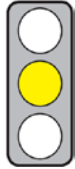


KEY ISSUES

Objective of the Directive: The Commission wishes to improve the protection of policy holders and prevent distortion of competition between distribution channels.

Parties affected: Insurance companies, insurance intermediaries, policy holders



Pros: (1) Extending insurance mediation rules to include direct sales through insurance companies can prevent distortion of competition and regulatory arbitrage.
(2) The fact that an intermediary must disclose the type of remuneration they receive contributes to sound purchase decisions.

Cons: (1) The regulations for annex intermediaries are ambiguous; this creates considerable legal uncertainty. The different treatment of annex intermediaries distorts competition.
(2) Rather than extend the exceptions, it makes more sense to prescribe an external assessment of professional qualifications for both insurance company employees and for intermediaries.
(3) The obligation to disclose the remuneration amount will not prevent the provision of incorrect advice and creates new distortion of competition.
(4) Prohibiting commission for “independent” insurance intermediaries creates neither practical mediation solutions nor intermediaries who are really independent.

CONTENT

Title

Proposal COM (2012) 360 of 3 July 2012 for a **Directive** of the European Parliament and the Council on **insurance mediation** (recast)

Brief Summary

► General points and objectives

- The Directive governs the mediation of insurance products by insurance intermediaries (hereinafter: intermediaries) and insurance undertakings (hereinafter: insurance companies) (Art. 1 (1), Art. 2 (3)).
- The Directive replaces the existing Directive on Insurance Mediation (Directive 2002/92/EG).
- The aim of the proposal is (Explanatory Memorandum p. 3)
 - to strengthen policy holder protection and
 - to ensure a level playing field for intermediaries and insurance companies in relation to the sale of insurance products.

► Scope and exceptions

- The scope of the Directive has been extended. In future, in addition to conventional insurance intermediaries, it will also cover
 - insurance companies which sell their products through direct sales rather than through intermediaries (Art. 2 (3)),
 - claims managers and loss adjustors (Art. 1 (1)).
- The exceptions for intermediaries providing insurance on an ancillary basis which complements the provision of goods (“ancillary providers”) are restricted. Ancillary providers will only be exempt from the Directive if they (Art. 1 (2) e)
 - cover breakdown, loss or damage to the goods supplied, and
 - the annual premium for the insurance contract does not exceed EUR 600 (previously EUR 500).

► “Contractually tied intermediaries”

- “Contractually tied intermediaries” (hereinafter: tied intermediaries) are
 - as before, intermediaries who act for and on behalf of insurance companies and under the responsibility of such insurance companies, and
 - in future also those intermediaries who act for, on behalf of and under the responsibility of one or more intermediaries, provided these are not themselves tied to another intermediary (Art. 2 (8)).

► Professional and organisational requirements

- Until now, only intermediaries needed to have “appropriate knowledge and ability”. In future, this requirement will also apply to ancillary providers, claim handlers and loss adjustors, and in particular to insurance company employees who carry out mediation activities. In future, they will all have to demonstrate their “professional experience” and commit to ongoing professional development. (Art. 8 (1))
 - The Commission can adopt delegated acts in this regard (Art. 8 (8)).
- Intermediaries and, in future, also insurance company employees who carry out mediation activities, must be “of good repute” (Art. 8 (2)).
- Whereas Member States have previously only been able to permit insurance companies to verify for themselves – rather than by way of external inspectors – whether their tied intermediaries fulfil the professional requirements, in future they will also be able to permit intermediaries to do so (Art. 8 (1), subparagraph 4).

