

## CEA preliminary comments on IMD revision

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The CEA, the European insurance and reinsurance federation, would like to contribute to the European Commission's and CEIOPS's work on the revision of the Insurance Mediation Directive (IMD). Herewith we express our preliminary views on Commission's questions raised to CEIOPS in its "[Request for Advice regarding the revision of the Insurance Mediation Directive](#)" from January 2010.

### | IMD legal framework

Q1: What would be the particular advantages and disadvantages of a Lamfalussy structure for IMD2?

The European Commission considers that a **Lamfalussy-type directive** may provide more flexibility, allowing level 1 to concentrate on high-level fundamental principles and leaving the details to levels 2 and 3. However, the discussion should focus on the level of harmonisation and prescriptiveness sought, rather than on the legal form of a directive. Further refinements may, for example, be useful in the following areas, which can be adequately addressed in a **classic directive**:

- **Professional requirements:** the same high-level principles on knowledge and ability may be applied to all distribution channels covered by the revised IMD. If the Commission decides to refine professional requirements, the CEA would support a reference to the European Qualification Framework (EQF) to assess qualifications on the basis of "learning outcomes". This issue is discussed further under question 5.
- **Notification system:** technical measures could be adopted to improve the notification system, make it more efficient, and ensure a consistent approach in all countries (see also question 8).

Conversely, the following IMD provisions do not require further refinement:

- **IMD scope:** defining in detail different intermediary categories according to their activities could be difficult given the diversity, both of distribution channels and the activities these intermediaries perform in their national markets. The existing channels are also evolving over time and new channels are created to adapt to the general market situation. Detailed definitions may therefore interfere with market developments, the evolution of intermediaries' role, and consumers' needs.
- **Registration requirements** are clear and have been implemented appropriately in all EU markets. Further technical details are not necessary and would, on the contrary, impose costly and burdensome changes to the existing systems.
- The provisions on **professional indemnity insurance and financial capacity** are clear and do not require further adjustments. The appropriateness of these provisions was confirmed by the Commission in its report to the European Parliament and the Council<sup>1</sup>.
- **Information requirements in Article 12 IMD:** current requirements are clear and help consumers to understand the status of intermediaries and their relationship with an insurance undertaking. They do not need further refinement.
- With regard to the **conditions of information provision and advice documentation**, further requirements would lead to additional costs (eg changes to IT systems) without adding value. A number of Member States have already introduced rules requiring insurance companies to register information given to, and received from, a client.

The CEA therefore considers that a classic directive, such as the current one, can provide for an adequate degree of flexibility and at the same time is detailed enough to allow for **targeted full harmonisation**. If changes to the current IMD are necessary, it should be done through a revision of its provisions, under the current legal framework, and not through a new directive. Repealing the current directive may cause legal uncertainty for professionals who are just becoming familiar with its provisions. Conversely, the revision of the current directive would guarantee a better understanding of the changes made to the directive and overall better application of the new provisions.

Q2: How should IMD2 be structured under the new supervisory framework? For example, what are the areas, if any, where CEIOPS could usefully adopt binding technical measures?

The CEA believes that an EU-wide **minimum harmonisation regime** will better accommodate the existing insurance distribution markets' diversity. Distribution markets are different across Europe because they have adapted to different consumers' cultures, needs and preferences, and reflect local traditions and social environments<sup>2</sup>. Aligning regulatory frameworks and introducing a "one-size-fits-all" approach would have a different impact in different markets and interfere with the capacity of the markets to develop innovative and appropriate consumer-oriented solutions. Conversely, a minimum harmonisation approach would accommodate the diversity of the existing distribution structures, which are tailored to consumers' needs. Therefore, we believe that high-level principles would provide sufficient flexibility to allow markets to develop in a way that best matches consumer needs.

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<sup>1</sup> Final report of the European Commission on the continued appropriateness of the requirements for professional indemnity insurance imposed on intermediaries under Community law, 11.4.2007, COM(2007) 178 final.

<sup>2</sup> See the CEA briefing note "Serving consumers: the diversity of insurance distribution markets. Points to consider when regulating insurance distribution and CEA proposals for high-level principles".

The CEA finds it difficult to provide any further detail in response to question 2, because the new supervisory framework does not exist yet. In addition, it is difficult to foresee which implementing measures will be adopted by insurance supervisors because the new comitology system was introduced by the Lisbon Treaty and its consequences for the future Lamfalussy design are not known yet, ie which comitology procedures will be applied to the IMD.

