

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 IV

ORGANISATIONAL REQUIREMENTS

Article 10

Professional and organisational requirements

1 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.

2 Home Member States shall 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 in order to maintain an adequate level of performance corresponding to the role they perform and the relevant market.

To that end, home Member States shall have in place and publish mechanisms to control effectively and assess the knowledge and competence of insurance and reinsurance intermediaries and employees of insurance and reinsurance undertakings and employees of insurance and reinsurance intermediaries, based on at least 15 hours of professional training or development per year, 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.

Member States shall adjust the required conditions with regard to knowledge and ability in line with the particular activity of insurance or reinsurance distributors and the products distributed, particularly in the case of ancillary insurance intermediaries. Member States may require that in the cases referred to in the third subparagraph of Article 3(1), and with regard to the employees of insurance or reinsurance undertakings who are engaged in insurance or reinsurance distribution, the insurance or reinsurance undertaking or intermediary is to verify that the knowledge and ability of the intermediaries are in conformity with the obligations set out in paragraph 1 and, if need be, is to provide such intermediaries with training or professional development means which correspond to the requirements concerning the products sold by the intermediaries.

Member States need not apply the requirements referred to in paragraph 1 and in the first subparagraph of this paragraph to all the natural persons working in an insurance or reinsurance undertaking, or insurance or reinsurance intermediary, who pursue the activity of insurance or reinsurance distribution, but Member States shall ensure that the relevant persons within the management structure of such undertakings who are responsible for distribution in respect of insurance and reinsurance products and all

other persons directly involved in insurance or reinsurance distribution demonstrate the knowledge and ability necessary for the performance of their duties.

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

3 Natural persons working in an insurance or reinsurance undertaking, or insurance or reinsurance intermediary, who pursue insurance or reinsurance distribution shall be of good repute. As a minimum, they shall have a clean criminal record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities and they shall not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.

Member States may, in accordance with the third subparagraph of Article 3(1), allow the insurance or reinsurance distributor to check the good repute of its employees and, where appropriate, of its insurance or reinsurance intermediaries.

Member States need not apply the requirement referred to in the first subparagraph of this paragraph to all the natural persons who work in an insurance or reinsurance undertaking, or insurance or reinsurance intermediary provided that those natural persons are not directly involved in insurance or reinsurance distribution. Member States shall ensure that the persons within the management structure responsible for, and any staff directly involved in, insurance or reinsurance distribution fulfil that requirement.

As regards ancillary insurance intermediaries, Member States shall ensure that the persons responsible for ancillary insurance distribution fulfil the requirement referred to in the first subparagraph.

4 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, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.

5 Member States shall require that ancillary insurance intermediaries hold professional indemnity insurance or comparable guarantees at a level established by Member States taking into account the nature of the products sold and the activity carried out.

6 Member States shall take all necessary measures to protect customers against the inability of the insurance, reinsurance or ancillary insurance intermediary to transfer the premium to the insurance undertaking or to transfer the amount of claim or return premium to the insured.

Such measures shall take any one or more of the following forms:

- a provisions laid down by law or contract whereby monies paid by the customer to the intermediary are treated as having been paid to the undertaking, whereas monies paid by the undertaking to the intermediary are not treated as having been paid to the customer until the customer actually receives them;
- b a requirement for the intermediary 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;

- c a requirement that customers' monies be transferred via strictly segregated customer accounts and that those accounts not be used to reimburse other creditors in the event of bankruptcy;
- d a requirement that a guarantee fund be set up.

7 EIOPA shall regularly review the amounts referred to in paragraphs 4 and 6 in order to take account of changes in the European index of consumer prices as published by Eurostat. The first review shall take place by 31 December 2017 and successive reviews shall take place every five years thereafter.

EIOPA shall develop draft regulatory technical standards which adapt the base amount in euro referred to in paragraphs 4 and 6 by the percentage change in the index referred to in the first subparagraph of this paragraph over the period between 1 January 2013 and 31 December 2017 or between the last review date and the new review date and rounded up to the nearest multiple of EUR 10.

EIOPA shall submit those draft regulatory technical standards to the Commission by 30 June 2018 and the successive draft regulatory technical standards every five years thereafter.

