



PUBLIC HEARING ON THE REVISION OF THE IMD – FROM IMD1 to IMD2

10 December 2010

1. SUMMARY OF PANEL 1: THE NEW FACE OF INSURANCE INTERMEDIATION AND INSURANCE DISTRIBUTION: ACHIEVING A BETTER LEVEL PLAYING FIELD IN A MORE INTEGRATED MARKET WITH OPTIMUM CONSUMER PROTECTION

Chaired by Karel van Hulle (Head of Unit DG Markt)

Panellists:

- André Van Varenberg (Chairman BIPAR Brokers' Committee)
- Hans Georg Jenssen (German Brokers' Association, BVVM)
- Alastair Evans (Head, Government Policy and Affairs, Lloyd's of London)
- Lars Gatschke (BEUC)
- Rita Lopes Tavares (Instituto de Seguros de Portugal, Portuguese Insurance and Pension Funds Supervisory Authority, Regulatory Policy and Institutional Relations Department)

The panellists highlighted various issues and concerns with regard to the scope of the IMD, exceptions from its scope, the current registration system and notification process and cross border activities.

André Van Varenberg endorsed the view that the current IMD was a piece of quality legislation, and the new legislation should preserve the insurance specificities as well as improve legal certainty. Direct selling should be brought under the scope of the IMD to enhance the level playing field. Reinsurance intermediaries should remain within the scope of the IMD2. He believed that it was also important to reduce administrative burden. He warned that the current general good system should be more transparent in order to facilitate cross border business. In this context, he advocated that the Commission should update its interpretative communication on freedom to provide

services and general good. He noted that from his point of view as a representative of BIPAR, the current minimum harmonisation Directive was acceptable.

Hans Georg Jensen agreed with the views expressed by Mr Varenberg. He also emphasised the fact that there was a need to clarify the definition of freedom to provide services. He emphasised the need to integrate the definitions on FOS and FOE into the IMD, but this might not be sufficient to render the cross border insurance intermediation process more effective. He said that administrative burden generally should be eased. He noted that ensuring level playing field and consumer protection are equally important. He warned that there were some the so called “grey area”, where the application of the IMD was not sufficiently clear. He added that the scope of the new IMD should be extended to such 'grey areas' (e.g. price comparison websites).

Alastair Evans, as a representative of the CEA, noted that distribution channels for insurance products varied across Europe. He said that the IMD should be flexible on that matter. He favored minimum harmonisation but would not endorse 'goldplating' from Member States. He agreed with CEIOPS (now EIOPA) on having a classical directive. He advocated a high level of consumer protection; however, he noted that the scope of the existing directive should be maintained. He noted that intermediaries and direct sales represented two different sales models. He supported the view that a number of provisions of the IMD could not be applied to direct sales forces. He added that Solvency II encapsulates many of the already existing consumer protection provisions in insurance and the current exemptions under the IMD should be kept. He expressed his personal view that reinsurance intermediaries should be rephrased as wholesale intermediaries and should be covered by the IMD. He added that CEA would support enhanced cross border activities and the introduction of an electronic notification procedure for intermediaries' registrations. He said that the integration of a definition of freedom to provide service and freedom of establishment (FOS/FOE) into the directive would be vital. General good rules should be revised by the Commission services, because more transparency would be needed at EU level in this regard.

Lars Gatschke, representing consumers, advocated strengthening the level playing field and introducing a higher level of consumer protection in the rules. He explained that the review should also address cross-sectoral regulatory inconsistencies on selling different investment products including insurance products. He stated that MiFID was a good starting point in this regard. For consumers, giving proper advice would be crucial. He warned that, due to current gaps in the supervisory networks, a proper enforcement mechanism should be established. Pre-contractual information requirements had to be clarified. According to a survey, he mentioned, 11% of the clients were not satisfied with the advice given by intermediaries. He recalled that large companies had a competitive edge on selling financial products.

