

COMPROMISE AMENDMENTS

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IMCO Opinion on Insurance Mediation (recast)

CA 1 on Art. 2 paragraph 3 covering amendments 4, 41 and 43

Text proposed by the Commission

(3). ‘insurance mediation’ means the activities of advising on , proposing or carrying out other work preparatory to the conclusion of contracts of insurance, concluding such contracts or assisting in the administration and performance of such contracts, in particular in the event of a claim , and the activity of professional management of claims and loss adjusting . These activities shall be considered to be insurance mediation also if carried on by an insurance undertaking without the intervention of an insurance intermediary.

Amendment

(3). ‘insurance mediation’ means the activities of advising on , proposing or carrying out other work preparatory to the conclusion of contracts of insurance, concluding such contracts or assisting in the administration and performance of such contracts, in particular in the event of a claim , and the activity of professional management of claims and loss adjusting . These activities shall be considered to be insurance mediation also if carried on by an insurance undertaking without the intervention of an insurance intermediary.
Comparing information regarding insurance products and prices on a commercial basis on a website should be considered as insurance intermediation.

CA 2on Article 2, paragraph 9 covering amendments 5, 46, 47 agreed

Text proposed by the Commission

(9). ‘advice’ means the provision of a recommendation to a customer, either upon their request or at the initiative of the insurance undertaking or the insurance intermediary;

Amendment

(9). ‘advice’ means the provision of a ***personal*** recommendation to a customer, either upon their request or at the initiative of the insurance undertaking or the insurance intermediary;

CA 3 on Article 2, paragraph 9 new

Text proposed by the Commission

Amendment

(9). ‘personal advice’ means the provision of recommendations to a customer. Insurance undertakings or an insurance intermediary shall obtain the necessary information regarding the client’s or potential client’s knowledge and experience in the insurance field relevant to the specific type of product, his insurance situation and his insurance objectives as to enable the firm to recommend to the client or potential client the insurance products that are suitable for him.

CA 4 on Article 2 paragraph 19 covering amendments 7, 50 agreed

Text proposed by the Commission

Amendment

(19) ‘tying practice’ means the offering of one or more ancillary services with an insurance service or product in a package where this insurance service or product is not made available to the consumer separately.

(19) ‘tying practice’ means

- the offering of one or more ancillary services with an insurance service or product in a package where this insurance service or product is not made available to the consumer separately.
- ***two or more insurance services or products in a package where these insurance services or products are not made available to the consumer separately***

Tying practice does not refer to the optional offer of one or more insurance products as part of package where the primary product is not an insurance service.

CA 5 concerning freedom of establishment and freedom to provide services, covering amendments 55, 58, 63

Text proposed by the Commission

Amendment

Registered insurance and reinsurance intermediaries shall be allowed to take up

and pursue the activity of insurance and reinsurance mediation in the Union by means of both freedom of establishment and freedom to provide services.

Agreed to introduce the above text as a new Article 4b before Article 5, in the beginning of Chapter IV, which concerns the freedom of establishment and the freedom to provide services.

CA 6 on registration of intermediaries already registered under IMD I, covering amendments 10, 61

Agreed to withdraw all the amendments tabled, since Article 3 § 1 already states that there is no obligation to re-register.

CA 7 on Article 13

introductory part, covering amendments 78, 79, 90

Text proposed by the Commission

1. Member States shall ensure the setting-up of appropriate, effective, impartial and independent complaints and redress procedures for the out-of-court settlement of disputes between insurance intermediaries and customers, and between insurance undertakings and customers, using existing bodies where appropriate.

Member States shall further ensure that all insurance undertakings and insurance intermediaries participate in the procedures for the out-of-court settlement of disputes where the following conditions are met:

Amendment

1. Member States shall ensure the setting-up of appropriate, effective, impartial and independent complaints and redress procedures for the out-of-court settlement of disputes between insurance intermediaries and customers, and between insurance undertakings and customers, using existing bodies where appropriate.

paragraph 1, point aa new, covering amendments 84, 100, 101, 103

Text proposed by the Commission

Amendment

(a a) Where a customer initiates a procedure for alternative dispute resolution laid down in national law against an insurance intermediary or insurance undertaking with regard to a dispute concerning rights and obligations established under this Directive the insurance intermediary or insurance undertaking shall be required to participate in that procedure.

