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Consultation on the revision of the Insurance Intermediation Directive (IMD)

The response of the Fédération Bancaire Française (FBF)

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The Fédération Bancaire Française (the French Banking Federation, hereinafter FBF) is the professional organisation that represents the interests of the banking sector in France. It comprises all the credit establishments registered as banks and doing business in France, i.e. more than 450 commercial and cooperative banks. Banks that are members of the FBF have 40,000 permanent branches in France, 400,000 employees and 60 million customers.

As a preliminary remark, the banking profession would like to note that after five years of experience with the IMD, recently in a context of a major economic and financial crisis, no overall deficiency has been identified in the distribution of insurance products to consumers in Europe. This raises the question as to the appropriateness of a revision of a directive that will lead to significant costs for the banks and ultimately the consumer, who will moreover not reap any tangible benefits.

As was generally emphasised during the public hearing organized by the Commission last 10 December, the initial observations / postulates (insufficient information about risks, the costs of insurance products, conflicts of interest, inadequate transparency concerning the payment of intermediaries and commission sharing) are not shared by the members of the insurance intermediation profession.

By way of example, note that, in its opinion rendered on 10 November 2010 on the revision of the IMD, the CEIOPS affirmed that transparency on payments would enable consumers to evaluate the advice received (cf. 6.1.1 § 3). However, in this case neither the existence nor the level of the payment gives any indication of the quality of the advice provided by the intermediary nor does it provide the customer with any information about the content and/or overall cost of the insurance product that the intermediary is presenting. This overlooks the very heart of the customer's objective, which is to be able to benefit from coverage adapted to their needs. The debate is no longer over the content of the product or its overall price as invoiced to the customer, but concerns a constitutive element of the price, i.e. the payment formally charged by the intermediary.

Furthermore, one of the conflict of interest situations cited by CEIOPS (see Article 6.2.1 § 1) is the case of “intermediaries integrated into or forming part of an insurance group”. Yet an intermediary’s membership in a large insurance group cannot in itself and by its very nature constitute a risk to its independence and impartiality.

The same is true for "the proposal or the sale of insurance products in association with the provision of other products or services (e.g. credit insurance offered by a bank in association with a loan), which is likely to allow the intermediary to make a financial gain at the expense of the customer" (cf. § 1 c). Once again it is not shown how the receipt by the intermediary of a gain from the transaction would in itself be antithetical to the pursuit of the best interests of the insured client (see below).

Similarly, CEIOPS considers that there is a conflict of interest whenever an intermediary is both broker and agent (see 6.2.1 §1 g). However, the current directive does not forbid an intermediary from carrying out business in a number of ways. The key is that the customer is informed of the status of the intermediary when the latter offers him the insurance policy (see Article 12.1 i), ii), iii) of the current directive).

The FBF therefore considers that a prior impact assessment is absolutely essential to demonstrate the need for a revision of the directive.

If failures have been observed, it is a priori only occasionally at the local level, due to the poor transposition of the directive. It is not possible to generalise this observation, and the revision of a directive cannot be validly based on the observation of problems that are purely national, for which responses can be provided at the local level.

Finally, the current directive already ensures satisfactory regulation of the activity of insurance mediation, both as regards advice and transparency on capital links between the different actors involved in a single transaction. The real question then is the proper application of the current directive, throughout Europe, as the transposition has not been uniform, and this is a directive with a minimum of harmonisation that allows Member states to maintain or add stricter national provisions. Experience shows that a directive with full harmonisation is to be preferred in order to ensure uniform implementation and thus a level playing field between the different actors within the different EU states.
The transposition of the 2002 Directive carried out in France is very protective for consumers.

Questions

***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?*

We are in full agreement that insurance companies should be subject to the same obligations as insurance intermediaries, which will ensure a level playing field in the market for the distribution of insurance products.

***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.*

We are in favor of this exemption.

***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.*

The French banking industry is in favor of full harmonisation that genuinely leads to promoting a level playing field in Europe on the market for insurance mediation. Accordingly, Member States should not be able to maintain or adopt stricter provisions than those contained in the directive with respect to the matters that it covers.

