reinsurance and ancillary insurance intermediaries which have notified their intention to carry on cross-border business.

Freedom of establishment and provision of services: where insurance, reinsurance or ancillary insurance intermediaries pursue business in different Member States under the freedom to provide services, the competent authority of the home Member State should be responsible for ensuring compliance with the obligations set out in this Directive with regard to the entire business within the internal market. 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. Such is the case, in particular, as regards breaches of the rules on good repute, professional knowledge and competence requirements or on the conduct of business. Moreover, 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.

Professional and organisational requirements: home Member States shall: (i) 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; (ii) ensure that insurance and reinsurance intermediaries and employees of insurance and reinsurance undertakings and employees of insurance and reinsurance intermediaries comply with **continuing professional training and development** requirements.

To that end, home Member States shall have in place and **publish mechanisms** to control effectively and assess the knowledge and competences.

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.

Moreover, Member States shall ensure that:

- that procedures are set up which allow customers and other interested parties, especially consumer associations, to register **complaints** about insurance and reinsurance distributors. In all cases, complainants shall receive replies;
- 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.

Information requirements and conduct of business rules: insurance distributors shall always act **honestly, fairly and professionally** in accordance with the best interests of their customers. Member States shall ensure that **insurance distributors are not remunerated** or do not remunerate or assess the performance of their employees in a way that conflicts with their duty to act in accordance with the best interests of their customers. The insurance distributor should develop, adopt and regularly review policies and procedures relating to **conflicts of interest** with the aim of avoiding any detrimental impact on the quality of the relevant service to the customer and of ensuring that the customer is adequately informed about fees, commissions or benefits.

Prior to the conclusion of a contract, including in the case of non-advised sales, the **customer should be given the relevant information** about the insurance product to allow the customer to make an informed decision. An insurance product information document should provide **standardised information** about non-life insurance products.

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.

The insurance product information document shall be drawn up by the manufacturer of the non-life insurance product. It shall be a short and stand-alone document and laid out in a way that is clear and easy to read. It shall be accurate and not misleading.

The Directive provides for the provision of **additional information to clients regarding insurance-based investment products** (means an insurance product which offers a maturity or surrender value and where that maturity or surrender value is wholly or partially exposed, directly or indirectly, to market fluctuations).

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.

Product oversight and governance requirements: insurance undertakings shall maintain, operate and review a process for the approval of each insurance product, or significant adaptations of an existing insurance product, before it is marketed or distributed to customers.

Penalties: in order to ensure compliance with the provisions of this Directive by insurance undertakings and persons who pursue insurance distribution, and to ensure that they are subject to similar treatment across the Union, Member States should be required to provide for administrative sanctions and other measures which are effective, proportionate and dissuasive.

In order to ensure that decisions on breaches by competent authorities have a dissuasive effect on the public at large, those decisions should be **published**, unless such disclosure jeopardises the stability of financial markets or an ongoing investigation.

ENTRY INTO FORCE: 22.2.2016.

TRANSPOSITION: 23.2.2018 at the latest.

DELEGATED ACTS: the Commission shall be empowered to adopt delegated acts in respect of product oversight and governance requirements for all products, and, in relation to the distribution of insurance-based investment products and the management of conflicts of interest. It shall be conferred on the Commission for an **indeterminate period** of time from 22 February 2016. The European Parliament or the Council may formulate objections with regard to the delegated act within a period of **three months** of its notification (this period may be extended by three months). If the European Parliament and the Council object, the delegated act may not enter into force.