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The European Federation of Investors
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Consultation on the Review of the Insurance Mediation Directive (IMD)

Reply of the European Federation of Investors

Introduction

EuroInvestors (the European Federation of Investors or EFI) was created in the summer of 2009, following the financial crisis which demonstrated the limits of the almost exclusive dialogue between regulators and the financial industry, largely ignoring the user side. EFI aims at representing and defending at the European level the interests of financial services users in order to promote training, research and information on investments, savings, borrowings and Personal Finances of individuals in Europe, by grouping the organizations pursuing the same objectives at a national or international level. Already about 45 national organizations of investors and other financial services users have joined us, and EFI already represents about two million European citizens.

Executive Summary

EuroInvestors supports the objectives of the consultation launched by the European Commission on the review of the Insurance Mediation Directive.

It is essential to **increase the level of policy holders' protection** to obtain the highest possible level by improving the quality of information provided to customers (generalization of the KIID to Insurance PRIPS, for example, requirement of a higher level of professional requirements), reinforcing transparency by requiring the disclosure of the total costs and of the inducements to avoid or at least spotlight conflicts of interest, harmonize the distribution of Insurance PRIPS by applying the same rules as those being reviewed and planned in the MIF for the other PRIPs.

The potentially most critical issue could arise from **a too narrow scope of PRIPs** (we refer to our reply to the PRIPs consultation[1]): if a significant part of life insurance contracts is excluded from the scope of PRIPs, then regulatory arbitrage risk to be massive to the severe detriment of policy

[1] http://euroinvestors.org/upload/positions/EFI%20PRIPs%20reply%20to%20EC%20%202011%2001311296556000.pdf

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holders. It is crucial that all life insurance contracts with an investment element are included in the scope of PRIPs including annuities of all types and optional pension products that are subject to national member states' insurance regulations.

One other critical issue is the necessary extension of provisions regarding **clear, fair and not misleading information** of the MiFID directive to all retail insurance products.
In particular, the **conditions with which information must comply in order to be fair, clear and not misleading,** especially those of article 27 of the MiFID Implementation directive, most importantly those under point 2:

Information *"shall be accurate and in particular shall not emphasize any potential benefits of an investment service or financial instrument without also giving a fair and prominent indication of any relevant risks.*
It shall be sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received.
It shall not disguise, diminish or obscure important items, statements or warnings."

These requirements are even more critical for the protection of individual holders of insurance products, as we have ample evidence of very misleading and very opaque information on many life insurance products in which individuals are often hooked up for the long term.

EFI asks that these provisions be included in the IMD as soon as possible, and then really enforced by national supervisors.

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3.1. Policy Objectives

A. **High and Consistent Level of Policy Holder Protection Embodied in EU Law**

A 1. **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?**

EFI fully supports the Commission services general approach to guarantee a high level of policy holder protection by providing fair and not misleading information. Therefore it is necessary to require similar requirements from insurance undertakings and insurance intermediaries. So the information requirements in Article 12 IMD ought to be extended to direct writers.

But this is far from enough to address the "*insufficient quality of information provided to consumers*" and to investors as identified by the consultation paper (page 5, para 2.2.1). In fact, unfortunately, none of the "policy objectives" (para 3.1. of the consultation paper) seems to regard the quality of information at the point of sale.
In particular, the provisions regarding **clear, fair and not misleading information** that are applicable to retail investment products covered by MiFID must be fully extended to all retail insurance products.
Some member states have actually already partially extended the information provisions of MiFID to insurance products. For example, France did extend the provisions of Article 19(2) of Directive 2004/39/EC to the French Insurance Code in 2010[2].

But France for example failed to extend the provisions regarding the **conditions with which information must comply in order to be fair, clear and not misleading**, especially those of article 27 of the COMMISSION DIRECTIVE 2006/73/EC of 2006 (the MiFID implementation directive), most importantly those under point 2:

Information "*shall be accurate and in particular shall not emphasise any potential benefits of an investment service or financial instrument without also giving a fair and prominent indication of any relevant risks.*

It shall be sufficient for, and presented in a way that is likely to be understood by, the average member of the group to whom it is directed, or by whom it is likely to be received.

It shall not disguise, diminish or obscure important items, statements or warnings."

