

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL
A5-0219/2002

4 June 2002

*****II**

RECOMMENDATION FOR SECOND READING

on the Council common position for adopting a European Parliament and
Council directive on insurance mediation
(5462/1/2002 – C5-0148/2002 – 2000/0213(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Luis Berenguer Fuster

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.

CONTENTS

	Page
PROCEDURAL PAGE	4
DRAFT LEGISLATIVE RESOLUTION.....	5
EXPLANATORY STATEMENT	15

PROCEDURAL PAGE

At the sitting of 14 November 2001 Parliament adopted its position at first reading on the proposal for a European Parliament and Council directive on insurance mediation (COM(2000) 511 – 2000/0213 (COD)).

At the sitting of 10 April 2002 the President of Parliament announced that the common position had been received and referred to the Committee on Economic and Monetary Affairs (5462/1/2002 – C5-0148/2002).

The committee had appointed Luis Berenguer Fuster rapporteur at its meeting of 25 October 2000.

It considered the common position and draft recommendation for second reading at its meetings of 15 April 2002, 22 May 2002, 3 June 2002 and 4 June 2002.

At the latter meeting it adopted the draft legislative resolution unanimously.

The following were present for the vote: Christa Randzio-Plath, chairman; José Manuel García-Margallo y Marfil, Philippe A.R. Herzog and John Purvis, vice-chairmen; Luis Berenguer Fuster, rapporteur (for Pervenche Berès); Hans Udo Bullmann, Bert Doorn (for Astrid Lulling), Jonathan Evans, Enrico Ferri (for Generoso Andria, pursuant to Rule 153(2)), Ingo Friedrich, Carles-Alfred Gasòliba i Böhm, Lutz Goepel (for Mónica Ridruejo), Lisbeth Grönfeldt Bergman, Mary Honeyball, Brice Hortefeux, Christopher Huhne, Pierre Jonckheer (for Alain Lipietz), Othmar Karas, Giorgos Katiforis, Piia-Noora Kauppi, Christoph Werner Konrad, Thomas Mann (for Renato Brunetta), Ioannis Marinos, David W. Martin, Hans-Peter Mayer, Miquel Mayol i Raynal, Ioannis Patakis, Fernando Pérez Royo, Mikko Pesälä (for Olle Schmidt), Alexander Radwan, Peter William Skinner, Ieke van den Burg (for Robert Goebbels) and Theresa Villiers.

The recommendation for second reading was tabled on 4 June 2002.

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

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the Council common position for adopting a European Parliament and Council directive on insurance mediation (5462/1/2002 – C5-0148/2002 – 2000/0213(COD))

(Codecision procedure: second reading)

The European Parliament,

- having regard to the Council common position 5462/1/2002 – C5-0148/2002),
 - having regard to its position at first reading¹ on the Commission proposal to Parliament and the Council (COM(2000) 511²),
 - having regard to Article 251(2) of the EC Treaty,
 - having regard to Rule 80 of its Rules of Procedure,
 - having regard to the recommendation for second reading of the Committee on Economic and Monetary Affairs (A5-0219/2002),
1. Amends the common position as follows;
 2. Instructs its President to forward its position to the Council and Commission.

¹ OJ not available yet..

² OJ C 29, 30.1.2001, p. 245.

Amendment 1

Recital 23

(23) Without prejudice to the right of customers to bring their action before the courts, Member States should encourage public or private bodies established with a view to settling disputes out-of-court, to cooperate in resolving cross-border disputes. Such cooperation could for example be aimed at enabling customers to contact extra-judicial bodies established in their Member State of residence about complaints concerning insurance intermediaries established in other Member States. The setting up of the FIN-NET network provides increased assistance to consumers when using cross-border services.

(23) Without prejudice to the right of customers to bring their action before the courts, Member States should encourage public or private bodies established with a view to settling disputes out-of-court, to cooperate in resolving cross-border disputes. Such cooperation could for example be aimed at enabling customers to contact extra-judicial bodies established in their Member State of residence about complaints concerning insurance intermediaries established in other Member States. The setting up of the FIN-NET network provides increased assistance to consumers when using cross-border services. ***The provisions on procedures shall take into account the provisions of Commission Recommendation 98/257/EC of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes.***

Justification

This text was adopted at first reading as an amendment to Article 9 of the proposal for a directive. The Council took the view that the wording could be included in a recital but did not introduce any changes of its own to that effect. Therefore, this amendment is now being tabled in a recital.

Amendment 2

Article 1, paragraph 2 a (new)

2a. Member States need not apply the provisions of this Directive to the following persons:

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

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

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

- a security or repayment indemnity for a service to be provided to the customer and where an insurance undertaking or a credit institution assumes 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;

- insurance mediation offered in connection with services provided by the motor vehicle trade, e.g. third-party, vehicle and passenger accident and legal protection policies.

