

**Consultation document
on the Review of the Insurance Mediation Directive (IMD)
Commission Staff Working Paper**

This document is a working document of the Internal Market and Services Directorate General of the European Commission for discussion and consultation purposes. It does not purport to represent or pre-judge the formal proposal of the Commission.

The aim of this consultation document is to invite stakeholders to comment on the current functioning of and a number of possible changes to the Insurance Mediation Directive. The responses to this consultation will provide important guidance to the Commission services in preparing a formal Commission proposal.

All interested parties are invited to respond to the questions posed in this consultation document. In particular it is envisaged that developers of insurance products (insurance undertakings and their employees), insurance intermediaries responsible for selling and distributing these products, CEIOPS as well as supervisory authorities in the Member States, consumers and their associations will be interested in this consultation document. Respondents are invited to be as specific as possible in their responses by illustrating their positions with concrete examples and identifying, where possible, the nature and size of any costs and benefits related to the different issues raised.

This consultation is open until 31 January 2011.

Responses should be addressed to MARKT-H2@ec.europa.eu.

The Commission services will publish all responses received on the Commission website unless confidentiality is specifically requested.

1. INTRODUCTION

The experience of the Insurance Mediation Directive to date

Insurance intermediaries have an important role to play in the distribution of insurance products. In order to ensure consistent rules, Directive 2002/92/EC of the European Parliament and the Council on insurance mediation (IMD or the Directive) was adopted on 9 December 2002. The Directive had to be transposed by Member States by 15 January 2005.

The IMD aims to guarantee a high level of consumer protection. The IMD has also established a legal framework, aiming at a high level of professionalism and competence among insurance intermediaries. A centralised registration system for insurance intermediaries provides a mechanism for the proof of professional requirements and facilitates cross border activities by way of freedom of establishment and freedom to provide services.

The Commission services initiated an implementation check of the Directive in 2005. According to this review, the goal of achieving a certain minimum level of consumer protection has generally been achieved in all Member States. Insurance intermediaries are required to provide comprehensive information to the consumer prior to the conclusion of any initial insurance contract, and, if necessary, upon amendment or renewal of the contract. Complaints procedures are organised by competent authorities or by specific bodies established for this purpose. Member States have also introduced out of court settlement procedures to handle complaints.¹ However, due to its minimum harmonisation character, a patchwork of national regulations has emerged in Member States. This has led to significant gaps and inconsistencies as far as the activity of insurance mediation is concerned.

¹ CEIOPS' Report on the Implementation of the Insurance Mediation Directive's Key Provisions, <http://www.ceiops.eu/media/files/publications/submissionstotheec/CEIOPS-DOC-09-07IMDReport.pdf>.

Solvency II

With the entry into force of the Solvency II Framework Directive, a risk-based solvency regime will be introduced for insurance undertakings. This will also affect the relationship between insurance undertakings and policy holders². Against this background, Recital 139 of the Solvency II Directive invites the Commission to come forward with a proposal for the revision of the IMD, in order to extend the benefits of a risk based solvency regime and increased transparency rules to policy holders.

Cross-sectoral selling practices – the link to the PRIPs initiative

Whilst not being the main cause of the recent crisis, it is clear that selling practices in connection with certain financial products have been shown to be deficient. Whilst recognising that differences in the characteristics of distribution channels for different financial products may be justified, it is important to ensure a coherent approach. Issues to be dealt with include the provision of pre-contractual information, its form and content, incentives for distributors that may influence the advice to consumers, assessment of the suitability of the financial product for the consumer, and the appropriate regulation and supervision of all participants in the respective distribution chain.

The Commission intends to address cross-sectoral inconsistencies regarding the marketing of investment products through its Packaged Retail Investment Products (PRIPs) initiative, as set out in a Communication of 30 April 2009. The Communication concluded that legislative changes at EU level were necessary to ensure a more consistent and coherent horizontal approach to the regulation of product disclosure and sales practices. Therefore, the regulation of selling practices in relation to insurance PRIPs should be covered by the IMD².

In this context, two regimes would appear to be necessary in the IMD, one for the sale of general insurance products and one for insurance PRIPs (investments packaged as life insurance policies)³.