For the purposes of the application of this of this Directive the competent authorities shall cooperate with each other and with the entities responsible for out-of-court complaint and redress procedure referred to above and to the extent permitted by EU Directives or regulations in force.

paragraph 2, covering amendments 102, 103

Text proposed by the Commission

Amendment

2. Member States shall ensure that these bodies cooperate in the resolution of cross-border disputes.

2. For business-to-customer transactions, these bodies shall comply with Directive XXX/XXXX/EU of the European Parliament and of the Council of the European Union on alternative dispute resolution for consumer disputes.

The following two amendments are technically not compromise amendments, your Rapporteur would however like to know whether the Shadows can support to have this text included in Article 13.

paragraph 2 a new, amendment 104

Text proposed by the Commission

Amendment

2 a. Member States shall ensure that insurance intermediaries established on their territories inform consumers about the name, address and website address of the ADR entities by which they are covered and which are competent to deal with potential disputes between themselves and consumers.

paragraph 2 b new, amendment 105

Text proposed by the Commission

Amendment

2 b. Insurance intermediaries within the Union engaging in online and cross-border online sales shall inform consumers about the ODR platform, if applicable and about their email address. This information shall be made easily, directly, prominently and permanently accessible on the insurance intermediaries' website and if the offer is made by e-mail or another textual message transmitted by electronic means, in that message. It shall include an electronic link to the ODR platform's homepage. Insurance intermediaries shall also inform consumers about the ODR platform when the consumer submits a complaint to the insurance intermediary, a consumer complaint handling system

*operated by the insurance intermediary or
to a company ombudsman.*

CA 8 on Article 17

paragraph 1 point c (i) amendments 16,107

Text proposed by the Commission

(i) it gives advice on the basis of a fair analysis, or

Amendment

(i) it **must disclose whether** it gives advice on the basis of a fair **and personal** analysis,

paragraph 1 point c (iii)

Text proposed by the Commission

(iii) it is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair analysis. In that case, it shall provide the names of the insurance undertakings with which it may and does conduct business;

Amendment

(iii) it is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair **and personal** analysis. In that case, it shall provide the names of the insurance undertakings with which it may and does conduct business ;

paragraph 1 point d amendments 109, 110

Text proposed by the Commission

(d) the nature of the remuneration received in relation to the insurance contract;

Amendment

deleted

paragraph 1 point f, amendments 112, 113

Text proposed by the Commission

(f) if the intermediary will receive a fee **or a commission** of any kind, the full amount of the **remuneration** concerning the insurance products being offered or considered or, where the precise amount is not capable of being given, the basis of calculation of all the fee or commission or the combination of both;

Amendment

(f) if the intermediary will receive **remuneration** any kind **in relation to the insurance contract**, the full amount of the **remuneration** concerning the insurance products being offered or considered or, where the precise amount is not capable of being given, the basis of calculation of all the fee or commission or the combination of both, upon request of the consumer;

paragraph 1 point g, amendments 114, 115, 116

Text proposed by the Commission

Amendment

(g) if the amount of the commission is based on the achievement of agreed targets or thresholds relating to the business placed by the intermediary with an insurer, the targets or thresholds as well as the amounts payable on the achievement of them. ***deleted***

paragraph 2 introductory part covering amendments 18, 119,

Text proposed by the Commission

Amendment

2. By derogation from paragraph 1 (f) for five years from the date on which this Directive comes into force, the intermediary of insurance contracts other than contracts in any of the classes specified in Annex I of Directive 2002/83/EC, shall, prior to the conclusion of any such insurance contract, if the intermediary is to be remunerated by a fee or commission, ***deleted***

paragraph 3, covering amendments 120, 121, 122

Text proposed by the Commission

Amendment

3. The insurance undertaking or insurance intermediary shall also inform the customer about the nature and the basis of the calculation of any variable remuneration received by any employee of theirs for distributing and managing the insurance product in question. ***deleted***

paragraph 4, covering amendments 123, 124

Text proposed by the Commission

Amendment

4. If any payments are made by the customer under the insurance contract after its conclusion, the insurance undertaking or intermediary shall also make the disclosures in accordance with ***deleted***

this Article for each such payment.

paragraph 5, covering amendments 125, 126, 127

Text proposed by the Commission

Amendment

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 33. Those delegated acts shall specify:

deleted

(a) appropriate criteria for determining how the remuneration of the intermediary - including contingent commission – shall be disclosed to the customer as referred to in paragraph 1 (f) and (g) and paragraph 2 of this Article;

(b) appropriate criteria for determining in particular the basis of calculation of all the fee or commission or the combination of both;

(c) the steps that insurance intermediaries and insurance undertakings might reasonably be expected to take to disclose their remuneration to the customer.

