



EUROPEAN COMMISSION
IMPACT ASSESSMENT BOARD

Brussels,
D(2012)

Opinion

Title **DG MARKT- Impact Assessment on a Proposal for Amending
the Directive 2002/92/EC on Insurance Mediation**

(Resubmitted draft: version of 5 January 2012)

(A) Context

The Insurance Mediation Directive (IMDI) 2002/92/EC is a minimum harmonisation instrument which regulates the point of sale of insurance products. The uneven transposition of the Directive across Member States, as evidenced by an evaluation of the implementation from 2005-2008, together with the limited scope of IMDI, which does not include direct writers, car rentals, banc-assurances, travel agents, claims handlers and loss adjusters, has created the impetus for this initiative. The current impact assessment evaluates the major policy choices relating to a revision of the selling practices rules and their scope in IMDI. The aim of the revision is to improve harmonisation, legal certainty, and precision in definitions and at the same time to remedy existing difficulties in the application of the current IMD at national level.

(B) Overall assessment

While the report has been improved to some extent along the lines recommended by the Board in its first opinion, it still needs to be significantly strengthened in several important respects. It should provide more convincing evidence for the existence and concrete effects of the problems and, based on that, should more explicitly address the proportionality of further EU action. The report should clearly highlight the scope of the initiative by further explaining which actors will be excluded under the *de minimis* rule. The report should also provide a fuller explanation of the measures envisaged under each of the policy options, and in particular concerning the amended policy options. The report should provide a more in-depth assessment of the likely effects of the measures proposed on the industry structure including the sustainability of current business models, particularly those of SMEs. It should significantly strengthen the presentation of the cost calculations, explaining clearly how the figures have been derived. Finally, the report should much better reflect stakeholder views.

Given the nature of these recommendations, the Board asks DG MARKT to submit a revised version of the report, on which it will issue a new opinion.

(C) Main recommendations for improvements

(1) Provide further evidence in support of the problems identified. Whilst the report has more fully explained the policy context, and the scope of the current Directive (IMD1) the report should nevertheless further strengthen its evidence base in order to better justify the case for further EU action. The report should better describe the synergies and interrelations with other forthcoming EU initiatives. In relation to the scope the report should better explain how the existence of an unlevel playing field is potentially harmful to consumers, and should explain how the envisaged measures will improve the situation for consumers given that some market actors that are currently excluded from IMD1, will also be excluded under the *de minimis* exceptions (under IMD2). The section considering problems with IMD1 should specifically address implementation problems. The report should further demonstrate the extent of the problem of a lack of cross-border market access for insurance intermediaries, and further demonstrate that this is an internal market issue, and that cross border business is hampered by the current regulations. In relation to the problem of 'low quality of advice' the report should demonstrate that this really is a problem for consumers, by drawing further on the data from the stakeholder consultation and other available sources, and by showing whether consumer complaints are higher in Member States with low qualification requirements. Whilst the report has provided evidence for increasing consumer complaints to insurance mediators within a few Member States, it should also show what the trends in numbers of complaints are across the EU as a whole. Regarding sanctions, the report should better explain why the lack of harmonisation of sanctions is considered to be a problem. It should discuss the value added of sanctions given that their application in this area is traditionally weak in many Member States (3.1.5.b), and given the highly fragmented nature of the insurance market. It should explain how these measures will interact with the PRIPs regulation initiative, which could also establish sanctions for sellers of some insurance products.

(2) Better explain policy options and more clearly justify the choice of options. The report has more fully described the substance of some of the policy options, but should be more explicit in outlining all of the market actors that are included in the scope and by further explaining how the *de minimis* rule would work in practice. For instance, it should indicate how, under *de minimis*, the 'principal professional activity' of a person is to be defined and what the implications are for the various actors in the insurance market, and their inclusion in the scope of IMD2 (e.g. would typical car rental and travel insurance companies benefit from *de minimis* rules?). It should make clear whether this rule is compatible with stakeholder views on the scope. The report should clarify why an additional declaration requirement for intermediaries has been introduced in option 1.5, and again, should further explain what this requirement will consist of, and which actors will be subject to it. The report should also explain how the new preferred option 3.3 'ban on commission for independent advice' would work in practice, and which intermediary groups would be included. The report should clearly justify why the option 'ban on commissions' has been chosen as a preferred option, given that concerns are raised in section 7.2 about the potentially negative consequences for more vulnerable consumer groups, and their ability to gain insurance coverage. Where the report proposes more than one preferred option to address the identified problems, these options should be assessed together against the baseline, and their aggregate impact made clear in the impacts section. The abolition of products difficult to understand even for professional market participants should be considered in the options. The report should present the views of key stakeholder groups (insurance industry, intermediaries, and consumer groups) for

each of the preferred policy options, and especially for the new policy options, such as compulsory disclosure of remuneration.

(3) Provide fuller assessment of the impacts on business and SMEs. The report should provide a more in-depth assessment of the likely effects of the combination of measures proposed, on the structure of the industry and the sustainability of current business models, especially SMEs, given their high presence within this sector. The report should demonstrate the proportionality of the combined set of policy options, as described above. It should be clearer in explaining what the simplified notification procedure and the general proportionality rule (section 8.1) will consist of, and how it will offer guidance to Member States to impose requirements in a proportionate manner. In general, the report should better explain how the estimates for compliance costs, administrative costs and administrative burden have been derived, and clearly show how the additional measures being proposed (such as new declaration requirements under option 1.5) affect these calculations, and especially the overall calculation for the administrative cost, of 12 billion EUR. The basis for the estimates in the Table in Annex 11 should be explained and these should be linked more clearly to the preferred options. The report should also be clearer in showing how the business-as-usual costs (95%) have been determined, especially as regards training obligations. Finally, the report should provide a breakdown of the costs for each of the preferred options, and especially for option 1.5.

(4) Monitoring, compliance and evaluation. The report has outlined monitoring indicators but should provide a timeline for future evaluations. It should be made clear if more direct means of monitoring the effectiveness of the measures can be proposed, rather than relying on consumer complaints figures.

(D) Procedure and presentation

Stakeholder views are not sufficiently reflected in the discussion on policy options and problem definitions. They should be transparently presented throughout the text. An overview table with figures showing the costs/benefits of the preferred options should be provided at the end of the impacts section. In line with the guidelines on impact assessment, the report should be significantly shortened and more focused on key points. The readability of the report, especially the policy options sections should be improved, in order to better support decision making. Section 4.3 concerning the proposed legislative structure should be discussed in the policy option section.

(E) IAB scrutiny process

Reference number	MARKT/2012/005
External expertise used	No
Date of Board Meeting	Written procedure The present opinion concerns a resubmitted draft IA report. The first opinion was issued on 25/11/2011.