The revision of the IMD would therefore consist of two parts: 1) revision of the IMD provisions in light of the implementation review mentioned above and 2) the introduction of MiFID⁴-inspired conduct of business and conflicts of interest rules regulating the sale of insurance PRIPs.

Involvement of CEIOPS

In order to find adequate solutions to these issues, the Commission services requested advice from the Committee of European Insurance and Occupational Pensions Supervisors

² Recital 139 of Directive 2009/138/EC of 25 November 2009 on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II), JO L 335., p.1.

³ Consultation by Commission Services on legislative steps for the Packaged Retail Investment Products initiative http://ec.europa.eu/internal_market/consultations/2010/priips_en.htm

⁴ Directive 2004/39/EC of 21 April 2004 on markets in financial instruments (level 1), JO L 145.p.1. and Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC (level 2), JO L 241.p.26.

(CEIOPS) on 27 January 2010. The Commission services requested advice on the following areas: the legal framework of the IMD2, its scope, international dimension of insurance intermediation, professional requirements, cross-border aspects of insurance intermediation, management of conflicts of interests and transparency and reduction of administrative burden. CEIOPS' final report was delivered in November 2010.⁵

Public hearing

DG MARKT intends to organise a public hearing on issues relating to the IMD review on 10 December 2010. Details can be found on the DG MARKT website.⁶

2. THIS CONSULTATION

2.1. Purpose and scope of this consultation

The purpose of this consultation is to collect views from all stakeholders concerned on the necessary changes to address the main weaknesses in the current IMD.

This consultation is intended to cover all major issues relating to a fundamental review of the IMD, in particular those identified by the implementation check initiated by the Commission services in 2005. According to one of the surveys launched in connection with the implementation check, practice varies between Member States on the interpretation of the cumulative conditions of Article 1(2) regulating exemptions from the IMD's scope. In addition, the Commission services also launched a questionnaire which has focused on various distinctive areas of the IMD, such as the definition of a tied insurance intermediary, home Member State of intermediaries having the form of a legal person, registration of natural persons working for an intermediary, professional requirements for intermediaries, general good provisions and information requirements for insurance intermediaries. The outcome of this survey highlighted that, in all these areas, the application of the IMD varies considerably between Member States leading to problems with information requirements, legal certainty, professional requirements, management of conflicts of interests and transparency rules.⁷

2.2. What are the main problems identified?

Consumers often have insufficient understanding of the risks, costs and features of insurance products. Sellers of these products can be subject to significant conflicts of interests for instance when their remuneration and inducements are higher for selling some insurance products as compared with others.

⁵ https://www.ceiops.eu/fileadmin/tx_dam/files/publications/reports/IMD-advice-20101111/20101111-CEIOPS-Advice-on-IMD-Revision.pdf

⁶ http://ec.europa.eu/internal_market/insurance/mediation_en.htm

⁷ http://ec.europa.eu/internal_market/insurance/docs/mediation/advice-ceiops-imd2_en.pdf

The revision of the IMD should therefore be focused on addressing the following key problems:

2.2.1. Insufficient quality of information provided to consumers

Information given to consumers varies significantly in quality depending on the insurance products and the prevailing regulatory requirements which apply in Member States. This is caused particularly by the minimum harmonisation approach of the IMD and is evidenced by the existing fragmentation of national insurance markets. In general, information is dense, legalistic, full of jargon, and difficult to digest.

Furthermore, consumers are not always fully informed of their rights during the process of insurance intermediation. This may contribute to unsuitable advice being given, to mis-buying and mis-selling of products to the detriment of the consumer and to potential regulatory arbitrage.

It should also be noted that the third generation of insurance directives (recast under Solvency II), the E-Commerce Directive (2000/31/EC⁸, ECD) and the Directive on the Distance Marketing of Financial Services (Directive 2002/65/EC⁹, DMFS Directive) contain overlapping requirements in the area of pre-contractual information because of their different purposes and scope. This can cause uncertainty and increase administrative burden for the national supervisory authorities, insurance intermediaries, insurance undertakings and consumers.

2.2.2. Conduct of business rules: conflicts of interests and transparency

The current wording of the Directive is unclear in relation to conflicts of interests and transparency rules. Article 12 contains a mixture of disclosure and conflicts of interest provisions which can lead to confusion.

