verbraucherzentrale Bundesverband

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Consultation Document on the Review of the Insurance Mediation Direktive (IMD)

Response by Verbraucherzentrale Bundesverband
the Federation of German Consumer Organisations

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General remarks

The experience of the Insurance Mediation Directive to date

Even in Germany there is no unique procedure of licensing for all Intermediaries. Tied agents and agents selling Insurance beyond their origin business do not need to have license. They need only a registration. Insurance broker and insurance adviser need a license.

There is no working permanent supervision on information requirements as contained in Art. 12 par. 2 and 3.

The waiving of advice is - inconsistent with IMD - explicitly regulated by Art. 61 par. 2 of Insurance contract act.

Cross-sectoral selling practices

It is important to ensure a coherent approach in IMD, PRIP and MiFID. This includes the provision of pre-contractual information, its form and content, incentives for distributors that may influence the advice to consumers, assessment of the suitability of the financial product for the consumer, and the appropriate regulation and supervision of all participants in the respective distribution chain.

Several directives contain overlapping requirements in the area of pre-contractual information because of their different purposes and scope. This can cause uncertainty and information overload for the consumers.

Distinction between distribution, advice and general information

A definition of "advice" should be introduced as an independent service to consumers. The Adviser must be independent form an insurer or insurance intermediaries and cannot receive any benefit from them. The consumer pay fee for the advice.

Insurance intermediaries cannot give independent advice paid by fee from consumer. The “advice” is part of sales talk proposing an insurance product by analysing of consumer´s needs and testing appropriateness of the recommended

insurance product to the customer's needs. In Germany insurance intermediaries try to avoid giving “advice” to consumer. It is allowed by national law. As a result of a telephone survey only 52 % of the consumers have got “advice” by insurance intermediaries.

Advice could be defined as a personalised recommendation to subscribe to an insurance policy. This is the distinction to general Information, which should remain outside the scope of the IMD.

Effective management of conflicts of interests and transparency

First of all the intermediary must act honestly, professionally and in line with the best interests of the customers.

First objective must be the prevention of conflicts of interest. Is this not possible any conflicts of interest should be brought to the knowledge of their customers.

Conflicts of interest depend not on categories of insurance products, they depend on level of inducements. E.g. a commission of 18 monthly premiums will cause a serious conflict of interest and must be disclosed by numeralising the commission in Euro and Cent. The numeralisation must be mandatory and not on demand by consumer.

Opinion on the Consultation Document

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?

Concerning insurance undertakings Art. 12, par. 1 need not be applied (the necessary rules are part of directives life and non-life), but Art. 12 par. 2 and 3. Furthermore explicit information is needed that there is no check if better-suited products are on the market.

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.

Article 12 of the Directive which currently is no base for a full harmonisation approach does not offer a high level of protection. For example, there is no obligation to inquire actively about the customer's needs; even if the intermediary has undertaken an impartial analysis of the market he can rely on the information given to him by the consumer. In the future the intermediary should be obliged to pose questions making it possible to obtain all the information needed for correctly determining the needs.

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

Like in MiFID a definition is useful so that it gets possible to distinguish between information, advertising and personalised advice which can only be given and products proposed after the needs and demands of the consumers have been actively detected and analysed by the intermediary. The products proposed must fit to those needs.

Insurance intermediaries cannot give independent advice paid by fee from consumer. The “advice” is part of the sales talk proposing an insurance product by analysing consumer´s needs and testing appropriateness of the recommended insurance product to the customer's needs. In Germany insurance intermediaries try to avoid giving “advice” to consumer. It is allowed by national law. As a result of a telephone survey only 52 % of the consumers have got “advice” by insurance intermediaries.

There must exist two separate worlds: distribution financed by commission and gross premium on one hand and advice financed by fee and net premium on the second one. No mixture of both systems! Every insurer has to offer products without commission.

If a product shall be sold without an advice there has to be a specific warning if the product would not match an appropriateness check.

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 MiFID be appropriate? Please provide reasons for your reply.

We believe that the definition of advice in MiFID is an appropriate model (personalised recommendation to sign an insurance contract).

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?

Only within the framework of direct sales it should be possible to sell insurance products without advice; Art. 12 par. 3 and 4 should however be applied. The contract must be appropriate to the consumer's needs what suggests the distributor asking consumer to specify these needs (e.g. via an online questionnaire).

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?

First of all conflicts of interest - both for PRIPs and other insurance products - must be avoided; secondly, those that cannot be avoided must be made transparent to the consumer. Competition has to work on the level of products' quality and price and not on distribution channels and remunerations which are not related to the service quality. Commissions should be defined clearly (often not only money is being paid, but non-cash benefits given); the level of commissions and benefits could be capped:

- Cap on the commissions in life and private health,
- No commissions at all when cover is transferred, underwriters are changed,
- In life no more front-up loading; instead all commissions have to be distributed over the whole lifetime of the contract.

It is also important that brokers/intermediaries have to identify their status, that is if they are mainly co-operating with one or few insurance companies or if they offer the whole range of products/insurers. There is a need for an European standard of status declaration and handout explanatory information sheet about types of intermediaries.

Tied agent and direct writer have to give warning about limited range of products and possible suboptimal appropriateness of the product.

In Germany one harmful remuneration principle is the ban on passing all or part of the commission onto the consumer.