The CEA deems it important to stress that in any case, a Lamfalussy approach would require a clear **allocation of competences**. This is currently not the case since not all national supervisors for intermediaries are members of CEIOPS. For example, the authorities supervising intermediaries are the national Chamber of Commerce in Germany, and the Federal Ministry of Economy, Family and Youth and its local authorities in Austria. In France, there are two national competent supervisory authorities: a specific intermediary authority controls intermediaries' professional requirements and their registration, and an insurance supervisory authority controls intermediaries' commercial practices.

## | EC's questions on the scope

Q3 What should be the scope of insurance mediation to be covered by IMD2?

Q4 What should be the conditions for exemptions from IMD2, taking into account the need to ensure legal certainty?

The CEA supports maintaining the current exemptions of Article 1 Para. 2 IMD, since they provide for a **proportionate approach**. The exempted insurance distribution activities have a very limited scope and concern simple (uncomplicated) products sold on an ancillary basis. Furthermore, there has been no evidence of detriment to the consumer due to these exemptions. Extending the IMD to the current exemptions would result in imposing unnecessary and burdensome requirements (eg requirements on registration, professional indemnity insurance cover or compulsory training) generating additional costs and, as a result, a decrease in the number of points of sale and an increase in premiums of basic insurance products.

Q5 How could direct selling be incorporated into IMD2 to guarantee a level playing field?

The CEA stresses the importance of affording consumers the same level of protection regardless of the method of distribution. However, the current IMD concerns insurance mediation activities and has been designed for insurance intermediaries, not for direct sellers. Insurance intermediation and direct selling concern two very different sales models that represent different challenges requiring different protection measures. Therefore, the provisions of the IMD are not relevant to be applied to direct selling, and address the employer-employee relationship between insurance undertakings and their direct sale forces. This is particularly relevant for liability, requirement- and notification-rules. Therefore, the CEA does not believe direct selling could be incorporated into IMD2.

### ■ Requirements on PII, registration and notification

The CEA does not see any direct benefits for consumers in applying the IMD to direct selling. In fact, consumers are already protected by the insurance undertakings' liability and responsibility for their employees. These are enshrined in employment contracts. The same applies with respect to registration and notification requirements. Insurance undertakings have to obtain authorisation in their home state and notify their services abroad. The inclusion of insurers' employees in a register for self-employed persons, or requiring them to notify their activities, would have no added value and would increase administrative burden. For the same reasons, there is no need to require professional indemnity insurance and financial capacity from insurer employees.

- **Requirements of good repute, knowledge and ability**

The Solvency II Directive already implies requirements of good repute, knowledge and ability for insurance companies' direct sales forces. It introduces new governance rules requiring insurance undertakings to adopt a good governance policy and to introduce internal control systems to ensure that their employees meet high standards on good repute, knowledge and ability. Art 41 of the Solvency II Directive requires insurance undertakings to establish an effective system of governance which provides for sound and prudent management of the business. According to Art 42 of the Solvency II Directive, all persons who effectively run the undertaking or have other key functions should possess adequate and sufficient professional qualifications, knowledge and experience, and be of good repute and integrity. Article SG1 Para 1 (d) and (g) of the draft Commission Document on System of Governance from January 2010 (implementing measures for Article 41 of the Solvency II Directive) requires insurance undertakings to establish a good governance system which complies with 1) a requirement to employ personnel with the skills, knowledge and expertise necessary to discharge properly the responsibilities allocated to them, and 2) a requirement that any performance of multiple tasks by individuals does not prevent the persons concerned from discharging any particular function in a sound, honest and professional manner. Compliance with these requirements is essential for obtaining authorisation to carry out insurance business. Additional provisions introduced by IMD2 on direct sales would therefore mean an unnecessary duplication and complication of requirements.

Furthermore, insurance companies are responsible for training their employees and they design their own training programmes. These programmes are an element of competition with other insurers and should not be standardised.

- **Mutual recognition of qualifications**

Since rules on mutual recognition of qualifications concern the access to regulated professions, there is no need to introduce these rules for direct selling.

## | Professional requirements

Q6 What high-level requirements on knowledge and ability of insurance intermediaries would be appropriate in view of the existing differences in the applicable qualification systems in Member States?

