



**Leaseurope observations on and amendments to the
European Commission's proposal for a Directive of the
European Parliament and of the Council on Insurance
Mediation (COM (2012) 360 final)**

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About Leaseurope

As a Federation, Leaseurope brings together 44 associations throughout Europe representing either the leasing, long term and/or short term automotive rental industries. The scope of products covered by Leaseurope's members ranges from hire purchase and finance leases to operating leases of all asset types (automotive, equipment and real estate) and also includes the rental of cars, vans and trucks. It is estimated that Leaseurope represents approximately 92% of the European leasing market.

The Federation's mission is to represent the European leasing and automotive rental industry, ensuring the sector's voice is heard by European and international policy makers.

For further information please visit www.leaseurope.org

GENERAL REMARKS

Leaseurope generally welcomes the proposal for a revised Insurance Mediation Directive. The need to address the shortcomings evident in the European insurance mediation market is of vital importance and the revision of the Insurance Mediation Directive serves to do this.

First and foremost, Leaseurope would like to welcome the fact **that a more proportionate approach has been applied** as a result of the revision. The concept of the ancillary intermediary has been recognized and afforded recognition in the said proposal, in terms of providing for a simplified declaration procedure and partial applicability in terms of information disclosures.

However, the presence of delegated acts throughout the proposal is counter intuitive. Delegated acts according to *Article 290* of the Treaty on the Functioning of the European Union are intended to deal with non-essential aspects of legislative texts. Nonetheless, delegated acts apportioned throughout this proposal for a legislative instrument appear to be allocated to aspects that are clearly essential to the very essence of the legislative act, for example professional and organizational requirements.

SPECIFIC REMARKS

Chapter I - Scope and definitions

Article 2 - Definitions

Tied-intermediary

Article 2(8) presents a definition for tied insurance intermediaries. Leaseurope has observed that there appears to be a lack of clarity surrounding this definition. It clearly states that a tied-intermediary is a natural person that acts for/on behalf of and under the full responsibility of one or more insurance undertakings/intermediaries. However, it is **unclear how this would work in the case where an intermediary is tied to more than one undertaking/intermediary**.

Chapter II – Registration requirements

Article 3 – Registration

Leaseurope would like to express its support for *Article 3* which deals exclusively with registration of full time insurance intermediaries, and also welcomes the fact that it has remained largely unchanged and reflects the registration procedures prescribed in IMD I. Leaseurope's membership can obtain an exemption from these prescriptive registration requirements by satisfying the ancillary intermediary definition in *Article 4(1)*. This implies that those who satisfy the ancillary definition will be subject to a declaration type procedure, which is a much lighter form of registration.

Chapter III – Simplified registration procedure – Declaration of activities

Article 4 – Declaration procedure for providing ancillary insurance mediation; professional management of claims or loss assessment services

Declaration procedure

Leaseurope welcomes the introduction of a simplified registration procedure, namely the declaration procedure for ancillary insurance intermediaries. This regime represents a proportional approach for those intermediaries that distribute insurance products akin to their main professional activity. It also represents acknowledgement of the various distribution channels that exist.

Ancillary intermediary definition

Leaseurope has some reservations about the final criterion in *Article 4(1)(c)* to be fulfilled to gain ancillary intermediary status, **as it contains some ambiguous language**. This ambiguity could lead to misinterpretations at Member State level, thus preventing ancillary intermediaries from fulfilling the definition intended for them, thereby causing some intermediaries to withdraw from offering mediation, which would ultimately be to the detriment of the consumer. **Leaseurope would like the phrase ‘main cover’ to be changed to ‘main product or service offered by the intermediary’**, as there is no definition offered in the said proposal for ‘main cover’. As such, this concept is open to multiple interpretations which will erode consistency and legal certainty, which is exactly what the proposal seeks to address. This slight change of wording would offer less ambiguity and ensure coherent application.

Exemption of information requirements

Leaseurope would like to express its support for the allocation of only certain information disclosure provisions to ancillary intermediaries.

To apply more rigorous conditions may cause ancillary providers to leave the market. This would inevitably be to the detriment of the consumer, who would no longer avail of the one-stop-shop convenience of purchasing their insurance at the same time as taking out their lease or rental contract.

