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Committee on Economic and Monetary Affairs

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DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council
on insurance mediation (recast)
(COM(2012)0360 – C7-0180/2012 – 2012/0175(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Werner Langen

(Recast – Rule 87 of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in bold italics. Highlighting in normal italics is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in bold. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

CONTENTS

	Page
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION	5
EXPLANATORY STATEMENT.....	61
ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS.....	64
ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION	66

DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council on insurance mediation (recast)

(COM(2012)0360 – C7-0180/2012 – 2012/0175(COD))

(Ordinary legislative procedure – recast)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0360),
 - having regard to Article 294(2) and Article 53(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0180/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹,
 - having regard to the letter of 9 November 2012 from the Committee on Legal Affairs to the Committee on Economic and Monetary Affairs pursuant to Article 87(3) of its Rules of Procedure,
 - having regard to the undertakings given by the Commission at Parliament's plenary sitting of ... to incorporate Parliament's position, and by the Council representative by letter of ... to approve that position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rules 87 and 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on the Internal Market and Consumer Protection (A7-0000/2012),
- A. whereas, according to the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance;
1. Adopts its position at first reading hereinafter set out, taking account of the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission;

¹ OJ C 77, 28.3.2002, p. 1.

2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1
Proposal for a directive
Recital 1

Text proposed by the Commission

(1) **A number of** amendments are to be made to Directive 2002/92/EC of the European Parliament and the Council of 9 December 2002 on insurance mediation. **In the interests of clarity, that** Directive should be recast.

Amendment

(1) Amendments are to be made to Directive 2002/92/EC of the European Parliament and the Council of 9 December 2002 on insurance mediation. **Thus it is proposed that the** Directive should be recast.

Or. de

Amendment 2
Proposal for a directive
Recital 2

Text proposed by the Commission

(2) Since the main objective and subject-matter of this proposal is to harmonise national provisions concerning the mentioned areas, the proposal should be based on Article 53(1) and 62 TFEU. The form of a Directive is appropriate in order to enable the implementing provisions in the areas covered by this Directive, when necessary, to be adjusted to any existing specificities of the particular market and legal system in each Member State. This Directive should also aim at coordinating national rules concerning the access to the activity of insurance and reinsurance mediation **including professional management of claims and loss adjusting**, and is therefore based on Article 53(1) of the Treaty. In addition, since this is a sector offering services across the Union, this Directive is also based on Article 62 of the Treaty.

Amendment

(2) Since the main objective and subject-matter of this proposal is to harmonise national provisions concerning the mentioned areas, the proposal should be based on Article 53(1) and 62 TFEU. The form of a Directive is appropriate in order to enable the implementing provisions in the areas covered by this Directive, when necessary, to be adjusted to any existing specificities of the particular market and legal system in each Member State. This Directive should also aim at coordinating national rules concerning the access to the activity of insurance and reinsurance mediation, and is therefore based on Article 53(1) of the Treaty. In addition, since this is a sector offering services across the Union, this Directive is also based on Article 62 of the Treaty.

Or. de

Amendment 3
Proposal for a directive
Recital 4

Text proposed by the Commission

(4) Various types of persons or institutions, such as agents, brokers and 'bancassurance' operators, insurance undertakings, travel agents and car rental companies can distribute insurance products. ***Equality of treatment between operators and customer protection requires that all these persons or institutions be covered by this Directive.***

Amendment

(4) Various types of persons or institutions, such as agents, brokers and 'bancassurance' operators, insurance undertakings, travel agents and car rental companies can distribute insurance products.

Or. de

Amendment 4
Proposal for a directive
Recital 5

Text proposed by the Commission

(5) The application of Directive 2002/92/EC has shown that a number of provisions require further precision with a view to facilitating the exercise of insurance and reinsurance mediation and that the protection of consumers requires an extension of the scope of that Directive to all sales of insurance products, whether by insurance intermediaries or insurance undertakings. In respect of their sales, after-sales and claims processes insurance undertakings which sell directly insurance products, should be brought into the scope of the new Directive on a similar basis as insurance agents and brokers.

Amendment

(5) The application of Directive 2002/92/EC has shown that a number of provisions require further precision with a view to facilitating the exercise of insurance and reinsurance mediation and that the protection of consumers requires an extension of the scope of that Directive to all sales of insurance products ***as a main professional activity***, whether by insurance intermediaries or insurance undertakings. In respect of their sales, after-sales and claims processes insurance undertakings which sell directly insurance products, should be brought into the scope of the new Directive on a similar basis as insurance agents and brokers.

Or. de

Amendment 5
Proposal for a directive
Recital 6

Text proposed by the Commission

Amendment

(6) In order to guarantee that the same level of protection applies regardless of the channel through which consumers buy an insurance product, either directly from an insurance undertaking or indirectly from an intermediary, the scope of the Directive needs to cover not only insurance undertakings but other market participants who sell insurance products on an ancillary basis (e.g. travel agents and car rental companies, suppliers of goods not meeting conditions for the exemption).

deleted

Or. de

Amendment 6
Proposal for a directive
Recital 7

Text proposed by the Commission

Amendment

(7) This Directive should apply to persons whose activity consists of assisting (whether on behalf of a customer or an insurance undertaking) in the administration and performance of a contract of insurance or reinsurance, including the professional management of claims, or of loss adjusting or the expert appraisal of claims.

(7) This Directive should apply to persons whose activity consists of assisting (whether on behalf of a customer or an insurance undertaking) in the administration and performance of a contract of insurance or reinsurance.

Or. de

Amendment 7
Proposal for a directive
Recital 20

Text proposed by the Commission

Amendment

(20) Member States should not apply the registration requirements to insurance intermediaries which conduct insurance mediation in relation to certain types of insurance contract on an ancillary basis or to professional management of claims, loss adjusting or expert appraisal of claims, provided that they comply with the requirements of this Directive as to knowledge and ability and good repute and the applicable information and conduct of business requirements, and a declaration of activity has been submitted to the competent authority.

deleted

Or. de

**Amendment 8
Proposal for a directive
Recital 21 a (new)**

Text proposed by the Commission

Amendment

(21a) An insurance or reinsurance intermediary carries on insurance mediation activities under the terms of freedom to provide services if:

(a) he performs insurance or reinsurance mediation activities for a policy-holder or potential policy-holder resident or established in a Member State other than the Member State of origin of the intermediary; and

(b) each risk to be insured is located in a Member State other than the Member State of origin of the intermediary.

An insurance or reinsurance intermediary carries on insurance or reinsurance mediation activities under the terms of freedom to provide services if he maintains a permanent presence in a Member State other than the Member

State of origin.

Or. de

Amendment 9
Proposal for a directive
Recital 22

Text proposed by the Commission

(22) It is important to guarantee a high level of professionalism and competence among insurance and reinsurance intermediaries and the employees of direct insurers who are involved in activities preparatory to, during and after the sales of insurance policies. Therefore, the professional knowledge of an intermediary, of the employees of direct insurers, ***and of car rental companies and travel agents, as well as the professional knowledge of persons carrying on the activities of the management of claims, loss adjusting or expert appraisal of claims*** needs to match the level of complexity of these activities. Continuing education should be ensured.

Amendment

(22) It is important to guarantee a high level of professionalism and competence among insurance and reinsurance intermediaries and the employees of direct insurers who are involved in activities preparatory to, during and after the sales of insurance policies. Therefore, the professional knowledge of an intermediary ***and*** of the employees of direct insurers needs to match the level of complexity of these activities. Continuing education should be ensured. ***Issues of form, substance and required documentary evidence should be regulated by the Member States. Professional training organisations linked to the sector or belonging to an association should receive certification in this context.***

Or. de

Amendment 10
Proposal for a directive
Recital 30

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

Amendment

(30) Consumers should be provided in advance with clear information about the status of the persons who sell the insurance product. ***It would be worth considering introducing*** a mandatory status disclosure for European insurance intermediaries and insurance undertakings. This information

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.**

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).

