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The Retail Green Paper
and
Retail Insurance Markets

Background

On 2 May 2007, the European Commission published its Green Paper on Retail Financial Services in the Single Market. The publication of the Green Paper launches a public consultation which will be open until 16 July 2007. The Commission will organise a hearing on 19 September to draw the conclusions of the consultation launched by the Green Paper and discuss with all stakeholders which initiatives are needed to bring about a more efficient internal market for retail financial services. The results of the consultative process will be incorporated into the Single Market Review, to be published in the Autumn.

As is stated in the Green Paper, the Commission believes that integration in retail financial services markets can be achieved by:

- Ensuring that properly regulated open markets and strong competition deliver products that meet consumers' needs, offering choice, value and quality
- Enhancing consumer confidence by ensuring consumers are properly protected and providers are financially sound and trustworthy
- Empowering consumers to make the right decisions for their financial circumstances.

The Commission has established a Government Expert Group on Retail Financial Services to assist the Commission in the development of its overall policy on retail financial services and the follow-up to the Green Paper on Retail Financial Services in the Single Market. This Group had a first meeting on 15 June.

The above expert group will consider all financial services. In the view of the Commission, it is appropriate that the EIOPC should carry out its own specific analysis of the internal market for insurance and examine possible ways of improving the current situation.

The internal market for insurance

The EU insurance legislation establishes a general framework for insurance market integration that already takes account of major retail issues (consumer needs). EU insurance legislation is not confined to prudential and financial aspects but contains a number of provisions addressing fundamental consumer (policyholder) protection issues: e.g. law applicable to the insurance contract, portfolio transfers, right to cancel life insurance contracts, pre-contractual information requirements, preferential treatment of insurance claims in case of winding-up of insurance undertakings. These provisions have improved the degree of protection of insured persons in the EU. The Insurance Mediation Directive should also in time contribute to a further integration of insurance markets. The detailed information requirements it imposes and the obligation to provide good advice add a new instrument for the protection of insured persons.

The EU insurance directives also introduce the freedom of marketing and tariffs in the insurance sector and have abolished material supervision of policy conditions and premiums by insurance supervisors. This regime should result in enhanced competition among insurance undertakings with regard to cover, price and innovation in insurance markets.

Despite this, the insurance internal market has developed in a very particular way. EU market integration has mainly occurred through cross-border acquisitions and the creation of pan-European groups. Branching is limited and freedom of services (FOS) business, apart from certain niche markets, is negligible.

On most markets, domestic companies account for more than 90% of total premium income. The market is also concentrated. In life insurance the market share of the top 5 groups is over 50% on every market except UK, Spain and Germany. The share of the top 15 in life insurance exceeds 90% on almost every market. The non-life situation is similar. The 20 largest European insurance groups account for approx. 50% of total premium income in Europe. Why has the single insurance market evolved in this way and is this situation prejudicial to consumers' interests or competition?

The CEA analysed the situation in a 2004 Policy Report on the European retail insurance market. An expert group on insurance and pensions carried out similar work for the Commission as part of the assessment of the FSAP.

The CEA stated that, in its view, the European insurance market remained highly competitive and believed that the success of the single market could not be judged solely in terms of the volume of cross-frontier FOS business. The CEA further argued that insurance companies' trans-national establishments have strengthened the European dimension of retail markets.

However, given the inroads made by distance selling in some national markets for certain mass risks (e.g. for compulsory third-party motor), it should at first sight be possible to penetrate other markets via FOS selling.

In response, it is often stressed that an insurance policy is not a simple product but a service whose performance and delivery depends vitally on local/national characteristics. These aspects make it difficult, if not impossible, to design products for universal EU sale. Cumulatively they produce significant, natural entry-barriers to FOS selling.

For life and savings policies, where the policyholder entrusts substantial amounts of money to the insurer for many years, the need for the customer to feel comfortable with the product supplier is considered particularly strong. Non-life policies frequently require after sales service, particularly in the event of a claim.

In general, it is often suggested that the specific nature of retail business is such that, for many lines of business, FOS sales will always remain relatively limited. At the customer level, language and culture differences, customer preferences and consumer protection rules act as entry barriers. At the supplier level, the need for local risk knowledge and a local claims service, business and distribution characteristics as well as local 'general good' rules, make cross-border selling difficult. Taxation presents a whole range of challenges.

