

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 VII

SANCTIONS AND OTHER MEASURES

Article 31

Administrative sanctions and other measures

1 Without prejudice to the supervisory powers of competent authorities and the right of Member States to provide for and impose criminal sanctions, Member States shall ensure that their competent authorities may impose administrative sanctions and other measures applicable to all infringements of the national provisions implementing this Directive, and shall take all measures necessary to ensure that they are implemented. Member States shall ensure that their administrative sanctions and other measures are effective, proportionate and dissuasive.

2 Member States may decide not to lay down rules on administrative sanctions under this Directive for infringements which are subject to criminal sanctions under their national law. In that case, Member States shall communicate to the Commission the relevant criminal law provisions.

3 Competent authorities shall exercise their supervisory powers, including investigatory powers and powers to impose sanctions provided for in this Chapter, in accordance with their national legal frameworks in any of the following ways:

- a directly;
- b in collaboration with other authorities;
- c by application to the competent judicial authorities.

4 Member States shall ensure that where obligations apply to insurance or reinsurance distributors, in the event of a breach of any such obligation, administrative sanctions against, and other measures with regard to, the members of their management or supervisory body, and any other natural or legal persons who, under national law, are responsible for such breach, can be applied.

5 Member States shall ensure that administrative sanctions and other measures taken in accordance with this Article are subject to a right of appeal.

6 The competent authorities shall be given all investigatory powers that are necessary for the exercise of their functions. In the exercise of their powers to impose administrative sanctions and other measures, the competent authorities shall cooperate closely to ensure that those sanctions and measures produce the desired results and coordinate their action when dealing with cross-border cases, while ensuring that the conditions are met for legitimate data processing in accordance with Directive 95/46/EC and Regulation (EC) No 45/2001.

Where Member States have chosen, in accordance with paragraph 2 of this Article, to lay down criminal sanctions for infringements of the provisions referred to in Article 33, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to:

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- a liaise with judicial authorities within their territory to receive specific information relating to criminal investigations or proceedings commenced for possible infringements under this Directive; and
- b provide such information to other competent authorities and EIOPA to fulfil their obligation to cooperate with each other and with EIOPA for the purposes of this Directive.

Article 32

Publication of sanctions and other measures

1 Member States shall ensure that the competent authorities publish any administrative sanction or other measure that has been imposed for breaches of the national provisions implementing this Directive and against which no appeal was lodged in time, without undue delay, including information on the type and nature of the breach and the identity of persons responsible for it. However, where the publication of the identity of the legal persons, or identity or personal data of natural persons, is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data or where publication jeopardises the stability of financial markets or an ongoing investigation, the competent authority may decide to defer publication, not to publish, or to publish the sanctions on an anonymous basis.

2 Where national law provides for the publication of a decision to impose a sanction or other measure which is subject to an appeal before the relevant judicial or other authorities, the competent authorities shall publish on their official website, without undue delay, such information and any subsequent information on the outcome of such appeal. Moreover, any decision annulling a previous decision to impose a sanction or other measure which has been published shall also be published.

3 Competent authorities shall inform EIOPA of all administrative sanctions and other measures imposed, but not published in accordance with paragraph 1, including any appeal in relation thereto and the outcome thereof.

Article 33

Breaches, and sanctions and other measures

- 1 This Article shall apply to at least the following:
 - a persons who fail to register their distribution activities in accordance with Article 3;
 - b an insurance or reinsurance undertaking or insurance or reinsurance intermediary using the insurance or reinsurance distribution services of persons referred to in point (a);
 - c an insurance, reinsurance or ancillary insurance intermediary who obtained a registration through false statements or any other irregular means in breach of Article 3;
 - d an insurance distributor who fails to meet the provisions of Article 10;
 - e an insurance undertaking or insurance intermediary failing to comply with conduct of business requirements set out in Chapters V and VI, in relation to the distribution of insurance-based investment products;
 - f an insurance distributor who fails to comply with conduct of business requirements set out in Chapter V, in relation to any insurance product other than those referred to in point (e).