► **Registration requirements**

- Intermediaries must continue to register with the competent authority in their home Member State (Art. 3 (1), subparagraph 1). In future, they will also have to provide information (Art. 3 (7), Art. 2 (16)) as to the identity
 - of their shareholders with a holding of more than 10% and
 - of “persons with close links” to them, e.g. where there is a controlling relationship between a parent company and its subsidiary.
- The registration requirements do not apply to
 - insurance companies and their staff (Art. 3 (1), subparagraph 1),
 - ancillary providers, claim handlers or loss adjustors; they are only required to provide their identity, address and professional activities (Art. 4 (2) and (3)).
- As before, the Member States may stipulate that contractually tied intermediaries do not have to register independently. In this case, both intermediaries and insurance companies may now also register their own intermediaries (Art. 3 (1), subparagraphs 2 and 3).

► **Rules of conduct**

- Intermediaries, including tied ones, and insurance companies must, in future, (Art. 16, Art. 18 (1))
 - identify the demands and needs of the customer and provide reasons for their recommendations,
 - provide the customer with details of their identity and the place where they are registered, and
 - inform the customer whether they only sell insurance or also provide advice.
- Intermediaries must in future inform the customer whether they (Art. 16 (a) (v))
 - are acting either for and on behalf of one or more insurance companies
 - or whether they are in fact “representing” the customer.
- The information must be provided before concluding any insurance contract – previously only required before the first transaction (Art. 16).

► **Remuneration disclosure**

- To date, intermediaries have not been obliged to disclose their remuneration vis-à-vis customers. In future, before each contract conclusion they must disclose (Art. 17 (1) lit. d-g, (3)) the following:
 - the nature of the remuneration received: either fee, commission or a combination of both
 - the full amount of the remuneration or, if this is impossible, the basis of calculation
 - the amount of the commission on reaching agreed targets or thresholds
 - the type and calculation basis for variable remuneration of employees; this also applies to insurance companies
- Within the first five years following the entry into force of the Directive, intermediaries of types of insurance other than life insurance must only disclose their full remunerations or calculation basis if their customers so request. However, they must inform their customers of their right to request the information. (Art. 17 (2))
- Member States may adopt provisions on the disclosure of remunerations (Art. 19 (2)).
- The obligation to disclose remunerations does not apply to
 - annex intermediaries (Art. 4 (4)) or
 - the mediation of insurances for major risks or for “professional customers” (Art. 19 (1)).

► **Increased customer protection in distributing packaged retail investment products (PRIIPS)**

- Packaged retail investment products (PRIIPS) are insurances with an investment element, e.g. unit-linked life insurances pursuant to the PRIIPS Regulation [Draft: COM (2012) 352, see [cepPolicyBrief](#)].
- Intermediaries and insurance companies must comply with the following obligations when distributing PRIIPS:
 - They must take “appropriate steps” to prevent conflicts of interest between all participating parties – e.g. customers, employees or tied insurance intermediaries. If a conflict of interest cannot be prevented, this must be set out for the customer before contract conclusion. The Commission may adopt a delegated legal act to this end. (Art. 23)
 - In the case of distribution without advice, they must “ask” the customer to provide information regarding his or her knowledge of the investment field. Where a lack of or “insufficient” information on the part of the customer means they are unable to assess the suitability of a product, they must warn the customer accordingly. They must also issue a warning if they consider a product to be unsuitable for a customer. (Art. 25 (2))
 - In the case of distribution with advice, the investment knowledge, the financial situation and the customer’s investment objectives must be assessed as a basis for a recommendation to the customer (Art 25 (1)). Moreover, they must inform the customer as to (Art. 24 (3) lit. a)
 - how comprehensive their market analyses are,
 - whether or not the suitability of the recommended insurance products are regularly assessed, and
 - whether or not their advice is given “independently”.

► **“Independent” advice of insurance PRIIPS**

- Insurance intermediaries or insurance undertakings may only call themselves independent if they (Art. 24 (5)):
- forego “fees, commissions or any monetary benefits” from third parties;
 - “assess a sufficiently large number” of insurance products available on the market; and
 - are not limited to insurance products from providers to whom they are closely linked.

► Prohibition of tying practices

Insurances which are sold as packages together with another product exclusively (“tying practices”) are prohibited (Art. 21 (1)).