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.*

As we stated above, there is no evidence today of real problems in the distribution of insurance products. The current directive already provides a certain number of elements to define the concept of advice (to "recommend" a product suited "to the demands and needs" of the customer - Article 12.2 and 12.3).

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 MiFID12 be appropriate? Please provide reasons for your reply.*

The definition of investment advice given by the MIFID (provision of recommendations personalised to the customer's request or at the initiative of the investment firm with respect to one or more transactions related to the financial instruments) is not appropriate for the insurance context considered as a whole.

There is a great difference in logic between the MIFID and the IMD Directive: in the first case, the advice is treated as a service provided to the customer, with cases in which advice can be dispensed with ("execution only"). In the second case, the advice is a full and complete obligation and concerns a specific insurance product.

Thus the definition given by the MIFID is not suitable for insurance products other than PRIPs, which are not investment products, and even less so for general insurance.

In any event, if, despite the reservations expressed above, a more precise definition is to be introduced into the IMD, then advice should be defined generically so as to encompass all the different types of insurance sold.

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?*

The requirement of advice must apply in all cases, that is to say, to all insurance products, regardless of the distribution channel. The form of the response to the obligation of advice must, however, be adjusted according to the complexity of the product, as provided by the current directive (Article 12.3) (cf. response to the next question).

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

Some documents (e.g. a quotation) must be capable of establishing advice formally in order to ease the administrative constraints and costs. The current directive also does not prohibit integrating the formal establishment of advice into another document by the intermediary.

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?*

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

B 3. *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.*

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?*

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?*

- The prevention of conflicts of interest basically requires information about the business relationship between the stakeholders, about the degree of independence that this relationship does or does not allow, rather than simply an outright prohibition.

The current directive contains provisions on transparency. This includes on the one hand, the capital relationships and, on the other, the nature of the relationship between the intermediaries and the insurance companies (three methods of exercising the activity of insurance intermediary defined in Article 12.1.).

- It is important that the customer is clearly aware of the ways in which the insurance intermediary carries on its business, and thus on whose behalf it is acting: for example, whether it is acting as a representative of an insurance company (and thus acts as an agent - covered in Article 12.1 ii) of the current directive) or as a representative of the customer (and thus acts as a broker - covered in Article 12.1 i) of the current directive). There can be no conflict of interest so long as the customer is clearly aware of the existence of contractual or capital-based relationships between the intermediary and the producer insurer. In this case, the customer is fully aware when subscribing / adhering.

In summary, the current directive is satisfactory. The issue of transparency concerning commissions seems secondary relative to the advice to be given to the customer about the actual content of the product, its price, and its relevance to customer needs, all of which are at the heart of the intermediary's obligation to the customer.

Moreover, while the Commission is not making use in its consultation, which we welcome, of the CEIOPS assertion that the proposal by a bank of credit insurance in addition to a loan may be considered to be an example of a conflict of interest, we would like nevertheless to shed some light on this point so as to avoid any misunderstanding.

In its report, the CEIOPS cites this example and considers that there is a potential conflict of interest when an intermediary is directly or indirectly a beneficiary of a contract sold by it, so this may apply to the case of a bank that is beneficiary of an insurance policy covering a loan when the accident occurs (e.g. death or disability of the insured borrower).

These comments are totally misplaced. With respect to insurance for borrowers, there is no potential conflict of interest between the insured and the intermediary, and there is instead a very strong convergence of interest between the insured and the intermediary who is the beneficiary of the contract (the bank that granted the loan), whether the insurance is issued by a company that has capital ties with the bank or it is an insurance company completely outside the banking group.

From a legal standpoint, the amount received by the beneficiary can simply extinguish all or part of the debt incurred by the insured, and it is paid to the bank on behalf of the borrower.

Conversely, in the absence of such insurance and upon the occurrence of unforeseen events (death, Invalidity, disability, unemployment), the situation of the borrowers or of their family would be extremely precarious, especially for the repayment of mortgages.

