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NOTE

from:	Presidency
to:	Working Party on Tax Questions – Indirect Taxation (VAT)
Subject:	Proposals for a Council Directive and Regulation as regards the VAT treatment of insurance and financial services - General comments

Delegations will find below comments by the Presidency on the changes to the abovementioned proposals introduced by notes 12977/10 FISC 89 and 12988/10 FISC 90.

The comments only provide an explanation with respect to articles whose content has been modified.

Separate documents with comments have been produced on:

- Treatment of factoring for VAT purposes (doc. 13578/10 FISC 93);
- Treatment of outsourcing for VAT purposes (doc. 13579/10 FISC 94).

Article 135 paragraph 1, point (a): insurance, reinsurance and transfer of insurance and reinsurance contracts

Directive text

- According to a general and widely accepted rule of law, the substance of the contract (the actual content) prevails over its form (qualification given by the contracting parties). The substance of the contract is consequently decisive for the determination of the legal (and tax) consequences of the contract. As requested by several Member States during the previous meeting, the explicit reference to this concept has therefore been removed.

  However, as suggested by a number of delegations, the Presidency agrees that it would be useful to have some kind of additional wording in place within the definition of insurance allowing to distinguish these services more easily from especially guarantees. As suggested by one delegation an alternative could be to refer to the pooling of risks, which refers back to the underlying economic basics of the regular insurance activities which seems to be typical for this kind of service: from the perspective of the insurer the insurance mechanism involves not just the legal assumption of risk, but also the reduction and ideally the elimination of risk by a process of risk sharing (pooling).

- The brackets have been removed from "in return for payment of a premium" as most delegations indicated that they wanted to maintain this element in accordance with the established case law of the ECJ.

- Following the request of several Member States, the VAT exemption with respect to insurance and reinsurance has been made explicitly applicable to the transfer of insurance and reinsurance services.

The definition of insurance and reinsurance merely incorporates into the legal text the definition which was developed throughout the case law of the ECJ. As the ECJ stated in the SwissRe-case (C- 242/08), this definition does not cover the transfer of insurance and reinsurance contracts. Taking into account that the Regulation, as an implementing measure, can not be used to enlarge the scope of the exemptions laid down in the text of the Directive, the Presidency proposes therefore, for reasons of legal certainty, to include the transfer of insurance and reinsurance contracts not as an example in the implementing regulation but in the text of the Directive itself.

<u>Regulation text – Article 2, paragraph 1 (what is covered)</u>

- *Point (a):* Following discussions during the last meeting, the Presidency has reinstated the reference to "annuities". It is possible that the term "annuities" in itself gives rise to some terminological confusion as the term in itself does not contain any reference to insurance in EN as opposed to, for instance the equivalent term in NL and FR.

  In this respect, the Presidency would like to refer to the notion annuities as explicitly referred to in article 2, paragraph 1, point (b) of the Directive 2002/83/EC of the European parliament and of the Council of 5 November 2002 on life insurance. That Directive clearly considers annuities as insurance services (covered under the life insurance directive) as opposed to capital redemption operations.

  Technically, annuities are a product conceived and designed under the life insurance model. These products involve, as a rule, a long term contract period, the guarantee of a technical interest rate, a participation in benefits and special rules for calculating the commitments based on mathematical provisions, which follow the same rules as for life insurance with application of actuarial principles.

Hence, annuities do include a risk coverage to the extent that the insurance company agrees to (continue to) provide for life risk coverage where the insured lives longer than the calculated period (which is the average life expectancy). Consequently, the insurer has to pay the annuity, even though the capital (initial deposit or accumulated balance of periodical deposits made by the insured, increased with interest and possibly profit participations) has been totally spent. Accordingly, the beneficiary insures the risk that he would live longer than the period during which the capital could sustain an annuity, allowing him to continue to benefit from an annuity even beyond that point.

- *Points (g) and (h):* the mention of "co-insurance" has been deleted in point (g) and replaced by a description of the content of this term under a separate point (h) following the request of a *delegation* which indicated that the term as such covered different meanings and was therefore ambiguous.

- *Point (i) as deleted:* the reference to the transfer of insurance or reinsurance contracts has been moved *to* the text of the Directive for reasons of legal certainty but no changes have been made with respect to the applicable VAT treatment.