CA 9 on Article 18

paragraph 1, introductory part covering amendments 18, 129

Text proposed by the Commission

1. Prior to the conclusion of any specific contract, the insurance intermediary – including tied ones– or insurance undertaking shall **indentify**, on the basis of information provided by the customer:

Amendment

1. Prior to the conclusion of any specific contract, the insurance intermediary – including tied ones– or insurance undertaking shall **specify**, on the basis of information provided by **or regarding** the customer:

paragraph 3 covering amendments 21, 132

Text proposed by the Commission

3. When the insurance intermediary or the insurance undertaking inform the customer that it **gives** its advice on the basis of a fair analysis, it is obliged to **give** that advice on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable it to make a recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

Amendment

3. When the insurance intermediary or the insurance undertaking inform the customer that it **provides** its advice on the basis of a fair analysis, it is obliged to **provide** that advice on the basis of an analysis of a **significant and** sufficiently large number of insurance contracts **from a sufficiently large number of insurance providers** available on the market, to enable it to make a recommendation, in accordance with professional criteria, regarding which insurance contract would be adequate to meet the customer's needs.

CA 10 on Article 21

paragraph 1 covering amendemnts 138, 139

Text proposed by the Commission

1. Member States shall allow **bundling** practices **but not tying** practices.

Amendment

1. Member States **may** allow bundling practices but not tying practices, **taking into account Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market.**

paragraph 2 covering amendments 140, 141

Text proposed by the Commission

2. When **an** insurance **service or product** is offered together with another service or product as a package, the insurance undertaking or, where applicable, the insurance intermediary shall **offer and** inform the customer **that** it is possible to buy the components of the package separately and shall provide information of the costs and charges of each component of the package that may be bought through or from it separately.

Amendment

2. When insurance is offered together with another service or product as a package, the insurance undertaking or, where applicable, the insurance intermediary shall inform the customer **whether** it is possible to buy the components of the package separately and, **if yes** shall provide information of the costs and charges of each component of the package that may be bought through or from it separately, **at the clients request.**

CA 11 on Article 22 paragraph 1 b new covering amendments 149, 150, 151

Text proposed by the Commission

Amendment

Member States may maintain or adopt stricter provisions regarding the customer protection requirements referred to in Articles 23, 24 and 25 provided that such provisions comply with Union law. ESMA and EIOPA should work together to achieve as much consistency as possible in the conduct of business standards for retail investment products that are subject to either (MiFID II) or to this Directive through guidelines.

CA 12 on Article 23 paragraph 2 covering amendments 152, 153

Text proposed by the Commission

2. Where steps taken by the insurance intermediary or insurance undertaking in compliance with Articles 15, 16 and 17 are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of customers and potential customers arising from conflicts of interest will be prevented, the insurance intermediary or insurance undertaking shall clearly disclose the general nature or sources of conflicts of interest to the customer before undertaking business on the customer's behalf.

Amendment

2. An insurance intermediary or insurance undertaking shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its customers.

Where steps taken by the insurance intermediary or insurance undertaking are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of customers and potential customers arising from conflicts of interest will be prevented, the insurance intermediary or insurance undertaking shall clearly disclose the general nature and sources of conflicts of interest and the steps taken to mitigate those risks to the customer.

CA 13 on Article 24 paragraph 3 point a, covering amendments 158, 159

Text proposed by the Commission

(a) the insurance intermediary or insurance undertaking and its services. When advice is provided, information shall specify whether the advice is provided on an independent basis and whether it is based on a broad or on a more restricted analysis of the market and shall indicate whether the insurance intermediary or insurance undertaking will provide the customer with the on-going assessment of the suitability of the insurance product recommended to the customer;

Amendment

(a) the insurance intermediary or insurance undertaking and its services. When advice is provided, information shall specify whether it is based on a broad or on a more restricted analysis of the market and shall indicate whether the insurance intermediary or insurance undertaking will provide the customer with the on going assessment of **and latest information about** the suitability of the insurance product recommended to the customer;

CA 14 on Recital 28 (linked to CA 7)