Or. de

Amendment 11
Proposal for a directive
Recital 31

Text proposed by the Commission

(31) ***In order to mitigate conflicts of interest between the seller and the buyer of an insurance product, it is necessary to ensure sufficient disclosure of remuneration of insurance distributors. Accordingly, for life insurance products, the intermediary and the employee of the insurance intermediary or the insurance undertaking should be obliged to inform the customer about its remuneration, in advance of the sale. For other insurance products, subject to a transitional period of 5 years, the customer must be informed of the customer's right to request this information, which must be provided to the customer upon request.***

Amendment

(31) For insurance ***investment*** products, the intermediary and the employee of the insurance intermediary or the insurance undertaking should be obliged to inform the customer about ***the costs and fees applicable to the insurance investment product***, in advance of the sale. ***Member States may impose disclosure requirements which exceed those laid down in this Directive, provided that equal competitive conditions are preserved among the various distribution and mediation channels and that proportionality is maintained among the various resultant administrative burdens and the intended consumer protection.***

Or. de

Amendment 12
Proposal for a directive
Recital 32

Text proposed by the Commission

(32) ***In order to provide a customer with comparable information on the insurance***

Amendment

deleted

mediation services provided regardless of whether the customer purchases through an intermediary, or directly from an insurance undertaking, and to avoid the distortion of competition by encouraging insurance undertakings to sell direct to customers rather than via intermediaries in order to avoid information requirements, insurance undertakings should also be required to provide information about remuneration to customers with whom they deal directly in the provision of insurance mediation services about the remuneration they receive for the sale of insurance products.

Or. de

Amendment 13
Proposal for a directive
Recital 34

Text proposed by the Commission

Amendment

(34) In order to avoid mis-selling cases, if necessary, the sale of insurance products should be accompanied with honest and professional advice.

deleted

Or. de

Amendment 14
Proposal for a directive
Recital 35

Text proposed by the Commission

Amendment

(35) It is **essential** for the customer to know whether he/she is dealing with an intermediary who is advising the customer on products from a broad range of insurance undertakings or on products provided by a specific number of insurance undertakings.

(35) It is **important** for the customer to know whether he/she is dealing with an intermediary who is advising the customer on products from a broad range of insurance undertakings or on products provided by a specific number of insurance undertakings.

Amendment 15
Proposal for a directive
Recital 36

Text proposed by the Commission

(36) Due to the increasing ***dependence of consumers on personal recommendations***, it is appropriate to include a definition of advice. Before advice is provided, the insurance intermediary or undertaking should assess the customer's needs, ***demands*** and *its* financial situation. If the intermediary declares that it is giving advice on products from a broad range of insurance undertakings, it should carry out a fair and sufficiently wide-ranging analysis of the products available on the market. In addition, all insurance intermediaries and insurance undertakings should explain the reasons underpinning their advice.

Amendment

(36) Due to the increasing ***complexity of insurance products for consumers***, it is appropriate to include a definition of advice. Before advice is provided, the insurance intermediary or undertaking should assess the customer's ***expectations and needs with regard to his insurance cover*** and *assess his* financial situation. If the intermediary declares that it is giving advice on products from a broad range of insurance undertakings, it should carry out a fair and sufficiently wide-ranging analysis of the products available on the market. In addition, all insurance intermediaries and insurance undertakings should explain the reasons underpinning their advice.

Amendment 16
Proposal for a directive
Recital 38

Text proposed by the Commission

(38) Uniform rules should be laid down in order to ***give the person selling the insurance product a certain*** choice ***with regard to*** the medium in which ***all*** information is provided to the customer allowing for use of electronic communications where it is appropriate having regard to the circumstances of the transaction. However, the customer should be given the option to receive it on paper.

Amendment

(38) Uniform rules should be laid down in order to ***facilitate the*** choice ***of*** the medium in which ***mandatory*** information is provided to the customer allowing for use of electronic communications where it is appropriate having regard to the circumstances of the transaction. However, the customer should be given the option to receive it on paper. In the interest of consumer access to information, all pre-

In the interest of consumer access to information, all pre-contractual information *should always* be *provided* free of charge.

contractual information *must* be *accessible* free of charge.

Or. de

Amendment 17
Proposal for a directive
Recital 40

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 which may be imposed on insurance intermediaries and insurance undertakings independently of the 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 2000/31/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)¹⁶. 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*

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 which may be imposed on insurance intermediaries and insurance undertakings independently of the 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 2000/31/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 *remains limited*.

intermediaries conducting insurance mediation on an ancillary basis if they consider it necessary and proportionate.

Or. de

Amendment 18
Proposal for a directive
Recital 41

Text proposed by the Commission

(41) Cross-selling practices are a common strategy for retail financial service providers throughout the Union. *They can provide benefits to consumers but can also represent practices where the interest of consumers is not adequately considered. For instance, certain forms of cross-selling practices or products, namely tying practices where two or more financial services are sold together in a package and at least one of those services or products is not available separately, can distort competition and negatively affect consumers' mobility and their ability to make informed choices. An example of tying practices can be the necessary opening of current accounts when an insurance service is provided to a consumer in order to pay the premiums or the necessary conclusion of a motor insurance contract when a consumer credit is provided to a consumer in order to insure the financed car. While practices of bundling, where two or more financial services or products are sold together in a package, but each of the services can also be purchased separately, may also distort competition and negatively affect customer mobility and customers' ability to make informed choices, they at least leave choice to the customer and may therefore present less risk to the compliance of insurance intermediaries with their obligations under this directive.*

Amendment

(41) Cross-selling practices are a common ***and perfectly appropriate*** strategy for retail financial service providers throughout the Union.

The use of such practices should be carefully assessed in order to promote competition and consumer choice.

Or. de

Amendment 19
Proposal for a directive
Recital 42

Text proposed by the Commission

(42) Contracts of insurance that involve investments are often made available to customers as potential alternatives or substitutes to investment products subject to Directive [MiFID II]¹⁷. To deliver consistent investor protection and avoid the risk of regulatory arbitrage, it is important that retail investment products (insurance investment products as defined in the Regulation on key information documents for investment products) are subject to the same conduct of business standards: these include provision of appropriate information, requirements for advice to be suitable and restrictions on inducements, as well as requirements to manage conflicts of interest, **and in the case of independent advisers, restrictions on the form of remuneration**. The European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (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. For insurance investment products, the standards of this Directive which are applicable to all insurance contracts (**Chapter VII** of this Directive), and the enhanced standards for insurance investment products are cumulative. Accordingly, persons carrying out

Amendment

(42) Contracts of insurance that involve investments are often made available to customers as potential alternatives or substitutes to investment products subject to Directive [MiFID II]¹⁷. To deliver consistent investor protection and avoid the risk of regulatory arbitrage, it is important that retail investment products (insurance investment products as defined in the Regulation on key information documents for investment products) are subject to the same conduct of business standards: these include provision of appropriate information, requirements for advice to be suitable and restrictions on inducements, as well as requirements to manage conflicts of interest. The European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) should work together to achieve as much consistency as possible in the **rules of** conduct for retail investment products that are subject to either [MiFID II] or to this Directive through guidelines. For insurance investment products, the standards of this Directive which are applicable to all insurance contracts (**Chapter VI** of this Directive), and the enhanced standards for insurance investment products are cumulative. Accordingly, persons carrying out insurance mediation in relation to insurance investment products should comply with the conduct standards

insurance mediation in relation to insurance investment products should comply with the conduct standards applicable to all insurance contracts as well as to the enhanced standards applicable to insurance investment products.

applicable to all insurance contracts as well as to the enhanced standards applicable to insurance investment products.

Or. de

Amendment 20
Proposal for a directive
Recital 43

Text proposed by the Commission

(43) In order to ensure compliance with the provisions of this Directive by insurance undertakings and persons who pursue insurance mediation, and to ensure that they are subject to similar treatment across the Union, Member States should be required to provide for administrative sanctions and measures which are effective, proportionate and dissuasive. A review of existing powers and their practical application has been carried out with the aim of promoting convergence of sanctions and measures in the Commission Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial sector¹⁸. Therefore, administrative sanctions and measures laid down by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or measure, publication, key sanctioning powers **and levels of administrative pecuniary sanctions**.

