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*****I**

REPORT

on the proposal for a European Parliament and Council Directive on insurance mediation
(COM(2000) 511 – C5-0484/2000 – 2000/0213(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Luis Berenguer Fuster

Draftsman(*):

Enrico Ferri, Committee on Legal Affairs and the Internal Market

(*)Enhanced Hughes Procedure

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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(*) Enhanced Hughes Procedure

PROCEDURAL PAGE

By letter of 20 September 2000 the Commission submitted to Parliament, pursuant to Article 251(2) and Articles 47(2) and 55 of the EC Treaty, the (amended) proposal for a European Parliament and Council directive on insurance mediation (COM(2000) 511 - 2000/0213 (COD)).

At the sitting of 27 October 2000 the President of Parliament announced that she had referred this proposal to the Committee on Economic and Monetary Affairs as the committee responsible and the Committee on the Environment, Public Health and Consumer Policy and the Committee on Legal Affairs and the Internal Market for their opinion(s) (C5-0484/2000).

At the sitting of 14 June 2001 the president of Parliament announced that the Committee on Legal Affairs and the Internal Market, which had been asked for its opinion, would be involved in drawing up the report, under the enhanced Hughes Procedure.

The Committee on Economic and Monetary Affairs appointed Luis Berenguer Fuster rapporteur at its meeting of 25 October 2000.

The committee considered the Commission proposal and draft report at its meetings of 5 February 2001, 11 April 2001, 25 June 2001, and 16 October 2001.

At the last meeting it adopted the draft legislative resolution by 28 votes with 3 abstentions. The following were present for the vote: Christa Randzio-Plath, chairman; José Manuel García-Margallo y Marfil, and Philippe A.R. Herzog, vice-vice-chairmen; Luis Berenguer Fuster, rapporteur; Generoso Andria, Richard A. Balfe, Pervenche Berès, Hans Udo Bullmann, Benedetto Della Vedova, Harald Ettl (for Bruno Trentin), Carles-Alfred Gasòliba i Böhm, Robert Goebbels, Lisbeth Grönfeldt Bergman, Christopher Huhne, Pierre Jonckheer, Othmar Karas, Giorgos Katiforis, Piia-Noora Kauppi, Werner Langen (for Christoph Werner Konrad), Jules Maaten, Ioannis Marinos, Ioannis Patakis, Karla M.H. Peijs (for Marianne L.P. Thyssen), Fernando Pérez Royo, José Javier Pomés Ruiz, Alexander Radwan, Bernhard Rapkay, Karin Riis-Jørgensen, Peter William Skinner, Ieke van den Burg (for Helena Torres Marques), Theresa Villiers, Karl von Wogau.

The opinion of the Committee on Legal Affairs and the Internal Market is attached; the Committee on the Environment, Public Health and Consumer Policy decided on 21 November 2000 not to deliver an opinion.

The report was tabled on 17 October 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a European Parliament and Council directive on insurance mediation (COM(2000) 511 – C5-0484/2000 – 2000/0213(COD))

The proposal is amended as follows:

Text proposed by the Commission ¹

Amendments by Parliament

Amendment 1

Recital 10

This Directive should cover persons whose normal business is to provide third parties with insurance mediation services on a professional basis. Its scope should not therefore cover any person with a different professional activity, such as a tax expert or an accountant, who provides advice on insurance cover on an incidental basis in the course of that other professional activity.

This Directive should cover persons whose normal business is to provide third parties with insurance mediation services on a professional basis. Its scope should not therefore cover any person with a different professional activity, such as a tax expert or an accountant, who provides advice on insurance cover on an incidental basis in the course of that other professional activity.

Neither should it include the mere provision of information of a general nature on insurance products.

Justification

A distinction should be drawn between the activity of insurance mediation and the mere provision of information of a general nature on insurance products.

Amendment 2

Recital 10 a (new)

(10a) The protective purpose of the Directive extends solely to life insurance. Where what are involved are in fact accident insurance policies that are also concluded as part of travel insurance, even where they promise benefits in the event of accidental death, such policies are not covered by the Directive's protective purpose.

¹ OJ C 29 E, 30.1.2001, pp.245-250.

Justification

It often happens that accident insurance policies including benefits in the event of death are also sold as part of travel insurance. It must be made clear that these are not life insurance policies within the meaning of the Directive.

Amendment 3
Recital 11

(11) Member States should have the option of ***not applying*** this Directive to persons practising insurance mediation as an ancillary activity. ***However, in the interests of customer protection, this option should be strictly limited.***

(11) Member States should have the option of ***applying*** this Directive, ***to a limited extent***, to persons practising insurance mediation as an ancillary activity.

Justification

The text of the proposal is not consistent with Article 4(1), third subparagraph, which provides that part-time agents may be excluded from the training requirement, but must fulfil all other requirements.

Amendment 4
Recital 12

(12) Insurance and reinsurance intermediaries should be registered by the competent authority of the Member State where they have their head office, provided that they meet strict professional requirements in relation to their competence, good repute, professional indemnity cover and financial capacity.

(12) Insurance and reinsurance intermediaries should be registered by the competent authority of the Member State where they have ***their residence or*** their head office, provided that they meet strict professional requirements in relation to their competence, good repute, professional indemnity cover and financial capacity.

Justification

Natural as well as legal persons should be included.

