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NOTE

From: Presidency
To: Permanent Representatives Committee

Subject: Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF
THE COUNCIL on insurance distribution (recast)
- Preparation of a general approach

I. INTRODUCTION

1. On 5 July 2012, the Commission presented a proposal for a Directive of the European Parliament and of the Council on insurance mediation (IMD).
2. The European Economic and Social Committee delivered its opinion on 13 December 2012. The ECON Committee of the European Parliament adopted its report on 22 January 2014, and on 26 February 2014 the EP Plenary adopted the amendments proposed by the Committee (partial vote at 1st reading).
3. The proposal has been examined by the Working Party on Financial Services in 10 meetings during the Cyprus, Hellenic and Italian Presidencies, and six compromise proposals have been prepared with a view to reaching an agreement on the Council's general approach.

II. STATE OF PLAY

4. Following deliberations in the Working Party of 21 October 2014, the Presidency has revised its latest compromise text with a view to reaching an agreement on a general approach.
5. The key issues discussed during the Working Party meetings included the scope of the Directive (in particular aspects concerning ancillary insurance intermediaries), respective competencies of home and host Member States' national authorities in case of cross-border activity and the rules covering the remuneration of the activity of insurance distribution. The compromise solutions on these issues are widely supported by the Member States.
6. However, some isolated concerns still persist, in particular in relation to conditions under which insurance distributors can accept fees or commissions from a third party, when distributing insurance-based investment products. Taking into account the different practices in place in the Member States, the approach taken by the Presidency in Article 24 of the current compromise allows intermediaries to accept such fees and commissions on condition that those do not have a detrimental impact on the quality of the services to the customer, while keeping complete alignment with MIFID on transparency of costs. At the same time, in line with the minimum harmonisation nature of the Directive, Member States are allowed to adopt stricter provisions at national level.
7. While holding opposite views on the issue, the UK and Spain, both have raised concerns on the abovementioned condition:
 - the UK favours full alignment with MiFID, namely, such fees and commissions should be allowed only if designed to enhance the quality of the relevant services to the customer;
 - Spain, however, would like to depart from the MiFID approach, even further than the Presidency compromise, by eliminating such condition altogether.

8. While some other Member States have signalled the issue of fees and commissions as being of importance to them, they are still in a position to support the general approach proposed by the Presidency. Following in-depth debates in the Working Party, the Presidency is of the opinion that current compromise text reflects the best achievable equilibrium.
9. In addition, Austria considers that the text of IMD II should sufficiently reflect the possibility for Member States to set out a specific regime for insurance intermediaries which provide advice on the basis of a fair and personal analysis. The Presidency is satisfied that, to address this need for clarification, recital 35 could be supplemented without altering the balance reached in the provisions.¹
10. The Presidency trusts that the overall revised compromise in document 14791/14, with a possible amendment to recital 35, as set out in point 9 above and the Annex, represents a balanced approach and could be supported by a qualified majority of delegations.

¹ See Annex.

III. CONCLUSION

11. Against this background the Presidency recommends that the Permanent Representatives Committee:

- agree on the general approach with regard to the proposed Directive, as set out in document ST 14791/14 ECOFIN 985 CODEC 2114 SURE 37 EF 283;
- invite the Presidency to pursue negotiations with the European Parliament on the basis of that general approach with a view to reaching an agreement at the first reading.

Amendment to recital 35:

"(35) It is essential for the customer to know whether he/she is dealing with an intermediary who gives advice on the basis of a fair and personal analysis. In order to assess whether the number of contracts and providers considered by the intermediary is sufficiently large to cater for a fair and personal analysis, appropriate consideration should be given, *inter alia*, to the needs of the customer, the number of providers in the market, the market share of those providers, the number of relevant insurance products available from each provider, and the features of those products. This Directive should not prevent Member States from imposing that an insurance intermediary who wishes to give advice on the basis of a fair and personal analysis on an insurance contract is required to give such an advice on all the insurance contracts that it distributes."
