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RAZVOJ DISTRIBUCIJE OSIGURANJA U BIH: DE LEGE FERENDA

STRUČNI RAD

Sažetak

Autori u radu predstavljaju pravni okvir i analiziraju regulatorne odredbe o distribuciji osiguranja u Bosni i Hercegovini. U radu se preispituju odredbe zakona koje reguliraju distribuciju osiguranja, odnosno, konkretnije, pokušava se dati odgovor na pitanje da li je zakonska regulativa u ovom kontekstu zastarjela i da li je neophodno pristupiti izmjenama? Oslanjajući se na rezultat uporednopravne analize zakonodavstva Evropske unije u tom kontekstu, autori zagovaraju stajalište da je pravni okvir distribucije osiguranja de lege ferenda potrebno mijenjati i uskladiti sa Direktivom o distribuciji osiguranja. Izmjene treba da idu u cilju efikasnog funkcionisanja tržišta osiguranja i jačanja zaštite potrošača.

Ključne riječi: *distribucija osiguranja, posredovanje u osiguranju, proizvodi osiguranja, direktiva Evropske unije o distribuciji osiguranja.*

I Uvod

Distribuciju osiguranja potrebno je razlikovati od obavljanja djelatnosti osiguranja.² Djelatnost osiguranja je regulisana Zakonom o osiguranju Federacije Bosne i Hercegovine³ i čine je poslovi osiguranja, poslovi reosiguranja i poslovi neposredno

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² Vidi više kod: Nataša Petrović Tomić, *Osnovi prava osiguranja*, Pravni fakultet Univerziteta u Beogradu, Beograd, 2021, 113 i dalje.

³ *Službene novine Federacije BiH*, broj 23/17, u daljem tekstu: ZOS FBiH

povezano za poslovima osiguranja. Pod poslovima osiguranja podrazumijeva se zaključivanje ugovora o osiguranju i izvršavanje obaveza iz tako zaključenog ugovora. Uz prednje navedene radnje, poslovi osiguranja obuhvataju i poduzimanje mjera za sprečavanje i suzbijanje rizika koji ugrožavaju osiguranu imovinu i lica. Nasuprot tome, poslovi reosiguranja predstavljaju zaključivanje i izvršavanje ugovora o reosiguranju osiguranog viška rizika jednog društva za osiguranje kod drugog društva za reosiguranje. Pored poslova osiguranja i reosiguranja, djelatnost osiguranja čine i poslovi koji su neposredno povezani sa poslovima osiguranja. Tradicionalno te poslove čine utvrđivanje rizika i šteta i njihovu procjenu, posredovanje radi prodaje kao i prodaja ostataka osiguranih oštećenih stvari i pružanje drugih intelektualnih i tehničkih usluga u vezi sa poslovima osiguranja. Posljednji poslovi koji se odnose na posredovanje radi prodaje predstavljaju distribuciju osiguranja, koja je, kako će se vidjeti poslije, regulisana posebnim zakonom. Zakon o društvima za osiguranje Republike Srpske⁴ preciznije daje definiciju djelatnosti osiguranja⁵ navodeći izričito da je to djelatnost zaključivanja i izvršavanja ugovora o osiguranju i reosiguranju, te djelatnost posrednika i zastupnika u osiguranju.

Za funkcionisanje osiguranja od životne važnosti je djelatnost posredovanja i zastupanja.⁶ U našem pozitivnopravnom okviru nema izravne definicije distribucije osiguranja, međutim ona se može izvući posredno. Distributivni sistem usluga osiguranja predstavlja posredovanje u privatnom osiguranju, koje se obavlja putem zastupnika i brokera u osiguranju.

II Regulatorni okvir distribucije osiguranja u Bosni i Hercegovini

Generalno, svi pravni izvori koji se odnose na osiguranje mogu se klasificirati u dvije grupe. Jednu čine statusni, a drugu materijalno-pravni izvori. Statusni izvori prava osiguranja su oni kojima se reguliraju pravni položaj, status društava za osiguranje, nadzor osiguranja i slično. Materijalno-pravni izvori su oni koji normiraju obvezno-pravne odnose u oblasti prava osiguranja, bilo na temelju zakona ili ugovora.

Regulatorni okvir distribucije osiguranja u Bosni i Hercegovini (u daljem tekstu: BiH) čini šest propisa. To su:

- a) Zakon o obligacionim odnosima FBiH,⁷
- b) ZOS FBiH,

⁴ Službeni glasnik Republike Srpske, br. 17/05, 01/06, 64/06 i 74/10, u daljem tekstu: ZDO RS.

⁵ Čl. 2. stav 1. ZDO RS.

⁶ Marijan Ćurković, „Posredovanje i zastupanje u osiguranju“, Zbornik sa 7. savjetovanja o obradi i likvidaciji međunarodnih automobilskih šteta (Hrvatski ured za osiguranje, Ante Lui), Lovran, 1999, 33.

⁷ Sl. list SFRJ, br. 29/1978, 39/1985, 45/1989 - odluka USJ i 57/1989, Sl. list RBiH, br. 2/1992, 13/1993 i 13/1994 i Sl. novine FBiH, br. 29/2003 i 42/2011; u daljem tekstu: ZOO FBiH.

- c) Zakon o obligacionim odnosima Republike Srpske,⁸
- d) ZDO RS,
- e) Zakon o posredovanju u privatnom osiguranju⁹ i
- f) Zakon o zastupanju u osiguranju i posredovanju u osiguranju i reosiguranju.¹⁰

Kao što je navedeno u uvodu, ZOS FBiH u općim odredbama i ZDO RS u uvodnim odredbama određuju šta se to podrazumijeva pod djelatnošću osiguranja, pri čemu oba zakona navode da posredovanje radi prodaje potpada u širem smislu pod djelatnost osiguranja. Ova dva zakona predstavljaju *lex generalis*, dok ZPPO FBiH i ZZOPOR RS predstavljaju *lex specialis* u odnosu na ovu materiju. ZOO FBiH i ZOO RS sadrže značajnu odredbu koja reguliše ovlaštenja zastupnika osiguranja,¹¹ ali ova dva zakona predstavljaju i materijalno pravni izvor u odnosu na ugovor o posredovanju i ugovor o trgovačkom zastupanju, koje odredbe se primjenjuju na zastupnika u osiguranju i brokera u osiguranju, u dijelu koji nije uređen ZPPO FBiH i ZZOPOR RS.¹²

1. Federacija Bosne i Hercegovine

Temeljni zakon o osiguranju u FBiH je ZOS FBiH, kojim se uređuje osnivanje, poslovanje, nadzor i prestanak društava za osiguranje i reosiguranje osnovanih u FBiH, kao i podružnica društava za osiguranje i reosiguranje koja nemaju sjedište u FBiH.¹³ Zakon je donesen 2017. godine, podijeljen je na 15 glava sa ukupno 230 članova, pa možemo reći da se radi o prilično obimnom zakonu.

Kao što je navedeno u uvodu rada, poslovi osiguranja, poslovi reosiguranja i poslovi neposredno povezani za poslovima osiguranja čine djelatnost osiguranja. Poslovi neposredno povezani za poslovima osiguranja su posredovanje radi prodaje, što je uređeno u ZPPO FBiH, kao *lex specialis*. Zakon je donesen 2005. godine, a mijenjan je dva puta, 2010 i 2016. godine. Podijeljen je na šest dijelova: I opće odredbe, II zastupnik u osiguranju, III broker u osiguranju, IV nadzor nad posrednicima u osiguranju, V kaznene odredbe i VI prijelazne i završne odredbe. Radi se o relativno malom zakonu, koji ukupno ima 19 članova. ZPPO FBiH normira posredovanje u privatnom osiguranju, uslove za obavljanje tih poslova kao i nadzor nad njihovim

⁸ *Sl. list SFRJ*, br. 29/1978, 39/1985, 45/1989 - odluka USJ i 57/1989 i *Sl. glasnik RS*, br. 17/1993, 3/1996, 37/2001 - dr. zakon, 39/2003 i 74/2004; u daljem tekstu: ZOO RS.

⁹ *Službene novine Federacije BiH*, br. 22/05, 8/10 i 30/16, u daljem tekstu: ZPPO FBiH.

¹⁰ *Službeni glasnik Republike Srpske*, br. 47/17, u daljem tekstu: ZZOPOR RS.

¹¹ Čl. 906. ZOO FBiH i ZOO RS.

¹² Miroslav Džidić, Marijan Čurković, *Pravo osiguranja*, Pravni fakultet Sveučilišta u Mostaru, Mostar, 2017, 115.

¹³ Čl. 1. ZOS FBiH.

obavljanjem u FBiH.¹⁴ Shodno zakonskoj regulativi, postoje dvije vrste posredovanja u osiguranju, i to: zastupnik u osiguranju i broker u osiguranju.

Da bi društvo za osiguranje u FBiH moglo da obavlja djelatnost neposrednog osiguranja ili djelatnost reosiguranja preko posrednika u osiguranju, oni moraju biti registrovani u skladu sa ovim zakonom i upisani u poseban registar koji vodi Agencija za nadzor osiguranja FBiH (u daljem tekstu: Agencija za nadzor FBiH). Bitno je naglasiti da takva registracija vrijedi na teritoriji cijele Bosne i Hercegovine. Ukoliko je posrednik u osiguranju registrovan u FBiH, on može pružati svoje usluge i u Republici Srpskoj (u daljem tekstu: RS), ali isključivo putem organizacione jedinice RS, što se detaljnije uređuje zakonom. Vrijedi i *vice versa* kada se radi o posredniku u osiguranju koji je registrovan u RS, a prvi put ima namjeru da obavlja poslove u FBiH preko organizacione jedinice, s tim što o tome pismeno obavještava Agenciju za nadzor RS.¹⁵

U djelatnosti osiguranja veoma su značajne uloge zastupnika i posrednika.¹⁶

Zastupnik u osiguranju je jedna od dvije vrste posrednika u osiguranju. ZPPO FBiH mu posvećuje svega dva člana, jedan koji se odnosi na opće odredbe i drugi koji detaljnije propisuje registrovanje zastupnika.¹⁷ Poslove zastupanja u osiguranju mogu obavljati pravna ili fizička lica koja se bave profesionalnom djelatnošću. Izuzetno, ove poslove mogu obavljati i banke¹⁸ i javna preduzeća – poštanski operateri, naravno uz uslov posjedovanja dozvole i upisa lica u registre Agencije za nadzor FBiH. Zastupnik djeluje u ime i/ili za račun jednog ili više društava, što znači da se radi o licu koje je vezano za osiguravača. Da bi zastupnik u osiguranju mogao da obavlja poslove zastupanja u osiguranju, on mora zaključiti pismeni ugovor sa društvom za osiguranje, a društvo je u obavezi da ga dostavi Agenciji za nadzor FBiH. Jednaka obaveza obavještavanja Agencije za nadzor FBiH od strane društva postoji i u slučaju raskida ugovora o zastupanju, bez obzira koji je razlog raskida uz objavljivanje takvog obavještenja u dnevnim novinama većeg tiraža u mjestu poslovanja zastupnika u osiguranju i internet stranici društva.¹⁹ Zastupnik u osiguranju samostalno obavlja djelatnost a njegovi poslovi obuhvataju sljedeće poslove: pokretanje, predlaganje i izvršavanje pripremnih radnji do zaključenja ugovora o osiguranju, zaključenje ugovora o osiguranju, pomaganje u primjeni ili izvršenju ugovora o osiguranju, naročito u slučaju eventualnog odštetnog zahtjeva i pružanje savjetodavnih usluga.

Da bi zastupnik u osiguranju mogao otpočeti obavljanje profesionalne djelatnosti moraju se ispuniti određeni uslovi, koji su različiti u zavisnosti od toga da li se radi o zastupniku fizičkom ili pravnom licu i registrovati se kod Agencije za nadzor

¹⁴ Čl. 1. ZPPO FBiH.

¹⁵ Čl. 5. ZPPO FBiH.

¹⁶ Vidi više kod: Dragan Mrkšić, Zdravko Petrović, Katarina Ivančević, *Pravo osiguranja, II izmijenjeno i dopunjeno izdanje*, Fakultet za poslovno pravo, Beograd, 2005, 90 i dalje.

¹⁷ Čl. 6. i 7. ZPPO FBiH.

¹⁸ Osim u osiguranju od odgovornosti za motorna vozila.

¹⁹ Ova obaveza postoji i u slučaju isteka ugovora o zastupanju.

FBiH. Kada je u pitanju registar za zastupnika fizičko lice, on je podijeljen na dva podregistra, podregistar sa imenima zastupnika registrovanih u FBiH i podregistar sa imenima zastupnika koji su registrovani u RS i pružaju usluge u FBiH. Prvi podregistar broji ukupno 1149 zastupnika u osiguranju a drugi 5. Agencija vodi i podregistar javnih preduzeća – poštanskih operatera i banaka zastupnika u osiguranju koji ima ukupno 13 upisanih zastupnika.²⁰ Registar društava za zastupanje u osiguranju ima dva podregistra glavnog registra. U podregistru društava za zastupanje u osiguranju u FBiH je upisano 41 društvo, a u podregistru podružnica društava za zastupanje u osiguranju iz RS je upisano 5 podružnica. Društvo za zastupanje u osiguranju može biti osnovano u obliku dioničkog društva ili društva sa ograničenom odgovornošću u skladu sa zakonom kojim se uređuje položaj privrednih društava. Da bi Agencija za nadzor FBiH donijela rješenje o upisu u registar u roku od 30 dana od dana podnošenja zahtjeva, zastupnik u osiguranju mora podnijeti zahtjev za upis i dostaviti dokumentaciju propisanu zakonom.²¹ Zastupnici imaju obavezu plaćanja godišnje naknadu za nadzor nad poslovanjem i takse za registrovanje u skladu sa propisima Agencije. Godišnja naknada za društva za zastupanje u osiguranju, banke, javna preduzeća – poštanski operateri, podružnice društava plaćaju godišnju naknadu u iznosu od 0,5% od ostvarene provizije u prethodnoj godini za tekuću godinu, ali ne manje od 1.000,00 KM, dok fizička lica plaćaju isti procenat, ali je minimalni iznos smanjen na 500,00 KM.²²

Interesantno je da zakon ne spominje izričito pravo na proviziju kada su u pitanju zastupnici u osiguranju, ali ZOO koji regulira ugovor o trgovačkom zastupanju (što je po svojoj prirodi ugovor koji zaključuje zastupnik i društvo) kao jedno od osnovnih prava zastupnika predviđa naknadu (proviziju).²³ Zastupnik ima pravo na proviziju kada je ugovor zaključen njegovim posredovanjem, kada je zaključio direktno ugovore (ako je za to bio ovlašten), kao i u slučaju da je društvo zaključilo ugovore o osiguranju sa klijentima koje je zastupnik pronašao.²⁴ Zastupnik stiče pravo na naknadu kada ugovor bude izvršen.²⁵ On ima pravo na proviziju i kada ugovor ne bude izvršen ukoliko je za neizvršenje krivo društvo za osiguranje.²⁶ Pitanje provizije je pitanje koje se najčešće reguliše ugovorom o zastupanju sa društvom za osiguranje, uz brojna druga pitanja, poput ovlaštenja zastupnika.²⁷ Kada je u pitanju visina provizije, ona se određuje ugovorom. Ukoliko to nije slučaj, zastupnik ne bi trebao

²⁰ Registar zastupnika u osiguranju, Internet stranica Agencije za nadzor FBiH, <https://nados.ba/bs/zastupnici/> 16.7.2024.

²¹ Vidi čl. 7. ZPPO FBiH.