Power is conferred on the Commission to adopt the regulatory technical standards referred to in the second and third subparagraphs of this paragraph in accordance with Articles 10 to 14 of Regulation (EU) No 1094/2010.

8 To ensure compliance with the requirements in paragraphs 1, 2 and 3, insurance and reinsurance undertakings shall approve, implement and regularly review their internal policies and appropriate internal procedures.

Insurance and reinsurance undertakings shall identify a function to ensure the proper implementation of the endorsed policies and procedures.

Insurance and reinsurance undertakings shall establish, maintain and keep up-to-date records of all the relevant documentation regarding the application of paragraphs 1, 2 and 3. Insurance and reinsurance undertakings shall, upon request, make available the name of the person responsible for that function to the home Member State competent authority.

Article 11

Publication of 'general good' rules

1 Member States shall ensure appropriate publication by their competent authorities of the relevant national legal provisions protecting the general good, including information about whether and how the Member State has chosen to apply the stricter provisions provided for in Article 29(3), which are applicable to the carrying on of insurance and reinsurance distribution in their territories.

2 A Member State which proposes to apply and applies provisions regulating insurance distribution in addition to those set out in this Directive shall ensure that the administrative burden stemming from those provisions is proportionate with regard to consumer protection. The Member State shall continue to monitor those provisions to ensure they remain in conformity with this paragraph.

3 EIOPA shall include on its website the hyperlinks to the websites of competent authorities where information on 'general good' rules is published. Such information shall be

updated by the national competent authorities on a regular basis and EIOPA shall make the information available on its website, with all national ‘general good’ rules categorised into different relevant areas of law.

4 Member States shall establish a single point of contact responsible for providing information on ‘general good’ rules in their respective Member State. Such a point of contact should be an appropriate competent authority.

5 EIOPA shall examine in a report, and inform the Commission about, the ‘general good’ rules published by Member States as referred to in this Article in the context of the proper functioning of this Directive and of the internal market before 23 February 2019.

Article 12

Competent authorities

1 Member States shall designate the competent authorities empowered to ensure implementation of this Directive. They shall inform the Commission thereof, indicating any division of those duties.

2 The authorities referred to in paragraph 1 of this Article shall be either public authorities or bodies recognised by national law or by public authorities expressly empowered for that purpose by national law. They shall not be insurance or reinsurance undertakings or associations whose members directly or indirectly include insurance or reinsurance undertakings, or insurance or reinsurance intermediaries, without prejudice to the possibility of cooperation between competent authorities and other bodies where that is expressly provided for in Article 3(1).

3 The competent authorities shall possess all the powers necessary for the performance of their duties under this Directive. Where there is more than one competent authority on its territory, a Member State shall ensure that those authorities collaborate closely so that they can discharge their respective duties effectively.

Article 13

Cooperation and exchange of information between the competent authorities of Member States

1 The competent authorities of different Member States shall cooperate among themselves and exchange any relevant information on insurance and reinsurance distributors in order to ensure the proper application of this Directive.

2 In particular, in the process of registration and on an ongoing basis, the competent authorities shall share relevant information concerning the good repute, the professional knowledge and the competence of insurance and reinsurance distributors.

3 The competent authorities shall also exchange information on insurance and reinsurance distributors who have been subject to a sanction or other measure referred to in Chapter VII and such information is likely to lead to removal from the register of any such distributors.

4 All persons required to receive or divulge information in connection with this Directive shall be bound by professional secrecy, in the same manner as is laid down in Article 64 of Directive 2009/138/EC.

Article 14

Complaints

Member States shall ensure 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.

Article 15

Out-of-court redress

1 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 legislative acts and national law, using existing bodies where appropriate. Member States shall ensure that such procedures are applicable, and the relevant body's competence effectively extends, to insurance distributors against whom the procedures are initiated.

2 Member States shall ensure that the bodies referred to in paragraph 1 cooperate in the resolution of cross-border disputes concerning rights and obligations arising under this Directive.

Article 16

Restriction on use of intermediaries

Member States shall ensure that, when using the services of the insurance, reinsurance or ancillary insurance intermediaries, insurance and reinsurance undertakings and intermediaries use the insurance and reinsurance distribution services only of registered insurance and reinsurance intermediaries or ancillary insurance intermediaries including those referred to in Article 1(3).