

EIOPA: Q&A (luty 2021 r.)

Question ID: 1760

- **Question:**

IDD, is this applicable for captives – could you outline the reasons why and where this is noted in the Directive?

Have some European regulators specifically removed Captives from the scope of this Directive in their transposition.

There is confusion in industry here and its application to reinsurance and captives.

One opinion is that it applies to captives as Re/Insurance undertakings and therefore re/insurance distributors as customers includes consumers and commercial entities, and on this basis the management/directors of captives would be required to comply with Reg 20 i.e. F&P & CPD requirements. However the Central Bank have discretion to adjust its requirements where appropriate in respect of knowledge and ability.

Another opinion is that the following exemption mostly applies and so most not captured Information exemptions and flexibility clause 35. (1) An insurance distributor carrying out distribution activities in relation to the insurance of large risks is not required to provide the information required under Regulations 31, 32 and 34. ‘Large risks’ as defined in the Solvency II Directive include: marine, aviation, transport classes and contracts with commercial policyholder of certain size (more than 250 employees, with turnover of more than €12.8m or balance sheet over €6.2m).

The Central Bank of Ireland won't provide any comment on its application. Is it a case that we might need to lobby to have captives removed from scop/exemption for captives with the Central Bank of Ireland, has any other EU country done similar?

- **EIOPA's Answer:**

Firstly, it is important to emphasize that the IDD pursues a minimum harmonisation of the regulatory framework governing the distribution of insurance products. Hence, the Member States are not allowed to implement a standard which goes below the minimum required under the IDD. However, Member States may wish to introduce stricter standards. In case of information requirements and conduct of business rules referred to in the Chapter V of the IDD, Article 22(2) of the IDD provides the possibility for the Member States to maintain or adopt stricter provisions.

Further, in accordance with Article 13 of the Solvency II Directive, a captive insurance undertaking is an insurance undertaking, the purpose of which is to provide insurance cover exclusively for the risks of the undertaking to which it belongs or the group of which it is a member.

Since captive insurance undertakings are by the definition insurance undertakings with above stated specificities, captive insurance undertakings fall under the scope of the IDD. In that regard, when dealing with the insurance of large risks, in accordance with Article 22 (1) of the IDD information referred to in Articles 18, 19 and 20 of the IDD need not be provided. Moreover, at national level, Member States may also provide that the information referred to in Articles 29 and 30 of the IDD need not be provided to a professional client as defined in point (10) of Article 4(1) of MiFID II.

Further, continuing professional training and development requirements can be adjusted by means that correspond to the requirements concerning the products sold. However, the requirement of good repute cannot be adjusted nor the proportionality principle could be applied in that matter. In fact, even ancillary intermediaries have to fulfil the minimum requirement of a good repute prescribed in Article 10 (3) of the IDD.

As regards to POG, Article 25 of the IDD prescribes that POG requirements apply to insurance undertakings, therefore captive insurance undertakings should also apply the POG process when manufacturing and distributing insurance products, unless those products are manufactured/distributed for only one customer and as long as the product doesn't cover large risks with respect to Article 25 (4) of the IDD.