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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive (EU) 2016/97 as regards the date of application of Member States' transposition measures. - Outcome of the European Parliament's first reading, (Brussels, 28 February to 1 March 2018)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

In this context, the rapporteur, Werner LANGEN (EPP, DE) presented one amendment to the proposal for a Directive, on behalf of the Committee on Economic and Monetary Affairs. This amendment had been agreed during the informal contacts referred to above.

¹ OJ C 145, 30.6.2007, p.5

II. VOTE

When it voted on 1 March 2018, the plenary adopted the amendment (amendment 1) to the proposal for a Directive by means of a single vote. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Insurance distribution: date of application of Member States' transposition measures *I**

European Parliament legislative resolution of 1 March 2018 on the proposal for a directive of the European Parliament and of the Council amending Directive (EU) 2016/97 as regards the date of application of Member States' transposition measures (COM(2017)0792 – C8-0449/2017 – 2017/0350(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0792),
 - having regard to Article 294(2) and Articles 53(1) and 62 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0449/2017),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 14 February 2018 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A8-0024/2018),
- A. Whereas for reasons of urgency it is justified to proceed to the vote before the expiry of the deadline of eight weeks laid down in Article 6 of Protocol No 2 on the application of the principles of subsidiarity and proportionality;
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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Position of the European Parliament adopted at first reading on 1 March 2018 with a view to the adoption of Directive (EU) 2018/... of the European Parliament and of the Council amending Directive (EU) 2016/97 as regards the date of application of Member States' transposition measures

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 53(1) and Article 62 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure³,

³ Position of the European Parliament of 1 March 2018.

Whereas:

- (1) Directive (EU) 2016/97 of the European Parliament and of the Council⁴ harmonises national provisions concerning the distribution of insurance and reinsurance products and insurance-based investment products by insurance intermediaries and insurance companies, and their employees, and by ancillary insurance intermediaries in the Union.
- (2) Pursuant to Article 42(1) of Directive (EU) 2016/97, Member States are to bring the laws, regulations and administrative provisions necessary to comply with that Directive into force by 23 February 2018.
- (3) On 21 September 2017, the Commission adopted Delegated Regulations (EU) 2017/2358⁵ and (EU) 2017/2359⁶, supplementing Directive (EU) 2016/97.
- (4) In its decisions not to raise any objections to Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359, the European Parliament invited the Commission to adopt a legislative proposal setting 1 October 2018, rather than 23 February 2018, as the date of application of the laws, regulations and administrative provisions necessary to comply with Directive (EU) 2016/97. The European Parliament substantiated that request by highlighting the need to give insurance undertakings and insurance distributors more time to better prepare for a correct and effective implementation of Directive (EU) 2016/97 and to implement the necessary technical and organisational changes to comply with Delegated Regulations (EU) 2017/2358 and (EU) 2017/2359.
- (5) Directive (EU) 2016/97 should therefore be amended accordingly.

⁴ Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (OJ L 26, 2.2.2016, p. 19).

⁵ Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to product oversight and governance requirements for insurance undertakings and insurance distributors (OJ L 341, 20.12.2017, p. 1).

⁶ Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing Directive (EU) 2016/97 of the European Parliament and of the Council with regard to conduct of business rules applicable to the distribution of the insurance-based investment products (OJ L 341, 20.12.2017, p. 8).

- (6) *Given the very short period of time left before the national laws, regulations and administrative provisions necessary to comply with Directive (EU) 2016/97 are to be brought into force, and in order to ensure legal certainty and avoid potential market disruption, this Directive should enter into force as a matter of urgency and should apply, with retroactive effect, from 23 February 2018.*
- (7) *Consequently, it is also justified to apply in this case the exception for urgent cases provided for in Article 4 of Protocol No 1 on the role of national Parliaments in the European Union, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union,*

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Directive (EU) 2016/97 is amended as follows:

(1) in Article 42(1), the first subparagraph is replaced by the following subparagraphs:

“1. By **1 July 2018**, Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive. They shall immediately inform the Commission thereof.

Member States shall apply those measures from 1 October 2018 ***at the latest***.”;

(2) in Article 44, the first paragraph is replaced by the following:

"Directive 2002/92/EC, as amended by the Directives listed in Part A of Annex II to this Directive, is repealed with effect from 1 October 2018, without prejudice to the obligations of the Member States relating to the time limits for the transposition into national law of the Directives set out in Part B of Annex II to this Directive."

Article 2

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

It shall apply, with retroactive effect, from 23 February 2018.

Article 3

This Directive is addressed to the Member States.

Done at ...

For the European Parliament
The President

For the Council
The President