²² Odluka o naknadama, *Službene novine FBiH*, br. 2/18 (dalje: Odluka o naknadama FBiH).

²³ M. Džidić, M. Čurković, 126-127.

²⁴ Čl. 804. ZOO.

²⁵ Odnosno kada bude plaćena premija od strane ugovaratelja.

²⁶ Čl. 805. ZOO

²⁷ N. Petrović Tomić, 122.

ostati bez naknade, nego ima pravo na uobičajenu naknadu.²⁸ Konačno, ukoliko je zastupnik imao ovlaštenje za naplatu premije i izvršio je, pripada mu posebna naknada u tom slučaju.²⁹ Kada su u pitanju troškovi koje je zastupnik imao u okviru redovnog obavljanja svoje djelatnosti, on nema pravo na njihovu naknadu, ali ostaje da se to pitanje može drugačije urediti ugovorom između zastupnika i društva. Ukoliko je zastupnik imao posebne troškove koji su koristili društvu, zastupnik će imati pravo na njihovu naknadu.³⁰

Na ovom mjestu čini se uputnim spomenuti i odredbe ZOO koje se odnose na ugovor o osiguranju, a regulišu zastupanje u osiguranju. Naime, osiguravač može ovlastiti nekoga da ga zastupa sa ili bez ograničenja njegovih ovlaštenja. U slučaju da zastupnik osiguranja djeluje bez ograničenja ovlaštenja, onda on može u ime i za račun osiguravača da zaključuje ugovore o osiguranju, ugovara njegove izmjene ili produženje važenja. Također, u ovom slučaju zastupnik osiguranja može izdavati polise osiguranja, naplaćivati premije i primati izjave koje se odnose na osiguravača. Ukoliko postoje ograničenja njegovih ovlaštenja, a to nije bilo poznato ugovaraču osiguranja, smatra se da ta ograničenja nisu ni postojala.³¹

Druga vrsta posrednika u osiguranju je *broker u osiguranju*. Zakon mu posvećuje član više u odnosu na zastupnika u osiguranju (čl. 8 – 10), kojim su uređene opće odredbe, registrovanje i obaveze brokera. Poslove brokera u osiguranju mogu obavljati pravna i fizička lica koja samostalno obavljaju djelatnosti. Za razliku od zastupnika u osiguranju, koji radi za društvo za osiguranje, isključivi profesionalni cilj brokera u osiguranje jeste da radi u ime osiguranika, što znači da je u potpunosti nezavisan od društva za osiguranje. Poslovi brokera obuhvataju sljedeće poslove: dovođenje u vezu lica koja traže osiguranje ili reosiguranje i društva za osiguranje ili reosiguranje, obavljanje pripremnih radova za zaključenje ugovora o osiguranju ili reosiguranju i pomaganje prilikom obrade i izvršenja ugovora, naročito u slučaju odštetnih zahtjeva.³²

Za razliku od zastupnika u osiguranju, gdje zakon ništa ne govori o proviziji koja im pripada (iako to čini ZOO kako je naprijed navedeno), kod brokera u osiguranju je izričito normirano da prima proviziju od društva i djeluje uz potpunu slobodu u pogledu izbora društva za osiguranje.³³ To se čini odmah nakon definisanja brokera prije uslova za dobijanje dozvole za obavljanje djelatnosti.

Da bi broker otpočeo sa obavljanjem djelatnosti, mora da ispuni određene uslove koji su različiti u zavisnosti od toga da li se radi o fizičkom ili pravnom licu.

²⁸ Čl. 806. st. 1. ZOO.

²⁹ Čl. 807. ZOO.

³⁰ Čl. 808. ZOO.

³¹ Čl. 906. ZOO.

³² Ovo samo ukoliko je ugovoreno.

³³ Čl. 8. st. 2. ZPPO FBiH.

Broker u osiguranju (fizičko i pravno lice) se mora registrovati u posebnom registru kod Agencije za nadzor FBiH. Registar fizičkih lica brokera je podijeljen na dva podregistra, jedan je podregistar sa imenima brokera u osiguranju koji su registrovani u FBiH, a drugi podregistar sa imenima brokera u osiguranju koji su registrovani u RS i pružaju usluge u FBiH preko organizacione jedinice u FBiH. U prvom podregistru je upisano 13 brokera, a u drugom ukupno 5.³⁴ Registar za brokere pravna lica je podijeljen na podregiste po istom principu kao i za brokere fizička lica. U podregistru brokerskih društava u osiguranju koji obavljaju djelatnost u FBiH upisano je 8 društava, a u podregistru brokerskih društava koji su registrovani u RS i obavljaju djelatnost putem podružnice u FBiH je upisano njih ukupno 5.³⁵ Broker u osiguranju pravno lice se može osnovati u obliku dioničkog društva ili društva sa ograničenom odgovornošću, u skladu sa zakonom kojim se reguliše pravni položaj privrednog društva. Bitno je naglasiti da lice ovlašteno za zastupanje brokerskog društva u osiguranju mora biti registrovano kao broker u osiguranju (mora biti upisano u oba registra), kao i da svi zaposlenici u brokerskom društvu za osiguranje koji obavljaju poslove pribavljanja osiguranja moraju imati stručne kvalifikacije³⁶. Da bi Agencija izdala odobrenje za rad, broker u osiguranju je dužan podnijeti zahtjev i priložiti istu dokumentaciju koju podnose zastupnici u osiguranju (vidi str. 6 – 7). Dodatni uslov za brokera fizičko lice jeste blokada njegove imovine u iznosu od 200.000,00 KM radi dobrog izvršavanja njegovih djelatnosti, kao dokumentacija kojom dokazuje da ima važeće osiguranje od profesionalne odgovornosti u slučaju greške ili propusta. Pravilnikom Agencije reguliše se način blokiranja imovine brokera u osiguranju kao i sve pojedinosti u vezi sa osiguranjem od odgovornosti iz njegove djelatnosti.³⁷ Agencija je dužna u roku od 30 dana od dana podnošenja zahtjeva i dokumentacije kojom se dokazuje ispunjavanje zakonskih uslova donijeti rješenje kojim odlučuje o podnesenom zahtjevu. Registracija brokera u osiguranju je ograničena na period od 2 godine. Broker je u obavezi da u roku od 30 dana prije isteka ovog roka ponovno podnese sve dokumente (u zavisnosti da li se radi o fizičkom ili pravnom licu), a ukoliko to ne učini registracija nije više važeća. Dodatno, registracija ne ostaje na snazi ukoliko se u postupku utvrdi da podnosilac zahtjeva nije lice podobno da djeluje kao broker u osiguranju.

Broker u osiguranju je dužan da ima poseban račun na koji će polagati sve iznose koje naplati za račun osiguranika i ne smije se koristiti u neke druge svrhe, kao npr. za isplatu nekih drugih povjerilaca brokera. Ukoliko dođe do nesolventnosti

³⁴ Registar brokera u osiguranju, Internet stranica Agencije za nadzor FBiH, <https://nados.ba/bs/zastupnici/> 16.7.2024.

³⁵ Registar brokera u osiguranju, Internet stranica Agencije za nadzor FBiH, <https://nados.ba/bs/zastupnici/> 16.7.2024.

³⁶ Stručne kvalifikacije podrazumijevaju položen stručni ispit za obavljanje poslova posredovanja u osiguranju.

³⁷ Član 1. Pravilnika o blokiranju imovine i osiguranju od odgovornosti iz djelatnosti brokera u osiguranju, *Službene novine FBiH*, broj 80/06.

brokera u osiguranju, iznosi sa posebnog računa će se koristiti za isplatu svih dugovanja prema klijentima po osnovu odštetnih zahtjeva.³⁸

Obaveza plaćanja godišnje naknade i takse za registrovanje postoji i kod brokera u osiguranju. Godišnja naknada za brokerska društva u osiguranju, njihove podružnice u FBiH sa sjedištem u RS plaćaju godišnju naknadu u iznosu od 0,5% od ostvarene provizije u prethodnoj godini za tekuću godinu, ali ne manje od 1.000,00 KM, dok fizička lica plaćaju isti procenat, sa minimalnim iznosom 500,00 KM.³⁹

Pored prednje navedenih, posebno je istaknuto da broker u osiguranju ima obaveze koje se mogu grupirati na sljedeći način: obaveza vođenja knjiga i dokumentacije o obavljanju djelatnosti, postupanje po zahtjevima Agencije za nadzor FBiH u pogledu izvještavanja i vođenja posla i nezavisnost u pogledu društva.

Uloga Agencija za nadzor FBiH. Agencija za nadzor FBiH ima regulatornu i nadzornu funkciju nad poslovanjem posrednika u osiguranju. Regulatorna funkcija se sastoji u tome da Agencija propisuje uslove za sticanje i provjeru stručnih znanja potrebnih za obavljanje poslova posredovanja u osiguranju, propisuje pravila za vođenje registara, podatke koji se upisuju u njih i način javnog pristupa registrima kao i postupak izdavanja odobrenja za obavljanje poslova zastupanja u osiguranju i uvjete za obavljanje poslova zastupanja u osiguranju za banke i javna preduzeća-poštanske operatore. Nadzorna funkcija, kako joj i samo ime govori, sastoji se u tome da Agencija vrši nadzor nad poslovanjem posrednika u osiguranju. Ukoliko u postupku nadzora utvrdi da postoje određene nepravilnosti, može donijeti odgovarajuće rješenje. U vršenju ove funkcije, posrednici su dužni da sarađuju sa Agencijom i dostavljaju joj podatke u obimu, na način i u rokovima koje odredi Agencija. Nadzor se može obaviti i u poslovnim prostorijama posrednika u osiguranju.

2. Republika Srpska

Temeljni statusni zakon iz oblasti prava osiguranja u RS je ZDO RS, čije norme su posvećene osnivanju, poslovanju, nadzoru i prestanku rada društava za osiguranje i filijala koje obavljaju djelatnost osiguranja u RS i kojim se osniva Agencija za osiguranje RS (u daljem tekstu: Agencija RS).⁴⁰

Temeljni zakon kojim se uređuje distribucija osiguranja u RS je ZZOPOR RS, kojim se uređuju poslovi i djelatnost zastupanja u osiguranju, odnosno posredovanja u osiguranju i reosiguranju, uslovi za izdavanje i prestanak važenja ovlašćenja, odnosno dozvole, poslovanje i pravila poslovanja, kao i nadzor nad obavljanjem prednje navedenih poslova i djelatnosti.⁴¹ Za razliku od istovrsnog zakona u FBiH,

³⁸ Čl. 9. st. 9. ZPPO FBiH.

³⁹ Odluka o naknadama FBiH.

⁴⁰ Čl. 1. ZDO RS.

⁴¹ Čl. 1. ZZOPOR RS.

analizirajući naslov i predmet zakona u RS, zaključujemo da je zastupanje moguće samo u djelatnosti osiguranja, a posredovanje u osiguranju i reosiguranju. Zakon je donesen 2017. godine i podijeljen je na VII glava: I osnovne odredbe, II zastupanje u osiguranju, III posredovanje u osiguranju, IV osnivanje filijale društva za zastupanje u osiguranju i brokerskog društva u osiguranju, V zajedničke odredbe, VI nadzor i kaznene odredbe i VII prijelazne i završne odredbe. Ukupno ima 51 član, što je dvostruko više članova nego što to ima istovrsni zakon FBiH. U FBiH posredovanje u privatnom osiguranju je širi pojam i on uključuje posredovanje preko zastupnika u osiguranju i posredovanje putem brokera u osiguranju. U RS to nije slučaj. Zakon pravi jasnu razliku između zastupanja u osiguranju i posredovanja u osiguranju i reosiguranju. Zastupanje u osiguranju se radi u ime i za račun društva za osiguranje, a obuhvata sve pripremne radnje u cilju zaključivanja ugovora o osiguranju. Posredovanje u osiguranju obuhvata posredovanje u osiguranju i posredovanje u reosiguranju i to su svi brokerski poslovi. Radi se o poslovima dovođenja u vezu osiguranika i društava za osiguranje u cilju zaključivanja ugovora o osiguranju. Dodatno, broker ima obavezu da pruža pomoć prilikom realizacije tako zaključenog ugovora.⁴² Zakonom su također izričito isključeni poslovi koji se ne smatraju zastupanjem i posredovanjem u osiguranju, a to su: prikupljanje podataka o osiguranicima, odnosno ugovaračima osiguranja, njihovim rizicima i potrebama za zaključenje ugovora i pružanje svih opštih informacija o dostupnim proizvodima osiguranja.

U cilju sprečavanja pravne nesigurnosti i jasnosti ustanovljena je odredba ZZOPOR RS koja reguliše primjenu drugih propisa,⁴³ pod uslovom da ovim zakonom nisu propisani drugačiji uslovi. Kada su u pitanju ugovori o zastupanju i ugovori o posredovanju u zastupanju, na sve ono što nije uređeno predmetnim zakonom primjenjuje se ZOO RS, a kada su u pitanju lica koja obavljaju poslove zastupanja u osiguranju i posredovanja u osiguranju, a osnovana su u formi privrednog društva, na njih se primjenjuje Zakon o privrednim društvima.⁴⁴

Poslove zastupanja u osiguranju obavljaju *zastupnici u osiguranju*. Zastupnik u osiguranju može biti: fizičko lice, preduzetnik, društvo za zastupanje, banka, mikroreditno društvo i Preduzeće za poštanski saobraćaj RS a.d. Banja Luka i filijale društava čije je sjedište u FBiH.

Zastupnik u osiguranju fizičko lice obavlja poslove zastupanja u osiguranju na temelju ovlaštenja za zastupanje i upisa u odgovarajuće registre Agencije RS. Međutim sama dozvola i upis u registar nije dovoljan da zastupnik otpočne sa poslovima zastupanja u osiguranju. On može raditi isključivo na osnovu ugovora o radu ili nekog drugog pravnog odnosa sa drugim subjektima – zastupnicima u osiguranju (preduzetnikom za zastupanje u osiguranju, društvom za zastupanje

⁴² Čl. 2. ZZOPOR RS.

⁴³ ZPPO FBiH ne sadrži ovu odredbu.

⁴⁴ *Sl. glasnik RS*, br. 127/2008, 58/2009, 100/2011, 67/2013, 100/2017, 82/2019 i 17/2023.

u osiguranju, filijalom društava čije je sjedište u FBiH, bankom, mikrokreditnim društvom ili Poštama Srpske). Ukoliko je zastupnik u osiguranju zaposlen na osnovu ugovora o radu ili nekog drugog pravnog odnosa u društvu za osiguranje on nije zastupnik u osiguranju u smislu ovog zakona. Poslovima zastupanja u osiguranju mogu da se bave samo zastupnici koji ispunjavaju uslove propisane zakonom⁴⁵. Ukoliko zastupnik fizičko lice ispunjava sve zakonom propisane uslove, Agencija RS će mu izdati ovlašćenje za rad i upisati ga u registar zastupnika u osiguranju fizičkih lica, na period od četiri godine od dana upisa u registar.⁴⁶ U Podregistar zastupnika fizičkih lica iz RS je upisano ukupno 615 zastupnika, a u Podregistar zastupnika fizičkih lica iz FBiH je upisano ukupno 3 zastupnika.⁴⁷ Ovlašćenje za zastupanje izdato zastupniku u osiguranju vrijedi na cijeloj teritoriji BiH. Jednom izdato ovlašćenje za zastupanje fizičkom licu može prestati na lični zahtjev zastupnika u osiguranju, istekom roka na koje je izdato i oduzimanjem ovlašćenja.⁴⁸

Djelatnost zastupanja u osiguranju može da obavlja i preduzetnik za zastupanje u osiguranju. Dvije su osnovne pretpostavke koje se moraju ispuniti za to, a to su dozvola za zastupanje izdata od strane Agencije RS i rješenje o registraciji izdato od strane nadležnog registracionog organa. Prva dozvola predstavlja uslov za njegov upis u registar preduzetnika, pa ju je dužan prvu pribaviti, a upis u registre Agencije se vrši na osnovu podnesenog dokaza o izvršenoj registraciji.⁴⁹ U Podregistru Agencije RS su upisana 84 preduzetnika za zastupanje u osiguranju.⁵⁰ Preduzetnik se organizuje u skladu sa odredbama zakona kojim se uređuje obavljanje zanatsko-poduzetničke djelatnosti.⁵¹ Da bi otpočeo sa obavljanjem djelatnosti potrebno je da ispuni uslove propisane zakonom. Jednom izdata dozvola za zastupanje preduzetniku može prestati da važi istekom roka važenja upisa u registre, ukoliko ne otpočne sa obavljanjem djelatnosti u roku od šest mjeseci od dana upisa u registre, i ako prestane da obavlja djelatnost šest mjeseci u kontinuitetu.