- *Point (i) as reinstated*: The Presidency has reintegrated "block insurance" as a positive example of insurance in article 2, paragraph 1, point (i) of the Regulation because it seems consistent with the definition developed by the ECJ of insurance transactions which is now incorporated into the text of article 135, paragraph 1, point (a) of the Directive. According to that case law of the ECJ the notion of insurance *did not cover solely transactions carried out by the insurers themselves but was broad enough in principle to include the provision of insurance covered by a taxable person who was not himself an insurer but, in the context of a block policy, procured such cover for his customers by making use of the supplies of an insurer who assumed the risk insured"* (C-349/96 (CPP)).

As already indicated above, the compromise texts have maintained the scope of the existing (narrow) wording of the insurance exemption in the Directive, so the existing ECJ's case law should still be considered valid in that respect (the approach as defended both by the Commission services and the Advocate general before the ECJ in the CPP-case (concl AG, C-349/96, point 36) that the person providing block insurance should be considered as an intermediary not having been upheld by the ECJ).

- *Point (j):* the reference to covering of the risk of the debtor's default has been moved from Art. 5 of the Regulation (which corresponds to Article 135, paragraph 1, point (d) of the Directive (transfer of a debit and credit position)). Taking into account the intrinsic nature of the service concerned, it has been integrated into the part of the implementing regulation with respect to the insurance exemption. The reference to factoring agreements is put between brackets as some delegations have uttered doubts as to the usefulness of such a reference because the term "factoring" is somewhat ambiguous.

Regulation text – Article 2, paragraph 2 (what is not covered)

- *Point (a):* At the request of one delegation, a reference to "manufacturer" has been added.

Article 135 paragraph 1, point (aa): management of insurance and reinsurance contracts

- Following the request of a number of Member States, the Presidency submits a proposal to make explicit and clarify the application of the VAT exemption with respect to the management of (re)insurance contracts, covering both the ongoing, regular administration of (re)insurance policies and the administration of the resolution of claims arising from insurance policies.

This change is embedded in a wider modification of the compromise text built up around the following axes:

Inclusion of management of insurance contracts in the text of the VAT directive in order to have it explicitly covered by the VAT exemption on that level;
Inclusion of specific wording, similar to that included by the previous Presidency with respect to management of investment funds, in the "outsourcing provision" in order to have outsourcing in the insurance sector adequately covered by the VAT exemption;
Inclusion of specific wording in the implementing regulation clarifying the scope of application of the new wording in the Directive.

The suggested approach is essentially based on the following considerations.

The possibilities to outsource services relating to insurance under the current provisions are very limited due to the specific wording of the insurance exemption, as it seems only possible with respect to the actual legal commitment to cover a risk (C-240/99 (Skandia), point 43; conclusions AG in C-242/08 (Swiss Re), point 42). As compared to the VAT exempt outsourcing possibilities with respect to other financial services, this situation seems to be particularly strict, especially taking into account that some financial services are economically structured in a similar way. This point is addressed in more detail in the separate document with the comments on outsourcing (doc. 13579/10 FISC 94). In that respect, it should also be taken into account that claims handling - as a typical example of insurance policy administration - was already included in the Commission's proposal for implementing regulation as an essential and specific element for the insurance service. This point is also addressed in more detail in the separate document with the comments on outsourcing (doc. 13579/10 FISC 94).

Furthermore, the current wording with respect to the insurance exemption states that besides insurance, the *related services* performed by insurance brokers and insurance agents are VAT exempt. This wording is different from the wording used for intermediation in financial services (containing only a reference to “negotiation” as such). Such a difference in wording undoubtedly explains the different considerations used by the ECJ when deciding upon VAT cases relating to the interpretation of the VAT exemption with respect to insurance intermediaries as compared to intermediaries in financial services. The current provision therefore seems to sustain a wider interpretation of the VAT exemption with respect to services which can be rendered with application of the VAT exemption by insurance brokers and insurance agents (to the extent that they qualify as such).

On the other hand, in the proposal for a Directive the intermediation exemption is destined to become an exempt activity in its own right. With respect to insurance intermediation this implies that only the strict intermediation services as defined in article 135, paragraph 1, point (gd) of the Directive (and not any longer the “related services”) could continue to be covered by the VAT exemption. Under these circumstances it could be deemed useful to have a specific provision in place in order not to reduce inadvertently the scope of application of the existing VAT exemption.

Article 135 paragraph 1, point (b): granting of credit and credit management

Directive text

- The previous Presidency compromise text did not contain any specific reference to credit management. Such a reference exists in the current text of the directive (even though limited to management by the person who has granted the credit).

