

Eurofinas observations on the Commission's Proposal for a Directive of the European Parliament and of the Council on insurance mediation (COM(2012) 360 final)

14 September 2012

Eurofinas is entered into the European Transparency Register of Interest Representatives with ID n° 83211441580-56



ABOUT EUROFINAS

Eurofinas, the European Federation of Finance House Associations, is the voice of the specialised consumer credit providers in the EU. As a Federation, Eurofinas brings together associations throughout Europe that represent finance houses, universal banks, specialised banks and captive finance companies of car, equipment, etc. manufacturers. The scope of products covered by Eurofinas members includes all forms of consumer credit products such as personal loans, linked credit, credit cards and store cards. Consumer credit facilitates access to assets and services as diverse as cars, education, furniture, electronic appliances, etc. It is estimated that together Eurofinas members financed over 328 billion Euros worth of new loans during 2011 with outstandings reaching 821 billion Euros at the end of the year.

For further information about this Eurofinas position, please contact: a.delava@eurofinas.org

RELEVANCE OF THE IMD 2¹ FOR CONSUMER CREDIT PROVIDERS

The core business of consumer credit providers across Europe is to lend. However, in addition to the provision of consumer credit, companies represented by Eurofinas distribute a small number of insurances on an optional basis. These are simple types of insurance coverage that are available to consumers when they conclude a credit agreement. The main categories of insurance distributed by credit providers vary from country to country but generally include the following:

- Insurance linked to the asset financed:
 - o Guaranteed asset protection (GAP insurance)
 - o Motor insurance (Third Party liability [compulsory cover], driver coverage and extended warranty)
 - o Legal protection insurance

- Insurance linked to the loan:
 - o Loan protection insurance

Not all these products may be offered by all consumer credit providers. These products offer a high level of protection for the consumer in case of unforeseen events affecting his/her ability to repay a loan, litigation or damages to the asset financed. Protection products in particular also play a key role in preventing consumer over-indebtedness. The offers made to consumers reflect their expectations in terms of protection. This explains why insurance products are distributed by consumer credit providers and offered at the same time to their customers.

Most consumer credit providers do not cover insurance risks themselves but work in partnership with insurance companies. This means that a consumer credit provider distributes the insurance products of its insurance partner and in this context acts as an intermediary. The Insurance Mediation Directive provisions therefore directly apply to consumer credit providers.

Hence, Eurofinas represents a specific part of the insurance mediation sector that is very different from the traditional insurance mediation brokerage.

In turn consumer credit providers offer these insurance products through their distribution channels including at the point of sale. In the latter situation, insurance products will be distributed by retailers or motor dealers that will act as the credit providers' own intermediaries. These partners of consumer credit providers are therefore another type of insurance intermediaries that is here again very different from the traditional insurance mediation brokerage.

¹ Commission Proposal for a Directive of the European Parliament and of the Council on insurance mediation (recast) (COM(2012) 360 final)



INTRODUCTORY OBSERVATIONS

Eurofinas, the voice of consumer credit providers at European level, takes note of the publication of the European Commission's Proposal for a Directive of the European Parliament and of the Council on insurance mediation (recast) (COM(2012) 360 final).

The Commission's Proposal provides a good basis to further discuss the issues at stake in a European context. We believe that an efficient, fair and high-quality regulatory framework for insurance intermediaries requires avoiding at all costs a "one-size-fits-all" approach by adapting statutory requirements to the different existing distribution channels i.e. insurance distributors' different levels of responsibility, types of products on offer and material ability to adapt to changes of regulatory requirements.

We therefore welcome, in particular, the differentiated approach taken by the Commission in its Proposal, especially with regard to those intermediaries that distribute less complex products on an ancillary basis. However, the Federation would like to draw your attention to a number of key concerns for the industry that Eurofinas represents.

These key concerns should be read in light of the specificities of our industry as well as the response of the Federation to the European Commission consultation on the subject matter.²

SPECIFIC OBSERVATIONS

1. Chapter I – Article 1 – Scope

Eurofinas takes the view that the conditions for exemption from the scope of the IMD 2 must be adjusted and adapted to the current market reality. A number of elements should be taken into account:

Life assurance contracts

Article 1(2)(b) states that the Directive shall not apply if the insurance contract is not a life assurance contract.