Chapter V –Other organizational requirements

Article 8 – Professional and organizational requirements

Professional requirements

This provision deals with the professional attributes that all intermediaries should possess. *Article 8(1)* is strong in allocating the power to the respective Member States to determine the appropriate knowledge and ability that intermediaries should be in possession of. However, Leaseurope welcomes the fact that the European Commission has added a degree of proportionality to this provision by stipulating that the knowledge and ability required is to be relevant to the complexity of the insurance products being mediated. This is very positive news for the leasing and automotive rental industries, as their insurance products generally tend to be of a more simple form than for example life assurance and investment insurance products, which this proposal for a Directive seeks to also regulate.

The second subparagraph of *Article 8(1)* continues to state that if the Member State adjusts the professional requirements for those whose main activity is not insurance mediation, then the insurance undertaking underwriting the policy must assume full responsibility for the intermediary’s actions. This provision is rather worrisome as it implies that for professional requirements to be adjusted or lessened there is a condition of another intermediary/undertaking assuming responsibility. This paragraph does not mention the complexity of the product but rather creates another line of bureaucracy.

Indemnity insurance thresholds

The indemnity insurance thresholds set out in *Article 8(3)* represent a significant increase, and may not always be possible to comply with, in particular for insurance intermediaries working in SME leasing and automotive rental businesses that are not under the control of an insurance/reinsurance company. Leaseurope therefore suggests that the indemnity insurance requirement take on a proportional approach for non-tied intermediaries, in that **the indemnity should be proportional to**

the amount of mediation they conduct, the fact that mediation may not be their core business activity and also taking into consideration the complexity of the products that they mediate.

Delegated acts

Leaseurope has acknowledged that *Article 8(8)* presents some very worrying overtones. This provision is clearly contradictory to the powers that are apparently vested in the Member States in *Article 8(1)*. *Article 8(8)* clearly delegates powers to the European Commission to draft and adopt delegated acts specifying the notion of knowledge and ability that an intermediary should possess.

Leaseurope is against the presence of delegated acts for a number of reasons. Firstly, it clearly contradicts *Article 8(1)* where the power is allocated to the Member States regarding setting out professional requirements. Secondly, the purpose of delegated acts is to deal with non-essential aspects in accordance with *Article 290* of the Treaty on the Functioning of the European Union, however, professional requirements are an essential provision as they are at the very essence of the intermediary's entitlement to carry out his work. Thirdly, this proposal for a Directive is a minimum harmonization instrument and delegated acts employ a standard of high level principles that represent a maximum standard.

Delegated acts rarely involve stakeholder consultation and usually set a very rigid standard that does not take into account the specificities of particular sectors.

Leaseurope would like to seek clarification of this double and contradictory allotment of competences, and also seek knowledge of the circumstances in which this can occur. Would the European Commission only be empowered to step in and adopt delegated acts if the Member State fails to determine the adequate level of knowledge and ability? That would lead to a very unfair consequence whereby the failure to properly implement in a single Member State would be corrected by a maximum harmonization instrument applying across all of the Member States. Hence Leaseurope as a first consideration would like the delegated acts stipulated in *Article 8(8)* to be deleted on grounds of subsidiarity.

If deletion of *Article 8(8)* is not possible, then a carefully considered trigger mechanism or circumstantial scenario should be added. Additionally, the three criteria for which delegated acts can be drafted should include the wording "*relative to the complexity of the product being mediated*" as there is a chance that the level prescribed could be too high level as the proposed regulation aims to regulate all intermediaries ranging from full time investment and life insurance intermediaries to ancillary providers of relatively simpler products.

Article 13 – Out-of-court redress

Consistency with EU legislation

This provision envisions that Member States shall set up redress procedures for out-of-court settlement of disputes for not only intermediaries and customers (as was provided for in IMD I) but also for disputes arising between insurance undertakings and customers. Leaseurope feels that this provision should be streamlined with the recent initiative at European level for an Alternative Dispute Resolution Directive (ADR) ([accessible here](#)). The ADR mechanisms that are to be set up by Member States as stated in the ADR Directive should also deal with complaints lodged against insurance undertakings and intermediaries. As having too many redress mechanisms is a waste of resources when the same principles can be applied to all.