Rita Lopes Tavares representing CEIOPS (now EIOPA) and the Instituto de Seguros de Portugal (Portuguese Insurance and Pension Funds Supervisory Authority), maintained that, in her personal view, a classical directive should be adopted because this regulatory approach seems more suitable within the context of minimum harmonization and would facilitate the implementation of the new rules across the EU, leaving more flexibility for national legislators and supervisors to address specificities on the Member States' markets. She referred that minimum harmonization did not mean “no harmonization” and that it is possible to go further and achieve a greater (and adequate) level of harmonization. She recommended that, depending on the subject and the concrete level of harmonization to be achieved at level 1, certain issues (beyond core issues) could be further regulated at other levels (such as conflicts of interests, transparency, etc) after in-depth analysis. She reflected on EIOPA's new regulatory competences and added that it is important to have a clear and well organized legal instrument, alongside with the Luxembourg Protocol, which is considered to be an important tool for the supervisors. She also noted that the scope of the IMD should be further clarified, taking into consideration the accumulated experience and the discussions on specific situations between the national authorities and between those and the Commission Services. She stated that, regardless of the distribution channel, an equivalent level of consumer protection was vital but this would not mean having the exact same rules for all players (e.g. information requirement or conflicts of interest rules should be kept different and accommodate the specificities of the seller's business). She added that reinsurance intermediaries should be retained in the scope as this is relevant for cross border activities, although she highlighted the importance of defining proper rules taking into account their particular activity. She reflected that a clearer legal framework is needed regarding cross border rules, adding that the cross border business in insurance mediation cannot be compared to other financial services due to its specificities. She stressed the importance of keeping the current system of notifications (for the sake of legal certainty and for the benefit of consumers, insurance intermediaries and supervisors), with some improvements such as electronic notification. As for general good rules, she suggested that more transparency was crucial at this moment (e.g. using the relevant websites) and that more work could be done in the future (pointing out the possible revision of the Commission's Interpretative Communication in this regard). Finally, she stated that a balanced approach should be taken when addressing administrative burden as one of the central points of the IMD revision is consumer protection.

Q&A

On the subject of whether general good rules should be addressed in a more transparent way, the panellists agreed that these would be helpful. Concerns were expressed though that there were too many rules, the level playing field should be enhanced and issues with general good rules were more linked to their different application in the Member States. It was suggested that general good rules should be accessible for everyone and they should be published in a common language (English). One suggestion was to take inspiration from the e-commerce directive in this regard to enhance transparency.

A question was raised as to whether the Commission intended to update the Interpretative communication on general good. The Commission representative stated that this should be dealt with but not in the framework of the current review.

A question was raised on whether minimum harmonisation is acceptable. According to most panellists minimum harmonisation was a realistic approach. Concerns were raised about the implementation and the correct application of the current directive. Ms Tavares

pointed out that the current review should target a level between full and minimum harmonisation.

A question was asked on the level playing field and on the usefulness of different protection rules for consumers buying products through different insurance distribution channels. Mr Evans recalled that the insurance industry differed according to distribution channels, as different rules were applied to those different channels. Mr Gatschke observed that consumers were not aware of the channel from which they were buying their insurance products and this might contribute to unsuitable advice being given, to mis-buying and to the mis-selling of products to the detriment of consumers. Mr Jenssens recalled that this problem could be solved under the current directive, as the general information requirements should be the same for everyone selling insurance products (internet selling included).

Replying to the question on the need to maintain the current exemption for insurance intermediaries providing information to business customers in the large risks area, Mr Evans recalled that current agreement between Bipar and Ferma on the subject regulated the matter and he praised the transparency achieved in this area mentioned that FERMA and BIPAR have come out with a statement on this issue ('on request') and then gave the Lloyds perspective, stating that in the UK there is an agreement with brokers ('on request' basis). Mr Varenberg reiterated that there was no problem of transparency in the area of large risks

Mr Van Hulle (Moderator, Panel 1) concluded the first panel with the following summation: it was clear that number of points had to be clarified as regards the current scope of the directive, higher level of harmonisation should be achieved; and that a classical directive would be the favoured legal instrument for the revised IMD2.

