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# #DeRisk Newsletter

DLA PIPER

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ESG

# Sustainability and greenwashing in insurance – EIOPA publishes draft Opinion

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Insurance consumers and pensions savers are increasingly interested in allocating their money to sustainability related products. So insurance and pensions providers are expanding their sustainable offerings and adapting their business models to be more sustainable.

While the growth of environmental, social, and governance (ESG) investing can contribute to the transition to a more sustainable economy, greenwashing risk exists. Greenwashing is the practice of misrepresenting sustainability-related features of investment products.

The issue has received renewed attention at European level, with EIOPA recently publishing a draft Opinion on sustainability claims and greenwashing. The Opinion is open for public consultation until 12 March 2024.[1] It aims to foster a more effective and harmonized supervision of sustainability claims across Europe and limit the risk of greenwashing in the insurance and occupational pensions sectors. EIOPA qualifies a wide range of statements, communications or actions related to sustainability as sustainability claims. These claims can be made at all stages of the life cycle of insurance and pensions, including the business model, product manufacturing, delivery and management. And they can be misleading in a number of ways, such as empty claims, vagueness or lack of clarity, inconsistency, misleading imagery or sound, irrelevance, outdated information, or falsehoods.

The draft opinion sets out four principles that should be observed when insurers and pension entities make sustainability claims. Examples of good and bad practices for each of the proposed principles are also included.

Principle 1 addresses the accuracy of sustainability claims, providing that they "should be accurate, precise, and consistent with the provider's overall profile and business model, or the profile of its products." According to this principle, providers are expected to present sustainability claims that are accurate, precise, and that reflect the sustainability features of the product in a fair manner. They should refrain from making overstatements or placing undue emphasis on particular aspects that might mislead consumers regarding the actual sustainability impact of the product. To ensure the accuracy of sustainability claims, all relevant information should be disclosed without omission.

Principle 2 provides that sustainability claims should be kept up to date, and any changes should be disclosed in a timely manner and with a clear rationale. Providers have to ensure their sustainability claims remain accurate with the product's sustainability features and consumers' sustainability preferences. Providers should review and monitor their strategies, policies, operations and products so possible changes in their sustainability profile are reflected in their sustainability claims.

Principle 3 states that sustainability claims should be substantiated with clear reasoning and facts. Sustainability claims must be adequately explained and supported by a clear rationale and verifiable, up-to-date facts. In line with Principle 2, any change to the sustainability profile of a product must be adequately substantiated.

1See EIOPA, *Consultation Paper on the Opinion on sustainability claims and greenwashing in the insurance and pensions sectors*, 17 November 2023. The public consultation was opened on 12 December 2023.

According to Principle 4, sustainability claims and their substantiation should be accessible by the targeted stakeholders. Visibility, accessibility and understandability of sustainability claims and their substantiation are considered central for stakeholders' understanding and decisions. Sustainability claims and their substantiation should be tailored to the target audience. Clear and understandable language should be used. When it's necessary to use more complex terms, such as in disclosures required by specific sustainability-related requirements, providers should accompany them with clear explanations.

Competent supervisory authorities are expected to monitor that providers adhere to the four principles set out by the draft Opinion. And where it turns out that a provider has made deceptive or misleading sustainability claims, competent authorities should undertake additional supervisory measures, including requesting appropriate remedial actions from the provider under the relevant law.

EIOPA will develop the impact assessment of the proposed Opinion based on the answers received in the context of the public consultation and will revise the Opinion accordingly. EIOPA will submit its final report to the European Commission by May 2024.

The EU sustainable finance regulatory framework on sustainability claims is still fragmentated and, as EIOPA notes, there are no specific requirements for the disclosure of sustainability features of non-life insurance products, although possible misleading claims may be addressed on the basis of the general fairness principle, including the general principle of being fair, clear and not misleading under the EU Directive on insurance distribution (IDD).[2] The proposed principles may prove useful in providing guidance on how to identify misleading sustainability claims and monitor greenwashing in insurance and pensions, given that greenwashing remains a key issue that can create risks for investors and market integrity.

2 See Article 17 IDD.

# Sustainability and ESG Regulatory Guide for Insurers

In under 20 years, the Sustainability and ESG (Environmental, Social, and Governance) movement has transformed from a United Nations initiative on corporate social responsibility into a worldwide phenomenon that is restructuring the business environment. For insurers, the development of ESG mirrors the transformative shift from Solvency I to Solvency II, as the industry is experiencing a similar transformation in preparation for the growing importance of Sustainability & ESG criteria, and the related increase in risk.

The heightened awareness of Sustainability and ESG, coupled with new regulations and instances of climate-related disasters, is elevating its prominence on the industry agenda. While ESG laws are not entirely novel, their obligatory impact has intensified, affecting various facets of insurance companies, including underwriters, loss managers, claims handlers, legal teams, and the compliance function.

The integration of Sustainability and ESG goes beyond mere compliance; it is pivotal for competitive positioning and economic transition. Companies must acknowledge that the current economic landscape is transient, and embedding ESG into legal and compliance frameworks is imperative for future competitiveness and sustainability.

Staying abreast of developments entails monitoring EU publications, conducting comprehensive assessments of legislations, scrutinizing insurance products for compliance, and keeping abreast of timelines for the various directives and regulations.

This Guide will help our clients understand the ever more complex jungle of sustainability & ESG regulation at EU level, and how it affects their business. For more detailed guidance, our lawyers across the various jurisdictions will be happy to advise.

For more information please visit our webpage.

# Non-life insurance

## Generative AI tools

LEILA BIANCHI

Generative AI (GenAI) is a fascinating branch of AI that can produce original and creative content. It uses complex algorithms and neural networks to learn from data and generate outputs that mimic human-like creativity. The data used to train GenAI tools can be text, images, audio, video or other types of content. GenAI is a powerful technology that can revolutionize various industries and domains, such as content creation, design, art and software development. It can also improve human productivity and collaboration and has potential to bring societal benefits, economic growth and enhance innovation and global competitiveness.

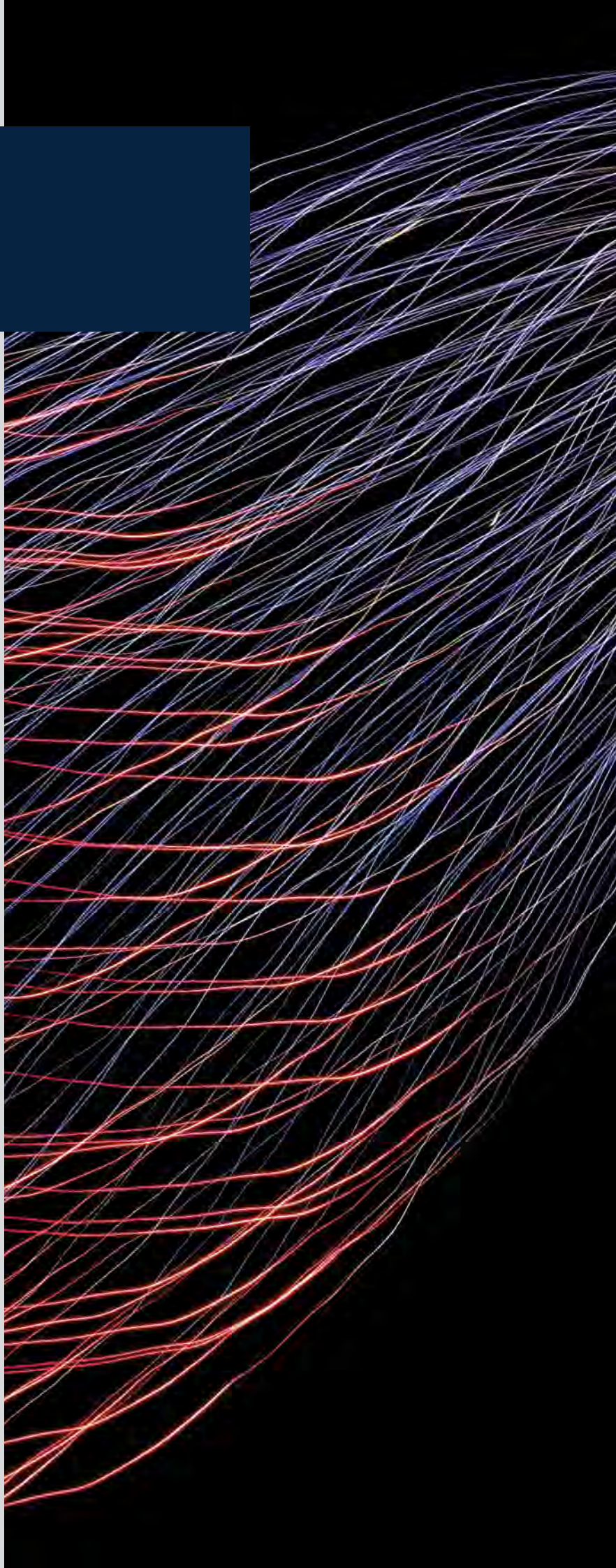
But GenAI poses quite significant challenges and risks; it's commonly acknowledged that GenAI tools blur the boundaries between originality and derivation, authorship and ownership, fair use and infringement. Further, they raise concerns such as accuracy, reliability, security and privacy.