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

All kinds of remuneration paid or given to the intermediary should be brought to the attention of the customer (not only on demand).

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

No remuneration, direct or indirect, in cash or non-cash, must be concealed from the consumer.

Conflicts of interest don't depend on categories of insurance products, they depend on level of inducements, e.g. a commission of 18 monthly premiums will cause a serious conflict of interest and must be disclosed by indicating the commission in Euro and Cent. This indication must be mandatory and not only on the consumer's demand.

C. Introducing clearer provisions on the scope of the IMD

C1. 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.)

IMD provisions should be applied if insurance contracts are recommended or distributed (by agents or directly). At least the following rules should apply:

- the intermediary must act honestly, professionally and in line with the best interests of the customer;
- the advice given must be adequate to customer's needs (suitability test)

- if a product is sold without advice, its appropriateness in relation to the customer's needs must be checked;
- remuneration structures cannot work contrary to the obligation to act honestly, professionally and in line with the best interests of the customer.

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?

Of course activities like websites, comparative tests/software or pieces of information made or given by independent consumer organisations should remain outside the scope of the IMD.

But there can also be insurers, intermediaries or providers on the market that launch websites (esp. for comparison reasons) or produce comparative software (with pre-ticking of boxes and other tricks) ordered and paid by – with commission or any other payment - insurers or intermediaries. Even editorials can be dangerous when sponsored by providers and containing advertising material that can lead consumers to certain product offers. The wolf in sheep's clothing has to be avoided.

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?

The current IMD does not 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 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?

Articles 10 (unsolicited communications) and 15 (burden of proof).

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?

Concerning qualification some pieces of legislation concentrate on certain degrees. Much more important are the competencies taught in the training. Besides economic and product knowledge the learning contents should comprise advisory skills focussing on consumer needs. Most of the current training offers don't pass this test. 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. An independent body has to certify that qualification.

Every natural person has to fulfil qualification requirements.

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

In the context of PRIPS, it would appear important to ensure that consistent conduct of business, inducements and conflict of interest rules are applied to all persons selling packaged retail investment products, irrespective of whether the relevant entity is an intermediary or whether it is the product originator. Detailed requirements should take into account the service being offered (advice, sales without advice). However, it is vital that market failings or risks for customers should be always be addressed in an effective or appropriate manner, irrespective of the channel through which a sale is being concluded. The rules of MiFID would appear to be the appropriate benchmark in this regard

The person selling insurance PRIPs should be responsible for providing precontractual disclosure document(s) to the client. As regards direct sales, the responsibility would fall on the product originator (PRIPS insurer). For indirect sales, the intermediary would be responsible for providing the document to the client22

In respect to the sales process and any services provided in relation to that process, the following main principles should be considered: Insurers or insurance intermediaries selling or giving advice on insurance PRIPs should act honestly, fairly and professionally

in accordance with the best interests of their clients. In the context of tied agents, the responsibility to act in the best interest of the client would remain with the insurance undertaking

Insurance undertakings or insurance intermediaries selling PRIPs need to ensure that the client receives information as regards the remuneration of the sellers (making clear the difference between the premium paid and the actual invested part of the premium)

Remuneration structures should not be such that they materially impact on the ability of the intermediary to act in the best interest of the client and should be structured in a way that effectively avoid or manage any conflicts of interest that may arise

When providing investment advice for insurance PRIPs, the insurance intermediary or the insurer should obtain the necessary information regarding the client's or potential client's knowledge and experience in the investment field relevant to the specific type of product or service, his financial situation and his investment objectives. This information should be obtained so as to enable the firm to recommend to the client or potential client the investment services and financial instruments that are suitable for that client or potential client

Member States could be required to ensure that the insurance intermediary and the insurer, when selling insurance PRIPs without providing advice, ask the client or potential client to provide information regarding his knowledge and experience in the investment field relevant to the specific type of product or service offered or requested. This information request should enable the insurance intermediary or the insurer to assess whether the investment service or product envisaged is appropriate for the client. If the insurer or intermediary considers, on the basis of the information received, that the product or service is not appropriate to the client or potential client, the insurer or intermediary should warn the client or potential client. This warning could be provided in a standardised format

Member States could be required to ensure that insurance intermediaries and insurers take all reasonable steps to identify conflicts of interest between themselves. This should include conflicts in relation to the intermediaries' or insurers' managers, employees and tied intermediaries, or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any insurance, insurance intermediation and ancillary services related to PRIPs insurance policies

Where organisational or administrative arrangements put in place by the insurance intermediary or the insurer to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to client interests will be prevented, the PRIPs intermediary and insurer could be required to clearly disclose the general nature and/or sources of conflicts of interest to the client before undertaking business on the client's behalf.

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?

FSUG supports COM believing that professional conduct of business, inducements and conflicts of interest rules should apply to everyone selling PRIPS products be it an intermediary or a product originator.

The main principle however should not be limited to the distribution of PRIPS. The duty to act honestly, fairly and professionally in accordance with the best interests of their clients should always be applicable.

The suggested measures concerning conflict of interests should be more precise; first of all conflicts of interest must be prevented. They must be identified, avoided whenever possible, otherwise reduced and disclosed.

Information on the remuneration must be more than the difference between the total premium and the invested part of the premium; kickbacks, other advantages, soft inducements also have to be mentioned.