

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 VI

### **ADDITIONAL REQUIREMENTS IN RELATION TO INSURANCE-BASED INVESTMENT PRODUCTS**

#### *Article 26*

##### **Scope of additional requirements**

This Chapter establishes requirements additional to those applicable to insurance distribution in accordance with Articles 17, 18, 19 and 20, where the insurance distribution is carried out in relation to the sale of insurance-based investment products by any of the following:

- (a) an insurance intermediary;
- (b) an insurance undertaking.

#### *Article 27*

##### **Prevention of conflicts of interest**

Without prejudice to Article 17, an insurance intermediary or an insurance undertaking carrying on the distribution of insurance-based investment products shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest as determined under Article 28 from adversely affecting the interests of its customers. Those arrangements shall be proportionate to the activities performed, the insurance products sold and the type of the distributor.

#### *Article 28*

##### **Conflicts of interest**

1 Member States shall ensure that insurance intermediaries and insurance undertakings take all appropriate steps to identify conflicts of interest between themselves, including their managers and employees, or any person directly or indirectly linked to them by control, and their customers or between one customer and another, that arise in the course of carrying out any insurance distribution activities.

2 Where organisational or administrative arrangements made by the insurance intermediary or insurance undertaking in accordance with Article 27 to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to customer interests will be prevented, the insurance intermediary or insurance undertaking shall clearly disclose to the customer the general nature or sources of the conflicts of interest, in good time before the conclusion of an insurance contract.

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3 By way of derogation from Article 23(1), the disclosure referred to in paragraph 2 of this Article shall:

- a be made on a durable medium; and
- b include sufficient detail, taking into account the nature of the customer, to enable that customer to take an informed decision with respect to the insurance distribution activities in the context of which the conflict of interest arises.

4 The Commission shall be empowered to adopt delegated acts in accordance with Article 38 in order to:

- a define the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when carrying out insurance distribution activities;
- b establish appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers of the insurance intermediary or insurance undertaking.

#### *Article 29*

#### **Information to customers**

1 Without prejudice to Article 18 and Article 19(1) and (2), appropriate information shall be provided in good time, prior to the conclusion of a contract, to customers or potential customers with regard to the distribution of insurance-based investment products, and with regard to all costs and related charges. That information shall include at least the following:

- a when advice is provided, whether the insurance intermediary or insurance undertaking will provide the customer with a periodic assessment of the suitability of the insurance-based investment products recommended to that customer, referred to in Article 30;
- b as regards the information on insurance-based investment products and proposed investment strategies, appropriate guidance on, and warnings of, the risks associated with the insurance-based investment products or in respect of particular investment strategies proposed;
- c as regards the information on all costs and related charges to be disclosed, information relating to the distribution of the insurance-based investment product, including the cost of advice, where relevant, the cost of the insurance-based investment product recommended or marketed to the customer and how the customer may pay for it, also encompassing any third party payments.

The information about all costs and charges, including costs and charges in connection with the distribution of the insurance-based investment product, which are not caused by the occurrence of underlying market risk, shall be in aggregated form to allow the customer to understand the overall cost as well as the cumulative effect on the return of the investment, and, where the customer so requests, an itemised breakdown of the costs and charges shall be provided. Where applicable, such information shall be provided to the customer on a regular basis, at least annually, during the life cycle of the investment.

The information referred to in this paragraph 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 and, consequently, to take investment decisions on an informed basis. Member States may allow that information to be provided in a standardised format.

2 Without prejudice to points (d) and (e) of Article 19(1), Article 19(3) and Article 22(3), Member States shall ensure that insurance intermediaries or insurance undertakings are regarded

as fulfilling their obligations under Article 17(1), Article 27 or Article 28 where they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit in connection with the distribution of an insurance-based investment product or an ancillary service, to or by any party except the customer or a person on behalf of the customer only where the payment or benefit:

- a does not have a detrimental impact on the quality of the relevant service to the customer; and
- b does not impair compliance with the insurance intermediary's or insurance undertaking's duty to act honestly, fairly and professionally in accordance with the best interests of its customers.

3 Member States may impose stricter requirements on distributors in respect of the matters covered by this Article. In particular, Member States may additionally prohibit or further restrict the offer or acceptance of fees, commissions or non-monetary benefits from third parties in relation to the provision of insurance advice.

Stricter requirements may include requiring any such fees, commissions or non-monetary benefits to be returned to the clients or offset against fees paid by the client.

Member States may make the provision of advice referred to in Article 30 mandatory for the sales of any insurance-based investment products, or for certain types of them.

Member States may require that, where an insurance intermediary informs the client that advice is given independently, the intermediary shall assess a sufficiently large number of insurance products available on the market which are sufficiently diversified with regard to their type and product providers to ensure that the client's objectives can be suitably met and shall not be limited to insurance products issued or provided by entities having close links with the intermediary.

The stricter requirements of a Member State referred to in this paragraph have to be complied with by all insurance intermediaries or insurance undertakings, 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.

4 Without prejudice to paragraph 3 of this Article, the Commission shall be empowered to adopt delegated acts in accordance with Article 38 to specify:

- a the criteria for assessing whether inducements paid or received by an insurance intermediary or an insurance undertaking have a detrimental impact on the quality of the relevant service to the customer;
- b the criteria for assessing compliance of insurance intermediaries and insurance undertakings paying or receiving inducements with the obligation to act honestly, fairly and professionally in accordance with the best interests of the customer.

5 The delegated acts referred to in paragraph 4 shall take into account:

- a the nature of the services offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions;
- b the nature of the products being offered or considered, including different types of insurance-based investment products.