Amendment 5
Recital 13 b (new)

(13b) Member States are not obliged to maintain a single central register, and may maintain various registers for different categories of intermediaries provided that they are readily available for public consultation. Consideration should be given to publishing these registers on the World Wide Web (internet) to facilitate cross-border consultation.

Justification

In Member States practices differ, and some Member States maintain different registers (i.e. Life and Non-Life registers) maintained by different competent authorities compatible with flexibility, traditional practice and subsidiarity. The internet offers a ready solution to the need for rapid cross-border consultation of an intermediary's registration when it wishes to conduct business across borders.

Amendment 6
Article 1(2), first subparagraph

2. Member States need not apply the provisions of this Directive to persons providing insurance contracts if all the following conditions are met:

2. Member States need not apply the provisions of ***Chapters I and II*** of this Directive to persons providing insurance contracts if all the following conditions are met:

Justification

The provisions of Chapter III, which relate to consumer protection, should apply in all cases.

Amendment 7
Article 1, paragraph 2, subparagraph a

(a) the contracts do not require **general or specific** knowledge of insurance.

(a) the contracts do not require **specialist** knowledge of insurance.

Justification

The original wording in the text (general or specific) is contradictory and, therefore, nonsensical.

Amendment 8
Article 1(2)(b)

b) the contracts are not life insurance contracts;

b) the contracts are not life insurance contracts, **with the exception of ancillary cover limited to the duration of a journey**;

Justification

Cases such as travel insurance policies should be included in the exemption.

Amendment 9
Article 1, paragraph 2, subparagraph c

(c) the insurance does not **cover any** liability risks;

(c) the insurance does not **have as a primary objective the coverage of** liability risks;

Justification

Travel agents and tour operators are concerned that their inability to cover any liability will increase the risks to tourists who may, therefore, travel without adequate cover.

Amendment 10
Article 1, paragraph 2, point d)

(d) the **principal** professional activity of the person is other than insurance mediation;

(d) the **principal** professional activity of the person is other than insurance mediation **and their income does not predominantly depend on it**;

Justification

This amendment is merely intended to ensure that the definition of insurance intermediaries acting on an occasional basis is consistent throughout the directive. The definition used by the Commission in Article 4(1), third subparagraph seems more complete than the one it uses here.

Amendment 11 Article 1, paragraph 2, subparagraph e

(e) the insurance is ancillary to the good or service supplied, in particular where such insurance covers either the risk of breakdown, loss of or damage to goods supplied by that person or ***an indemnification of goods*** linked to the travel booked with that person;

(e) the insurance is ancillary to the good or service supplied, in particular where such insurance covers either the risk of breakdown, loss of or damage to goods supplied by that person or ***provides the coverage of different types of risks*** linked to the travel booked with that person;

Justification

This widens the scope of exemptions for travel agents, and allows them to provide cover in different areas, including policies with a life element.

Amendment 12 Article 1(2)(f)

f) the amount of the premium does not exceed EUR 1 000 and the duration of the insurance contract is less than a year.

f) the amount of the premium does not exceed EUR 1 000 and the duration of the insurance contract is less than a year ***and is not renewable.***

Justification

The scope of the exemption ought to be limited.

Amendment 13

Article 1(2a) (new)

(2a) Member States need not apply the provisions of this Directive concerning registration to the following persons:

(a) insurance intermediaries of 'large risks' within the meaning of Article 5(d) of Directive 73/239/EEC;

(b) 'one-company insurance intermediaries' where operating exclusively for the company with which they are associated;

(c) natural or legal persons who, in connection with their main professional activity, offer as a secondary occupation standardised insurance contracts, for example:

- a security or repayment indemnity for a service to be provided by the client and where an insurance undertaking or a credit institution assume have unlimited liability for the actions of such persons;

- tourist assistance packages offered by travel agencies as insurance intermediaries;

- animal liability and animal sickness insurance offered by veterinary practitioners;

Justification

The Member States should be free to decide whether to exempt insurance intermediaries of commercial risks from the requirements concerning registration of the Directive. This does not raise issues of consumer protection

Amendment 14

Article 1(3) (new)

Tourist assistance packages offered by travel agencies as insurance intermediaries are not subject to the provisions of this directive. The same applies to animal

***liability and animal sickness insurance
mediated by veterinary practitioners;***

Justification

The explanatory memorandum to the Commission draft already makes it clear that such activities by travel agencies or comparable institutions do not fall within the scope of the directive. The Commission has however self-evidently forgotten to make that explicit in the text of the directive itself.

Amendment 15
Article 2(3)

3. "insurance mediation" means the activities of introducing, ***giving information***, proposing or carrying out work preparatory to the conclusion of, or in concluding, contracts of insurance, or assisting in the administration and performance of such contracts, in particular in the event of a claim;

3. "insurance mediation" means the activities of introducing, proposing or carrying out work preparatory to the conclusion of, or in concluding, contracts of insurance, ***giving information on guarantees or content*** or assisting in the administration and performance of such contracts, in particular in the event of a claim, ***by any means, including activities carried out remotely using electronic data processing and storage equipment***;

Justification

The first phrase allows cases in which any type of information (such as expert information) may be included in the definition to be excluded. The second phrase provides for mediation by electronic means to be included

Amendment 16
Article 2(4)

4. "reinsurance mediation" means the activities of introducing, ***giving information***, proposing or carrying out work preparatory to the conclusion of, or in

4. "reinsurance mediation" means the activities of introducing, proposing or carrying out work preparatory to the conclusion of, or in concluding, contracts

concluding, contracts of reinsurance, or assisting in the administration and performance of such contracts, in particular in the event of a claim;

of reinsurance, ***giving information on guarantees or content*** or assisting in the administration and performance of such contracts, in particular in the event of a claim, ***by any means, including activities carried out remotely using electronic data processing and storage equipment***;

Justification

The first phrase allows cases in which any type of information (such as expert information) may be included in the definition to be excluded. The second phrase provides for mediation by electronic means to be included.

