Memorandum 42 – October 2010

REQUEST FOR ADVICE REGARDING THE REVISION OF THE INSURANCE MEDIATION DIRECTIVE (IMD2)

Introduction

The "Fédération Européenne des Conseils et Intermédiaires Financiers" (FECIF), based in Brussels, represents approximately 200,000 European financial intermediaries (life & pensions insurance agents and brokers, investment agents and brokers, independent financial advisers, financial planners, etc.) through 25 national trade associations representing 155,000 registered intermediaries from 12 EU Member States.

Membership includes also 25 pan European commercial networks or groupings operating across 22 EU Member States and 2 life insurance companies supportive of the distribution by independent intermediaries.

FECIF has also created three national chapters, FECIF-France (to act as a think-tank for the French members of FECIF), FECIF-Greece and FECIF-Poland to accommodate the smaller local national associations and a similar project is under way in Belgium.

The last survey carried on 1,245 intermediaries and 3,124 investors (actual and/or potential clients of intermediaries members of FECIF) in 2010 across ten EU Member States indicates that:

- 37% of the total number of investors contacted prefer to deal through an intermediary because of the personal attention they received at the occasion of a face-to-face meeting
- 30% better trust dealing directly with an institution feeling secured by the size of the bank and/or the insurance company
- 18% prefer to rely on the assistance of a friend or a member of the family to provide advice
- 12% refer their queries to another professional (accountant, tax adviser, lawyer, etc.)
- 3% handle directly their affairs through the Internet for instance

After carefully reviewing the contents of the letter dated 27th January 2010 addressed to Mr. Gabriel Bernardino, Chairman of the Committee of European Insurance and Occupational Pensions (CEIOPS) by Mr. Jörgen Holmquist, Director General, DG Internal Market & Services, European Commission (EC), FECIF would

like to thank the EC for the opportunity to comment on the different questions raised in this letter.

We welcome the occasion to raise the voice of the intermediaries who are very concerned by the response of the regulators to the crisis: the financial services industry has lost 500,000 jobs not only because of the crisis but also because of the consequences of over regulations. An incredible number of 100,000 intermediaries (including 10,000 in the UK and 60,000 in Germany) have been pushed out of business because of the effect of over regulation on small and medium size enterprises (SME's), first victims of administrative burden and costly compliance.

We sincerely hope that our views will be taken into account from a positive angle without any form of systematic prejudice against the small operators who remain the favourite partners of the European consumers.

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1. Legal framework of the IMD2

What would be the practical advantages of a Lamfalussy structure for IMD2? What would be the practical disadvantages of a Lamfalussy structure for IMD2?

We have no strong opinion regarding the use of the Lamfalussy structure for IMD2. Our only concern is that intermediaries are not often represented during the decision process in spite of the fact that we get the full support of our clients, the consumers to represent their interest.

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 standards?

FECIF supports a full harmonization approach. We want to avoid having to suffer though the transposition process dealing with 27 different interpretations of the same rule that prevent healthy competition and the construction of an efficient single market.

We know too well that regulation is not perfect, and it can even end up reducing consumer protection because of its cost or inefficiency. The regulators also may lack the resources and competence to design and administer appropriate regulations, particularly for our complex financial services industry requiring much specialized knowledge.

Needless to say that Financial Conglomerates may find ways to influence regulation to the point where it is ineffective or even ends up benefiting one segment of the industry at the expense of the consumers.

We see as a treat certain restrictions in the scope of the PRIPS review for instance.

2. Scope

What should be the scope of insurance mediation to be covered by IMD2?
What should be the conditions for exemption from IMD2, taking into account the need to ensure legal certainty?

We fundamentally disagree with the rule of exemption usually opening the door to discriminatory treatment and/or regulatory arbitrage.

The directive should apply to everyone practising insurance mediation even if this is only as an ancillary activity.

How could direct sales by insurance undertakings be effectively incorporated in order to guarantee a level playing field with the sale of insurance products through insurance intermediaries?

In order to guarantee a level playing field the provisions on selling practices should also applied to direct sales by insurance undertakings without any form or shape of exemption.