In any case, it can be argued (all the more so because of the disappearance of a specific reference in the current text) that the very narrow wording of the exemption with respect to credit (granting of credit, wording which is also in place under the current directive text) would legally allow to extend the scope to credit management without a specific legal base in the Directive.

Arguably, the lack of specific mention in article 135, paragraph 1, point (b) of the compromise text, could be made up for by application of the SDC-doctrine inspired provision in article 135, paragraph (1a) of the compromise text. However, in that case the fundamental question is raised whether this provision would allow to cover credit management as a "constituent element" which is "specific and essential" for the granting of credit and, a fortiori, whether it would entail any change in the "legal and financial relationship between the parties".

As the Presidency understands that it was the intention of delegations to cover credit management under the VAT exemption, the Presidency suggests, in view of the above and for reasons of legal certainty, to include a specific reference to credit management in the text of the Directive.

<u>Regulation text – article 3, paragraph 1 (what is covered)</u>

- *Point (c): The granting of loans secured on claims.* In order to clarify both the content of this exemption and the VAT treatment to be applied to a number of specific transactions, the provision has been completed with a set of three examples.

1. *invoice discounting*

The question of the VAT regime applicable to “invoice discounting” has already been discussed in the VAT committee and is somewhat linked to the discussion on the VAT regime applicable to factoring or debt recovery services. As confirmed by discussions before the VAT committee, the main difference between invoice discounting and a typical factoring agreement seems to be that under the invoice discounting agreement the transferor of the debts remains in charge of collecting the debts and the debtor is most often unaware of the transfer of the debts to the invoice discounter. Regardless of the way in which these kinds of agreements are analysed, it seems that the essential element in the agreement is merely the advance of funds secured on the debts which are transferred.

As is the case for factoring, invoice discounting can be offered with or without recourse (covering of the risk of default of the debtor). The same solution as will finally be withheld for this service components within a typical factoring agreement, should logically also be withheld here.

To the extent that Member States would be uncomfortable with the mere reference to “invoice discounting” because its coverage would be insufficiently clear, it could be considered to replace the mere mention of the term by a more general description of these services.

2. *discounting of bills of exchange and promissory notes*

While discounting a bill, the bank buys bill of exchange or promissory note before it is due and credits the value of the bill after a discount charge to the customer's account. The transaction is an advance of funds (financing / credit) against the security of the bill and the discount represents the interest on the advance from the date of purchase of the bill until it is due for payment. Such an operation is generally recognized as credit operation secured on a transferable claim, so that it could be usefully taken up as an example under this header.

3. *the advance of funds included in debt recovery agreements such as factoring agreements*

Since the advance of funds granted in the context of a debt recovery agreement is recognized as a credit (addressed in more detail in the separate document with the comments on factoring (doc. 13578/10 FISC 93), the Presidency would suggest to incorporate the reference to this potential component of a global debt recovery agreement under this header. The reference to factoring agreements is put between brackets as some delegations have uttered doubts as to the usefulness of such a reference as the term "factoring" is somewhat ambiguous.

- *Point (e):* the inclusion of the granting of credit by means of sale and lease back of goods was rather controversial during the last meeting. On the one hand, there were some Member States advocating to consider the sale and lease back as two separate operations, regardless of whether they have been laid down in two contracts or not. On the other hand, some other Member States, advocated disqualifying the two consecutive operations (sale and lease) into one single financial operation as there was deemed to be no actual transfer of the right to dispose of the good as an owner. It seems that leasing operations include, either implicitly or explicitly, some financing element. This perception is all the stronger within the framework of a sale and lease back operation especially where the seller is already using the good as an owner and will, after the sale and lease back operation, just continue to use this good albeit in another capacity (as a lessee). As stated on several occasions by the ECJ and recognized during the discussions in the VAT Committee on a similar question, the general starting point is normally that multiple transactions are analysed individually and not automatically disqualified into one single operation (it should be noted that such an approach goes beyond taxing the two consecutive transactions and just exempting the credit element).

  However, as always and according to the normal rules applicable in this area, the global contractual structure could be set aside if there is evidence of either abusive practices (application of recently established case law by the ECJ in the VAT area) or of simulation. In the latter case, the contracting parties have not accepted all legal consequences of the legal structure they have set up, so it can be set aside.

  Therefore, the Presidency suggests to tighten up the wording of the proposed text and explicitly express in the text of the regulation the underlying rationale as put forward by delegations advocating this approach. As a result, the text proposed maintains the basic principle but recognizes at the same time that these kind of agreements could nevertheless under specific circumstances qualify as one single credit operation.