Preduzetnik može da zastupa jedno ili više društava za osiguranje istovremeno i to u istim ili različitim vrstama osiguranja, a razlika je u tome što mu je za zastupanje u istim vrstama osiguranja potrebna saglasnost zastupanih društava u pismenoj formi. Društvo za osiguranje zaključuje ugovor sa preduzetnikom, također u pismenoj formi i dostavlja ga Agenciji RS. Osim činjenice zaključenja ugovora, društvo ima obavezu da obavijesti Agenciju RS i o raskidu ugovora, bez obzira na razlog raskida.⁵²

⁴⁵ *Sl. List RS*, br. 56/10 (u daljem tekstu: Odluka o tarifama RS).

⁴⁶ Čl. 28. ZZOPOR RS.

⁴⁷ <https://azors.rs.ba/bs/naslovna/ucესnici-na-trzistu/> 20.7.2024.

⁴⁸ Vidi čl. 38. ZZOPOR RS.

⁴⁹ Čl. 9. ZZOPOR RS.

⁵⁰ <https://azors.rs.ba/bs/naslovna/ucესnici-na-trzistu/> 20.7.2024.

⁵¹ Zakon o samostalnim preduzetnicima, *Službeni glasnik Republike Srpske*, br. 98/24.

⁵² Čl. 11. ZZOPOR RS.

Kao zastupnik u osiguranju može se pojaviti i društvo za zastupanje u osiguranju kojem je izdata dozvola za zastupanje i koje je upisano u registar poslovnih subjekata. Društvo se može osnovati u dva oblika: kao akcionarsko ili društvo sa ograničenom odgovornošću u skladu sa propisima koji regulišu privredna društva. Dozvola za zastupanje izdata društvu za zastupanje u osiguranju vrijedi četiri godine i na teritoriji BiH.

Izdata dozvola za zastupanje društvu od strane Agencije je uslov za njegov upis u registar poslovnih subjekata, a nakon upisa u taj registar vrši se upis u registre koje vodi Agencija RS. Registar društava za osiguranje koji vodi Agencija RS podijeljen je na dva podregistra: Podregistar društava za zastupanje u osiguranju iz RS, koji broji 17 društava i Podregistar društava za zastupanje u osiguranju iz FBiH koji broji ukupno 4 upisana društva.⁵³

Jednako kao i preduzetnik za zastupanje u osiguranju i pod istim uslovima, društvo može da zastupa jedno ili više društava za osiguranje, kako u istim tako i različitim vrstama osiguranja. Društvo za zastupanje u osiguranju zaključuje pismeni ugovor sa društvom za osiguranje i dostavlja ga Agenciji RS, a ova obaveza društva prema Agenciji postoji i u slučaju raskida njihovog ugovora.

Društvo i preduzetnik za zastupanje u osiguranju imaju obavezu da tačno i ažurno vode poslovnu evidenciju, posjeduju i čuvaju cjelokupnu dokumentaciju koja se odnosi na obavljanje njihove djelatnosti. Poslovna evidencija ovih zastupnika u osiguranju uključuje vođenje podataka o zastupnicima fizičkim licima, društvima za osiguranje sa kojim su zaključili ugovor i licima koji prikupljaju podatke o potencijalnim osiguranicima/ugovaračima osiguranja, rizicima i potrebama, kao i onih koji pružaju neke opšte informacije o proizvodima osiguranja.

S obzirom da ugovor o zastupanju u osiguranju nije besplatni ugovor, njegov bitni element jeste provizija. Društvo i preduzetnik za zastupanje u osiguranju imaju, za svoj rad, pravo na proviziju. Proviziju plaća društvo za osiguranje u čije ime i za čiji račun zaključuje ugovor o osiguranju. Zakonom je propisano da Agencija RS, u slučaju da utvrdi ugroženost finansijskog položaja i finansijske discipline društava, kao i nesmetano funkcionisanje tržišta osiguranja zbog ugovorene provizije zastupnika, donosi akt kojim ograničava iznos provizije i uređuje druge međusobne odnose zastupnika u osiguranju sa društvima za osiguranje. Agencija RS je donijela Pravilnik o međusobnim odnosima zastupnika u osiguranju i društava za osiguranje i ograničenju provizije zastupnika u osiguranju⁵⁴ Tako npr. prema ovom Pravilniku, ograničenje iznosa provizije u vrsti osiguranje od autoodgovornosti je 27%, a za druge vrste neživotnih osiguranja ne može se ugovoriti viša stopa provizije od visine udjela režijskog dodatka u bruto premiji za tu vrstu osiguranja.⁵⁵

⁵³ <https://azors.rs.ba/bs/naslovna/ucesnici-na-trzistu/> 20.7.2024.

⁵⁴ *Sl. glasnik RS*, br. 21/19 i 85/21.

⁵⁵ *Ibid*, čl. 3.

Djelatnost zastupanja mogu da obavljaju banke, mikrokreditna društva i Pošte Srpske na temelju dozvole za zastupanje izdate od strane Agencije. Agencija izdaje dozvolu nakon podnesenog zahtjeva i dokumentacije kojom se dokazuje ispunjavanje zakonom propisanih uslova.⁵⁶

Posredovanje u osiguranju je, prije svega, uređeno u ZOO. Naime, odredbom čl. 813. ZOO propisano je da se ugovorom o posredovanju obavezuje posrednik da nađe i dovede u vezu sa nalogodavcem lice koje bi s njim pregovaralo o zaključenju određenog ugovora, a nalogodavac se obavezuje da mu isplati određenu naknadu, ako taj ugovor bude zaključen. Ukoliko ovo transponiramo na polje osiguranja, onda je posrednik broker u osiguranju, on nalazi i dovodi u vezu sa društvom za osiguranje potencijalne osiguranike/ugovarače osiguranja koji žele s njim zaključiti ugovor. ZZOPOR RS ovoj klasičnoj definiciji posredovanja iz ZOO dodaje još poslova koji predstavljaju obaveze brokera u osiguranju, a to je obavljanje pripremnih radnji za zaključenje ugovora o osiguranju kao i pružanje pomoći nakon zaključenog ugovora u pogledu njegovog izvršenja. Poslovi posredovanja se mogu podijeliti generalno u tri faze. Prva se odnosi na analizu potreba konkretnog osiguranika/ugovarača osiguranja i kreiranje ponude prema njegovim željama. Druga faza obuhvata pregovaranje sa društvom za osiguranje u cilju zaključenja ugovora. Konačno, treća i posljednja faza uključuje obavezu brokera da pruži pomoć osiguraniku nakon zaključenja ugovora o osiguranju, odnosno tokom njegovog trajanja.⁵⁷

Poslove, odnosno djelatnost posredovanja u osiguranju obavljaju brokери u osiguranju i to kao isključivu djelatnost. Kao broker u osiguranju se može pojaviti: fizičko lice, na temelju ovlaštenja za posredovanje, pravno lice, na temelju odobrenja za posredovanje, i filijale brokerskih društava čije je sjedište u FBiH. Navedeni subjekti stiču pravo da obavljaju poslove, odnosno djelatnost danom upisa u odgovarajuće registre Agencije RS, na temelju ispunjavanja zakonom propisanih uslova. Ovlaštenje za posredovanje se izdaje na period od četiri godine i vrijedi na teritoriji Bosne i Hercegovine, a prestaje da važi na isti način kao i ovlaštenje za zastupnika u osiguranju fizičko lice.⁵⁸ Brokersko društvo u osiguranju može da se osnuje u obliku akcionarskog društva i društva za ograničenom odgovornošću. U okviru registra brokerskih društava u osiguranju organizirana su dva podregistra: Podregistar brokerskih društava u osiguranju iz RS i Podregistar brokerskih društava u osiguranju iz FBiH. U okviru prvog podregistra upisano je sedam brokerskih društava, a tri u okviru drugog.⁵⁹

Za dobijanje dozvole za posredovanje brokersko društvo u osiguranju mora da ispunjava iste uslove kao i društvo za zastupanje u osiguranju (za izbjegavanje

⁵⁶ Čl. 8. ZZOPOR RS.

⁵⁷ Marijan Ćurković, Zastupanje i posredovanje u osiguranju prema Zakonu o osiguranju, Novi propisi iz osiguranja – Zakon o osiguranju i Zakon o obveznim osiguranjima u prometu, Inženjerski biro, Zagreb, 2006, 52.

⁵⁸ Čl. 16. st. 3. ZZOPOR RS.

⁵⁹ <https://azors.rs.ba/bs/naslovna/ucesnici-na-trzistu/> 20.7.2024.

ponavljanja autori upućuju na str. 16 ovog rada) uz još jedan dodatni uslov koji se odnosi na dokaz o postojanju osiguranja od odgovornosti iz djelatnosti posredovanja u osiguranju u visini osigurane sume koja ne može biti manja od 600.000,00 KM po svakom odštetnom zahtjevu, odnosno 960.000,00 KM za sve odštetne zahtjeve u jednoj godini.⁶⁰ Dozvola za posredovanje izdata brokerskom društvu traje četiri godine od dana upisa u registar Agencije RS i vrijedi na teritoriji BiH, a prestaje da važi na isti način kao i dozvola za zastupanje društvu za zastupanje u osiguranju (vidi str. 17).

Broker u osiguranju ima obaveze, kako prema osiguraniku, odnosno ugovaraču osiguranja, tako i prema društvu za osiguranje. Zakonom je ustanovljena zaštitna uloga brokera u odnosu na osiguranika/ugovarača osiguranja. Ova uloga uključuje pružanje osiguraniku svih neophodnih informacija i pojašnjenja kako bi osiguranik donio najbolju odluku i zaključio ugovor o osiguranju u skladu sa svojim potrebama. Naravno, broker to ne radi samoinicijativno, nego isključivo na osnovu pismenog naloga ili ugovora koji zaključi sa klijentom. U tom smislu, kada broker dobije potrebne informacije od osiguranika/ugovarača osiguranja, pristupiće izradi analize rizika i načela pokrića koji predstavljaju najbolje rješenje.⁶¹ On će to uraditi uzimajući u obzir više ugovora o osiguranju koji su dostupni na tržištu. Zakon ne govori o kojem broju je riječ, nego se koristi riječcom „dovoljno veliki broj ugovora“. Šta znači dovoljno veliki broj ugovora vjerovatno zavisi od vrste osiguranja i dostupnosti na tržištu osiguranja. Na osnovu svih stručnih informacija kojima raspolaže i koje su mu poznate, broker će napraviti ocjenu finansijske sposobnosti društva za osiguranje za pokriće rizika osiguranika. Nakon što izradi analizu rizika i ocjenu finansijske sposobnosti društva za osiguranje, dolazi do izražaja njegova savjetodavna uloga. Na zahtjev osiguranika broker će savjetovati osiguranika koje od više društava za osiguranje da izabere za zaključenje ugovora, odnosno koje društvo mu pruža najveću sigurnost. Uz ovu obavezu vezuje se i obaveza brokera da osiguraniku dostavi sve ponude koje je pribavio od društava za osiguranje, sa uslovima osiguranja i u tom smislu mu izričito ukaže na pojedine odredbe uslova koje se tiču obima pokrića i isključenja. Nakon što izvrši izbor društva, osiguranik pristupa zaključenju ugovora. Ukoliko to izričito osiguranik zahtjeva, broker će posredovati njegovom zaključenju. Nakon zaključenja ugovora, broker dostavlja osiguraniku zaključeni ugovor o osiguranju. Uloga brokera i briga za zaštitu interesa osiguranika ne završava sa zaključenjem ugovora. Broker provjerava sadržaj polise osiguranja i ima obavezu da prati ugovor o osiguranju u čijem zaključenju je posredovao za vrijeme njegovog trajanja. U tom smislu, ukoliko to bude potrebno, dužan je predlagati izmjene već zaključenog ugovora. Posebno se naglašava obaveza brokera da pruža pomoć osiguraniku tokom trajanja ugovora. Ovo naročito može biti od značaja ukoliko se dogodi osigurani slučaj zbog kojeg

⁶⁰ Čl. 18. ZZOPOR RS.

⁶¹ Nebojša Žarković, „Lični razgovor sa strankom u posredovanju i zastupanju u osiguranju“, *Tokovi osiguranja*, 4/2020, 7-24.

se i zaključuje ugovor o osiguranju, pa je u tom smislu uloga brokera od posebne važnosti da vodi računa da osiguranik ostvari sva prava koja mu pripadaju iz ugovora i u zakonom propisanim rokovima. Konačno, broker je u svom djelovanju dužan da bude transparentan, te učini dostupnim sve veze (kako pravne, tako i ekonomske) i proviziju sa konkretnim društvom za osiguranje.⁶²

Osim što je dužan štiti interese osiguranika na putu izbora najboljeg i najpovoljnijeg ugovora o osiguranju, obaveza zaštite interesa postoji i u odnosu na društvo za osiguranje u istoj mjeri i obimu kao i u odnosu na osiguranika. Broker u osiguranju je dužan da konkretno društvo za osiguranje informiše o ponudi osiguranika, odnosno o njegovim zahtjevima i potrebama.

Brokersko društvo za osiguranje mora da ima poseban račun, na kojem će se nalaziti sredstva koja osiguranik/ugovarač osiguranja plati na ime premije osiguranja i sredstva koja društvo za osiguranje plati na ime naknade ili svote iz ugovora o osiguranju (koji je zaključen posredovanjem brokera), naravno ukoliko je za to posebno pismeno ovlašten. Ova sredstva ne ulaze u imovinu, likvidacionu ili stečajnu masu brokerskog društva, ne mogu biti predmetom prinudnog izvršenja i koristiti se za naplatu povjerilaca brokerskog društva.⁶³

Imajući u vidu da broker u osiguranju, koji je povezan sa osiguranikom/ugovaračem osiguranja i društvom za osiguranje i dužan da štiti interese obje ugovorne strane (pa često može doći do sukoba interesa, što mora izbjegavati), pitanje plaćanja provizije može biti zbunjujuće. Prema običajnom pravu proviziju posredniku plaća društvo za osiguranje⁶⁴. Pravo na proviziju brokera u osiguranju je u ZZOPOR RS negativno određeno na način da broker nema pravo da od osiguranika, odnosno ugovarača osiguranja zahtijeva plaćanje provizije ili neke druge naplate, ako to nije izričito pismeno ugovoreno. Iz ovoga zaključujemo da broker ima pravo na proviziju koju će mu platiti osiguranik/ugovarač osiguranja ukoliko je to pravo stipulirano u ugovoru zaključenim sa osiguranikom. Ukoliko je to slučaj, onda broker nema pravo da proviziju naplati od društva za osiguranje.

