

Insurance services: novelties introduced by the “liberalization decree”

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Within the scope of the measures intended to promote the competition and liberalization of the business activities approved by the Council of Ministers on January 20, 2012, are included, among other things, special provisions concerning the performance of insurance services which introduce relevant amendments to the Legislative Decree No. 209 of September 7, 2005 (“**Insurance Code**”).

In general terms – notwithstanding what is provided for life insurance agreements linked with the disbursement of loans – most of the novelties concern the policies in the matter of tort liability resulting from the circulation of vehicles. In such respect, the legislative effort has been directed, on one hand, to concede a greater protection to clients during the pre-contract phase; on the other hand, to restrain frauds and to favour the assessment of certain cases of evasion from the obligation of insurance. Such measures – pursuant to what has been already noted by ISVAP and according to the illustrative report of the same Decree – would allow in the first place to bring down the costs for the insurance companies also determining in principle a reduction of the insurance premium for the mandatory tort liability.

This newsletter aim at providing a summarize of the main novelties introduced by the law decree No. 1 of January 24, 2012 (the “**Decree**”), while it remain possible that further amendments to the decree text may be introduced during the conversion of the same.

1. Obligation to compare the rates during the pre-contract phase

Among the most important novelties introduced by the Decree, it is worth pointing out the obligation related to subjects which distribute insurance services and products of the non-life class, connected with vehicles and crafts circulation, to inform the client, in a correct, transparent and exhaustive way, upon the rate and the other contractual terms offered by at least three different insurance companies which do not belong to the same groups. For this purpose the intermediaries may also make use of the information mandatory published by the insurance companies on their own web site.

The Decree provides the invalidity – noticeable only by the policy holder – of the agreements entered into in breach of such obligation. Specific penalties (from Euro 50,000 to 100,000) are also provided and the same may be imposed by ISVAP towards the intermediary that has act in breach of the mentioned rules and in case, jointly, also by the insurance company which has granted the intermediation mandate.

2. Dematerialization of the insurance slips

The Decree lays down the basis to reach a progressive dematerialization of the insurance slips related to the insurance agreements related to the compulsory public liability insurance on motor vehicle. For this purpose, subsequent implementing regulations that shall be adopted by ISVAP will be necessary.

The introduction of such devices in replacement of the paper insurance slip aim at facilitate the controls that may be done also seeking the help of technical instruments of control and distance reading. Such process shall be ended within two years from the date of the decree effectiveness.

3. Mapping of vehicles not covered by mandatory insurance

The Decree provides for the establishment at the Infrastructure and Transport Ministry of a list of the motor vehicles subject to obligation of insurance – pursuant to Art. 122 of the Insurance Code – and which are not covered by any insurance policy.

Such mapping shall be done using the information that will be provided to the Ministry by the insurance companies, in accordance to modalities which are not specified by the Decree. The Ministry provides to communicate to the single owners of vehicles the consequences they will face with in the case the same vehicles are placed in circulation. In the end the Decree provides that such list shall be made available to the police.

4. Assessment of the breach of the obligation of insurance through informative devices

Still for the purpose of checking the breaches of the obligation of insurance, the Decree introduces the chance to carry out verifications also through devices, equipments and technical means used for the traffic control and for the distance reading of breaches of the rules and regulations concerning the circulation provided by the rules of the road, without prejudice to the necessity of documenting the breach with photographic, video or analogous equipments.

5. Repression of frauds: annual informative report

The Decree introduces the obligation for insurance companies to yearly transmit to ISVAP a report containing detailed information upon the number of claims for which it was deemed necessary to carry out closer examinations because of the possible fraud risk, the number of complaints or reports filed with the judicial authority, the outcome of the consequent criminal proceedings, as well as the organizational internal measures adopted or promoted to prevent frauds. Such report shall be drawn up in compliance with a special draft that will be issued by ISVAP.

The insurance companies are also required to indicate in the report (or in the additional note) to the balance sheet and to publish on their own web site (or with suitable diffusion instruments) an estimate concerning the reduction of the burdens for claims arising from the frauds assessment, as a consequence of the activity carried out in autonomy of control and repression of frauds.

6. Vehicle inspection and black box

The Decree, completing Art. 232 of the Insurance Code, provides to insurance companies a reduction of the insurance policy rates in the event that: (i) the client voluntarily submits its vehicle to an inspection before the drawing up of the agreement; (ii) the policy holder consents to the installation of electronic devices that register the vehicle activity (black box or equivalents).

7. Statement on the risk status

The Decree implements some relevant amendments to Art. 134 of the Insurance Code, requiring to integrate the indications contained in the statement related to the status of the risk with more information concerning the damages type possibly liquidated during the insurance history.