Amendment

(43) In order to ensure compliance with the provisions of this Directive by insurance undertakings and persons who pursue insurance mediation, and to ensure that they are subject to similar treatment across the Union, Member States should be required to provide for administrative sanctions and measures which are effective, proportionate and dissuasive. A review of existing powers and their practical application has been carried out with the aim of promoting convergence of sanctions and measures in the Commission Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial sector. Therefore, administrative sanctions and measures laid down by Member States should satisfy certain essential requirements in relation to addressees, criteria to be taken into account when applying a sanction or measure, publication **and** key sanctioning powers.

Or. de

Amendment 21
Proposal for a directive
Recital 50

Text proposed by the Commission

Amendment

(50) In order to attain the objectives set out in this Directive, the power to adopt acts in accordance with Article 290 of the Treaty should be delegated to the Commission in respect of details concerning notions of adequate knowledge and competence of the intermediary, management of conflicts of interest, conduct of business obligations in relation to insurance packaged retail investment products and procedures and forms for submitting information in relation to sanctions. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

deleted

Or. de

Amendment 22
Proposal for a directive
Recital 52

Text proposed by the Commission

Amendment

(52) By means of delegated acts pursuant to Articles 290 and 291 of the Treaty on the Functioning of the European Union and in accordance with Articles 10 to 15 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational

deleted

Pensions Authority)¹⁹, the Commission should adopt delegated acts as set out in Articles [8] regarding notions of adequate knowledge and ability of the intermediary, Article [17 and 23] regarding management of conflicts of interest and Articles [24 and 25] regarding conduct of business obligations in relation to insurance packaged retail investment products as well as implementing technical standards as set out in Article [30] regarding procedures and forms for submitting information in relation to sanctions. These delegated acts and implementing technical standards should be developed in draft by EIOPA.

Or. de

Amendment 23
Proposal for a directive
Recital 56

Text proposed by the Commission

(56) A review of this Directive should be carried out five years after the date on which this Directive enters into force in order to take account of market developments as well as developments in other areas of Union law or Member States experiences in implementation of Union law, *in particular with regard to products covered by Directive 2003/41/EC.*

Amendment

(56) A review of this Directive should be carried out five years after the date on which this Directive enters into force in order to take account of market developments as well as developments in other areas of Union law or Member States experiences in implementation of Union law.

Or. de

Amendment 24
Proposal for a directive
Article 1 – paragraph 1

Text proposed by the Commission

1. This Directive lays down

Amendment

1. This directive lays down the rules

rules concerning the taking-up and pursuit of the activities of insurance and reinsurance mediation, **including professional management of claims and loss adjusting**, by natural and legal persons which are established in a Member State or which wish to be established there.

concerning the taking-up and pursuit of the activities of insurance and reinsurance mediation by natural and legal persons which are established in a Member State or which wish to be established there.

Or. de

Amendment 25
Proposal for a directive
Article 1 – paragraph 2 – point e - point i (new)

Text proposed by the Commission

(e) the insurance is complementary to **goods supplied** by any provider, where such insurance covers the risk of breakdown, loss of or damage to the goods supplied by that provider ;

Amendment

(i) the insurance is complementary to **the supply of goods or provision of a service** by any provider, where such insurance covers the risk of breakdown, loss of or damage to the goods supplied by that provider; **or**

Or. de

Amendment 26
Proposal for a directive
Article 1 – paragraph 2 – point e – point ii (new)

Text proposed by the Commission

(ii) damage to or loss of baggage and other risks linked to the travel booked with that provider, even if the insurance covers life assurance or liability risks, provided that the cover is ancillary to the main cover for the risks linked to that travel; or

Or. de

Amendment 27
Proposal for a directive
Article 1 – paragraph 2 – point e – point iii (new)

Text proposed by the Commission

Amendment

(iii) damage to or loss of baggage and other risks linked to a rented vehicle, including injury to the vehicle's occupants, provided that the cover is ancillary to the main cover for the risks linked to that rental;

Or. de

Amendment 28
Proposal for a directive
Article 2 – point 1

Text proposed by the Commission

Amendment

1. 'insurance undertaking' means an undertaking which has received official authorisation in accordance with **Article 6 of Directive 73/239/EEC or Article 6 of Directive 79/267/EEC**;

1. 'insurance undertaking' means a **direct life or non-life insurance** undertaking which has received authorisation in accordance with **Article 14 of Directive 2009/138/EC**;

Or. de

Amendment 29
Proposal for a directive
Article 2 – point 2

Text proposed by the Commission

Amendment

2. 'reinsurance undertaking' means an undertaking which **has received official** authorisation in accordance with Article 3 of Directive **2005/68/EC**;

2. 'reinsurance undertaking' means an undertaking which **holds** authorisation in accordance with Article **14** of Directive **2009/138/EC to pursue reinsurance activities**;

Or. de

Amendment 30
Proposal for a directive
Article 2 – point 3

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. These activities shall be considered to be insurance mediation also if carried on by an insurance undertaking without the intervention of an insurance intermediary. **Each of the following activities shall be considered as insurance mediation within the meaning of the directive:**

Provision of information concerning one ore more insurance contracts according to criteria selected by customers through a website or other media and the compilation of an insurance product ranking list or the discounting of premiums for customers accordingly able to take out insurance contracts directly.

Or. de

Amendment 31
Proposal for a directive
Article 2 – point 6

Text proposed by the Commission

6. 'reinsurance mediation' means the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of reinsurance, of concluding such contracts or assisting in the administration and performance of such contracts, in particular in the event of a

Amendment

6. 'reinsurance mediation' means the activities of advising on, proposing or carrying out other work preparatory to the conclusion of contracts of **insurance or** reinsurance, of concluding such contracts or assisting in the administration and performance of such contracts, in particular

claim, **and the activity of professional management of claims and loss adjusting.**

These activities shall be considered to be reinsurance mediation also if carried on by a reinsurance undertaking without the intervention of a reinsurance intermediary.

in the event of a claim. These activities shall be considered to be reinsurance mediation also if carried on by a reinsurance undertaking without the intervention of a reinsurance intermediary.

Or. de

Amendment 32
Proposal for a directive
Article 2 – point 7

Text proposed by the Commission

7. 'reinsurance intermediary' means any natural or legal person, other than a reinsurance undertaking, who, for remuneration, takes up or pursues reinsurance mediation;

Amendment

7. „'reinsurance intermediary' means any natural or legal person, other than a reinsurance undertaking **and its employees**, who, for remuneration, takes up or pursues reinsurance mediation;

Or. de

Amendment 33
Proposal for a directive
Article 2 – point 8

Text proposed by the Commission

8. 'tied insurance intermediary' means any person who carries on the activity of insurance mediation for and on behalf of one or **more** insurance undertakings or insurance intermediaries, and who acts under the full responsibility of those insurance undertakings or insurance intermediaries, provided that the insurance intermediaries under whose responsibility the person acts do not themselves act under the responsibility of another insurance undertaking or intermediary;

Amendment

8. 'tied insurance intermediary' means any person who carries on the activity of insurance mediation for and on behalf of one or, **in the case of insurance products not in competition, several** insurance undertakings or insurance intermediaries, **but does not collect premiums or amounts intended for the customer** and who acts under the full responsibility of those insurance undertakings or insurance intermediaries, provided that the insurance intermediaries under whose responsibility the person acts do not themselves act under the responsibility of another insurance

undertaking or intermediary;

Or. de

Amendment 34
Proposal for a directive
Article 2 – point 9

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;

Or. de

Amendment 35
Proposal for a directive
Article 2 – point 11

Text proposed by the Commission

11. 'large risks' shall be as defined by Article 5(d) of Directive 73/239/EEC;

Amendment

11. „'large risks' shall be as defined by Article 13(27) of Directive 2009/138/EC;

Or. de

Amendment 36
Proposal for a directive
Article 2 – point 15

Text proposed by the Commission

(15) 'cross-selling practice' means the offering of an insurance service or product together with another service or product as part of a package or as a condition of taking another agreement or

Amendment

deleted

package;

Or. de

Amendment 37
Proposal for a directive
Article 2 – point 18

Text proposed by the Commission

(18) 'remuneration' means any commission, fee, charge or other payment, ***including an economic benefit of any kind***, offered or given in connection with insurance mediation activities;

Amendment

(18) 'remuneration' means any commission, fee, charge or other payment, offered or given in connection with insurance mediation activities;

Or. de

Amendment 38
Proposal for a directive
Article 2 – point 20

Text proposed by the Commission

(20) 'bundling 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 also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the ***ancillary*** services.

