



Implementation of the Insurance Mediation Directive

Directive 2002/92/EC

France

France has still to implement the Insurance Mediation Directive (the IMD).

A government Bill was proposed before the French senate in August 2003 with the aim of implementing not only the IMD, but also three other directives concerning security of products, insolvency of insurance companies and financial transparency.

A new law was passed to enable the government to implement certain directives by the way of orders in March 2004. The three other directives included in the government Bill mentioned above were implemented via government orders, but the French parliament did not include the IMD and its implementation was not placed back on the French senate's agenda.

However, a new government Bill on the IMD has now been drafted and the Comité consultatif de la réglementation et de la législation financière approved this on 28 January 2005. The Bill was lodged at the National Assembly on 2 March 2005 and following a report from the French Deputy Auberger, it was passed on 5 April 2005. It was then submitted to the senate on 6 April 2005. Since then it has been discussed at senate level and some amendments have been suggested.

As the senate has not yet voted on the Bill, the implementation of the IMD is still not effective. However, under European Community case law, the IMD can be directly effective upon those subject to its provisions as long as those provisions are clear and unconditional, notwithstanding that the state has not implemented it or

Summary

The Insurance Mediation Directive (Directive 2002/92/EC) was adopted on 9 December 2002 and was implemented by the UK on 14 January 2005. This briefing discusses the status of its implementation in France, Germany, Italy and Spain.

has failed to do so properly. In the event of any dispute arising over the subject matter of the IMD, the judge who has to try the case will determine which provisions are clear and unconditional.

Content of the government Bill

The new Bill deals with various provisions to adapt French law to European Community law. Its aim is the full or partial transposition of two main directives: the IMD, and one concerning information for policyholders of life insurance contracts (2002/83/CE).

The Bill's first provision modifies the livre V of the Insurance Code (Code des assurances) by (i) establishing a new definition for insurance mediation; (ii) imposing a duty to register with a French association called the ALCA (Association de la liste des courtiers d'assurance – Society of the List of Insurance Brokers) on a national entry book which the public has access to; and also (iii) imposing information duties on the intermediary who has to inform the customer about its identity, its registration number, rights of action or remedies available, and if necessary, any financial links with insurance companies. The second provision defines the jurisdiction of the Control Commission for Insurance, Mutuals and Provident Institutions (Commission de contrôle des assurances, mutuelles et institutions de prévoyance) which is the main supervising authority for the insurance sector and which ensures that all applicable laws, regulations and contracts are complied with.

Germany

Germany has not yet implemented the IMD. The German government under Gerhard Schröder was planning to implement it in two steps: an implementing act to deal with provisions regarding compulsory insurances, intermediaries' duties in relation to the provision of information, consultation and documentation, the protection of premiums paid by customers and mechanisms for out-of-court settlements (The ministry of economics and labour (Bundesministerium für Wirtschaft und Arbeit, BMWA) presented a draft law supplemented by a draft regulation in December 2004 in relation to this); and a second act dealing with the remaining issues on professional requirements, qualifications, and registration (this has not yet been drafted).

However, the implementation process has now been delayed further by the elections for the German Bundestag that were held on 18 September 2005 and it is unlikely that the IMD will be implemented in Germany before 2006.

When implemented, the IMD will have a significant impact on insurance intermediaries in Germany. At present, a person intending to act as an insurance intermediary in Germany is only required to notify the local authorities of their proposed activities; there are no further requirements regarding qualifications or other admission restrictions – a unique situation within the European Union. Based on information provided by the German Insurance Association, the BMWA estimates that the number of insurance intermediaries to be regulated under the IMD could total approximately 500,000.

In order to implement the IMD's requirements mentioned above, the draft law sets out amendments to the Trade, Commerce and Industry Regulation Act (Gewerbeordnung), the Insurance Contract Law (Versicherungsvertragsgesetz) and the Insurance Supervisory Law (Versicherungsaufsichtsgesetz).

The draft law obliges all insurance intermediaries (with the exception of tied insurance intermediaries) to take out professional indemnity insurance. The draft law also includes various information requirements relating to the intermediary/customer relationship.

Sanctions for breaches of an intermediary's duties will result in administrative fines in the Gewerbeordnung. An intermediary is also liable to its customer for all

damages caused by any breach of duty. Ultimately, local authorities may prevent an intermediary from carrying on insurance mediation activities.

The draft law also proposes that premiums paid to an intermediary are considered to have been paid to an insurance company unless the customer knew or should have known that the intermediary was not authorised to receive such payments.

Finally, the draft law allows the ministry of justice to recognise existing privately organised ombudsmen and arbitration boards to settle disputes between insurance intermediaries and customers through insurance mediation, thus avoiding the need to establish new bodies.

Parts of the IMD are to be implemented through regulation. The draft regulation mainly contains provisions regarding professional indemnity insurance (eg minimum amounts to be insured) and further details relating to information requirements, particularly those required at the first meeting between an intermediary and customer. The draft regulation also proposes detailed rules relating to the security that insurance agents acting without prior instruction from an insurance company must provide, as well as security rules relating to the collection of premiums from customers.