In order to avoid misleading customers, effective rules on conflict of interests should be introduced. Conflict of interests can arise both in the relationship between a broker and an insurance company and between a broker and third parties, such as asset managers. Such conflicts of interests may compromise the objectivity of the advice given to customers. Considering the fact that these sellers are often engaged in the provision of advice or other personalised services, these conflicts of interests can have a direct impact on the quality of the service, leading to policy holders buying unsuitable and overpriced products and leading also to less competitive markets. Existing provisions regulating conflicts of interests as laid down in the Article 12 in general, and in particular for the sale of investments packaged as life insurance policies (insurance PRIPS), may not be sufficiently effective to prevent such negative effects.

As far as transparency is concerned, the current IMD does not contain any provisions on remuneration and Member States are therefore free to impose their own remuneration

⁸ Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), JO L 178, 17.7.2000, p. 1

⁹ Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC, JO L 271, 9.10. 2002., p. 16.

requirements on sellers of insurance products. The financial crisis has highlighted the need to provide more comprehensive information and more transparency in this context.

National conduct of business models diverge. Certain Member States have introduced additional requirements on the distribution of insurance products to those contained in the IMD. In contrast other Member States have left this area completely unregulated. The need to preserve a level playing field between those companies who pursue insurance intermediation business should be acknowledged. For instance, the Commission services are aware that some Member States have introduced restrictions relating to the activities of intermediaries who are registered in another EU/EEA Member State. In addition, there are diverging attitudes to the application of general good rules in insurance intermediation. In these respects, the Single Market for insurance intermediaries has not yet been completed.

2.2.3. Legal uncertainty due to unclear definition of scope in the IMD

Many of the existing problems in the application of the IMD are caused by legal uncertainty due to diverging interpretations concerning exemptions from its scope. The definition of insurance intermediation which is built on the activity-based principle, seems to conflict with the definition of the scope of the IMD and a whole set of related provisions.

Even more importantly, the current IMD does not guarantee a real level playing field between all participants involved in the selling of insurance products, because it directly exempts insurance undertakings (direct writers) and their employees from its scope. As a result, policyholders may receive less information and protection when directly buying insurance products from insurance undertakings. In order to guarantee a level playing field and to achieve effective consumer protection, it is also important to consider the current exemption for insurance intermediaries providing information to business customers in the large risks area.

2.2.4. Burdensome notification system

The market for cross-border financial services business in general is still very limited in the retail insurance sector.¹⁰ The implementation check of the IMD revealed that its notification system, through which insurance intermediaries announce their activities beyond their home Member States, does not encourage cross-border insurance intermediation. This directly narrows down the available choices for consumers. Furthermore, this situation has a negative impact on the competitiveness of the insurance markets, the level of administrative burden and the final cost for consumers.

The Commission services believe that the current notification system is too burdensome and they see opportunities for improvements, modernisation and increased transparency. Suggestions are also welcome on how the appropriate and transparent use of general good rules can be guaranteed, in order to avoid unintended negative effects on the functioning of the Single Market for insurance and reinsurance intermediaries.

¹⁰Communication of the Commission on the review of the DMFS Directive (2002/65/EC).
http://ec.europa.eu/consumers/rights/docs/com_review_distance_mark_cfsd_en.pdf.

The data collected in the Report comes from Eurobarometer 2008 and are based on material obtained prior to the economic and financial crisis. This means that during and after the crisis, the percentage of cross-border trade in financial services is even lower.

2.3. SME aspects and administrative burden

The Commission services realize that any new regulation in this field must be carefully considered in relation to the stakeholders, in particular consumers and small and medium-sized enterprises.

In addition, one of the Commission's general objectives is to reduce the administrative burden¹¹ on companies. This has been highlighted by the High Level Expert Group on Administrative Burden. This will be considered in the revision of the IMD.

Both aspects will be covered in this consultation.

3. ELEMENTS OF THE PROPOSED APPROACH

The revision of the IMD seeks effective regulation in the retail insurance market by improving the Single Market for insurance and reinsurance intermediaries. It aims at ensuring a level-playing field between all participants involved in the selling of insurance products and at strengthening policy holder protection.