Amendment

(20) 'bundling 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 also made available to the consumer separately but not necessarily on the same terms or conditions as when offered bundled with the services.

Or. de

Amendment 39
Proposal for a directive
Article 2 – point 20 a (new)

Text proposed by the Commission

Amendment

(20a) 'Product' means an insurance

contract covering one or more risks;

Or. de

Amendment 40
Proposal for a directive
Article 3 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Except as provided in Article 4, insurance and reinsurance intermediaries shall be registered with a competent authority, in their home Member State. Insurance undertakings registered in Member States under Directive 73/239/EEC, Directive 2002/83/EC and Directive 2005/68/EC and their employees shall not be required to register again under this Directive.

Amendment

Insurance and reinsurance intermediaries shall be registered with a competent authority, in their home Member State. Insurance ***and reinsurance*** undertakings registered in Member States under Directive 73/239/EEC, Directive 2002/83/EC and Directive 2005/68/EC and their ***respective*** employees shall not be required to register again under this Directive.

Or. de

Amendment 41
Proposal for a directive
Article 3 – paragraph 4– subparagraph 1

Text proposed by the Commission

EIOPA shall establish, publish on its website and keep up-to-date a single electronic register containing records of insurance and reinsurance intermediaries which have notified their intention to carry on cross-border business in accordance with Chapter IV. Member States shall provide relevant information to EIOPA promptly to enable it to do this. This register shall show a hyperlink to each relevant competent authority in each Member State. That register shall contain links to, and be accessible from, each of the Member States' competent authorities'

Amendment

EIOPA shall establish, publish on its website and keep up-to-date a single electronic register containing records of insurance and reinsurance intermediaries which have notified their intention to carry on cross-border business in accordance with Chapter IV. Member States shall provide relevant information to EIOPA promptly to enable it to do this. This register shall show a hyperlink to each relevant competent authority in each Member State. That register shall contain links to, and be accessible from, each of the Member States' competent authorities'

websites.

websites. *EIOPA shall have right of access to the data stored there. EIOPA and the competent authorities shall have the right to modify this data. Data subjects whose personal details can be stored and exchanged shall be entitled to access and have the right to be appropriately informed.*

Or. de

Amendment 42
Proposal for a directive
Article 3 – paragraph 8 a (new)

Text proposed by the Commission

Amendment

8a. Registered insurance and reinsurance intermediaries shall be allowed to take up and pursue the activity of insurance and reinsurance mediation in the Community by virtue of freedom of establishment and freedom to provide services.

Or. de

Amendment 43
Proposal for a directive
Article 3 – paragraph 8 b (new)

Text proposed by the Commission

Amendment

8b. Member States may provide that intermediaries already registered in accordance with Directive 2002/92/EC (IMD 1) are not required to reregister.

Or. de

Amendment 44
Proposal for a directive
Article 4

Article 4

deleted

Declaration procedure for providing ancillary insurance mediation; professional management of claims or loss assessment services

1. The registration requirements in Article 3 shall not apply to an insurance intermediary which conducts insurance mediation on an ancillary basis, provided that its activities meet all the following conditions:

(b) the principal professional activity of the insurance intermediary is other than insurance mediation;

(c) the insurance intermediary only mediates certain insurance products that are complementary to a product or service and clearly identifies them in the declaration;

(d) the insurance products concerned do not cover life assurance or liability risks, unless that cover is incidental to the main cover.

2. The registration requirements in Article 3 shall not apply to insurance intermediaries whose sole activity is professional management of claims or loss assessment services.

3. Any insurance intermediary who is subject to paragraphs 1 and 2 of this Article shall submit to the competent authority of its home Member State a declaration whereby it informs the competent authority of its identity, address and professional activities.

4. Intermediaries who are subject to paragraphs 1 and 2 of this Article shall be subject to the provisions of Chapters I, III, IV, V, VIII, IX and Articles 15 and 16 of this Directive.

Amendment 45
Proposal for a directive
Article 8 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Insurance and reinsurance intermediaries, including those who pursue these activities on an ancillary basis, ***persons carrying on the activities of the professional management of claims, loss adjusting or expert appraisal of claims***, and members of staff of insurance undertakings carrying out insurance mediation activities, shall possess appropriate knowledge and ability, as determined by the home Member State of the intermediary or undertaking, to complete their tasks and perform their duties adequately, ***demonstrating appropriate professional experience relevant to the complexity of the products they are mediating***.

Amendment

Insurance and reinsurance intermediaries, including those who pursue these activities on an ancillary basis, and members of staff of insurance undertakings carrying out insurance mediation activities, shall possess appropriate knowledge and ability, as determined by the home Member State of the intermediary or undertaking, to complete their tasks and perform their duties adequately.

Amendment 46
Proposal for a directive
Article 8 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Member States shall ensure that insurance and reinsurance intermediaries and members of staff of insurance undertakings carrying out insurance mediation activities update their knowledge and ability through continuing professional development in order to maintain an adequate level of performance.

Amendment

deleted

Amendment 47
Proposal for a directive
Article 8 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Member States *may* adjust the required conditions with regard to knowledge and ability in line with the particular activity of insurance or reinsurance mediation and the products mediated, particularly if the principal professional activity of the intermediary is other than insurance mediation. *In such cases, that intermediary may pursue an activity of insurance mediation only if an insurance intermediary fulfilling the conditions of this Article or an insurance undertaking assumes full responsibility for the intermediary's actions.* Member States may provide that in the cases referred to in the second subparagraph of Article 3(1), the insurance undertaking or intermediary shall verify that the knowledge and ability of the intermediaries are in conformity with the obligations set out in the first subparagraph of this paragraph and, if need be, shall provide such intermediaries with training which corresponds to the requirements concerning the products sold by the intermediaries.

Amendment

Member States *shall* adjust the required conditions with regard to knowledge and ability in line with the particular activity of insurance or reinsurance mediation and the products mediated, particularly if the principal professional activity of the intermediary is other than insurance mediation. Member States may provide that, in the cases referred to in the second subparagraph of Article 3(1) *and with regard to the employees of insurance companies engaged in insurance mediation*, the insurance undertaking or intermediary shall verify that the knowledge and ability of the intermediaries are in conformity with the obligations set out in the first subparagraph of this paragraph and, if need be, shall provide such intermediaries with training which corresponds to the requirements concerning the products sold by the intermediaries.

Or. de

Amendment 48
Proposal for a directive
Article 8 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Insurance and reinsurance intermediaries and members of staff of insurance undertakings carrying out insurance mediation activities shall be of

Amendment

Insurance and reinsurance intermediaries and members of staff of insurance undertakings carrying out insurance mediation activities shall be of

good repute. As a minimum, they shall have a clean police record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities ***and they should not have previously been declared bankrupt, unless they have been rehabilitated in accordance with national law.***

good repute. As a minimum, they shall have a clean police record or any other national equivalent in relation to serious criminal offences linked to crimes against property or other crimes related to financial activities.

Or. de

Amendment 49
Proposal for a directive
Article 8 – paragraph 3

Text proposed by the Commission

3. Insurance and reinsurance intermediaries shall hold professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, for at least EUR ***1,120,000*** applying to each claim and in aggregate EUR ***1,680,000*** per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.

Amendment

3. Insurance and reinsurance intermediaries shall hold professional indemnity insurance covering the whole territory of the Union or some other comparable guarantee against liability arising from professional negligence, for at least EUR ***1,000,000*** applying to each claim and in aggregate EUR ***2,000,000*** per year for all claims, unless such insurance or comparable guarantee is already provided by an insurance undertaking, reinsurance undertaking or other undertaking on whose behalf the insurance or reinsurance intermediary is acting or for which the insurance or reinsurance intermediary is empowered to act or such undertaking has taken on full responsibility for the intermediary's actions.