III Distribucija osiguranja u Evropskoj Uniji

Četiri osnovne slobode predstavljaju stub jedinstvenog tržišta Evropske unije (u daljem tekstu: EU): sloboda osnivanja, sloboda pružanja usluga, sloboda kretanja ljudi i sloboda kretanja kapitala.⁶⁵ Djelatnost osiguranja generalno se

⁶² Čl. 20. ZZOPOR RS.

⁶³ Detaljnije o samom poslovanju brokera: Željko Vojinović, „Uređenje unutrašnjih odnosa u posredničkom i zastupničkom poslovnim poduhvatu“, *Tokovi osiguranja*, 4/2022, 40-53.

⁶⁴ Robert Merkin, Angus Rodger, *EC Insurance Law*, London, 1997, 80.

⁶⁵ Pored Direktive 2016&97 o kojoj će u nastavku biti više reči, za jedinstveno tržište osiguranja EU bitna je i Direktiva Solvency II. Detaljnije o ovoj direktivi: Nikolina Maleta, „Prilagodba regulatornog okvira Solvency II

klasificira kao jedna od značajnijih djelatnosti u zemljama članicama EU. Ono je oblikovano kroz tzv. generacije direktiva, ali i odlukama Suda pravde.⁶⁶ S obzirom da zastupnici i posrednici imaju bitnu ulogu u distribuciji osiguranja u okviru EU, a sve u cilju funkcionisanja zajedničkog tržišta, zakonodavstvo EU im posvećuje pažnju regulišući njihovo poslovanje direktivama i preporukama. Prvi propis koji se ticao djelatnosti zastupanja i posredovanja bila je Direktiva br. 77/92 CEE od 13.12.1976. godine, koja je prestala da važi 14.01.2005. godine.⁶⁷ Nakon ove Direktive, donesena je Preporuka br. 92/48/EE,⁶⁸ koja nije obvezujući akt. S obzirom da su i dalje među državama članicama postojale razlike, bilo je neophodno pristupiti daljoj regulaciji. Stoga, donijeta je Direktiva 2002/92/EZ Europskog parlamenta i Vijeća od 9.12.2002. godine o posredovanju u osiguranju,⁶⁹ koja je prestala da važi 30.9.2018. godine kada je donijeta Direktiva (EU) 2016/97 Europskog parlamenta i Vijeća od 20.01.2016. godine o distribuciji osiguranja.⁷⁰

1. Direktiva br. 77/92/CEE

Dokaz da je Evropska zajednica posvećivala pažnju prodaji proizvoda osiguranja putem posrednika i zastupnika u osiguranju jeste Direktiva br. 77/92 CEE od 13.12.1976. godine. Cilj Direktive se može vidjeti iz njenog naslova, a to je reguliranje mjera za ostvarivanje dvije slobode: slobodu poslovnog nastana⁷¹ i slobodu pružanja usluga⁷² u pogledu djelatnosti koju obavljaju zastupnici i posrednici u osiguranju.⁷³ Direktiva se primjenjuje na posrednike u osiguranju-brokere i zastupnike

novim rizicima i izazovima suvremenog korporativnog upravljanja", *Tokovi osiguranja*, 3/2024, 869-885; Milo Marković, „Izazovi tržišta osiguranja u Srbiji na putu ka Solventnosti II", *Tokovi osiguranja*, 2/2024, 333-361.

⁶⁶ Jasna Pak, „Pružanje usluga osiguranja na jedinstvenom tržištu Evropske Unije" u *Uslovi za realizaciju prometa roba i usluga u pravu Evropske unije i jugoslovenskom pravu*, Institut za uporedno pravo, Monografija br. 137, Beograd, 2001, 223 – 267.

⁶⁷ Council Directive 77/92/EEC of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex ISIC Group 630) and, in particular, transitional measures in respect of those activities, *Službeni list Evropskih zajednica*, L 26, 31 januar 1977.

⁶⁸ Commission Recommendation of 18 December 1991 on insurance intermediaries od 18.12.1991. godine, *Službeni list* L 019, 28/01/1992, P. 0032 – 0033.

⁶⁹ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, *Službeni list Evropske unije*, Posebno izdanje 2013., 06. Pravo poslovnog nastana i sloboda pružanja usluga, Svezak 08.

⁷⁰ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) Text with EEA relevance, *Službeni list Evropske unije*, L 26, 2. veljače 2016.

⁷¹ Uobičajeno se za slobodu poslovnog nastana u engleskoj terminologiji koristi izraz *Freedom of Establishment* – FOE.

⁷² Uobičajeno se za slobodu pružanja usluga u engleskoj terminologiji koristi izraz *Freedom of Provide of Services* – FOS.

⁷³ Marijan Ćurković, "Obveza distributera na informiranje potrošača proizvoda osiguranja prema odredbama EU Direktive o distribuciji proizvoda osiguranja", *Zbornik radova sa 30. Susreta osiguravača i reosiguravača Sarajevo*, (urednik Nikola Miljević), Sarajevo, 2019, 147-159.

u osiguranju koji su činili klasične kanale prodaje kakvi su postojali u vrijeme donošenja Direktive u zemljama članicama. Direktiva je iscrpno u članu 2. stav 2. navodila sve nazive osoba koji su se bavili posredovanjem u osiguranju. Primjera radi, u Njemačkoj je to bio *versicherungsmakler* ili *versicherungsvertreter*, u Francuskoj *courtier d'assurance* ili *agent general d'assurance*, dok je u Ujedinjenom kraljevstvu to bio *Insurance broker* ili *Agent*, u zavisnosti od vrste djelatnosti koju je obavljao.⁷⁴ Unatoč donošenju ove Direktive, koja se istina nije primjenjivala direktno, nego su države članice imale obavezu da je transponiraju u domaće pravo, harmonizacija propisa, kao krajnji cilj, nije se ostvarila zbog značajnih razlika u poimanju pojma posredovanja u osiguranju između država članica. S obzirom na navedeno, Direktiva je dobila obilježje privremene i čekalo se donošenje nove direktive koja će pokušati ostvariti cilj koji nije ostvarila prethodna.

2. Preporuka br. 92/48/CEE

Da bi pokušala ublažiti razlike između država članica koje su ostale egzistirati uprkos donošenju Direktive br. 77/92 CEE, Evropska komisija se 1991. godine odlučila za donošenje pravno neobavezujućeg akta, Preporuke br. 92/48/EEC od 18.12.1991. godine o posrednicima u osiguranju. Preporukom su predložene mjere u pogledu nezavisnosti posrednika u osiguranju, njihovih profesionalnih uslova, znanja, kompetencija, osiguranja od profesionalne odgovornosti kao i njihove registracije u javnim registrima. Apelirano je na države članice da ovakva rješenja transponiraju u domaće zakonodavstvo a sve u cilju ostvarenja efikasnog jedinstvenog tržišta osiguranja, što je većina njih i uradila, a to je konstatovano u preambuli naredne donesene direktive.

3. Prva EU direktiva o posredovanju u osiguranju (IMD I/MID I)

Direktivom br. 77/92/EEZ učinjen je prvi korak u olakšavanju ostvarivanja slobode poslovnog nastana i slobode pružanja usluga za zastupnike i posrednike u osiguranju. Također, države članice su u velikoj su mjeri slijedile Preporuku Komisije 92/48/EEZ o posrednicima u osiguranju, koja je nesumnjivo doprinijela usaglašavanju nacionalnih odredbi o stručnim uvjetima i upisu u registar posrednika u osiguranju. Međutim, pored donošenja Direktive i Preporuke ostale su znatne razlike između država članica koje su podrivale održavanje jedinstvenog tržišta u pogledu obavljanja djelatnosti posredovanja u osiguranju i reosiguranju. Stoga je bilo neophodno Direktivu 77/92/EEZ zamijeniti novom Direktivom br. 2002/92/EC koja je donesena 9.12.2002. godine. Njen naziv u žargonu je bio Prva direktiva o posredovanju,

⁷⁴ Marijan Ćurković, "Nastanak i obuhvat regulatornih odredbi o distribuciji osiguranja", *Hrvatski časopis za OSIGURANJE*, No. 1, Zagreb, 2019, 23 – 38.

odnosno skraćeno MID I. Direktiva nije imala za cilj harmoniziranje propisa država članica o posredovanju u osiguranju, već je propisano da bi se trebala odnositi na osobe čije se poslovanje sastoji od pružanja usluga posredovanja u osiguranju trećim osobama u zamjenu za naknadu. Direktiva traži da se posrednici u osiguranju i reosiguranju moraju biti upisani u registar pri nadležnom tijelu države članice naravno pod uslovom da ispunjavaju odgovarajuće uvjete. Obaveza je država članica da uspostave jedinstveno informativno mjesto koje omogućava brz i jednostavan pristup informacijama iz različitih registara, koje se prikupljaju elektronskim putem i stalno ažuriraju. Direktiva definira da država članica definira znanja i sposobnosti koja moraju posjedovati posrednici u osiguranju i reosiguranju moraju posjedovati. Potrebno je uspostaviti efikasne postupke pritužbi u cilju rješavanja sporova na relaciji potrošač-posrednik u osiguranju, te uz postojeću sudsku zaštitu, poticati vansudsko rješavanje sporova. Posrednici moraju imati osiguranje od od profesionalne odgovornosti. Obaveza je posrednika da pruže potrebne informacije potrošačima prije zaključenja bilo kakvog ugovora i definira način informiranja. Odredbom člana 16. Direktive propisana je obaveza država članice da se usklade sa Direktivom do 15. januara 2015. godine, koju je većina država i ispunila.

4. Direktiva 2016/97 (IDD) o distribuciji osiguranja

S obzirom da se pristupilo donošenju nove direktive iz oblasti distribucije osiguranja, to nas upućuje na zaključak da prethodno navedena nije postigla svoj cilj. U njenoj preambuli istaknuto je da je potrebno napraviti niz izmjena u MID I, a u interesu jasnoće bi je trebalo preinačiti, a sve u cilju usklađivanja nacionalnih odredbi u vezi s distribucijom osiguranja i reosiguranja. Također, naglašeno je da se novom direktivom želi postići minimalno usklađivanje i da to ne stoji na putu državama članicama da zadrže ili uvedu strožije odredbe u cilju zaštite potrošača. Nekoliko je faktora uticalo na potrebu donošenja nove direktive. Prvi od njih jeste kriza u finansijskom sektoru⁷⁵ nakon donošenja Prve direktive o posredovanju, potom tu je razvijanje novih kanala prodaje proizvoda osiguranja npr. putem interneta⁷⁶ i konačno ulazak finansijskih institucija (banke, pošte i sl.) u djelatnost prodaje osiguranja. Sve je to zahtijevalo izmjenu normativnog okvira posredovanja u osiguranju. Nakon što je Evropska komisija 2010. godine objavila *Consultation Document on the Review of Insurance Mediation Directive*, započela je faza konsultacija, kao jedna od faza u procedu donošenja EU

⁷⁵ Vidi više kod: Ozren Uzelac, Marija Dukić Mijatović, „Sadržina i obim obaveza tokom procesa izrade i uvođenja proizvoda osiguranja na tržište prema Direktivi EU o distribuciji osiguranja“, *Evropska revija za pravo osiguranja*, str. 9 - 18, I/2019, dostupno na: <https://erevija.org/wp-content/uploads/2022/10/I-2019-1.pdf> 29.7.2024.

⁷⁶ Vidi više kod: Maja Mihelja Žaja, Ljubica Milanović Glavan, Mateja Grgić, „Digitalna tehnologija kao čimbenik razvoja kanala distribucije u osiguranju“, *Hrvatski časopis za osiguranje*, No. 3/2020, 191-214.

direktiva.⁷⁷ Provedeno je anketiranje nekoliko kategorija ispitanika, a nakon provedene ankete većina je bila za izmjenu Prve direktive o posredovanju. To je rezultat imalo prijedlog nove direktive o posredovanju u osiguranju (IMD 2 – *Insurance Mediation Directive 2*), koju je Evropska komisija objavila 3. juna 2012. godine. Proces javne rasprave je trajao jako dugo (4 godine), nakon čega je postignut sporazum u pogledu konačnog teksta direktive, koja mijenja i naziv u Direktiva o distribuciji osiguranja (IDD – *Insurance Distribution Directive*), umjesto dosadašnjeg naziva Direktiva o posredovanju – IMD 2. Novi naziv naglašava na koga se sada Direktiva primjenjuje, a to su svi subjekti koji učestvuju u postupku posredovanja u osiguranju, odnosno prodaje u osiguranju. Dana 20. januara 2016. godine prihvaćena je IDD i objavljena u Službenom glasniku EU br. 26/19 od 2. februara 2016. godine.⁷⁸ Stupila je na snagu 23. februara 2016. godine. Države članice su imale obavezu prenijeti je u nacionalna zakonodavstva u roku od 24 mjeseca, odnosno do 23. februara 2018. godine. S obzirom da je bilo potrebno donijeti tzv. delegirane akte Evropske komisije prije usklađivanja nacionalnih propisa sa propisima EU, kasnilo se i sa implementacijom IDD-a, pa je primjena Direktive odgođena za 1.10.2018. godine.⁷⁹

IV Razvoj distribucije osiguranje u BiH de lege ferenda

Pitanju razvoja distribucije osiguranja pristupiće se kroz prizmu analize usklađenosti normativnog okvira u odnosu na IDD, kako bi se izveli zaključci u kojem pravcu treba ići reforma distribucije osiguranja u oba entiteta BiH.

ZPPO FBiH prvenstveno nije usklađen terminološki i u pogledu područja primjene. Njime se reguliše posredovanje u privatnom osiguranju, dok IDD propisuje pravila osnivanja i obavljanje poslova distribucije osiguranja i reosiguranja u Uniji. To znači da ZPPO FBiH ne obuhvata sve distributere osiguranja koji obavljaju ovu djelatnost, imajući u vidu da navodi da se posredovanje vrši preko zastupnika u osiguranju i preko brokera u osiguranju. Za razliku od njega, IDD propisuje da se ona odnosi na sve fizičke ili pravne osobe s poslovnim nastanom (ili koje ga planiraju uspostaviti) s ciljem osnivanja i obavljanja djelatnosti distribucije proizvoda osiguranja i reosiguranja. Direktiva propisuje da se ne odnosi na sporedne posrednike u osiguranju, uz ispunjenje određenih uslova. ZPPO FBiH u članu 2. stav 2. navodi da društvo za osiguranje ne može u FBiH vršiti djelatnost neposrednog osiguranja/reosiguranja preko posrednika koji nisu registrovani u skladu sa zakonom. IDD traži od država članica da osiguravaju da nadležna tijela prate tržišta generalno, uključujući i proizvode dodatnog osiguranja, dok ZPPO FBiH uopće ne regulira ovu obavezu.

⁷⁷ Marijan Ćurković, "Nastanak i obuhvat regulatornih odredbi o distribuciji osiguranja", 25.

⁷⁸ Dostupno na: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32016L0097>.

⁷⁹ Puni naslov: Direktiva (EU) 2018/411 Evropskog parlamenta i vijeća od 14. marta 2018. o izmjeni Direktive (EU) 2016/97 u pogledu datuma početka primjene mjera država članica za prenošenje, *Službeni list Evropske unije* br. L 76/28.

Terminološka usklađenost u odnosu na IDD uprkos datumu stupanja na snagu ZZOPOR RS ne postoji. Naime, ovaj zakon razdvaja zastupanje u osiguranju i posredovanje u osiguranju i reosiguranju, pa se iz samog naslova naslućuje da je zastupanje moguće samo u osiguranju, dok je posredovanje moguće u osiguranju i reosiguranju.