The concept of "life insurance contract" should be clarified to avoid any divergent national interpretations. As it stands, products which may have as part of their overall package a cover aiming to protect the policy holder in the event of death or disability may fall under the definition of life assurance contract. This despite the fact that they may be composed of various other covers, including non-life coverage such as protection in the event of unemployment or hospitalisation. These products are not as complex or long term as 'traditional' life insurance contracts. There should therefore be a differentiated treatment for these products, in line with the approach taken by the Commission in other areas of the Proposal such as through the distinction between PRIPs and non-PRIPs products.

Liability risks

Article 1(2)(c) provides that the Directive shall not apply if the insurance contract does not cover any liability risks.

The concept of "liability risks" should be clarified to avoid any divergent national interpretations. The notion of "civil responsibility" should be preferred, also given the differences between the various language versions of the Proposal.³

² Eurofinas response to the Commission consultation on the review of the Insurance Mediation Directive, February 2011, available here: <http://www.eurofinas.org/uploads/documents/positions/Final%20Eurofinas%20response%20EC%20consultation%20IMD.pdf>.

³ See the French language version.



Complementary

Article 1(2)(e) states that the Directive shall not apply if the insurance is complementary to goods supplied by any provider, where such insurance covers the risk of breakdown, loss of or damage to the goods supplied by that provider.

This condition should also include complementary insurance to product or service supplied by any provider. In particular, where such insurance covers the impossibility to discharge fully or partially any contractual obligation related to the aforementioned product or service in the event of death, disability or unemployment.

De minimis

Article 1(2)(f) provides that the IMD 2 shall not apply if the amount of the annual premium for the insurance contract, when pro-rated to produce an annual amount, does not exceed EUR 600.

Eurofinas considers that this amount should be regularly reviewed to take into account changes in the European Index of Consumer Prices, as published by Eurostat. We propose to introduce wording similar to the provisions proposed by the Commission in Article 8(7) of the Proposal for an IMD 2. This Article provides that EIOPA shall develop draft regulatory standards which adapt this base amount, thereby ensuring that the amount reflects the economic situation.

2. Chapter I – Article 2 - Definitions

Tied insurance intermediaries

Article 2(8) of the Proposal sets out the definition of “tied insurance intermediary”. The Commission indicates in the explanatory memorandum that this definition has been extended to include intermediaries working under the responsibility of another insurance intermediary.⁴ However, we fear that the definition proposed by the Commission will exclude some distribution channels.

Whether or not an intermediary is tied does not depend on the capacity, in turn, of the entity it is tied to. The wording should be amended accordingly: “provided that the insurance intermediaries under whose responsibility the person acts do not themselves act under the responsibility of another insurance undertaking or intermediary” should be deleted. This will ensure consistent use of this term in line with the definition proposed in other legislation, such as proposed by the European Parliament’s ECON Committee in the context of the CARRP.⁵

We would also like to point out inconsistencies between the wording used within the Proposal. Article 3(1) paragraph 2 refers to tied intermediaries whereas paragraph 3 refers to those acting under the responsibility of an insurance undertaking or intermediary, which is essentially a tied intermediary according the definition of this term in Article 2. These inconsistencies may cause confusion and divergent national interpretations and should therefore be minimised.

Advice

Eurofinas considers advice to correspond to the provision of a personal recommendation to a client and that it constitutes a separate activity from the mediation of insurance products. This is not reflected in the definition in

⁴ IMD 2 Proposal, pg 7.

⁵ Proposal for a Directive of the European Parliament and of the Council on credit agreements relating to residential property, COM(2011) 142 final.



Article 2(9) and should be amended accordingly. This will also ensure consistency with the definition used in other financial services legislation, such as the currently under discussion CARRP and MiFID II.⁶

3. Chapter III – Article 4 – Declaration procedure for providing ancillary insurance mediation; professional management of claims or loss assessment services

Eurofinas welcomes the introduction of a declaration procedure for those intermediaries who distribute insurance products in an ancillary capacity. This results in a proportional level of administrative burden and takes into account the differences between the various distribution channels.

