

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 V

INFORMATION REQUIREMENTS AND CONDUCT OF BUSINESS RULES

Article 17

General principle

1 Member States shall ensure that, when carrying out insurance distribution, insurance distributors always act honestly, fairly and professionally in accordance with the best interests of their customers.

2 Without prejudice to Directive 2005/29/EC of the European Parliament and of the Council⁽¹⁾, Member States shall ensure that all information related to the subject of this Directive, including marketing communications, addressed by the insurance distributor to customers or potential customers shall be fair, clear and not misleading. Marketing communications shall always be clearly identifiable as such.

3 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. In particular, an insurance distributor shall not make any arrangement by way of remuneration, sales targets or otherwise that could provide an incentive to itself or its employees to recommend a particular insurance product to a customer when the insurance distributor could offer a different insurance product which would better meet the customer's needs.

Article 18

General information provided by the insurance intermediary or insurance undertaking

Member States shall ensure that:

- (a) in good time before the conclusion of an insurance contract, an insurance intermediary makes the following disclosures to customers:
 - (i) its identity and address and that it is an insurance intermediary;
 - (ii) whether it provides advice about the insurance products sold;
 - (iii) the procedures referred to in Article 14 enabling customers and other interested parties to register complaints about insurance intermediaries and about the out-of-court complaint and redress procedures referred to in Article 15;
 - (iv) the register in which it has been included and the means for verifying that it has been registered; and
 - (v) whether the intermediary is representing the customer or is acting for and on behalf of the insurance undertaking;

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- (b) in good time before the conclusion of an insurance contract, an insurance undertaking makes the following disclosures to customers:
- (i) its identity and address and that it is an insurance undertaking;
 - (ii) whether it provides advice about the insurance products sold;
 - (iii) the procedures referred to in Article 14 enabling customers and other interested parties to register complaints about insurance undertakings and about the out-of-court complaint and redress procedures referred to in Article 15.

Article 19

Conflicts of interest and transparency

1 Member States shall ensure that in good time before the conclusion of an insurance contract, an insurance intermediary provides the customer with at least the following information:

- a whether it has a holding, direct or indirect, representing 10 % or more of the voting rights or of the capital in a given insurance undertaking;
- b whether a given insurance undertaking or parent undertaking of a given insurance undertaking has a holding, direct or indirect, representing 10 % or more of the voting rights or of the capital in the insurance intermediary;
- c in relation to the contracts proposed or advised upon, whether:
 - (i) it gives advice on the basis of a fair and personal analysis;
 - (ii) it is under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings, in which case it is to provide the names of those insurance undertakings; or
 - (iii) it is not under a contractual obligation to conduct insurance distribution business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair and personal analysis, in which case it is to provide the names of the insurance undertakings with which it may and does conduct business;
- d the nature of the remuneration received in relation to the insurance contract;
- e whether in relation to the insurance contract, it works:
 - (i) on the basis of a fee, that is the remuneration paid directly by the customer;
 - (ii) on the basis of a commission of any kind, that is the remuneration included in the insurance premium;
 - (iii) on the basis of any other type of remuneration, including an economic benefit of any kind offered or given in connection with the insurance contract; or
 - (iv) on the basis of a combination of any type of remuneration set out at points (i), (ii) and (iii).

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

3 If any payments, other than the ongoing premiums and scheduled payments, are made by the customer under the insurance contract after its conclusion, the insurance intermediary shall also make the disclosures in accordance with this Article for each such payment.

4 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.

5 If any payments, other than the ongoing premiums and scheduled payments, are made by the customer under the insurance contract after its conclusion, the insurance undertaking shall also make the disclosures in accordance with this Article for each such payment.

Article 20

Advice, and standards for sales where no advice is given

1 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.

2 The details referred to in paragraph 1 shall be modulated according to the complexity of the insurance product being proposed and the type of customer.

3 Where an insurance intermediary informs the customer that it gives its advice on the basis of a fair and personal analysis, it shall give that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market to enable it to make a personal recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

4 Without prejudice to Articles 183 and 184 of Directive 2009/138/EC, prior to the conclusion of a contract, whether or not advice is given and irrespective of whether the insurance product is part of a package pursuant to Article 24 of this Directive, the insurance distributor shall provide the customer with the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision, while taking into account the complexity of the insurance product and the type of customer.

5 In relation to the distribution of non-life insurance products as listed in Annex I to Directive 2009/138/EC, the information referred to in paragraph 4 of this Article shall be provided by way of a standardised insurance product information document on paper or on another durable medium.

6 The insurance product information document referred to in paragraph 5 shall be drawn up by the manufacturer of the non-life insurance product.

