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CONSULTATION DOCUMENT ON THE REVIEW OF THE INSURANCE MEDIATION DIRECTIVE (IMD) (EC CONSULTATION)

BEUC RESPONSE TO CONSULTATION

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Summary

BEUC welcomes the Commission's consultation on the review of the insurance Intermediation directive.

Insurance is particularly important for consumers, who must be able to be certain that they are making the right choice for the protection of their home, the financial protection of their loved ones in the event of death, the constitution of long-term savings with a view to their retirement, etc.

The Communication published on 25 September, 2007 after the sector inquiry on business insurance highlighted the necessity to prevent and reduce the conflicts of interests in the distribution of insurance products.

Our main demands and comments are the following:

- Insurance intermediaries should be obliged to act honestly, fairly and professionally in accordance with the best interests of their customers;
- As it is currently drafted, article 12 of the Directive does not offer a high level of protection for consumers. It should be improved and Member States should remain allowed to impose stricter requirements;
- No insurance product should be advised to the customer without a prior analysis of his/her needs, accompanied by an obligation on the part of the distributor to actively inquire about these needs;
- The recommended insurance product must be appropriate to the customer's needs;
- With regard to conflicts of interest, BEUC believes that the first objective must be the avoidance of conflicts of interest; secondly, those that cannot be avoided must be made transparent to the consumer. Competition has to work on the level of product quality and price, not on distribution channels and remunerations, which are not related to the service quality;
- The remuneration and other inducements attributed to the intermediary should be brought to the attention of their customer without the latter having to request it.

General remarks

1. Importance of the IMD Directive for consumers

Insurance is particularly important for consumers, who must be able to be certain that they are making the right choice for the protection of their home, the financial protection of their loved ones in the event of death, the constitution of long-term savings with a view to their retirement, etc.

Consumers rely on the information and advice received from intermediaries for the choice of the insurance policy most appropriate to their circumstances.

2. Necessity of taking measures to prevent and reduce the impact of conflicts of interest

The sector inquiry conducted by the Commission ¹ into the provision of insurance products and services in the Community has clearly highlighted some practices into the distribution of insurance products that affects customers' interests:

- the dual role of brokers acting both as an advisor and as a distribution channel, as well as some remuneration schemes are potential sources of conflicts of interest between the objectivity of the advice and their own commercial interests;
- the lack of spontaneous disclosure of remuneration received from insurers and other potential conflicts of interest create an environment in which clients, in many cases, are unable to make fully informed choices;
- some remuneration scheme practices might result in insurers' competing against each other on the level of remuneration afforded to brokers in an attempt to 'buy' distribution, or at the very least influence the broker's choice.

The Commission's findings should be tackled by adopting legislative measures, especially in the field of conflicts of interest.

3. Obligation to act honestly, professionally and in line with the interests of their customers

BEUC supports the Commission when it says that: "insurance intermediaries should be obliged to act honestly, professionally and in line with the interests of their customers"². BEUC believes that this fundamental principle should be incorporated verbatim into the Directive.

¹ COMMUNICATION FROM THE COMMISSION of 25/09/2007, Sector Inquiry under article 17 Regulation (EC) No 1/2003 on business insurance; COM(2007) 556 final.
EN : <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0556:EN:NOT>

² See consultation document, p. 9.

4. Suitability of the insurance product to consumer needs

Considering the complexity of most insurance products, BEUC considers that no insurance product should be proposed to the consumer for signing without a prior analysis of his/her needs, accompanied by an obligation on the part of the distributor to actively inquire about those needs.

When the distributor recommends an insurance product, it should be appropriate to the customer's needs. When the customer intends to subscribe to an insurance product without the advice of a distributor, the latter should warn the customer if the insurance product is inappropriate to his/her needs.

Analysis of the consultation

3.1. Policy objectives

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

A1. 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?

The same information rules should apply whatever the channel used for distributing insurance policies.

Furthermore, explicit information is needed that there is no check as to whether better-suited products are on the market.

A2. 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.

BEUC has no strong opinion on this question, which does not directly affect consumers.

A3. 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.

As it is currently drafted, article 12 of the Directive does not offer a high level of protection for consumers. For example, there is no obligation to inquire about the customer's needs; even if the intermediary declares that they have undertaken an impartial analysis of the market (which they are not obliged to do), it suffices to base themselves on the information provided by the customer, without any obligation to ask questions which would make it possible to obtain all of the information that is useful for correctly determining those needs.

As currently drafted, Article 12 could not under any circumstances serve as a basis for imposing a full harmonisation approach.