Regulation text – article 3, paragraph 2 (what is not covered)

- *Point (a):* some minor adjustments have been made to the text to bring it in line with the way other points are worded and with the way the relevant case law was worded.

- *Point (b):* Taking into account the remarks made by a number of delegations with respect to the previous wording under this point (referring to "hire and operative leasing arrangements"), it is proposed to move away from the specific yet unclear terms "hire" and specifically "leasing" and attempt to use a more general description of the essential characteristics of the kind of agreements which are targeted under this point. Contacts with various delegations and stake holders confirmed that especially the notion "leasing" seems to cover a wide variety of contracts, so it may offer more legal certainty and facilitate discussion and comprehension between delegations when an attempt is made to describe the services to be excluded under this point more objectively by means of neutral terms.

Article 135, paragraph 1, point (c): guaranteeing of debt

Directive text

A comparative analysis of the different language versions of the current provision in the VAT directive reveals important terminological differences regarding the concept of assumption of obligations, securities and guarantees. In certain language versions, such as the German, French, Dutch and Italian, that expression has a general meaning, whereas in others, such as English and Spanish, it seems to refer to pecuniary obligations (obligations to pay money) (cf C-455/05, pt. 18).

Concerning the context in which the expression is used, the ECJ has stated that the VAT exemption includes, in addition to the assumption of obligations, the negotiation and assumption of credit guarantees or any other security for money and the management of credit guarantees. As all those transactions are, by their nature, financial services, the conclusion was drawn that it was the intention of the Community legislator to exempt from VAT only the assumption of pecuniary obligations whereas the assumption of non-pecuniary obligations is subject to VAT.

However, the Presidency would like to point out that the acceptance of an obligation to pay (pecuniary obligation) is not necessarily exclusively triggered by the default of the debtor as seems to be implied by the strict wording of the definition which was proposed nor is it exclusively linked to an underlying monetary obligation even though the obligation to which the guarantor himself is committed is of a monetary nature.

More specifically, “guarantee” generally speaking denotes an accessory or “conditional” type of obligation. The essence of the instrument is the promise to answer for the duty of another person, if that other person should default. The beneficiary of such a promise will only be entitled to payment if he can adduce evidence of the occurrence of the event, which the guarantee secures. This means that the issuer’s liability to pay arises only in cases of actual default of the principal and not on mere demand. The definition which was proposed seems to cover situations, in which a guarantor legally assumes the pecuniary obligations of the primary debtor in case of his default.

However, the Presidency would like to suggest that some other types of guarantees should also be covered by this VAT exemption and more in particular the one generally referred to as “demand guarantee” (US: “outstanding letter of credit” – reference is made to the International Chamber of Commerce’s Uniform Rules for Demand Guarantees). Under this guarantee the obligation to pay is conditioned within the terms of the banks promise, and is therefore payable upon the beneficiary’s written first demand. As a result, he is assured to receive the payment notwithstanding any (legal) defence related to any other underlying transactions. The beneficiary does not have to prove the default. The issuer of a demand guarantee is not concerned with the underlying contract and cannot raise any (legal) defence available to the underlying contracting party. The obligation taken up by the provider of a demand guarantee is therefore pecuniary by nature and legally not accessory to an underlying commercial obligation (of non pecuniary nature): he does not assume someone else’s obligations but he assumes an independent obligation. Nevertheless, it will normally be provided that the debtor on whose behalf the obligation to pay has been carried out by the guarantor, will have to reimburse the amount paid to the guarantor. These kind of guarantees were in fact initially developed to replace cash deposits, emphasizing once again the essential pecuniary nature of these kind of guarantees.

The Presidency suggests that, taking into account the intrinsic pecuniary nature of the obligation of the provider of a demand guarantee, this kind of obligation should also be covered by the wording of the definition. The reference to a monetary obligation seems to be sufficiently broad to cover these kind of independent obligations. A slight modification has been made at the end of the sentence to take account of the fact that the demand guarantee will be legally triggered under the contractually defined conditions other than the proof of default of the debtor, even if there is an implicit connection with (or safeguard for) the default of a debtor.