Both GenAI providers and users are facing lawsuits, stemming from unfair training or improper use of GenAI.

### Recent claims for copyrights infringement by GenAI tools in the US

Over the last year many content creators and owners (such as writers, visual artists but also source-code owners) have launched lawsuits against GenAI software companies in the US, mainly claiming copyrights infringement.

Several US novelists (including famous author John Grisham) sued Open AI (who developed Chat GPT) back in September 2023, contesting "systematic theft on a mass scale" as ChatGPT was allegedly trained using their works without permission.



Google was sued based on alleged infringements involving computer chips. And some music publishers claimed in court that they'd been irreparably harmed by "Claude," a chatbot produced by software company Anthropic, accused of illegitimate AI training on music lyrics.

Recently, The *New York Times* also filed a lawsuit both against Microsoft and Open AI, contesting that ChatGPT "rely on large-language models ... that were built by copying and using millions of The Times's copyrighted news articles, in-depth investigations, opinion pieces, reviews, how-to guides, and more" and seeking "to hold them responsible for the billions of dollars in statutory and actual damages that they owe for the unlawful copying and use of The Times's uniquely valuable works."

Some of these US copyrights infringement claims were settled and the content creators agreed to license their intellectual property rights to the GenAI software companies for a fee.

Copyrights license agreements with the owners of the contents used to train GenAI tools will probably be the answer for software companies to mitigate the risks of copyrights infringement.

But this might not be enough to prevent GenAI software companies from being targeted with copyright infringement-related claims. A verification system proving that GenAI tools are fairly trained could also be implemented to help ensure responsible use of GenAI products. And specific initiatives to "evaluate and certify artificial intelligence products as copyright-compliant, offering a stamp of approval to AI companies that submit details of their models for independent review" are being discussed in the US, *Bloomberg* reported.

Even verification systems may have their own limitations and pose challenges though, considering that they would in turn be based on AI tools.

## GenAI tools also raise significant issues for (direct and indirect) users

GenAI tools also raise concerns for those who help spread or rely on the product of a GenAI tool.

In April 2023 the song "Heart on My Sleeve" by music artists Drake and The Weeknd became viral on Spotify and YouTube; too bad the song was neither written nor sung by them but rather generated by an unknown TikToker through a GenAI tool.

The song was removed from the streaming platforms as soon as the scam was figured out; if you look it up on YouTube you find that it is "is no longer available due to a copyright claim by Universal Music Group (UMG)," Drake's record label. According to UMG, "platforms have a fundamental legal and ethical responsibility to prevent the use of their services in ways that harm artists," which might suggest that UMG is considering taking action against those who allowed the spreading of the bogus song, such as YouTube and Spotify.

Around the same time, two lawyers used ChatGPT to defend a case in the US. Unfortunately for them, the court precedents that the AI tool had indicated turned out to be completely made up, so they presented six fictitious case citations to the judge. In AI language this is called "hallucination" and specifically refers to misleading or false information generated by AI tools.

As a result of this hallucination, the judge imposed a USD5,000 sanction on the lawyers for having acted in bad faith and made "acts of conscious avoidance and false and misleading statements to the court"; the client might also sue the lawyers for negligence, as they relied on the inaccurate results obtained from the GenAI tool, possibly without adequately informing him about its use in preparing the case.

## GenAI tools, data protection and privacy

Last but not least, GenAI tools also raise issues in the matter of data protection and privacy in several ways.

The use of GenAI tools may result in unauthorized access or disclosure of sensitive information or unauthorized data sharing; GenAI tools may share personal data with third parties without explicit consent or for purposes beyond what was initially communicated.

GenAI tools may also inadvertently perpetuate biases present in the training data, which could affect the privacy and dignity of individuals or groups. For example, a GenAI tool that generates facial images may produce images that are skewed towards certain races, genders or ages, possibly resulting in discriminatory behaviors.

## Gen AI tools' users should be responsible and cautious

Using GenAI tools may produce inaccurate and misleading content (which might have serious consequences for users) or expose sensitive or confidential data to unauthorized access or misuse (compromising the security and privacy both of users and of third parties).

Those who use or plan to use GenAI tools should be aware of these issues and adopt appropriate policies and practices, to make sure that:

- the accuracy and reliability of the content generated by GenAI tool is verified and the sources and references for the created content are provided;
- data and systems used by GenAI tools are properly secured and protected;
- ethical and responsible principles when using GenAI are followed, so the content generated by the GenAI tools is fair.

But GenAI users seem to be far from achieving a "safe" use of GenAI tools. Based on a recent survey DLA Piper conducted with its clients, 96% of the interviewed companies are rolling out AI tools in some way. However, 71% of the interviewees described themselves as mere "explorers" in the field, which might suggest they're not fully aware of the Gen AI tools-related risks and how to prevent them.

## What about insurers? Do insurance policies available on the market cover liability connected to GenAI tools and their use?

The insurance world cannot ignore the risks and challenges that the GenAI presents, considering that they are among the most significant ones that will be encountered in the near future.

Indeed, insurers of both GenAI providers and users will now be called to cover claims of the kind described so far.

As for GenAI providers, the PI policies available to them respond in the case of claims based on malfunctioning of the chatbot, eg due to algorithms' flaws or bias in the machine learning models.

Coverage for copyrights infringement claims like The *New Your Times'* one could possibly be questioned by the insurers of GenAI tools providers based on exclusions provided in relation to this specific kind of claims. Or they could argue that the training of GenAI tools without copyright permission can only be intentional and therefore not covered.

As for GenAI users, depending on the type and extent of the loss, different insurance policies may be triggered in connection with the liabilities deriving from the use of GenAI tools. For example, cyber insurance may cover the (mis)use of protected data, general liability insurance may cover copyright infringement claims and professional liability insurance may cover errors or omissions deriving from (unreliable or inaccurate) GenAI products.

