



Recommendation regarding agreements on the distribution of life insurance policies

Recommendation 2014-R-01 of 3 July 2014

1. Background

An analysis of the practices and agreements observed in the insurance brokerage market revealed that, even before January 2010, insurance undertakings and insurance intermediaries generally formalised their business relationships via written agreements.

In order to “*harmonise certain rules regarding the marketing of financial instruments with those applicable to the marketing of comparable savings and insurance products*” and, in particular, “*ensure that all producer-distributor relationships are governed by written agreements*”, Ordinance No. 2008-1271 of 5 December 2008, implemented in January 2010, made it mandatory for producers and distributors of financial instruments and life insurance and capitalisation policies to enter into a written agreement.

The aforementioned texts stipulate that these agreements must contain provisions indicating that:

- all marketing documents issued by the distributor must be verified by the producer to ensure they comply with the contractual documents;
- the producer must provide the distributor with all information necessary for the proper marketing and distribution of its life insurance policies.

Nonetheless, the analysis revealed that the required provisions were frequently imprecise and unsuited to the large number of participants involved in the distribution circuit. As a result, the legislator’s objective, which is to regulate and ensure the quality of the information provided to customers, was not adequately fulfilled.

Conversely, certain intermediaries operating via a network of distributors were found to have taken the initiative of signing agreements with their respective business partners which included obligations similar to those specified in agreements with insurance undertakings.

In the case of distribution chains, due to the large number of participants, the link between the insurance undertaking and the policyholder is increasingly remote. For example, the intermediary acting as primary point of contact with the insurance company (“the primary intermediary”) may differ from the intermediary acting as point of contact with the customer (“the distribution intermediary”). Moreover, in the majority of cases, there is no agreement directly linking the distribution intermediary to the insurance undertaking.

As a result, in order to be effective and meet the legislator’s objectives, agreements between insurance intermediaries and insurance undertakings should include provisions for cases where more than one intermediary is involved in the distribution process.

As part of their respective roles, the ACPR and AMF are required to monitor insurance distributors falling within their jurisdiction to ensure they comply with the applicable regulatory texts. As their jurisdictions and the texts they refer to often overlap, the two authorities carried out a joint assessment on the use of written agreements. Following this assessment, they decided that they needed to clarify their expectations, in order to ensure that all agreements meet the following two objectives:

- clarify the obligations of both parties to the agreement regarding the verification of marketing documents and the provision of information to ensure the characteristics of the policy can be understood;
- protect life insurance customers throughout the chain of distribution, notably by ensuring that the information provided in all advice or marketing materials is reliable.

2. Reminder of the legal and regulatory framework

Articles L. 132-28, R. 132-5-1 and R. 132-5-2 of the French Insurance Code specify that intermediaries must sign formal agreements with insurance undertakings offering individual life insurance policies with surrender values, capitalisation policies and group life insurance policies with transfer or surrender values, and the policies specified in Article L. 441-1, with the exception of mandatory insurance policies.

Articles L. 132-28 and R. 132-5-1 of the Insurance Code specify that these agreements must be drawn up in writing at the request of the insurance intermediary, and must stipulate in particular the following:

- i. The conditions whereby the intermediary must submit marketing materials to the insurance undertaking prior to their circulation.
 - Obligations of the intermediary:
 - The intermediary must submit to the insurance undertaking all planned marketing documents, regardless of type or form, and any planned modifications to these materials.
 - The intermediary may only use those marketing documents approved by the insurance undertaking.

- Obligations of the insurance undertaking:
 - The insurance undertaking must verify that all planned marketing documents or modifications thereof, for life insurance policies or capitalisation policies and, where relevant, the associated disclaimers or small-print, are compliant¹.
 - The agreement must specify the deadline for carrying out these verifications.
- ii. The conditions whereby the insurance undertaking must provide the intermediary with all information necessary to ensure that both it and the customer fully understand the characteristics of the policy. This information must be systematically communicated and updated, notably in the form of factsheets, and must be available either in paper form or on another durable medium.

Article R.132-5-2 of the Insurance Code specifies that agreements are not required in the following cases:

- if the intermediary only uses the marketing documents provided by the insurance undertaking;
- if the insurance undertaking has made a written commitment to provide the intermediary with all the information necessary to understand the characteristics of the policy.

Article L. 116-5 of the French Mutual Insurance Code stipulates that mutual insurers and unions offering life insurance and capitalisation policies must draw up agreements with their respective intermediaries, setting out a similar framework to that described in Article L. 132-28 of the Insurance Code.

Moreover, Articles L. 132-27 of the Insurance Code² and L. 223-25-2 of the Mutual Insurance Code stipulate that all information, including that contained in the marketing literature, must be presented in terms that are clear, accurate and not misleading.

Articles L. 520-1 and L. 132-27-1 of the Insurance Code, and Article L. 223-25-3 of the Mutual Insurance Code, also specify that insurance intermediaries are required to gather information about the customer's level of financial knowledge, to specify the customer's requirements and needs, and provide the customer with any underlying reasons explaining the advice given, taking into account the level of complexity of the policy offered.

