

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 III

FREEDOM TO PROVIDE SERVICES AND FREEDOM OF ESTABLISHMENT

Article 4

Exercise of the freedom to provide services

1 Any insurance, reinsurance or ancillary insurance intermediary who intends to carry on business within the territory of another Member State for the first time, under the freedom to provide services, shall communicate the following information to the competent authority of its home Member State:

- a the name, address and, where applicable, the registration number of the intermediary;
- b the Member State or Member States in which the intermediary intends to operate;
- c the category of intermediary and, where applicable, the name of any insurance or reinsurance undertaking represented;
- d the relevant classes of insurance, if applicable.

2 The competent authority of the home Member State shall, within one month of receiving the information referred to in paragraph 1, communicate that information to the competent authority of the host Member State, which shall acknowledge its receipt without delay. The competent authority of the home Member State shall inform the insurance, reinsurance or ancillary insurance intermediary in writing that the information has been received by the competent authority of the host Member State and that the intermediary can commence its business in the host Member State. Where applicable, at the same time, the competent authority of the home Member State shall communicate to the intermediary the fact that information concerning the legal provisions referred to in Article 11(1) applicable in the host Member State is available through the means referred to in Article 11(3) and (4) and also that the intermediary must comply with those provisions in order to commence its business in the host Member State.

3 In the event of a change in any of the particulars communicated in accordance with paragraph 1, the insurance, reinsurance or ancillary insurance intermediary shall notify that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed of that change by the competent authority of the home Member State as soon as is practicable and no later than one month from the date of receipt of the information by the competent authority of the home Member State.

Article 5

Breach of obligations when exercising the freedom to provide services

1 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.

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After assessing the information received pursuant to the first subparagraph, the competent authority of the home Member State shall, where applicable, and, if so, at the earliest opportunity, take appropriate measures to remedy the situation. It shall inform the competent authority of the host Member State of any such measures taken.

Where, despite the measures taken by the home Member State or because those measures prove to be inadequate or are lacking, the insurance, reinsurance or ancillary insurance intermediary persists in acting in a manner that is clearly detrimental to the interests of host Member State consumers on a large scale, or to the orderly functioning of insurance and reinsurance markets, the competent authority of the host Member State may, after informing the competent authority of the home Member State, take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing that intermediary from continuing to carry on new business within its territory.

In addition, the competent authority of the home Member State or the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

2 Paragraph 1 shall not affect the power of the host Member State to take appropriate measures to prevent or penalise irregularities committed within its territory, in a situation where immediate action is necessary in order to protect the rights of consumers. This power shall include the possibility of preventing insurance, reinsurance and ancillary insurance intermediaries from carrying out new business within its territory.

3 Any measure adopted by the competent authorities of the host Member State under this Article shall be communicated to the insurance, reinsurance or ancillary insurance intermediary concerned in a well-reasoned document and notified to the competent authority of the home Member State, to EIOPA and to the Commission without undue delay.

Article 6

Exercise of the freedom of establishment

1 Member States shall ensure that any insurance, reinsurance or ancillary insurance intermediary that intends to exercise its freedom of establishment by establishing a branch or permanent presence within the territory of another Member State communicates that to the competent authority of its home Member State and provides that competent authority with the following information:

- a the name, address and, where applicable, the registration number of the intermediary;
- b the Member State within the territory of which the intermediary plans to establish a branch or permanent presence;
- c the category of intermediary and, if applicable, the name of any insurance or reinsurance undertaking represented;
- d the relevant classes of insurance, if applicable;
- e the address in the host Member State from which documents may be obtained;
- f the name of any person responsible for the management of the branch or permanent presence.

Any permanent presence of an intermediary in the territory of another Member State that is equivalent to a branch shall be treated in the same way as a branch, unless the intermediary lawfully sets up such permanent presence in another legal form.

2 Unless the competent authority of the home Member State has reason to doubt the adequacy of the organisational structure or the financial situation of the insurance, reinsurance or ancillary insurance intermediary, taking into account the distribution activities envisaged, it shall, within one month of receiving the information referred to in paragraph 1, communicate that information to the competent authority of the host Member State, which shall acknowledge its receipt without delay. The competent authority of the home Member State shall inform the insurance, reinsurance or ancillary insurance intermediary in writing that the information has been received by the competent authority of the host Member State.

Within one month of receipt of the information referred to in the first subparagraph of this paragraph, the competent authority of the host Member State shall communicate the legal provisions referred to in Article 11(1) through the means referred to in Article 11(3) and (4) which are applicable in its territory to the competent authority of the home Member State. The competent authority of the home Member State shall communicate that information to the intermediary and inform the intermediary that it may commence its business in the host Member State provided that it complies with those legal provisions.

Where no communication is received within the period provided for in the second subparagraph, the insurance, reinsurance or ancillary insurance intermediary may establish the branch and commence its business.