Chapter VI – Information requirements and conduct of business rules

Article 15 – General principle

Leaseurope generally welcomes the new insertion that Member States shall be required to monitor whether intermediaries act in the best interests of their clients as this is always the aim of the intermediary. However, some ambiguity surrounds the wording and Leaseurope will call for further clarification on how exactly '*best interest of the customers*' is to be interpreted.

Article 17 – Conflicts of interest and transparency

Leaseurope welcomes the proportional approach inherent for intermediaries that meet the ancillary definition stipulated in *Article 4(1)*, in that they are not subject to the provisions stated in *Article 17*.

Nonetheless it is important to note that mandatory disclosures are often burdensome for small enterprises that lack the relevant resources to compile such information in preparation for disclosure and a portion of this required information is not generic (remuneration structures depending on the insurance product in question), hence it must be prepared on a case by case basis. Additionally this information being disclosed can lead to the further confusion of the customer and the question arises as to whether all this information being disclosed really adds to the overall protection of the consumer.

In relation to the disclosure of remuneration structures stipulated in *Article 17(1)(d)*, Leaseurope feels this will be very difficult to implement in practice in particular for the automotive rental industry which sell very short term insurance products. In cases where the precise amount of remuneration for the transaction cannot be issued, a calculation structure must be offered. This is in principle a redundant exercise as the products distributed are of very low value and the ease of having access to the product clearly outweighs any consideration of remuneration structures. So in essence this disclosure is obsolete and is of no legitimate interest to the customer.

An indiscretion within this provision has been noted in that it grants non-life insurance intermediaries a five year transitional period where disclosure of remuneration structures is not mandatory, in comparison with life insurance intermediaries who must disclose remuneration structures immediately. This is apparently a proportional approach. However, there is a further mandatory requirement that non-life intermediaries (during the five year transitional period) must inform their customer about the fact that they are entitled to request disclosure of remuneration structures, and then if the customer opts for disclosure it must be disclosed. Hence, this approach erodes any proportionality. **Thus, the procedure is practically identical for both life and non-life insurance intermediaries.**

Article 17(5) provides that the European Commission will be empowered to adopt delegated acts to specify attributes for disclosure such as the appropriate criteria for determining how remuneration of the intermediary shall be disclosed to the customer, the appropriate criteria for determining the basis of calculation and the steps to be taken for disclosing such remuneration structures/figures. **This delegation of power is clearly disproportionate to the fundamental function of delegated acts as the specifics for remuneration disclosure are essential aspects central to the conclusion of an insurance contract.** The high level principles that result through delegated acts yet again generally fail to account for the specificities of the various sectors through which intermediaries operate. Another major reservation that Leaseurope has in relation to delegated acts is their total failure to involve stakeholder consultation. Leaseurope believes that these delegated acts assume a maximum standard despite the minimum harmonization nature of the said legislative instrument.

Article 19 – Information exemptions and flexibility clause

Leaseurope in theory agrees with the way *Article 19(1)* presents itself in that there is an information disclosure exception for 'large risks' and when professional customers (see Annex) are seeking insurance cover by intermediaries.

The problem arises in relation to the Professional Customers listed in the Annex to the proposal. The Annex fails to list SMEs as Professional Customers. This factor could be very detrimental to leasing companies as the majority of their customers are SMEs. Failure to consider SMEs as Professional Customers could result in leasing companies withdrawing insurance mediation services from their scope of activity and this would be very disparaging for all involved. Thus, **Leaseurope would like to strongly advocate for SMEs to be added to the list of Professional Customers.**

Chapter VIII- Sanctions and measures

Article 26 – Administrative sanctions and breaches

Leaseurope believes the given the nature of the products that leasing and car rental companies mediate that the sanctions for breaches are too onerous. The proposal should contain more explicit wording which refers to sanctions being proportionate in relation to the 'complexity of the products being mediated'.

Article 33 – Delegated acts

Leaseurope would like to call for this empowerment to be annulled for reasons stated throughout this document (see note on *Article 8* and *Article 17*).