In order to benefit from the declaration procedure the insurance products the intermediary distributes cannot cover life assurance or liability risks, unless the cover is incidental to the main cover. Eurofinas would like to remark that due to their nature, many low risk and low complexity insurance products inherently cover some life aspects or liability risks (civil responsibility). It is also unclear how it would be determined which cover constitutes the main cover, if at all.

We therefore fear that the wording used on this issue does not correspond to the market reality and would exclude virtually all insurance intermediaries who were intended to fall under the declaration procedure⁷ from the scope of Article 4 of the Proposal. This wording should be amended to ensure that ancillary providers distributing low risk products can use the declaration procedure.

4. Chapter III – Former Article 5 – Retention of acquired rights

Eurofinas questions the desirability of the deletion in the IMD 2 of the article on retention of acquired rights,⁸ which foresees that those intermediaries already registered under the previous rules and who have the level of training and experience similar to those required by the new rules, should be automatically registered. It should be avoided that all intermediaries would have to reregister or declare their activities, substantially increasing and in essence duplicating the administrative burden placed upon intermediaries. National competent authorities should also not be overburdened with registration requests upon the transposition of the IMD 2 into national law.

Eurofinas therefore propose that a dedicated article, in line with Article 5 IMD 1 should be inserted in the IMD 2 to increase legal certainty and to prevent the need to reregister all intermediaries. The insertion of such a provision reducing administrative burden would not remove the obligation for intermediaries to adhere to any new rules introduced pursuant to the IMD 2.

5. Chapter V – Article 8 – Professional and organisational requirements

Complexity of the product and ancillary capacity

The Federation welcomes three distinct aspects of the Article on professional requirements, which should remain in the revised Directive:

- 1) The clarification that appropriate professional experience shall be relevant to the complexity of the products the intermediary is mediating;

⁶ Proposal for a Directive of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast), COM(2011) 656 final.

⁷ Page 8, Explanatory Memorandum, Proposal for an IMD 2.

⁸ Page 45-46, Proposal for an IMD 2.



- 2) The Proposal provides, in line with IMD 1, that Member States may “adjust the required conditions with regard to knowledge and ability in line with the particular activity of insurance or reinsurance mediation and the products mediated, particularly if the principal professional activity of the intermediary is other than insurance mediation. In such cases, that intermediary may pursue an activity of insurance mediation only if an insurance intermediary fulfilling the conditions of this Article or an insurance undertaking assumes full responsibility for the intermediary’s actions”; and
- 3) Training requirements should not directly apply to those intermediaries that provide insurance products on an ancillary basis and that work under the full responsibility of insurance undertakings or another insurance intermediary. The latter should have the responsibility for training, authorizing and monitoring the former. Article 8(1) IMD 2 currently provides for such a differentiated treatment.

These provisions are in our view proportionate to the situation of those intermediaries that provide basic insurance products, in an ancillary capacity, at the point of sale and who act under the complete responsibility of consumer credit providers who fulfil themselves these requirements.

We believe that these provisions allow for adequate flexibility to match market operational reality and constraints while at the same time ensuring a high degree of professionalism and consumer protection. We therefore support the Commission’s proposals for these provisions.

Competence to set professional requirements and delegated acts

There is a contradiction between the wording in Article 8(1) paragraph 1 and Article 8(8). The first requires intermediaries to possess appropriate knowledge and ability “*as determined by the Home Member State*”, yet the second provides that the Commission shall adopt delegated acts to specify what adequate knowledge and ability entails.

Eurofinas considers that balanced professional and training requirements are key to ensuring a high level of professionalism and consumer protection. However, as these concepts are essential aspects of the framework on insurance mediation, further rules should in our view not be set out in delegated acts, in line with the provisions of the Treaty on the Functioning of the EU.⁹

In addition, as insurance distributed by consumer credit providers, and by retailers, is offered in an ancillary capacity for a limited product range, we warn against the introduction through delegated acts of additional requirements designed for traditional insurance brokers whose core business is the distribution of insurance. This would not be suitable for all distribution channels. Further requirements for intermediaries who are already stringently trained in providing insurance to spend even more time in a classroom to study detailed insurance information would be completely disproportionate to what is needed to enable those intermediaries to provide clear information to the consumer about what are, in the final analysis, affordable and commonly used optional insurance products.

