Memo for Action

To: Non-life Committee
Cc: General Liability SG, Public Affairs
From: Non-Life Insurance department
Date: 10 January 2014
Reference: NLI-14-002

Subject: Package Travel Directive

Background

In July 2013, the European Commission (DG Justice) published a proposal for a Directive on package travel and assisted travel arrangements. With this proposal, the European Commission aims to respond to the development of internet distribution and the liberalisation in the airline sector, unnecessary compliance costs and obstacles to cross-border trade as well as unclear and outdated consumer protection rules.

The proposal introduces new rules for traveller compensation, including a maximum of three nights' stay if impossible for the traveller to return home due to unavoidable and extraordinary circumstances (Article 11), security for the effective and prompt refund of all payments in cases of insolvency (Article 15) and no-fault liability for errors during the booking process (Article 19). The proposal also refers to travel insurance as an "ancillary service" that should not be considered as "tourist services in their own right" (Recital 17). Finally, the proposal says the traveller should be "fully protected against the insolvency of the organiser" and that such protection may be provided "in the form of a guarantee or an insurance policy" (Recital 34).

At the European Parliament, the Internal Market and Consumer Protection (IMCO) Committee has the lead on this file while the Transport and Tourism (TRAN) Committee is responsible for an opinion. The IMCO Committee issued its draft report on 26 November 2013 while the TRAN Committee issued its draft opinion on 3 December 2013 (see also 18 December 2013 memo NLI-13-041).

Recent Developments

- **IMCO Committee**

The IMCO Committee published amendments tabled to the draft report on 19 December. In contrast to the Secretariat's previous report on 18 December, an insurance-related amendment has been added by MEP Emma McClarkin (S&D, UK) as follows:

Amendment 380 to Article 14(1) (new text in bold/italics):

- "Member States shall ensure that the organiser ***has adequate insurance or means to give appropriate*** assistance to the traveller in difficulty, in particular by:
    - (a) providing appropriate information on health services, local authorities and consular assistance, and
    - (b) assisting the traveller in making distance communications and alternative travel arrangements.

  The organiser shall be able to charge a reasonable fee for such assistance if the situation is caused by the traveller's negligence or intent. "

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Though no justification is provided for the above amendment, it may be concerning for the insurance industry as there is no clarification on what constitutes "adequate insurance" or "appropriate assistance".

Though not specific to insurance, the IMCO report also contains numerous amendments to Article 11(5) on limitation of the travel organiser's liability. As members may recall, Article 15 of the EC proposal limits travel organiser's liability to EUR 100 per night and up to 3 nights per traveller in the case of unavoidable and extraordinary circumstances. The following amendments were proposed:

- **Amendment 330** deletes this text entirely on the basis that the organiser should not be made subject to "liability without fault".
- **Amendments 331-333** revise the amounts and number of overnight stays that should be covered by the travel organiser.
- **Amendments 334, 336, 337 and 339** propose that the travel organiser and retailer be jointly accountable, with Amendment 334 proposing no limitation on overnight stays per traveller.
- **Amendment 335** limits the traveller liability to EUR 100 per night but without indicating the amounts of the overnight stays.
- **Amendment 338** adds that travel organiser shall afford assistance *at traveller's request*.
- **Amendment 340** reduces the EC proposal amount of 100 EUR per night to 80 EUR per night.

- **TRAN Committee**

The TRAN Committee amendments to its opinion have also been published. In contrast to the Secretariat's previous report on 18 December, the TRAN opinion also introduces two amendments that refer to insurance as follows (new text in bold/italics).

MEP Jacqueline Foster (ECRG, UK) has proposed Amendment 220 to Article 14:

- Member States shall ensure that the organiser ***has adequate insurance or means to give appropriate*** assistance to the traveller in difficulty, in particular by:

MEPs Eva Lichtenberger and Michael Cramer (Greens/EFA, DE) have proposed Amendment 228 to Article 15(2)(a) (new), referring to potential insolvency of the travel organiser or retailer:

- ***2a. The organisers and retailers shall prove that they have taken all measures to guarantee the protection of the traveller, including the existence of a fund or insurance.***

Similar to the IMCO report, no justification is provided for the above amendments. Amendment 228 as read appears to suggest a form of compulsory insurance for "protection of the traveller" in the case of insolvency.

Though not specific to insurance, the following amendments were also made in regard to the travel organiser's liability:

- **Amendments 199/201 and 200** to Article 11(1), proposing travel organiser and retailer jointly liable;
- **Amendment 205** to Article 11(4) proposing travel organiser and retailer jointly liable for transport to place of departure in the case where suitable arrangements are not possible;
- For Article 11(5)
  - **Amendment 206** proposing that "additional costs" arising from traveller's inability to return home to be "split equally between parties";
  - **Amendment 207** proposing travel organiser to be liable for 125 EUR per overnight stay until traveller's return;
  - **Amendment 208** proposing no to reference liability amounts when limiting travel organiser liability to 3 overnight stays;
- For Article 11(6)

- **Amendment 209** proposing to delete text that states the limitation of costs due to unavoidable and extraordinary circumstances does *not* applying to persons of reduced mobility;
- **Amendment 210** deleting the EC proposed text that a travel organiser may not invoke "unavoidable and extraordinary circumstances" to limit liability costs if relevant transport provider may not rely upon such circumstances upon applicable Union legislation.

Secretariat Recommendation

In line with the Secretariat's previous recommendation to act only on any insurance-related articles, as had been agreed by members, the Secretariat recommends sending *brief comments* on **Amendment 380** of the IMCO Committee report on the one hand, and **Amendments 220 and 228** of the TRAN Committee opinion on the other hand. Since these amendments touch upon the same articles, in the interest of efficiency, the secretariat suggests issuing a single set of comments, which, once agreed by members, can be tailored to the specific committees. These comments should highlight the difficulties of insuring business insolvencies and that such cover for insolvency is not widespread or even feasible in some markets.

Considering the tight deadline for the TRAN Committee vote on 22 January, the Secretariat expects to forward any such comments to the TRAN's lead and shadow rapporteurs as well as to the IMCO Committee within an email no later than Friday 17 January.

More detailed comments can later be submitted to the *lead* IMCO Committee in view of its report, *pending any further discussion to be held on this topic at the 28 January 2013 General Liability Steering Group meeting.*

Next steps

- 22 January 2014: TRAN vote
- 11 February 2014: IMCO vote
- 10 March 2014: Indicative Plenary sitting date

Input Requested

Members are requested to submit their input to the Secretariat (bell@insuranceeurope.eu, fabry@insuranceeurope.eu) no later than **cob on Tuesday, 14 January 2014** as to whether Insurance Europe should submit brief comments to both the TRAN Committee and the IMCO Committee on the insurance-related amendments in the TRAN Committee opinion (220, 228) and IMCO Committee report (380).