If the objective is to improve the cross-border activity of insurance intermediaries, full harmonisation of the rules of conduct would be pointless, since it would not put the intermediaries in a position to operate in the other Member States under the free provision of services. In fact, the primary factors which limit cross-border activity of the intermediaries are more related to differences in contract law and civil liability as well as the obligatory character (or lack of) of certain types of insurance policies, rather than differences in rules of conduct.

A4. In the context of the information requirements, do you think a definition of "advice" should be introduced? Please provide reasons for your reply.

A definition of the notion of 'advice' would be useful for distinguishing between general information or advertising messages and actual advice which, according to BEUC, could be given only after an analysis of the specific needs of the customer, an analysis which should be accompanied by an obligation on the part of the distributor to actively inquire about these needs.

No insurance product should be advised to the customer without a prior analysis of his/her needs, accompanied by an obligation on the part of the distributor to actively inquire about these needs.

The recommended insurance product must be appropriate to the customer's needs.

When the customer intends to subscribe to an insurance product without advice of the distributor, the latter must warn the customer if the insurance product is not appropriate to his/her needs. This appropriateness test could be done by means of responses to an on-line questionnaire.

Independent advice should be distinguished from advice given by intermediaries remunerated by insurance companies. *Independent* advice should be only remunerated by the consumer. The advice given by the intermediary is part of the sales talk proposing an insurance product. Insurance intermediaries who perceive commission or inducements from insurance companies should not give *independent* advice paid by fee from consumer.

A5. 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 MiFID2 be appropriate? Please provide reasons for your reply.

BEUC believes the definition of advice as drafted for the MiFID legislation is an adequate model.

Insurance advice could be defined as being a personalised recommendation to subscribe to an insurance policy. The recommendation should be regarded as personalised when it is presented in such a way or in such a context that it can reasonably be regarded by the consumer as having been developed as a function of their needs or their personal situation.

As mentioned above, independent advice should be distinguished from advice given by an intermediary remunerated by insurance companies.

A6. 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?

The consumer should be able to subscribe to an insurance policy without having received advice. This can be the case, for example, within the framework of direct sales.

However, it is necessary that the insurance policy be appropriate to the consumer's needs, which presumes that the distributor has asked the consumer to specify his needs. This could be done via a questionnaire completed online.

For some complex insurance products, e.g. products which require detailed disclosures or products with important limitations of protection, Member States should be allowed to decide if they should only be distributed with advice.

A7. What practical measures could be envisaged for reducing the administrative burden in this area?

BEUC has no strong opinion regarding this question.

B. Effective management of conflicts of interest and transparency

B1. 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?

B2. How could these principles be reconciled for all participants involved in the selling of insurance products?

B3. 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.

B4. 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?

B5. 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?

With regard to conflicts of interest, BEUC believes that the first objective must be their avoidance; secondly, those that cannot be avoided must be made transparent to the consumer. This principle is valid for both the PRIPs type of insurance and others.

Currently, the commissions and other inducements paid by the undertakings are not related to the quality of the service to the insured, but solely to the selling of insurances.

Competition has to work on the level of product quality and price, not on distribution channels and remunerations, which are not related to the service quality.

The level of the commissions is an important aspect in this respect. In the UK, the Competition Commission investigated the market for payment protection insurance and found that commission of up to 80% was paid on such policies³. To ensure that the commission does not have an influence on the advice that is given, it would be necessary to harmonise the level of the commissions allocated to intermediaries by insurance undertakings. The level of commission could be capped.

Some remuneration schemes have a more harmful effect and are in direct contradiction with the interests of customers, because they give brokers an incentive to concentrate all their recommendations to customers on a single insurance company. These remuneration schemes have an effect which runs directly contrary to the interests of the insurance candidate and increases cases of 'mis-selling', and should therefore be prohibited. This is the case, for example, when the commission level is abnormally high and especially when the commissions are progressive as a function of the volume of premiums brought in for the undertaking. It is also the case when undertakings offer holiday trips each year the (exotic) destination of which is related to the amount of premium collected by the broker. The broker - who naturally wishes to maximise his/her profit - cannot remain indifferent to this type of remuneration structure.

Member States should not be allowed to ban passing all or part of the commission onto the consumer like German law does. Passing the commissions and inducements to the client is a way to avoid conflict of interest.

Member States must remain allowed to prohibit intermediary remuneration by insurance companies, as is the case in Finland and Denmark.

Independent advice should be unbiased and therefore remunerated only by the consumer. An independent advisor should not be allowed to be remunerated by insurance companies for the advice or for any other intermediary activity.

B6. What conditions should apply to disclosure of information on remuneration?

The remuneration and other inducements attributed to the intermediary should be brought to the attention of their customer without the latter having to request it.

It is not enough to communicate to a customer the amount of the net premium in as much as, for some products; the intermediary receives a share of the annual management fees, which will affect the reserve.