Moreover, in France the Lagarde law of 1 July 2010 introduced the delinking of the creditor insurance for mortgage loans: now, the borrower always has the option to purchase insurance other than the group insurance offered by the lender. The latter may not refuse the guarantee offered by an insurance policy if the policy offers a coverage level equal to the one that it is offering.

Inappropriate regulatory constraints that upset the European market for creditor insurance would have a significant negative impact, especially in the form of:

- a risk of refusal of credit from banks (mortgages and consumer loans) in the absence of insurance coverage of the risk of death or disability;

- a probable rise in lending rates to help offset the additional risk;

- a significant brake on real estate investment and household consumption, which is very much in opposition to the key objectives of economic growth within the European Union.

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

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

For all the reasons set out above, we are against the introduction of provisions on the transparency of commissions earned by an intermediary.

We would like to emphasise that the key for our customers is likely to be above all advice concerning the insurance product itself, its content, the scope of its guarantees, their relevance to the customer's needs, the price or total cost, and finally, information about any possible links between the intermediary and the producer of the insurance (and, therefore, about whether or not the intermediary is independent).

Informing the customer about the existence and level of the intermediary's remuneration does not help at all in understanding the insurance product that is being presented.

- In France, the Insurance Code stipulates that this information is to be provided only by intermediaries who claim to be providing advice based on an unbiased analysis (covered in Article 12.1 i) of the current directive), at the customer's request and only for insurance intended to cover occupational risks when the annual premium exceeds 20,000 euros.

What is most important for the customer is to know the overall cost of the transaction, the contents of the insurance coverage and, where appropriate, the identity of anyone who is paying the intermediary and of the capital links between them, and not the breakdown of this cost between the different actors. It does not therefore seem necessary to broaden the constraints.

- If a provision concerning the transparency of fees and commission sharing were introduced in the directive, such a measure would seem exorbitant compared to what is practiced in business relationships as a whole in other areas.

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.)*

C 2. *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?*

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?*

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?*

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?*

C 6. *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?*

- The French banking industry is in favour of bringing insurance firms into alignment with the system on intermediaries with regard to obligations on advice, professional standards, etc.

However, it does not seem to us either necessary or appropriate for an insurance company (or its employees) to be obliged to register as an intermediary in insurance when it is carrying out this activity.

- Simple indicators who merely make a referral to a person, and not to a product or a policy, should continue to be excluded from the directive's scope of coverage. In contrast, a comparator, who studies and selects the products, should be expected to fall within the scope of the directive.

- Moreover, it would seem necessary to modify the criteria on duration in f) of Article 1.2. of the current directive, which is irrelevant in terms of customer protection. Indeed, it is not consistent to retain the five-year criterion since the contract is renewed automatically and the customer has the option of terminating it every year.

D - *Increased efficiency in cross-border business*

French banks fully support the objective of simplifying and developing the intermediation business across borders.

However, the real obstacles to the development of cross-border activities are in our opinion not legal, but rather fiscal, linguistic, cultural, etc.

The notification system set out under the current directive seems satisfactory.

It might, however, be useful to introduce a clearer and more explicit definition in the IMD of freedom to provide services and freedom of establishment.

Moreover, it might be useful to improve the transparency of the general interest provisions that can be invoked by the competent authorities of the Member States, particularly with respect to consumer protection. In addition, the European Commission or the new European insurance supervisory authority could be given the authority to check on whether these provisions comply with the general principles of Community law (including with respect to the freedom to provide services and freedom of establishment).

E – *Achieve a higher level of professional requirements*

We fully agree with this objective. In France, comprehensive authorisation systems have been set up.

F *– PRIPs*

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?

In its reply of 31 January 2011 to the European Commission's consultation on PRIPs, the FBF has supported an approach aimed at simplifying the issuance of pre-contract information in order to put all the players on an equal footing.

The FBF is very concerned that any new regulation be consistent with existing ones. To meet their obligations, particularly those concerning respect for the primacy of the interests of the customer for any investment operation, the banks have made significant investments, particularly in the field of information technology and staff training. We are mindful that a new regulation does not create significant additional costs without any certainty that it will provide added value to the customer compared to the current situation.