Or. de

Amendment 50
Proposal for a directive
Article 8 – paragraph 8 – introductory part

Text proposed by the Commission

Amendment

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

8. Member States shall specify:

Or. de

**Amendment 51
Proposal for a directive
Article 8 – paragraph 8 a (new)**

Text proposed by the Commission

Amendment

8a. For the mutual recognition of suitable knowledge and skills acquired by insurance and reinsurance mediators and insurance company employees performing insurance mediation activities and in particular their professional qualifications, a national qualification accredited to level 3 or above under the European Qualifications Framework for lifelong learning established under the Recommendation of the European Parliament and Council of 23 April 2008 should be accepted by a host Member State as demonstrating that an insurance or reinsurance intermediary meets the requirements of knowledge and ability which are a condition of registration in accordance with this Directive.

Or. de

**Amendment 52
Proposal for a directive
Article 13 – paragraph 1 – introductory part**

Text proposed by the Commission

Amendment

1. Member States shall ensure the setting-

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:***

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.

Or. de

Amendment 53
Proposal for a directive
Article 13 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) the procedure results in decisions which are not binding;

deleted

Or. de

Amendment 54
Proposal for a directive
Article 13 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) [the running of] the limitation period for bringing the dispute before a court is suspended for the duration of the procedure for alternative dispute resolution;

deleted

Or. de

Amendment 55
Proposal for a directive
Article 13 – paragraph 1 – point c

Text proposed by the Commission

Amendment

(c) the period of prescription of the claim is suspended for the duration of the procedure; ***deleted***

Or. de

Amendment 56
Proposal for a directive
Article 13 – paragraph 1 – point d

Text proposed by the Commission

Amendment

(d) the procedure is free of charge or at moderate costs; ***deleted***

Or. de

Amendment 57
Proposal for a directive
Article 13 – paragraph 1 – point e

Text proposed by the Commission

Amendment

(e) electronic means are not the only means by which the parties can gain access to the procedure and; ***deleted***

Or. de

Amendment 58
Proposal for a directive
Article 13 – paragraph 1 – point f

Text proposed by the Commission

Amendment

(f) interim measures are possible in ***deleted***

exceptional cases where the urgency of the situation so requires.

Or. de

Amendment 59
Proposal for a directive
Article 15 – paragraph 1

Text proposed by the Commission

1. Member States shall require that, when carrying out insurance mediation with or for customers, an insurance intermediary or insurance undertaking acts *honestly, fairly and* professionally in accordance with the *best* interests of its customers.

Amendment

1. Member States shall require that, when carrying out insurance mediation with or for customers, an insurance intermediary or insurance undertaking acts professionally in accordance with the interests of its customers.

Or. de

Amendment 60
Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission

2. All information, including marketing communications, addressed by the insurance intermediary or insurance undertaking to customers or potential customers shall be *fair*, clear and not misleading. Marketing communications shall be clearly identifiable as such.

Amendment

2. All information, including marketing communications, addressed by the insurance intermediary or insurance undertaking to customers or potential customers shall be clear and not misleading. Marketing communications shall be clearly identifiable as such.

Or. de

Amendment 61
Proposal for a directive
Article 16 – paragraph 1 – point a – point ii

Text proposed by the Commission

Amendment

ii) whether or not it provides any type of advice about the insurance products sold; ***deleted***

Or. de

Amendment 62
Proposal for a directive
Article 16 – paragraph 1 – point a – point v

Text proposed by the Commission

Amendment

v) whether the intermediary is representing the customer or is acting for and on behalf of the insurance undertaking; ***deleted***

Or. de

Amendment 63
Proposal for a directive
Article 16 – paragraph 1 – point b – point ii

Text proposed by the Commission

Amendment

ii) whether or not it provides any type of advice about the insurance products sold; ***deleted***

Or. de

Amendment 64
Proposal for a directive
Article 17 a (new)

Text proposed by the Commission

Amendment

Article 17a

Member States may introduce or retain additional disclosure requirements for insurance mediators and insurance

company employees, provided that equal terms of competition between the various distribution and mediation channels are upheld and that the resulting administrative burdens remain proportional to the intended level of consumer protection.

Or. de

Amendment 65
Proposal for a directive
Article 17 – paragraph 1 – point d

Text proposed by the Commission

Amendment

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

deleted

Or. de

Amendment 66
Proposal for a directive
Article 17 – paragraph 1 – point f

Text proposed by the Commission

Amendment

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;

deleted

Or. de

Amendment 67
Proposal for a directive
Article 17 – paragraph 1 – point g

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***

Or. de

Amendment 68
Proposal for a directive
Article 17 – paragraph 2

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***

(a) provide the customer with the amount or, where the precise amount is not capable of being given, the basis of calculation of the fee or commission or the combination of both, if the customer so requests.

(b) inform the customer of his right to request the information referred to in point (a).

Or. de

Amendment 69
Proposal for a directive
Article 17 – paragraph 2 – point a

Text proposed by the Commission

Amendment

(a) provide the customer with the amount or, where the precise amount is not capable of being given, the basis of calculation of the fee or commission or the combination of both, if the customer so requests. ***deleted***

Or. de

Amendment 70
Proposal for a directive
Article 17 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) inform the customer of his right to request the information referred to in point (a). ***deleted***

Or. de

Amendment 71
Proposal for a directive
Article 17 – paragraph 3

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***

Or. de

Amendment 72
Proposal for a directive
Article 17 – paragraph 4

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 this Article for each such payment.

deleted

Or. de

Amendment 73
Proposal for a directive
Article 17 – paragraph 5

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.

Or. de

Amendment 74
Proposal for a directive
Article 18 – paragraph 1 – point a

Text proposed by the Commission

a) the ***demands*** and the needs of that customer;

Amendment

a) the ***expectations*** and the needs of that customer ***in terms of insurance cover***;

Or. de

Amendment 75
Proposal for a directive
Article 18 – paragraph 1 – point b

Text proposed by the Commission

b) and shall specify to the customer the underlying reasons for any advice to the customer on a specified insurance product, ***if given***.

Amendment

b) and shall specify to the customer the underlying reasons for any advice to the customer on a specified insurance product.

Or. de

Amendment 76
Proposal for a directive
Article 18 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Paragraph 1(b) shall not apply where the customer

(a) specifically relinquishes the right to advice or

(b) uses only distance communication channels in concluding the contract, unless he specifically requests advice.

Or. de

Amendment 77
Proposal for a directive
Article 18 – paragraph 2

Text proposed by the Commission

2. The details referred to in points (a) and (b) of paragraph 1 shall be modulated according to the complexity of the insurance product being proposed and the level of financial risk to the customer.

Amendment

2The details referred to in points (a) and (b) of paragraph 1 shall be modulated according to the complexity of the insurance product being proposed, the level of financial risk to the customer **and the distribution route selected by the customer.**

Or. de

Amendment 78
Proposal for a directive
Article 18 – paragraph 4

Text proposed by the Commission

4. Prior to the conclusion of a contract, whether or not advice is given, the insurance intermediary or insurance undertaking shall give the customer the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision, while taking into account the complexity of the insurance product and the type of costumer.

Amendment

deleted

Or. de

Amendment 79
Proposal for a directive
Article 19 – paragraph 1

Text proposed by the Commission

1. The information referred to in Articles 16, 17 and 18 need not be given when the

Amendment

1. The information referred to in Articles 16, 17 and 18 need not be given when the

insurance intermediary or insurance undertaking mediates in the insurance of large risks, in the case of mediation by reinsurance intermediaries or reinsurance undertakings, ***or in relation to professional customers as specified in the Annex.***

insurance intermediary or insurance undertaking mediates in the insurance of large risks ***or*** in the case of mediation by reinsurance intermediaries or reinsurance undertakings.