Amendment 17 Article 2, subparagraph 6 a (new)

(6a) “*tied agent*” means any person who acts as an insurance intermediary for and on behalf of an insurance undertaking but does not handle premiums or amounts payable to the customer, and who acts entirely under the responsibility of that insurance undertaking.

“*tied agent*” also means any person who acts as an insurance intermediary under the responsibility of one or more insurance undertakings in addition to engaging in his principal professional activity, where the insurance concerned is provided in addition to the product or service he provides through his principal professional activity, but who does not handle premiums or amounts payable to the customer.

Justification

This amendment seeks to place self-employed persons that conclude contracts exclusively on behalf of one insurance undertaking and for whom the insurance undertaking has assumed

the same responsibility as for employees of that undertaking, on an equal footing with the employees of that insurance undertaking.

Amendment 18
Article 2(5a) (new)

5a. "bancassurance distribution" means any insurance mediation activity carried out by any type of financial institution that is not an insurance or reinsurance institution, provided that its principal and usual activity is other than insurance distribution, and that its structure includes a network of offices for contact with its clients.

Justification

The new ways in which insurance is marketed should be reflected.

Amendment 19
Article 2(6a) (new)

6a. "agent of an insurance intermediary" means any person who assists in the intermediary's work, on the latter's behalf and under his responsibility.

Justification

Provision should be made for agents of intermediaries (subagents) who work with intermediaries. They should be required to have the necessary training, but should not be included in the register.

Amendment 20

Article 2(8)(a)

a) where the intermediary is a natural person, the Member State in which his residence is situated **and** in which he carries on **business**;

a) where the intermediary is a natural person, the Member State in which his residence is situated **or** in which he carries on **his principal professional activity**;

Justification

This amendment to the definition of 'home Member State' aims to facilitate the mobility within the single market of intermediaries who are 'natural persons'.

Amendment 21

Article 2, subparagraph 10

(10) "durable medium" means any instrument which enables the customer to store information addressed personally to him in a manner accessible for future reference for a period of time appropriate to the purposes of the information and which allows the unchanged reproduction of the information stored.

(10) "durable medium" means any instrument which enables the customer to store information addressed personally to him in a manner accessible for future reference for a period of time appropriate to the purposes of the information and which allows the unchanged reproduction of the information stored. ***This may include floppy discs, CD ROMs, computer hard drives of the consumer's computer on which electronic mail is stored and any other appropriate electronic means of storage.***

Justification

This furthers a long-held EU ambition to modernise commercial practice by encouraging e-commerce and paperless offices.

Amendment 22

Article 2 a, first paragraph (new)

2a. Bancassurance distribution, defined in Article 2, which shall be subject to the general principles applicable to insurance

intermediaries linked to insurance companies set out in this Directive must, in addition, comply with the following operating principles:

1. It shall be based on a written agreement between the insurance institution and the financial institution, setting out the principles on which their commercial relationship is based, with particular reference to the explicit commitment to the insurance training that persons responsible for carrying out distribution functions directly with clients shall receive from the insurance institution.

2. The insurance institution shall be responsible for ensuring compliance with the requirements set out under Article 4, particularly those relating to ability and knowledge appropriate to the duties performed and to the range and features of the products offered.

3. Financial institutions operating in the field of bancassurance are prohibited without prior written consent of the client from:

- making improper use of clients' private information, particularly on any insurance contracts they may have for which payments are made through accounts held with the financial institution, for the purpose of making specific offers to them regarding the insurance products they distribute.

- obliging the client of the financial institution to purchase an insurance product distributed by the latter as a condition for purchasing a financial product from its usual range.

Evidence of these prohibited practices shall lead to appropriate sanction.

Justification

It ensures consistency with Amendment 10 (Article 2(5a)) and brings the prohibitions in subparagraph 3 into line with commercial practice in many Member States.

Amendment 23
Article 3, paragraph 1 a (new)

- 1a. Member States may allow the persons to whom Article 2(6a) applies to be registered by an insurance undertaking or an association of insurance undertakings, under the responsibility of a competent authority.**

Justification

The special status of the new category of tied agents should allow them to be registered within their company.

Amendment 24
Article 3(2)

2. Without prejudice to the third subparagraph of Article 4(1), Member States shall ensure that *registration of insurance and reinsurance intermediaries is made subject to the fulfilment of* the professional requirements laid down in Article 4.

2. Member States shall ***adopt the necessary measures to ensure that the competent authority registers the insurance and reinsurance intermediaries who fulfil the professional requirements laid down in Article 4 and that it removes from the register those who subsequently cease for any reason to fulfil them. The validity of registration should be subject to at least three-yearly review by the competent member state authority.***

Justification

The first part follows on from the deletion of Article 4(1), third subparagraph (Amendment 64). Registration should occur only when it has been verified that all requirements are fulfilled. Similarly, anyone who ceases to fulfil the requirements should be removed from the register.

