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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*
= *Statements*

DECLARATION BY FRANCE

France would like to thank the Presidency's efforts to reach an agreement on the proposal for a directive on insurance distribution.

Despite the significant improvements included in the compromise text, France regrets that the level of consumer protection provided by this new text is not raised sufficiently :

- (i) the scope is not large enough, as the exclusions for ancillary intermediaries remain too wide ;
- (ii) the conduct business rules have maintained the provision of advice as an option, even for complex investment products, whereas mandatory advice on all insurance products would be more adapted.

Besides, concerning information disclosed to customers (article 24.7c), France considers that the obligations go unnecessarily further than PRIIPs and MIFID rules, and are not adapted to fit the insurance distribution specificities, especially as regards the disclosure of the cost of advice which is irrelevant.

Therefore France expects that these issues can be revisited during the negotiations between the European Parliament, the Commission and the Council.

DECLARATION BY HUNGARY

Hungary generally supports the compromise text, particularly including the rules relating the insurance-based investment products. Generally Hungary does not oppose the additional rules of information requirements relating to ancillary distribution which is exempted from the application of the Directive [Art. 1(2b)].

It has to be noted though that the proposal contains rules on an issue which is out of the scope of the Directive and is generally resolved by Art. 15c and by the Solvency 2 Directive [Art. 183–185]. An ancillary intermediary is exempted from the application of the Directive because its main activity is other than insurance, and it makes available standard, typified, basic insurances covers for the safety and comfort of the customer. These insurance covers cannot be tailor-made and cannot suit special demands. Therefore para (2b) in Article 1 raises concerns of legal inconsistency and will be counterproductive in practice.

- If the ancillary intermediaries (and its activities) are exempted from the Directive then it cannot contain rules regarding those (legal inconsistency, especially in Article 1 point 2b.b).
- As the ancillary insurance is standard, typified, basic insurance with bound conditions then it cannot be a tailor-made insurance, suiting special demands (contradiction in the rules).

In case of any mediated insurance policies the insurer is always responsible in general that the information has to be made available to the customer prior to the conclusion of the contract, and we believe that the information provided to the customer is the key element. We believe that the necessary corrections can be made as part of the further negotiations with the European Parliament, to fix the above concerns.

DECLARATION BY LUXEMBOURG

Luxembourg understands the new Article 7c as an anti-abuse provision allowing Member States to take appropriate measures only in case such measures are needed to counter circumvention of national legislation which is not harmonized in the proposed Directive.

Luxembourg considers that such a provision is not the most appropriate solution in the context of a harmonizing legislation and would have welcomed further harmonization of national laws instead.

In any case, the application by Member States of this provision has to be in line with the Treaties and the applicable case law of the Court of Justice of the European Union. The applicable legislation should be justified by legitimate general interest and the measures taken by national competent authorities should be proportionate, objectively necessary and apply in non-discriminatory manner. Those measures should not be an obstacle to the freedom to provide services and the freedom of establishment, or an access barrier for cross-border activity.

DECLARATION BY THE UK

The UK supports alignment of IMD 2 and MiFID 2 so that a level playing field exists and there is consistent protection of consumers buying investment products. In particular, the wording for Article 24(10) in the 6th Presidency Compromise of the Insurance Distribution Directive will weaken the protection given to consumers buying insurance based-investment products relative to those buying other investment products. Protection for consumers against conflicts of interests arising from inducements is important and should be consistent across investment products. As the provision on inducements is not consistent with MiFID 2 this will cause difficulties for Member States when they try and implement these Directives together. We believe that this will need to be further considered at the trilogue stage.