7 The insurance product information document shall:

- a be a short and stand-alone document;

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- b be presented and laid out in a way that is clear and easy to read, using characters of a readable size;
- c be no less comprehensible in the event that, having been originally produced in colour, it is printed or photocopied in black and white;
- d be written in the official languages, or in one of the official languages, used in the part of the Member State where the insurance product is offered or, if agreed by the consumer and the distributor, in another language;
- e be accurate and not misleading;
- f contain the title ‘insurance product information document’ at the top of the first page;
- g include a statement that complete pre-contractual and contractual information on the product is provided in other documents.

Member States may stipulate that the insurance product information document is to be provided together with information required pursuant to other relevant Union legislative acts or national law on the condition that all the requirements set out in the first subparagraph are met.

- 8 The insurance product information document shall contain the following information:
- a information about the type of insurance;
 - b a summary of the insurance cover, including the main risks insured, the insured sum and, where applicable, the geographical scope and a summary of the excluded risks;
 - c the means of payment of premiums and the duration of payments;
 - d main exclusions where claims cannot be made;
 - e obligations at the start of the contract;
 - f obligations during the term of the contract;
 - g obligations in the event that a claim is made;
 - h the term of the contract including the start and end dates of the contract;
 - i the means of terminating the contract.

9 EIOPA, after consulting national authorities and after consumer testing, shall develop draft implementing technical standards regarding a standardised presentation format of the insurance product information document specifying the details of the presentation of the information referred to in paragraph 8.

EIOPA shall submit those draft implementing technical standards to the Commission by 23 February 2017.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph of this paragraph in accordance with Article 15 of Regulation (EU) No 1094/2010.

Article 21

Information provided by ancillary insurance intermediaries

Member States shall ensure that ancillary insurance intermediaries comply with points (i), (iii) and (iv) of Article 18(a) and point (d) of Article 19(1).

Article 22

Information exemptions and flexibility clause

1 The information referred to in Articles 18, 19 and 20 need not be provided when the insurance distributor carries out distribution activities in relation to the insurance of large risks.

Member States may provide that the information referred to in Articles 29 and 30 of this Directive need not be provided to a professional client as defined in point (10) of Article 4(1) of Directive 2014/65/EU.

2 Member States may maintain or adopt stricter provisions regarding the information requirements referred to in this Chapter provided that such provisions comply with Union law. Member States shall communicate to EIOPA and the Commission such national provisions.

Member States shall also take the necessary steps to ensure appropriate publication by their competent authorities of the information about whether and how the Member State has chosen to apply stricter provisions under this paragraph.

In particular, Member States may make the provision of advice referred to in the third subparagraph of Article 20(1) mandatory for the sales of any insurance product, or for certain types of insurance products. In such a case, such stricter national provisions shall be complied with by insurance distributors, including those operating under the freedom to provide services or the freedom of establishment, when concluding insurance contracts with customers having their habitual residence or establishment in that Member State.

3 Member States may limit or prohibit the acceptance or receipt of fees, commissions or other monetary or non-monetary benefits paid or provided to insurance distributors by any third party, or a person acting on behalf of a third party, in relation to the distribution of insurance products.

4 In order to establish a high level of transparency by all appropriate means, EIOPA shall ensure that the information it receives relating to national provisions is also communicated to customers, and to insurance and reinsurance distributors.

5 Member States shall ensure that where the insurance distributor is responsible for the provision of mandatory occupational pension arrangements and an employee becomes a member of such an arrangement without having taken an individual decision to join it, the information referred to in this Chapter shall be provided to the employee promptly after their enrolment in the arrangement concerned.

Article 23

Information conditions

1 All information to be provided in accordance with Articles 18, 19, 20 and 29 shall be communicated to the customer:

- a on paper;
- b in a clear and accurate manner, comprehensible to the customer;
- c in an official language of the Member State in which the risk is situated or of the Member State of the commitment or in any other language agreed upon by the parties; and

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d free of charge.

2 By way of derogation from point (a) of paragraph 1 of this Article, the information referred to in Articles 18, 19, 20 and 29 may be provided to the customer on one of the following media:

- a a durable medium other than paper, where the conditions laid down in paragraph 4 of this Article are met; or
- b a website where the conditions laid down in paragraph 5 of this Article are met.

3 However, where the information referred to in Articles 18, 19, 20 and 29 is provided using a durable medium other than paper or by means of a website, a paper copy shall be provided to the customer upon request and free of charge.

4 The information referred to in Articles 18, 19, 20 and 29 may be provided using a durable medium other than paper if the following conditions are met:

- a the use of the durable medium is appropriate in the context of the business conducted between the insurance distributor and the customer; and
- b the customer has been given the choice between information on paper and on a durable medium, and has chosen the latter medium.