The CEA believes that **high-level principles on insurance intermediaries' knowledge and ability** can guarantee sufficient flexibility for market players and continuous development of distribution channels. In order to guarantee a uniform approach in raising the level of professionalism and consumer protection, the CEA proposes the following high-level principles, common for all markets, which should relate to the knowledge and ability of insurance intermediaries and should be based on currently existing national rules:

- **Adequate performance of duties** (in compliance with national rules): this principle aims to ensure that intermediaries have the appropriate knowledge and competences to complete their tasks and missions adequately.
- **Appropriate experience**: this principle aims to guarantee that intermediaries demonstrate appropriate, relevant professional experience, enabling them to guide their clients through the whole selling process.
- **Continuous professional development**: this outcome-oriented principle means that intermediaries should be encouraged to update their knowledge and competences (eg through professional training) in order to ensure a continuous adequate level of performance.

These high-level principles could be introduced for all insurance intermediaries, and adjusted to their status and nature of activities, as long as consumer protection is sufficient.

Should the Commission decide to streamline certain IMD provisions on professional requirements, the CEA believes that rather than defining input requirements (a certain amount of training hours, a specific curriculum), professional requirements should be **outcome-oriented**. They should target concrete learning outcomes and competences. Such an approach will guarantee a certain level of professionalism and at the same time ensure flexibility. As a reference, the European Qualification Framework (EQF)<sup>3</sup> could be used to compare and assess qualifications on the basis of “learning outcomes” (what an intermediary knows, understands and is able to do). In this respect, the definition of minimum European qualification standards based on knowledge, skills and competences of insurance intermediaries (as defined in the EQF) could be included.

Furthermore, rules on entrepreneurial ability could be introduced for independent intermediaries at national level, if not already available.

The above-mentioned refinements should not interfere with national training programmes for at least two reasons. Firstly, detailed professional requirements, as well as specific training and education programmes, already exist at national level, and it would be difficult to harmonise them without interfering with the national qualification systems and national trade law regulating the access to professions. Further detailed requirements could result in burdensome requirements and costs, without bringing added-value. Secondly, a number of Member States have started to introduce complex competence-based testing systems in the early 90’s, and the revision of the IMD should not result in the lowering of professional standards in these countries.

Any new additional obligations for insurance intermediaries may have a negative impact on the development of their business, and may lead to structural changes at the expense of price competition (eg market concentration) and job reduction. The insurance sector plays a key role in generating jobs in Europe. Not only do independent insurance intermediaries work within insurance distribution, but also employees of small insurance agencies, bigger broker companies and employees of insurance companies. The insurance sector employs 2 million people in Europe (2008).

Q7 Could the provisions of the Luxembourg Protocol relating to the mutual recognition clause be integrated into IMD2?

Before the Commission takes a decision on the issue of mutual recognition of qualifications, the CEA would like to draw its attention to the problems related to the current recognition system under Directive 2005/36/EC on the Recognition of Professional Qualifications. This system is very complex as it is based on a “case by case” examination, ie evidence of foreign professional qualifications has to be verified/demonstrated in each individual case and the evaluation criteria are not clear. In addition, due to substantial differences between national legal systems, competent authorities may still require additional adaptation periods or aptitude tests when verifying the minimum level of knowledge required in their country. Therefore, the current system does not fully contribute to achieving the Single Market for insurance intermediaries, and may even defeat such objectives.

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<sup>3</sup> The European Qualification Framework (EQF) is a reference tool which enables to compare the qualifications levels of different countries. All new national qualifications issued from 2012 will carry a reference to an appropriate EQF level. More information is available on [http://ec.europa.eu/education/lifelong-learning-policy/doc44\\_en.htm](http://ec.europa.eu/education/lifelong-learning-policy/doc44_en.htm).

We believe that any solution to these above-mentioned problems should not be to the detriment of consumers.

## | Cross-border issues

Q8: Can you provide concrete examples of how you would make the current notification system more efficient?  
Q9: Could certain provisions of the Luxembourg Protocol relating to the notification system be integrated into IMD2?  
Q10: How would you ensure the appropriate and transparent use of general good rules in order to avoid unwanted negative effects on the functioning of the Single Market for insurance and reinsurance intermediaries?

The CEA supports CEIOPS members' proposal to introduce an **electronic version for notifications** to improve the efficiency and practicability of the whole notification system<sup>4</sup>. For consistency reasons, IMD2 could also introduce one **single notification form** on the basis of the template already included in the Luxembourg Protocol. Other Luxembourg Protocol provisions on the notification system could also be integrated in the revised directive, eg sanctions in case of non-notified activities. We also propose to create an internet website with a notification form which should be easily accessible for intermediaries and insurance companies.

In order to eliminate problems with the applicable law and to guarantee legal certainty for insurance intermediaries operating on a cross-border basis, a **definition of freedom of services** included in the Luxembourg Protocol should be introduced into IMD2.

