

# Q&A

QUESTION ID:

1906

REGULATION REFERENCE:

(EU) No 2016/97 - Insurance Distribution Directive

TOPIC:

Professional requirements (Art. 10 IDD)

ARTICLE:

10

STATUS:

Final

DATE OF SUBMISSION

20 Aug 2021

BACKGROUND OF THE QUESTION:

The reason for this question is that while going through insurance terms of some brokers' PII we have noted that there are provisions that state that defense costs are included in the amounts of the policy or can be deducted. We are not sure whether this is in line with the directive.

## Question

According to the article 10(4) of the IDD insurance and reinsurance intermediaries shall hold professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1 250 000 applying to each claim and in aggregate EUR 1 850 000 per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.

Our question is related to the sums mentioned in the article. What shall these sums cover? Can the insurance company deduct from these sums defense costs like costs that are related to damage limitation, claim adjustment or legal proceedings (court)? Does it make any difference whose costs are, the clients, the insurance company's or the insurance brokers?

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## EIOPA answer

Many thanks for your email of 5 April in which you raise questions regarding the professional indemnity insurance laid down in Art. 10 (4) of the IDD.

The insurance cover should offer a professional indemnity against liabilities arising from professional negligence for include any kind of costs/detriment of the customers caused by the insurance intermediary. This typically includes costs for claims, legal fees and subsequent legal remedies, if these costs have to be borne by the customer or by any party injured as a result of intermediary negligence. All costs on the side of the insurance intermediary are not covered as they would reduce the amount available for the protection of the customers.

Whereas the IDD only requires re-/insurance intermediaries to hold a professional indemnity insurance with a harmonised minimum amount, it is the national law of the respective Member States which determines under which circumstances an intermediary is liable and for which damages.

It should further be noted that the base amounts as laid down in Article 10 paragraph 4 IDD have to be regularly reviewed by EIOPA in order to take account of changes in the European index of consumer prices. In June 2018, EIOPA submitted draft regulatory technical standards with an adaptation of the base amounts to the European Commission and these will be incorporated into a Delegated Regulation by the European Commission. For further details, please see

<https://eiopa.europa.eu/Publications/Letters/EIOPA-18-413%20Draft%20RTS%20for%20PII.PDF>.