Regulation text - Article 4, paragraph 1 (what is covered)

Point (d) (new): in accordance with the explanation with respect to the definition, the Presidency suggests to take up an example to clarify explicitly that "demand" guarantees are covered by the VAT exemption. However, the Presidency does not insist on using the term "demand guarantees" or "standby letters of credit" since there may be some terminological confusion between the two kinds of guarantees, especially in different language versions. In any case, the decisive factor in determining the type of guarantee will be found in the terms and conditions of the guarantee itself and not in how it is referred to by the contracting parties in a particular transaction.

Regulation text - Article 4, paragraph 2 (what is not covered)

Point (b): It is clear that the ECJ has confirmed that it was the intention of the Community legislator to exempt from VAT only the assumption of pecuniary obligations whereas the assumption of non-pecuniary obligations is subject to VAT. The general description reflecting this case law has therefore been maintained. However, the Presidency wonders whether the "performance guarantees" should be maintained as an example, to the extent that this notion can also refer to a specific kind of "demand guarantee". In that case, the obligation taken up by the guarantor is pecuniary by nature as it is an independent obligation even though it is used to safeguard against default of the debtor with respect to an obligation which is non-pecuniary by nature.

<u>Article 135, paragraph 1, (d): transfer of a credit and debt position</u>

<u>Directive text</u>

The reference to "full title" has been removed for reasons of uniformity between the transfer of a credit and a debit position and because the addition seems to be somewhat redundant: the right is either transferred or it is not. The word "transfer" has equally been changed into "cession" for reasons of uniformity.

<u>Regulation text, - Article 5, paragraph 1 (what is covered) and paragraph 2 (what is not covered)</u>

The Presidency has distributed a separate document to meet the concerns of several Member States to come to a common understanding on the VAT treatment of factoring arrangements (doc. 13578/10 FISC 93). That document includes both the comments to the changes made to the legal text and further background documentation on factoring as such.

<u>Article 135, paragraph 1, point (e): financial transfer</u>

<u>Directive text</u>

No changes.

<u>Regulation text – article 6, paragraph 1 (what is covered)</u>

- *point (c)*: the *term* "via" has been changed into "based on" as to avoid confusion. Payment "via cheque" may capture the payment taking place between the issuer of the cheque and the merchant (the cheque being considered as a legal means of payment) instead of the payment carried out by the bank to the account of the merchant who has handed over the cheque to the bank.

  Promissory notes was added as cheques, bills of exchange and promissory notes are typically quoted together as typical examples of transferable commercial papers.

- *Point (d):* The description has been somewhat clarified in order to capture the specific features of smart-card-based "electronic purse" systems. These kind of systems are used to store funds on a card chip (and not in an externally recorded account) so that readers and machines accepting the card need no network connectivity (anonymous off-line e-money). The Presidency suggests to use the term “smart card based electronic purse systems” covering simultaneously all different kinds of cards (credit cards, debit cards, special smart cards) in which these kind of systems can be integrated. The reference at the end of the sentence has been deleted as it is already included in a non-exhaustive enumeration and seems therefore redundant (all the more since the reference to payments has been retained but moved forward).

- *Point (g):* <u>point (g) included in the original version of Article 6, paragraph 1 of FISC 90 (compromise proposal for the Regulation) has been moved to point (b) of paragraph 2 of the same article by a corrigendum note (see below).</u>

- *Points (h) and (i):* The Presidency added “the execution of direct debits” and “the execution of standing orders” respectively to clarify the difference between the “setting up of a direct debit”. The latter is the mere creation by the bank of a facility to the benefit of the account holder (VAT exempt under account operation) whereas the former are the execution of the payment when it is demanded for by the third party to who’s benefit the direct debt was set up (VAT exempt under financial transfer).

<u>Regulation text – article 6, paragraph 2 (what is not covered)</u>

- *Point (b):* <u>This point has been moved from article 6, paragraph 1, point (g) by a corrigendum note</u>. In order *to* avoid any confusion between genuine financial transfers and secure electronic transporting of messages (which can relate to financial data, such as transfers) carried out by service providers not having any kind of contractual responsibility for the actual financial transfer, the Presidency suggests to clarify this explicitly in the implementing regulation.

Article 135, paragraph 1, point (f): financial deposit taking and account operation

No significant changes

Article 135, paragraph 1, point (g): currency exchange and provision of cash

Directive text

No changes

Regulation text – article 8, paragraph 1 (what is covered)

- *Point (c):* At the *request* of one delegation, a minor linguistic change has been made with respect to travellers' cheques.