Amendment 25
Article 3, paragraph 2 a (new)

***2a. Agents of insurance intermediaries
need not be included in the register.***

Justification

The role of agents is not the same as that of intermediaries, and therefore it is not necessary for them to be included in the register.

Amendment 26
Article 3, paragraph 4

4. Member States shall ensure that there is easy public access to the register or registers referred to in paragraph 1.

4. Member States shall ensure that there is easy public access to the register or registers referred to in paragraph 1.

Together with the name of the intermediary, the register shall contain all information relative to his legal and financial links with insurance companies. The authority responsible for the register shall make public the list of intermediaries registered in other Member States who have declared their intention to conduct business under the arrangements for freedom to provide services and freedom of establishment.

Justification

The amendment aims to improve the information contained in the register and facilitate access to it without reference to the term 'legal status', which is unhelpful in this context. It also provides for the list of intermediaries from other Member States who have declared their intention of conducting business to be made public.

Or. en

Amendment 27
Article 3, paragraph 5

5. Insurance undertakings shall use the insurance and reinsurance mediation services only of registered insurance intermediaries and reinsurance intermediaries and of the persons referred to in Article 1(2).

5. Insurance undertakings, ***without prejudice to the conduct of business placed outside the EU with unregistered non EU-based intermediaries*** shall use the insurance and reinsurance mediation services only of registered insurance intermediaries and reinsurance intermediaries and of the persons referred to in Article 1(2).

Justification

There are concerns expressed by the industry that ambiguity in the wording of this article will restrict undertakings from conducting business outside the EU.

Or. en

Amendment 28
Article 4 (1), second sub-paragraph

Member States need not apply the requirement referred to in the first subparagraph to all the persons working either in an undertaking or for a natural person exercising the activity of insurance or reinsurance mediation. Member States shall ensure that ***the management*** of such undertakings or natural person ***and any staff directly involved in insurance or reinsurance mediation*** possess such knowledge and ability.

Member States need not apply the requirement referred to in the first subparagraph to all the persons working either in an undertaking or for a natural person exercising the activity of insurance or reinsurance mediation. Member States shall ensure that ***an appropriate number of persons in the management*** of such undertakings or natural person possess such knowledge and ability. ***Similarly, all agents of intermediaries must possess the appropriate knowledge and ability for the performance of their duties.***

Justification

The amendment aims to avoid subjecting undertakings and natural persons exercising the activity of insurance or reinsurance mediation to excessive red tape by providing that an appropriate number of persons in the management of such undertakings or natural person must possess the professional qualifications required to protect consumers, as originally laid down in Recommendation 92/48/EEC.

Amendment 29

Article 4, paragraph 1, third subparagraph

Member States need not apply the requirement referred to in the first subparagraph to natural persons taking up and pursuing the activity of insurance mediation whose principal professional activity is other than insurance mediation and whose income does not predominantly depend on it. Such a person shall be permitted to mediate only if an insurance intermediary fulfilling the provisions of this Article or an insurance undertaking has taken on full responsibility for his actions and provided him with appropriate and relevant basic training.

In the case of tied agents, Member States may allow the insurance undertaking to provide appropriate and relevant basic training pursuant to the second subparagraph.

Justification

In accordance with the amendment to article 2 (5), tied agents can receive training from the companies for which they act.

Amendment 30

Article 4(2), first subparagraph

Insurance and reinsurance intermediaries shall be of good repute. In particular, they shall have a clean police record or any other national equivalent ***in relation to insurance and reinsurance business*** and they shall not have previously been declared bankrupt,

Insurance and reinsurance intermediaries shall be of good repute. In particular, they shall have a clean police record or any other national equivalent ***for crimes against property*** and they shall not have previously been declared bankrupt ***nor shall judicial***

unless they have been rehabilitated in accordance with national law.

insolvency proceedings ever have been opened in respect of their assets, unless they have been rehabilitated in accordance with national law.

Justification

The 'good repute' requirement should be extended to reflect the fact that it is not satisfied by anyone who has been convicted of crimes against property (theft, fraud) or other offences affecting financial assets (embezzlement, misappropriation of funds) rather than only those who have committed insurance-related offences.

Amendment 31 Article 4, paragraph 3

3. Insurance and reinsurance intermediaries shall hold professional indemnity insurance or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1 000 000 per claim, 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.

3. Insurance and reinsurance intermediaries shall hold professional indemnity insurance or some other comparable guarantee ***or safeguard in accordance with national rules*** against liability arising from professional negligence, for at least EUR 1 000 000 per claim 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.

Justification

Adequate safeguards against professional misconduct or negligence need not always take the form of professional indemnity insurance. This amendment would allow Member States to set or maintain more flexible rules to cover, for example, large, reputable financial institutions whom national regulators deem to present lower risks.

Amendment 32 Article 4 a (new)

4a. The Member States may provide that those persons who, as at September 2000,

were pursuing the activity of mediation, were entered in a register and possess a similar level of training and experience to that required under this Directive, shall be automatically entered in the register that is created.

Justification

Provision must be made for a transitional rule allowing for the inclusion of those already practising insurance mediation at the time when the Directive enters into force.

Amendment 33
Article 5, paragraph 3 a (new)

3a. When a Member State receives notification of conduct of business under the arrangements for freedom to provide services and freedom of establishment, it shall publish the information in a list accessible by the public in any form, which shall include all of the details laid down under Article 3 of this Directive.

