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**Position paper:
Insurance Mediation Directive (IMD2) -
Taking into account consumer issues in the
trialogue negotiations**

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Introduction

The objective of the Insurance Mediation Directive (IMD2) is to create a uniform general regulatory framework for the distribution of insurances to avoid regulatory arbitrage. Subsequently, the level of consumer protection would no longer depend on the distribution channel. Part-time intermediaries, tied intermediaries, agents, direct distribution and insurance products from other European countries would finally be subject to the same conditions. The proposals under discussion that have been presented by the European Commission, the European Parliament and the ECOFIN Council only partially live up to that objective. For this purpose it would be necessary to lay down certain minimum requirements for every point of sale - while respecting proportionality of the measures. This would apply to basic qualifications and further training, the disclosure of the status of acting parties, the fair, honest and professional contact with clients and the execution of a risk analysis.

After the Council published its common position, vzbv (Federation of German Consumer Organisations) would like to draw the attention to the following points for the upcoming triologue negotiations:

1. Fully include small insurances

Most of the time, insurance coverage of so-called small insurances for theft, repair or travel risks includes numerous exceptions and the supposed insurance protection does not exist in practice. However, in most cases, consumers will not be informed about those clauses by the intermediary. The reasons are mostly lack of qualification of non-professional intermediaries who fail to explain the terms of the contract in a suitable manner. Additionally, in most cases, advice is only given in a short, oral and incomplete way. Questions about existing insurance coverage or risk behaviour are often not even being asked.

The intermediaries are subject to a high conflict of interest caused by considerable financial inducements. Subsequently, they mostly have a sales conversation with their customer instead of giving sound financial advice, which the consumer on the other hand expects to receive. Consumers in most cases do not plan to buy small insurances. Hence, there is no possibility of comparison and an unfair sales context emerges in which the consumer needs to fully trust the intermediary and rely on the explanations and advice s/he receives.

Therefore, vzbv welcomes the Council's proposal which at least obliges the insurers to act in a transparent way and in the best interest of their customers, while the remuneration of the intermediaries must not set false incentives. Consumers need to have access to all relevant information – for example whether the offered products can also be bought separately. In contrast, the Commission's and Parliament's proposals almost completely exclude the distribution of small insurances from the scope of IMD2. vzbv would therefore strongly support the Council's position.

vzbv recommends to follow the Council's proposal with regard to the scope of IMD2, including small insurances in article 1.

2. Retain the examination of registration requirements for non-professional intermediaries

Unlike originally intended by the Commission's proposal and the Parliament's text the Council rightly eliminated the possibility for Member States to exclude non-professional intermediaries from the examination of registration requirements, as long as they work for a registered intermediary. If that was so, only the supervising intermediary would be responsible for the accuracy of the requirements. However, this subordination relationship creates a serious conflict of interest if the subordinated intermediaries are excluded from the assessment of whether they meet the registration requirements.

Particularly pyramid selling schemes would profit enormously from this type of regulatory approach. In these arrangements every intermediary has an incentive to recruit as many non-professional intermediaries as possible who work for him/her in the hierarchy as they get to keep a share of their commissions. Therefore, their objective is to permanently acquire large numbers of subordinate non-professional intermediaries. If the assessment of registration requirements is incumbent on the registered intermediaries only, they have a strong incentive to accept deficient qualifications and thereby enhance the conflict of interest. This drastically impacts the quality of the offered financial advice. Therefore, non-professional intermediaries must not be excluded from the assessment of registration requirements.

Every intermediary has to obtain his own admission without exceptions as intended by the changes in article 3 and deletion of article 4 in the Council's proposal. Vzbv supports the adoption of these changes in the final IMD2.

3. Prevent conflicts of interest – full disclosure for all types of insurances

The disclosure of all commissions originally proposed by the Commission in article 17 to avoid conflicts of interest was not included in the proposals of the Parliament or the Council. While the Council suggests the disclosure of commissions for the distribution of insurance investment products in article 24, a holistic approach including all insurance products is a far better solution.

Price transparency of commissions is important, especially because commission-based and fee-based advice do not compete under fair conditions. Under first impression, commission-based financial advice seems to be free of charge, while fee-based advice seems relatively expensive and unattractive for consumers. The lack of price transparency for advisory services prevents a functioning and fair competition between the two systems – to the detriment of fee-based advice.

Therefore, vzbv recommends to follow the Commission's proposal in article 17 and to implement compulsory disclosure of all commissions in the distribution of all insurance products. Hence, full disclosure in Euros and Cents should be mandatory. Additionally, customers should have access to information about the basis of calculation, agreed objectives and thresholds which the commissions depend on.

4. Consumer protection on tying and bundling practises

In many cases insurance products are offered together with other goods or services as part of a package. In some cases the conclusion of an insurance contract is a pre-condition for concluding another contract. Tying and bundling practices are an unacceptable situation that regularly leads to problems for consumers. Especially banks have in the past pressured consumers and made their credit lending directly or indirectly conditional to the conclusion of additional insurance contracts that have no genuine relation with the credit contract. Therefore, we have welcomed the Commission's proposal, which intends to prohibit this mandatory combination of two legal acts (tying).

The Commission proposal additionally suggested that if insurance products are offered in a package with other goods or services (bundling) a notice that these products can be bought separately is mandatory. This is absolutely essential for an informed decision-making of consumers.

vzbv therefore recommends the adoption of article 21 of the Commission's proposal which prohibits tying practises and obliges intermediaries to inform consumers of the possibility to separately purchase the offered insurances contracts, goods and services, which are being presented in a bundle.

5. Convergence with MiFID2 rules

There are only few requirements about additional consumer protection for the distribution of insurance investment products in the Council's proposal that are in line with provisions of MiFID2. Especially the prohibition to label as "independent" advice services of intermediaries when they do not assess a sufficiently large number of insurance products or accept monetary or non-monetary benefits from a third party - as originally proposed by the Commission - should be adopted in dialogue. Likewise, the obligation to always act and inform fairly and in the best interest of the customer, as proposed by the Commission, should become part of the final text. The best convergence concerning the obligation to provide information on commissions, market and risk analysis is to be found in article 24 of the Parliament's position.

The convergence with the MiFID2 provisions is crucial because capital-forming life insurances and classic investment products are sold as substitutes in the B2C distribution markets for financial products. Already today, banks are the main distribution channel for private pension schemes for lump sum payments. If rules for the distribution of insurance investment products will lag behind those of classic investment products in future there will be a drastic shift from other financial products towards insurance products in B2C distribution. Stricter regulations will have imminent managerial effects and it is to be expected that distribution will focus on the less regulated sector/products. Subsequently, consumers would no longer be offered the entire portfolio of the intermediaries but instead mostly financial products disguised as insurances. On the ground of covering biometric risks there would always be a formal justification possible for doing so. This serves neither

the overall competition between different product types nor the consumers' interest which would require a separation of building up capital and risk protection.

Therefore, vzbv recommends achieving a convergence with article 24 in MiFID2 on consumer protection in the distribution of insurance investment products to the furthest possible extent. Hence, we recommend to adopt paragraphs 1, 2, 4, 5 and 6 from the proposal of the Commission, paragraph 3 of the Parliament's text and paragraphs 10 and 12 from the Council's common position of the respective articles 24 in the Insurance Mediation Directive 2 (IMD2) dialogue.