

LEGAL UPDATE

EU Court of Justice: is a group insurance policyholder an intermediary?

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According to the Court of Justice of the European Union (the "**Court**"), a policyholder of a group insurance policy may under certain circumstances fall under the definition of "insurance intermediary" as defined in the Insurance Distribution Directive ("**IDD**"). Under Dutch regulatory law, the term "insurance intermediary" falls under the definition of "intermediary" in the Financial Supervision Act ("**FSA**"). The Court's ruling may have the effect that a policyholder under a group insurance policy qualifies as an intermediary and must in principle hold an authorisation.

However, in our view, this Court's ruling does not imply that policyholders of group insurance policies of all types and sizes should be classified as intermediaries under the FSA. The ruling can be seen as a further interpretation of the term "insurance intermediary" under IDD. In order to understand the impact of this ruling, the specific facts of the case are thus of great importance. We discuss these below. We then turn to the Court's main findings.

The ruling can be found [here](#).

Facts

TC Medical Air Ambulance Agency GmbH ("**TC Medical**") has, as the policyholder, entered into a group insurance policy with an insurance company. It pays insurance premiums to the insurance company under the group insurance policy. The group insurance provides cover in the event of illness or accidents abroad and cover for repatriation costs. TC Medical has instructed advertising companies to offer customers in Germany membership of a group insurance policy by means of door-to-door sales, in return for a fee. In exchange for the right to insurance benefits, customers pay a fee to TC Medical. TC Medical does not hold an authorisation as an insurance intermediary.

Findings

The Court first assessed the definition of "remuneration" in the IDD. The term "remuneration" is part of the term "insurance intermediary" under the IDD. The Court held that TC Medical did indeed receive a remuneration. TC Medical namely received a payment each time a customer joined the insurance cover under the insurance contract it had already entered into with the insurance company.

The Court gave considerable weight to the fact that TC Medical had its own economic (in the sense of commercial) interest in gathering as many customers as possible under the insurance cover. This interest is separate from the interest of its customers. The Court considered it irrelevant to its assessment that these payments were made by the customers to TC Medical and not by the insurer, e.g. in the form of a commission.

The Court further considered that the capacity of insurance intermediary is not incompatible with the capacity of policyholder. Under Dutch law, this therefore implies that a policyholder can also qualify as an intermediary in addition to being a policyholder. On this aspect, the Court deviates from Dutch legislative history. As the latter states that the term "intermediary" expresses the fact that the intermediary himself does not become a party to a contract, unlike a provider. In addition, the Court's view does not match the informal (and unpublished) 'Fenex interpretation' of the Dutch Authority for the Financial Markets ("**AFM**"). Under this interpretation, mediation in an insurance contract based on a framework agreement is not subject to an authorisation requirement. In the past, the AFM reconsidered this interpretation and announced that it could no longer stand. Since then, however, the AFM has remained silent.

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Finally, the Court considers that the intention of the policyholder is not an argument to contend that there is no intermediation. According to the Court, soliciting group insurance memberships for a fee is comparable to the activities of an insurance intermediary. In doing so, the Court takes into account the rationale behind the IDD. After all, the IDD should ensure that customers enjoy the same level of protection despite a difference in distribution channels. This related to the need to create a level playing field under the same conditions between insurance intermediaries.

For companies acting as policyholders under a group insurance policy, it is important to examine the potential impact of the Court's ruling. The Court has confirmed that selling cover under a group insurance policy as a policyholder does not preclude application of the IDD. On the other hand, as mentioned, this ruling does not necessarily mean that a company acting as a policyholder under a group insurance policy in any event qualifies as an intermediary.

Are you wondering if the Court's ruling has implications for your company's operations? Feel free to contact us. We will be happy to further assist.

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