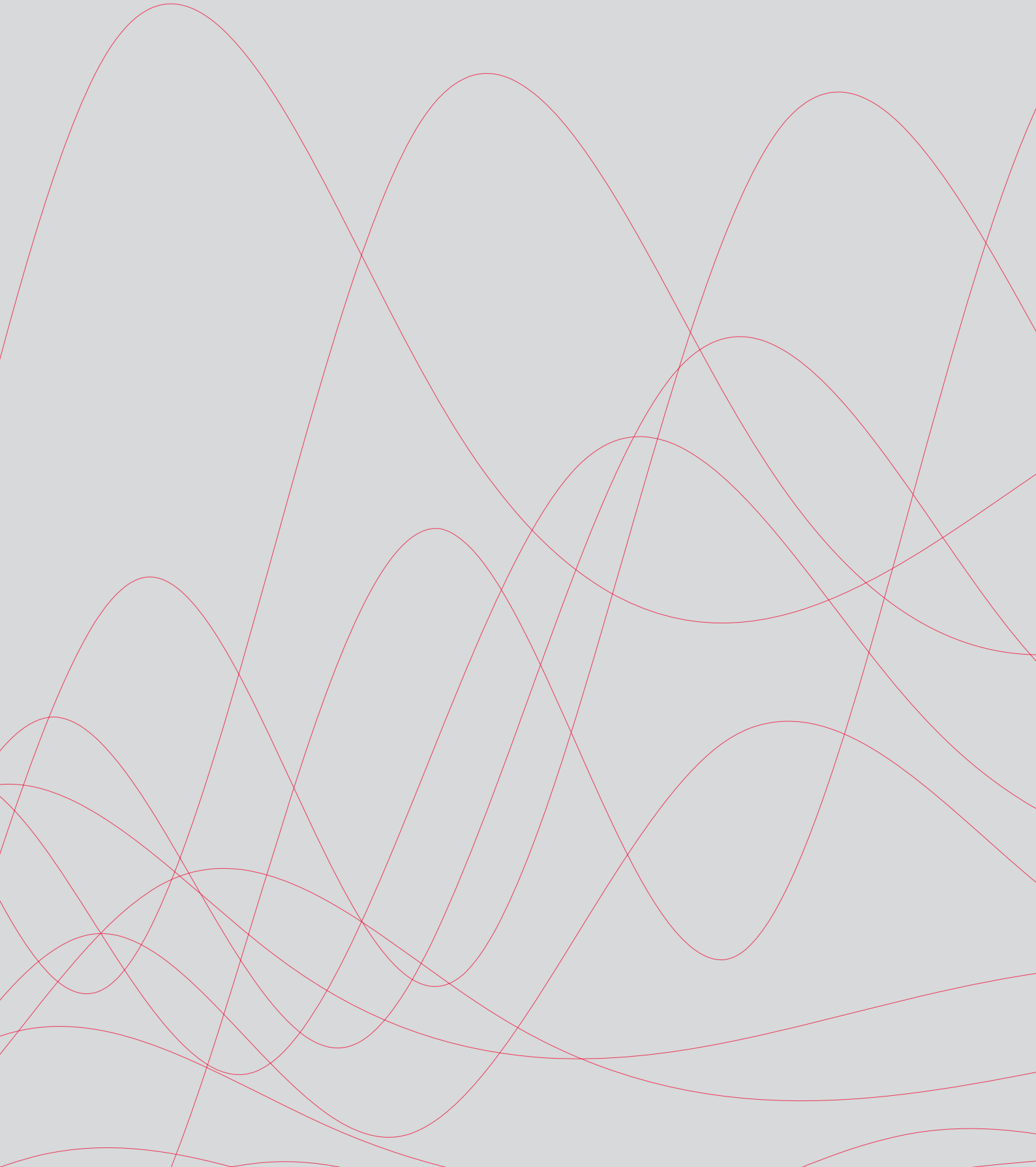
Property policies might also be triggered, eg in case company machines are somehow damaged due to incorrect instructions given to them by GenAI tools, or in relation to business interruption coverage. However, there may also be gaps or uncertainties in the coverage, as some insurance policies were not designed for the specific risks relating to GenAI and might have wording which does not "fit" the new risks.

The policies existing on the market should probably be reviewed to better define the scope and limitations of the coverage they provide and avoid ambiguities.

Interestingly, some insurers are already offering a "new" insurance product which is specifically engaged when AI solutions do not perform as promised, indemnifying the client of the GenAI tools' provider. Depending on the extent of coverage (which may potentially include third-party claims against the client due to the improper performance of the AI solution), this "new" AI policy could possibly overlap with the PI policy of the client of the GenAI tools' provider itself.

The insurance market will be faced with major challenges, both in terms of creation of insurance products that meet these upcoming needs and of coordination between new and existing ones.

Given the various and significant risks that may arise from the use of GenAI tools, PI insurers should consider investigating their use by the insured specifically to accurately assess the risk they're taking on.



# Regulatory
# News in the Motor Insurance sector: Legislative Decree No. 184/2023

DAVID MARIA MARINO, VALENTINA GRANDE, FRANCESCA ONORATO

Legislative Decree No. 184/2023 (Decree), published on 23 December 2023, has ushered in a new era for motor insurance regulations in Italy. The Decree amends the Motor Code (Legislative Decree No. 285 of 30 April 1992) and the Insurance Code (Legislative Decree No. 209 of 7 September 2005), aligning them with EU standards through the transposition of Directive (EU) 2021/2118 of the European Parliament and the Council.

Among the notable amendments, the decree introduces the following changes.

## New definition of "Vehicles"

The Decree significantly intervened in the domain of insurance obligations by establishing that the mere use of a vehicle, irrespective of its location or motion status, imposes insurance obligations. This groundbreaking change extends the insurance obligation to vehicles stationary in private areas.

The new definition of vehicles includes all vehicles propelled solely by mechanical power, circulating on the ground (excluding rails), with a maximum design speed exceeding 25 km/h or a maximum net weight exceeding 25 kg and a maximum design speed exceeding 14 km/h.

Light electric vehicles, including e-bikes and e-scooters, are now expressly covered under mandatory third-party motor liability insurance.

Specific identification criteria for these vehicles will be determined through a decree to be jointly issued by the Minister of Enterprise and Industry, the Minister of Infrastructure and Transport, and the Minister of the Interior by 22 March 2024.

## Coverage for multiple vehicles

The Decree also provides that, to fulfil the coverage obligation, public or private entities can offer policies covering the risk for multiple vehicles in accordance with established contractual practices. This provision is applicable when these vehicles are used for the entities' activities and analytically identified in the policy.

This approach streamlines insurance practices, providing flexibility for entities with diverse vehicle usage.

## Recovery action among guarantee funds

With the new Decree, if the damaging vehicle is insured with a company from other EU states, the Italian Guarantee Fund (*Fondo di Garanzia per le Vittime della* Strada) acts as the front office. But the ultimate responsibility for the claim remains with the counterpart Fund of the EU Member State where the insurer of the damaging vehicle is based.

The Directive also aims to ensure perfect reciprocity in claims between European Guarantee Funds in the event of bankruptcy or liquidation of a company operating under freedom of establishment or free provision of services regimes.

## Increased insurance limits

The limits of coverage provided for in Article 128 of the Insurance Code have also been increased, and are now:

- in cases of personal injury, EUR6,450,000, regardless of the number of victims; and
- for property damage, EUR1.3 million per claim, again independent of the number of victims.

These adjustments aim to ensure adequate coverage and compensation in the event of accidents.

The Decree is a landmark reform, modernizing Italy's motor insurance regulations and adapting them to evolving European standards. The expanded definition of "vehicles" to include light electric vehicles, streamlined collective coverage practices, revised contribution mechanisms, and increased insurance limits collectively enhance the regulatory framework, ensuring a more robust and responsive system for all stakeholders involved.

The Legislative Decree is available here.

# Second EIOPA report on the implementation of IDD (Directive 2016/97)

DAVID MARIA MARINO – VALENTINA GRANDE

On January 15, 2024, EIOPA released its second report[3] on the implementation of the IDD, two years after the previous one. We summarize the main results of the analysis below.

## Changes in the European market

### INFLATION AND RISING INTEREST RATES

Inflation and rising interest rates in the past two years have affected the insurance market.

On the one hand, companies are facing rising claims costs, caused by the general increase in service prices. On the other, consumers are facing a reduction in purchasing power, a situation made more critical by rising premiums and deductibles, which, more and more frequently, is leading them to forego buying insurance policies.

In 2021, EIOPA published a Supervisory Statement emphasizing the importance for manufacturers to regularly assess the "value for money" of products.[4] This monitoring is crucial to identify certain events, including inflation, that could have a significant impact on product characteristics.

Attention to these topics varies among Member States. As far as Italy is concerned, IVASS recently published a consultation paper on supervisory expectations in the Product Oversight and Governance (POG) field focusing on the necessary assessment of the value for money of products.[5]

### BANCASSURANCE AND DISTANCE SELLING

Bancassurance has played a significant role in the distribution of life products, while the non-life sector is still mainly dominated by agents. As for distance selling, the number of products purchased online is rather modest in all Member States while registering a steady growth from year to year, in line with the ongoing digitalization process.

