

European Council adopts Insurance Distribution Directive

December 22 2015 | Contributed by [Sidley Austin LLP](#)

Background

Key changes

Background

On December 14 2015 the European Council formally adopted the EU Insurance Distribution Directive, as adopted on November 24 2015 by the European Parliament at first reading. The Insurance Distribution Directive will replace the EU Insurance Mediation Directive (2002/92/EC) and introduce refreshed minimum regulatory standards for insurance sales in the European Union. The Insurance Distribution Directive comes into force 20 days after its publication in the *Official Journal of the European Union* and will have two years to transpose it into national law.

The Insurance Mediation Directive has been part of the EU regulatory landscape since January 14 2005. The overhaul was prompted by:

- inconsistency in the way in which the Insurance Mediation Directive regime had been implemented by member states;
- the development of a more complex insurance market and product offerings since the Insurance Mediation Directive was enacted; and
- a greater focus on consumer protection across all financial sectors since the 2008 financial crisis.

Key changes

The Insurance Distribution Directive, like the Insurance Mediation Directive, is a minimum harmonisation directive.⁽¹⁾ This means that the Insurance Distribution Directive sets a threshold which national legislation must meet, but beyond which member states are free to maintain or introduce stricter provisions relating to insurance selling.

Direct sellers to be in scope

The Insurance Distribution Directive will apply not only to intermediaries, but also to insurance undertakings that sell directly to their customers, including sales through aggregator websites and certain ancillary sales. This extension of scope reflects the view that consumer protection should be the same regardless of the channel through which customers buy an insurance product.

The mere provision of information to customers or data to insurers about potential customers, as well as claims management on behalf of an insurance undertaking, loss adjusting and expert claim appraising, fall outside of the directive's scope.⁽²⁾

Enhanced professional requirements and internal policies

The Insurance Distribution Directive will require a minimum of 15 hours per year for professional training and development for certain persons involved in insurance distribution, including "relevant persons within the [distributor's] management structure" and those who are "directly involved" in insurance distribution.⁽³⁾ Competency and continuing professional development requirements must match the complexity of the activities connected with the insurance product being sold and the type

AUTHORS

[Marisa Orr](#)



[Martin
Membery](#)



of distributor.(4)

Further, insurance undertakings must implement, document and regularly review internal policies and procedures to ensure that the "good repute"(5) (carried over from the Insurance Mediation Directive) and enhanced competency and continuing development requirements under the Insurance Distribution Directive are met by the relevant employees involved in insurance distribution.(6)

'Customer's best interests' principle, conflict management and product governance rules

The Insurance Distribution Directive will introduce a general principle that distributors must "always act honestly, fairly and professionally in accordance with the best interests of its customers", (7) and that they are not to remunerate, incentivise or assess the performance of their employees in a way that conflicts with this duty.(8)

The Insurance Distribution Directive further requires insurance undertakings and any intermediaries that design insurance products – other than those relating to large risks(9) – to maintain, operate and periodically review a product approval process.(10) Where a distributor advises on or proposes an insurance product which it did not manufacture, that distributor must have in place adequate arrangements to obtain the information that it needs in order to understand the product characteristics and its identified target market.(11)

The Insurance Distribution Directive empowers the European Commission to:

- adopt delegated acts to further specify product oversight and information principles;(12) and
- in relation to insurance-based investment products, prescribe steps for identifying, preventing, managing and disclosing conflicts of interest as well as establish criteria for determining the types of conflict which might adversely impact customers.(13)

New remuneration disclosures

Before concluding a contract, insurance intermediaries must disclose to customers the nature of any remuneration received in relation to the contract and whether the contract works on the basis of a fee, commission or other type of arrangement (including any financial or non-financial advantage, offered or given in respect of (re)insurance distribution activities).(14) Where the fee is payable directly by the customer, the insurance intermediary must provide the amount of the fee or, where this is not possible, the method for calculating it.(15)

The new remuneration provisions will not apply to mediation of large risks. The Insurance Distribution Directive leaves member states to decide whether to apply the rules in relation to "professional clients", as defined in Article 4(1)(10) of the EU Markets in Financial Instruments (MiFID) II Directive (2014/65/EU).(16) A 'professional client' is a client which:

- possesses the experience, knowledge and expertise to make its own investment decisions and properly assess the risks that it incurs; and
- complies with the criteria set out in Annex II of the MiFID II Directive.

