

# Legal Focus: Have new French intermediary rules achieved their objectives?

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Regulations had intended to extend scope of distribution rules and increase consumer protection

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The Directive (EU) 2016/97 of the European parliament on insurance distribution – known as the Insurance Distribution Act (IDA) – was transposed into French law and entered into force nearly a year ago on October 1, 2018.

The insurance distribution sector was already strongly regulated in France. Insurance intermediaries were subject to licensing and inspection by the French regulatory authority, the *Autorité de Contrôle Prudentiel et de Résolution*.

The main objective of the IDA was to extend regulations and inspection prerogatives to the entire distribution chain by integrating new operators, such as insurance comparators, and strengthening their legal obligations. The directive pursued a second objective: to ensure insurance customers benefit from the same level of protection, regardless of the differences between distribution channels or in the size of insurance intermediaries, and thus from minimum requirements guaranteeing they are fully informed.

One year on, the question is whether these objectives have been achieved. What do companies still need to be aware of and what steps should insurance intermediaries take to ensure compliance with this regulation?

The new legislation created new obligations for insurance intermediaries, particularly by formalising a set of rules and previous information requirements with a view to offering insurance products that fully correspond to the needs of the insured.

Additionally, the remuneration of the entire distribution chain is subject to transparency requirements. As a general rule, insurance intermediaries' remuneration must not conflict with their obligation to act in their customers' best interest. A 15-hour annual continuing education requirement is also imposed on insurance intermediaries and their employees.

## **Broad application**

All insurance intermediaries, whatever their size, are subject to these new obligations, which are or have been more difficult to implement for small entities not necessarily having the appropriate organisational set-up.

Corporations not classified as insurance brokers are partially exempted from the regulations introduced by the IDA, provided the insurance contracts they issue are merely complementary to the goods or services they offer and only cover certain risks, which exclude civil liability; and do not exceed an annual insurance premium of €600 (\$666.50) or €200 in the case where the contract is complementary to a service they provide of which the duration is three months or less.

However, these insurance intermediaries in an ancillary capacity are subject to the other obligations created by the reform such as, for instance, a minimum information and transparency requirement in respect of the customers they insure.

Under the IDA, insurance product developers are required to carry out a market study. This implies identifying a target market for each product, ensuring all the risks associated with the identified target market are assessed and the intended distribution strategy is consistent with the identified target market. Furthermore, developers are required to take reasonable steps to ensure the insurance product is distributed to the identified target market. According to the French regulatory authority, insurance companies should always be considered as the developers of insurance products, even if an insurance intermediary can potentially be a co-developer of an insurance product.

Consequently, one of the issues raised with respect to insurance intermediaries is whether they are required to comply with this obligation considered as being too burdensome. The answer is positive, but where possible, most insurance intermediaries should negotiate with insurance companies so the latter either supports this obligation or accepts to negotiate an allocation of the relevant tasks with limited liability for the insurance intermediary.

This form of co-operation is all the more advisable insofar as the European Insurance and Occupational Pensions Authority recently demanded environmental, social and governance aspects be included in the requirements applicable to insurance product development, which is not the case at present.

## **Licence extension**

Insurance intermediaries in member states of the EU can request the extension of their licence with a view to operating their activity in another member state, pursuant to the principle of freedom of establishment or freedom to provide services.

As a rule, insurance intermediaries are mainly subject to the regulations applicable in the member state of origin regarding their status and practice.

However, where insurance distribution is concerned, France requires insurance intermediaries operating in its territory under those two principles to comply with most of its rules (including but not limited to the regulations applicable in terms of consultancy, continuing education, remuneration and so on).

Accordingly, European insurance intermediaries operating in France must review their compliance with French rules as an imperative.

The reform offers insurance customers the benefit of better information, advice and protection. However, according to a survey, most companies are totally unaware of these new benefits whereas compliance with the new regulations should be a decisive criterion for choosing an insurance intermediary and taking out an insurance policy.

Thus, for example, the Insurance Product Information Document – a clear and concise document provided to insurance customers, should allow the latter to more easily compare insurance offers.

As for insurance intermediaries, their strict compliance with the new regulations should become a strong business case.

One year after it entered into force, the reform is being slowly implemented.

Although most insurance intermediaries have already integrated the strengthened duty to provide advice, many are struggling to implement and even understand the scope of the regulations in terms of pricing transparency or the monitoring of requirements by insurance product developers.

Last, the new regulations have considerably broadened the inspection prerogatives of the French regulatory authority, which stated that it does not currently have the necessary human and material resources to properly implement them. In this context, a self-regulatory system is planned to be set up for insurance brokers, but its implementation has been delayed because of legal issues pertaining to the lack of a dedicated authority with appropriate jurisdictional powers to assume this role.

As for insurance customers, they have not yet taken advantage of the opportunities for risk management optimisation the reform offers them, including with respect to their right to information and advice.

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