## Impact of the new regulatory framework

### PROFESSIONAL SKILLS OF DISTRIBUTORS

Over the past two years, an improvement in the level of professionalism of intermediaries has been observed in some Member States. This improvement can be attributed to several factors, including frequent mystery shopping inspections, internal audits conducted by the insurance companies and advanced training programs.

### DIGITALIZATION AND NEW DISTRIBUTION MODELS

Digitalization is still a source of some critical issues:

- Pre-contractual disclosure regulations still show limitations in adapting to the digital reality (policy documents are often not provided well in advance of the conclusion of the contract, increasing the risk that the customer does not have sufficient time to make an informed decision).
- Uncertainties about the definition of "insurance distribution" persist, leading to confusion among market participants. It's not always easy to distinguish between mere introducers and distributors (for example, EIOPA refers to the presence of banners on digital platforms that redirect users to intermediaries' websites. In this situation, it's not always clear to either the consumer or the platform provider who is performing insurance distribution).
- There's a lack of guidelines on collecting information regarding the needs of policyholders/insureds through AI and machine learning.
- Unfair pricing practices, such as "price walking," which, through the use of AI systems or sophisticated profiling tools, result in constant premium increases unrelated both to the insured's risk profile and the cost of services offered.

3 Available at: https://www.eiopa.europa.eu/publications/second-idd-application-report-20222023_en.

4 See https://www.eiopa.europa.eu/publications/supervisory-statement-assessment-value-money-unit-linked-insurance-products-under-product-oversight_en.

5 Available at the following link: https://www.ivass.it/normativa/nazionale/secondaria-ivass/pubb-cons/2023/08-pc/index.html.

### BUSINESS PRACTICES AND CONSULTING SALES

While in some Member States EIOPA observed an improvement in the quality of advice provided to policyholders, in some cases there's still concern from consumer associations about unfair business practices. In some Member States, for example, there is no requirement to record telephone conversations when products are sold at a distance, making it more complex for the insured to defend themselves in the event of a dispute.

### SUSTAINABILITY AND INSURANCE DISTRIBUTION

Initial data provided by regulators on implementing new sustainability regulations highlight the challenges consumers are facing in understanding concepts that are far from simple.

### GROUP POLICIES

The recent European Court of Justice ruling on group policies[6] (by which the criteria for understanding when the policyholder also acts as an insurance intermediary were identified) has had a major impact in several Member States where national authorities have already taken specific positions or are still considering whether and how to intervene.

## Supervisory activities of national authorities

The resources of national authorities dedicated to the supervision activities has increased slightly in the past two years.

Some authorities reported that they do not yet have sufficient tools to carry out effective supervision while others (including IVASS) appear to lack "intermediate" intervention tools such as suspension from operation (exercisable by IVASS only in a few specific cases).

## Product Oversight and Governance (POG)

In July 2023, EIOPA published a "Peer review report" with the aim of examining how national supervisors are overseeing the implementation of POG requirements by companies and intermediaries.

The greatest critical issues continue to be related to the "value for money" and its assessment, both during the insurance product design and during its monitoring.

## Conflicts of interest and commissions

Over the past two years, many Member States have taken measures to limit excessive commissions or increase transparency in this area.

For example, some Member States have introduced a cap on commissions related to distributing certain types of policies, mostly related to credit or financing protection.

6 Cf: https://curia.europa.eu/juris/document/document.jsf?text=&docid=266563&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=2234497.

# The new procedure for collecting information on payment to beneficiaries of dormant life insurance policies: IVASS clarifications

**CHIARA CIMARELLI, INA DOCI, FRANCESCA SANTOVITO**

On January 26, IVASS (the Italian Insurance Supervisory Authority) published a letter to the market on the new procedure for collecting information on the payment of dormant life insurance policies to beneficiaries (the Letter). It also published the results of a survey conducted on dormant life insurance policies (the Survey).

Dormant life insurance policies are life insurance policies whose benefits, although accrued, have not been paid to the beneficiaries; for example, when beneficiaries are unaware of death policies.

Article 2952, paragraph 2, of the Civil Code provides that rights arising from life insurance policies are time-barred by ten years from the day on which the event on which the right is based occurred (eg death of the insured). After this period has expired, the sums, if not collected by the beneficiaries, are transferred to the Dormant Relations Fund (*Fondo Rapporti Dormienti*) established at CONSAP.

IVASS has been increasing market awareness for years. This has been matched by intensive solicitation efforts addressed to insurance companies, to avoid the statute of limitations on claims deriving from these policies.

In 2017, the Authority started cross-referencing the tax codes of insured persons – provided by insurers – with the Tax Registry (which holds data on whether citizens are alive). The process, undertaken every year, is for the benefit of insurers, completed in collaboration with the Italian Revenue Agency. The aim is to report cases of deaths not known to insurance companies, so they can contact the beneficiaries and pay the death benefit before the statute of limitations expires.

This time-consuming activity was accompanied by an equally extensive outreach and monitoring of insurance companies. This was not only to collect tax codes held by insurance companies, but also to verify, on the part of IVASS, the existence of adequate internal procedures to guard against the phenomenon of dormant policies of operators.

In the letter to the market of November 22, 2023, IVASS announced that, as a result of the completion of the National Register of Resident Population (ANPR), as of 2024 the Authority will no longer cross-reference tax codes with the data held by the Tax Registry. Now, to verify the death of insured persons and settle the benefits due, insurance companies will have to consult the newly established registry at least once a year. Access will be free of charge.

In the Letter, the Authority clarified that, to gain access to the ANPR, companies will have to join the PDND platform,[7] through a certified electronic mail address (PEC). Insurance companies operating in Italy will also have to join the PDND platform under the freedom to provide services regime.

The Supervisory Authority added that a new procedure will be established at the Authority, based on the platform Infostat. This new procedure is aimed at collecting data on payments that will be made on dormant policies. Information about how the Authority will collect the data will be published on the IVASS website by this month.

7 Accessible through www.interop.pagopa.it, following the instructions in the relevant operational manual.

For enterprises that have already reported through the Infostat platform, no further accreditation will be necessary. But for those that have never reported through the platform, it will be necessary to register as soon as possible.[8]

We have to wonder whether the complexity of procedures and fulfillments, have, so far, produced the hoped-for results.

Data provided by the Survey shows that, as of June 2023, dormant policies worth more than EUR5 billion had been ascertained, of which EUR4 billion appear to have been paid to beneficiaries. Around 18% of policies are still to be verified.

In the Survey, IVASS says it expects companies to consult ANPR to:

- improve information flow exchanges with intermediaries (especially with banking intermediaries, for policies combined with financing);
- simplify the settlement process by avoiding requests for documentation, particularly medical, that is difficult for beneficiaries to find;[9] and
- take steps to ensure that beneficiary designation by policyholders, when taking out the policy, is done by name.

For consumers, the Institute instead suggests they take action on their own to verify whether a deceased family member may have taken out a life insurance policy. They can use the coverage search service offered by ANIA[10] or ask the insurance intermediary, bank or company that the family member used. In this regard, IVASS recalls that, in a recent interpretative measure,[11] the Data Protection Authority held that heirs and those called to the estate can request access to the personal data of beneficiaries of insurance policies taken out during the lifetime of a deceased person.

The Survey closes by reporting that IVASS has already initiated inspection processes aimed at verifying the proper liquidation management of dormant policies by companies.

8 Registration should be done by logging in at https://infostat-ivass.bancaditalia.it; this should be followed by sending the accreditation form on the website https://www.ivass.it/operatori/imprese/raccolta-dati/infostat/Modulo_accreditamento_altre_Survey.dcx?force_download=1 filled out, which should be sent to the following email address: studi.gestionedati@pec.ivass.it, stating in the subject line: "Infostat-Request for POLDO survey qualification."

9 See, in this sense, the guidelines of the Supreme Court, according to which "The requirement to produce a medical report on the death of the insured places a significant economic burden on the beneficiary and, even more seriously, transfers to him the burden of documenting the causes of the accident, a burden that by law he does not have [...]."

