

cover article

2016, a Year of Contradictions in Insurance Regulations

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In terms of legislation, 2016 was for insurance a year of contradictions – we saw, on one hand, the strengthening of the alignment and implementation of EU law, but, on the other hand, it was a year of local interferences and initiatives amplified by the effect of the election year, with some of these initiatives being questionable in terms of legal and economic reasons or compatibility with the European legislation. We mention in this regard, first, on a better understanding and consolidating of the application of the provisions of European insurance law (Solvency II) and the capping of MTPL (RCA) prices (by GEO 54/2016).

Implementation of Solvency II

The Solvency II Directive (Directive 2009/138/EC of the European Parliament and Council on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) November 25, 2009), a complex regulation applicable from 2016 to local insurance companies (assessing legal solvency for financial insurance groups on a consolidated basis of capital), but with different transitional periods regarding quantitative requirements (capital requirements) and quality requirements (quality regulations on supervision, including the obligations of transparency and reporting), was implemented mainly by Law 237/2015 regarding the authorization and supervision of insurance and reinsurance, published in GO 800/10.28.2015, with subsequent amendments.

This law bordering the Solvency II regime and the national regime, as the case may be, applicable to local insurance companies, attracted during 2016 a special effort in implementing it, including the issuance by the Financial Supervisory Authority of specific secondary legislation, implementation of rules and transitional plans applied by insurance entities.

By Norms no. 21/2016 on reporting relating to the insurance and/or reinsurance, published in the Official Gazette no. 268/08.04.2016 and the Norms no. 35/2015 on quality requirements set by the European Insurance and Occupational Pensions Authority, published in the Official Gazette no. 971/29.12.2015, applicable from 1 January 2016, the Romanian Financial Supervisory Authority confirmed the applicability of the related guidelines that contain qualitative and reporting requirements set by EIOPA, and set additional requirements to those provided by Law no. 237/2015, the Commission Delegated Regulation (EU) 2015/35, implementing technical standards and regulations.

Passporting the license for underwriting MTPL policies

The procedure on passporting/authorization in Romania of an insurer authorized in one EU Member State to subscribe MTPL policies is regulated mainly by Law 237/2015 regarding the authorization and supervision of insurance and reinsurance, the Norms of the Financial Supervision Authority no. 20/2016 regarding the authorization and monitoring and reinsurance insurance companies and Norms of the Financial Supervision Authority no. 39/2016 regarding the MPTL insurance in Romania.

According to such legislation, an insurer headquartered and authorized in a Member State of the European Union for underwriting of risk of mandatory third party civil liability, which intends to underwrite on the territory of Romania, the same risks pertaining to such insurance category no. 10 "civil liability insurance for vehicles (other than carrier's liability)", under the mechanism of freedom of services or the right of establishment, has to prior submit with the Financial Supervisory Authority in Romania, through the competent authority of the home Member State, the notification of intention in such respect.

The passported MTPL insurance business may be carried out in Romania only with the approval of the Financial Supervisory Authority and in accordance with national law. The Member State Insurer shall be considered authorized to practice MTPL insurance in Romania on the date on which the competent authority of the home Member State notices the confirmation from the Romanian Financial Supervisory Authority on receiving the notification of intent to exercise the freedom of services or the right establishment and related required documentation according to national norms.

[Adjusting the mechanism for calculating insurance premiums on MPTL](#)

As part of the measures package adopted by the Romanian Financial Supervision Authority under the general purpose to stabilize the MTPL insurance market and protect the interests of related insured persons, including amendments to primary legislation in this area, MTPL regulation was amended by Government Emergency Ordinance 54/2016, published in the Official Gazette no. 723 as of 19.09.2016.

In consideration of the measures taken by Financial Supervision Authority that led out to the exit from the insurance market of the two local insurers subscribing significant MPTL risks (Astra Asigurare Reasigurare SA and Carpatica Asigurari SA), situation followed by a trend of increasing of the average premiums on this MPTL market, and taking into account the high volatility and extreme dispersion of such premiums, by the Norms issued by the Financial Supervision Authority no. 37/2016, published in the Official Gazette no. 807 as of 13.10.2016, it was established the methodology for calculating the maximum threshold of the premiums rate for underwriting MTPL risks.

Consequently, taking into account such exceptional circumstances of this insurance area, and with observing the competition legislation, by the Government Decision no. 826/2016 published in the Official Gazette no 896 as of 11.08.2016 and which entered into force on 18.11.2016, it was instituted practically a mechanism of control the Romanian MPTL insurance market by setting by the Financial Supervision Authority of the maximum thresholds for the MPTL premiums for vehicle categories, prices to be applied by the insurance entities, for the new contracted MPTL policies, for a period of 6 months as of the Government Decision date of entering into force. Thus, insurers apply premium rates notified to the authority before the entry into force of this decision, but not exceeding the maximum premium rates set forth in this enactment. Basically, if prior to the implementation of this decision, insurers practiced lower rates, they would not be increased to the maximum level, but if the rates exceed this level, insurers are required to reduce to the maximum threshold allowed.

[New applicable requirements for performing damages ascertaining activity for MTPL policies](#)

The Financial Supervision Authority, through secondary legislation, the Norms no. 39/2016 on motor insurance in Romania, published in the Official Gazette no. 986 as of 08.12.2016, established new criteria for qualification and professional certification for persons performing damages ascertaining activities for MTPL policies, together with their approval by ASF for registration in the Register of Damage Ascertaining Specialists, up to 30 June 2017. It is relevant to mention the requirement for the claims inspectors to have a university degree in auto specialization or similar. The deadline to obtain certificates of competence issued by the Institute of Financial Studies is set for March 31, 2018.

For additional details on this material, please do not hesitate to contact us.

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