2. SUMMARY OF PANEL 2: CONSUMER AND INSURANCE INTERMEDIATION AND INSURANCE DISTRIBUTION: INFORMATION REQUIREMENTS, TRANSPARENCY AND POTENTIAL CONFLICTS OF INTEREST

Chaired by Victor Rod (Director of the Insurance Commission of Luxembourg)

Panellists:

- Paul Carty (Chairman BIPAR EU Committee)
- Luc Hendrickx (Director, UEAPME)
- Dr. Christian Cassebaum (Member of the Board of Management, Allianz Beratungs- und Vertriebs-AG Munich)
- Allison Philips (Responsible for the IMD, FSA)
- Mick McAteer (Director, The Financial Inclusion Centre)

The panellists highlighted various issues around the information requirements, and requirements on transparency and conflicts of interests.

Paul Carty highlighted that the level of choice on the market should be preserved. He agreed that enhanced transparency would be needed for all the participants distributing insurance products. He agreed to introduce an 'on request' regime for disclosure of remuneration explaining that it should be clear for consumers how all sellers of insurance products were remunerated.

Luc Hendrickx agreed on the need to have enhanced transparency and to introduce an 'on request' regime but he disagreed that there was a problem with the current system. He continued against introducing an obligation for the intermediary to inform consumers about the consumer's right to request for remuneration's disclosure. He expressed his concerns about introducing a ban on commission as this would be detrimental for small and medium sized enterprises.

Christian Cassebaum, representing German insurers, suggested that quality of advice should be more important for consumers than remuneration disclosure. He advised that the total price of insurance products including all costs was the most important information which would enable consumers to compare products. He warned that transparency in and of itself would not guarantee the achievement a higher level of consumer protection.

Alison Phillip noted that it could be argued that retail consumers should know more information on the products and services being provided, and the risks covered, rather than the remuneration aspects. She disagreed with having a 'one size fits all' regulatory approach in this regard.

Mick McAteer, enumerated the following principles from the perspective of consumers on several financial initiatives including IMD, MIFID, PRIIPs : fairness and quality choice should be ensured for consumers, more competition and protection of investment should be equally fundamental. Finally, he recommended that transparency and regulatory consistency should be applied for all market players.

Victor Rod (Chair, panel 2) queried as to whether only retail consumers should be protected or whether there was a greater need for the same level of protection for all. Mr Carty considered that only large risks insurers should be exempted from the application of such rules. He recalled that BIPAR already had an agreement with major players on transparency matters. Mr Hendrickx recalled that the current IMD ensured appropriate protection. He was not aware of any complaint in this regard. He explained that the disclosure of intermediaries' remuneration had no informative added value. Mr Cassebaum agreed. He added that – in case that disclosure of remuneration might be considered – no difference should be made between distribution channels. Ms Philips reiterated her comments on not applying a 'one size fits all' approach. As for a mandatory remuneration disclosure system, she recalled that according to a UK study, this system was not proven to be beneficial for consumers. Mr McAteer highlighted that a tailored regulatory system should be envisaged which should be proportionate to comply with various consumer needs. He recalled that a disclosure regime should be complemented with other consumer protection measures. He agreed that a disclosure of remuneration in and of itself would not be sufficient. He recommended that this should be complemented with enhanced conflicts of interest rules. As for problems with the current regulation, he explained that evidence shows a considerable number of mis-selling cases which had led to consumer detriment in the market. On the subject of how conflicts of interest should be treated, Mr McAteer observed that there would always be conflicts of interest,

disclosure of remuneration should be complemented by other measures (such as status of the intermediary, charges, etc.). Ms Phillip's stated the disclosure of the intermediary's status (agent, broker, direct sellers) was the most important piece of information to be disclosed to consumers in this regard. Mr Cassebaum stated that IMD I already contains a viable solution providing right and sufficient information on the intermediary's status to customers and clients. He noted that the current IMD worked well in Germany. Mr Carty suggested that the current IMD should a good starting point in this regard. A balanced solution should be found when strengthening the transparency and conflicts of interest rules while maintaining choices of distribution for consumers. In concluding the panel discussion, the moderator recalled the drafting and implementation history of the current directive and reflected upon the need for further changes.