Justification

Provision must be made for publication of information concerning all intermediaries who intend to operate in a specific market and for ensuring that the register is as accessible as possible.

Amendment 34
Article 5(4a) (new)

Any Member State that receives notification of intent to conduct business in accordance with the freedom to provide services and freedom of establishment shall publish this in a list accessible to the public, which shall contain all the information referred to under Article 3 of this Directive.

Justification

The names of all intermediaries who intend to operate in a particular market should be in the public domain.

Amendment 35
Article 8

Member States shall ensure the setting-up of a facility allowing customers and other interested parties to register complaints about insurance and reinsurance intermediaries.

Member States shall ensure the setting-up of a facility allowing customers and other interested parties to register complaints about insurance and reinsurance intermediaries. ***In all cases the facility must allow complaints to be presented in a way that is accessible both to consumers and consumer associations and make available replies to complaints, which may be made public.***

Justification

Criteria must be established for the complaint facility.

Amendment 36
Article 9(1)

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

1. Member States shall encourage the setting-up of appropriate and effective complaints and redress procedures for the out-of-court settlement of disputes between insurance intermediaries and customers, using existing bodies where appropriate. ***The provisions on procedures shall take into account the provisions of Recommendation 98/257/EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes.***

Justification

Provisions on out-of-court dispute settlement procedures should be consistent with Recommendation 98/257/EC

Amendment 37

Article 10(1)

1. Prior to ***any initial contract***, an insurance intermediary shall provide the customer with at least the following information:

1. Prior to ***conclusion of the contract***, an insurance intermediary shall provide the customer with at least the following information:

Justification

Improved wording.

Amendment 38

Article 10, paragraph 1, subparagraph b

b) whether he advises the customer on insurance cover from a broad range of insurance undertakings or not. In the latter case, the insurance intermediary shall also inform the customer of the number and identity of the insurance undertakings with which he may and does conduct business for each class of risk;

b) whether he advises the customer on insurance cover from a broad range of insurance undertakings or not. In the latter case, ***provided that he is mediating a specific request***, the insurance intermediary shall also inform the customer of the number and identity of the insurance undertakings with which he may and does conduct business for each class of risk;

Justification

To ensure that the information is only provided if expressly requested.

Amendment 39
Article 10, paragraph 1, subparagraph d

- | | |
|---|--|
| (d) any contractual obligation to conduct the respective business with one or more insurance undertakings as well as the names of those undertakings; | (d) any contractual obligation to conduct the respective business with one or more insurance undertakings and, following a specific verbal or written request by the customer, the names of those undertakings; |
|---|--|

Justification

*Article 10, if implemented as it stands, is too onerous and detailed for routine use. This amendment, therefore, allows for the provision of **the names of the undertakings on request**.*

Amendment 40
Article 10(1)(e)

- | | |
|---|--|
| (e) the party to be held liable for any negligence, misconduct or inappropriate advice by the intermediary in relation to the insurance mediation; | (e) the natural and/or legal persons to be held liable for any negligence, misconduct or inappropriate advice by the intermediary in relation to the insurance mediation; |
|---|--|

Justification

In addition to the insurance intermediary, his company and/or partners, only the liability insurance and the undertaking with which the insurance contract is entered into can be held liable in the event of a claim.

Amendment 41
Article 10, paragraph 2

- | | |
|---|---|
| 2. If the insurance intermediary declares that he gives advice on insurance from a broad range of insurance undertakings referred to in point (b) of paragraph 1, he shall at least give advice based on a fair analysis of | 2. If the insurance intermediary declares that he gives advice on insurance from a broad range of insurance undertakings referred to in point (b) of paragraph 1, he shall at least give advice based on a fair analysis of |
|---|---|

insurance contracts available on the market that is sufficient to enable him to ***recommend the insurance contract appropriate to meet the customer's needs.***

insurance contracts available on the market that is sufficient to enable him to ***make a recommendation as to the appropriate insurance contract which meets the needs specified by the customer. Furthermore, the choice of the most suitable product should not be directly influenced by the scale of the commission paid by the undertaking to the intermediary.***

Justification

In the interests of consumers, intermediaries must operate in accordance with the 'best possible advice' principle.

Amendment 42
Article 10(3)

3. Prior to the conclusion of any specific contract, insurance intermediaries shall at least specify the demands and the needs of the customer and clarify the underlying reasons for their advice.

Delete

Justification

In almost all cases contracts that have been concluded reflect the clear and unambiguous intention of the party to be insured so that making a record of the customer's intentions has to be seen more as a bureaucratic burden than as meaningful consumer protection.

Amendment 43
Article 10(4)

The information referred to in paragraphs 1, 2 and 3 need not be given when the insurance intermediary mediates in the insurance of large risks, nor in the case of ***mediation by reinsurance intermediaries.***

The information referred to in paragraphs 1, 2 and 3 need not be given when the insurance intermediary mediates in the insurance of large risks, nor in the case of ***one-company insurance intermediaries when mediating the business for the company with which they are associated.***

Justification

Since no consumer protection issues are raised in the case of insurance intermediaries of 'large risks' within the meaning of Article 5(d) of Directive 73/239/EEC and of one-company insurance intermediaries where solely engaged in the company's business, they should not be compelled to comply with the requirements of Article 10 of the draft directive.