Regulation text – article 8, paragraph 3 (what is covered)

- *Point(b) and (bb):* At the request of one delegation, the same minor linguistic change has been made with *respect* to travellers' cheques as the one under point (c) of article 8, paragraph 1 of the implementing regulation. The reference to "cheques" has been added as the encashment of a cheque seems to correspond as much to the provision of cash as the encashment of a traveller's cheque (the execution of payments based on a cheque being covered under point (c) of article 6, paragraph 1 with respect to financial transfers).

- *Point (e):* the wording has been changed to bring it into line with the wording used under point (d) of article 6, paragraph 1 of the implementing regulation. More fundamentally, the Presidency wonders whether there is a fundamental difference between both points and more in particular *whether* the former should be maintained: any consideration paid for the transfer of the money transferred from an account into the electronic purse seems to be the same as the one paid for the charging of the electronic purse.

<u>Article 135, paragraph 1, point (ga): transactions in securities, excluding their safekeeping and management</u>

<u>Directive text</u>

No changes

<u>Regulation text – article 9, paragraph 1 (what is covered) and article 9, paragraph 2 (what is not covered)</u>

Paragraph 1, point (e) and paragraph 2, point (a): Following remarks received from a number of Member States, the words "where tradeable" have been added to clarify that cheques, bills of exchange and promissory noted are only covered by the definition of securities to the extent that they are actually tradeable (which is not always the case).

Technically, a cheque is a *negotiable instrument* instructing a financial institution to pay a specific amount of a specific currency from a specified demand account held in the drawer/depositor's name with that institution. Furthermore, a cheque is generally recognized as an official means of payment. The specific nature of this instrument accounts for the explicit reference to cheques both under money transfers and provision of cash.

The Presidency agrees that cheques and bills of exchange can be transferred (hence the current VAT exemption as a negotiable instrument), but they do not seem to constitute actual securities as traditionally understood, neither in financial nor in VAT legislation. This is not only reflected in the Commission services' contribution of 19 March 2008 (where it was treated under account operation), but also in the current text of Directive 2006/112/EC where cheques are covered separately under article 135, paragraph 1, point (d) (“cheques and other negotiable instruments”) whereas securities are covered separately under a different point (article 135, paragraph 1, point (f)). To a certain extent, this is also confirmed by the inclusion of “cheques” within the notion “securities” (under article 135, paragraph 1, point (e)) which is subsequently balanced out by the suggested exclusion of transaction in cheques from the notion “transaction in securities” if they are covered by financial transfers, provision of cash or currency exchange (paragraph 2, point a)). The Presidency would therefore like to receive a confirmation whether the delegations do want to cover cheques under the VAT exemption provided for securities.

Article 135, paragraph 1, point (gb): transactions in financial derivatives, excluding their safekeeping and management

Directive text

The word “exempt” has been added so that taxed financial services (in those Member States where an option can be carried out) come within the scope of the provision.

Article 135, paragraph 1, point (gc): management of investment funds

Directive text and Regulation text – article 11, paragraph 1 (what is covered)

The Presidency fully endorses the objective pursued by the previous Presidency to have the management of pension funds explicitly covered by the VAT exemption. As the solution as proposed by the previous Presidency gave rise to some reservations, the Presidency suggest to move away from an explicit reference in the Directive.

As a result, the Presidency has deleted the reference to "management of pension funds" in the text of the Directive, as it seems to be redundant, given the fact that a pension fund, is in fact an investment fund which is managed in the same way as any other investment fund and which sole object is to invest in the same assets as any investment funds, even though the regulatory framework may be stricter in order to achieve the specific investment purpose of such an investment fund by offering a larger protection to investors. This approach seems to be confirmed by the Commission services' contributions of March 19, 2008 and April 13, 2010 as it is clearly indicated that the concept of investment fund is sufficiently broad to equally cover pension funds.

As a formal confirmation and explicit clarification the Presidency has taken up "pension funds" as a example of the funds covered under the definition of investment funds in the new paragraph 1 of article 11.

At the same time, the Presidency has put in place some explicit wording confirming that both open-ended and closed-ended investment funds are covered by the definition of investment funds (examples are also already included in the Commission services' contribution of March 19, 2008).

Article 135, paragraph 1, point (gd): intermediation in insurance financial transactions as referred to in points (a) to (gb)

Directive text

Following the interventions by Member States during the previous meeting, the Presidency has deleted the part of the definition text requiring that the intermediary must be known to the parties. In a chain of intermediaries it is possible that an intermediary is not actually known to either the main supplier or the customer and deleting this condition would therefore hamper the way in which sub-intermediation is actually conducted.