New cross-selling rules

In the context of the Insurance Distribution Directive, a 'cross-selling practice' is where an insurance product is offered together with a non-insurance product or service as part of a package or the same agreement. The requirements vary depending on whether the insurance product is the main or ancillary product within the package and are subject to other EU legislation governing cross-selling practices in relation to certain categories of goods or services:(17)

- Where the insurance product is offered together with an ancillary non-insurance product or service – distributors must inform the customer whether it is possible to buy the different components separately and, if so, provide an adequate description of the different components of the package as well as information on the costs and charges of each component. It must be clear to customers how insurance coverage varies depending on whether the product is sold in or out of the package.(18)
- Where the insurance product is ancillary to a non-insurance product or service (unless it is an

investment service or activity, a credit agreement or a payment account) – the customer must be able to buy the non-insurance product or service separately.⁽¹⁹⁾

Further, the European Insurance and Occupational Pensions Authority may issue guidelines on cross-selling practices and examples of practices that may fall short of the "customer's best interests" principle.⁽²⁰⁾

Enhanced sales standards for insurance-based investment products

Similar to the sales standards applicable to non-insurance investment products under MiFID, the directive will include the following sales standards:

- Increased disclosure requirements relating to the nature and risks associated with the insurance-based investment product and all costs and associated charges, with such information to be given to customers in a comprehensible form such that they can reasonably be expected to understand the product offered and make an informed decision.⁽²¹⁾
- For non-advised sales, a requirement to assess the appropriateness of an insurance-based investment product for each customer or, where the customer does not provide the information needed for such assessment, warn the customer that a determination on appropriateness cannot be made.⁽²²⁾ If certain conditions are met, member states may derogate from this obligation in relation to non-complex insurance-based investment products.⁽²³⁾
- For advised sales, suitability assessment and suitability statement requirements and a requirement to inform customers whether a periodic suitability assessment in respect of a recommended product will be conducted.⁽²⁴⁾
- Provision of periodic reports to customers, taking into account the type and complexity of the insurance-based investment product.⁽²⁵⁾

Passporting

Member states will be required to publish online the 'general good' provisions that they apply to firms passporting into their territory. The Insurance Distribution Directive also clarifies the role of the home and host state regulators in both the freedom of services and freedom of establishment contexts.

For further information on this topic please contact [Marisa Orr](#) or [Martin Membery](#) at Sidley Austin LLP by telephone (+44 20 7360 3600) or email (morris@sidley.com or mmembery@sidley.com). The Sidley Austin LLP website can be accessed at www.sidley.com.

Endnotes

(1) Recital 3.

(2) Article 2(2).

(3) Article 10(2).

(4) Article 10(1)-(2).

(5) Article 10(3).

(6) Article 10(8).

(7) Article 17(1).

(8) Article 17(3).

(9) Article 25(4).

(10) Article 25(1).

(11) Article 25(1).

(12) Article 25(2).

(13) Article 28(4).

(14) Article 19(1)(e).

(15) Article 19(2).

(16) Article 22(1).

(17) Recital 54.

(18) Article 24(1)-(2).

(19) Article 24(3).

(20) Article 24(4).

(21) Article 29(1).

(22) Article 30(2).

(23) Article 30(3)(a)-(d)); Article 30(7)-(8) provides for the issuance of European Insurance and Occupational Pensions Authority guidelines in this respect.

(24) Article 29(1)(a); Article 30.

(25) Article 30(5).

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).