Amendment 44 Article 11, paragraph 2

2. By way of derogation from point (a) of paragraph 1, the information referred to in Article 10 may be provided orally only where immediate cover is necessary or Requested by the customer.

2. By way of derogation from point (a) of paragraph 1, the information referred to in Article 10 may be provided orally (***which includes all methods of oral communication such as distance selling by telephone or any similar method of communication***) only where immediate cover is necessary or requested by the customer, ***or when the customer specifically requests it. In all cases, the customer shall have the right to request subsequent written confirmation.***

Justification

Article 11, if implemented as it stands, would preclude the practice of intermediaries granting immediate insurance cover over the telephone.

Amendment 45 Article 11a (new)

11a. The Member States shall ensure that customers who conclude insurance contracts without the involvement of an insurance intermediary or through the persons referred to in Article 1(2) of this Directive receive sufficient information on the insurance contract proposed. This information shall enable the customer to determine whether it is appropriate for him to enter into the contract and whether it is suitable for his needs.

Justification

The information received by the consumer should be equivalent to that offered by an insurance intermediary.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the proposal for a European Parliament and Council directive on insurance mediation (COM – C5-0484/2000 – 2000/0213(COD))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2000) 511¹),
 - having regard to Article 251(2) of the EC Treaty and Articles 47(2) and 55 of the Treaty, pursuant to which the Commission submitted the proposal to Parliament (C5-0484/2000),
 - having regard to Rule 67 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 Legal Affairs and the Internal Market (A5-0359/2001),
1. Approves the Commission proposal as amended;
 2. Asks to be consulted again should the Commission intend to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ OJ C 29 E, 30.1.2001, p. 245-250

EXPLANATORY STATEMENT

1. The Commission proposal

The proposal for a Directive establishes a legislative framework designed to ensure a high level of professionalism and competence among insurance intermediaries. A single registration system for intermediaries will facilitate cross-border activities by way of freedom of establishment and freedom to provide services. The proposal also guarantees a high level of protection of customers' interests.

The proposal focuses on the objectives which should be attained in order to reconcile insurance mediation with the internal market while properly protecting insurance customers. The Commission considers that it is better to rely as much as possible on mutual recognition among the Member States rather than trying to harmonise in detail the methods of control actually used. At present, only Directive 77/92/EEC contains binding provisions on insurance intermediaries. However, its scope is limited since it does not harmonise the professional qualifications required of persons working as agents or brokers. The Directive does not prevent the Member States from laying down specific provisions on access to and pursuit of these activities, or indeed from not doing so, and in fact Member States have adopted widely differing rules.

The aim of the proposal for a Directive is to guarantee that all persons (natural and legal) taking up and pursuing the activity of insurance or reinsurance mediation have been registered by a competent authority on the basis of a minimum set of professional requirements. These include: the possession of appropriate professional knowledge and ability, professional indemnity insurance or another comparable guarantee, sufficient financial capacity and being of good repute and not having been declared bankrupt.

Registered intermediaries will be able to operate in other Member States by availing themselves of the freedom to provide services or by establishing a branch. Member States may add to the professional requirements laid down in the Directive, but only for the intermediaries that they register. The proposal also sets minimum requirements as regards the arrangements for, and content of, the information which the insurance intermediaries must make available to their potential customers. It should be noted that this proposal for a Directive is based on the approach put forward by the Commission in Recommendation 92/48/EEC and takes up the principles outlined there.

2. The rapporteur's approach

Your rapporteur broadly welcomes the Commission's proposal as one which essentially takes a balanced approach to the different interests at stake, but has some suggestions to improve consumer protection and refine the proposal in certain respects.

In terms of consumer protection, a number of improvements could be envisaged, in particular:

- ensuring that intermediaries have to offer their customers products based on the "best advice" principle, and that this advice is based on a clear and complete description of the needs and requests of the customer;

- allowing the consumer to request the language in which information must be provided by the intermediary;
- clarification that information must be provided to the customer before the conclusion of the contract;
- ensuring that the complaints mechanisms to be established by each Member State respect certain criteria, and that the out-of-court settlement procedures should take into account Recommendation 98/257 of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (OJ L115 of 17 April 1998, p 31).

Concerning the definitions, it would seem appropriate to add a definition of 'agent of an intermediary', who would work with and under the responsibility of an intermediary and would have the necessary knowledge and experience, but would not be required to be included in the register. The definition of insurance mediation could also be amended to make it clear that this activity includes the provision of information on the content of and the guarantees offered by insurance policies, and that it covers the provision of such services by whatever means, including services provided at a distance by electronic means. A definition of 'bancassurance distribution' should also be added, since it is proposed to bring the insurance mediation activities of bancassurance groups into the scope of the Directive.

In terms of the scope of the proposal, the approach taken by the Commission seems relatively well balanced, and your rapporteur would therefore propose limited changes. However, the scope of the exemption which Member States can grant in article 1.2 should be restricted to chapters 1 and 2 of the Directive only. The conditions set out in article 1.2 could be amended, so that ancillary life insurance cover which is limited to the duration of a journey would not be considered life insurance for the purposes of the Directive, and so that liability risks insurance which is ancillary to the main insurance cover is similarly excluded.

