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# Transposition of Directive 2016/97 on insurance distribution

Royal Decree-Law 3/2020, of February 4, incorporating into Spanish law several EU directives on private insurance, pension plans and funds, tax and tax litigation

February 2020



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## **Royal Decree-Law 3/2020 (RD-Law 3/2020) incorporating into Spanish law Directive 2016/97 on insurance distribution has just been approved.**

The main developments of RD-Law 3/2020 affecting insurance distribution, which are described in more detail below, are as follows:

- > The objective scope of application is extended to include the provision of information on insurance according to the criteria chosen by clients through a website (“insurance comparators”). Simultaneously, it excludes other activities regarding the mere provision of contact data of potential policyholders.
- > New obligations for insurance companies are approved, including the obligation to train employees involved in the distribution or the establishment of new procedures for the approval and control of their products.
- > Duties of transparency in precontractual information are reinforced.
- > Additional requirements for the distribution of insurance-based investment products (IBIPs) are established.
- > The sanctions regime is tightened up.

RD-Law 3/2020 is in force since February 6 with transitional periods in certain matters.



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## General comments

After a delay of more than a year and a half after the date on which it should have been transposed, Directive 2016/97 on insurance distribution has finally been incorporated into Spanish law.

The instrument used to that end is a royal decree-law, meaning it must be subsequently approved by the Spanish Congress.

Royal Decree-Law 3/2020 has been in force since February 6, the day following its publication in the Spanish Official State Gazette, although some transitional periods are established until the effective entry into force of certain obligations included in the new regulation on insurance distribution.

The wording of Royal Decree-Law 3/2020 on insurance distribution (it should be taken into account that this regulation transposes other directives on diverse matters) is almost identical to the Draft Bill dated May 21, 2018, which was going through Congress when the previous legislature ended early, so it failed to go through.

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## Main purposes of new regulation on insurance distribution

- The new regulation on insurance distribution seeks to grant the maximum level of protection to the insured parties, regardless of the means through which they acquire the insurance product, extending to that end its subjective scope of application, which now covers the insurance companies themselves when they market their insurance products directly.
- To reinforce the protection of insurance customers, it introduces new transparency duties for all distributors, and it intensifies the standards of conduct applicable to them, particularly when referring to marketing life insurance whose maturity or surrender value is fully or partly exposed to market fluctuations (“insurance-based investment products” or “IBIPs”).



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## Changes in the objective scope of application

- The new regulation on insurance distribution extends its objective scope of application by including within the activities it regulates, apart from those already described in the now revoked regulation (advice, proposals or implementation of works before the signing of insurance contracts, the signing of insurance contracts, or assistance in their subsequent management and performance), the provision of information on insurance according to criteria chosen by clients through a website and their classification, when they can enter into the agreement through a website (commonly known as “insurance comparators”).
- It should also be noted that, apart from other activities that were already excluded under the previous regulation (e.g., the distribution of supplementary insurance for goods or services by a supplier whose main activity is not insurance distribution), the regulation excludes from its scope of application the mere provision of information on potential insurance policy holders to insurance brokers or to the insurance companies themselves, and the mere provision of information on insurance products, on a broker, or on an insurance company to potential policy holders.

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## Extension of the subjective scope of application

- As stated, the new regulation on insurance distribution extends its scope of application to insurance companies, in their role as direct marketers of their insurance products. Thus, new obligations are introduced for insurance companies, including the training of employees involved in the distribution activity, the new duties of precontractual information when they distribute their insurance directly, and new procedures for the approval and control of their products.
- The new regulation maintains the same categories of intermediaries that existed before; i.e., the insurance agents (exclusive or tied), including the special type of “bancassurance operators”, and insurance brokers, without introducing any significant developments into their specific regulations.
- The “external collaborators” of insurance intermediaries, whose system of operation, always on behalf of those intermediaries, has been open and flexible since the last insurance mediation regulation reforms, are preserved.



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### Greater transparency in precontractual information

- One of the main aspects of the reform is the reinforcing of the duties of information to the client before the insurance policy is signed. Apart from the precontractual information that had to be provided under the previous regulation, the client must also be informed, among other aspects, of whether the distributor offers advice on the insurance marketed, i.e., whether they offer personalized advice on the proposed product, as well as the type of remuneration received. This is apart from the reinforced duties of information in the “insurance-based investment products” or “IBIPs,” to which we refer below.
- Also of note, in the case of non-life insurance, is the obligation to provide the customer, before signing the contract, with the “insurance prior information document,” according to the standardized presentation format approved through Implementation Regulation (EU) 2017/1469, of August 11, 2017.

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### Additional requirements for distributing IBIPs

- In the case of IBIPs, apart from the general duties of precontractual information, the distributor must inform the client, among other aspects, of all the costs and expenses related to the product, and the risks related to them or to the investment strategies proposed.
- If the distributor does not offer any advice, they should obtain from the client information on their knowledge and experience within the investment field of the product, to analyze whether the insurance is appropriate for the client, advising them that it is not when this is seen from the information provided by the client.
- If the distributor offers advice, apart from the information mentioned above, clients should also be asked about their financial situation and investment targets, to then formulate a recommendation on the most suitable IBIP for them that best adapts to their risk tolerance level and capacity to bear losses. In these cases, the client should also be informed of whether periodical evaluations are being implemented on the suitability of the recommended IBIP.
- Finally, regarding the IBIPs in which the insurance policy holder assumes the risk of the investment, it is important to note the prohibition established on insurance brokers



receiving any remuneration from any person or entity other than the actual client deriving from the distribution of this class of products.

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### Tightening up the penalty regime

- Also worth noting is the tightening up of the penalty regime for any infringement of the regulation on insurance distribution, with penalties of up to €1,000,000 for legal entities and €100,000 for individuals, in the case of very serious infringements. Up until now, the maximum fine for this type of infringement was €30,000, both for legal entities and individuals.
- Penalties are tightened up especially in the case of infringements committed due to the distribution of IBIPs, and could amount to €5,000,000 for legal entities and €700,000 for individuals, in the case of very serious infringements.

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### Transitional rules

- Among the different transitional rules established in Royal Decree-Law 3/2020 relating to the new regulation on insurance distribution, we emphasize the recognition of initial training for persons who, on the date of its entry into force, are responsible for the distribution activities of insurance companies, or are employees of the insurance companies involved in these activities.
- Regarding mediation and insurance distribution agreements prior to the entry into force of the new regulation, these will remain in force in all of their terms and conditions, apart from any adaptations that should be made to the new obligations regarding information and rules of conduct, which are applicable from the date of entry into force of the new regulation.



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