As part of its consultation under the Retail Green Paper and the Single Market Review the Commission wishes to re-open this discussion with the Member States, with the industry and with consumers. Is retail insurance destined to remain largely a local affair? Is there a large unsatisfied demand from consumers and insurers for a greater level of cross-frontier business? Has the situation evolved and what possibilities are open for improving the functioning of the insurance single market where there is a demand from consumers or suppliers? As a first stage, the Commission has identified a number of areas where further work might be justified and where there might be some potential for making the conduct of cross-frontier business less difficult or expensive.

Possible areas of further work

1. Motor insurance

Motor insurance is the number one retail insurance. Many citizens are surprised that when they change their Member State of residence they are unable to stay with their current motor insurer. This is an area where there is a certain consumer interest that does not seem to be reflected on the part of the insurance industry. Why this lack of insurer interest? One consideration is the fact that in the motor insurance sector the directives themselves demand a local presence of the insurer for claims settlement and require its membership in the local guarantee fund and the local "green card bureau". This protects the third party victim, in particular from having to enter into cross-border negotiations with an insurance company established in another Member State. Furthermore, insurers are obliged in many Member States to appoint a fiscal representative, and need to understand local contract law ("general good") and legal practices. Against this background it is perhaps not surprising that the volume of cross-frontier business in this branch is very limited.

However, it is argued by some that there is a lack of competition and that a higher volume of cross-frontier business might bring down motor insurance premium levels

Possible next steps

Discuss with Member States, the industry and consumers whether there are possible measures, building on current structures or even replacing them, which would make it more attractive for insurers to offer and for consumers to seek motor insurance on a cross-frontier basis. Pursue work to combat uninsured driving, given that the cost of dealing with the consequences of this problem (compensation of damage and injuries caused by uninsured drivers) constitutes a de facto tax on law-abiding motorists who do have the insurance cover required by law.

2. General good requirements

The insurance directives state that an insurer based in one Member State can offer its products throughout the single market subject only to complying with the legal provisions protecting the general good in force in the Member State in which the risk is situated. Even then the host State's general good rules must respect a series of conditions laid down by the European Court of Justice. In its 2000 Interpretative Communication the Commission stated that the inclusion by some Member States of whole areas of their national legislation could constitute a misuse of the concept of the general good. A number of insurers have drawn the Commission's attention to a perceived abusive use of general good requirements.

Possible next steps

Establish a full inventory of general good requirements by means of a questionnaire which is to be sent to all the EU and EEA Member States and, on the basis of that inventory and possible input from the industry, discuss with Member States possible cases of abusive or excessive enforcement of such rules not meeting the conditions laid down by the Court of Justice. Infringement proceedings could be initiated where the Court's conditions were clearly not respected.

3. Tax administration

The insurance directives allow host Member States to apply their premium taxes to incoming FOS business and further allow Member States to require the appointment of a fiscal representative to ensure that such taxes are paid.

Some Member States require a fiscal representative, while others find that they can dispense with this requirement.

A number of insurers have complained to the Commission about the difficulties of finding and the cost of a fiscal representative and about the administrative requirements relating to the collection of local premium taxes (periodicity of reporting, timing and sanctions for any delay in reporting, non-refundability when insurance cover is cancelled).

Possible next steps

While not calling into question Member States' right to ensure collection of premium taxes, the Commission believes that there should be a discussion with Member States and the industry of the need for a fiscal representative and of the administrative requirements relating to business reporting and the collection of premium taxes.

4. Supervision fees

The insurance single market is based on the concepts of home country control and mutual recognition. The home Member State has sole competence for financial/prudential supervision, while the host Member State retains some competence for conduct of business supervision and can insist that its justified general good conditions are respected by insurers opening branches and providing cross-frontier FOS business.

The directives are silent on the question of the financing of supervision and on the levying of fees for branch supervision. Some Member States charge a fee for branch supervision while others do not.

Certain Member States also appear to charge a fee in respect of incoming FOS business.

Possible next steps

A full survey among EU- and EEA- Member States and the industry should be carried out in respect of the charging of supervisory fees affecting branches or FOS business to establish whether such fees pose a possible obstacle to the functioning and development of the insurance single market.

Questions to Members of the EIOPC

Do you agree with the assessment of the current state of the insurance single market set out in this document?

Do you agree with the areas for examination and further work listed above?

Are there other aspects which in your view would merit examination with a view to promoting consumer confidence or further facilitating cross-border business?