Text proposed by the Commission

(28) There is a need for ***suitable***, appropriate and effective out-of-court complaint and redress procedures in the Member States in order to settle disputes between insurance intermediaries or undertakings and customers, using, where appropriate, existing procedures. Effective out-of-court complaint and redress procedures should be available to deal with disputes concerning rights and obligations established under this Directive between insurance undertakings or persons selling or offering insurance products and customers. In order to enhance the effectiveness of out-of-court resolution of disputes procedures dealing with complaints submitted by customers, this Directive should provide that insurance undertakings or persons selling or offering insurance products have to participate in dispute resolution procedures, ***which do not result in a binding decision, instituted against themselves by customers and concerning rights and obligations established under this Directive. Such out-of court resolution of disputes procedures would aim to achieve a quicker and less expensive settlement of disputes between insurance undertakings or persons selling or offering insurance products and customers and lightening of the burden on the court system. However, out-of-court resolution of disputes procedures should not prejudice the rights of the parties to such procedures to bring legal proceedings before courts.***

2002/92/EC recital 23 new

Without prejudice to the right of customers to bring their action before the courts, Member States should ensure that ADR entities dealing with disputes referred to under this Directive encourage public or private bodies established with a view to

Amendment

(28) There is a need for appropriate and effective out-of-court complaint and redress procedures in the Member States in order to settle disputes between insurance intermediaries or undertakings and customers, using, where appropriate, existing procedures. Effective out-of-court complaint and redress procedures should be available to deal with disputes concerning rights and obligations established under this Directive and Directives between insurance undertakings or persons selling or offering insurance products and customers. In order to enhance the effectiveness of out-of-court resolution of disputes procedures dealing with complaints submitted by customers, this Directive should provide that insurance undertakings or persons selling or offering insurance products have to participate in dispute resolution procedures. ***This should be in accordance with the Alternative Consumer Dispute Resolution 2011/0373(COD) and the Online Consumer Dispute Resolution Directive 2011/0374(COD).***

settling disputes out-of-court, to cooperate in resolving cross-border disputes. Member States should encourage ADR entities dealing with such disputes to become part of FIN-NET. Such cooperation could for example be aimed at enabling customers to contact extra-judicial bodies established in their Member State of residence about complaints concerning insurance intermediaries established in other Member States. The setting up of the FIN-NET network provides increased assistance to consumers when they use cross-border services. The provisions on procedures should take into account Commission Recommendation 98/257/EC of 30 March 1798 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes.

CA 15 on Recital 30, covering amendments 28, 29

Text proposed by the Commission

(30) Consumers should be provided in advance with clear information about the status of the persons who sell the insurance product and ***about the remuneration which they receive***. There is a need to introduce a mandatory status disclosure for European insurance intermediaries and insurance undertakings. This information should be given to the consumer at the pre-contractual stage. Its role is to show the relationship between the insurance undertaking and the intermediary (where applicable) as well as the structure and the content of the intermediaries' remuneration.

Amendment

(30) Consumers should be provided in advance with clear information about the status of the persons who sell insurance product and ***whether they are being given personal advice***. There is a need to introduce a mandatory status disclosure for European insurance intermediaries and insurance undertakings. This information should be given to the consumer at the pre-contractual stage. Its role is to show the relationship between the insurance undertaking and the intermediary (where applicable) as well as the structure and content of the intermediaries remuneration.

CA 16 on Recital 40, covering amendments 3, 32

Text proposed by the Commission

(40) This directive should specify the minimum obligations which insurance undertakings and insurance intermediaries should have in providing information to customers. A Member State should be able to in this area maintain or adopt more stringent provisions of their home Member State where they are pursuing insurance mediation activities on its territory provided that any such more stringent provisions comply with Union law, including Directive 20003/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce). A Member State which proposes to apply and applies provisions regulating insurance intermediaries and the sale of insurance products in addition to those set out in this directive should ensure that the administrative burden stemming from these provisions is proportionate for consumer protection. In the interest of consumer protection and in order to prevent mis-selling of insurance products, Member States should be permitted to apply *exceptionally the* more stringent requirements to such insurance intermediaries conducting insurance mediation on an ancillary basis if they consider it necessary and proportionate.

Amendment

(40) This directive should specify the minimum obligations which insurance undertakings and insurance intermediaries should have in providing information to customers. A Member State should be able to in this area maintain or adopt more stringent provisions of their home Member State where they are pursuing insurance mediation activities on its territory provided that any such more stringent provisions comply with Union law, including Directive 20003/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce). A Member State which proposes to apply and applies provisions regulating insurance intermediaries and the sale of insurance products in addition to those set out in this directive should ensure that the administrative burden stemming from these provisions is proportionate for consumer protection. In the interest of consumer protection and in order to prevent mis-selling of insurance products, Member States should be permitted to apply more stringent requirements to such insurance intermediaries conducting insurance mediation on an ancillary basis if they consider it necessary and proportionate.