With regard to the treatment of intermediaries whose principal activity is other than insurance mediation, it would seem worthwhile clarifying the fact that these can be subject to the Directive in a limited way, in particular concerning the professional requirements, but that the rest of the Directive should apply to them. Member States should be allowed to require a different level of professional requirements for such intermediaries, and this should not be lower than the level required for the proposed category of 'agents of an insurance intermediary'. Member States should also be able to decide not to apply the professional requirements to those who have been carrying out the activity of insurance intermediary for a sufficient period before the adoption of this Directive.

With regard to the treatment of bancassurance groups (financial conglomerates bringing together both banking and insurance business), these should also be included in the scope of the Directive for their insurance mediation business. In addition, the banking and insurance parts of such groups should have a written agreement setting out how they will provide services to their clients, and particularly how the insurance part of the company will provide training to those persons providing services to clients. The insurance company will be responsible for ensuring compliance with the provisions of article 4. Lastly, the financial institution shall not be allowed to use private client information to offer clients specific group insurance products, nor shall they be allowed to make taking out an insurance policy with the group a condition of concluding a contract for a financial service.

The provisions on the register could also be developed in the interests of consumer information and protection. The competent authorities should be required to include in the register only those intermediaries who comply with the professional requirements in article 4, and to remove from the register those who cease to comply. The register should set out details of the legal status of each intermediary and his economic and legal links to insurance companies. The register should also include the names of intermediaries registered in other Member States who have notified their intention to offer services under the right of establishment or the freedom to provide services. Member States which make use of the possibility of not applying the professional requirements in article 4 to intermediaries for whom insurance mediation is not the principal activity, should be allowed to establish a different register for this class of intermediaries.

11 October 2001

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET (*)

for the Committee on Economic and Monetary Affairs

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

(COM(2000) 511 – C5-0484/2000 – 2000/0213 (COD))

Draftsman (*): Enrico Ferri

(*) Enhanced Hughes procedure

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Enrico Ferri draftsman at its meeting of 11 April 2001.

It considered the draft opinion at its meetings of 10 July, and 11 October 2001.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Ana Palacio Vallelersundi, chairman; Ward Beysen, vice-chairman; Enrico Ferri, draftsman; Paolo Bartolozzi, Luis Berenguer Fuster (for Jean-Maurice Dehousse), Maria Berger, Charlotte Cederschiöld (for Janelly Fourtou), Willy C.E.H. De Clercq (for Toine Manders), Bert Doorn, Raina A. Mercedes Echerer, Marie-Françoise Garaud, Evelyne Gebhardt, Neena Gill (for Carlos Candal pursuant to Rule 153(2)), Françoise Grossetête (for Malcolm Harbour), Gerhard Hager, Heidi Anneli Hautala, The Lord Inglewood, Kurt Lechner, Klaus-Heiner Lehne, Neil MacCormick, Luís Marinho, Manuel Medina Ortega, Angelika Niebler (for Hans-Peter Mayer), Ria G.H.C. Oomen-Ruijten (for Antonio Tajani), Fernando Pérez Royo (for Enrico Boselli pursuant to Rule 153(2)), Helle Thorning-Schmidt (for Willi Rothley pursuant to Rule 153(2)), Joachim Wuermeling and Stefano Zappalà.

SHORT JUSTIFICATION

The insurance mediation sector is one of the fields in which the 1999 Financial Services Action Plan calls for priority action to be taken to complete the internal market.

This fact explains the urgent nature of the opinion which the Committee on Legal Affairs and the Internal Market intends to submit so as to alter the amendments tabled by the Committee on Economic and Monetary Affairs, the committee responsible, so that they reflect certain issues which the Legal Affairs Committee believes should be taken into account.

The objective of the proposal for a directive presented by the Commission is to guarantee that all natural or legal persons taking up and pursuing the activities of insurance or reinsurance mediation have been registered on the basis of a minimum set of professional requirements.

Thus intermediaries registered in one Member State will be able to operate in other Member States by exercising their freedom to provide services or by establishing a branch there. Member States may add to the professional requirements laid down in the proposal for a directive in respect of the intermediaries registered by them.

The aim of the proposal, as presented by the Commission, is to fill a legal lacuna stemming from Directive 77/92/EEC owing to the fact that Recommendation 92/48/EEC which was adopted in order to give the Member States wider and more up-to-date directions does not, as everyone knows, have the binding effect of a directive.

The proposal reproduces some of the measures advocated in the 1992 recommendation though incorporating many new features.

In this context, the intention of the Committee on Legal Affairs and the Internal Market is to propose the following amendments, which are in each case followed by their justification:

AMENDMENTS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Recital 10a (new)

The protective purpose of the Directive extends solely to life insurance. Where what are involved are in fact accident insurance policies that are, for example, also concluded as part of travel insurance and also promise benefits in the event of accidental death, such policies are not covered by the Directive's protective purpose.

Justification

It often happens that accident insurance policies including benefits in the event of death are also sold as part of travel insurance. It must be made clear that these are not life insurance policies within the meaning of the Directive.

(Amendment 2) Article 1(2)(c)

c) the insurance does not cover any liability risks;

c) the insurance does not cover any liability risks, ***except where ancillary to the main insurance cover;***

Justification

This amendment is necessary for the same reasons as those given in the justification for Amendment 1, because if Article 1(2)(c) were not amended as suggested, the travel insurance contracts usually offered in conjunction with third party liability insurance by travel agents in many Member States could no longer be marketed.

¹ OJ C .

