

Transposition into Luxembourg law of the European Directive on insurance distribution: what are the changes?

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The law of 10 August 2018^[1] has transposed the Directive (EU) 2016/97 of the European Parliament and of the Council of the European Union of 20 January 2016 on insurance distribution (the “IDD Directive”) into Luxembourg law. The law of 7 December 2015 on the insurance sector is amended again.

The IDD Directive answers a concern for efficiency of the insurance market regulation by improving customer protection and increasing transparency in the insurance sector.

Among the major changes introduced by the law of 10 August 2018, which took effect on 1 October 2018, we find:

The extension of the scope of the law on the insurance sector to persons or institutions selling insurance products on an ancillary basis, as well as the internal sales staff of insurance companies;

The strengthening of the duty of advice: in particular, creating the duty to issue a standardized product information document for any non-life insurance product, summarizing in a clear language the characteristics and clearly specifying the costs of the product. The objective is to improve the transparency of the information given to the policyholder while drawing attention to the significant information of the contract, facilitate understanding and create informed consent before contracting;

The requirement for continuing training: insurance and reinsurance intermediaries and employees of insurance and reinsurance undertakings must attend at least 15 hours of professional training or development per year, taking into account the nature of the products sold, the type of distributor, the role they perform and the activity carried out;

The obligation to introduce a policy of governance and constant supervision of the insurance products: before the market launch of an insurance product, the insurance undertakings must now provide a written policy specifying an identified target population for each product, ensuring exclusive marketing to this target population and regularly verifying its adequacy with the needs of the target population. The same approval process of products must be provided for any significant adaptation of the product;

The obligation to put in place a policy to avoid or reduce conflicts of interest: insurance product distributors are required to implement all reasonable steps to prevent, detect and manage conflicts of interest.

Although more precise than the previous European Directive^[2] that it repeals and replaces, the IDD Directive is

nevertheless a minimum harmonization Directive, allowing Member States to provide for stricter regulations. The transposition law of 10 August 2018 then sustains those pre-existing national requirements which are considered relevant, by occasionally making some adjustments.

To that extent, the obligation to require a ministerial approval for any insurance and reinsurance intermediary is important. In addition to this obligation, the IDD Directive requires registration in a distributor registry, which, in Luxembourg, is held by the Insurance Commission ("CAA").

The obligation to require a ministerial approval is not new in Luxembourg law, but this approval could now be requested only for the branch where the intermediaries carry out their activities (life insurance or non-life insurance). It's an important novelty, because the previous legislation required proof of their skills in both branches, even when their activities were performed only in a single branch.

A registration in the distributor registry held by the Insurance Commission is required for the new category of insurance intermediaries on an ancillary basis.

Do not hesitate to contact us if you have any questions.

[1] Published in Journal Officiel, Mémorial A, n°710 of the 22 August 2018

[2] Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation

Your contact(s)

**Michel MOLITOR****Managing partner**

Avocat à la Cour, Member of the Luxembourg Bar, 1985

michel.molitor@molitorlegal.lu**François CAUTAERTS****Partner**

Avocat à la Cour, Member of the Luxembourg Bar, 1996

francois.cautaerts@molitorlegal.lu

**Sophie LAMOTHE****Counsel**Avocat à la Cour, Member of the Luxembourg Bar, 2008
PhD in Private Lawsophie.lamothe@molitorlegal.lu**Jacques WOLTER****Partner**

Avocat à la Cour, Member of the Luxembourg Bar, 1990

jacques.wolter@molitorlegal.lu**Florence MARIMPIETRI****Senior Associate**

Avocat à la Cour, Member of the Luxembourg Bar, 2006

florence.marimpietri@molitorlegal.lu