B7. What types/kinds of remuneration need to be included in the information on remuneration?

BEUC believes that no remuneration, direct or indirect, in cash or in kind, must be concealed from the consumer.

³ UK Competition Commission, investigation into payment protection insurance, provisional findings report 05/06/2008, p. 6
http://www.competition-commission.org.uk/inquiries/ref2007/ppi/pdf/prov_find_report.pdf

C. Introducing clearer provisions on the scope of the IMD

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.)

The provisions of the IMD should be applicable when the insurance policies are recommended or distributed by agents or directly by the insurance company. Without being exhaustive, the following rules should apply:

- the intermediary must act honestly, professionally and in line with the best interests of the customers;
- the advice given must be adequate in relation to the customer's needs (suitability test) and when a product is sold without advice, its adequacy with the customer's needs must be checked;
- the distribution remuneration structures cannot run contrary to the obligation to act honestly, professionally and in line with the best interests of the customers.

C2. 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?

C3. What conditions/reasons for exemption from IMD2 should be in place taking into account the need to ensure legal certainty and consumer protection?

BEUC has no strong opinion regarding those questions.

C4. 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?

BEUC considers that, when a generic (not personalised) piece of information or advice is provided by a person or an organisation which is not an insurance undertaking or an insurance intermediary, this activity should remain outside the scope of the IMD.

This is the case for example with comparative tests or with information distributed by a consumer association.

However, even if information or comparison websites are not considered as insurance intermediaries, they should have the duty to act honestly and in the interest of the user of the site. Companies operating comparison websites should disclose all remuneration or inducements received from insurance companies or intermediaries.

C5. 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?

BEUC believes that such sales should continue to be covered by the IMD. Insurance sales by car rental companies often happen in a pressurised environment (at the counter, at the point when the consumer is about to embark on his or her journey) and often concern marginal products.

In the UK, the regulator decided to bring connected travel insurance sales by travel agents under the full remit of the IMD from 2009 as it found evidence of significant consumer detriment in this area⁴.

The IMD should guarantee a real level playing-field between all participants involved in the selling of insurance products. The obligations for tied agents and persons who carry on the activity of insurance mediation in addition to their principal professional activity are currently lower than those for multiple agents and brokers.

C6. 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 intermediation?

BEUC is of the view that Articles 10 (unsolicited communications) and 15 (burden of proof) should be taken in account in the IMD.

D. Increased efficiency in cross-border business

D1. Do you agree with the inclusion of the definition of the freedom to provide services (FOS), as laid down in the Luxembourg Protocol of CEIOPS, in the text of the IMD?

D2. Is there a need to further clarify the rules regarding freedom of establishment (FOE) and integrate these rules in the IMD?

D3. How can the notification process be made more efficient and useful?

D4. Do you agree that further rules on FOS and FOE should be included in a revised IMD in order to provide more legal certainty?

D5. 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.

D6. 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?

D7. Would the integration of the CEIOPS Luxembourg Protocol clause on mutual recognition in a revised IMD be useful in this respect?

D8. 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 IMD2?

BEUC has no strong opinion regarding these questions.

⁴ FSA policy statement 08/4 Regulating connected travel insurance.

E. Achieve a higher level of professional requirements

E1. 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?

E2. Should these requirements be adapted according to the distribution channel? If so, how?

Besides economic and product knowledge the learning contents should comprise advisory skills focussing on consumer needs. Most of the current training offers do not pass this test. A central element of the authorisation must be methods and knowledge on how consumer needs are identified and building on this how an ideal solution/recommendation can be developed. Every person in contact with clients should fulfil the qualification requirements.

The training should not be organised by insurance companies (or their staff members) and the assessment of the qualification should be controlled by an independent body.

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

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?*

BEUC fully supports the European Commission when it considers that consistent conduct of business rules, inducements and conflict of business rules should apply to all persons selling PRIPs irrespective of whether the relevant entity is an intermediary or whether it is the product originator.

BEUC generally agrees with the main principles outlined by the Commission to be considered. However, BEUC has some concerns about the formulation of these:

- The duty to *act honestly, fairly and professionally in accordance with the best interests of their clients* should be applicable to all insurance advice or intermediation (on page 4).
- The suggested measures concerning conflicts of interests could be more precise. BEUC believes that the first objective must be the prevention of conflicts of interest. Those must be identified, avoided when possible, otherwise minimised and disclosed to the consumer. See our second general remark (on page 3) and our answer to question B.1. (on page 7).
- The information on the remuneration is more than the difference between the premium paid and the actual invested part of the premium. The kickbacks paid year after year by the issuer are at least as important as the initial commission. The other advantages or soft inducements should be also disclosed.

END.