Justification

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

Amendment 3

Article 1, paragraph 3, second sub-paragraph

This Directive does not affect a Member State's law in respect of insurance mediation business pursued by insurance and

This Directive does not affect a Member State's law in respect of insurance mediation business pursued by insurance and

reinsurance intermediaries established in a third country and operating on its territory under the principle of freedom to provide services.

reinsurance intermediaries established in a third country and operating on its territory under the principle of freedom to provide services, ***provided that equal treatment is guaranteed to all persons carrying out or authorised to carry out insurance mediation activities on that market*** .

Justification

The Member States are free to set specific conditions for third countries' intermediaries acting to cover risks situated on their territory. However, 'reverse' discrimination should be avoided, i.e. a Member State should not grant more favourable conditions to a 'foreign' intermediary operating on its territory, so as to preserve both the equality of competition between all intermediaries operating on one market - including Community intermediaries operating by virtue of the freedom to provide services on that territory - and with the current consumer protection provisions .

Amendment 4

Article 2, paragraph 3, third sub-paragraph

The provision of information on an incidental basis in the context of another professional activity ***without the purpose of assisting the customer in concluding or performing an insurance contract***, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims are also not considered as insurance mediation;

The provision of information on an incidental basis in the context of another professional activity ***provided that the purpose of that activity is not to assist the customer in concluding or performing an insurance contract***, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims are also not considered as insurance mediation;

Justification

Recital 12 clearly intends to ensure that the Directive does not catch those who provide information as an incidental aspect of carrying on a professional activity (not mediation). However Articles 2(3) paragraph 3 and 2(4) paragraph 3 imply that the purpose of providing the information must be other than to assist the customer in concluding or performing the contract. This amendment ensures that the approach taken in Recital 12 is reflected in the text.

Amendment 5
Article 2, Paragraph 4, third subparagraph

The provision of information on an incidental basis in the context of another professional activity *without the purpose of assisting the customer in concluding or performing a reinsurance contract*, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims are also not considered as insurance mediation

The provision of information on an incidental basis in the context of another professional activity *provided that the purpose of that activity is not to assist the customer in concluding or performing a reinsurance contract*, the management of claims of an insurance undertaking on a professional basis, and loss adjusting and expert appraisal of claims are also not considered as insurance mediation;

Justification

Recital 12 clearly intends to ensure that the Directive does not catch those who provide information as an incidental aspect of carrying on a professional activity (not mediation). However Articles 2(3) paragraph 3 and 2(4) paragraph 3 imply that the purpose of providing the information must be other than to assist the customer in concluding or performing the contract. This amendment ensures that the approach taken in Recital 12 is reflected in the text.

Amendment 6
Article 3, paragraph 2, second subparagraph

Member States shall see to it that a single information point is established allowing quick and easy access to information from these different registers, which shall be compiled electronically and kept constantly updated. This information point shall also provide the identification details of the competent authorities of each Member State referred to in paragraph 1, first subparagraph.

Member States shall see to it that a single information point is established allowing quick and easy access to information from these different registers, which shall be compiled electronically and kept constantly updated. This information point shall also provide the identification details of the competent authorities of each Member State referred to in paragraph 1, first subparagraph. *The register shall indicate further the country or countries in which the intermediary conducts business under the rules on establishment or on the freedom to provide services.*

Justification

With the requirement that the host Member State receive notification from the home Member State (Article 5) having been dropped, the home Member State's register ought to list those countries in which the intermediary conducts business.

Amendment 7

Article 3, paragraph 3, second subparagraph

Member States shall also ensure that insurance intermediaries – including tied ones – and reinsurance intermediaries who cease to fulfil these requirements are removed from the register. If necessary, the home Member State shall inform the host Member State of such removal, by any appropriate means.

Member States shall also ensure that insurance intermediaries – including tied ones – and reinsurance intermediaries who cease to fulfil these requirements are removed from the register. ***The validity of the registration should be subject to a regular review by the competent authority.*** If necessary, the home Member State shall inform the host Member State of such removal, by any appropriate means.

Justification

The three yearly revision was approved by the Parliament at first reading, but not taken over by Council. In order to reach a compromise with the Council, it is proposed to leave it up to each competent authority to decide as to how often such a review should be conducted.

Amendment 8

Article 4, paragraph 2, second subparagraph

Member States may, ***for the cases referred to in*** the second subparagraph of Article 3(1), allow the insurance undertaking to check the good repute of tied insurance intermediaries.

Member States may, ***in accordance with the provisions of*** the second subparagraph of Article 3(1), allow the insurance undertaking to check the good repute of tied insurance intermediaries.

Justification

Article 4(1), third subparagraph, in keeping with Article 3, allows the insurance undertaking to check that all intermediaries, including tied insurance intermediaries, possess the requisite knowledge and ability.

In contrast, the provisions of Article 4(2), second subparagraph diverge from those of Article 4(1), third subparagraph and Article 3, in that they allow insurance undertakings to check the good repute of tied insurance intermediaries alone.

Amendment 9 Article 4 c (new)

Member States may provide that those persons who, prior to September 2000, were pursuing the activity of mediation, were entered in a register and possessed a similar level of knowledge and ability to that required under this Directive, shall be automatically entered in the register that is created.