Amendment 3
Article 1, paragraph 2, point d)

(d) the *principal* professional activity of the person is other than insurance mediation;

(d) the *principal* professional activity of the person is other than insurance mediation **and their income does not predominantly depend on it**;

Justification

This amendment is merely intended to ensure that the definition of insurance intermediaries acting on an occasional basis is consistent throughout the directive. The definition used by the Commission in Article 4(1), third subparagraph seems more complete than the one it uses here.

Amendment 4
Article 1, paragraph 2, point f)

(f) the amount of the premium does not exceed EUR 1 000 and the duration of the insurance contract **is less than** a year.

(f) the amount of the premium does not exceed EUR 1 000 **for one year** and the duration of the insurance contract **does not exceed** a year, **with the exception of basic life insurance contracts offered routinely** .

Justification

In line with the previous amendment, this amendment proposes an exemption from the maximum duration of insurance contracts excluded from the scope of the directive in favour of typical life insurance contracts fulfilling all the other requirements laid down in Article 1(2). The maximum contract duration is anyway already regulated by the relevant legislation and the size of the premium is a more appropriate point of reference for consumer protection. The Commission proposal fails to take account of the fact that, although contracts do exist with a duration of less than one year, they are automatically extended unless cancelled.

Amendment 5
Article 1(3) (new)

Tourist assistance packages offered by travel agencies as insurance intermediaries are not subject to the provisions of this directive. The same applies to animal liability and animal sickness insurance mediated by veterinary practitioners;

Justification

The explanatory memorandum to the Commission draft already makes it clear that such activities by travel agencies or comparable institutions do not fall within the scope of the directive. The Commission has however self-evidently forgotten to make that explicit in the text of the directive itself.

Amendment 6
Article 2(8)(a)

a) where the intermediary is a natural person, the Member State in which his residence is situated ***and*** in which he carries on ***business***;

a) where the intermediary is a natural person, the Member State in which his residence is situated ***or*** in which he carries on ***his principal professional activity***;

Justification

This amendment to the definition of 'home Member State' aims to facilitate the mobility within the single market of intermediaries who are 'natural persons'.

Amendment 7
Article 4 (1), second sub-paragraph

Member States need not apply the requirement referred to in the first subparagraph to all the persons working either in an undertaking or for a natural person exercising the activity of insurance or reinsurance mediation. Member States shall ensure that ***the management*** of such undertakings or natural person ***and any staff directly***

Member States need not apply the requirement referred to in the first subparagraph to all the persons working either in an undertaking or for a natural person exercising the activity of insurance or reinsurance mediation. Member States shall ensure that ***an appropriate number of persons in the management*** of such undertakings or

involved in insurance or reinsurance mediation possess such knowledge and ability.

natural person possess such knowledge and ability. ***Any of the rest of the staff directly involved in insurance or reinsurance mediation must possess appropriate knowledge and ability for the activity entrusted to them.***

Justification

The amendment aims to avoid subjecting undertakings and natural persons exercising the activity of insurance or reinsurance mediation to excessive red tape by providing that an appropriate number of persons in the management of such undertakings or natural person must possess the professional qualifications required to protect consumers, as originally laid down in Recommendation 92/48/EEC.

This amendment requires an appropriate level of knowledge from all the staff, with varying criteria depending on whether or not they are part of management..

Amendment 8

Article 4(3)

Insurance and reinsurance intermediaries shall hold professional indemnity insurance or some other comparable guarantee against liability arising from professional negligence for at least EUR 1 000 000 ***per claim***, 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.

Insurance and reinsurance intermediaries shall hold professional indemnity insurance or some other comparable guarantee against liability arising from professional negligence for at least EUR 1 000 000 ***per annum***, 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.

Justification

The amendment makes the professional indemnity insurance against liability arising from professional negligence required of intermediaries subject to a time-limit in order to make it less burdensome and to make it easier to find such cover in many Member States.

Amendment 9
Article 10, paragraph 3

3. Prior to the conclusion of any specific contract, insurance intermediaries shall at least specify the demands and ***the needs of the customer and clarify the underlying reasons for their advice.***

3. Prior to the conclusion of any specific contract, insurance intermediaries shall at least specify, ***at the express request of the customer, the essential*** demands and needs ***expressed by the customer.***

Justification

Consumers should possess all the information necessary to assess the cover proposed in full knowledge of the facts. However, over-burdensome administrative obligations should not be placed on intermediaries, and are in any case not a suitable way of guaranteeing consumer protection.

In reality it is the consumer who has reasons for taking out a contract and makes the decision to do so, and the systematic delivery of the specified documentation can have no influence over this choice.

Therefore, intermediaries should be given limited obligations, which are restricted to setting out the objective information clearly expressed by the consumer, and only in cases where the consumer expressly so requests.

Amendment 10
Article 10(4)

The information referred to in paragraphs 1, 2 and 3 need not be given when the insurance intermediary mediates in the insurance of large risks, ***nor in the case of mediation by reinsurance intermediaries.***

The information referred to in paragraphs 1 and 2 need not to be given in the case of one-company insurance intermediaries when mediating the business for the company with which they are associated.

The information referred to in paragraphs 1, 2 and 3 need not be given when the insurance intermediary mediates in the insurance of large risks.

Justification

Since no consumer protection issues are raised in the case of insurance intermediaries of 'large risks' within the meaning of Article 5(d) of Directive 73/239/EEC and of one-company

insurance intermediaries where solely engaged in the company's business, they should not be compelled to comply with the requirements of Article 10 of the draft directive.