In order to stimulate discussion, tentative preferred options are set out in boxes. These are, however, subject to changes, in light of the results of this consultation and the upcoming impact assessment.

3.1. Policy objectives

Given the above, the revision of the IMD should be aimed at addressing the following objectives:

A. A high and consistent level of policy holder protection embodied in EU law

In addition to the requirement to provide policy holders with all relevant information in a clear, comprehensible and accurate manner, it is vital that the information provided is also fair and not misleading.

Article 12(1) of the IMD contains a list of information to be provided to the customer by an insurance intermediary prior to the conclusion of any initial insurance contract, and, if necessary, when the contract is amended or renewed. Article 12(2) of the IMD deals with the issue of "fair analysis". Article 12(3) of the IMD requires insurance intermediaries to, at a minimum, specify consumers' needs and demands and the underlying reasons for any advice on a given insurance product. Article 12(4) of the IMD contains an exemption from that obligation for large risk insurance products. Article 12(5) establishes that Member States may maintain or adopt stricter provisions regarding these information requirements, provided that such provisions comply with EU law.

¹¹ The administrative costs consist of two different cost components: the business-as-usual costs and administrative burdens. While the business-as-usual costs correspond to the costs resulting from collecting and processing information which would be done by an entity even in the absence of the legislation, the administrative burdens stem from the part of the process which is done solely because of a legal obligation. http://ec.europa.eu/governance/impact/commission_guidelines/docs/iag_2009_annex_en.pdf

It would appear logical to require similar requirements from insurance undertakings and insurance intermediaries when distributing insurance policies, taking into account the specificities of existing distribution channels.

Questions

A 1. Do you agree with the Commission services general approach outlined in the box above? Should information requirements as contained in Article 12 of the IMD be extended to direct writers taking into account the specificities of existing distribution channels?

A 2. Should the exemption from information requirements for large risk insurance products as laid down in Article 12 (4) of the IMD be retained? Please provide reasons for your reply.

A 3. In the context of the information requirements for the mediation of insurance products other than PRIPs, do you think that the possibility for Member States to impose stricter requirements should be maintained? Please provide reasons for your reply.

A 4. In the context of the information requirements, do you think a definition of "advice" should be introduced? Please provide reasons for your reply.

A 5. If you think that a definition of advice is needed for the mediation of insurance products other than PRIPs, would a definition similar or identical to the definition in MiFID¹² be appropriate? Please provide reasons for your reply.

A 6. Do you consider that certain insurance products (other than PRIPs) can be sold without advice? If yes, which products would you have in mind and how could possible detriment for consumers be mitigated?

A 7. What practical measures could be envisaged for reducing the administrative burden in this area?

B. Effective management of conflicts of interests and transparency

¹² According to MiFID, investment advice means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments (Article 4(4) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments JO L 145.p.1.)

One of the objectives of the revision of the IMD should be to adopt clear and effective rules on conflicts of interests and transparency which affect the distribution of all insurance products. Insurance intermediaries should be obliged to act honestly, professionally and in line with the interests of their customers. Another objective of the revision of the IMD should be to establish a more robust EU disclosure framework which should lead to a higher degree of harmonisation.

Considering the fact that MiFID already contains clear and sophisticated rules on conflicts of interests, transparency and inducements and that these rules have been identified as a clear benchmark for the distribution of insurance PRIPs, the IMD2 should take these rules into account when designing conduct of business rules for that specific category of insurance products. As regards the sale of insurance products not covered by the scope of PRIPs, it could be important to introduce more transparency on the way insurance intermediaries are remunerated as well as on the mechanisms in place to ensure the effective management of conflicts of interest.

In addition, the Commission's Business Insurance Sector Inquiry 2007 raised concerns in relation to potential conflicts of interest. In this report the Commission services have found that the dual role of brokers as advisor to their clients and as a distribution channel for the insurer, is a potential source of conflicts of interest between the objectivity of the advice they provide to their clients and their own commercial considerations. The Sector Inquiry also showed that certain market practices – in particular the lack of spontaneous disclosure of remuneration received from insurers – create an environment in which insurance clients are unable to make fully informed choices. Also, practices aimed at inciting brokers to place business with particular insurers have the potential to undermine fair competition and might result in insurers competing with each other on the level of remuneration afforded to brokers, in an attempt to influence the brokers' choice. The final Report on the Sector Inquiry confirmed the Commission's intention to look into the issue in the framework of the review of the IMD.¹³

The current provisions in the IMD would not appear sufficiently clear and effective to mitigate significant conflicts of interest. Therefore, it would appear appropriate to revise the current rules.