Or. de

Amendment 80
Proposal for a directive
Article 21 – paragraph 1

Text proposed by the Commission

Amendment

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

1. Member States shall allow bundling ***and*** tying practices.

Or. de

Amendment 81
Proposal for a directive
Article 21 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States shall allow creditors to make loans subject to the contracting of a credit insurance policy and to refuse them where the consumer fails to take out such an insurance policy with the lender or an alternative supplier having similar characteristics to that offered by the creditor's preferred supplier. Member States shall also authorise the marketing of products combining insurance cover against one or more risks.

Or. de

Amendment 82
Proposal for a directive
Article 21 – paragraph 2

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 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 **should** 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.

Or. de

Amendment 83
Proposal for a directive
Article 21 – paragraph 3

Text proposed by the Commission

3. EIOPA shall develop, by 31 December [20XX] at the latest, and update periodically, guidelines for the assessment and the supervision of cross-selling practices indicating, in particular, situations in which cross-selling practices are not compliant with obligations set out in Articles 16, 17 and 18 or paragraph 1 of this Article.

Amendment

deleted

Or. de

Amendment 84
Proposal for a directive
Article 23 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 to specify : *deleted*

(a) the steps and effective organisational and administrative arrangements that insurance intermediaries and insurance undertakings might reasonably be expected to take to identify, prevent, manage and disclose conflicts of interest when providing insurance mediation;

(b) appropriate criteria for determining the types of conflict of interest whose existence may damage the interests of the customers or potential customers of the insurance intermediary or insurance undertaking.

Or. de

**Amendment 85
Proposal for a directive
Article 24 – paragraph 1**

Text proposed by the Commission

Amendment

1. Member States shall require that, when carrying out insurance mediation with or for customers, an insurance intermediary or insurance undertaking acts honestly, fairly and professionally in accordance with the best interests of its customers and complies, in particular, with the principles set out in this Article and in Article 25. *deleted*

Or. de

**Amendment 86
Proposal for a directive
Article 24 – paragraph 2**

Text proposed by the Commission

Amendment

2. All information, including marketing communications, addressed by the insurance intermediary or insurance undertaking to customers or potential customers shall be fair, clear and not misleading. Marketing communications shall be clearly identifiable as such. *deleted*

Or. de

**Amendment 87
Proposal for a directive
Article 24 – paragraph 5**

Text proposed by the Commission

Amendment

5. When the insurance intermediary or insurance undertaking informs the customer that insurance advice is provided on an independent basis, the insurance intermediary or insurance undertaking shall: *deleted*

(a) assess a sufficiently large number of insurance products available on the market. The insurance products should be diversified with regard to their type and issuers or product providers and should not be limited to insurance products issued or provided by entities having close links with the insurance intermediary or insurance undertaking; and

(b) not accept or receive fees, commissions or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of the service to customers.

Or. de

Amendment 88
Proposal for a directive
Article 24 – paragraph 6

Text proposed by the Commission

Amendment

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 concerning measures to ensure that insurance intermediaries and insurance undertakings comply with the principles set out in this Article when carrying on insurance mediation with their customers. Those delegated acts shall specify :

deleted

(a) the nature of the service(s) offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions; and

(b) the nature of the products being offered or considered including different types of insurance products.

Or. de

Amendment 89
Proposal for a directive
Article 24 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. Member States may introduce or continue to apply additional measures, provided that the resulting administrative burdens are kept in proportion with the level of consumer protection being sought.

Or. de

Amendment 90
Proposal for a directive
Article 25 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Member States shall ensure that insurance intermediaries and insurance undertakings, when carrying on insurance mediation in relation to sales where no advice is given, **ask** the customer or potential customer **to provide information regarding the customer's or potential customer's knowledge and experience in the investment field relevant to the specific type of product or service offered or demanded so as to enable the insurance intermediary or insurance undertaking** to assess **whether the insurance service or** product envisaged is appropriate for **the customer**.

Amendment

Member States shall ensure that insurance intermediaries and insurance undertakings, when carrying on insurance mediation in relation to sales where no advice is given **warn**, the customer or potential customer **that they are unable** to assess whether the product envisaged is appropriate for **them**. **This warning may be provided in a standardised format.**

Or. de

Amendment 91
Proposal for a directive
Article 25 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Where the insurance intermediary or insurance undertaking considers, on the basis of the information received under the previous subparagraph, that the product or service is not appropriate to the customer or potential customer, the insurance intermediary or insurance undertaking shall warn the customer or potential customer. This warning may be provided in a standardised format.

Amendment

deleted

Or. de

Amendment 92
Proposal for a directive
Article 25 – paragraph 2 – subparagraph 3

Text proposed by the Commission

Amendment

Where customers or potential customers do not provide the information referred to in the first subparagraph, or where they provide insufficient information regarding their knowledge and experience, the insurance intermediary or insurance undertaking shall warn them that the insurance intermediary or insurance undertaking is not in a position to determine whether the service or product envisaged is appropriate for them. This warning may be provided in a standardised format.

deleted

Or. de

Amendment 93
Proposal for a directive
Article 25 – paragraph 3

Text proposed by the Commission

Amendment

3. The insurance intermediary or insurance undertaking shall establish a record that includes a document or documents such as a contract which has been agreed between the insurance intermediary or insurance undertaking and the customer that set out the rights and obligations of the parties, and the other terms on which the insurance intermediary or insurance undertaking will provide services to the customer. The rights and duties of the parties to the contract may be incorporated by reference to other documents or legal texts.

deleted

Or. de

Amendment 94
Proposal for a directive
Article 25 – paragraph 4

Text proposed by the Commission

Amendment

4. The customer must receive from the insurance intermediary or insurance undertaking adequate reports on the service provided to its customers. These reports shall include periodic communications to customers, taking into account the type and the complexity of insurance products involved and the nature of the service provided to the customer and shall include, where applicable, the costs associated with the transactions and services undertaken on behalf of the customer. When providing advice, the insurance intermediary or insurance undertaking shall specify how the advice given meets the personal characteristics of the customer.

deleted

Or. de

Amendment 95
Proposal for a directive
Article 25 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 33 to ensure that insurance intermediaries and insurance undertakings comply with the principles set out in this Article when carrying on insurance mediation with their customers. Those delegated acts shall specify :

deleted

(a) the nature of the service(s) offered or provided to the customer or potential customer, taking into account the type, object, size and frequency of the transactions;

(b) the nature of the products being offered or considered including different types of insurance products.

Or. de

Amendment 96
Proposal for a directive
Article 26 – paragraph 3

Text proposed by the Commission

3. The competent authorities shall be given all investigatory powers that are necessary for the exercise of their functions. In the exercise of their sanctioning powers, the competent authorities shall cooperate closely to ensure that sanctions or measures produce the desired results and coordinate their action when dealing with cross border cases.

Amendment

3. The competent authorities shall be given all investigatory powers that are necessary for the exercise of their functions. In the exercise of their sanctioning powers, the competent authorities shall cooperate closely to ensure that sanctions or measures produce the desired results and coordinate their action when dealing with cross border cases, *while ensuring that conditions are met for legitimate data processing in accordance with Directive 95/46/EC and Regulation (EC) No 45/2001. The competent authorities shall be entitled to request documents or other information under a formal decision, which shall indicate the legal basis for the request for information, the deadline for compliance and the right of the recipient to seek a judicial review of the decision.*

Or. de

Amendment 97
Proposal for a directive
Article 27 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In announcing the above penalties and measures, the competent authority shall, in cases where an appeals procedure is still possible or under way,

clearly specify that the decision is still open to appeal and that the individuals identified must be presumed innocent pending finalisation of the decision. If the decision is revoked, the competent authority shall issue a rectification.