In its response to the Green Paper on Retail Financial Services, the CEA highlighted the need for one web page with a list of the national general good rules with which business must comply. The CEA thus welcomes CEIOPS's work on publishing the information on general good rules<sup>5</sup>. However, we still see some areas for improvement. For instance, instead of creating one common website, hyperlinks to the national supervisory authorities' web pages were published. Hyperlinks for two countries are missing (France, Greece), the information is not always accessible in English (eg for Germany, Denmark, France) and two links refer to the general websites of the supervisory authorities only (Estonia, Finland). Moreover, these general good rules are not categorised into different areas of law which makes it difficult for insurance intermediaries and companies to verify with which particular provisions they must actually comply. For the purpose of better practicability, we recall our request for a **single list in the English language with all national general good rules categorised into different areas of law** (eg insurance law, supervisory law or civil law). Such information would increase legal certainty and transparency for insurance intermediaries and companies operating on a cross-border basis.

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<sup>4</sup> CEIOPS's document on the IMD and other intermediaries' related issues - practical solutions and examples, CEIOPS-DOC-19/09 June 2009, Page 13.

<sup>5</sup> See Excel-document "CEIOPS- General good provisions – General Protocol – 2010-02-15 on <http://www.ceiops.eu/content/view/521/215/>

## | Conflicts of interest

Q11: What high-level principles would you propose for an effective management of conflicts of interest, taking into account the differences between investments packaged as life insurance policies and the remaining categories of insurance products?

The CEA agrees that in order to achieve a high level of consumer protection, selling practices must be focused on the fair treatment of consumers. In addition, in order to protect consumers against misselling of products, those assessing the suitability of products for their clients must understand the products they sell.

The CEA believes that conflicts of interest can be prevented by **disclosing the intermediary's status** and his/her role towards the consumers and the insurance company. Consumers should always be informed about the intermediary's specific role in the selling process. Therefore, the intermediary should disclose whether he/she is acting as broker or agent to enable a consumer to understand whether the intermediary is representing a consumer and providing his services independently and on the basis of fair analysis of the market (acting as a broker), or if the intermediary is acting for and on behalf of the insurance company and on the basis of a fair analysis of the products offered by the company (acting as agent).

The IMD does address the problem of conflicts of interest by requesting the disclosure of any contractual obligations between intermediaries and insurance undertakings. According to Art. 12 Para 1 (ii) IMD, insurance intermediaries are obliged to inform their customers whether they are under contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. Such disclosure helps to mitigate potential conflicts of interest as the consumer is informed of the intermediaries' capacity, is able to better assess the transaction, and can act and respond accordingly.

Appropriate **disclosure of insurance intermediaries' financial relationship** with insurance companies can also help mitigate conflicts of interest. Before purchasing a specific product, consumers should have no doubts regarding the obligations that an intermediary has towards the insurance company. Art. 12 Para. 1 (c), (d) IMD requires the disclosure of capital links between intermediaries and insurance undertakings, and both parties have to inform consumers about mutual investments.

Furthermore, consumers should always be able to buy products which suit their needs. Conflicts of interest can be mitigated by requiring an **adequate assessment of product suitability**. Art. 12 Para 3 IMD already requires insurance intermediaries to specify consumers' needs and demands and the underlying reasons for any advice on a given insurance product. This should be done prior to the sale of any specific insurance product. Moreover, intermediaries are also required to inform consumers whether they give advice based on a fair analysis, i.e. an analysis of a sufficiently large number of insurance contracts available on the market.

Consumer protection in cases of conflicts of interest is enhanced by Art. 8 Para. 3 IMD, which requires Member States to introduce **sanctions in case of an insurance intermediary's failure** to comply with national legislation implementing the IMD. This liability provides strong incentives for intermediaries to act in the interest of their customers and limits the emergence of conflicting interests. In addition, consumers are also protected by **withdrawal rights** which were included in Article 186 of the Solvency II Directive. The cancellation of a contract by an insurance policyholder is usually very costly for intermediaries and providers. These withdrawal rights are an incentive to act in the interest of their customers.

The above-mentioned minimum harmonisation requirements are important, but Member States can introduce additional rules adjusted to their national market's specificities. It is important, however, to stress that elimination of product misselling cannot be achieved solely by regulation. Appropriate measures on **financial education** must also be considered to enable consumers to understand the nature and limitation of advice.

Q12: How could these principles be reconciled for all actors involved in the selling of insurance products?