The application of the high level principles concerning conflicts of interest and transparency both to insurance intermediaries and insurance undertakings could be considered.

In this context, one option could be to use the MiFID Level 1 regime as a starting point for the management of conflicts of interest, notably with regard to remuneration.¹⁴

¹³ http://ec.europa.eu/competition/sectors/financial_services/inquiries/final_report_annex.pdf.

¹⁴ The MiFID deals with conflicts of interest in Article 18 of the principal MiFID Directive and Articles 21 and 22 of the MiFID Implementing Directive. The sophisticated MiFID regime for the identification, management and disclosure of conflicts of interest provides undertakings with some flexibility to determine the appropriate approach for their business, depending on its nature, size and complexity. However, these rules will have to be adapted to meet the requirements of the insurance intermediation business where the business is operated by natural persons.

In addition, requirements regarding the disclosure of remuneration could be introduced.

Questions

B 1. What high level principles would you propose to effectively manage conflicts of interest, taking into account the differences between investments packaged as life insurance policies and other categories of insurance products?

B 2. How could these principles be reconciled for all participants involved in the selling of insurance products?

B 3. Do you agree that the MiFID Level 1 regime could be regarded as starting point for the management of conflicts of interests? If not, please explain why.

B.4. How can the transparency of remuneration in the sale of non-PRIPS insurance policies be improved for all participants involved in the selling of insurance products, taking into account the need for a level playing field?

B 5. Do you agree that all insurance intermediaries should have the right to be treated equally in terms of the structure of their remuneration, e.g. that brokers should be allowed to receive commissions from insurance undertakings as insurance agents?

B. 6. What conditions should apply to disclosure of information on remuneration?

B. 7. What types/kinds of remuneration need to be included in the information on remuneration?

C. Introducing clearer provisions on the scope of the IMD

Another objective of the revision should be to guarantee a real level playing field between all participants involved in the selling of insurance products. In practical terms this means that the scope of the IMD would need to be extended to direct writers (i.e. direct sale of insurance products by insurance undertakings and their employees), taking into consideration the specificities of each distribution channel. In addition, the scope would need to take into consideration the differences between investments packaged as life insurance policies (insurance PRIPs) and other categories of insurance products. Finally, greater clarity would need to be achieved regarding the exemptions from scope. In this respect, the focus should be on eliminating unnecessary administrative burden.

Sales of insurance products by the means of distance marketing should also be included in the scope of IMD2. These provisions should take into account the existing

provisions in the above mentioned Directive 2002/65/EC (DMFSD) which is a maximum harmonisation tool.¹⁵

It would be appropriate to retain the activity-based definition of insurance intermediation. It is suggested that exemptions from the scope should be activity-based and not based on types of "professions" e.g. travel agents. Reinsurance intermediaries should remain within the scope of the IMD. In addition, "direct sales" by insurance undertakings and their employees could also be included. Finally, where an insurance undertaking (A) sells the products of another insurance undertaking (B), A should be considered to be the intermediary of B and subject to the provisions relating to insurance intermediaries.

Questions

C 1. In order to guarantee a real level playing field between all participants involved in the selling of insurance products, to what extent should the current IMD requirements also be applicable to direct writers and their employees? Please, specify which particular requirements should apply and reflect on the particularities of direct sales with examples (how, where, under what circumstances, etc.)

C 2. A lack of clarity about the scope of the IMD could lead to unnecessary administrative burden. What are the possible clarifications that could be brought to the current scope of the IMD in this respect?

C 3. What conditions/reasons for exemption from IMD2 should be in place taking into account the need to ensure legal certainty and consumer protection?

C 4. Should a website or a person who just gives information about insurance fall under the scope of the IMD? How could the boundaries be more clearly defined in respect to insurance intermediation?