These requirements are even more critical for the protection of individual investors and consumers in insurance products, as we have ample evidence of very misleading and very opaque information on many life insurance products.

We ask that these provisions, and especially those of article 27 of the MiFID implementation

[2] "Loi portant réforme du credit à la consommation" of 1st July 2010, article 35, now transposed into the French Insurance code article L132-27 and French Mutualitycode article L223-25-2.

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directive be included in the IMD as soon as possible.

A 2. **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.**

Individuals are not concerned by this exemption but in general we are not in favor of giving exemptions, in order to guarantee a true level playing field.

A 3. **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.**

Although EFI supports usually a full harmonization approach, in this case, it seems to us that the specificity of some insurance markets, for example the French one, leads us to be in favor of a more flexible approach.

A 4. **In the context of the information requirements, do you think a definition of "advice" should be introduced? Please provide reasons for your reply.**

Yes, it is essential to have a clear and understandable definition of "advice".

A 5. **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 MiFID be appropriate? Please provide reasons for your reply.**

EFI considers that a definition similar to that in MiFID would be the most appropriate, in order to avoid difference in interpretation and overlap in legislation depending on the specific product in question. There is an issue with the current MiFID definition though. Professionals claiming they are "advisors" should be independent from product providers. If not, it should not be labeled misleadingly as "advice", but as marketing or sales pitch, which is what it really is. We refer to our reply on the MiFID review consultation.[3]

A 6. **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?**

In some cases, insurance covering is included in the product sold to the consumer, like in car renting or leasing of equipment and the client has not the possibility to refuse the insurance covering or to get another contract from another insurance undertaking. In these cases,

[3] http://euroinvestors.org/upload/positions/MiFID%20EFI%20reply%20%202%20Feb%202011%201296749279.pdf

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information has to be nevertheless given to the customer, so that at least he or she knows whether he or she will be sufficiently covered by the contract.

A 7. **What practical measures could be envisaged for reducing the administrative burden in this area?**

Any measure that will increase the number of documents or the complexity of the documents the consumer will have to read may be counterproductive in the sense that , flooded by papers, this consumer will not take the time to read then or will have difficulties to understand them. For these reasons we are in favor of the KIID approach applied also to all insurance contracts and Insurance PRIPs. Note also that the costs of producing these documents will be in the end supported by the customer which is not in his financial interest.

B. **Effective Management of Conflict of Interest and Transparency**

B 1. **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?**

In all cases, clear and effective rules to avoid conflicts of interest and provide transparency should be implemented. Insurance undertakings and intermediaries should be obliged to act honestly, professionally and in line with the interests of their customers. The principles on which MIFID is based when dealing with these subjects could be a good starting point. Clearly as stated in the commission paper, intermediaries or undertakers can have a dual role as advisor and sellers of a product. This could be a source of conflict of interest. Therefore, the client should be informed, prior to the provision of the service about the basis on which advice is provided and be informed of the level of remuneration and inducements received by the intermediary or the undertaker (in case of advice or sale at the counter). This implies that the provision of investment advice would be clearly separated from the sale of investment products, which is actually quite rarely the case.

In the case of advice it should be based on the profile, needs, financial and tax situation of the client and a fair analysis of the market through a sufficiently large number of contracts from different providers (see MIFID consultation). This means that banks, salaried distribution networks of insurance companies, insurance agents and excusive brokers cannot provide any advice, as they offer products from only one provider to which they are economically tied in a way or another.

The “sufficiently large” concept should be specified and include at least one low cost provider.

But the European Authorities must face the reality of the retail distribution in Europe:

1/ In the EU, a vast majority of financial intermediaries sells only products from their own Group (especially retail banks and insurance companies distribution networks);

2/ An even larger majority of financial intermediaries is compensated directly or indirectly on the

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basis of product sales (actually many intermediaries do not even have the proper training and competencies to be able to do that anyway).

Therefore, only a tiny minority of intermediaries (the "fee-based" ones) could provide "*advice based on a fair analysis of the market*", assuming they have the proper training and competencies to do that.

Then considering "*a sufficiently large number of financial instruments from different providers*" can only be relevant for that very small portion of European financial intermediaries.