3. International dimension of insurance mediation

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

EU regulators should provide necessary information on the Internet, in the local language and in English to allow access to it without any restriction and in real time.

4. Professional requirements

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

It would be advisable that the requirements on knowledge to be described in details into IMD2. Further harmonization is obviously also required.

Everyone involved in insurance mediation should be required to evidence sufficient technical knowledge in:

i. insurance legislation,
ii. legislation on the supervision of insurance companies concerning insurance contracting
iii. legislation on selling practices and consumer protection

iv. 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.

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.

5. Cross-border aspects of insurance mediation

Can you provide concrete examples of how you would make the current notification system more efficient?

It would be recommendable to require registration to be electronic and frequently updated, and made available in the local language and in English in real time.

FECIF welcomes the suggestion to incorporate a definition of freedom to provide services into IMD2 text. FECIF also believes that it would be helpful to address a number of the cross border registration issues in respect of Articles 2 and 3 identified in CEIOPS document 19/09.

A number of intermediaries have been under the mistaken belief that they can passport as a “network” in State A into other member States and use services of persons not authorised in those States under the protective umbrella of their own Home State authorisation.

As stated above we believe it would be useful if IMD2 could contain a definition or definitions of a network and the responsibilities and relationships of the network and its members corporate and individual.

According to an article published in International Adviser (7th September 2010) “around 35% of the intermediaries are not properly regulated...”
A large number of the intermediaries interviewed “were unsure as to either their business was covered by the licence it held”.

Extremely complex regulation and gold platting have caused uncertainty in the market which is very worrying for the industry.

Could certain provisions of the Luxembourg Protocol relating to the notification system be integrated into IMD2?

Yes.

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?

Full harmonisation again is the only sensible answer.
Protectionism measures should be banned by all means.

Amongst so many examples of intolerable measures of protectionism is the German Insurance Guarantee Scheme which does not allow branches of foreign insurers operating in Germany to join the country scheme. This allows the domestic insurers to "arbitrage" the fact that they have a guarantee scheme and the "foreigners" do not – again another form of discrimination.

6. Management of conflicts of interest and transparency

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

We take this matter very seriously at FECIF taking into consideration that the issue of conflict of interest has been in use for many years as an excuse to discriminate between different forms of distribution targeting intermediaries as the scape goat.

In full co-operation with the Association of International Life Offices (ALIO) and Euro-Investors/Euro-Shareholders we have taken position and published some important papers of which copies are attached to this Memorandum (Scope of PRIPS - Letter addressed to Mr. Barnier by Euro-Investors and endorsed by our associations & Charter of Policyholder Protection Principles jointly adopted by AILO & FECIF).

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

As regards the sale of classical insurance products not covered by the scope of PRIPS on the issue of transparency in remuneration of intermediaries in order to

avoid commission bias, we are of the opinion in view of the level playing field required between all actors involved in the selling of insurance products, it should be mandatory to inform the client of the total cost including the distribution costs if any. At the moment, in France for instance, some bank assurers advertise for “free advice” through the net or their network of agents.

Proper disclosure by all the players on the same basis and following the same format would enable the client to see what costs are involved regardless of the distribution channel.
If only independent intermediaries were forced to disclose costs it would be an intolerable discrimination and a serious breach of all basic European legal principles.

Regarding the management of conflicts of interest, it would be enough if the intermediary were to inform the customer about the possible existence of incentives and bonuses. Same should apply to bank and undertaker’s employees dealing with the public.

Regarding the management of conflicts of interest, it is necessary to elaborate Article 12.1. Ever increasing numbers of natural and legal persons are active in preparing and proposing insurance contracts to intermediaries without having any direct contact with the policyholder. The IMD does not apply to such activities, but herein there are also possible conflicts of interest since these undertakings also remunerate the intermediary. The insurance intermediaries therefore should also inform the customer about whether they have a capital interest in undertakings of this kind or whether such undertakings have a capital interest in the insurance intermediary.

The intermediary should also disclose to the customer about commissions he/she receives from an asset provider linked to a wrapper insurance policy, e.g. a fund house.