Q&A

In the discussion that followed, the minimum harmonisation nature of the directive and its impact were discussed. As an example of Member States' implementation techniques, the Finnish 'net-quoting' regulatory approach and the heavily regulated nature of the Italian market were briefly presented by the members of the audience.

Replying to the questions as to whether in the context of the information requirements, a definition of "advice" should be introduced and as to whether such advice should be 'trusted', Ms Phillip noted that the definition of advice was still an open question. She added that conflicts of interest rules were introduced for insurance intermediaries and insurance undertakings in the UK on this matter and the UK system worked well. Mr Carty warned that excessive conduct of business rules could undermine the single market. He commented that giving bad advice to clients was not in the interest of any intermediary. Mr Cassebaum claimed that the quality of advice and an efficient claim management system were the most important issues to be observed on the market. Mr McAteer reiterated his comments that cross-sectoral regulation of conflicts of interests was needed. He pointed out that remunerations and costs would affect the quality of advice, therefore these should be disclosed to consumers in a transparent way. Consistency and efficiency should be taken into account when drafting new legislation on the nature of advice for consumers.

In the subsequent discussion, the need for different treatment for large risks providers was raised. Different views were raised on the 'Nordic model' of regulating conflicts of interest as to whether this kind of regulation might be detrimental for consumers and for independent intermediaries or not. It was also noticed that disclosure of commission was useful for product comparability reasons. Concerns were raised as to whether it was appropriate to only establish basic, high-level common principles for professional requirements for all sellers of insurance products.

Mr Rod (Moderator , Panel 1) concluded the second panel by noting that there would always be conflicts of interests, and different stakeholders would have varied interests in this respect. He invited the audience to submit their contribution to the recent public consultation launched by the Commission's services.

3. SUMMARY OF PANEL 3: HOW SHOULD SALES OF PRIPS INSURANCE PRODUCTS WITHIN IMD2 BE TREATED?

Chaired by Ulf Linder (Deputy Head of Unit DG Markt)

Panellists:

- Gérard Lebègue (Chairman BIPAR Agents' Committee)
- Andrew Strange (Director of Policy AIFA, UK)
- John Beaney (Deputy Chairman, AILO)
- William Vidonja (Head of Single Market & Social Affairs, CEA)
- Marcin Kawiński (Warsaw School of Economics)

The panellists discussed high level issues with regard the sales of PRIPS insurance, the reasons why a different regulation has to be applied to the sales of such products and its likely impact.

Ulf Linder (Moderator, Panel 3) recalled that the revision of the IMD also aimed to improve transparency and to establish a level playing field between the sales of insurance products through insurance intermediaries and those sold by insurance undertakings. In this context, the differences between investments packaged as life insurance policies (*insurance PRIPs*) and the remaining categories of insurance products (traditional or classical insurance policies) should be taken into consideration. He noted that there was a need to align the IMD revision with the ongoing work of the Commission on Packaged Retail Investment Products (*PRIPs*). He recalled that a consultation was launched on PRIPs on 26 November.

Gérard Lebègue, speaking from the viewpoint of professional associations of insurance intermediaries, reflected that there were too many open questions concerning the definitions of PRIPs, and insurance PRIPs, and MiFID as a benchmark for regulating insurance PRIPs. He noted that PRIPs and MiFID consultations were also currently ongoing. He expressed the view that overregulation can be counterproductive and might be detrimental to level playing field and consumers. Consumers' interests should be key when regulating insurance selling practices. The objectives of reasonable management of conflicts of interests and sound regulatory approach should be achieved.

Andrew Strange, representing independent financial advisors, said that the need to ensure a level playing field for all operators should be observed when regulating insurance PRIPs. He was keen to clarify that the non-life/ pure life insurance market was different from the life with investment element type insurances market. He drew attention to the fact that the insurance intermediation and independent financial advisor sector were characterised by the presence of many intermediaries. He added that The majority of these were SME scale undertakings which would be unable cope with a burdensome MiFID style regulation. He said that proportionality should be borne in mind when drafting new rules in this area. He insisted the considerable differences between PRIPs and UCITS products being taken account of.