Kada su u pitanju definicije, IDD sadrži 18 definicija koje se koriste za potrebe Direktive, dok je ZPPO FBiH specifičan u tom smislu jer ne sadrži uopšte definicije pojmova upotrijebljenih u zakonu, što svakako doprinosi pravnoj nesigurnosti i eventualnoj proizvoljnosti prilikom pojedinačnih tumačenja. Primjera radi, IDD definiše distribuciju osiguranja, distribuciju reosiguranja, posrednika u osiguranju, sporednog posrednika u osiguranju, distributera u osiguranju itd.

Za razliku od ZPPO FBiH, ZZOPOR RS sadrži u članu 2. definicije zastupanja u osiguranju, posredovanja u osiguranju i reosiguranju i odredbu o tome šta se to ne smatra zastupanjem i posredovanjem u osiguranju.

Iako ne postoji terminološka usklađenost, kako je naprijed navedeno (Direktiva propisuje distributere osiguranja: posrednik u osiguranju, sporedni posrednik u osiguranju i društvo za osiguranje, a ZPPO FBiH govori o zastupnicima i brokerima u osiguranju), ipak poslovi zastupnika u osiguranju se u velikoj mjeri poklapaju sa poslovima navedenim u definiciji distribucije osiguranja u Direktivi (predlaganje ugovora, savjetovanje, pripreme radnje, sklapanje ugovora, pomoć tokom trajanja ugovora, a posebno prilikom rješavanja odštetnog zahtjeva itd.), a u manjoj mjeri kod brokera u osiguranju. Međutim, postoji nešto što bismo mogli nazvati sadržajna neusklađenost između ova dva propisa. Naime, zastupnik u osiguranju u ZPPO FBiH radi u ime i za račun ili samo za račun jednog ili više društava, broker radi u ime osiguranika i dovodi u vezu lica koja traže osiguranje/reosiguranje i društva koja se bave tom djelatnošću, a IDD ne sadrži takve razlike nego distribuciju osiguranja definiše kao: *„djelatnost predlaganja ugovora o osiguranju, savjetovanje o njima ili obavljanja drugih pripremnih radnji za sklapanje ugovora o osiguranju, ili sklapanja takvih ugovora, ili pružanja pomoći pri upravljanju takvim ugovorima i njihovu izvršavanju, posebno u slučaju rješavanja odštetnog zahtjeva, uključujući pružanje informacija o jednom ili više ugovora o osiguranju u skladu s kriterijima koje odabiru potrošači putem internetske stranice ili nekog drugog medija i sastavljanje rang-liste proizvoda osiguranja, uključujući i usporedbu cijena i proizvoda ili popust na cijenu ugovora o osiguranju, ako potrošač može izravno ili neizravno sklopiti ugovor o osiguranju na internetskoj stranici ili drugom mediju.”*⁸⁰ Na temelju navedene definicije zaključujemo kako je ova djelatnost usmjerena samo prema potrošačima.

Sličan zaključak bi se mogao izvesti i u pogledu ZZOPOR RS kada se u pitanju termini koji se koriste u zakonu i područje primjene. Naime, Zakon ne poznaje termine kao i IDD, a to su distribucija osiguranja i s njim povezani termini, ali spominje

⁸⁰ Član 1. stav 1. tačka 1. IDD.

posredovanje u osiguranju (koje obuhvata i osiguranje i reosiguranje), dok i dalje zadržava termin zastupanje u osiguranju.

Kada je u pitanju upis u registar, ZPPO FBiH, propisuje registrovanje posrednika u osiguranju i uvjete za upis. IDD navodi obavezu država članica da se uspostavi sistem upisa putem interneta koji mora biti lako dostupan i omogućiti ispunjavanje obrasca za upis u registar izravno na internetu, koja obaveza nije provedena u FBiH. U odnosu na rokove rješavanja zahtjeva za upis, IDD ostavlja mnogo duži period (tri mjeseca od podnošenja zahtjeva) dok ZPPO FBiH rok od 30 dana za donošenje rješenja o zahtjevu, koja odredba je u interesu podnosioca zahtjeva, kao i bržeg i efikasnijeg ostvarivanja njihovih prava. Direktiva i Zakon su usklađeni u pogledu ograničenja korištenja usluga posrednika, pri čemu se insistira na tome da se mogu koristiti usluge samo distributera osiguranja koji su upisani u odgovarajuće registre.

IDD u pogledu stručnih i organizacijskih uvjeta distributera osiguranja propisuje da oni moraju posjedovati odgovarajuća znanja i sposobnosti kako bi primjereno izvršili svoje zadatke i dužnosti i da su se dužni stalno stručno osposobljavati i usavršavati u cilju održavanja nivoa učinkovitosti. Države članice moraju provjeravati i ocjenjivati njihovo znanje i stručnost (najmanje 15 sati godišnje), a može se zahtijevati i potvrda u tom smislu. Posrednici u osiguranju/reosiguranju moraju dokazati usklađenost sa relevantnim uvjetima stručnog znanja i sposobnostima iz Priloga 1 IDD. Za fizičke osobe se naglašava da moraju imati dobar ugled i definira šta to podrazumijeva. Naposljetku, posrednici moraju imati osiguranje od profesionalne odgovornosti.

Upis u registar u ZZOPOR RS je odvojeno definiran za zastupnike i za brokere u osiguranju i uslovi koje moraju da ispune u zavisnosti od toga da li se radi o fizičkom ili pravnom licu. Posebno su razrađene obaveze brokera prema osiguraniku, odnosno ugovaraču osiguranja, što je u njihovom najboljem interesu.

IDD u posebnom poglavlju definira uvjete informiranja i pravila poslovnog ponašanja, uključujući opća načela, opće informacije, sukob interesa i transparentnost, izuzeća itd. ZPPO FBiH ne sadrži uopće odredbe o informiranju potrošača, tako da i u ovom segmentu postoji neslaganje i neusklađenost sa Direktivom. Osim toga, IDD sadrži posebno poglavlje u pogledu informiranja kada su u pitanju investicijski proizvodi osiguranja, koje ZPPO FBiH ne spominje niti na koji način.

Za razliku od ZPPO FBiH, ZZOPOR RS sadrži poseban član u kojem se detaljno normira obaveza pružanja informacija od strane zastupnika i brokera u osiguranju, kako sadržaj informacija tako i oblik u kojem one moraju biti saopštene osiguraniku, odnosno ugovaraču osiguranja.

ZPPO FBiH vrlo oskudno normira nadzor nad posrednicima u osiguranju, pri čemu je ta uloga data Agenciji za nadzor, a u slučaju nepravilnosti donosi rješenje koje je konačno i protiv njega se može pokrenuti upravni spor. Ovo rješenje nije u skladu sa odredbama IDD-a (član 31. stav 5.) koje propisuju da države članice jamče

da se pravo na žalbu primjenjuje na administrativne sankcije i druge mjere. Vezano za sankcije i druge mjere, Direktiva propisuje da će države članice jamče da će nadležna tijela uspostaviti djelotvorne mehanizme kojima će se omogućiti i potaknuti da se tim tijelima prijavljuju potencijalna ili stvarna kršenja nacionalnih odredaba kojima se Direktiva prenosi u zakonodavstvo, a ZPPO FBiH ne sadrži takve odredbe, niti propisuje posebne postupke za zaprimanje prijava kršenja.

ZZOPOR RS mnogo detaljnije reguliše nadzor na obavljanje poslova i djelatnosti zastupanja u osiguranju, odnosno posredovanja u osiguranju (kriterijumi i uslovi za ograničavanje iznosa provizije, neovlašteno obavljanje poslove, oduzimanje ovlaštenja/dozvole za rad) kao i prekršaje.

V Zaključak

Distribucija osiguranja predstavlja potpuno novi sistem posredovanja i zastupanja u osiguranju, koji je uveden u pravo osiguranja Evropske unije IDD direktivom 2016. godine. Novi sistem je uspostavio i nova pravila na tržištu osiguranja, a države članice su u obavezi da transponiraju odredbe Direktive u nacionalna zakonodavstva. Imajući u vidu da je BiH potpisala Sporazum o stabilizaciji i pridruživanju sa Evropskim zajednicama i njihovim država članicama, a dobila kandidatski status 15. decembra 2022. godine, u obavezi je da postepeno prilagođava svoje zakonodavstvo pravnoj stečevini Evropske unije (*Acquis communautaire*) i uspostavlja zonu slobodne trgovine s Evropskom unijom.

Analizom pravnog okvira u BiH koji se odnosi na posredovanje u osiguranju se može izvesti zaključak kako u oba entiteta odredbe nisu u potpunosti usaglašene sa sistemom EU. Naime, ZPPO FBiH je donesen 2005. godine, a izmjene su vršene u dva navrata, 2010. i 2016. godine, dok je ZZOPOR RS donesen 2017. godine.

Oba entitetska zakona o posredovanju (i zastupanju) u osiguranju nisu terminološki usklađena sa Direktivom, odnosno ne spominju uopšte distribuciju osiguranja. Iako ne postoji terminološka usklađenost, poslovi zastupnika u osiguranju se u velikoj mjeri poklapaju sa poslovima navedenim u definiciji distribucije osiguranja u Direktivi, a u manjoj mjeri kod brokera u osiguranju. Kada je u pitanju upis u registar, ni ZPPO FBiH ni ZZOPOR RS nisu uspostavili elektronski sistem (putem interneta) registrovanja posrednika u osiguranju. Cilj IDD-a je, između ostalog, povećati nivo zaštite potrošača kroz kontinuirano profesionalno osposobljavanje distributera osiguranja na godišnjem nivou, koja odredba nije propisana kao uvjet za obnavljanje upisa u odgovarajući registar posrednika i zastupnika u osiguranju. Konačno, zaštita potrošača se postiže propisivanjem vrlo striktnih pravila u vezi sa pružanjem informacija o proizvodima osiguranja, gdje FBiH u potpunosti zaostaje, jer ne sadrži niti jednu odredbu o tome, dok zakon RS sadrži poseban član u kojem se detaljno normira obaveza pružanja informacija od strane zastupnika i brokera

u osiguranju, kako sadržaj informacija tako i oblik u kojem one moraju biti saopštene osiguraniku, odnosno ugovaraču osiguranja.

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DEVELOPMENT OF INSURANCE DISTRIBUTION IN BOSNIA AND HERZEGOVINA: DE LEGE FERENDA

PROFESSIONAL PAPER

Abstract

The authors present the legal framework and analyze regulatory provisions on insurance distribution in Bosnia and Herzegovina. The paper examines the legal provisions governing insurance distribution and, more specifically, seeks to answer whether the current regulatory framework is outdated and requires amendments. Relying on a comparative legal analysis of European Union legislation in this context, the authors argue that the legal framework for insurance distribution should be revised *de lege ferenda* and aligned with the Insurance Distribution Directive. The proposed amendments should aim at enhancing the efficient functioning of the insurance market and strengthening consumer protection.

Keywords: insurance distribution, insurance mediation, insurance products, European Union Insurance Distribution Directive.

I Introduction

Insurance distribution must be distinguished from the insurance activities.² Insurance activities are regulated by the Insurance Law of the Federation of Bosnia

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² See more: Nataša Petrović Tomić, *Osnovi prava osiguranja*, Faculty of Law, University of Belgrade, Belgrade, 2021, 113 et seq.

and Herzegovina³ and consist of insurance operations, reinsurance activities, and activities directly related to insurance.

Insurance activities include the conclusion of insurance contracts and the fulfillment of obligations arising from such contracts. In addition to these actions, insurance activities also involve taking measures to prevent and mitigate risks that threaten insured property and individuals. In contrast, reinsurance activities refer to the conclusion and execution of reinsurance agreements, through which an insurance company transfers excess risk to a reinsurance company. Besides insurance and reinsurance activities, the insurance business also includes activities directly related to insurance operations. Traditionally, these activities encompass risk assessment and damage assessment, mediation for sales, the sale of insured damaged goods, and the provision of other intellectual and technical services related to insurance. The activities related to mediation for insurance sales constitute insurance distribution, which, as will be discussed later, is regulated by a separate law. The Insurance Company Law of the Republic of Srpska⁴ provides a more precise definition of insurance activities,⁵ explicitly stating that the insurance activities comprise the conclusion and execution of insurance and reinsurance contracts, as well as the activities of insurance intermediaries and agents.

Insurance mediation and insurance agencies play a crucial role in the functioning of the insurance sector.⁶ The current legal framework in Bosnia and Herzegovina does not provide a direct definition of insurance distribution; however, it can be inferred indirectly. The insurance service distribution system consists of mediation in private insurance, which is conducted through insurance agents and brokers.

II Regulatory Framework for Insurance Distribution in Bosnia and Herzegovina

In general, all legal sources related to insurance can be classified into two categories: status-related sources and substantive legal sources. Status-related sources of insurance law regulate the legal position and status of insurance companies, insurance supervision, and similar matters. Substantive legal sources, on the other hand, govern contractual and legal relationships in the field of insurance law, whether based on legal provisions or contractual agreements.

³ *Službeni glasnik BiH*, No. 23/17, hereinafter: ZOS FBiH.

⁴ *Službeni glasnik Republike Srpske*, Nos. 17/05, 01/06, 64/06, and 74/10, hereinafter: ZDO RS.

⁵ Article 2, Paragraph 1, ZDO RS.

⁶ Marijan Čurković, „Posredovanje i zastupanje u osiguranju“, Proceedings of the 7th Conference on the Processing and Settlement of International Motor Claims (*Croatian Insurance Bureau, Ante Lujić*), Lovran, 1999, 33.

The regulatory framework for insurance distribution in Bosnia and Herzegovina (hereinafter: BiH) consists of six legal acts:

- a) The Law of Obligations of the Federation of BiH,⁷
- b) The Insurance Law of the Federation of BiH (ZOS FBiH),
- c) The Law of Obligations of the Republic of Srpska,⁸
- d) The Insurance Company Law of the Republic of Srpska (ZDO RS),
- e) The Law on Mediation in Private Insurance,⁹ and
- f) The Law on Insurance Agency and Mediation in Insurance and Reinsurance.¹⁰

As stated in the introduction, ZOS FBiH, in its general provisions, and ZDO RS, in its introductory provisions, define the scope of insurance activities, explicitly recognizing that sales mediation falls under the broader category of insurance industry. These two laws serve as *lex generalis*, while ZPPO FBiH and ZZOPOR RS act as *lex specialis* in relation to this matter. ZOO FBiH and ZOO RS contain an important provision regulating the authority of insurance agents.¹¹ However, these two laws also serve as substantive legal sources concerning mediation contract and commercial agency contract. Their provisions apply to insurance agents and brokers in cases where the matter is not specifically regulated by ZPPO FBiH and ZZOPOR RS.¹²

1. Federation of Bosnia and Herzegovina

The fundamental insurance law in the Federation of Bosnia and Herzegovina (FBiH) is the Insurance Law of FBiH (ZOS FBiH), which regulates the establishment, operations, supervision, and termination of insurance and reinsurance companies founded in FBiH, as well as branches of insurance and reinsurance companies headquartered outside FBiH.¹³ The law was enacted in 2017, divided into 15 chapters with a total of 230 articles, making it a rather extensive legal framework.