10 By consulting https://www.ania.it/it/ricerca-polizze-vita.

11 Published in Official Gazette General Series No. 281, December 1, 2023.

# Legal and regulatory updates

CHIARA CIMARELLI, INA DOCI,
FRANCESCA SANTOVITO

## IVASS simplifies pre-contractual requirements – 24 November 2023

On 23 November 2023, the Italian Insurance Regulatory Authority (IVASS) issued Consultation Document no. 9/2023 (the Consultation Document), officially opening a public consultation on proposals to modify:

- the precontractual documentation and information documents pursuant to IVASS Regulation no. 40/2018 (Regulation 40, in matter of distribution); and
- Regulation no. 41/2018 (Regulation 41, in matter of information, disclosure and design of insurance products), as well as on sustainable finance.

IVASS Consultation Document provides for the following:

### A. IN REGARD TO THE DISTRIBUTOR'S INFORMATION DOCUMENTATION AS PER REGULATION 40 (CURRENTLY CONTAINED IN ANNEXES 3, 4, 4 BIS AND 4 TER TO THE REGULATION):

- a Single Precontractual Model (*Modello unico precontrattuale* or MUP), different for each IBIPs and non-IBIPs products, will replace Annexes 3, 4 and 4-bis to Regulation 40;
- elimination of Attachment 4-ter to Regulation 40, which contains information on the conduct obligations that distributors must follow;
- abrogation of the obligations, pursuant to art. 56, para. 2 of Regulation 40, to publish on the website or on the distributor's premises the information in Attachments 3 and 4-ter;
- insertion of a clause linked to the information on the product, which will allow distributors to give the information on complaints in a specific location;
- allow distributors, who have no contractual obligation towards insurance companies and do not provide advice based on a personal and partial analysis (as per art. 120-ter, para. 1, lett. e) of the Code of Private Insurances, (the Code)), to publish the information/ precontractual documentation on their website or on their premises, without prejudice to the request of the client to receive the documentation in a hard copy.

### B. IN REGARD TO THE SIMPLIFICATION OF THE INFORMATION/DOCUMENTATION ON THE PRODUCT AS PER REGULATION 40:

**1. Simplify the structure of the additional informative pre-contractual documents (DIPs), by eliminating:**

- redundant elements already contained in the KID and in the DIP/non-life DIP; or
- elements which have an impact on the implementation phase of the contract (eg how to report a claim) and that can be easily found in the General Terms and Conditions of the contract.

As a result of the evaluations made by the Italian insurance regulator, the new proposed schemes on the information to be provided to the potential customers focus on the following aspects:

- costs
- guarantees/insurance coverages offered, exclusions and limitations
- tax regime
- mandatory information pursuant to article 185 of the Code (solvency, complaints, applicable law)

Only in cases where it is necessary for the policyholders to understand some of the characteristics of the product, a reference to the conditions in the additional DIP of the policy can be added. But the reference cannot be generic and must identify the exact point (depending on the case, the page, section, paragraph, line) where the characteristic in question can be found.

**2. Introduce a maximum limit of pages for the additional DIPs.**

**3. Cancel the obligation to insert sections in the DIP where there is no information to provide and the section is blank.**

**4. For IBIPs, standardize the terms of the additional DIPs with those used in the KIDs to facilitate the comparability with other products perceived as similar and make immediately evident to the clients the insurance features that characterize the products.**

### C. WITH RESPECT TO SUSTAINABLE FINANCE, THE CONSULTATION DOCUMENT AIMS AT COMPLETING AT A NATIONAL LEVEL THE OBLIGATIONS INTRODUCED BY EUROPEAN LEGISLATION, ALREADY STARTED BY THE AUTHORITY WITH THE PUBLICATION OF IVASS ORDER NO. 131/2023.

Any observations, comments and proposals had to be sent to IVASS, by 22 January 2024, to the following email address: *simplified@ivass.it*, using the table in Word format attached to the Consultation Document.

On the same date IVASS issued Order no. 139/2023 (the Order) indicating that the rate for management fees to be deducted from the premium collected, for determining the supervisory fee for insurance and reinsurance business for the fiscal year 2024, is 4.37% (see article 335, paragraph 2, legislative decree no. 7/2005).

## NEW RUI Portal – 5 December 2023

On 4 December IVASS, the Italian insurance regulatory authority, published an alert on its website anticipating the launch of a new portal replacing the RUI (the electronic register of the insurance/ reinsurance intermediaries).

The new portal will allow intermediaries to directly update and insert information in the new register.

In this respect, IVASS requests:

- the legal representatives of the companies registered as intermediaries in sections A, B and D of the RUI;
- the legal representatives of insurance companies; and
- the legal representatives of EU branches of the companies acting as intermediaries and registered in the list annexed to the RUI (*Elenco Annesso*);

to access the portal (Login (ivass.it) through **SPID** (*Sistema Pubblico di Identità Digitale* – Public System of Digital Identity), **CIE** (*carta d'identità elettronica* – electronic ID) or **CNS** (*Carta nazionale dei servizi* – National Card of Services).

Before accessing the portal, intermediaries established in the form of companies must equip themselves with a company search or similar documentation from which the powers of the legal representative can be inferred.

Once the first access is made, it will be possible to delegate access to third parties to the portal and the "new" RUI, as soon as the latter is active.

Individuals acting as intermediaries will not have to request to have access to the portal indicated above, as for them the access to the new RUI will be directly possible.

## Towards a consumer centric insurance – 20 December 2023

On 15 December 2023, the Italian Insurance Regulatory Authority (IVASS) held an international conference titled "Toward a consumer centric insurance."

During the conference, European supervisory authorities, insurance market players, experts and consumer associations discussed European legislative initiatives on product distribution and supervisory tools for consumer protection.

In particular, the conference was divided into three panels discussing:

- insurance and the EU Commission proposals on Retail Investor Protection rules;
- consumers and sustainability in insurance: accessibility, affordability, sustainability preferences, greenwashing risks;
- IBIPs value for money.

Below we recap the topics discussed in each of the panels.

### 1. INSURANCE AND THE EU COMMISSION PROPOSALS ON RETAIL INVESTOR PROTECTION RULES

The European Commission recently adopted a retail investment strategy placing the consumers' interest at the centre of retail investing. Based on this approach, a proposal for an omnibus directive on retail investor protection was published (the RIS Directive) to amend and revise several provisions of the IDD Directive, the Solvency II Directive, and the PRIIPs Regulation.

Mr. Didier Millerot (Head of the Insurance Unit – DG FISMA European Commission) underlined that there are several issues to be addressed with regard to retail investment in Europe. In particular, retail investor participation in the EU is lower if compared with international standards, mainly because consumers have poor understanding of investments and the market, lack of trust in their advisors and they consider products to be too expensive.

According to Mr. Millerot, the aim of the RIS Directive should be to empower retail investors to make investment decisions that are aligned with their needs and preferences, ensure that they're treated fairly and they are duly protected. This could be achieved by focusing on four key objectives:

- **Disclosure and marketing**: improve transparency on costs, modernizing disclosure rules to make them suitable for digitalization and strengthen provisions on marketing activities.
- **Financial literacy**: the EU is developing a program to improve financial competence framework for both adults and young people.
- **Inducements**: a new set of restrictions and safeguards on inducements and advice is needed (ie partial ban for execution only sales of products without advice and when advice is provided, tougher rules to ensure that firms act in the clients' best interest – known as the "new best interest test" which will replace the existing quality enhancement and no detriment test).
- **Value for money**: a new set of rules for manufacturers and distributors should be adopted to assess costs, performance and compare their products against a relevant benchmark (developed by ESMA and EIOPA) of similar products. Moreover, it is crucial to ensure that products with no value for money are not put nor sold on the market.

Some of the participants welcomed these new proposals, while others were more doubtful since they did not perceived such changes as an effective solution to the problems affecting retail investors and the market.