3. Scope of the recommendation

3.1 Life insurance policies concerned

This recommendation applies to individual life insurance policies comprising surrender values, capitalisation policies which fall within the scope of the Insurance Code, the policies cited in Article L. 441-1 of the Insurance Code, the policies cited in Article L. 132-5-3 of the Insurance Code, with

1. Mentioned in Articles L. 132-5-3 and L. 132-5-2 respectively of the French Insurance Code.

2. And Article R. 932-23 of the Social Security Code, which refers to these provisions.

the exception of those where the subscriber's ties with the policyholder make the insurance mandatory, and the transactions cited in Article L. 223-1 of the Mutual Insurance Code (hereafter collectively referred to as "life insurance contracts").

3.2 Persons concerned

This recommendation applies to insurance and capitalisation undertakings governed by the Insurance Code, mutual insurers and unions governed by Book II of the Mutual Insurance Code, provident institutions governed by the Social Security Code (hereafter referred to as "insurance undertakings"), and to the insurance intermediaries mentioned in Articles L. 511-1 of the Insurance Code and L. 116-2 of the Mutual Insurance Code (hereafter referred to as "intermediaries"), including where those insurance undertakings or insurance intermediaries operate in France under the EU principle of freedom to provide services or freedom of establishment.

4. Recommendation

In order to improve the quality of the information and advice provided to customers in the marketing of life insurance policies, and in accordance with Articles L. 612-1, II point 3, and L. 612-29-1 point 2 of the French Monetary and Financial Code, the ACPR recommends the following best practices:

4.1 Regarding marketing materials

Where an intermediary uses marketing materials other than those provided by the insurance undertaking, the agreement should clearly stipulate the following:

- 4.1.1 All drafts of new marketing materials, or modifications to previously approved drafts or to materials previously provided by the insurance undertaking, must be submitted to said undertaking for approval prior to their circulation by the intermediary. These materials must be submitted to the insurance undertaking in the form in which they will be distributed to the public, regardless of the medium or distribution format used.
- 4.1.2 The insurance undertaking must issue an opinion (straightforward validation or refusal, or modification request) on all marketing materials submitted to it by the intermediary in accordance with paragraph 4.1.1, including in their final form, before they can be circulated to the public.
- 4.1.3 The insurance undertaking must commit to verifying the marketing materials within a fixed deadline, expressed as a maximum number of days, which is appropriate for the intermediary's specific marketing methods and the communication medium used.
- 4.1.4 The intermediary must agree not to circulate the marketing materials in the absence of a response from the insurance undertaking.

4.2 Regarding information on the insurance policy

Where an agreement exists

The agreement should clearly specify the following regarding the information to be submitted to the insurance intermediary by the insurance undertaking:

- 4.2.1 The type(s) of document which will be used to communicate the information necessary to understand all the characteristics of the policy, notably details of the fees and units of account, so that said document(s) can be effectively identified by the signatories to the agreement.
- 4.2.2 The deadline for the communication of this information, expressed as a minimum number of days prior to the start of distribution of the policy and its update, and the method by which it will be communicated. With regard to this information, the agreement should state that:
- ✓ it must be easily accessible;
 - ✓ it must be possible to store it for an appropriate length of time with regard to the purpose of the information, so that it can be referred to easily;
 - ✓ it must be possible to make an exact copy of the stored information.

Where no agreement exists

- 4.2.3 If the intermediary only uses the marketing materials as provided by the insurance undertaking, it should clearly indicate the elements specified in point 4.2 in the written document mentioned in Article R. 132-5-2 of the Insurance Code.

4.3 Regarding the application of points 4.1 and 4.2 in the case of a chain of distribution

Where the initial intermediary uses other intermediaries to distribute the insurance policies of an insurance undertaking:

- 4.3.1 The initial intermediary should include a clause in its agreement with the insurance undertaking stating that it will draw up a separate agreement with each distribution intermediary regarding the process of validation and/or use of marketing materials and the communication of the information necessary to understand all the characteristics of the insurance policy.
- 4.3.2 Each agreement signed between the initial intermediary and its distribution intermediaries should specify that:
- ✓ the distribution intermediary will only use the marketing materials in the form in which they were provided by the initial intermediary;

- ✓ failing this, the distribution intermediary will submit any planned marketing materials or changes to existing or planned materials, regardless of the medium used, to the initial intermediary, so that the latter can submit it to the insurance undertaking for validation;
- ✓ the initial intermediary shall communicate to the distribution intermediary all information necessary to understand the characteristics of the insurance policy and any updates thereof.

4.3.3 The initial intermediary should ensure that the provisions of the agreement it draws up with each distribution intermediary are compatible with the provisions of the agreement signed with the insurance undertaking, and enable it to fulfil its obligations to the insurance undertaking under the conditions set forth in the present recommendation.

4.3.4 In the case outlined in point 4.2.3 and where the distribution intermediary only uses marketing materials provided by the insurance undertaking, the initial intermediary shall undertake to communicate in writing to the distribution intermediary all information necessary to understand all the characteristics of the insurance policy and any updates thereof.

4.4 Regarding the resources and procedures implemented

Insurance undertakings and intermediaries should:

- implement all resources and procedures necessary to ensure they meet the conditions regarding the establishment and observance of the agreements recommended in points 4.1, 4.2 and 4.3 above;
- be able to justify to the ACPR the resources and procedures they have chosen to implement, or explain why they have chosen not to comply with certain elements of the present recommendation.

This recommendation shall be applicable as of 1 January 2015.