The CEA believes that consumers should be offered the same level of protection regardless of the distribution channel they use. However, insurance distribution markets vary significantly across EU markets<sup>6</sup> and any prescriptive regulatory approach may have negative implications both for markets and consumers.<sup>7</sup> In order to guarantee consumers an appropriate level of protection, regardless of the distribution channel, and at the same time accommodate the existing distribution markets' diversity, the CEA proposes the following **six high-level principles on selling practices for insurance**:

1. Selling practices must be focused on the fair treatment of the customer
2. A distributor has to offer advice on request or on own initiative when the circumstances indicate there is a need.
3. A customer should always be informed about any limitation of the service (fair analysis).
4. Advice should be based on an analysis of the customer's needs, on the basis of information provided by the customer.
5. Any distributor providing information or advice on an insurance product must understand this product.
6. Before a contract is concluded, the customer should be given the information about the insurance product, which allows the customer to make an informed decision.

Q13: How can the transparency of remuneration in the sale of non-PRIPS insurance policies be improved for all actors involved in the selling of insurance products, taking into account the need for a level playing field?

The CEA is pleased to see that Member States have found their respective, appropriate ways with regard to the provision of information on remuneration or cost, in respect of their national legal, social and cultural context and distribution structure.

This being said, a detailed breakdown of distribution costs is confusing for consumers because for a similar product the type of remuneration varies depending on the nature of the distribution channel. Such a disclosure breakdown would thus require additional information on the remuneration structures for all other types of distribution channels. Such complexity inhibits consumers from comparing costs between products and making informed decisions.

We would like to stress that there is still uncertainty as to what a "PRIP" means.

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<sup>6</sup> For more information please consult the CEA report "CEA Statistics N°39: Insurance Distribution Channels in Europe" which is available on [http://www.cea.eu/uploads/DocumentsLibrary/documents/1270043839\\_cea-statistics-nr-39-distribution.pdf](http://www.cea.eu/uploads/DocumentsLibrary/documents/1270043839_cea-statistics-nr-39-distribution.pdf)

<sup>7</sup> See the CEA briefing note "Serving consumers: the diversity of insurance distribution markets. Points to consider when regulating insurance distribution and CEA proposals for high-level principles."



## | International dimension of insurance mediation

Q14: How can the legal certainty of services offered by insurance intermediaries, established in third countries, in the territory of Member States, be improved?

In order to improve legal certainty for services offered by insurance intermediaries, some third countries signed bilateral agreements on free movement of insurance intermediaries. Such an agreement exists between Switzerland and Liechtenstein. It regulates cross-border activities of insurance intermediaries on the territories of contracting parties, as well as all aspects linked to supervision. Currently, there is no similar agreement between Switzerland and the EU.

Another possible solution could be the introduction in the IMD of a clause with regard to the verification of the equivalence of supervisory regimes of third countries. This could be done by analogy to Article 260 – 264 Solvency II. In the event of equivalent supervision, EU Member States should rely on the supervision exercised by the third country supervisory authorities.

The CEA would welcome more European coordination on this issue. Here, the future European Insurance and Occupational Pensions Authority (EIOPA) could have some role in improving cooperation with third countries.

## | Reduction of administrative burdens

Q15: What practical measures could you envisage for reducing administrative burden caused by the IMD implementation?

Q16: Are there any areas of the IMD which have proven to be too costly compared with the intended objectives and benefits?

Q17: If a regulation of these areas is still appropriate, how might they be regulated in less costly way?

As mentioned under question 8, we propose improving the notification system by introducing an **electronic version of notifications** and **one single template** into IMD2. To improve the effectiveness of the notification, one single web page with a notification form in English could be created in order to enable insurance intermediaries and companies to fill out the form directly online. It could also enable them to better monitor the status of their notification.

Our comments on **general good rules** under question 10 are also relevant for the question on reducing administrative burden. Indeed, the lack of information on these national rules is one of the biggest barriers and creates legal uncertainty for intermediaries operating abroad.

Since insurance companies are liable for their agents, the **IMD registration requirements for agents** present an unnecessary administrative burden for supervisory authorities and insurance companies. As agencies' employees often change within the agencies, the register has to be very often updated which causes an additional bureaucratic barrier.

Some Member States request foreign insurance intermediaries operating on their territory on a cross-border basis to register with their national authorities. This requirement provides for unnecessary duplication of registration and contradicts the idea of a single European licence. Similar cases should be scrutinised to avoid additional administrative burdens.



The CEA is the European insurance and reinsurance federation. Through its 33 member bodies — the national insurance associations — the CEA represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. The CEA represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers generate premium income of over €1 050bn, employ one million people and invest more than €6 800bn in the economy.

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