► National provisions protecting the “general good”

National provisions protecting the “general good” may go beyond the requirements stipulated by the Directive. The associated administrative burden must however be proportionate to consumer protection. Member States shall report such national provisions to EIOPA, which publishes this information in a concise form (Art. 9 (2) and (3)).

► Cross-border intermediary activities

– An intermediary taking their business activities to another Member State “for the first time”, must communicate this to the competent authority of their home Member State (Art. 5 (1), Art. 6 (1)). If the competent authority has any concerns regarding the organisational structure or the financial situation of the intermediary, it may prohibit the activities (Art. 6 (2)).

– If the competent authority of the host Member State holds that an intermediary infringes “obligations set out in the Directive”, it must communicate this to the competent authority of the home Member State, which shall take the “appropriate measures”. If it fails to do so, the competent authority of the host Member State must prohibit the mediation activities on its territory. (Art. 7 (3))

Statement on Subsidiarity by the Commission

According to the Commission, national provisions for insurance mediation are “far less efficient” and contribute to the fragmentation of markets, regulatory arbitrage and distortion of competition.

Policy Context

In 2002, the Directive on insurance mediation (IMD I, 2002/92/EC) was adopted and Member States were obliged to implement it by 2005. In October 2011, the Commission proposed new provisions on the distribution of financial products within the framework of the revision of the MiFID Directive [MiFID II, COM (2011) 656, see [cepPolicyBrief](#)]. The consumer protection provisions of the IMD-2-Directive reflect the provided provisions. In its position on the MiFID-II Directive, the European Parliament called for the rules on investor protection for bank advisors to be applied to insurance intermediaries and insurance companies on a one-to-one basis (see [cepMonitor](#), *in German only*). Along with the IMD-II-Directive, the Commission submitted a Directive on information rules for providers of investment products (PRIIPS) for small investors [COM(2012) 352, see [cepPolicyBrief](#)]. It regulates that when selling PRIIPS – including insurance PRIIPS – a customer must be provided with a basic information document containing key information on a product.

Legislative Procedure

03 July 2012	Adoption by the Commission
Open	Adoption by the European Parliament and the Council, publication in the Official Journal of the European Union, entry into force

Options for Influencing the Political Process

Directorate General:	DG Internal Market
Committee at the European Parliament:	Economic and Monetary Affairs, Rapporteur Werner Langen (PPE-Group, DE)
German Federal Ministries:	Economics and Technology (BMW) (leading)
Committee at the German Bundestag:	Economics (leading); Legal Affairs; Finances; Consumer Protection
Decision mode in the Council:	Qualified majority (approval by a majority of Member States and at least 255 out of 345 votes; Germany: 29 votes)

Formalities

Legal competence:	Art. 53 (1) TFEU and Art. 62 TFEU (Take-up and pursuit of activities as self-employed persons)
Form of legislative competence:	Shared competence (Art. 4 (2) TFEU)
Legislative procedure:	Art. 294 TFEU (ordinary legislative procedure)

ASSESSMENT

Economic Impact Assessment

Extending the provisions on insurance mediation to cover the direct sales of insurance companies is just as appropriate as the equal treatment of professional requirements as to for intermediaries and insurance company employees. For irrespective of the distribution channel, this means that all the requirements for insurance mediation are consistent. This **can help to prevent distortion of competition and regulatory arbitrage**.

Not convincing is the idea that in future Member States may allow not only insurance companies but also intermediaries to assess for themselves whether or not the intermediaries linked to them comply with the professional requirements. Although this removes the previous distortion of competition between insurance companies and intermediaries, that required only the latter to provide external proof of the suitability of their intermediaries and normally by means of an assessment that was subject to a fee, there is, however, a general

risk that in-house examinations are not sufficiently objective. Therefore, **neither insurance companies nor intermediaries should be granted the right to assess themselves, rather than through external examiners, the professional qualifications of their own intermediaries.**

Including claim handlers and loss adjusters into the scope of the Directive is inappropriate, as they are not directly involved in the mediation of insurance contracts.