A lot of problems arose because many undertakers rebate or let policyholders buy at creation price in underlying funds. It is a number of intermediaries who have negotiated “kick backs” from some fund management houses and manage to persuade policyholders to use their funds. This leads to high charges.

It is more an issue of integrity than transparency and the meaning of independency should be further clarified in IMD2 also.

A recent survey published in International Adviser (August 2010) showed 95% of intermediaries interviewed claimed to be independent…
In the UK this means a company has terms of business with the whole of market and conducts a fair analysis based upon the client’s needs.

The answer is probably not so much whole of market independence for the client but an independence from banks, providers or larger distribution corporations so that advisers and advisory firms can manage their respective client banks in the way they choose best.

The independent firms interviewed by International Adviser stated the reasons for choosing to focus on independency as follows:

- 32% autonomy to make decisions
- 29% more attractive revenue models
- 18% less bureaucracy
- 16% disliked regulation
- 3% better product offering
- 3% technical Specialists in this area

A better co-operation between EU regulators and the industry would avoid misunderstandings and a lack of clarity in the rules.

7. Reduction of administrative burden

What practical measures could you envisage for reducing the administrative burden caused by the implementation of the IMD?
Are there any areas of the current IMD which have proven to be too costly compared with the intended objective and benefits?

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

Non-PRIP insurance policies
Consumers are flooded with documents they are supposed to read and sign. The amplification of the burden to provide customer information could result in less protection for the customer since the greater volume makes it more likely that none of it is actually read. Therefore, for classical non-PRIP insurance policies, we recommend that the specification of the demands and the needs of the customer (Article 12.3) be incorporated into the insurance proposal since this document normally already contains this information.

The information required by Article 12.1 could be provided on the website of the intermediary. The possibility of providing this kind of information on the internet should be provided for in Article 13.1 of the IMD. This information can also be incorporated into the insurance contract itself to ensure that all otherwise debateable aspects are in fact clear.

Insurance-based PRIPS
For this type of insurance policy the intermediary not only has to specify the demands and needs of the customer but is also required to create an investor profile.

In order to be able to apply the MiFID selling rules to the sale of insurance-based PRIPS, it is necessary that these products have the same information regarding risk profile, etc. There should be a standard to which reference can be made. It should not be the responsibility of the intermediary to evaluate the risk involved in the product.

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 pre-contractual disclosures about the product should be best left to the company that markets/distributes the PRIP or to the intermediaries or directly to the retail investors themselves. Since a lot of products are altered by the distributors and the product originator is not always completely aware of these alterations, it seems logical that the party that ultimately distributes the product should have responsibility for providing a KID.

Since the identity of the originator is not always clear, this would make it easier for the intermediary to obtain the right KID. The self-regulation of unit-linked life insurance policies in Belgium is a good example of how the insurance company can provide the investor with the necessary information. It is the responsibility of the insurance company to provide a financial information document.

The administrative burden is not only pushing out of business good intermediaries, it is also the excuse for all sort of regulatory arbitrage.

The UK's Association of Independent Financial Advisers has told IFAs not to rule out the
option of moving to another EU state and passporting their business back into the UK as the retail distribution review approaches.

The astronomic extra costs imposed by over regulation are making outsourcing really the only route to improved profits.

It is widely suggested that intermediaries could increase both their short term profitability and long term value by outsourcing areas such as regulatory compliance, investment management, human resources, business management, accounting, legal services, paraplanning, administration IT, marketing, public relations, client research and even reception services.

The absence of a strong EU harmonization of rules means that some intermediaries sadly just are not interested in proper authorization or long term value, but simply wish to make hay whilst they can.

The general environment of mistrust means that many highly professional advisers work in isolation, struggling to build their business without a trusted partner with whom they can collaborate and leverage off.

Whilst lawyers and accountants clearly realize the benefits of working in partnerships, the IFA market still has principals that prefer to muddle through all the above areas without ever mastering any.

At FECIF we are committed to defend our members and to promote the development of our members' professions.
We hope to find in the EU regulators a trustworthy partner in the future for the sake of the 450 millions EU consumers and an industry which is so important for the EU economy.

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