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cc: Carlos.Montalvo@ceiops.eu

Subject : Request for advice regarding the revision of the Insurance Mediation Directive

Dear Gabriel,

I am pleased with the excellent co-operation that has taken place so far between the Commission and CEIOPS on the transposition and application of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation (“the IMD”) in the Working Group on Insurance Intermediaries (IMEG). This dialogue, which is aimed at identifying areas where the IMD might need to be improved, is currently continuing in the Committee on Consumer Protection (CCP). Among several positive examples of this co-operation are the coordination of various positions relating to legal concepts of the IMD, the adaptations to the Luxembourg Protocol in 2008 and the adoption of a document summarizing practical examples and practices on the implementation of the IMD in 2009.

The Solvency II Directive requires the Commission to put forward a proposal for the revision of the IMD, taking into account the consequences of this Directive for policy holders.

The implementation check of the IMD conducted by the Commission has shown that, as a result of the minimum harmonization introduced by the IMD, the practical application of its provisions varies between Member States. This is also highlighted in a number of complaints submitted to the Commission. In addition, gold-plating practices, as well as

the use of general good requirements at national level, create undesirable obstacles to the functioning of the Single Market for insurance and reinsurance intermediaries.

The revision of the IMD will take into account the interests of policy holders and also seek to improve legal clarity and certainty. The Commission considers that the current level of consumer protection enshrined in the IMD might not be sufficiently transparent. It is also important from a policy holder perspective to establish a level playing field between the sales of insurance products through insurance intermediaries and those sold by insurance undertakings.

I am aware that the work involved in this exercise is significant as the intention is both to enhance the rights of consumers and to facilitate cross-border provision of insurance mediation services. Its complexity is reinforced by the need to align the IMD revision with the ongoing work of the Commission on Packaged Retail Investment Products (PRIPs) and the planned revision of the Markets in Financial Instruments Directive (MiFID).

In light of the above, the Commission would like to invite CEIOPS to provide technical advice on the following points, in order to inform the revisions to the IMD (referred to below as "IMD2"):

1. Legal framework of the IMD2

The Commission is keen to receive the views of CEIOPS concerning the legal framework of the IMD2. The starting point of our consideration relating to the legal basis of the revised IMD is to convert the Directive into a Lamfalussy Directive. Such a legal framework would not only introduce more flexibility but would also ensure that at level 1 we might concentrate on high level fundamental principles, leaving the details to levels 2 and 3.

Questions

The following questions should in particular be addressed:

- What would be the practical advantages of a Lamfalussy structure for IMD2?
- What would be the practical disadvantages of a Lamfalussy structure for IMD2?
- How should IMD2 be structured under the new supervisory framework? For example, what are the areas, if any, where CEIOPS could usefully adopt binding technical standards?

2. Scope

Some of the existing problems in the application of the IMD are caused by diverging interpretations of exemptions from its scope. In the Commission's view, the IMD2 should guarantee a real level playing field between all actors involved in the selling of insurance products. CEIOPS advice on this point should take into consideration the boundaries as well as differences between investments packaged as life insurance policies and the remaining categories of insurance products.

Questions

The following questions should in particular be addressed:

- What should be the scope of insurance mediation to be covered by IMD2?
- What should be the conditions for exemption from IMD2, taking into account the need to ensure legal certainty?
- How could direct sales by insurance undertakings be effectively incorporated in order to guarantee a level playing field with the sale of insurance products through insurance intermediaries?

3. International dimension of insurance mediation

The Commission would like to receive advice on ways to improve legal certainty as regards the services offered by insurance intermediaries, which have been established in third countries, in the territory of the Member States. In this regard, reference can be made to Article 1(3) of the IMD.

Questions

The following question should in particular be addressed:

- How can the legal certainty of services offered by insurance intermediaries, established in third countries, in the territory of Member States, be improved?

4. Professional requirements

The Commission is seeking advice on the extent to which IMD2 could further harmonize the requirements on knowledge and ability of insurance intermediaries and/or all actors involved in the selling of insurance products. This advice should take into account the existing differences in the qualification systems that apply in Member States. I should also clarify that at this stage the Commission is only seeking advice on high level principles.

Questions

The following questions should in particular be addressed:

- What high level requirements on knowledge and ability of insurance intermediaries would be appropriate, in view of the existing differences in the applicable qualification systems in Member States?
- Could the provisions of the Luxembourg Protocol relating to the mutual recognition clause be integrated into IMD2?

5. Cross-border aspects of insurance mediation

The Commission would encourage CEIOPS to develop concrete proposals on ways to improve the current notification system. We would also welcome suggestions on how the appropriate and transparent use of general good rules can be guaranteed, in order to avoid unwanted negative effects on the functioning of the Single Market for insurance and reinsurance intermediaries. The Commission's intention is to integrate certain provisions of the Luxembourg Protocol established by CEIOPS, such as those containing the definition of freedom to provide services, into the text of IMD2.

Questions

The following questions should in particular be addressed:

- Can you provide concrete examples of how you would make the current notification system more efficient?
- Could certain provisions of the Luxembourg Protocol relating to the notification system be integrated into IMD2?
- How would you ensure the appropriate and transparent use of general good rules in order to avoid unwanted negative effects on the functioning of the Single Market for insurance and reinsurance intermediaries?

6. Management of conflicts of interest and transparency

Considering our intention to adopt clear conflicts of interest and transparency rules regulating the distribution of investments packaged as life insurance policies, the Commission would welcome CEIOPS advice on how these issues could be resolved for all actors involved in the selling of the remaining insurance products. As regards the sale of classical insurance policies not covered by the scope of PRIPs, the Commission intends to introduce more transparency on the way intermediaries are being remunerated as well as on mechanisms to ensure effective management of conflicts of interest.

Questions

The following questions should in particular be addressed:

- What high level principles would you propose for an effective management of conflicts of interest, taking into account the differences between investments packaged as life insurance policies and the remaining categories of insurance products?
- How could these principles be reconciled for all actors involved in the selling of insurance products?
- How can the transparency of remuneration in the sale of non-PRIPs insurance policies be improved for all actors involved in the selling of insurance products, taking into account the need for a level playing field?

7. Reduction of administrative burden

The Commission sees this request for advice as an opportunity to also receive suggestions on possible ways to reduce administrative burden caused by the implementation of the IMD, which has been highlighted by the High Level Expert Group on Administrative Burden.

Questions

The following questions should in particular be addressed:

- What practical measures could you envisage for reducing the administrative burden caused by the implementation of the IMD?
- Are there any areas of the current IMD which haven proven to be too costly compared with the intended objective and benefits?
- If regulation of these areas is still appropriate, how might they be regulated in a less costly way?

As mentioned above, the Commission is operating under certain time constraints imposed by the Solvency II Directive. Given the existence of these time constraints, the Commission would welcome some initial advice from CEIOPS by Summer 2010 to allow time to consider this advice when drafting the respective legislative proposals.

I understand that CEIOPS is currently planning to discuss the organisational as well as procedural aspects connected with the revision of the IMD at the next meeting of the CCP planned for 9 February 2010. We are prepared to work with CEIOPS on this important project and I look forward to a continued close and productive co-operation on this issue.

If you require any clarification, please do not hesitate to contact my colleagues, Karel Van Hulle and Tomas Kukal (e-mail: Karel.Van-Hulle@ec.europa.eu; Tomas.KUKAL@ec.europa.eu).

Yours sincerely,

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