As mentioned in the introduction, insurance activities, reinsurance activities, and activities directly related to insurance operations constitute insurance. The latter category includes mediation in sales, which is regulated by the ZPPO FBiH as *lex specialis*. The law was enacted in 2005 and amended twice, in 2010 and

⁷ *Službeni glasnik SFRJ*, No. 29/1978, 39/1985, 45/1989 – Constitutional Court decision, and 57/1989; *Službeni glasnik BiH*, No. 2/1992, 13/1993, and 13/1994; *Službeni glasnik iH*, No. 29/2003 and 42/2011; hereinafter: ZOO FBiH.

⁸ *Službeni glasnik SFRJ*, No. 29/1978, 39/1985, 45/1989 – Constitutional Court decision, and 57/1989; *Službeni glasnik RS*, No. 17/1993, 3/1996, 37/2001 – other law, 39/2003, and 74/2004; hereinafter: ZOO RS.

⁹ *Službeni glasnik BiH*, No. 22/05, 8/10, and 30/16; hereinafter: ZPPO FBiH.

¹⁰ *Službeni glasnik Republike Srpske*, No. 47/17; hereinafter: ZZOPOR RS.

¹¹ Article 906, ZOO FBiH and ZOO RS.

¹² Miroslav Džidić, Marijan Čurković, *Insurance Law*, Faculty of Law, University of Mostar, Mostar, 2017, 115.

¹³ Article 1, ZOS FBiH.

2016. It is structured into six sections: I General Provisions, II Insurance Agents, III Insurance Brokers, IV Supervision of Insurance Intermediaries, V Penal Provisions, VI Transitional and Final Provisions. This is a relatively short law, consisting of only 19 articles. ZPPO FBiH governs insurance mediation in private insurance, the conditions for performing such activities, and the supervision of their execution within FBiH.¹⁴ According to the legal framework, there are two types of insurance intermediaries: insurance agents and insurance brokers.

For an insurance company in FBiH to conduct direct insurance or reinsurance activities through an insurance intermediary, the intermediary must be registered in accordance with this law and listed in a special register maintained by the Insurance Supervision Agency of FBiH (hereinafter: Supervision Agency FBiH). It is important to note that this registration is valid throughout Bosnia and Herzegovina. If an insurance intermediary is registered in FBiH, they may also provide their services in the Republic of Srpska (RS), but only through an organizational unit established within RS, as further specified by law. The same applies *vice versa*—when an insurance intermediary is registered in RS and intends to operate in FBiH for the first time, they must notify the RS Supervision Agency in writing.¹⁵

The role of insurance agents and brokers is crucial in the insurance industry.¹⁶

An insurance agent is one of the two types of insurance intermediaries. ZPPO FBiH dedicates only two articles to insurance agents: one covering general provisions and another detailing their registration requirements.¹⁷ Insurance agency activities may be performed by legal or natural persons engaged in professional business activities. Exceptionally, these activities may also be conducted by banks¹⁸ and public enterprises—postal operators, provided they obtain the necessary license and are registered with the Supervision Agency FBiH. An insurance agent acts on behalf of and/or for the account of one or more insurance companies, meaning they are directly affiliated with insurers. To perform their duties, an insurance agent must enter into a written agreement with an insurance company, which the company is then obligated to submit to the Supervision Agency FBiH. The same obligation applies in the event of contract termination, regardless of the reason for termination. The insurance company must notify the Supervision Agency FBiH and publish the notification in a widely circulated daily newspaper in the insurance agent's business location, as well as on the company's website.¹⁹ An insurance agent operates independently and performs the following tasks: initiating, proposing, and carrying out

¹⁴ Article 1, ZPPO FBiH.

¹⁵ Article 5, ZPPO FBiH.

¹⁶ For more details, see: Dragan Mrkšić, Zdravko Petrović, Katarina Ivančević, *Insurance Law, II revised and expanded edition*, Faculty of Business Law, Belgrade, 2005, 90 et seq.

¹⁷ Articles 6 and 7, ZPPO FBiH.

¹⁸ Except in cases involving motor vehicle liability insurance.

¹⁹ This obligation also applies in cases where the agency contract expires.

preparatory actions leading to the conclusion of an insurance contract, concluding insurance contracts, assisting in the implementation or execution of insurance contracts, particularly in case of a potential claim, and providing advisory services.

For an insurance agent to begin their professional activities, certain conditions must be met. These conditions vary depending on whether the agent is a natural person or a legal entity, and they must be registered with the FBiH Insurance Supervision Agency. Regarding the register of insurance agents who are natural persons, it is divided into two sub-registers: one containing the names of agents registered in FBiH and the other listing agents registered in RS who provide services in FBiH. The first sub-register includes a total of 1,149 insurance agents, while the second has only 5. Additionally, the Agency maintains a sub-register of public enterprises—postal operators and banks acting as insurance agents, which currently includes 13 registered agents.²⁰ The register of insurance agencies consists of two sub-registers within the main register. The sub-register of insurance agencies in FBiH contains 41 registered companies, while the sub-register of branches of insurance agencies from RS includes 5 registered branches. An insurance agency may be established as a joint-stock company or a limited liability company, in accordance with the law governing the status of commercial companies. For the FBiH Insurance Supervision Agency to issue a registration decision within 30 days from the date of application, an insurance agent must submit a registration request along with the legally prescribed documentation.²¹ Agents are also required to pay an annual supervision fee and a registration fee, in accordance with the Agency's regulations. Insurance agencies, banks, public enterprises - postal operators, and company branches must pay an annual fee of 0.5% of the commission earned in the previous year, but not less than 1,000.00 KM. Natural persons pay the same percentage, but the minimum amount is reduced to 500.00 KM.²² It is interesting that the law does not explicitly mention the right to commission when it comes to insurance agents. However, the Law of Obligations (ZOO), which regulates the commercial agency contract (a contract concluded between the agent and the company), stipulates that one of the agent's fundamental rights is compensation (commission).²³ The agent is entitled to a commission when a contract is concluded through their mediation, when they have directly concluded contracts (if authorized), as well as when the insurance company has concluded insurance contracts with clients the agent has introduced.²⁴ The agent obtains the right to compensation once the contract is executed.²⁵ The agent is also entitled to

²⁰ Register of Insurance Agents, Website of the FBiH Insurance Supervision Agency, <https://nados.ba/bs/zastupnici/> July 16, 2024.

²¹ See: Article 7, ZPPO FBiH.

²² Decision on Fees, *Official Gazette of FBiH*, No. 2/18 (hereinafter: Decision on Fees FBiH).

²³ M. Džidić, M. Čurković, 126–127.

²⁴ Art. 804 ZOO.

²⁵ Paid premium by the policyholder.

commission even if the contract is not executed, provided that the insurance company is at fault for the non-execution.²⁶ The issue of commission is typically regulated by the agency contract with the insurance company, alongside other matters such as the agent's authority.²⁷ The amount of commission is determined by contract. If no contractual provision exists, the agent should not be left without compensation but is instead entitled to a customary fee.²⁸ Lastly, if the agent was authorized to collect the premium and did so, he is entitled to a special fee in that case.²⁹ When it comes to the expenses incurred by the agent in the course of their regular professional activities, he is not entitled to reimbursement unless otherwise agreed upon in the contract with the insurance company. However, if the agent has incurred special costs that benefited the company, he is entitled to reimbursement for those costs.³⁰

At this point, it is useful to mention the provisions of the ZOO related to the insurance contract and regulate insurance agency. Namely, an insurer may authorize a person to act on their behalf, either with or without limitations on their authority. If an insurance agent acts without limitations on their authority, they may conclude insurance contracts on behalf of and for the account of the insurer, negotiate their amendments, or extend the validity of policies. Additionally, in such cases, the insurance agent may issue insurance policies, collect premiums, and receive statements related to the insurer. If there are limitations on the agent's authority that were unknown to the policyholder, it is considered that such limitations did not exist.³¹

The second type of intermediary in insurance is the *insurance broker*. The law dedicates an additional article to brokers compared to agents (Arts. 8–10), which regulate general provisions, registration, and broker obligations. Insurance brokerage activities may be performed by legal entities and individuals engaged in independent business activities. Unlike an insurance agent, who works for an insurance company, the exclusive professional purpose of an insurance broker is to act on behalf of the policyholder, meaning they are entirely independent of insurance companies. The broker's duties include the following: connecting parties seeking insurance or reinsurance with insurance or reinsurance companies, carrying out preparatory work for concluding insurance or reinsurance contracts, and assisting in contract execution and claim processing, particularly in the case of compensation claims.³²

Unlike insurance agents, where the law does not explicitly mention the commission they are entitled to (although the ZOO does, as previously stated), in the case of insurance brokers, it is explicitly regulated that they receive a commission

²⁶ Art. 805 ZOO.

²⁷ N. Petrović Tomić, 122.

²⁸ Art. 806 (1) ZOO.

²⁹ Art. 807 ZOO.

³⁰ Art. 808 ZOO.

³¹ Art. 906 ZOO.

³² Only if contractually agreed.

from the insurance company and operate with complete freedom in choosing the insurance company.³³ It is done immediately after defining a broker, before the conditions for obtaining a license to operate.

For a broker to begin business activities, he must meet certain conditions, which vary depending on whether he is a natural or legal person. An insurance broker (both natural and legal persons) must be registered in a special register maintained by the FBiH Supervisory Agency. The register of natural person brokers is divided into two sub-registers: one containing the names of brokers registered in FBiH, and another listing brokers registered in RS who provide services in FBiH through an organizational unit in FBiH. The first sub-register contains 13 brokers, while the second has a total of 5.³⁴ The register for legal entity brokers is divided in the same manner as for natural persons. The sub-register of brokerage companies operating in FBiH contains 8 companies, while the sub-register of brokerage companies registered in RS and operating through a branch in FBiH lists a total of 5.³⁵ A legal entity insurance brokerage company can be established as a joint-stock company or a limited liability company, in accordance with the law regulating the legal status of business entities. It is important to emphasize that the person authorized to represent an insurance brokerage company must be registered as an insurance broker (and must be listed in both registers). Additionally, all employees in an insurance brokerage company who perform insurance procurement activities must have professional qualifications.³⁶ For the Agency to issue a business authorization, an insurance broker must submit an application and attach the same documentation required for insurance agents (see pages 6–7). An additional requirement for a natural person broker is the blocking of assets in the amount of 200,000.00 KM to ensure the proper execution of his activities, as well as documentation proving valid professional liability insurance in case of errors or omissions. The Agency's regulations govern the method of blocking the broker's assets and all details related to professional liability insurance.³⁷ The Agency is required to issue a decision on the submitted application within 30 days of receiving the request and the documentation proving compliance with legal requirements. The registration of an insurance broker is valid for a period of two years. The broker is obligated to resubmit all documents within 30 days before the expiration of this period (depending on whether it is a natural or legal person). If he fails to do so, the registration will no longer be valid. Additionally, registration will

³³ Article 8, Paragraph 2, ZPPO FBiH.

³⁴ Insurance Brokers Register, FBiH Supervisory Agency website, <https://nados.ba/bs/zastupnici/>, 16.7.2024.

³⁵ Insurance Brokers Register, FBiH Supervisory Agency website, <https://nados.ba/bs/zastupnici/>, 16.7.2024.

³⁶ Successfully passing the professional examination for conducting insurance brokerage activities.

³⁷ Article 1, Rulebook on Blocking of Assets and Liability Insurance for Insurance Brokers, *Službeni glasnik BiH*, No. 80/06.

be revoked if it is determined during the process that the applicant is not a suitable person to act as an insurance broker.

An insurance broker is required to maintain a separate account for depositing all amounts collected on behalf of policyholders, and these funds must not be used for other purposes, such as paying the broker's other creditors. In the case of the broker's insolvency, the funds from a special account will be used to settle all outstanding claims to clients based on compensation claims.³⁸

The obligation to pay an annual fee and registration tax also applies to insurance brokers. The annual fee for brokerage companies in insurance, as well as their branches in FBiH with headquarters in RS, amounts to 0.5% of the commission earned in the previous year for the current year, but not less than 1,000.00 KM, while individuals pay the same percentage, with a minimum amount of 500.00 KM.³⁹

In addition to the obligations, it is particularly emphasized that an insurance broker has duties that can be grouped as follows: maintaining books and records of business activities, complying with the requests of the FBiH Supervisory Agency in terms of reporting and business conduct, and maintaining independence from insurance companies.

The role of the FBiH Supervisory Agency. The FBiH Supervisory Agency has a regulatory and supervisory function over the operations of insurance intermediaries. The regulatory function consists of setting the conditions for acquiring and verifying the professional knowledge required for performing insurance mediation tasks, establishing rules for maintaining registers, determining the data entered them, ensuring public access to these registers, and regulating the procedure for issuing authorization to conduct insurance representation activities, including the conditions applicable to banks and public enterprises—postal operators. As the name suggests, the supervisory function entails overseeing the operations of insurance intermediaries. If the supervisory process identifies irregularities, the Agency may issue appropriate solution. In fulfilling this function, intermediaries are required to cooperate with the Agency and provide information as specified in terms of scope, format, and deadlines. Supervision may also be conducted on the business premises of the insurance intermediary.

2. Republic of Srpska

The fundamental statutory law in the field of insurance in the Republic of Srpska (RS) is the Insurance Law of RS (ZDO RS), whose norms are dedicated to the establishment, activities, supervision, and termination of insurance companies and

³⁸ Article 9, Paragraph 9, ZPPO FBiH.

³⁹ Decision on Fees FBiH.

branches engaged in insurance activities in RS, and which establishes the Insurance Agency of RS (hereinafter: Agency RS).⁴⁰

The fundamental law governing insurance distribution in RS is the Law on Insurance Distribution (ZZOPOR RS), which regulates the activities of insurance agency and mediation in insurance and reinsurance, the conditions for issuing and terminating licenses, operations and rules of conduct, as well as supervision of the previously mentioned activities.⁴¹ Unlike the corresponding law in the Federation of Bosnia and Herzegovina (FBiH), an analysis of the title and subject of the law in RS concludes that representation is only possible in the field of insurance, while mediation occurs in both insurance and reinsurance. The law was enacted in 2017 and is divided into seven chapters: I Basic Provisions, II Representation in Insurance, III Mediation in Insurance, IV Establishment of Branches of Insurance Representation and Brokerage Companies, V Common Provisions, VI Supervision and Penal Provisions, and VII Transitional and Final Provisions. It consists of a total of 51 articles, which is twice as many as its counterpart law in FBiH. In FBiH, mediation in private insurance is a broader concept that includes mediation through insurance representatives and mediation via insurance brokers. In RS, this is not the case. The law makes a clear distinction between representation in insurance and mediation in insurance and reinsurance. Representation in insurance is conducted in the name and on behalf of the insurance company and includes all preparatory actions aimed at concluding insurance contracts. Mediation in insurance encompasses both insurance mediation and reinsurance mediation, which are all brokerage activities. These involve connecting policyholders with insurance companies to conclude insurance contracts. Additionally, brokers are obligated to assist in the implementation of such contracts.⁴² The law also explicitly excludes activities that are not considered representation and mediation in insurance, such as collecting data on policyholders or insurance contractors, their risks, and needs for concluding contracts, as well as providing general information about available insurance products.

In order to prevent legal uncertainty and clarity, a provision in the ZZOPOR RS has been established that regulates the application of other regulations⁴³, under condition that no different conditions are prescribed by this law. When it comes to contracts of representation and contracts of mediation in representation, the ZOO RS applies to everything that is not governed by the subject law. Regarding individuals performing representation and mediation in insurance, who are established as economic entities, the Law on Economic Societies applies to them.⁴⁴

⁴⁰ Art. 1. ZDO RS.

⁴¹ Art. 1. ZZOPOR RS.

⁴² Art. 2. ZZOPOR RS.