3 Where the competent authority of the home Member State refuses to communicate the information referred to in paragraph 1 to the competent authority of the host Member State, it shall give reasons for its refusal to the insurance, reinsurance or ancillary insurance intermediary within one month of receiving all the information referred to in paragraph 1.

A refusal as referred to in the first subparagraph or any failure by the competent authority of the home Member State to communicate the information referred to in paragraph 1 shall be subject to a right of appeal to the courts of the home Member State.

4 In the event of a change in any of the particulars communicated in accordance with paragraph 1, an insurance, reinsurance or ancillary insurance intermediary shall notify that change to the competent authority of the home Member State at least one month before implementing the change. The competent authority of the host Member State shall also be informed of that change by the competent authority of the home Member State as soon as is practicable and no later than one month from the date of receipt of the information by the competent authority of the home Member State.

Article 7

Division of competence between home and host Member States

1 If an insurance, reinsurance or ancillary insurance intermediary's primary place of business is located in a Member State other than the home Member State, the competent authority of that other Member State may agree with the home Member State competent authority to act as if it were the home Member State competent authority with regard to the provisions of Chapters IV, V, VI and VII. In the event of such an agreement, the home Member State competent authority shall notify the insurance, reinsurance or ancillary insurance intermediary and EIOPA without delay.

2 The competent authority of the host Member State shall have responsibility for ensuring that the services provided by the establishment within its territory comply with the obligations laid down in Chapters V and VI and with measures adopted pursuant thereto.

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The competent authority of the host Member State shall have the right to examine establishment arrangements and to request such changes as are needed to enable the competent authority to enforce the obligations under Chapters V and VI and measures adopted pursuant thereto with respect to the services or activities provided by the establishment within its territory.

Article 8

Breach of obligations when exercising the freedom of establishment

1 Where the competent authority of a host Member State ascertains that an insurance, reinsurance or ancillary insurance intermediary is in breach of the legal or regulatory provisions adopted in that Member State pursuant to the provisions of Chapters V and VI, that authority may take appropriate measures.

2 Where the competent authority of a host Member State has reason to consider that an insurance, reinsurance or ancillary insurance intermediary acting within its territory through an establishment is in breach of any obligation set out in this Directive, and where that competent authority does not have responsibility in accordance with Article 7(2), it shall refer those findings to the competent authority of the home Member State. After assessing the information received, the competent authority of the home Member State shall, where applicable and, if so, at the earliest opportunity take appropriate measures to remedy the situation. It shall inform the competent authority of the host Member State of any such measures taken.

3 Where, despite the measures taken by the home Member State or because those measures prove to be inadequate or are lacking, the insurance, reinsurance or ancillary insurance intermediary persists in acting in a manner that is clearly detrimental to the interests of host Member State consumers on a large scale, or to the orderly functioning of insurance and reinsurance markets, the competent authority of the host Member State may, after informing the competent authority of the home Member State, take appropriate measures to prevent further irregularities, including, in so far as is strictly necessary, preventing that intermediary from continuing to carry on new business within its territory.

In addition, the competent authority of the home Member State or of the host Member State may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010. In that case, EIOPA may act in accordance with the powers conferred on it by that Article.

4 Paragraphs 2 and 3 shall not affect the power of the host Member State to take appropriate and non-discriminatory measures to prevent or penalise irregularities committed within its territory, in situations where immediate action is strictly necessary, in order to protect the rights of consumers of the host Member State, and where equivalent measures of the home Member State are inadequate or lacking. In such situations, the host Member State shall have the possibility of preventing the insurance, reinsurance or ancillary insurance intermediary concerned from carrying out new business within its territory.

5 Any measure adopted by the competent authorities of the host Member State under this Article shall be communicated to the insurance, reinsurance or ancillary insurance intermediary concerned in a well-reasoned document and notified to the competent authority of the home Member State, to EIOPA and to the Commission without undue delay.

Article 9

Powers in relation to national provisions adopted in the interest of the general good

1 This Directive shall not affect the power of the host Member States to take appropriate and non-discriminatory measures to penalise irregularities committed within their territories which are contrary to their legal provisions referred to in Article 11(1), in so far as is strictly necessary. In such situations, host Member States shall have the possibility of preventing the insurance, reinsurance or ancillary insurance intermediary concerned from carrying out new business within its territory.

2 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 and, in addition, where its activity seriously endangers the proper functioning of insurance and reinsurance markets in the host Member State with respect to the protection of consumers. In such a case the competent authority of the host Member State, after informing the competent authority of the home Member State, may take, in respect of that insurance distributor, all the appropriate measures needed in order to protect the rights of consumers in the host Member State. The competent authorities involved may refer the matter to EIOPA and request its assistance in accordance with Article 19 of Regulation (EU) No 1094/2010, and in such a case, EIOPA may act in accordance with the powers conferred on it by that Article in the event of a disagreement between the competent authorities of the host and home Member States.