

EIOPA thematic review on consumer protection issues in travel insurance

Deadline: 10 September 2018 (BdV comments)

Introduction

Better Finance has been contacted by EIOPA to contribute to a thematic review to assess potential consumer protection issues in travel insurance. EIOPA sent a questionnaire to insurance undertakings selected by NCAs, but they would also like to collect inputs from others stakeholders.

EIOPA has selected some key issues as the three main sources of consumer detriment:

- Product design
- Distribution process
- Sales practices

EIOPA is flexible regarding the format and content of the inputs. If interested, Better Finance asks to send your inputs by Monday 10 September. The first draft inputs will be discussed with EIOPA before the final deadline on 12 October.

BdV presents the following comments for this thematic review:

I. Product design

Main characteristics of travel insurances:

- BdV considers medical travel insurances as a necessary product class. The costs are generally rather low (in Germany an annual contract for a single person costs mostly about 10 Euro, for a family about 20 to 30 Euro).
- Trip cancellation insurance may be appropriate in individual cases, especially if a very expensive travel is booked several months in advance.
- BdV considers baggage travel insurances as non-appropriate mainly because of two reasons: very often the terms and conditions regulating the indemnity in case - especially - of a theft are too tricky, in consequence the insurer may easily refuse the compensation. Home content insurances often include coverage of loss of baggage, so there is the danger of double coverage.
- Additional coverage for rental cars or for roadside assistance is generally recommended.

Two cases of necessary improvements of terms and conditions of trip cancellation insurances (“Reiserücktritt”) enforced by BdV legal proceedings:

- **Insurer HanseMerkur (Hamburg)**

Trip cancellation insurances mostly have a clause which includes "unexpected serious illness" ("unerwartet schwere Krankheiten") as reason for trip cancellation. But HanseMerkur did not explain in its terms and conditions which illness could be considered as "unexpected" as well as "serious" (e.g. pneumonia or influenza). That is why BdV considered this clause as non-transparent and therefore not applicable and went to court.

Only shortly after this action the Association of German Insurers (GDV) asked BdV for a settlement of dispute resulting in a press release amending the standard policy conditions (GDV Press Release of 6 March 2018):

<https://www.gdv.de/de/themen/news/reiseversicherungen-werden-verstaendlicher-31196>

The amendment consists in an additional explanation of the criteria of "unexpected" and of "serious" with regard to illness by elucidating several examples. Though these standard policy conditions are non-binding, in the meanwhile HanseMerkur included these additional explanations in its terms and conditions for the new trip cancellation contracts. The court has not yet decided with regard to the previous cases.

- **Distributor Paypal (Germany / Luxembourg), insurer Europ Assistance (Dublin)**

Via the German website of Paypal customers living in Germany and with a Paypal account may conclude trip cancellation insurances offered by the Irish branch of Europ Assistance. BdV made an injunction action against two clauses of the terms and conditions of this travel insurance:

- One clause stipulated that the only reason for the cancellation of a trip was “force majeure” (“act of God” / “höhere Gewalt”). BdV criticized this clause for not being precise enough and therefore not understandable and not transparent for the average customer.
- The second clause stipulated that in case of gross negligence by the customer the insurer was allowed to totally refuse any reimbursement. BdV considered this clause as a breach of the amended German insurance contract law of 2008 stipulating that even in case of gross negligence the indemnity or reimbursement has to be gradual following to the seriousness of the fault committed by the policyholder.

The Irish branch of Europ Assistance immediately accepted BdV’s allegations. The first clause was omitted, the second was amended accordingly to the law (in December 2017).

II. Distribution process

Travel insurances are mostly sold via travel agencies. The national implementation of IDD was completed in Germany in time, but as predictable the minimum standards fixed by the EU directive were not reinforced by the national implementation like probably in most other EU member states as well.

We strongly criticize that the travel agencies are not even regulated by the minimum standards of IDD due to the exemptions already fixed in the directive: amount of premiums not exceeding 600 Euro on a pro rata annual basis or not exceeding 300 Euro for a duration of service lasting not more than three months (cf. article 1 (3) IDD).

In Germany in 2016 there were more than 25 million contracts – exclusively - of medical travel insurances (with a total sum of gross premiums of about 360 million Euro; cf. GDV Statistical Yearbook 2017). Due to these exemptions this huge part of insurance business is mostly not submitted to any supervisory authority at all! Additionally the consequence is that there is no obligation of professional registration and no control of the minimum standards of professional knowledge and competence requirements of these ancillary intermediaries. No need to assess that the risk of consumer detriment is still ubiquitous despite IDD.

III. Sales practices

It is obvious that online business is more and more important for the distribution of travel insurances. That is why the pre-contractual information duties of travel agencies, of websites offering flights or of other comparison websites are more and more important especially with regard to travel insurances. Especially pre-fixed tick-boxes for the conclusion of a single trip insurance contract may often lead to double coverage, if the potential customer has already an annual travel insurance contract (and if additionally there is no previous test of the demands and needs of the customer).

Already in January 2015 EIOPA published its Opinion on sales via the Internet of insurance and pension products, in which the main “types of consumer protection issues” were depicted. It was clearly emphasized that consumers wishing to research premiums via the internet may not be fully aware that they may inadvertently enter into unsolicited contracts. Therefore online distributors must have a “duty of advice” in order to provide consumers with appropriate information and “with a view to avoiding unsolicited, or mistakenly concluded contracts”. Only by this “proactive approach” consumer detriment will be reduced.