Finally, what is more important is to forbid the vast majority of financial intermediaries to label themselves as "advisors" as they are in reality sales people. This is terribly misleading for the average EU citizen who has a low financial education level.

It is also of utmost importance that the total costs be displayed with the distinction between commercial costs, management costs etc..

B 2. **How could these principles be reconciled for all participants involved in the selling of insurance products?**

See our answer to A 3.

B 3. **Do you agree that the MiFID Level 1 regime could be regarded as starting point for the management of conflicts of interest? If not, please explain why.**

Yes, the MiFID Level 1 regime is a good starting point for the management of conflicts of interest, but also expressly includes the relevant provisions of the MiFID implementation directive of 2006 as well.

B 4. **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?**

Distribution costs are not always easy to individualize. But there are two very important information that should be given :

- the total of costs of the product (distribution, management etc..)

- the level of remuneration and inducements for the intermediary and in case of direct sale by the product provider the remuneration package of the employee.

B 5. **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?**

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Yes, but this will require full transparency.

Regarding the legal status of intermediaries, it should be mandatory for the insurance company as well as the intermediary to decide on a contractual relationship as either an independent broker or an insurance agent or an employee of the insurer. Simultaneous activities, for instance as both broker and agent or employee and broker/agent, must be banned in order to ensure a level playing field between direct writers and independent intermediaries.

Customers also should be treated equally and have the unrestricted right to change their insurance intermediary (especially so-called "brokers" or independent advisors"), and without any penalty, as we have ample evidence of intermediaries not doing anything for the insurance policy holders after the subscription phase, but still pocketing the yearly asset-based fee year after year.

B 6. **What conditions should apply to disclosure of information on remuneration?**

See our response above to B4 and B5. Transparency of the intermediary's role (broker, agent or employee of the provider) and its remuneration is crucial. The insurance intermediary must disclose the legal status with the insurer. Regarding the insurance products, intermediaries must forward the insurance information fact sheets containing the total costs of products introduced to the client.

B 7. **What types/kinds of remuneration need to be included in the information on remuneration?**

All information.

C. **<u>Introducing Clearer Provisions on the Scope of the IMD</u>**

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.)**

EFI considers that the same rules must apply to everyone involved in insurance mediation. Consequently, the full extent of IMD requirements that apply to intermediaries must also apply to direct writers and their employees.

C 2. **A lack of clarity about the scope of 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?**

If the rules apply uniformly, without exceptions, then no further clarification will be needed.

C 3. **What conditions/reasons for exemption from IMD2 should be in place taking into account the need to ensure legal certainty and consumer protection?**

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EFI is opposed to any broadening of the scope for exemption. We believe that everyone practicing insurance mediation must comply with the rules of the IMD. In combination with other specific regulations on insurance contracts, IMD leads to a balanced level of consumer protection, taking into consideration the specific issues related to insurance mediation.

C 4. **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?**

Yes as long as it is in a way or another related to specific insurance products, because the consumer is not in a position to know whether the website or the person is dependent of an insurance company or an intermediary subject to the IMD. The issue is, how to control the information displayed.

C 5. **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?**

No.

C 6. **Which particular requirements stemming form 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?**

EFI considers that the same rules must apply to everyone, regardless of the distribution channel, including internet and telephone.

D. <u>Increased Efficiency in Cross-Border Business</u>

D 1. **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?**

Yes. Also, the free flow of capital provisions of the EU are routinely violated by member states, as the following recent example shows. We are aware that this is not directly related to the IMD review, but it is certainly a big issue for European policy holders and a big unjustified limit to the free choice of insurance intermediaries, products and insurance providers within the EU.
For example a Belgian citizen will not be charged any income tax on any gains coming from a "branche 23" life insurance contract issued by a Belgian-based insurance company. But if he subscribes the same type of contract (unit-linked life insurance contract) issued by a French-based insurance company, he will be charged a non refundable withholding tax of 7.5 to 45% of the accumulated income by the French State (Article 125-0 A II bis of the French Code general des Impôts). This is obviously restricting heavily the choice of life insurance products for non French residents and thoroughly reducing competition.

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We are wondering when the EC will eventually put an end to these violations.

D 2. **Is there a need to further clarify the rules regarding freedom of establishment (FOE) and integrate these rules in the IMD?**

Do not know

D 3. **How can the notification process be made more efficient and useful?**

Not concerned.