## 2. CONSUMERS AND SUSTAINABILITY IN INSURANCE: ACCESSIBILITY, AFFORDABILITY, SUSTAINABILITY PREFERENCES, GREENWASHING RISKS

This panel underlined that consumers do not easily understand sustainability features of IBIPs and, consequently, face the risk of greenwashing. The EU intends to strengthen disclosure to help consumers to assess sustainability of insurance products as a way to make accessibility and affordability of insurance protection easier and, at the same time, combat greenwashing.

Mr. Patrick Montagner (First Deputy Secretary General – ACPR) underlined that France has recently issued a recommendation in which it provided that manufacturers have to prove that a product is in fact green through describing the assets' features. According to Mr. Montagner, this will help consumers to better understand sustainable products and solve the issues raised by other panellists, namely that people are interested in the products but they don't invest in them because they don't trust nor understand them.

## 3. IBIPS VALUE FOR MONEY

Valérie Mariatte-Wood (Head of the Consumer Protection Department – EIOPA) introduced this last panel by affirming that, according to EIOPA, value for money and consumer centricity are two concepts that go hand to hand. In fact, IBIPs, if well designed, can provide a lot of benefits to consumers but, at the moment, there are products available on the market that don't offer value for money, causing a massive loss of trust in the insurance sector.

In 2021 EIOPA issued a supervisory statement clarifying that while supervisory activity should not interfere with pricing, manufacturers should be able to present a structured pricing process (ie costs should be quantified, clarified and justified), along with a methodology on how to assess value for money in unit-linked products and hybrid ones.

She also said that EIOPA is developing benchmarks to help supervisors to take a more risk-based approach to supervision by identifying outliers (ie those products that are outside the perimeter of the benchmarks and which may require a higher level of scrutiny) and help insurance product manufacturers to better determine whether or not their products offer value for money.

A three-step approach has been proposed:

- categorize unit linked and hybrid products with similar features into groups based on policyholders needs (cluster of products);
- suggest new indicators around which value for money benchmarks should be developed. Based on the data collected, EIOPA will indicate which indicators work better for which products;
- effective and up-to-date data collection and benchmark calibration will be developed.

Finally, European Supervisors underlined and showed how they are carrying out value for money assessments in their countries and, in particular, IVASS recalled Consultation Document no. 8/2023 in which it discussed the topic thoroughly.

## IVASS on Suretyship Policies – 8 January 2024

On 5 January 2024, the Italian Insurance Regulatory Authority (IVASS) published a Letter to the Market (Letter) requiring domestic, EU companies operating in Italy under the right of establishment or the freedom to provide services regime and extra EU branches of insurance undertakings, all transacting class 15 of non-life insurance business, to communicate the electronic verification methods for suretyship policies under the Public Procurement Code (Code).

According to Article 106, paragraph 3, of the Code, the suretyship guarantee, which is both issued and signed digitally, must be electronically verifiable at the issuer's premises or managed using platforms that comply with the characteristics established by AGID (ie Agency for Digital Italy). Pending the adoption of platforms that comply with the criteria, ANAC (ie National Authority Against Corruption), in Resolution No. 606/2023, introduced a transitional solution operating until 30 June 2024 under which insurance companies may alternatively:

- provide a special section on its website dedicated to verifying the authenticity of the policy in real time, ensuring compliance with the regulations in force, including those on privacy;
- provide a certified electronic mail address (PEC address), through which the contracting authority receiving the policy can request the issuing company to confirm its authenticity.

The ANAC Resolution also provides that the supervisory authorities can make available to agencies awarding contracts and licensing bodies a list of the website addresses or the PEC addresses of insurance companies and financial intermediaries authorized to issue surety guarantees.

IVASS invites insurance undertakings to notify their chosen verification method and any subsequent changes by means of a communication to vigilanzacondottamercato@pec.ivass.it.

## Italian Budget Law: Provisions affecting the Insurance Sector – 9 January 2024

On 30 December 2023, the budget law no. 213/2023 was published in the Italian Official Gazette and entered into force on 1 January 2024.

The budget law includes several provisions applicable to the insurance sector, the most important of which provide for the following:

### 1. MANDATORY CATASTROPHIC INSURANCE FOR UNDERTAKINGS WITH LEGAL SEAT/PERMANENT ESTABLISHMENT IN ITALY

By 31 December 2024, all the undertakings with legal seat in Italy and/or foreign undertakings with a permanent establishment in Italy have to execute an insurance policy covering against catastrophic risks, such as earthquakes, floods, landslides, inundations and overflows.

The non-execution of the insurance policy could have a negative impact on the company as far as the distribution of contributions, grants and funds by the state is concerned.

Insurance companies can underwrite the risks entirely or through co-insurance or through a consortium. In this latter case, the consortium must be registered and approved by the Italian Insurance Regulatory Authority (IVASS).

The insurance policy must provide for an overdraft not exceeding 15% of damage suffered and for the application of premiums proportional to the risk.

If the insurance company refuses to cover the indicated risk, they could be sanctioned with a pecuniary fine ranging between EUR100,000 and EUR500,000.

SACE (the Italian export credit agency) is authorized to provide insurers with reinsurance up to 50% of the indemnifications paid by the insurers. It cannot exceed EUR5,000 million for 2024. And for each of the years 2025 and 2026 it can't exceed the greater amount between EUR5,000 million and the free resources as of 31 December of the preceding year that have not been used to pay compensation in the reference year and available on the accounting of the section of the special fund established as per art. 1, para. 14 of law decree no. 2020, converted into law by law no. 40/2020.

### 2. ESTABLISHING A GUARANTEE FUND FOR THE LIFE INSURANCE SECTOR

All Italian insurance companies authorized to transact life insurance business and all intermediaries distributing life insurance policies whose premium collection in the life business is equal to or higher than EUR50 million must adhere to the guarantee fund (the **Fund**).

Branches of extra-EU insurance companies transacting life business must do the same, unless they already adhere to a similar foreign guarantee fund.

Branches of EU life insurance companies and/or companies operating on a freedom to provide service can adhere to the Fund on a voluntary basis.

The Fund is provided with a financial endowment made of the contributions paid by the insurance undertakings and intermediaries indicated above.

For the first year, insurance companies are due to pay the fund contributions equal to 0.4 per thousand of the technical reserves set aside for the life business. For banks, contributions are equal to 0.1 per thousand of technical reserves mediated. For the other intermediaries (ie agents, brokers and direct canvassers) it is 0.1 per thousand of the premium collection achieved the previous year.

The Fund is allowed to ask for an integration of its financial endowment to the insurance companies and the insurance intermediaries, where it has to pay and the financial endowment possessed is not sufficient.

The Fund will pay:

- in case of compulsory liquidation procedure of any of the insurance companies members of the Fund;
- if so provided by its bylaws, it can step in in case of assignment of assets and liabilities;
- if so provided by its bylaws, it can intervene to prevent or overcome a situation of crisis that could lead to a compulsory liquidation procedure.

The Fund can pay up to a maximum of EUR100,000 to each subject requesting an indemnification to it.

IVASS will approve the Fund's bylaws and have supervisory powers on the Fund.

The non-adhesion to the Fund is sanctioned through the revocation of the authorization of transacting life insurance business or through the revocation of the distribution license for the intermediaries.

## EIOPA fourth annual report on administrative sanctions and other measures under the Insurance Distribution Directive (IDD) (2022) – 24 January 2024

On 17 January 2024, the European Insurance and Occupational Pensions Authority (EIOPA) published its fourth annual report on administrative sanctions and other measures under the Insurance Distribution Directive no. 2016/97 (IDD).

This report is based on the information provided, on an annual basis, by National Competent Authorities (NCAs) to EIOPA regarding administrative sanctions and other measures that have been imposed on insurance undertakings, as regulated in Article 36(2) of the IDD.