2 In the event of any of the breaches referred to in point (e) of paragraph 1, Member States shall ensure that the competent authorities have the power to impose, in accordance with national law, at least the following administrative sanctions and other measures:

- a a public statement, which indicates the responsible natural or legal person and the nature of the breach;
- b an order requiring the responsible natural or legal person to cease the conduct and to desist from a repetition of that conduct;
- c in the case of an insurance intermediary, withdrawal of the registration referred to in Article 3;
- d a temporary ban on the exercise of management functions in insurance intermediaries or insurance undertakings imposed against any member of the management body of the insurance intermediary or insurance undertaking who is held responsible;
- e in the case of a legal person, the following maximum administrative pecuniary sanctions:
 - (i) at least EUR 5 000 000 or up to 5 % of the total annual turnover according to the last available accounts approved by the management body, or in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of entry into force of this Directive. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial accounts according to Directive 2013/34/EU of the European Parliament and of the Council⁽¹⁾, the relevant total turnover shall be the total annual turnover according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking; or
 - (ii) up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined;
- f in the case of a natural person, the following maximum administrative pecuniary sanctions:
 - (i) at least EUR 700 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on the date of entry into force of this Directive; or
 - (ii) up to twice the amount of the profits gained or losses avoided because of the breach, where those can be determined.

3 In the event of any of the breaches referred to in points (a) to (d) and (f) of paragraph 1, Member States shall ensure that the competent authorities have the power to impose, in accordance with national law, at least the following administrative sanctions and other measures:

- a an order requiring the responsible natural or legal person to cease the conduct and to desist from a repetition of that conduct;
- b in the case of an insurance, reinsurance or ancillary insurance intermediary, withdrawal of the registration referred to in Article 3.

4 Member States may empower competent authorities to provide for additional sanctions or other measures and for levels of administrative pecuniary sanctions which are higher than those provided for in this Article.

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Article 34

Effective application of sanctions and other measures

Member States shall ensure that when determining the type of administrative sanctions or other measures and the level of administrative pecuniary sanctions, the competent authorities take into account all relevant circumstances, including where appropriate:

- (a) the gravity and the duration of the breach;
- (b) the degree of responsibility of the responsible natural or legal person;
- (c) the financial strength of the responsible natural or legal person, as indicated by either the annual income of the responsible natural person or the total turnover of the responsible legal person;
- (d) the importance of profits gained or losses avoided by the responsible natural or legal person, in so far as they can be determined;
- (e) the losses for customers and third parties caused by the breach, in so far as they can be determined;
- (f) the level of cooperation of the responsible natural or legal person with the competent authority;
- (g) measures taken by the responsible natural or legal person to prevent repetition of the breach; and
- (h) any previous breaches by the responsible natural or legal person.

Article 35

Reporting of breaches

1 Member States shall ensure that the competent authorities establish effective mechanisms to enable and encourage the reporting to them of possible or actual breaches of national provisions implementing this Directive.

- 2 The mechanisms referred to in paragraph 1 shall include at least:
- a specific procedures for the receipt of reports and their follow-up;
 - b appropriate protection, at least against retaliation, discrimination or other types of unfair treatment, for employees of insurance or reinsurance distributors and, where possible, for other persons, who report infringements committed within those entities; and
 - c protection of the identity of both the person who reports the breach and the natural person who is allegedly responsible for the breach, at all stages of the procedure unless such disclosure is required by national law in the context of further investigation or subsequent administrative or judicial proceedings.

Article 36

Submitting information to EIOPA in relation to sanctions and other measures

1 Competent authorities shall inform EIOPA of all administrative sanctions and other measures imposed but not published in accordance with Article 32(1).

2 Competent authorities shall provide EIOPA annually with aggregated information regarding all administrative sanctions and other measures imposed in accordance with Article 31.

EIOPA shall publish that information in an annual report.

3 Where the competent authority has disclosed an administrative sanction or other measure to the public, it shall at the same time report that fact to EIOPA.

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- (1) Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC ([OJ L 182, 29.6.2013, p. 19](#)).