

Directive (EU) 2016/97 of the European Parliament and of the Council of  
20 January 2016 on insurance distribution (recast) (Text with EEA relevance)

CHAPTER I

**SCOPE AND DEFINITIONS**

*Article 1*

**Scope**

- 1 This Directive lays down rules concerning the taking-up and pursuit of the activities of insurance and reinsurance distribution in the Union.
- 2 This Directive applies to any natural or legal person who is established in a Member State or who wishes to be established there in order to take up and pursue the distribution of insurance and reinsurance products.
- 3 This Directive shall not apply to ancillary insurance intermediaries carrying out insurance distribution activities where all the following conditions are met:
  - a the insurance is complementary to the good or service supplied by a provider, where such insurance covers:
    - (i) the risk of breakdown, loss of, or damage to, the good or the non-use of the service supplied by that provider; or
    - (ii) damage to, or loss of, baggage and other risks linked to travel booked with that provider;
  - b the amount of the premium paid for the insurance product does not exceed EUR 600 calculated on a *pro rata* annual basis;
  - c by way of derogation from point (b), where the insurance is complementary to a service referred to in point (a) and the duration of that service is equal to, or less than, three months, the amount of the premium paid per person does not exceed EUR 200.
- 4 Member States shall ensure that, when carrying out a distribution activity through an ancillary insurance intermediary who is exempted from the application of this Directive pursuant to paragraph 3, the insurance undertaking or insurance intermediary ensures that:
  - a information is made available to the customer, prior to the conclusion of the contract, about its identity and address and about the procedures referred to in Article 14 allowing customers and other interested parties to lodge complaints;
  - b appropriate and proportionate arrangements are in place to comply with Articles 17 and 24 and to consider the demands and needs of the customer before the proposal of the contract;
  - c the insurance product information document referred to in Article 20(5) is provided to the customer prior to the conclusion of the contract.
- 5 Member States shall ensure that competent authorities monitor the market, including the market for ancillary insurance products which are marketed, distributed or sold in, or from, their Member State. EIOPA may facilitate and coordinate such monitoring.

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6 This Directive shall not apply to insurance and reinsurance distribution activities in relation to risks and commitments located outside the Union.

This Directive shall not affect a Member State's law in respect of insurance and reinsurance distribution activities pursued by insurance and reinsurance undertakings or intermediaries established in a third country and operating on its territory under the principle of freedom to provide services, provided that equal treatment is guaranteed to all persons carrying out or authorised to carry out insurance and reinsurance distribution activities on that market.

This Directive shall not regulate insurance or reinsurance distribution activities carried out in third countries.

Member States shall inform the Commission of any general difficulties which their insurance or reinsurance distributors encounter in establishing themselves or carrying out insurance or reinsurance distribution activities in any third country.

## *Article 2*

### **Definitions**

1 For the purposes of this Directive:

- (1) 'insurance distribution' means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of insurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including 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;
- (2) 'reinsurance distribution' means the activities of advising on, proposing, or carrying out other work preparatory to the conclusion of contracts of reinsurance, of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim, including when carried out by a reinsurance undertaking without the intervention of a reinsurance intermediary;
- (3) 'insurance intermediary' means any natural or legal person, other than an insurance or reinsurance undertaking or their employees and other than an ancillary insurance intermediary, who, for remuneration, takes up or pursues the activity of insurance distribution;
- (4) 'ancillary insurance intermediary' means any natural or legal person, other than a credit institution or an investment firm as defined in points (1) and (2) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council<sup>(1)</sup>, who, for remuneration, takes up or pursues the activity of insurance distribution on an ancillary basis, provided that all the following conditions are met:
  - (a) the principal professional activity of that natural or legal person is other than insurance distribution;
  - (b) the natural or legal person only distributes certain insurance products that are complementary to a good or service;

- (c) the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the good or service which the intermediary provides as its principal professional activity;
- (5) ‘reinsurance intermediary’ means any natural or legal person, other than a reinsurance undertaking or its employees, who, for remuneration, takes up or pursues the activity of reinsurance distribution;
- (6) ‘insurance undertaking’ means an undertaking as defined in Article 13 point 1 of Directive 2009/138/EC of the European Parliament and of the Council<sup>(2)</sup>;
- (7) ‘reinsurance undertaking’ means a reinsurance undertaking as defined in Article 13 point 4 of Directive 2009/138/EC;
- (8) ‘insurance distributor’ means any insurance intermediary, ancillary insurance intermediary or insurance undertaking;
- (9) ‘remuneration’ means any commission, fee, charge or other payment, including an economic benefit of any kind or any other financial or non-financial advantage or incentive offered or given in respect of insurance distribution activities;
- (10) ‘home Member State’ means:
- (a) where the intermediary is a natural person, the Member State in which his or her residence is situated;
- (b) where the intermediary is a legal person, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;
- (11) ‘host Member State’ means the Member State in which an insurance or reinsurance intermediary has a permanent presence or establishment or provides services, and which is not its home Member State;
- (12) ‘branch’ means an agency or a branch of an intermediary which is located in the territory of a Member State other than the home Member State;
- (13) ‘close links’ means close links as defined in Article 13 point 17 of Directive 2009/138/EC;
- (14) ‘primary place of business’ means the location from where the main business is managed;
- (15) ‘advice’ means the provision of a personal recommendation to a customer, either upon their request or at the initiative of the insurance distributor, in respect of one or more insurance contracts;
- (16) ‘large risks’ means large risks as defined in Article 13 point 27 of Directive 2009/138/EC;
- (17) ‘insurance-based investment product’ 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, and does not include:
- (a) non-life insurance products as listed in Annex I to Directive 2009/138/EC (Classes of non-life insurance);

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- (b) life insurance contracts where the benefits under the contract are payable only on death or in respect of incapacity due to injury, sickness or disability;
  - (c) pension products which, under national law, are recognised as having the primary purpose of providing the investor with an income in retirement, and which entitle the investor to certain benefits;
  - (d) officially recognised occupational pension schemes falling under the scope of Directive 2003/41/EC or Directive 2009/138/EC;
  - (e) individual pension products for which a financial contribution from the employer is required by national law and where the employer or the employee has no choice as to the pension product or provider;
- (18) ‘durable medium’ means any instrument which:
- (a) enables a customer to store information addressed personally to that customer in a way accessible for future reference and for a period of time adequate for the purposes of the information; and
  - (b) allows the unchanged reproduction of the information stored.
- 2 For the purposes of points (1) and (2) of paragraph 1, the following shall not be considered to constitute insurance distribution or reinsurance distribution:
- a the provision of information on an incidental basis in the context of another professional activity where:
    - (i) the provider does not take any additional steps to assist in concluding or performing an insurance contract;
    - (ii) the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract;
  - b the management of claims of an insurance undertaking or of a reinsurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims;
  - c the mere provision of data and information on potential policyholders to insurance intermediaries, reinsurance intermediaries, insurance undertakings or reinsurance undertakings where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract;
  - d the mere provision of information about insurance or reinsurance products, an insurance intermediary, a reinsurance intermediary, an insurance undertaking or a reinsurance undertaking to potential policyholders where the provider does not take any additional steps to assist in the conclusion of an insurance or reinsurance contract.

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- (1) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).
- (2) Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).