John Beaney, representing cross-border life insurers, noted that the definition of insurance PRIPs should include all non pure protection policies and so include all 'with profits' and "traditional" insurance products. He insisted that the scope of PRIPs insurance should be broadened. In order to achieve level playing field, the same rules should be applied for all sellers of insurance products. The appropriately modified key information document (KII) contained in the UCITS legislation could be a workable solution when selling any 'with profits' and traditional insurance products in order to avoid regulatory arbitrage. He warned that intermediaries who used to experience 'difficulties' in one member States simply set up in another to do cross-border business back into the same territory. This phenomenon should be avoided.

William Vidonja commented from the insurance industry perspective, promising that the CEA would contribute to the public consultation. He welcomed the fact that the Commission recognised that insurance specificities should be taken into account when drafting new rules on the distribution of insurance PRIPs, as insurance was very different from other financial industries (e.g. banking). He wished to clarify that client classification rules contained in MiFID were unknown in insurance, that the structure of insurance distribution was different as insurance intermediaries were mostly natural persons and SMEs and that it was differing widely across the EU. He added that the diversity of insurance distribution channels was very positive in terms of competition, choice, and innovation, and it should not be threatened by too detailed, prescriptive one-size-fits-all approach. Proportionality should be observed when regulating the distribution of insurance PRIPs. On the application of MiFID rules to the distribution of insurance products, he pointed out that according to a study, insurance companies and intermediaries would have difficulties applying MiFID style rules when distributing insurance PRIPs.

Marcin Kawiński drew attention to the fact that there were life insurance products which should be considered as purely investments products, therefore there was no real need to regulate those products differently from other investment products. He added that improvement of the IMD would be needed, as insurance regulation was lagging behind banking regulation. He emphasised that clear and concise information should be provided for consumers. He noted that, as for regulating the definition of 'advice', some flexibility would need to be preserved due to the different market structures in the Member States. Special rules need to be introduced into the future IMD to deal with complicated products (such as pension plans). When drafting new rules, distinction should be drawn between investment products and pure life insurance products. He added that long term investment products required different treatment.

Q&A

On the subject of managing conflicts of interest, Mr Lebègue said that applying MiFID rules to insurance sector should be avoided. He agreed that disclosure of the premium paid and the premium actually invested should solve the problem. Mr Vidonja said that in the case of PRIPs insurance intermediation, an information overload could be experienced, as detailed information requirements were imposed on sellers of insurance products by several directives regulating life insurance. He recalled that this problem was addressed by the industry, and a key information checklist (KIC) has been developed by the CEA. This KIC could help a potential policyholder of a unit-linked life insurance product to better understand the features of the contract prior to the conclusion of a contract. This would enable the consumer to make an informed choice and allow

comparison of different offers on the market. He added that a key information checklist also contained information on total cost and capital guarantees which could enhance price and product comparability. A member of the audience pointed out that a similar key information sheet on pre-contractual requirements already existed in Belgium. On the previous comment, the Commission representative wished to clarify that one of the reasons of the IMD review was that regulatory differences between national and EU level are huge and consequent 'goldplating' from member States made cross border activities difficult and the single insurance market illusory.

The subsequent discussion and questions from the audience and by the moderator raised various points on the issue of applying current article 12 of the IMD on information requirements and conflicts of interest rules as starting points, to the need of introducing higher training requirements on sellers of PRIIPS insurance products to the issues of observing proportionality according to the complexity of different products and to the different distribution channels.

Mr Terták (Chair) concluded the day with the following summation: There was a preference among panellists for a classical directive and a need for more legal certainty as well as clarification of general good rules. Preference was given to a freedom of choice between products, stressing that quality of the service was as important as transparency. Discussions pointed out that equal treatment of distribution channels should be taken into account. Proportionality and SME's interest should be considered when drafting new legislation. He recalled that that same rules should be applied to the same kind of products. He noted that there were ongoing public consultations on PRIIPS as well as MiFID. He invited the audience to submit replies to all ongoing consultations.