On the basis of the analysis of the information provided by the 21 Member States' NCAs, conducted through the grouping of sanctions according to the type of breach committed (ie sanctions related to breaches of the professional and organizational requirements; sanctions relating to breaches of other more basic or formal requirements, including registration; sanctions relating to breaches of the substantive information and conduct of business rules) EIOPA has identified the following main issues:

- In total, the NCAs imposed 2,762 sanctions in 2022.
- There was a significant increase in the number of penalties imposed compared to 2021, probably due to the increased implementation of the IDD in various Member States.
- EIOPA considers that the overview provided by the sanctions applied in 2022 no longer represents a mere transitional phase regarding the implementation of the IDD but rather offers a glimpse into the concrete implications of its application across Europe.
- There are many differences in the types of sanctions adopted by the different Member States, ie as regards Italy, the sanctions most applied by the national authority in 2022 were "withdrawal of registration" and "other administrative sanctions or measures," a circumstance that depends on the different regulatory frameworks of the Member States, rather than on an incorrect implementation of the IDD.

Finally, EIOPA emphasises that the application of sanctions is only one of the tools that competent authorities can use to carry out supervision activities; so the effectiveness of IDD cannot be based solely on this report.

# Case law
# Supreme Court makes latest decision on 'claims made' clauses

KARIN TAYEL, ALESSANDRA PLOCCO

By decision no. 3123 of 2 February 2024, the Supreme Court ruled once again on "claims made" clauses.

The validity of claims made clauses has been the topic of an intense and longstanding case law and scholars' debate in Italy. According to case law of 2005, these clauses should have been considered unfair and therefore void unless approved pursuant to Article 1341 of the Italian Civil Code.

Since 2016, there has been a *revirement*. The Court of Cassation, first with judgment no. 9140/2016 and then with judgment no. 22437/2018, recognized the legitimacy of claims made clauses upon certain conditions, stating that it is a covenant delimiting the object of the contract and not the liability of the insurer.

However, even after the *revirement*, there have been many conflicting precedents of Italian courts about claims made clauses.

## The case at issue

The Supreme Court's decision of 2 February 2024 regards a medical malpractice case. The heirs of a patient filed a lawsuit for compensation of non-pecuniary damages due to the alleged negligent conduct of the defendants, including a local hospital, which in turn added to the action its insurer.

The insurer denied coverage since the claim fell outside the policy period. In fact, the applicable policy provided coverage for claims made during the policy period 31 December 2001 – 31 December 2002 and in any case within a year from its expiry date, for wrongful actions committed during the same period.

The patient died during the insurance period, but the first claim was made against the hospital on 19 April 2004.

The first instance Court established the liability of the hospital and ordered to pay non-pecuniary damages to the heirs. The Court also upheld the indemnity claim brought by the hospital, declaring the claims made clause provided by the aforementioned policy null and void.

The Court of Appeal granted the appeal of the insurance company and declared the claims made clause lawful.

The second instance decision was appealed by the hospital before the Court of Cassation.

## The judgment of the Supreme Court

The hospital sustained that the claims made clause was null and void since it was unfair and provided a forfeiture to the exercise of a right by the insured party.

By the judgment under examination, the Supreme Court has adhered to the recent case law[12] according to which, the claims made clause does not breach Article 2965 of the Civil Code. According to the Court the claim of the injured party can be configured as a future, unforeseen and unforeseeable event that inevitably contributes to the identification of the insured risk, therefore claims made coverage "is compliant with the model of insurance of civil liability referred to in paragraph 1 of Article 1917 of the Civil Code".

So, the claims made clause cannot be void merely because it makes the forfeiture of the right depend on the choice of a third party. The third party's claim – as a future and uncertain event – mirrors the typical structure of the insurance contract, in which the effectiveness of coverage must depend on a fact and not on the insured.

In light of the above, the Supreme Court dismissed the appeal brought by the hospital.

12 See judgment no. 12908/2022.

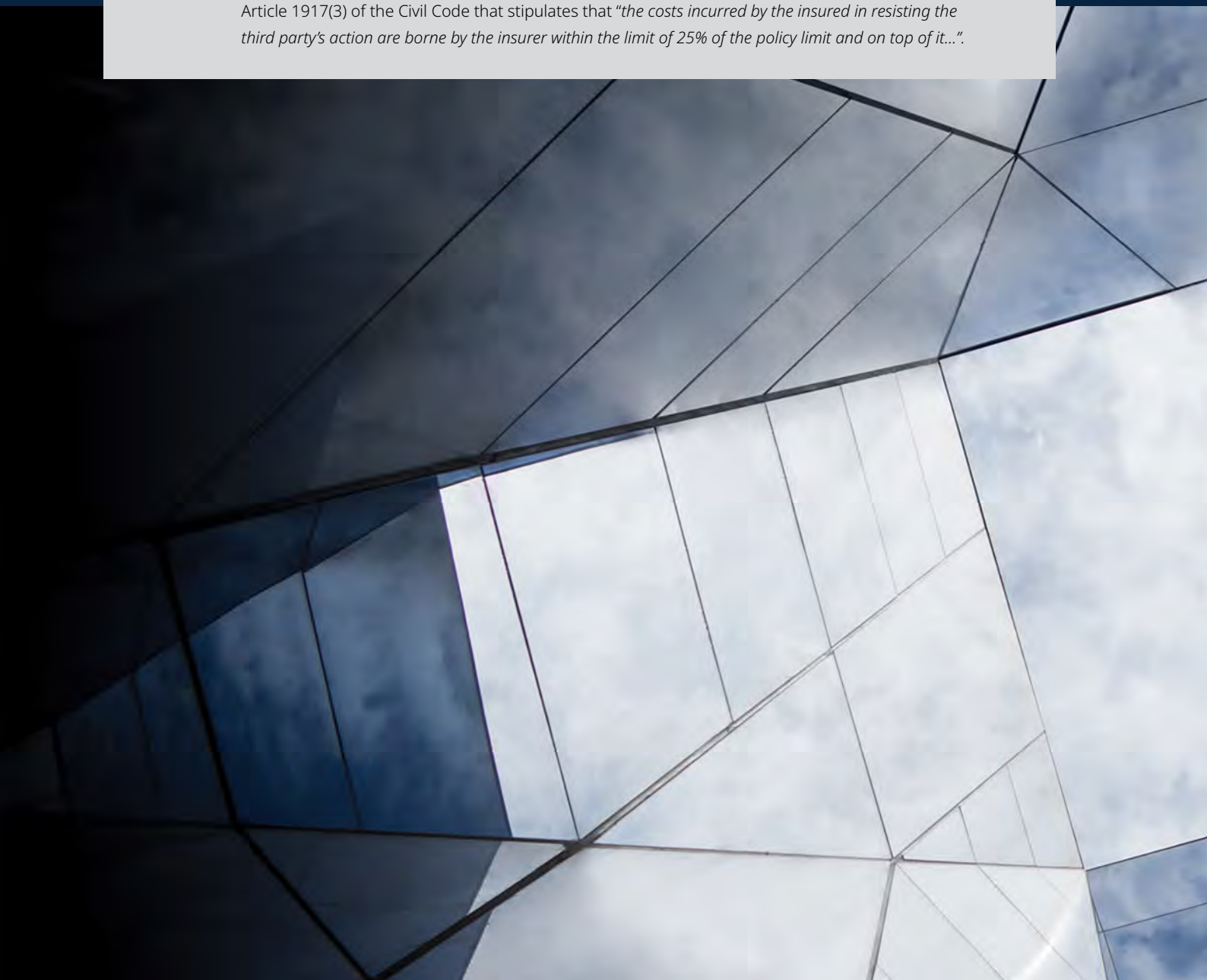
# Defence costs in third-party claims – Supreme Court confirms that the insured must file a specific claim against the insurer to be indemnified

KARIN TAYEL

## Costs – What are the insurer's obligations?

When a third damaged party brings an action against an insured and wins the case, two category of defence costs should be considered:

- Those due by the insured to the third damaged party because the insured has lost the case (the losing costs). Such costs: (a) are ancillary to the insured's obligation to pay damages and are entirely borne by the insurer; (b) form part of the policy limit.
- Those incurred by the insured in resisting the third party's claim. Such costs are governed by Article 1917(3) of the Civil Code that stipulates that *"the costs incurred by the insured in resisting the third party's action are borne by the insurer within the limit of 25% of the policy limit and on top of it…".*



## The case recently examined by the Supreme Court

In a first instance action, an insured had made a generic request that his insurer was ordered to pay costs and expenses relating to the litigation. Eventually, in the second instance proceeding the Court of Appeal ruled that such a request was so generic that could not be interpreted as including the costs under (ii) above.