The information contained in the statement shall be insert in an electronic data base (held by public or private entities) so to allow adequate controls concerning the assumption of binding insurance agreements. ISVAP shall provide for such obligation with a regulation.

Further integrations also concern the modality of transmission of the risk statement, providing for the possibility to deliver the same through the using of the above mentioned electronic databases or of the claims Database pursuant to Art. 135 of the Insurance Code. Insurance companies may also acquire directly through the same databases the statement on the risk status, in case of drawing up of an agreement for the same vehicle to which such statement refers to.

8. Efficiency in direct compensation and reimbursement in kind (*risarcimento in forma specifica*)

Art. 29 of the Decree amends the criteria that the insurance companies must follow in determine the value of costs and franchises upon which the adjustments within the limits of the direct compensation provided by Art. 150 of the Insurance Code are defined. To such extent the Decree requires that the calculation shall be done following a criteria that stimulates the productive efficiency of insurance companies and in particular the control of the compensation costs and the detection of frauds.

It should be noted, finally, the introduction of the possibility for insurance companies to offer compensations in kind instead of a compensation for equivalent: in such case, if there is a guarantee on the fixes not lower than two years for all the parties not subject to ordinary usury, the monetary compensation is reduced by the 30%.

9. Inspection for the assessment of damage entity and settlement procedure

With reference to the compensation procedure pursuant to Art. 148 of the Insurance Codes, the Decree has implemented new provisions aiming at allow an inspection by the insurer to ascertain the damage. For such purpose the damaged things shall be made available for the assessment for five business days from the day of the receipt by the insurer of the compensation request.

Its important to notice that, if the damaged things have not been made available to the insurer within the terms provided by this article, or have been repaired before the same inspection, the insurance company, for the purposes of the compensation offer, will carry out its own evaluations on the damage entity only upon the filing of a invoice attesting the reparative interventions that have been done.

A further novelty – in line with the provisions concerning the prevention of fraudulent phenomenon – concerns the case in which from the verifications carried out by the insurance company making use of the claims database arise at least two significance indicators, as defined in Art. 4 of the ISVAP regulation No. 2827 of August 25, 2010. In such case the insurance company may decide to not make the compensation offer and to conduct further closer exams with reference to the claim. Within thirty days from the communication to the policy holder of the decision to not proceed with the compensation, the insurance company shall communicate to the injured party its final determinations concerning the compensation request.

10. Penalties in case of frauds

The Decree provides for an aggravation of the penalties in case of false statement concerning a disablement state deriving from subjects carrying out sanitary professions and extends the same also to the insurance experts that might ascertain or estimate in a false way damages to things as a consequence of damages.

11. Insurance policies connected with loans

Pursuant to Art. 28 of the new Decree, in the event that a loan agreement is made conditional on the drawing up of a life insurance policy, the client shall receive from the bank, the credit institute, the financial intermediary and the distributing intermediary, at least two quotations of two different insurance groups.

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Such provision belongs to a wider framework and follows to two recent regulatory interventions aimed at protecting consumers from the detrimental effects experimented by many parties on the market deriving from the drawing up of insurance policies connected with loans. In particular:

- (i) The ISVAP regulation No. 2946 dated December 6, 2011 has prevented the intermediaries to undertake at the same time (directly or indirectly) the status of beneficiary or bounder of the insurance performances and the one of intermediary, to prevent possible conflict of interests between the same; and
- (ii) The law decree No. 201 dated December 6, 2011, completing the legislative decree No. 206 dated September 6, 2005 ("**Consumer Code**"), has considered as unfair the business practice of a bank, credit institute or financial intermediary which, for the purpose of drawing up a loan agreement, obliges the client to underwrite a insurance policy intermediated by the same bank, institute or intermediary.

12. Consumer protection and unfair clauses

The Decree implements the protection granted to consumers in respect of unfair clauses, introducing the new Art. 37-*bis* of the Consumer Code.

According to such new provision, the Italian Antitrust Authority ("**Authority**") is entitled with the power to declare the unfair nature of clauses included in the agreements entered into with consumers, by means of templates or standard forms.

In this respect the same rule allows the companies to consult in advance the Authority on the nature of the clauses adopted in their standards forms in order to avoid the same clauses to be declared unfair in the future by the same Authority.

In the light of the above, it would be necessary to analyse the impact of such rule with respect of the specific provisions included into the insurance contracts and, if deem appropriate, to asses the opportunities to file a specific questioning to the Authority.

INFORMATION PURSUANT TO ARTICLE 13 OF LEGISLATIVE DECREE NO. 196/2003 (Data Protection Code)

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