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### Article 30

#### Assessment of suitability and appropriateness and reporting to customers

1 Without prejudice to Article 20(1), when providing advice on an insurance-based investment product, the insurance intermediary or insurance undertaking shall also obtain the necessary information regarding the customer's or potential customer's knowledge and experience in the investment field relevant to the specific type of product or service, that person's financial situation including that person's ability to bear losses, and that person's investment objectives, including that person's risk tolerance, so as to enable the insurance intermediary or the insurance undertaking to recommend to the customer or potential customer the insurance-based investment products that are suitable for that person and that, in particular, are in accordance with that person's risk tolerance and ability to bear losses.

Member States shall ensure that where an insurance intermediary or insurance undertaking provides investment advice recommending a package of services or products bundled pursuant to Article 24, the overall bundled package is suitable.

2 Without prejudice to Article 20(1), Member States shall ensure that an insurance intermediary or insurance undertaking, when carrying out insurance distribution activities other than those referred to in paragraph 1 of this Article, in relation to sales where no advice is given, asks the customer or potential customer to provide information regarding that person's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the insurance intermediary or the insurance undertaking to assess whether the insurance service or product envisaged is appropriate for the customer. Where a bundle of services or products is envisaged pursuant to Article 24, the assessment shall consider whether the overall bundled package is appropriate.

Where the insurance intermediary or insurance undertaking considers, on the basis of the information received under the first subparagraph, that the product is not appropriate for the customer or potential customer, the insurance intermediary or insurance undertaking shall warn the customer or potential customer to that effect. That warning may be provided in a standardised format.

Where customers or potential customers do not provide the information referred to in the first subparagraph, or where they provide insufficient information regarding their knowledge and experience, the insurance intermediary or insurance undertaking shall warn them that it is not in a position to determine whether the product envisaged is appropriate for them. That warning may be provided in a standardised format.

3 Without prejudice to Article 20(1), where no advice is given in relation to insurance-based investment products, Member States may derogate from the obligations referred to in paragraph 2 of this Article, allowing insurance intermediaries or insurance undertakings to carry out insurance distribution activities within their territories without the need to obtain the information or make the determination provided for in paragraph 2 of this Article where all the following conditions are met:

- a the activities refer to either of the following insurance-based investment products:
  - (i) contracts which only provide investment exposure to the financial instruments deemed non-complex under Directive 2014/65/EU and do not incorporate a structure which makes it difficult for the customer to understand the risks involved; or

- (ii) other non-complex insurance-based investments for the purpose of this paragraph;
- b the insurance distribution activity is carried out at the initiative of the customer or potential customer;
- c the customer or potential customer has been clearly informed that, in the provision of the insurance distribution activity, the insurance intermediary or the insurance undertaking is not required to assess the appropriateness of the insurance-based investment product or insurance distribution activity provided or offered and that the customer or potential customer does not benefit from the corresponding protection of the relevant conduct of business rules. Such a warning may be provided in a standardised format;
- d the insurance intermediary or insurance undertaking complies with its obligations under Articles 27 and 28.

All insurance intermediaries or insurance undertakings, 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 a Member State which does not make use of the derogation referred to in this paragraph shall comply with the applicable provisions in that Member State.

4 The insurance intermediary or insurance undertaking shall establish a record that includes the document or documents agreed between the insurance intermediary or insurance undertaking and the customer that set out the rights and obligations of the parties, and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

5 The insurance intermediary or insurance undertaking shall provide the customer with adequate reports on the service provided on a durable medium. Those reports shall include periodic communications to customers, taking into account the type and the complexity of insurance-based investment products involved and the nature of the service provided to the customer and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer.

When providing advice on an insurance-based investment product, the insurance intermediary or the insurance undertaking shall, prior to the conclusion of the contract, provide the customer with a suitability statement on a durable medium specifying the advice given and how that advice meets the preferences, objectives and other characteristics of the customer. The conditions set out in Article 23(1) to (4) shall apply.

Where the contract is concluded using a means of distance communication which prevents the prior delivery of the suitability statement, the insurance intermediary or the insurance undertaking may provide the suitability statement on a durable medium immediately after the customer is bound by any contract, provided both of the following conditions are met:

- a the customer has consented to receiving the suitability statement without undue delay after the conclusion of the contract; and
- b the insurance intermediary or insurance undertaking has given the customer the option of delaying the conclusion of the contract in order to receive the suitability statement in advance of such conclusion.

Where an insurance intermediary or an insurance undertaking has informed the customer that it will carry out a periodic assessment of suitability, the periodic report shall contain an updated statement of how the insurance-based investment product meets the customer's preferences, objectives and other characteristics of the customer.

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6 The Commission shall be empowered to adopt delegated acts in accordance with Article 38 to further specify how insurance intermediaries and insurance undertakings are to comply with the principles set out in this Article when carrying out insurance distribution activities with their customers, including with regard to the information to be obtained when assessing the suitability and appropriateness of insurance-based investment products for their customers, the criteria to assess non-complex insurance-based investment products for the purposes of point (ii) of point (a) of paragraph 3 of this Article, and the content and format of records and agreements for the provision of services to customers and of periodic reports to customers on the services provided. Those delegated acts shall take into account:

- a the nature of the services offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions;
- b the nature of the products being offered or considered including different types of insurance-based investment products;
- c the retail or professional nature of the customer or potential customer.

7 By 23 August 2017, EIOPA shall develop guidelines, and thereafter update them periodically, for the assessment of insurance-based investment products that incorporate a structure which makes it difficult for the customer to understand the risks involved as referred to in point (i) of point (a) of paragraph 3.

8 EIOPA may develop guidelines, and thereafter update them periodically, for the assessment of insurance-based investment products being classified as non complex for the purpose of point (ii) of point (a) of paragraph 3, taking into account the delegated acts adopted under paragraph 6.