5 The information referred to in Articles 18, 19, 20 and 29 may be provided by means of a website if it is addressed personally to the customer or if the following conditions are met:

- a the provision of that information by means of a website is appropriate in the context of the business conducted between the insurance distributor and the customer;
- b the customer has consented to the provision of that information by means of a website;
- c the customer has been notified electronically of the address of the website, and the place on the website where that information can be accessed;
- d it is ensured that that information remains accessible on the website for such period of time as the customer may reasonably need to consult it.

6 For the purposes of paragraphs 4 and 5, the provision of information using a durable medium other than paper or by means of a website shall be regarded as appropriate in the context of the business conducted between the insurance distributor and the customer if there is evidence that the customer has regular access to the internet. The provision by the customer of an e-mail address for the purposes of that business shall be regarded as such evidence.

7 In the case of telephone selling, the information given to the customer by the insurance distributor prior to the conclusion of the contract, including the insurance product information document, shall be provided in accordance with Union rules applicable to the distance marketing of consumer financial services. Moreover, even if the customer has chosen to obtain prior information on a durable medium other than paper in accordance with paragraph 4, information shall be provided by the insurance distributor to the customer in accordance with paragraph 1 or paragraph 2 immediately after the conclusion of the insurance contract.

Article 24

Cross-selling

1 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.

2 In the circumstances referred to in paragraph 1, and where the risk or the insurance coverage resulting from such an agreement or package offered to a customer is different from that associated with the components taken separately, the insurance distributor shall provide an adequate description of the different components of the agreement or package and the way in which their interaction modifies the risk or the insurance coverage.

3 Where an insurance product is ancillary to a good or a service which is not insurance, as part of a package or the same agreement, the insurance distributor shall offer the customer the possibility of buying the good or service separately. This paragraph shall not apply where an insurance product is ancillary to an investment service or activity as defined in point 2 of Article 4(1) of Directive 2014/65/EU, a credit agreement as defined in point 3 of Article 4 of Directive 2014/17/EU of the European Parliament and of the Council⁽²⁾, or a payment account as defined in point 3 of Article 2 of Directive 2014/92/EU of the European Parliament and of the Council⁽³⁾.

4 EIOPA may develop guidelines for the assessment and the supervision of cross-selling practices indicating situations in which cross-selling practices are not compliant with the obligations laid down in Article 17.

5 This Article shall not prevent the distribution of insurance products which provide coverage for various types of risks (multi-risk insurance policies).

6 In the cases referred to in paragraphs 1 and 3, Member States shall ensure that an insurance distributor specifies the demands and needs of the customer in relation to the insurance products that form part of the overall package or the same agreement.

7 Member States may maintain or adopt additional stricter measures or intervene on a case-by-case basis to prohibit the sale of insurance together with an ancillary service or product which is not insurance, as part of a package or the same agreement, when they can demonstrate that such practices are detrimental to consumers.

Article 25

Product oversight and governance requirements

1 Insurance undertakings, as well as intermediaries which manufacture any insurance product for sale to customers, 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.

The product approval process shall be proportionate and appropriate to the nature of the insurance product.

The product approval process shall specify an identified target market for each product, ensure that all relevant risks to such identified target market are assessed and that the intended distribution strategy is consistent with the identified target market, and take reasonable steps to ensure that the insurance product is distributed to the identified target market.

The insurance undertaking shall understand and regularly review the insurance products it offers or markets, taking into account any event that could materially affect the potential risk to the identified target market, to assess at least whether the product remains consistent with the needs of the identified target market and whether the intended distribution strategy remains appropriate.

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Insurance undertakings, as well as intermediaries which manufacture insurance products, shall make available to distributors all appropriate information on the insurance product and the product approval process, including the identified target market of the insurance product.

Where an insurance distributor advises on, or proposes, insurance products which it does not manufacture, it shall have in place adequate arrangements to obtain the information referred to in the fifth subparagraph and to understand the characteristics and identified target market of each insurance product.

2 The Commission shall be empowered to adopt delegated acts in accordance with Article 38 to further specify the principles set out in this Article, taking into account in a proportionate way the activities performed, the nature of the insurance products sold and the nature of the distributor.

3 The policies, processes and arrangements referred to in this Article shall be without prejudice to all other requirements under this Directive including those relating to disclosure, suitability or appropriateness, identification and management of conflicts of interest, and inducements.

4 This Article shall not apply to insurance products which consist of the insurance of large risks.

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- (1) Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') ([OJ L 149, 11.6.2005, p. 22](#)).
- (2) Directive 2014/17/EU of the European Parliament and of the Council of 4 February 2014 on credit agreements for consumers relating to residential immovable property and amending Directives 2008/48/EC and 2013/36/EU and Regulation (EU) No 1093/2010 ([OJ L 60, 28.2.2014, p. 34](#)).
- (3) Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features ([OJ L 257, 28.8.2014, p. 214](#)).