C 5. Do you have examples of activities which, in the majority of Member States, fall under the IMD but which you believe should not be covered, such as sales of certain insurance products by car rental companies? Or conversely, do you have examples of activities which currently do not fall under the IMD but which should be covered?

C 6. Which particular requirements stemming from the Directive on the Distance Marketing of Financial Services (DMFS) need to be taken into account in IMD2? How does the definition of supplier in the DMFS Directive affect the definition of insurance intermediation¹⁶?

¹⁵ This means that Member States should not be able to adopt provisions other than those laid down in DMFSD in the fields that are harmonised by that Directive, unless specifically stated otherwise.

¹⁶ In this context, 'supplier' means any natural or legal person, public or private, who, acting in his commercial or professional capacity, is the contractual provider of services subject to distance contracts.

D. Increased efficiency in cross-border business

The Commission services believe that the practical application of the notification system needs to be reshaped in terms of its efficiency and operation.

A possible option for the Commission services would be to integrate the definition on freedom to provide services, already included in the Luxembourg Protocol of CEIOPS¹⁷, into the text of the IMD2 in order to increase legal certainty. In addition, the IMD2 should contain a definition of freedom of establishment (FOE) built upon the principles of Interpretative Communication 2000/C 43/03 on freedom to provide services (FOS) and the general good in the insurance sector¹⁸. It is important for the sake of legal certainty to clearly define the triggering element of the FOS activities of insurance intermediaries.

Despite there being no specific mutual recognition clause in the IMD (as there was in Directive 77/92/EEC), the general system contained in Directive 2005/36/EC¹⁹ on the recognition of professional qualifications serves as "lex specialis". Natural persons fully qualified as insurance intermediaries in an EU Member State wishing to take up the same profession in another EU Member State on the basis of permanent establishment, and without keeping their original licence, should also be able to benefit from Title III, Chapter I of Directive 2005/36/EC as the situation is not covered by the IMD.²⁰

In other directives, for instance in the E-Commerce Directive (Directive 2000/31/EC), general good provisions are subject to the Community procedure, i.e. the host Member State must notify the Commission and the home Member State of its intention to take such measures. If the Commission concludes that the measure is incompatible with EU law, it will ask the Member State not to take the measures or abolish them. It is important that a consistent approach should be pursued in the interpretation of the general good provisions.

The "single passport" under IMD is based on the principle of registration in the home Member State. It would appear appropriate to improve the legal framework in relation to the notification process and integrate the definitions on FOS and FOE into the IMD in order to render the cross border insurance intermediation process more effective. This includes a more transparent use of the general good rules. It would also appear appropriate to include the mutual recognition clause in the CEIOPS Luxembourg Protocol in the IMD.

¹⁷ Luxembourg Protocol of CEIOPS, Protocol relating to the Cooperation of the Competent Authorities of the Member States of the European Union in Particular Concerning the Application of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on Insurance Mediation, <https://www.ceiops.eu/publications/protocols/index.html>

¹⁸ http://ec.europa.eu/internal_market/insurance/legis-interpretation_en.htm

¹⁹ Directive 2005/36/EC on the recognition of professional qualifications, JO L 255, p.22.

²⁰ Remark: Title III, Chapter I of Directive 2005/36/EC lays down the general system for the recognition of evidence of training.

Questions

D 1. Do you agree with the inclusion of the definition of the freedom to provide services (FOS), as laid down in the Luxembourg Protocol of CEIOPS²¹, in the text of the IMD?

D 2. Is there a need to further clarify the rules regarding freedom of establishment (FOE) and integrate these rules in the IMD?

D 3. How can the notification process be made more efficient and useful?

D 4. Do you agree that further rules on FOS and FOE should be included in a revised IMD in order to provide more legal certainty?

D 5. Are there any issues with regard to the general good rules in relation to the cross-border dimension of insurance intermediation? If so, please provide further details.

D 6. What problems do insurance intermediaries face today when selling cross border? How should the IMD be amended to improve the conditions for FOE/FOS activities?

D 7. Would the integration of the CEIOPS Luxembourg Protocol clause on mutual recognition in a revised IMD be useful in this respect?