Justification

This would cover insurance or reinsurance intermediaries who, at the time when the proposal for the Directive was submitted, were already registered and had a similar level of knowledge to that stipulated by the proposal. Such persons should automatically be entered in the register that will be formed by their Member State through this Directive.

Amendment 10 Article 9

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

Member States shall ensure the setting-up of procedures allowing customers and other interested parties, ***especially consumer associations***, to register complaints about insurance and reinsurance intermediaries. ***In all cases replies to complaints shall be made***

available.

Justification

Criteria must be established for the complaints facility.

Amendment 11

Article 11, paragraph 1, point (e), figures (ii) and (iii)

- (ii) he is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. In that case, he shall ***also inform the customer of*** the names of those insurance undertakings,
or
- (iii) he is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice based on the obligation in paragraph 2 to provide a fair analysis. In that case, he shall ***also inform the customer of*** the names of the insurance undertakings with which he may and does conduct business.

- (ii) he is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. In that case, ***at the customer's request*** he shall ***provide*** the names of those insurance undertakings,
or
- (iii) he is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice based on the obligation in paragraph 2 to provide a fair analysis. In that case, ***at the customer's request*** he shall ***provide*** the names of the insurance undertakings with which he may and does conduct business.

Justification

The names of the undertakings ought to be supplied, but only in response to a specific request. However, in all cases the customer must be informed that the possibility of making a request exists.

Amendment 12

Article 11, paragraph 1, point (e a) (new)

(ea) In those cases requiring that information be provided solely at the customer's request, the latter shall be informed that he has the right to request such information.

Justification

The names of the undertakings ought to be supplied, but only in response to a specific request. However, in all cases the customer must be informed that the possibility of making a request exists.

Amendment 13
Article 11, paragraph 2

If the insurance intermediary informs the customer that he gives advice on the basis of a fair analysis, he is obliged to give that advice based on an analysis of a sufficient number of insurance contracts available on the market to enable him to ***recommend the insurance contract appropriate to meet the customer's needs.***

If the insurance intermediary informs the customer that he gives advice on the basis of a fair analysis, he is obliged to give that advice based on an analysis of a sufficient number of insurance contracts available on the market to enable him to recommend ***as to the appropriate insurance contract which is based on the 'best possible advice' principle and which meets the needs specified by the customer.***

Justification

This amendment reintroduces the amendment to article 10.2 adopted in 1st reading.

Amendment 14
Article 12, paragraph 2

2. By way of derogation from paragraph 1(a), the information referred to in Article 11 may be provided orally where the customer requests it, or where immediate cover is necessary. ***In those cases, the information shall be provided to the customer in***

2. By way of derogation from paragraph 1(a), the information referred to in Article 11 may be provided orally where the customer requests it, or where immediate cover is necessary.

*accordance with paragraph 1 immediately
after the conclusion of the insurance
contract.*

Justification

The customer must be entitled to decline to receive any information in writing.

*Where such a wish has been expressed by the consumer, it would be more red tape than
appropriate consumer protection to require the relevant information to be additionally
provided – for example – on paper.*

EXPLANATORY STATEMENT

Content and Context of 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 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.

The proposal is a priority action of the Commission's Financial Services Action Plan seeking to create an integrated financial market in the European Union by the end of 2005.

Critical Appraisal of the Common Position - Your Rapporteur's Approach

On 14 November 2001, the Parliament adopted the proposal at first reading, amending it in a number of areas. Of the 50 amendments adopted, 20 were supported in full or in part by the Commission.

The Common Position adopted by the Council of Ministers to a large extent follows the line taken by the European Parliament at first reading. It incorporates all but one of the amendments supported by the Commission, and it also takes into account two further amendments.

It is particularly gratifying that many of the most important amendments have been taken up by the Council, in particular those relating to the scope of the Directive and concerning the definitions. Your rapporteur particularly welcomes the inclusion of the concept of the 'tied insurance intermediary' (Article 2, subparagraph 7), which by and large corresponds to the Parliament's concerns.

Equally, the central provisions on registration (Article 3) and professional requirements (Article 4) are broadly in line with the position adopted by Parliament at first reading.

There are, however, a small number of areas where your rapporteur is not completely satisfied with the Common Position, and has proposed amendments.

The amendments concern *inter alia* the information requirements (Article 11 – first reading amendments Nos 38 and 39) and information on complaints (Article 8 – first reading amendment No 35). These amendments are outlined further in the justifications.

Conclusion

As indicated above, your rapporteur generally supports the Council Common Position, which closely matches Parliament's opinion at first reading. In a spirit of compromise, and to secure an early agreement, he has only retabled amendments on a limited number of the many points raised by Parliament at first reading which were *not* included in the Common Position.

He hopes, therefore, that the Council will be in a position to accept the small number of amendments retabled for second reading so that an agreement can be reached rapidly and a cumbersome conciliation procedure and third reading can be avoided.