

Insurance Distribution Directive – Set for 23 February 2018, but need to act now!

10 February 2016

In brief

On 2 February 2016, the **Insurance Distribution Directive** (“IDD”, Directive 2016/97/EU) was published in the Official Journal of the European Union. This follows the formal approval of the text by the European Parliament on 24 November 2015, and Council’s adoption on 3 December 2015.

Although aimed at minimum harmonisation, the IDD fully recasts the Insurance Mediation Directive (“IMD”, Directive 2002/92/EC) and introduces a number of significant changes and challenges.

This Directive marks a stepping up in consumer protection in the insurance field, tightening rules on the information and advice provided by insurance undertakings (incl. their staff), regardless of distribution channels (some exemptions may apply on the latter).

What’s next?

Member states have to **transpose the Directive in national legislation by 23 February 2018**. The Commission can adopt delegated acts on several aspects of the IDD, as well as seek technical advice from the EIOPA, with the aim for an adoption in the first quarter of 2017. EIOPA will also work on the definition of Regulatory Technical Standards.

In Luxembourg, the Commissariat Aux Assurances will likely issue a draft Law by the end of 2016, to make sure the national legislative process meets the transposition deadline.

In detail

IDD in a nutshell

A wider scope

- Insurance intermediaries.
- Insurance/Reinsurance undertakings involved in distribution (i.e. “direct sales”).
- Ancillary insurance intermediaries (with exemption under certain criteria).

Main features and changes

- **Product Oversight and Governance (“POG”)** will require insurers to set up and operate internal processes to make sure the products’ design, marketing and distribution strategy are adequately controlled and monitored before and after launch. These products have to match the needs of the targeted distribution countries and customers.

- **Product Information Document (“PID”)** will contain standard information on general/non-life products, provided to clients in the pre-contractual stage. This PID has to be, among others, short, stand-alone, comprehensible, accurate and not misleading.
- **Information requirements and conduct of business** have their roots in the principle that distributors must always “*act honestly, fairly and professionally in accordance with the best interest of their customers*”. In this context, the assessment of appropriateness and suitability of the advice (where provided) has to be addressed cautiously. Additional requirements for insurance-based investment products contain enhanced provisions concerning conflicts of interest.
- **Transparency on inducement and costs.** IDD, as a minimum harmonisation Directive, does not de facto prevent inducements. Generally speaking, the content of EIOPA’s delegated acts will need to be scrutinised closely to assess if they result in a more stringent interpretation than the current text of the IDD;
- **Conflicts of interests’** management will now be subject to higher standards, to be further detailed in the delegated acts (i.e. minimum measures to identify, prevent, manage and disclose these conflicts, as well as the criteria to be applied to determine the potentially damaging types of conflicts of interests).
- **Registration process and notification** as well as cross-border activity provisions are included within IDD. All intermediaries have to register in the national register maintained by the Competent National Authority of their Home Member State. IDD still foresees the possibility for any Host Member State to prevent any intermediary operating on its territory, if it seriously endangers the country’s insurance market functioning, including under the Freedom to Provide Services or Freedom of Establishment regime. Each Member State makes sure that its National Competent Authorities publish the applicable General Good Rules appropriately.
- **Competency and continuous professional development**, will need to be ensured by all intermediaries, proportionally to the complexity of the products sold, as well as the distribution nature.
- **Cross-selling disclosures** will impose for bundled products to inform customers on the characteristics of each product’s components (incl. costs and charges), and the possibility to buy each component separately.
- **Professional insurance and financial capacity** requirements are clearly set in the IDD, which, notably, foresees a mandatory professional civil liability insurance for all intermediaries.

What impact for Luxembourg undertakings?

Frequently called “the MiFID of insurance”, this Directive will significantly influence insurance players and push them to analyse thoroughly the operational and strategic impacts, including assessment of sustainability/appropriateness of current business model and strategy. The players operating under the Freedom to Provide Services regime will undoubtedly face some challenges, as transposition in countries where they sell their products may vary from one to another.

Alignment/departures in IDD of provisions on insurance in other regulations (e.g. MiFID, PRIIPS) will also need to be closely monitored and assessed by market participants, as well as any potential impact from the OECD’s BEPS project.

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