Or. de

Amendment 98
Proposal for a directive
Article 28 – paragraph 2 – subparagraph 1 – point e

Text proposed by the Commission

Amendment

(e) in case of a legal person, administrative pecuniary sanctions of up to 10 % of the total annual turnover of the legal person in the preceding business year; where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover shall be the total annual turnover resulting from the consolidated accounts of the ultimate parent undertaking in the preceding business year;

deleted

Or. de

Amendment 99
Proposal for a directive
Article 28 – paragraph 2 – subparagraph 1 – point f

Text proposed by the Commission

Amendment

(f) in case of a natural person, administrative pecuniary sanctions of up to 5 000 000 EUR, or in the Member States where the Euro is not the official currency, the corresponding value in the national currency on the date of entry into

deleted

force of this Directive; and

Or. de

Amendment 100
Proposal for a directive
Article 28 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Member States shall ensure that administrative pecuniary sanctions are in line with the range of penalties applied by the national supervisory authority in each case.

Or. de

Amendment 101
Proposal for a directive
Article 30 – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with ***the principles laid down in*** Directive 95/46/EC.

(c) protection of personal data concerning both the person who reports the breaches and the natural person who is allegedly responsible for a breach, in compliance with Directive 95/46/EC. ***The identity of these persons shall remain confidential at every stage, unless the disclosure thereof is required under national law for the purpose of subsequent inquiries or legal proceedings.***

Or. de

Amendment 102
Proposal for a directive
Article 32 – paragraph 1

Text proposed by the Commission

1. Member States shall **apply Directive 95/46/EC to** the processing of personal data **carried out** in the Member States pursuant to this Directive.

Amendment

1. Member States shall **ensure that** the processing of personal data in the Member States pursuant to this Directive **is carried out in accordance with national laws implementing Directive 95/46/EC.**

Or. de

Amendment 103
Proposal for a directive
Article 33

Text proposed by the Commission

Article 33

The Commission shall be empowered to adopt delegated acts in accordance with Article 34 concerning Articles 8, 17, 23, 24 and 25.

Amendment

deleted

Or. de

Amendment 104
Proposal for a directive
Article 34

Text proposed by the Commission

Article 34

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 8, 17, 23, 24 and 25 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Directive.

Amendment

deleted

3. The delegation of powers referred to in Articles 8, 17, 23, 24 and 25 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 8, 17, 23, 24 and 25 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Or. de

Amendment 105
Proposal for a directive
Article 35 – paragraph 1

Text proposed by the Commission

1. Five years after the entry into force of this Directive, the Commission shall review this Directive. The review shall include a general survey of the practical application of rules laid down in this Directive taking due account of developments in the retail investment

Amendment

1. Five years after the entry into force of this Directive, the Commission shall review this Directive. The review shall include a general survey of the practical application of rules laid down in this Directive taking due account of developments in the retail investment

products markets as well as experiences acquired in practical application of this Directive and Regulation on key information documents for investment products and [MIFID II]. ***The review shall reflect on a possible application of the provisions of this Directive to products falling under the scope of Directive 2003/41/EC.*** This review shall also include a specific analysis of the impact of Article 17(2), taking into account the situation of competition on the market of intermediation services for contracts other than contracts in any of the classes specified in Annex I of Directive 2002/83/EC and the impact of the obligations referred to in Article 17(2) on insurance intermediaries which are small and medium sized enterprises.

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Or. de

Amendment 106
Proposal for a directive
Annex 1 – paragraph 1 – point 1

Text proposed by the Commission

1. Entities which are required to be authorised or regulated to operate in the financial markets. The list below should be understood as including all authorised entities carrying out the characteristic activities of the entities mentioned: entities authorised by a Member State under a Directive, entities authorised or regulated by a Member State without reference to a Directive, and entities authorised or regulated by a non-Member State:

(a) Credit institutions;

(b) Insurance and reinsurance

Amendment

1. Insurance and reinsurance undertakings;

- Insurance and reinsurance intermediaries.

- intermediaries and investment firms;*
- (c) Other authorised or regulated financial institutions;*
- (d) Insurance and reinsurance undertakings;*
- (e) Collective investment schemes and management companies of such schemes;*
- (f) Pension funds and management companies of such funds;*
- (g) Commodity and commodity derivatives dealers;*
- (h) Locals;*
- (i) Other institutional investors.*

Or. de

Amendment 107
Proposal for a directive
Annex 1 – paragraph 1 – point 3

Text proposed by the Commission

Amendment

3. National *and regional* governments, *including public bodies that manage public debt at national or regional level, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations.*

3. National governments.

Or. de

Amendment 108
Proposal for a directive
Annex 1 – paragraph 1 – point 4

Text proposed by the Commission

Amendment

4. Other institutional investors whose main activity is to invest in financial

deleted

instruments, including entities dedicated to the securitisation of assets or other financing transactions. The entities mentioned above are considered to be professionals. They must however be allowed to request non-professional treatment and firms may agree to provide a higher level of protection Where the customer of a firm is an undertaking referred to above, the firm must inform it prior to any provision of services that, on the basis of the information available to the firm, the customer is deemed to be a professional customer, and will be treated as such unless the firm and the customer agree otherwise. The firm must also inform the customer that he can request a variation of the terms of the agreement in order to secure a higher degree of protection.

It is the responsibility of the customer, considered to be a professional customer, to ask for a higher level of protection when it deems it is unable to properly assess or manage the risks involved. This higher level of protection will be provided when a customer who is considered to be a professional enters into a written agreement with the firm to the effect that it shall not be treated as a professional for the purposes of the applicable conduct of business regime. Such agreement should specify whether this applies to one or more particular services or transactions, or to one or more types of product or transaction.

Or. de

Amendment 109
Proposal for a directive
Annex 2 – paragraph 6

Text proposed by the Commission

The new IMD would continue to have the features of a "minimum harmonisation" legal instrument. This means that Member States may decide to go further if necessary for the purposes of consumer protection. However, the minimum standards of IMD will be raised significantly. ***Some parts of the new Directive will be reinforced by Level 2 measures in order to align the rules with MiFID II: in particular, in the chapter regulating the distribution of life insurance policies with investment elements (hereafter: insurance investments - see below). This aims to harmonise the sales of investment insurances across the EU through Level 2 measures. This is an innovation as compared to the text of the original Directive. It is important that the Commission shall be in a position to compare the resulting situations in the various Member States and thus properly carry out its task of overseeing the application of Union law.*** Moreover, a revision clause is considered in the directive and, in order to be able to collect all relevant information on the functioning of those rules, the Commission will need to be able to monitor their implementation from the outset.

Amendment

The new IMD would continue to have the features of a "minimum harmonisation" legal instrument. This means that Member States may decide to go further if necessary for the purposes of consumer protection. However, the minimum standards of IMD will be raised significantly. Moreover, a revision clause is considered in the directive and, in order to be able to collect all relevant information on the functioning of those rules, the Commission will need to be able to monitor their implementation from the outset.

Or. de

EXPLANATORY STATEMENT

The draft report focuses on five key areas covered by the Commission proposal:

- Scope
 - Registration and simplified declaration procedure
- Conflicts of interest and transparency
- Cross-selling
- Insurance investment products
- Delegated acts/level of harmonisation

Scope (Article 1)

With a view to creating a level playing field, the Commission is seeking to expand the scope of the directive to encompass sales of insurance contracts by insurance and reinsurance undertakings without the intervention of an insurance intermediary, claims management and insurance policies sold along with other services.

Claims management by insurance undertakings or by third parties under insurance outsourcing contracts is already covered by Solvency II. The need to provide for settlement in the absence of an outsourcing agreement does not appear to be a sufficient reason for inclusion of claims management in this directive.

The sideline sale of travel insurance/reinsurance and care-hire insurance should be excluded, given the need to ensure the proportionality of the proposed measures.

2. Registration and simplified declaration procedure (Articles 3 and 4)

Although they have been brought within the scope of the directive, insurance undertakings and their employees will not need to register again. This proposal is firmly endorsed.

A further change relates to the new arrangement whereby tied intermediaries may be registered by registered intermediaries. This is to be welcomed in principle, subject to a continued ban on product competition as a condition for activity for and on behalf of a number of insurance undertakings, so as to avoid cases of borderline liability.

The Commission proposes a simplified registration procedure for the provision of ancillary insurance mediation subject to certain conditions (applying in particular to travel and car-hire agencies) and claims management services (Art. 4).

The proposed exemptions effectively obviate the principal object of this procedure. Article 4

should accordingly be deleted so as to ensure a level playing field for all intermediaries.