⁴³ Which provisions are not present in the ZPPO FBiH.

⁴⁴ *Službeni glasnik RS*, No. 127/2008, 58/2009, 100/2011, 67/2013, 100/2017, 82/2019, and 17/2023.

Insurance representation is carried out by *insurance representatives*. An insurance representative can be: a natural person, an entrepreneur, a representation company, a bank, a microcredit company, or Preduzeće za poštanski saobraćaj RS a.d. Banja Luka, as well as branches of companies based in FBiH.

An insurance representative who is a natural person performs representation activities based on authorization for representation and registration in the relevant registers of the Agency RS. However, the mere authorization and registration in the register are not sufficient for the representative to begin his activities in insurance representation. He can only operate based on an employment contract or some other legal relationship with other entities – insurance representatives (entrepreneurs for insurance representation, insurance representation companies, branches of companies based in FBiH, banks, microcredit companies, or Pošte Srpska). If the insurance representative is employed based on an employment contract or some other legal relationship in an insurance company, he is not considered an insurance representative under this law. Only representatives who meet the conditions prescribed by law can engage in insurance representation.⁴⁵ If a natural person insurance representative meets all the legally prescribed conditions, the Agency RS will issue them an authorization to work and register them in the register of natural person insurance representatives for a period of four years from the date of registration.⁴⁶ A total of 615 representatives are registered in the Subregister of natural person representatives from RS, while a total of 3 representatives are registered in the Subregister of natural person representatives from FBiH.⁴⁷ The authorization for representation issued to an insurance representative is valid throughout the entire territory of BiH. Once issued, the authorization for representation for a natural person can cease upon the personal request of the insurance representative, expiration of the term for which it was issued, or revocation of the authorization.⁴⁸

The activity of insurance representation can also be carried out by an entrepreneur engaged in insurance representation. Two fundamental conditions must be met for this; a representation license issued by the RS Agency and a registration decision issued by the competent registration authority. The first license is a prerequisite for their registration in the entrepreneurs' register, meaning he must obtain it first, while registration in the Agency's registers is done based on proof of completed registration.⁴⁹ A total of 84 entrepreneurs engaged in insurance representation are registered in the Subregister of the RS Agency.⁵⁰ The entrepreneur is

⁴⁵ *Službeni glasnik RS*, No. 56/10 (hereinafter: Decision on Tariffs RS).

⁴⁶ Art. 28. ZZOPOR RS.

⁴⁷ <https://azors.rs.ba/bs/naslovna/ucესnici-na-trzistu/> July 20, 2024.

⁴⁸ See: Art. 38. ZZOPOR RS.

⁴⁹ Art. 9. ZZOPOR RS.

⁵⁰ <https://azors.rs.ba/bs/naslovna/ucესnici-na-trzistu/> July 20, 2024.

organized in accordance with the provisions of the law regulating the performance of craft-entrepreneurial activities.⁵¹ To begin operations, the entrepreneur must fulfill the conditions prescribed by law. Once issued, the representation license for an entrepreneur can cease to be valid upon the expiration of the registration period, if the entrepreneur does not commence activities within six months from the registration date, or if he ceases operations for six consecutive months.

An entrepreneur may represent one or more insurance companies simultaneously, either in the same or different types of insurance. However, if representing multiple companies in the same type of insurance, the entrepreneur must obtain written consent from all represented companies. The insurance company enters into a written contract with the entrepreneur and submits it to the RS Agency. Additionally, insurance companies are required to notify the RS Agency about the termination of such agreements, regardless of the reason for termination.⁵²

An insurance representation company may also act as an insurance representative if it has been issued a representation license and is registered in the business entity register. Such a company can be established in two forms: as a joint-stock company or as a limited liability company, in accordance with regulations governing companies. The representation license issued to an insurance representation company is valid for four years and applies throughout the territory of Bosnia and Herzegovina.

The license issued by the Agency is a prerequisite for the company's registration in the business entity register, after which it is also entered into the registers maintained by the RS Agency. The register of insurance companies maintained by the RS Agency is divided into two subregisters: the Subregister of Insurance Representation Companies from RS, which includes 17 companies, and the Subregister of Insurance Representation Companies from FBiH, which includes 4 registered companies.⁵³

Just like an entrepreneur engaged in insurance representation, and under the same conditions, a company can represent one or more insurance companies in either the same or different types of insurance. The insurance representation company must conclude a written agreement with the insurance company and submit it to the RS Agency. This obligation to notify the Agency also applies in cases of contract termination.

The company and the entrepreneur engaged in insurance representation are obliged to accurately and promptly maintain business records, as well as to possess and keep all documentation related to their activities. The business records of these insurance representatives include maintaining data about physical person representatives, insurance companies with which they have entered contracts, and

⁵¹ Law on Independent Entrepreneurs, *Službeni glasnik Republike Srpske*, No. 98/24.

⁵² Art. 11. ZZOPOR RS.

⁵³ <https://azors.rs.ba/bs/naslovna/ucesnici-na-trzistu/> July 20, 2024.

individuals who collect data about potential policyholders/contractors, risks, and needs, as well as those who provide general information about insurance products.

Since the insurance representation contract is not a gratuitous agreement, its essential element is the commission. The company and the entrepreneur engaged in insurance representation have the right to a commission for their work. The commission is paid by the insurance company on behalf of which the insurance contract is concluded. The law stipulates that if the RS Agency determines a threat to the financial position and financial discipline of companies, as well as the smooth functioning of the insurance market due to the contracted commission of representatives, it may issue a regulation that limits the amount of the commission and regulates other mutual relations between insurance representatives and insurance companies. The RS Agency has adopted the Rulebook on the Mutual Relations of Insurance Representatives and Insurance Companies and the Limitation of Insurance Representatives' Commissions.⁵⁴ For example, according to this Rulebook, the limit on the commission amount for liability insurance is 27%, and for other types of non-life insurance, a higher commission rate than the share of the overhead addition in the gross premium for that type of insurance cannot be agreed upon.⁵⁵

Insurance representation activities can also be performed by banks, micro-credit companies, and Pošte Srpske based on a representation license issued by the Agency. The Agency issues the license after receiving a request and documentation proving that the legal conditions have been met.⁵⁶

Insurance mediation is primarily regulated in the Law of Obligations (ZOO). Specifically, Article 813 of the ZOO states that the mediation contract obligates the mediator to find and connect the client with a party that would negotiate the conclusion of a specific contract, and the client is obliged to pay a certain fee if the contract is concluded. If we transpose this to the field of insurance, the mediator is the insurance broker, who finds and connects potential policyholders/contractors with the insurance company to conclude a contract. The ZZOPOR RS adds further obligations for brokers in insurance to this classical definition of mediation from the ZOO, which includes performing preparatory actions for concluding insurance contracts and providing assistance after the contract is concluded regarding its execution. Mediation activities can generally be divided into three phases. The first phase involves analyzing the needs of the specific policyholder/contractor and creating an offer according to their wishes. The second phase encompasses negotiations with the insurance company to conclude the contract. Finally, the third and last phase includes the broker's obligation to provide assistance to the policyholder after the insurance contract is concluded, i.e. during its duration.⁵⁷

⁵⁴ *Official Gazette RS*, No. 21/19 and 85/21.

⁵⁵ *Ibid*, Art. 3.

⁵⁶ Art. 8. ZZOPOR RS.

⁵⁷ Marijan Čurković, Zastupanje i posredovanje u osiguranju prema Zakonu o osiguranju, Novi propisi iz osiguranja – Zakon o osiguranju i Zakon o obveznim osiguranjima u prometu, Inženjerski biro, Zagreb, 2006, 52.

The activities of insurance brokerage are carried out by insurance brokers as their exclusive activity. An insurance broker can be a natural person, based on a mediation authorization, a legal entity, based on a mediation approval, and branches of brokerage firms headquartered in the Federation of Bosnia and Herzegovina (FBiH). These entities acquire the right to perform their activities upon registration in the relevant registers of the Agency of the Republic of Srpska (RS), based on the fulfillment of legally prescribed conditions. The authorization for mediation is issued for a period of four years and is valid throughout Bosnia and Herzegovina, and it ceases to be valid in the same manner as the authorization for representation of a natural person in insurance.⁵⁸ An insurance brokerage company can be established as a joint-stock company or a limited liability company. Within the register of insurance brokerage companies, there are two subregisters: the Subregister of Insurance Brokerage Companies from RS and the Subregister of Insurance Brokerage Companies from FBiH. The first subregister contains seven registered brokerage companies, while the second contains three.⁵⁹

To obtain a mediation license, an insurance brokerage company must meet the same conditions as a representation company in insurance (for the avoidance of repetition, the authors refer to page 16 of this work) along with an additional condition related to proof of liability insurance from mediation activities in insurance, with a coverage amount that cannot be less than 600,000 KM per individual claim, or 960,000 KM for all claims in one year.⁶⁰ The mediation license issued to the brokerage company lasts for four years from the date of registration with the Agency of RS and is valid throughout Bosnia and Herzegovina, and it ceases to be valid in the same manner as the license for representation issued to a representation company in insurance (see page 17).

The insurance broker has obligations towards both the insured and the insurance company. The law establishes the protective role of the broker in relation to the insured/contractor. This role includes providing the insured with all necessary information and clarifications so that the insured can make the best decision and conclude an insurance contract according to their needs. Naturally, the broker does this not on their own initiative but exclusively based on a written order or contract concluded with the client. In this sense, when the broker receives the necessary information from the insured/contractor, they will proceed to prepare a risk analysis and coverage principles that represent the best solution.⁶¹ He will do this by considering multiple insurance contracts available in the market. The law does not specify

⁵⁸ Art. 16, para. 3, ZZOPOR RS.

⁵⁹ <https://azors.rs.ba/bs/naslovna/ucesnici-na-trzistu/> July 20, 2024.

⁶⁰ Art. 18, ZZOPOR RS.

⁶¹ Nebojša Žarković, „Lični razgovor sa strankom u posredovanju i zastupanju u osiguranju“, *Tokovi osiguranja*, 4/2020, 7-24.

how many contracts are required but uses the phrase “a sufficiently large number of contracts”. What makes a sufficiently large number likely depends on the type of insurance and availability in the insurance market. Based on all the professional information he has and that is known to him, the broker will evaluate the financial capacity of the insurance company to cover the risks of the insured. After conducting a risk analysis and assessing the financial capacity of the insurance company, the broker’s advisory role becomes essential. At the request of the insured, the broker will advise which of several insurance companies to choose for concluding the contract, or which company offers the greatest security. This obligation is also linked to the broker’s duty to provide the insured with all offers obtained from insurance companies, along with the terms of insurance, and in this respect, to explicitly point out certain provisions regarding the scope of coverage and exclusions. After choosing the company, the policyholder proceeds to conclude the contract. If explicitly requested by the policyholder, the broker will facilitate the conclusion of the contract. After the contract is concluded, the broker delivers the concluded insurance contract to the policyholder. The broker’s role and responsibility to protect the interests of the policyholder do not end with the conclusion of the contract. The broker checks the content of the insurance policy and is obliged to monitor the insurance contract in which they mediated during its duration. In this sense, if necessary, they are required to propose amendments to the already concluded contract. The broker’s obligation to assist the policyholder during the contract’s duration is particularly emphasized. This is particularly important if an insured event occurs for which the insurance contract was concluded, the broker plays a crucial role in ensuring that the policyholder realizes all rights that belong to him under the contract and within the legally prescribed deadlines. Finally, the broker must be transparent in their actions, making all connections (both legal and economic) and commissions received from the specific insurance company available.⁶²

In addition to being obligated to protect the interests of the policyholder in selecting the best and most favorable insurance contract, the duty to safeguard interests also applies to the insurance company to the same extent as it does to the policyholder. The insurance broker is required to inform the specific insurance company about the policyholder’s offer, as well as their requirements and needs.

An insurance brokerage firm must have a separate account in which funds paid by the policyholder/contracting party as an insurance premium, as well as funds paid by the insurance company as compensation or settlement amounts under an insurance contract brokered by the firm, are kept, provided there is explicit written authorization for such an arrangement. These funds do not constitute the assets of the brokerage company, nor do they form part of its liquidation or bankruptcy

⁶² Art. 20, ZZOPOR RS.

estate. They cannot be subject to forced execution or used to settle the brokerage company's creditors.⁶³

Given that the insurance broker is connected to both the policyholder/contracting party and the insurance company and is responsible for protecting the interests of both contracting parties (which may often lead to conflicts of interest that must be avoided), the issue of commission payment can be confusing. According to customary law, the insurance company pays the commission to the intermediary.⁶⁴ The broker's right to a commission is negatively defined in the ZZOPOR RS, meaning that the broker is not entitled to demand payment of a commission or any other fee from the policyholder or contracting party unless explicitly agreed upon in writing. From this, it follows that a broker has the right to a commission paid by the policyholder/contracting party if such a right is stipulated in the contract concluded with the policyholder. If this is the case, the broker is not entitled to collect a commission from the insurance company.

III Insurance Distribution in the European Union

The four fundamental freedoms form the pillar of the European Union's (hereinafter: EU) single market: the freedom of establishment, the freedom to provide services, the free movement of people, and the free movement of capital. The insurance industry is generally classified as one of the more significant sectors in EU member states. It has been shaped through so-called generations of directives as well as decisions of the Court of Justice.⁶⁵ Since agents and intermediaries play a crucial role in the distribution of insurance within the EU, contributing to the functioning of the common market, EU legislation devotes attention to regulating their operations through directives and recommendations. The first regulation concerning the activity of insurance representation and intermediation was Directive No. 77/92/EEC of 13 December 1976, which ceased to be in force on 14 January 2005.⁶⁶ Following this directive, Recommendation No. 92/48/EEC was adopted.⁶⁷ However, as a non-binding

⁶³ See more about the business of brokers: Željko Vojinović, „Uređenje unutrašnjih odnosa u posredničkom i zastupničkom poslovnim poduhvatu“, *Tokovi osiguranja*, 4/2022, 40-53.

⁶⁴ Robert Merkin, Angus Rodger, *EC Insurance Law*, London, 1997, 80.

⁶⁵ Jasna Pak, „Pružanje usluga osiguranja na jedinstvenom tržištu Evropske unije“ u *Uslovi za realizaciju prometa roba i usluga u pravu Evropske unije i jugoslovenskom pravu*, Institut za uporedno pravo, Monografija, No. 137, Belgrade, 2001, 223–267.

⁶⁶ Council Directive 77/92/EEC of 13 December 1976 on measures to facilitate the effective exercise of freedom of establishment and freedom to provide services in respect of the activities of insurance agents and brokers (ex ISIC Group 630) and, in particular, transitional measures in respect of those activities, *Official Journal of the European Communities*, L 26, 31 January 1977.

⁶⁷ Commission Recommendation of 18 December 1991 on insurance intermediaries, *Official Journal L* 019, 28 January 1992, 32–33.

act, it did not provide uniformity, and differences between member states persisted. Therefore, further regulation was necessary, leading to the adoption of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation.⁶⁸ This directive ceased to be in force on September 30, 2018, when it was replaced by Directive (EU) 2016/97 of the European Parliament and the Council of January 20, 2016, on insurance distribution.⁶⁹

3.1. Directive No. 77/92/CEE

Evidence that the European Community dedicated attention to the sale of insurance products through intermediaries and agents is Directive No. 77/92 CEE, adopted on December 13, 1976. The objective of the Directive is evident from its title, i.e. the regulation of measures to implement two freedoms—the freedom of establishment⁷⁰ and the freedom to provide services⁷¹ in relation to the activities performed by insurance agents and brokers.⁷² The Directive applies to insurance intermediaries—brokers and agents who constituted the traditional sales channels that existed in EU member states at the time of its adoption. Article 2, paragraph 2 of the Directive exhaustively listed all designations for individuals engaged in insurance mediation. For example, in Germany, they were referred to as *Versicherungsmakler* or *Versicherungsvertreter*, in France as *courtier d'assurance* or *agent général d'assurance*, while in the United Kingdom, they were known as *Insurance broker* or *Agent*, depending on the type of activities they performed.⁷³ Despite the adoption of this Directive, which was not applied directly, but required member states to transpose it into their national laws, regulatory harmonization, as the ultimate goal, was not achieved due to significant differences in how the concept of insurance mediation was understood across member states. The Directive took on a temporary character, and the adoption of a new directive was anticipated to attempt to achieve the objective that the previous one had failed to fulfill.

