



THE EUROPEAN TRAVEL AGENTS'
AND TOUR OPERATORS' ASSOCIATIONS

Ref. BC14-026/462

Per E-mail

**Mr Boris ZGOMBA, President
The Members,
The delegates of the Tour Operator Committee
The delegates of the Legal Committee**

Brussels, March 12th 2014

Dear Members,

Re: Insurance mediation directive: Results of the plenary vote in the European Parliament

Dear Members,

On the 25th of February, the European Parliament adopted the partial first reading of the Insurance Mediation Directive. Please be informed that this text has been partially voted in the plenary, meaning that it will now come back to the Economic and Monetary Affairs (ECON) Committee, in order to start the negotiations with the Council.

Please find hereafter the main elements of the report and their potential consequences for intermediaries selling travel insurance on an ancillary basis, **at this stage of the procedure.**

You will find the consolidated text as adopted by the European Parliament [here](#).

Scope: Travel Insurances sold by travel agents are included within the scope of the IMD2

Travel insurances ancillary to the sale of travel services sold by travel agents are included within the scope of the Directive despite various efforts to exclude such a product¹.

¹ The ECON report was referring to certain services to be excluded. However the confusing drafting, together with a too low financial threshold, was de facto including travel insurances. The difference with the last text approved by the Parliament is not mentioning the exclusion of services at all.

You will find hereafter the text of Article 1 (2) as adopted by the European Parliament:

Article 1 (2)

2. This Directive shall not apply to persons providing mediation services for insurance contracts if all the following conditions are met:

- (a) the insurance contract only requires knowledge of the insurance cover that is provided;
- (b) the insurance contract is not a life assurance contract;
- (c) the insurance contract does not cover any liability risks;
- (d) the principal professional activity of the person is other than insurance mediation.
- (e) the insurance is complementary to the supply of goods by any provider, where such insurance covers the risk of breakdown, loss of or damage to the goods supplied by that provider;**
- (f) the amount of the annual premium for the insurance contract, when pro-rated to produce an annual amount, does not exceed EUR 600.**

As you can see from the parts in bold, Travel Agents will not fulfil the conditions set up in parts (e) and (f):

- Part (e) does not cover insurances sold ancillary to a service anymore
- Part (f) explains that the maximum amount of the insurance has to be under 600 €. For temporary insurance (such as most of the travel insurances sold by Travel Agents), the amount must be prorated to produce an annual amount. As a result, most of the Travel Agent

Legal outcomes of the inclusion: Simplified or Full regime.

Travel agents can be under two regimes:

- The full regime: all the provisions of the text shall apply (provided in Article 3 of the directive) and
- A lighter procedure for intermediaries mediating insurance on an ancillary basis (provided in Art.4).

Simplified procedure: the general regime for Travel Agents

In order to only have to comply with the simplified procedure obligations, Travel agents should fulfil the conditions set up in Article 4 Paragraph 1:

Article 4 paragraph 1:

1. The registration requirements in Article 3 shall not apply to an insurance intermediary which conducts insurance mediation on an ancillary basis, provided that its activities meet all the following conditions:

- (a) the principal professional activity of the insurance intermediary is other than insurance mediation;
- (b) the insurance intermediary only mediates certain insurance products that are complementary to a product or service and clearly identifies them in the declaration;
- (c) the insurance products concerned do not cover life assurance or liability risks, unless that cover complements the product or service which the intermediary provides as his principal professional activity;
- (ca) the intermediary works under the responsibility of a registered intermediary.

However article 4 also allows Member States, when implementing the directive, to put certain activities under the full registration system of Article 3 (such as the mediation of travel insurance).

Obligations under the light regime:

Under the light regime, intermediaries will have to comply with the following provision:

Declaration (article 4):

Intermediaries would have to declare to the competent authority: its identity, address and professional activities. The administration shall acknowledge the receipt “**without delay**”.

Demonstration of the appropriate level of knowledge and ability (article 8):

Insurance intermediaries will have to demonstrate they have a satisfying knowledge of the products they sell. The general regime foresees a requirement of 200h of training within 5 years. Those requirements should not apply to every natural person but at least to a reasonable number of persons in the management structure.

A more proportionate level of training can be implemented by Members States, especially when Insurance mediation is not their principal activity.

Professional indemnity insurance (article 8):

Insurance intermediaries would be required to hold a professional indemnity insurance (or some other comparable guarantee) covering the whole territory of the Union against liability arising from professional negligence, for at least EUR 1 250 000 applying to each claim and in aggregate EUR 1 850 000 per year for all claims.

Such a requirement will not apply if guarantees are already provided by an insurance undertaking.

Payment Security (article 8):

Intermediaries shall be able to transfer the premium to the insurance undertaking or to transfer the amount of claim or to return the premium to be insured. Member states can implement such requirements adopting one or more of the following measures provided in article 8 (4):

- Monies paid by the customer to the intermediary are treated as having been paid to the undertaking.
- Proof of financial capacity: 4% of the annual turnover, subject to a minimum of 18750 €
- Requirement that customers' monies shall be transferred via strictly segregated customer accounts and that these accounts shall not be used to reimburse other creditors in the event of bankruptcy
- the setup of a guarantee fund

Full regime:

As explained earlier, Member States can decide, when implementing this directive, to choose to apply the whole provisions described in this directive. In addition of the above mentioned obligations, information and additional registration requirements would have to be put in place.

Registration (article 3):

Whereas the article 4 sets up a declaration procedure, intermediaries complying with article 3 will have to register to their national authority. The member state shall give its agreements after assessing the intermediary fulfils all the requirements set up in article 8 (appropriate level of knowledge and ability, professional indemnity insurance, security of payment).

Information requirements (article16):

According to article 16, Intermediaries registered under the full regime would have to disclose additional information to consumers when contracting:

- its identity and address and that it is an insurance intermediary;
- whether or not it provides any type of advice about the insurance products sold;
- the procedures referred to in Article 12 allowing customers and other interested parties to register complaints about insurance and reinsurance intermediaries and about the out-of-court complaint and redress procedures referred to in Article 13;
- the register in which it has been included and the means for verifying that it has been registered; and
- whether the intermediary is representing the customer or is acting for and on behalf of the insurance
- prior to the conclusion of any insurance contract, an insurance undertaking shall make the following disclosures to customers:
 - its identity and address and that it is an insurance undertaking;
 - whether or not it provides any type of advice about the insurance products sold;
 - the procedures referred to in Article 12 allowing customers and other interested parties to register complaints about insurance undertakings and about the out-of-court complaint and redress procedures referred to in Article 13.

Moreover, according to article 17 of the directive, an insurance intermediary shall provide the customer with at least the following information related to eventual conflict of interest:

- whether the intermediary or the insurance undertaking has a holding representing more than 10% of the voting rights or of the capital in their respective companies;
- In relation to the contract proposed, whether:
 - it gives advice on the basis of a fair and personal analysis, or
 - it is under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. In that case, it shall provide the names of those insurance undertakings, or
 - it is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice on the basis of a fair and personal analysis. In that case, it shall provide the names of the insurance undertakings with which it may and does conduct business;
- Information on its relation with the undertaking,
- The way the undertaking and the intermediary are remunerated (sources and method of remuneration).

Should you have any question, please do not hesitate to contact the secretariat.

With kind regards,

Benoît Chantoin
ECTAA – Legal Advisor