Professional and organisational requirements (Article 8)

The Commission recommendation that insurance intermediaries be required to update their knowledge and ability through continuing professional development is to be welcomed. However the form, substance and authentication requirements thereof should be left up to the Member States. In order to prevent the internal market being undermined by different qualifications in the various Member States, minimum requirements regarding knowledge and abilities applicable to all Member States should be established on the basis of the European Qualifications Framework.

Company and sector-related training programmes require national certification in order to function.

Conflicts of interest and transparency (Article 17)

The proposed provisions regarding conflicts of interest and transparency are one of the major changes under the revised directive.

The Commission requires insurance intermediaries to disclose the nature and exact amount of their own remuneration and of variable remuneration received by insurance company sales staff. Disclosure of this information shall be compulsory on entry into force of the directive in respect of life assurance products and, in respect of non-life insurance products, after a five-year transitional period during which the relevant information must initially be provided on request.

The findings of a Commission impact survey revealed that a large majority of those questioned were opposed to a system of 'information on request only' on the grounds that it was unnecessary and confusing to customers.

It is to be feared that compulsory disclosure of commissions and variable remuneration would lead not to greater consumer protection but to spiralling competition in respect of the relevant amounts.

However, given existing EU insurance market disparities, Member States should be free to introduce disclosure requirements over and above those of the directive.

Cross-selling (Article 21)

The Commission specifies that, where insurance services or products are offered as part of a package, they must also be offered separately.

This goes beyond MiFID II requirements and may even result in consumers no longer being offered advantageous package deals. Article 21 should accordingly be amended to specify that

consumers should simply be informed if parts of the package may also be purchased separately.

Insurance investment products (Chapter VII)

The seventh chapter of the Commission proposal concerns additional consumer protection requirements in relation to insurance investment products, that is to say Packaged Retail Investment Products (PRIPs), in accordance with its proposed revision of MiFID provisions in Articles 23-25.

While it is necessary to ensure legislative consistency with MiFID II, account must be taken of the distinction between insurance and purely investment products.

Insurance investment products are a special case in that they are not, unlike purely investment products, freely negotiable at all times.

Concerning the proposed ban on commission-based services regarding independent advice, it must first and foremost be borne in mind that, in the light of their differing experiences with commission-based advisory services and/or incorrect advice, Member States have adopted different solutions. This should be taken into account and harmonization accordingly kept to a minimum. A ban on commission-based advisory services could seriously detract from the supply of insurance products on certain markets. Furthermore, the definition of ‘independent advice could lead to confusion as a result of traditional connotations or different meanings of the term. For example, in France, the word for independent also means self-employed.

As with regard to the disclosure of remuneration, here also Member States should be given the freedom to adopt divergent provisions in accordance with their perceived market requirements.

Delegated acts/ level of harmonisation

The Commission provides for a number of delegated acts in major areas of the directive (for example, the definition of adequate knowledge and abilities of intermediaries, criteria for the calculation of commissions, precautionary measures for the prevention, settlement and disclosure of conflicts of interest and requirements regarding the supply of information and reports to customers). It is appropriate to issue a general caveat in this respect, since the provision purposely opens a back door to maximum harmonisation, which is both costly and bureaucratic, as well as compromising the principle of subsidiarity in certain cases.

For this reason, the proposed delegated acts should be deleted and detailed arrangements determined by the Member States themselves or through a codecision procedure in Council and Parliament in cases where a real need for harmonisation is shown to exist, for example with regard to inadequate arrangements for the mutual recognition of formal qualifications.

ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

Ref.: D(2012)57300

Ms Sharon Bowles
Chair of the Economic and Monetary Affairs Committee
ASP 10G201
Brussels

**Subject: Proposal for a directive of the European Parliament and of the Council on insurance mediation (recast)
(COM(2012)0360 – C7-0180/2012 – 2012/0175(COD))**

Dear Chairman,

The Committee on Legal Affairs, which I am honoured to chair, has examined the proposal referred to above, pursuant to Rule 87 on Recasting, as introduced into the Parliament's Rules of Procedure.

Paragraph 3 of that Rule reads as follows:

"If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.

In such a case, over and above the conditions laid down in Rules 156 and 157, amendments shall be admissible within the committee responsible only if they concern those parts of the proposal which contain changes.

However, if in accordance with point 8 of the Interinstitutional Agreement, the committee responsible intends also to submit amendments to the codified parts of the proposal, it shall immediately notify its intention to the Council and to the Commission, and the latter should inform the committee, prior to the vote pursuant to Rule 54, of its position on the amendments and whether or not it intends to withdraw the recast proposal."

Following the opinion of the Legal Service, whose representatives participated in the meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsman, the Committee on Legal Affairs considers that

the proposal in question does not include any substantive changes other than those identified as such in the proposal and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

In conclusion, after discussing it at its meeting of 6 November 2012, the Committee on Legal Affairs, by 23 votes in favour and no abstentions¹, recommends that your Committee, as the committee responsible, proceed to examine the above proposal in accordance with Rule 87.

Yours faithfully,

Klaus-Heiner LEHNE

Encl.: Opinion of the Consultative Working Party

¹ Luigi Berlinguer, Françoise Castex, Christian Engström, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Sylvie Guillaume, Sajjad Karim, Eva Lichtenberger, Antonio López-Istúriz White, Antonio Masip Hidalgo, Jiří Maštálka, Alajos Mészáros, Evelyn Regner, Francesco Enrico Speroni, József Szájer, Rebecca Taylor, Alexandra Thein, Axel Voss, Rainer Wieland, Cecilia Wikström, Zbigniew Ziobro, Tadeusz Zwiefka.

ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION



CONSULTATIVE WORKING PARTY
OF THE LEGAL SERVICES

Brussels, 11 September 2012

OPINION

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
THE COUNCIL
THE COMMISSION**

**Proposal for a directive of the European Parliament and of the Council on insurance mediation
COM(2012)360 of 3.7.2012 – 2012/0175(COD)**

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 23 July 2012 for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

At that meeting¹, an examination of the proposal for a directive of the European Parliament and of the Council recasting Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation resulted in the Consultative Working Party's establishing, by common accord, as follows:

- 1) As far as the explanatory memorandum is concerned, in order to be drafted in full compliance with the relevant requirements laid down by the Inter-institutional Agreement such a document should have specified which provisions of the earlier act remain unchanged in the proposal, as is provided for under point 6(a)(iii) of that agreement.
- 2) In the draft recast text, the following proposed changes should have been identified with the grey-shaded type generally used for marking substantive changes:
 - in Article 1(2)(e), the deletion of the words "*or service*";
 - in Article 1(2)(f), the replacement of the figure "500" with "600";

¹ The Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

- in Article 8(3), the replacement of the figure "1000000" with "1,120,000", and that of the figure "1500000" with "1,680,000";
- in Article 8(4)(b), the replacement of the figure "15000" with "16800";
- in Article 13(1), introductory wording, the replacement of the word "encourage" with "ensure";
- in Article 13(2), the replacement of the words "encourage these bodies to cooperate" with the words "ensure that these bodies cooperate";
- in Article 17(1)(c)(ii), the deletion of the words "at the customer's request".

3) The existing wordings of point 11 of Article 2 and of paragraph 2 of Article 13 of Directive 2002/92/EC should have been present in the draft recast text, and should have been identified by using the sign composed of a double strikethrough and a grey-shaded type which is generally used for marking substantive changes consisting of deletions of existing texts.

4) In order to comply with all the requirements laid down in point 7(b) of the Inter-institutional Agreement, the wording of the second paragraph of Article 37 should be completed with the final words "*and shall be read in accordance with the correlation table in Annex III*" and a correlation table should be annexed to the recast act as a new Annex III.

In consequence, examination of the proposal has enabled the Consultative Working Party to conclude, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such therein or in the present opinion. The Working Party also concluded, as regards the codification of the unchanged provisions of the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing text, without any change in its substance.

C. PENNERA
Jurisconsult

H. LEGAL
Jurisconsult

L. ROMERO REQUENA
Director General