D 8. Could provisions similar to those contained in the E-Commerce Directive regarding an appropriate and transparent use of general good rules be integrated into the IMD?

E. Achieve a higher level of professional requirements

It would appear appropriate to establish basic common principles for professional requirements for all sellers of insurance products.

In this context, one option would be to consider imposing a Member State requirement to ensure that all persons in insurance undertakings who are responsible for insurance distribution and sales in respect of insurance products, as well as all other employees directly involved in insurance or reinsurance distribution or sales, demonstrate the knowledge and ability necessary for the performance of their duties.

²¹ An insurance intermediary is operating under FOS if it intends to supply a policyholder, who is established in a Member State different from the one where the insurance intermediary is established, with an insurance contract relating to a risk situated in a Member State different from the Member State where the insurance intermediary is established.

https://www.ceiops.eu/fileadmin/tx_dam/files/publications/protocols/Luxembourg_Protocol%20_without%20anexes_Rev1_Oct2008.pdf

Questions

E 1. What high level requirements on the knowledge and ability of all participants involved in the selling of insurance products would be appropriate in view of the existing differences in the applicable qualification systems in Member States?

E 2. Should these requirements be adapted according to the distribution channel? If so, how?

3.2. Distribution of insurance PRIPs (investments packaged as life insurance policies)

In the context of PRIPs, it would appear important to ensure that consistent conduct of business, inducements and conflict of interest rules are applied to all persons selling packaged retail investment products, irrespective of whether the relevant entity is an intermediary or whether it is the product originator. Detailed requirements should take into account the service being offered (advice, sales without advice). However, it is vital that market failings or risks for customers should be always be addressed in an effective or appropriate manner, irrespective of the channel through which a sale is being concluded. The rules of MiFID would appear to be the appropriate benchmark in this regard.

The person selling insurance PRIPs should be responsible for providing pre-contractual disclosure document(s) to the client. As regards direct sales, the responsibility would fall on the product originator (PRIPs insurer). For indirect sales, the intermediary would be responsible for providing the document to the client²².

In respect to the sales process and any services provided in relation to that process, the following main principles should be considered:

Insurers or insurance intermediaries selling or giving advice on insurance PRIPs should act honestly, fairly and professionally in accordance with the best interests of their clients. In the context of tied agents, the responsibility to act in the best interest of the client would remain with the insurance undertaking.

Insurance undertakings or insurance intermediaries selling PRIPs need to ensure that the client receives information as regards the remuneration of the sellers (making clear the difference between the premium paid and the actual invested part of the premium). Remuneration structures should not be such that they materially impact on the ability of the intermediary to act in the best interest of the client and should be structured in a way that effectively avoid or manage any conflicts of interest that may arise.

When providing investment advice for insurance PRIPs, the insurance intermediary or the insurer should obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives. This information should be obtained so as to enable the firm to recommend to the client or potential client the

²² Consultation by Commission Services on legislative steps for the Packaged Retail Investment Products initiative, http://ec.europa.eu/internal_market/consultations/2010/prips_en.htm.

investment services and financial instruments that are suitable for that client or potential client.

Member States could be required to ensure that the insurance intermediary and the insurer, when selling insurance PRIPs without providing advice, ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or requested. This information request should enable the insurance intermediary or the insurer to assess whether the investment service or product envisaged is appropriate for the client. If the insurer or intermediary considers, on the basis of the information received, that the product or service is not appropriate to the client or potential client, the insurer or intermediary should warn the client or potential client. This warning could be provided in a standardised format.

Member States could be required to ensure that insurance intermediaries and insurers take all reasonable steps to identify conflicts of interest between themselves. This should include conflicts in relation to the intermediaries' or insurers' managers, employees and tied intermediaries, or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any insurance, insurance intermediation and ancillary services related to PRIPs insurance policies.

Where organisational or administrative arrangements put in place by the insurance intermediary or the insurer to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the PRIPs intermediary and insurer could be required to clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business on the client's behalf.

Questions

- 1. What practical challenges do you think should be addressed when drafting new legislation on the distribution of insurance PRIPs?*
- 2. What are the most important practical issues to be considered when applying the MiFID benchmark to the selling of insurance PRIPs?*