⁶⁸ Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation, Official Journal of the European Union, Special Edition 2013, Vol. 06, Right of Establishment and Freedom to Provide Services, Vol. 08.

⁶⁹ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast) – Text with EEA relevance, Official Journal of the European Union, L 26, 2 February 2016.

⁷⁰ Commonly referred to in English as *Freedom of Establishment* - FOE.

⁷¹ Commonly referred to in English as *Freedom to Provide Services* - FOS.

⁷² Marijan Čurković, "Obveza distributera na informiranje potrošača proizvoda osiguranja prema odredbama EU Direktive o distribuciji proizvoda osiguranja", *Zbornik radova sa 30. Susreta osiguravača i reosiguravača Sarajevo*, (editor Nikola Miljević), Sarajevo, 2019., pp. 147-159.

⁷³ Marijan Čurković, "Nastanak i obuhvat regulatornih odredbi o distribuciji osiguranja", *Hrvatski časopis za osiguranje*, No. 1, Zagreb, 2019., 23 – 38.

3.2. Recommendation No. 92/48/CEE

To mitigate the differences between member states that persisted despite the adoption of Directive No. 77/92 CEE, the European Commission decided in 1991 to issue a legally non-binding act, Recommendation No. 92/48/EEC of December 18, 1991, on insurance intermediaries. This Recommendation proposed measures concerning the independence of insurance intermediaries, their professional qualifications, knowledge, competencies, professional liability insurance, and their registration in public registers. Member states were urged to transpose these solutions into their national legislation to achieve an efficient single insurance market. Most member states complied with this appeal, a fact that was acknowledged in the preamble of the subsequent directive.

3.3. The First EU Directive on Insurance Mediation (IMD I/MID I)

Directive No. 77/92/EEC marked the first step in facilitating the freedom of establishment and the freedom to provide services for insurance agents and brokers. Additionally, member states largely followed Commission Recommendation 92/48/EEC on insurance intermediaries, which significantly contributed to harmonizing national provisions on professional requirements and registration of insurance intermediaries. However, despite the adoption of the Directive and the Recommendation, significant differences remained between member states, undermining the maintenance of a single market in terms of conducting insurance and reinsurance mediation activities. Therefore, it became necessary to replace Directive 77/92/EEC with a new Directive No. 2002/92/EC, which was adopted on December 9, 2002. Informally, it was referred to as the First Insurance Mediation Directive (IMD I or MID I). The directive did not aim to fully harmonize the national regulations of member states on insurance mediation. Instead, it was designed to apply to individuals engaged in providing insurance mediation services to third parties in exchange for compensation. The directive requires that insurance and reinsurance intermediaries be registered with the competent authority of the member state, provided they meet the necessary requirements. Member states are obligated to establish a centralized information point that enables quick and easy access to data from various registers, collected electronically and continuously updated. The directive mandates that member states define the knowledge and skills that insurance and reinsurance intermediaries must possess. It is necessary to implement effective complaint procedures to resolve disputes between consumers and insurance intermediaries, and encourage alternative dispute resolution mechanisms alongside traditional judicial protection. Intermediaries are required to have professional liability insurance. Additionally, they must provide relevant information to consumers before concluding any contract,

ensuring transparency in the information process. According to Article 16 of the Directive, member states were required to comply with the Directive by January 15, 2015, a requirement that most states successfully fulfilled.

3.4. Directive 2016/97 (IDD) on Insurance Distribution

Given that a new directive on insurance distribution was introduced, it indicates that the previously mentioned directive did not fully achieve its objective. The preamble to the new directive emphasized the necessity of making several amendments to MID I and in the interest of clarity, it should be amended. The goal was to harmonize national regulations concerning insurance and reinsurance distribution. Additionally, it was underlined that the new directive aimed at minimum harmonization, allowing member states to maintain or introduce stricter consumer protection measures. Several factors influenced the need for a new directive. The first was the financial sector crisis⁷⁴ after the adoption of the First Insurance Mediation Directive (MID I). Another factor was the emergence of new sales channels, such as online insurance distribution.⁷⁵ Finally, the entry of financial institutions (such as banks and post offices) into the insurance distribution business also called for a revision of the regulatory framework. In 2010, the European Commission published the *Consultation Document on the Review of the Insurance Mediation Directive*, initiating a consultation phase, a standard step in the EU directive adoption process.⁷⁶ Several categories of respondents were surveyed, and the results showed widespread support for amending MID I. This led to the proposal for a new directive on insurance mediation (IMD 2 – *Insurance Mediation Directive 2*), which the European Commission published on June 3, 2012. The public consultation process lasted four years, after which an agreement was reached on the final text of the directive. The directive was renamed to the *Insurance Distribution Directive (IDD)*, replacing the previous term Insurance Mediation Directive – IMD 2. The new name emphasizes to whom the Directive now applies, namely all entities involved in the insurance mediation and sales process. On January 20, 2016, the IDD was adopted and published in the Official Journal of the EU No. 26/19 on February 2, 2016.⁷⁷ It entered into force on February 23, 2016. Member states were required to transpose it into national legislation within 24 months, i.e. by February 23, 2018. However, due to the need for delegated acts by

⁷⁴ See more: Ozren Uzelac, Marija Đukić Mijatović, „Sadržina i obim obaveza tokom procesa izrade i uvođenja proizvoda osiguranja na tržište prema Direktivi EU o distribuciji osiguranja“, *Evropska revija za pravo osiguranja*, pp. 9-18, I/2019, available at: <https://erevija.org/wp-content/uploads/2022/10/1-2019-1.pdf> July 29, 2024.

⁷⁵ See more: Maja Mihelja Žaja, Ljubica Milanović Glavan, Mateja Grgić, „Digitalna tehnologija kao čimbenik razvoja kanala distribucije u osiguranju“, *Hrvatski časopis za osiguranje*, No. 3, 191-214, 2020.

⁷⁶ Marijan Čurković, „Nastanak i obuhvat regulatornih odredbi o distribuciji osiguranja“, 25.

⁷⁷ Available at: <https://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32016L0097>

the European Commission before national regulations could align with EU rules, the implementation of the IDD was delayed until October 1, 2018.⁷⁸

IV Development of Insurance Distribution in BiH *de lege ferenda*

The issue of developing insurance distribution will be approached through the lens of analyzing the compliance of the regulatory framework with the IDD, in order to draw conclusions on the direction in which insurance distribution reform should proceed in both entities of BiH.

The Law on Insurance Intermediaries (ZPPO FBiH) is mainly not aligned terminologically and in terms of scope. It regulates mediation in private insurance, while the IDD stipulates rules for the establishment and conduct of insurance and reinsurance distribution activities in the Union. This means that the ZPPO FBiH does not cover all insurance distributors engaged in this activity, considering that it states that mediation is conducted through insurance agents and insurance brokers. In contrast, the IDD specifies that it applies to all natural or legal persons with a business establishment (or those planning to establish one) aimed at establishing and conducting insurance and reinsurance product distribution activities. The Directive stipulates that it does not apply to ancillary insurance intermediaries, subject to certain conditions. The ZPPO FBiH in Article 2, paragraph 2 states that an insurance company cannot conduct direct insurance/reinsurance activities in FBiH through intermediaries that are not registered in accordance with the law. The IDD requires member states to ensure that the competent authorities monitor markets generally, including additional insurance products, while the ZPPO FBiH does not regulate this obligation at all.

Terminological alignment with respect to the IDD does not exist despite the effective date of the Law on Insurance Intermediaries of the Republic of Srpska (ZZOPOR RS). Namely, this law separates representation in insurance from mediation in insurance and reinsurance, so it is implied from the title itself that representation is only possible in insurance, while mediation is possible in both insurance and reinsurance.

When it comes to definitions, the IDD contains 18 definitions used for the purposes of the Directive, while the ZPPO FBiH is specific in that it does not contain definitions of the terms used in the law, which certainly contributes to legal uncertainty and potential arbitrariness in individual interpretations. For example, the IDD defines insurance distribution, reinsurance distribution, insurance intermediary, ancillary insurance intermediary, insurance distributor, etc.

⁷⁸ Full title: Directive (EU) 2018/411 of the European Parliament and Council of March 14, 2018, amending Directive (EU) 2016/97 regarding the start date for member states' transposition measures, *Official Journal of the European Union*, No. L 76/28.

Unlike the ZPPO FBiH, the ZZOPOR RS contains in Article 2 definitions of representation in insurance, mediation in insurance and reinsurance, and provisions regarding what is not considered representation and mediation in insurance.

Although there is no terminological alignment, as previously mentioned (the Directive specifies insurance distributors: insurance intermediaries, ancillary insurance intermediaries, and insurance companies, while the ZPPO FBiH refers to agents and brokers), the activities of insurance agents largely overlap with those defined in the Directive's definition of insurance distribution (such as proposing contracts, providing advice, preparatory actions, concluding contracts, assisting during the term of the contract, especially when handling claims, etc.), to a lesser extent in the case of insurance brokers. However, there is something we might call substantive misalignment between these two regulations. Specifically, an insurance agent under the ZPPO FBiH acts on behalf of and for the account of one or more insurance companies, while a broker acts on behalf of the insured, connecting individuals seeking insurance/reinsurance with companies engaged in that activity. The IDD does not contain such distinctions and instead defines insurance distribution as: *"the activity of proposing insurance contracts, advising on them, or carrying out other preparatory actions for concluding insurance contracts, or concluding such contracts, or providing assistance in managing such contracts and executing them, especially in the case of resolving claims, including providing information on one or more insurance contracts in accordance with criteria chosen by consumers via a website or another medium, and compiling a ranking list of insurance products, including comparing prices and products or discounts on the price of insurance contracts, if the consumer can directly or indirectly conclude an insurance contract on the website or through another medium"*.⁷⁹ Based on this definition, we conclude that this activity is directed solely at consumers.

A similar conclusion could be drawn regarding the ZZOPOR RS when it comes to the terms used in the law and the scope of application. Specifically, the law does not recognize terms like those in the IDD, such as insurance distribution and related terms, but it does mention insurance mediation (which includes both insurance and reinsurance), while still retaining the term insurance representation.

When it comes to registration in the registry, the ZPPO FBiH prescribes the registration of insurance intermediaries and the conditions for registration. The IDD states the obligation of member states to establish an online registration system that must be easily accessible and allow for the completion of the registration form directly on the internet, a requirement that has not been implemented in FBiH. Regarding the deadlines for resolving registration requests, the IDD allows for a much longer period (three months from the submission of the request), while the ZPPO FBiH sets a deadline of 30 days for making a decision on the request, which provision is in the interest of the applicant and facilitates quicker and more efficient realization

⁷⁹ Article 1, paragraph 1, point 1 of the IDD.

of their rights. The Directive and the Law are aligned in terms of restrictions on the use of intermediary services, insisting that only the services of insurance distributors registered in the appropriate registers can be utilized.

The IDD prescribes that insurance distributors must possess the necessary knowledge and skills to adequately perform their tasks and duties and that they are required to undergo continuous professional training and development to maintain their level of effectiveness. Member states must verify and evaluate their knowledge and expertise (at least 15 hours annually), and certification in this regard may be required. Insurance/reinsurance intermediaries must demonstrate compliance with the relevant professional knowledge and skill requirements outlined in Annex 1 of the IDD. For individuals, it is emphasized that they must have a good reputation, and what this entails is defined. Finally, intermediaries must have professional liability insurance.

The registration in the ZZOPOR RS is separately defined for agents and for brokers in insurance, with conditions they must fulfill depending on whether they are physical or legal entities. The obligations of brokers toward the insured or the policyholder are specifically elaborated, which is in their best interest.

The IDD defines the conditions for information provision and rules of business conduct in a special chapter, including general principles, general information, conflict of interest, and transparency, exceptions, etc. The ZPPO FBiH does not contain any provisions on consumer information, so there is also a discrepancy and lack of alignment with the Directive in this segment. Furthermore, the IDD includes a special chapter regarding information when it comes to investment insurance products, which the ZPPO FBiH does not mention in any way.

In contrast to the ZPPO FBiH, the ZZOPOR RS contains a specific article that details the obligation to provide information by insurance agents and brokers, including both the content of the information and the form in which it must be communicated to the insured or the policyholder.

The ZPPO FBiH very sparsely regulates supervision over insurance intermediaries, with this role assigned to the Supervisory Agency, and in the case of irregularities, it issues a decision that is final and against which an administrative dispute can be initiated. This decision is not in accordance with the provisions of the IDD (Article 31, paragraph 5) which stipulate that member states guarantee that the right to appeal applies to administrative sanctions and other measures. Regarding sanctions and other measures, the Directive specifies that member states guarantee that the competent authorities establish effective mechanisms to enable and encourage reporting of potential or actual violations of national provisions through which the Directive is transposed into legislation, while the ZPPO FBiH does not contain such provisions, nor does it prescribe specific procedures for receiving reports of violations.

ZZOPOR RS regulates the supervision of the activities and operations of insurance representation and mediation in much more detail (criteria and conditions

for limiting the number of commissions, unauthorized activities, revocation of authorizations/licenses for operation) as well as offenses.

V Conclusion

The distribution of insurance represents a completely new system of mediation and representation in insurance, which was introduced into European Union insurance law by the IDD directive in 2016. This new system established new rules in the insurance market, and member states are obligated to transpose the provisions of the Directive into their national legislation. Given that Bosnia and Herzegovina signed the Stabilization and Association Agreement with the European Communities and their member states, and received candidate status on December 15, 2022, it is required to gradually align its legislation with the *acquis communautaire* of the European Union and establish a free trade area with the European Union.

Analysis of the legal framework in Bosnia and Herzegovina concerning insurance mediation leads to the conclusion that in both entities, the provisions are not fully aligned with the EU system. Specifically, the ZPPO FBiH was enacted in 2005, with amendments made in two instances, in 2010 and 2016, while the ZZOPOR RS was adopted in 2017.

Both entity laws on mediation (and representation) in insurance are not terminologically aligned with the Directive, as they do not mention insurance distribution at all. Although there is no terminological alignment, the roles of insurance representatives largely overlap with the activities defined in the Directive's definition of insurance distribution, while to a lesser extent with insurance brokers. Regarding registration in the registry, neither ZPPO FBiH nor ZZOPOR RS has established an electronic system (via the internet) for the registration of insurance intermediaries. The goal of the IDD is, among other things, to increase the level of consumer protection through continuous professional training of insurance distributors on an annual basis, which provision is not stipulated as a condition for renewing registration in the relevant registry of intermediaries and representatives in insurance. Finally, consumer protection is achieved by prescribing very strict rules regarding the provision of information about insurance products, where FBiH lags significantly, as it contains no provisions on this matter, while the RS law includes a specific article detailing the obligation of representatives and brokers in insurance to provide information, including both the content of the information and the manner in which it must be communicated to the insured or the policyholder.

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