

LEGAL UPDATE

From passive to active commission transparency in non-life insurance: the AFM provides clarification

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On 1 July 2024, the Financial Markets Amendment Decree 2023 (the "**Amendment Decree**") will enter into force. Among other things, the Amendment Decree introduces so-called active commission transparency. This is an obligation for intermediaries and advisers to actively inform consumers about the amount of closing commission and ongoing commission in non-life insurance. The Netherlands Authority for the Financial Markets ("**AFM**") very recently published an [interpretation](#) on the interpretation of active commission transparency in non-life insurance.

In this Legal Update, we discuss active commission transparency in the form of a Q&A. Where relevant, we also address the AFM's published interpretation.

What will change?

To date, the so-called passive transparency obligation applies. Passive commission transparency means that an intermediary or adviser must disclose information on commission at the client's request. Active commission transparency obliges an intermediary or adviser to actively inform consumers. The amendments will be laid down in the Decree on Conduct of Business Supervision of Financial Undertakings.

What is the purpose of active commission transparency?

The aim is to start the conversation about the service provided in return for the commission so that consumers understand:

1. they indirectly pay the intermediary or adviser for mediation or advice, respectively;
2. they have access to services; and
3. what services of the adviser or intermediary they should consider in relation to the price and service.

The intention is to then enable a consumer to compare costs between service and commission, different intermediaries and advisers and distribution channels.

How should an intermediary or adviser inform consumers?

The manner in which a consumer must be informed is form-free. Should an intermediary or adviser choose to inform a consumer verbally rather than in writing, it is advisable for an intermediary or adviser to record this in writing.

In principle, an intermediary or adviser must disclose the exact amount of commissions in euros. A percentage is not sufficient. If the exact amount is (still) unknown, an indication of the commission as accurate as possible should be given. The legislative history of the Amending Decree mentions the 'granular average'. An intermediary or adviser bases the amount of the commission on the commission of comparable products with similar risk coverage. If this estimate changes significantly during the provision of services, an intermediary or adviser is obliged to inform the consumer in a timely and proactive manner. The AFM endorsed this practice in its interpretation.

When must an intermediary or adviser inform consumers?

In any case, an intermediary or adviser must inform the consumer about the amount of commission at the latest before the intermediary has completed his mediation or the adviser has given his advice.

Does active commission transparency also apply to the corporate market?

Active commission transparency only applies when providing services to consumers, and not when servicing the corporate market. Passive commission transparency does continue to apply to the corporate market.

However, as of 1 July 2024, direct insurance services to corporate markets are also subject to additional obligations in terms of introduction fees. Direct insurance undertakings namely must actively inform clients about the characteristics of the services provided and the form and amount of the commission they pay to third parties, other than an intermediary or adviser, for introducing a new client. This concerns clients who arrive at the direct insurance undertaking's website via a third-party website. This obligation applies to both the consumer and corporate market. With this obligation, the legislator aims to create a level playing field between the direct insurance services channel and the intermediary and adviser channel.

As of which moment does active commission transparency apply?

Active commission transparency applies to new agreements entered into on or after 1 July 2024. In its interpretation, the AFM indicates that the question of when a new agreement is entered into is a civil law question and is at the discretion of the parties themselves. In practice, it may be difficult to distinguish between existing and new agreements. This will be the case, for example, with a prolongation agreed before 1 July 2024. Whether a new agreement has been agreed upon depends on the circumstances of the case, but in any case when there is a material change to essential parts of the agreement. If it is not clear as of what moment there is a new agreement, the AFM recommends acting in accordance with the rules of active commission transparency.

Does active commission transparency also apply to ancillary insurance intermediaries?

Section 7 Exemption Regulation Wft allows ancillary insurance intermediaries to be exempted from the authorisation requirement for intermediaries. These intermediaries are exempt under certain conditions if they intermediate in insurance as a supplement to the delivery of goods or provision of a service. Although the exemption also covers active commission transparency, the AFM nevertheless recommends exempted intermediaries to comply with the active transparency obligation in line with the rules on tying.

What does the AFM focus on in exercising its supervision?

In its interpretation, the AFM indicates that in exercising its supervision, it looks at the purpose of active commission transparency. It must be clear to consumers what service can be expected and for what amount. A conversation should be held about this. This is what the AFM will focus its attention on.

Feel free to contact one of our specialists from the Banking & Finance team.

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