At present it is unclear when and how the IMD will be implemented in Germany. Due to the current political stalemate between the Christian and the Social Democrat political parties after the elections on 18 September 2005, it is uncertain whether the present Chancellor, Gerhard Schröder, or his conservative challenger, Angela Merkel, will succeed in forming a coalition government; which parties will participate in that coalition; and whether any new government will support the proposed approach for implementation of the IMD.

Italy

The Italian government adopted a legislative decree on 2 September 2002 that sets forth the 'Private insurance Code' (the Code).

The Code has been approved under article 4 of law 229 of 2003, which gives the Italian government the right to adopt a code with the aim of unifying and simplifying the laws that have to date regulated insurance enterprises

and their relationships with investors and customers (some of which date back to 1922 and 1925). The aim of this law is to improve levels of competitiveness within the insurance industry and to increase protection for insured persons.

The Code is consistent with the recent reforms introduced on 1 January 2004 to Italian corporate law and with EU laws including the IMD and the international accounting standards directive.

The Code will take effect from 1 January 2006, however most regulations implementing the Code will have to be adopted by the Italian regulating and supervising authority on insurance matters, the Istituto per la vigilanza sulle assicurazioni private e di interesse collettivo (ISVAP), by 1 January 2008.

The Code is made up of 355 articles, organised into 19 sections, that cover all areas relating to private insurance, with the exception of provisions relating to insurance and reinsurance contracts, which continue to be regulated by the Italian Civil Code.

The provisions implementing the IMD relating to insurance and reinsurance intermediaries are new under Italian law. The Code identifies insurance and reinsurance intermediaries in the following five categories:

- insurance agents (acting in the name of and on behalf of one or more insurers);
- insurance brokers (acting on behalf of the insured);
- insurance canvassers (those selling life, accident and illness insurance products on behalf of and under the responsibility of a specific insurer);
- financial intermediaries (banks, Italian post offices and certain specific financial intermediaries); and
- employees and collaborators of the entities listed above.

As regards insurance and reinsurance intermediaries, the Code provides:

- rules providing for freedom of establishment and the freedom to provide services throughout the EU;
- certain professional requirements;
- registration requirements;
- information requirements; and
- the ISVAP's regulating and supervising powers.

Only insurance agents, insurance brokers and financial intermediaries that have their residence or head office in Italy will be able to freely establish and provide services in

other EU member states. Other categories of insurance and reinsurance intermediaries (specified above) with their residence or head office in Italy will only be authorised to operate in Italy.

Insurance and reinsurance intermediaries residing or having their head offices in other EU member states will be able to freely establish and provide services in Italy provided that they are registered in Italy.

The regulations implementing the Code will provide that intermediaries with their residence or head office in other EU member states that are not deemed insurance and reinsurance intermediaries under the Code may still be registered with the ISVAP. If there is no registration with the ISVAP, other intermediaries will only be allowed to operate in Italy by informing consumers about the characteristics of standard insurance products which have non-negotiable terms.

Spain

Although Spain has not yet implemented the IMD, the Spanish government submitted a draft law to implement it to the Spanish parliament in July 2005 and it is expected that this law will be passed soon.

The Spanish government has taken the opportunity offered by the IMD's implementation to draft a more detailed and extensive regulation (68 articles) on insurance mediation activity in contrast to the current legislation, ie Law 9/1992 on Private Insurance Mediation, dated 30 April 1992 (32 articles). The reason for this is that it is generally considered that existing Spanish legislation does not reflect current practices on private insurance mediation.

One of the core aspects of the draft law is an increase in consumer protection. This includes:

- new legislation establishing the creation of a single registry (Registro especial administrativo de mediadores de seguros, corredores de reaseguros y de sus altos cargos), updated and easily accessible for consumers, which will include only those intermediaries that have met certain professional requirements (for example guaranteeing that they have the necessary knowledge to carry out the activity, the requisite financial capacity or are able to fulfil certain civil liability requirements);

- the imposition of a broader information obligation on intermediaries – prior to the signing of the insurance agreement, the client must be informed of the following:
 - the type of intermediary that is advising them and whether or not it is independent of other insurance companies; and
 - the reasons for the intermediary proposing a given insurance agreement to the consumer, having regard to the customer’s needs; and
- new legislation establishing the creation of a customer services ombudsman.

The new legislation also regulates new professionals in the insurance sector such as the reinsurance broker (*corredor de reaseguros*) or the so-named *agente de seguros vinculado*, permitting an insurance agent to act simultaneously for several insurance companies (this is forbidden under the current legislation), and putting Spanish insurance intermediaries on equal terms with intermediaries in other member states.

The draft legislation also sets out sanctions for specific administrative infringements of insurance mediation activity, in accordance with the IMD.

Finally, the draft legislation specifies a notification procedure that is required to start mediation activities by intermediaries established or domiciled in Spain, as well as for those intermediaries established in other member states which intend to operate in Spain.

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