D 4. **Do you agree that further rules on FOS and FOE should be included in a revised IMD in order to provide more legal certainty?**

Not concerned.

D 5. **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.**

Not concerned.

D 6. **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?**

See reply to D1

D 7. **Would the integration of the CEIOPS Luxembourg Protocol clause on mutual recognition in a revised IMD be useful in this respect?**

No.

D 8. **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?**

Not concerned.

E. **Achieve a Higher Level of Professional Requirements**

E 1. **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?**

Insurance and reinsurance mediation in each member state has to be a full-time trade, linked to official recognition.
These activities have to encompass mediation, consultation, as well as the winding up of contracts of general, personal and liability insurance to an extent which is equivalent to the officially

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recognized ability exam. Dependent Tied Agents of banks and insurance companies must meet the same standard as entrepreneurs, and pass their exam in front of the same authorities.
It would be advisable for the requirements regarding knowledge to be provided in the revised IMD. Further harmonization is required.

Everyone responsible for insurance mediation activity should be required to demonstrate sufficient technical knowledge. This relates to knowledge of:

- basic in insurance theory and practice
- basic in economy and financial markets
- insurance legislation,
- legislation on the supervision of insurance companies concerning insurance contracting
- legislation on trade practices and consumer protection
- legislation on preventing money laundering and terrorism financing

This knowledge can be demonstrated either by means of a qualification listed by the Member States or by passing an exam after the completion of a specialized course.

Access to official recognition necessary for the selling of insurance products must be either through a successfully taken ability exam or documents about an uninterrupted multi-year-period activity as insurance intermediary or in a leading position of an insurance or intermediation company.

Alongside theoretical knowledge there should also be a requirement for a certain level of practical experience.

It would be advisable to set separate requirements regarding knowledge needed to undertake insurance mediation for classical insurance products and for undertaking mediation in relation to insurance-based PRIPs.

There should be a level playing field concerning the requirements for knowledge and ability between all actors involved in the selling of insurance products including employees of banks and other institutions, internet platforms.

It is necessary to have provisions regulating employees of insurers who undertake insurance mediation. The same goes for direct selling.

E 2. **Should these requirements be adapted according to the distribution channel? If so, how?**

The requirements should apply equally to all those involved in insurance mediation, regardless of distribution channel, so as to achieve a level playing field and a good level of consumer's protection.

3.2 Distribution of Insurance PRIPs
(Investments Packaged as Life Insurance Policies)

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1. **What practical challenges do you think should be addressed when drafting new legislation on the distribution of insurance PRIPs?**

EFI agrees with the objectives expressed by the Commission: it is essential to ensure that consistent fair information, conduct of business, inducements and conflict of interest rules are applied to all persons selling packages retail investment products, irrespective of the nature of these products (insurance, banking, or capital markets products) and of whether the relevant entity is an intermediary or the product originator.

For these reasons, EFI is in favour of product manufacturers generally holding responsibility for preparing a KIID. It is the only way to maintain the uniformity necessary for the KIID to achieve the intended consumer protection. This option carries the benefits of clarity and simplicity.

But in some cases brokers (like some insurance brokers) may add features to the manufacturer's product.

These cases can be seen as particular arrangements between manufacturer and distributor. What is important is that authorisation of the document, as well as ultimate responsibility for the document, lies with the manufacturer.

2. **What are the most important practical issues to be considered when applying the MiFID benchmark to the selling of insurance PRIPs?**

In order to be able to apply the MiFID selling rules to the sale of insurance-based PRIPs, it is necessary that these products provide the same set of information regarding their characteristics, i.e. the KID. It should also be made clear if the company that actually markets and distributes the product (middle office for instance) has an interest in the investment company or the investment fund itself.

The potentially most critical issue could arise from a too narrow scope of PRIPs (we refer to our reply to the PRIPs consultation): if a significant part of life insurance contracts is excluded from the scope of PRIPs, then regulatory arbitrage risk to be massive to the severe detriment of policy holders. It is crucial that all life insurance contracts with an investment element be included in the scope of PRIPs including annuities of all types and optional pension products that are subject to national member states' insurance regulations.