

Implementation of EU Insurance Distribution Directive

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Introduction

Key features

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The EU Insurance Distribution Directive (IDD) (2016/97/EC), as amended, should have been transposed into national law by 1 July 2018, with the date of application of the new rules set for 1 October 2018. Although the IDD has yet to be transposed in Portugal, on 19 June 2018 the government submitted the proposed text of the new statute – Legislative Proposal 138/XIII – to Parliament for discussion.

The bill is likely to be discussed and approved in September, in order to enter into force on 1 October 2018.

Key features

The IDD applies to all distribution channels; it applies to any natural or legal person who is or wishes to be established in an EU member state so as to take up and pursue the distribution of (re)insurance products, including:

- insurance undertakings selling their own products directly, as well as a variety of insurance intermediaries;
- insurance agents and brokers;
- bancassurance operators;
- ancillary insurance intermediaries (eg, travel agents and car rental companies); and
- product comparison websites.

The IDD aims to level the playing field between all types of distributor in order to ensure that consumers benefit from the same level of protection throughout the marketplace, regardless of their chosen distribution channel.

Bearing this in mind, one of the key features of the local bill is that it separates what the IDD has united; some of the duties under the IDD will be included in the pre-existing Insurance Supervision Act approved by Law 147/2015, which was the main statute implementing the EU Solvency II Directive. These duties include product oversight and governance duties which, under the local bill, are addressed to (re)insurance undertakings and are thus relegated to the Insurance Supervision Act.

Most other duties will be provided by a new act – the so-called Insurance Distribution Act. The new act will include initial provisions generally referring to all distributors, but will mostly regulate (re) insurance mediation. Some of the duties created, such as that of applying the new demands and needs test, will also apply to insurance undertakings "with the appropriate adjustments". The bill provides no further guidance as to what such adjustments may be. This appears to suggest some scepticism towards the IDD's aim of levelling the playing field between all types of distributor.

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As to the main classes of intermediaries, the bill follows the IDD in its separation between so-called 'ordinary' intermediaries and 'ancillary' intermediaries. As in many other member states, ordinary intermediaries are subdivided into brokers and agents; insurance brokers pursue the business of insurance mediation independently from insurance undertakings, while insurance agents pursue that business on behalf of one or more insurance undertakings or on behalf of other insurance intermediaries. Bancassurance operators now registered as tied insurance intermediaries will be registered as insurance agents.

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