If the Parliament and Council opt to keep the provisions regarding delegated acts within the IMD 2, it should be clarified that the Commission shall take into account the particular activities of intermediaries, especially those who operate on an ancillary basis, as well as the complexity of the products distributed when setting out further rules on professional requirements. Stakeholders shall also be duly consulted in this process.

⁹ Article 290, Treaty on the Functioning of the European Union, OJ 9.5.2008



6. Chapter V – Article 13 – Out-of-court redress

Article 13 provides that Member States shall set up complaints and redress procedures for the settlement of disputes between insurance intermediaries/undertakings and customers, as in IMD 1. However, in addition to this, intermediaries/undertakings shall also participate in procedures which fulfill a number of requirements.

Eurofinas considers that existing ADR mechanisms should fall within the scope of this Article and it should be avoided at all costs that new systems need to be set up. We also question the need to outline some of the characteristics of the ADR mechanism that intermediaries should join when the Commission's proposals on ADR and ODR¹⁰ are currently being discussed in Trilogue. It would be preferable for the IMD 2 to refer, for business-to-consumer complaints, to mechanisms which adhere to the requirements of the ADR Proposal rather than to set divergent requirements which could result in the need to set up further ADR mechanisms.

7. Chapter VI – Article 15, 16 & 18 – General principle, General Information provided by the insurance intermediary or insurance undertaking & Advice and standards for sales where no advice is given

Eurofinas welcomes the Commission's Proposals for Article 15 and 16 introducing a general duty for intermediaries to act honestly, fairly and professionally as well as the obligation for intermediaries to clearly identify themselves and on whose behalf they are acting. Coupled with Article 18, which outlines the criteria for advice and the requirement to inform the customer of the characteristics of the product, these provisions are essential to ensure that consumers receive the information they need to avoid potential conflicts of interest and take informed decisions.

Eurofinas calls for these provisions, which provide a balanced approach, to remain as such in the final text. This is especially with regard to the distinction between advice and non-advised sales. This distinction is crucial to encompass the different types of insurance mediation activities. A number of intermediaries do not advise *per se* their customers but limit their activity to the provision of information and explanations on the products. Advice is very different from the latter and shall therefore be considered as a distinct service. This distinction protects both the consumer and the intermediary when the latter is not in an operational situation to provide advice i.e. he is under a contractual obligation to distribute products of specific providers.

8. Chapter VI – Article 17 – Conflicts of interest and transparency

Definitions

Article 2(18) of the Proposal defines "remuneration" and includes "an economic benefit of any kind". This wording is unclear and broad, which could result in differing national interpretations.

Eurofinas also questions the need to define "contingent commission", a term which is only used in the IMD 2 to assign power to the European Commission to adopt delegated acts thereon. We consider it inappropriate for a Proposal to not lay down any rules on one aspect and instead delegate this power entirely to the Commission. (please also see below our comments on delegated acts).

Disclosure of remuneration

Eurofinas welcomes clear rules on information requirements (as discussed in point 7 above) and the nature and source of any fees or commissions the intermediary receives, to avoid potential conflicts of interest and ensure that

¹⁰ Proposal for a Directive of the European Parliament and of the Council on alternative dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Directive on consumer ADR), COM(2011) 793 final and Proposal for a Regulation of the European Parliament and of the Council on online dispute resolution for consumer disputes (Regulation on consumer ODR), COM(2011) 794 final.



the customer is aware of on whose behalf the intermediary acts. However, we question the extent of the Commission's proposals on the issue of disclosure.

The amount of remuneration is only one element of a transaction. By emphasizing the intermediary's remuneration, consumers' attention will move away from the actual cost of the insurance products and the characteristics of its coverage. This presents a high risk that consumers could end up paying more for a product overall or select a less suitable coverage because of a lower remuneration element.

We also question the need for disclosure of the nature and basis of the calculation of variable remuneration receivable by individual employees of the intermediary, rather than the intermediary (as a legal person) itself. The income of an individual employee of an insurance intermediary is personal information which does not contribute the customer's understanding of the products, its characteristics and coverage and the cost for the customer.