The new regulations for annex intermediaries are ambiguous; this creates considerable legal uncertainty. On the one hand, the Commission wishes to subject annex intermediaries to the Directive. This affects travel agencies in particular and car rental services as annex intermediaries of travel insurances and car insurances. On the other hand, insurances which cover “breakdown, loss or damage of the goods” delivered by the annex intermediary, are to be excluded from the Directive. The term “goods” also includes travel (services) and cars (goods).

Moreover, the different treatment of different annex intermediaries creates the very distortion of competition the Commission wishes to prevent. The fact that policy holders require for the mediation of travel insurances higher protection than when mediating tyre insurance, for instance, is not convincing. Consistent rules are required here.

The fact that intermediaries must disclose the type of remuneration they receive is to be welcomed. Thus the policy holder is informed as to the different remuneration models and is in the position to recognise and assess conflicts of interest. This **contributes to sound purchase decisions.**

The obligation to disclose remuneration amounts will not prevent incorrect advice and creates further distortion of competition. For first of all, the amount of the commission says nothing about whether or not a product is suitable for a customer. Secondly, the intermediaries' remuneration models can differ, which makes it difficult if not impossible to compare commission amounts. Thirdly, a distortion of competition is to be feared: variable remunerations which direct insurance companies pay to employees in addition to their salaries are far less than the commission paid to intermediaries.

Prohibiting commission for “independent” insurance intermediaries mediating insurance investment products is wrong. This is supposed to reveal conflicts of interests; however, such conflicts of interest cannot be attributed to a product group per se. Hence, it is not consistent that the prohibition applies to insurance investment products only: an “independent” insurance intermediary must go without a commission when they recommend an insurance investment product as part of their sales advice, but they may accept a commission when advising on a non-insurance investment product. This **creates neither practical mediation solutions nor does it produce intermediaries who are really independent.**

Moreover, the prohibition on commission constitutes a subtle promotion of the fee-based counselling business. It is the customers' preferences, however, and not those of the Commission that should decide to which extent the mediation costs of insurances are to be financed in future by commissions or fees.

Moreover, fee-based mediation is not necessarily of a higher quality than commission-based mediation. For if the general unwillingness we see today to pay for fee-based mediation continues, intermediaries working on the basis of fees will not be able to offer high-quality advice in a cost-effective manner.

A general prohibition of tying transactions is not appropriate. Tying insurances to other products is only problematic if a company has unassailable market power on the insurance market or the market of the product concerned; this could then be viewed as an attempt to expand their power to the other market. Such market dominance is nowhere to be seen, at least not in the insurance market. Insurance companies not wishing to operate any tying transactions normally have sufficient substitution options available.

Legal Assessment

Competency

The Directive is correctly based on Art. 53 (1) and Art. 62 TFEU (self-employed).

Subsidiarity

Unproblematic.

Proportionality

Depends on the shaping of the delegated legal act.

Compatibility with EU Law

Unproblematic.

Conclusion

Extending the provisions on insurance mediation to include the direct sales of insurance companies can prevent distortion of competition and regulatory arbitrage. Neither insurance companies nor intermediaries should be granted the right to assess professional qualifications for themselves rather than by external examiners. The new regulations for annex intermediaries are ambiguous; this creates considerable legal uncertainty. The different treatment of annex intermediaries creates the very distortion of competition that the Commission wishes to prevent. The fact that the intermediary must disclose the type of remuneration they receive contributes to sound purchase decisions. The obligation to disclose the remuneration amount, however, will not prevent the provision of incorrect advice and creates new distortion of competition. Prohibiting commission for “independent” insurance intermediaries who distribute insurance investment products neither creates any practical mediation solutions nor does it produce intermediaries who are really independent.