



IDD IN BELGIUM – OF GOLD-PLATING AND LOBBYING

NOVEMBER 2018

Although the Insurance Distribution Directive (“IDD”) was supposed to be implemented on 1st October 2018 at the latest, the Belgian transposition law was only adopted on 14 November 2018. This implementation law is characterised by an expected dose of gold-plating together with a few surprising good news for the industry. In this news, we give our two cents on the upcoming changes we thought were the most interesting to the industry – and hopefully the less boring to read about.

I. Softened inducement requirements

Amongst the good news for the industry, the new rules on inducements are certainly the most important. Under the current regime – inspired by MiFID I – inducements are subject to two cumulative conditions:

- (i) They cannot breach the fundamental duty of acting honestly, fairly and in the client’s best interest; and
- (ii) They must contribute to a better quality of service (positive condition).

With the new law, the second condition is replaced by a negative condition: the inducement cannot negatively affect the quality of the service provided. This change increases the chance of inducements being valid and has been strongly criticised by the parliamentary opposition.

To balance things out, the Government expects the sector’s associations (e.g. Assuralia) to draw up a code of conduct containing a list of the inducements which they consider as affecting the

quality of the services provided as well as criteria for assessing the compliance of inducements with the fundamental duty of acting in the client’s best interest. In the lack of an adequate code of conduct from the industry within 12 months as from the publication of the new law, the Government will adopt its own code of conduct – that for sure is an inducement.

This new inducement regime reflects the minimal requirements set out in the IDD and will thus be welcomed by the industry. Rather strangely, the new inducement regime will only apply to savings- and investment-insurance contracts but the expected code of conduct drafted by the sector’s associations should apply to all kinds of insurance contracts.

II. Extension of the IBIP rules of conduct to savings- and investment-insurance contracts

The IDD sets forth several rules of conduct which only apply to IBIPs. The definition of IBIPs is narrower than the definition of savings- and

investment-insurance products, which is the category of products the Belgian Legislator created in 2014 when anticipating the IDD. A major difference between the two concepts is that the Belgian notion of savings- and investment-insurance products encompass branch-21 insurance contracts which offer a fixed return (without profit sharing) as well as insurance contracts of the third pension pillar.

In practice, however, the implementation law extends the application of the rules of conduct and information obligations applicable to IBIPs under the IDD to all savings- and investment-insurance products, which is a clear gold-plating practice. The good news for the industry is that it will mostly be a status quo to which they have been used since 2014.

III. Extension of the IBIP rules of conduct to all insurance contracts

In addition to the above, the implementation law extends some of the IBIP rules of conduct to all categories of insurance contracts (i.e. non-life included). Such is the case of the rules aiming at the prevention of conflict of interests as well as some more technical obligations (e.g. obligation to have a file for each client).

IV. The concept of independent advice

If they introduce their services as “independent advice”, insurance distributors will need to assess a sufficiently large number of insurance contracts offered on the market before making any recommendation to a client. In theory, this obligation might force insurance brokers to extend their assessment to insurance contracts offered by insurance companies with which they do not have any special collaboration. This would be an interesting change as currently, it is not uncommon to see brokers recommending only the products of short-listed insurance companies.

V. Categorisation of clients

This is arguably the second good news for the industry. The implementation law authorises insurance distributors to categorise each client as either a retail or a professional client. When dealing with professional clients, insurance distributors will be allowed not to carry out certain duties or provide certain information normally required (e.g. information on inducements, annual reports, appropriateness or suitability tests...). This possibility, which has been available to the investment sector since MiFID I, had long been requested by insurance professionals.

VI. No execution-only regime

The possibility to offer insurance services on non-complex insurance products without giving any piece of advice and, therefore, without carrying out any suitability or appropriateness test (the so-called “execution-only”) was also an important expectation of the insurance sector. However, the implementation law does not allow for this possibility. The reason invoked by the Government is that the criteria used to determine whether an insurance product is complex or not are too vague – one could have thought that adopting clear criteria was precisely its job.

VII. Insurance cross-selling

Under Belgian law, cross-selling practices including at least one insurance product were strictly prohibited by the Economic Law Code. This changes with the implementation law, which allows and regulates the cross-selling of insurance products sold together with another non-insurance product or service.

This is a paradoxical gift from the IDD, which was meant to bring new regulations on insurance cross-selling practices – which are currently allowed in many EU countries – and which will lead to a relaxation of the Belgian cross-selling regime which was already very strict.

What remains to be seen is whether the new provisions will also allow the cross-selling of two insurance products together (i.e. without any other non-insurance product or service). This scenario is not regulated by the IDD and the provisions of the implementation law allow room for interpretation. We tend to think this will be the case – that would also be a good news for the industry.

VIII. Free flow of information from insurance companies to insurance intermediaries

Insurance companies will be expected to provide insurance intermediaries with all the information they need to comply with the applicable information obligations. This ancillary obligation seems to have slipped under the radar but we think it could have a serious practical impact. Indeed, one could argue that this obligation will force insurance companies to provide key information on their products to any insurance broker willing to recommend their products, whether or not the concerned insurance companies entertain a privileged relationship with the said broker. We are looking forward to seeing how the industry will react.

IX. Entry into force

Initially foreseen to enter into force on the 1st October 2018 as requested by the IDD, the new law will finally come into force on the 10th day following its publication in the Belgian Official Gazette (not yet published).

Even though the IDD has been known to the sector for quite a while, it is doubtful such a short notice will be enough for all insurance actors to get in line with the Belgian new requirements.

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