Disclosure at subsequent payments

Where a customer makes any payments under the insurance contract after its conclusion, the disclosures shall also be made for each such payment. Eurofinas would like to remark that in order to reduce legal uncertainty; it should be clarified that this disclosure should be made prior to the conclusion of any contract. Requiring this disclosure at each payment would not take into account market realities. A number of insurance premiums are paid by customers on a monthly basis. Requiring information on commissions to be disclosed every month is disproportionate to the aim of informing customers and will overburden them with information.

Delegated acts

Eurofinas regrets that the issue of disclosure of remuneration would be dealt with by the Commission at a later stage. This procedure will restrict the input from stakeholders on operational realities and cause substantial business uncertainty.

Furthermore, we fear that Article 17(5)(b) could result in the standardisation of commission structures as the Commission would become empowered to adopt criteria for determining the basis of calculation of remuneration. It is not the task of the Commission to determine how intermediaries should be remunerated for their services, thereby standardising practices. Remuneration forms part of the freedom of contract of the parties and is a business consideration subject to negotiation between the parties.

9. Chapter VI – Article 21 – Cross-selling

General remarks

Eurofinas considers it crucial that consumers are informed about the products they are purchasing, the characteristics of these products as well as the price. This also applies where products are sold in a package.

However, the provisions in question concerning cross-selling and the definitions used are unclear and would likely result in a un-even playing field across the European Union depending on national interpretations.

The IMD 2 should not oblige intermediaries to offer insurance products on a stand-alone basis, where the insurance is ancillary to the main product or service provided by the intermediary in his principal professional activity. We fear that the text regarding product bundling as it stands could be construed as such. For example, credit providers and intermediaries will offer insurance to those customers considering applying for a consumer credit. Eurofinas supports provisions that require intermediaries to inform customers regarding the costs of the components of any such package, such as a loan and an insurance product, and that the purchase of both products in a package should never be mandatory.



However, it would not make sense to oblige insurance intermediaries to offer the insurance, where it is ancillary to the main product, on a stand-alone basis to any customer. This would essentially result in a, for example, motor dealer, being forced to practice insurance mediation not on an ancillary basis, but on a fulltime basis. This should be avoided at all costs.

Consistency with other legislation

Eurofinas warns of potentially conflicting provisions between the IMD 2 and other legislation such as the Consumer Credit Directive,¹¹ the CARRP and MiFID 2 with regard to cross-selling practices involving insurance products or services.

The Consumer Credit Directive in particular recognizes that in some circumstances ancillary services, such as insurance products, may be compulsory and it requires the cost of these services, where known, to be included into the total cost of credit. These services also have to be declared to the consumer in the Standard European Consumer Credit Information document (SECCI).

Inconsistencies should be avoided at all costs and IMD 2 should not prohibit practices which other legislation expressly allows for and lays down criteria for these sales.

Role of EIOPA

Eurofinas is not in favour of development by the European Insurance and Occupational Pensions Authority (EIOPA) of guidelines for assessment and supervision as market practices may differ across the markets and the decision of whether or not to offer products in some form of a package and at what conditions, in line with legal obligations, is a business consideration.

In particular, EIOPA should not identify cross-selling practices which are not compliant with Articles 16, 17, 18 and 21(1) as these articles are applicable to the sale of insurance products in general, not only to products being cross-sold. Ensuring adherence with the legislation and investigating potential breaches is for the competent national authorities.

10. Chapter VIII – Articles 26 - 31 - Sanctions and measures

Eurofinas would like to highlight the importance of Article 29(1) in ensuring that competent authorities are obliged to take into account all relevant circumstances when deciding whether or not to apply any administrative sanctions. The Article should be retained as it ensures that such measures will be proportionate.

11. Chapter IX – Articles 33 and 34 – Delegated acts & Exercise of the delegation

Eurofinas has serious concerns regarding the extensive power for the Commission to adopt delegated acts. This entails that crucial provisions of the IMD 2 would be liable to substantial changes over time, likely resulting in substantial business as well as legal uncertainty. The limited involvement of stakeholders in this process is also a concern.

We would like to recall that in accordance with the provisions of the Treaty delegated acts can only be applied to “non-essential” aspects of the Directive, rather than, as in the Proposal, on such essential aspects of the Directive like “appropriate knowledge and ability”.

¹¹ Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC, OJ 22.5.2008, L 133/66.