By order no. 4275 of 16 February 2024, the Court of Cassation confirmed the decision of second instance on the basis that:

- The generic insured party's request could not be considered as including the costs under Art. 1917(3) of the Civil Code, because "*the insurer's obligation to reimburse such costs is independent of a judgement by which the insured party is condemned to refund the third party. The said obligation arises from the insurance contract*."
- To obtain the reimbursement of the costs under Art. 1971(3), the insured must file a specific demand. The insured's generic request to condemn the insurer to pay costs and expenses relating to the litigation can only be interpreted as referring to the losing costs and not also to the costs under Art. 1917(3).

On such basis, the Supreme Court dismissed the insured's appeal claiming for the insurer's indemnification of costs under Art. 1917(3).

This order is in line with recent precedents of the Supreme Court on the subject of costs under Art. 1917(3), whereby the court has also clarified that the costs are payable to the insured only if the insured has provided evidence of the relevant disbursement (see judgment no. 26683 of 15 September 2023 and order no. 21290 of 5 July 2022).

# White collar crime

# ‘Failure to prevent fraud’ offence: How does it affect companies’ businesses?

VERONICA BERTOCCI, GIULIA RODIO

In a decisive move to combat corporate fraud, the UK government has enacted the Economic Crime and Corporate Transparency Act 2023 (the Act), which became law on 26 October 2023. This landmark legislation introduces the “Failure to prevent Fraud” offence, significantly augmenting corporate accountability. The Act targets organizations benefiting from fraudulent activities perpetrated by their employees or agents, especially in the absence of sufficient fraud prevention measures. The wide scope of the offence covers various fraudulent activities.

The Act, which represents a significant evolution in the landscape of corporate crime legislation, builds on the foundation laid by The Bribery Act 2010, a pioneering law in its scope and application. The Bribery Act established accountability for UK firms in preventing bribery, both within the country and internationally. And it was noted for its extensive territorial reach, requiring rigorous compliance from companies with global operations.

The legislative frameworks have similarities and differences in their approach to corporate crime.

The UK’s “Failure to Prevent Bribery” offense, under Section 7 of the Bribery Act, is applicable to all commercial organizations, irrespective of their size, and carries a global jurisdiction. This means any UK entity can be held accountable for bribery offenses, regardless of where the acts occur. The focus of the legislation is on bribery and corrupt practices, with the responsibility being of a corporate criminal nature. For defence, a company must prove the implementation of “adequate procedures” to prevent bribery. Penalties for non-compliance can include unlimited fines.

The "Failure to Prevent Fraud" offense under Section 199 of the Act is primarily aimed at larger organizations, defined as those with more than 250 employees, a turnover exceeding GBP36 million, and assets over GBP18 million. This law has extraterritorial reach, applying to non-UK entities that fail to prevent fraud in the UK. It encompasses a variety of fraud-related offenses, such as fraud by false representation, obtaining services dishonestly, and fraudulent trading. The responsibility here is corporate criminal liability, and organizations can defend themselves by demonstrating they have implemented measures to mitigate the risk of prosecution under the abovementioned offence, considering the following refined strategies:

- **Development and implementation of "reasonable procedures" by customizing fraud prevention procedures:** following the issuance of government guidance on what constitutes "reasonable procedures" (see, GOV.UK, HMRC internal manual "International Exchange of Information Manual", 23 January 2024) organizations should develop tailored fraud prevention protocols.
- **Comprehensive risk assessment by tailoring fraud risk frameworks:** organizations should conduct detailed assessments of their fraud risk frameworks, ensuring they encompass both internal and external fraud risk
- **Cultivate a strong anti-fraud culture level:** it requires active engagement from top management down to every employee. Organizations should focus on education and training programs that highlight the importance of ethical behaviour, the implications of fraud, and the role each individual plays in preventing fraud.
- **Regular review and adaptation, a dynamic approach to fraud prevention:** organizations should commit to a continuous process of reviewing and updating their fraud prevention measure.
- **Enact due diligence**: organizations should extend their fraud prevention strategies to include comprehensive due diligence on all partners, suppliers, agents, and any third parties involved in the business. Companies should also implement rigorous screening processes for new hires and continuous monitoring of existing employees can significantly reduce the risk of internal fraud. This should include regular reviews of employee access to sensitive information, financial controls to prevent embezzlement, and conflict of interest policies.

These measures not only mitigate legal risks but also contribute to establishing a more ethical business environment, ultimately benefiting the organization's reputation and stakeholder trust.

The Act also provides penalties for non-compliance including unlimited fines for organizations, with no individual liability for company executives under this specific offense, though individuals may still face prosecution for their personal involvement in fraudulent activities.

In a marked advancement, the Act amplifies the regulatory scrutiny placing a heightened emphasis on transparency and corporate integrity, extending and intensifying the principles of corporate accountability and legal compliance on a global scale.

It's interesting to note that the Act shares similarities with the Italian Legislative Decree No. 231/2001 which introduces administrative liability for entities. This liability arises from the entity's failure to implement effective prevention models to deter a range of crimes, including corruption, fraud against the state, and environmental crimes. The decree mandates the adoption of a compliance program (Organisation, Management and Control Model) to prevent such crimes, with guidelines provided by Confindustria and other associations. Penalties under this framework can include fines, business activity bans, and disqualification, underscoring the decree's focus on the importance of compliance programs and internal control systems.

These laws collectively underscore the global shift towards proactive corporate governance. They mandate robust internal controls, encourage ethical corporate cultures, and stress individual accountability.
The emphasis on preventive measures rather than mere punitive actions marks a significant evolution in legal approaches to corporate misconduct. Corporations must navigate these diverse legal landscapes, ensuring compliance through dynamic, comprehensive internal policies.

Tax

# Withholding taxes of insurance agents: New provisions in the Italian Budget Law 2024

GIOVANNI IASELLI

Following the approval of the Italian Budget Law 2024, as of 1 April 2024, commissions received by insurance agents for services rendered directly to insurance companies will be subject to withholding tax (Article 1, paragraph 89).

The new provision is aimed at fighting tax evasion. It extends the application of withholding tax to commissions received by insurance agents directly from insurance companies, to the amount and under the conditions set out in Article 25-bis of Presidential Decree 600/1973. Withholding tax is already in force for commissions paid under commission, agency, brokerage, trade representation and business procurement relationships.

As of 1 April 2024, withholding tax will have to be applied, at a rate of 23%:

- on 50% of the amount of commissions received by insurance agents; or
- on 20% of the amount of commissions if the recipients declare to their commissioners, principals or mandators that they continuously use the work of employees or third parties in the conduct of their business.

Insurance companies, to market their products, often collaborate with parties operating in sectors other than insurance (eg airlines, travel agency) who, in return, receive commission. In light of the new rule, it will be important to carefully evaluate the withholding discipline in these cases.

It would have been appropriate to distinguish between annual and multi-year contracts for paying pre-contracted commissions. In the latter case, given that commissions to agents contribute to the latter's income, applying the new provision will create a mismatch between the withholding to be made on the full amount of pre-contracted commissions and the share of the latter that will be part of the business income for the years following the year of collection.

# Insurance Sector events
# #DeRisk Breakfast

## CYCLE OF MEETINGS

Our Insurance team is organizing a cycle of meetings on topical issues for insurance market players. More meetings will follow throughout the year and we hope this will become a regular opportunity to find out about and discuss developments in the sector.

The meetings will normally be held in Italian and in person at DLA Piper's offices in Milan. For organizational reasons, some will be held as a webinar.

The schedule of upcoming appointments is as follows:

- **Property and non-property damages in cases of personal injury or death: state of the art and analysis of compensation criteria** – Wednesday, 6 March 2024, 08:30 – 10:30.
- **From the DORA and MiCA regulations to the NIS2 Directive: focus on new technological regulatory provisions applicable to the insurance industry** – Tuesday, 9 April 2024, 08:30 – 10:30.

For more information and to stay up to date please visit our webpage.

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