



The Consumer Voice in Europe

# INSURANCE MEDIATION DIRECTIVE (RECAST)

BEUC Position Paper

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## Summary

BEUC welcomes the European Commission proposal to review the Insurance Mediation Directive (IMD) in particular as regards the objective to improve consumer protection in the distribution of insurance products through intermediaries.

The main improvements are the following:

- The inclusion of a duty to act honestly, fairly and professionally in accordance with the best interests of their customers;
- Same level of consumer protection regardless of the distribution channel;
- Clear information about the status & remuneration of the insurance seller;
- Disclosure of the nature, basis and structure of the intermediary remuneration;
- Prohibition of tying practices;
- Compulsory participation in procedures for impartial and independent out-of-court settlement of disputes;
- Creating a level playing field for the distribution of all investment products, those wrapped in life-insurances included.

However, the European Commission proposal does not go far enough regarding the following aspects:

- All intermediaries selling insurances on an ancillary basis should fall under the directive's scope and should comply with all consumer protection provisions;
- Contingent remuneration linked to any targets related to the activities run by the intermediary including sales volume and number of claims reported by clients should be banned;
- Conflict of interest: remuneration schemes and performance evaluations within the intermediary's firm or insurance undertaking should be designed in a way that does not impair the employee to act honestly, fairly, professionally and in accordance with the best interest of its customers;
- Not only remuneration linked to a contract should be disclosed but all remuneration, including remuneration in kind, linked to the mediation activity;
- Information about the insurance product should be given through a standardised information sheet;
- Provisions on tying and bundling practices should also cover situations where two or more insurances products are sold together as a package.;
- Training of intermediaries and insurance undertakings staff in contact with clients should be organised by a body independent from insurance undertakings and approved by the competent authority;
- Prior to distributing investment insurance products, intermediaries should define the targeted public and assess the suitability of the product for that public;
- The powers of the competent authorities should be described. Product intervention, including prohibition or restriction should form part of their powers in the area of investment life-insurances

## ***Introduction***

BEUC welcomes the proposal to review the Insurance Mediation Directive (IMD) in particular as regards the objective to improve consumer protection in the distribution of insurance products through intermediaries.

More specifically, BEUC welcomes the general principle provided by Article 15 stipulating that: "*Member States shall require that, when carrying out insurance mediation with or for customers, an insurance intermediary or insurance undertaking acts honestly, fairly and professionally in accordance with the best interests of its customers.*"

### **The importance of a high quality service for consumers**

By definition, an insurance contract is intended to cover risks that rarely occur at individual level. This means that the consumer is not able to learn from past experience to choose the best insurance contract or the best insurance intermediary as it is the case when buying a physical product. This is the reason why it is so important that mediation insurance service is of high quality for consumers.

### **Learning from the shortcomings of IMD1**

Shortcomings in the current directive coupled with poor enforcement have led to miss-selling practices detrimental for consumers. Lessons should be learned from this in order to really improve consumer protection.

Here are some concrete examples of miss-selling practices:

#### In the non-life insurance area:

- Payment Protection Insurance (PPI) in the UK:
  - Bank trained their staff to put pressure on customers selling credit protection insurances even if not needed. Millions of PPI were sold.
  - The UK Competition Commission investigated the market for payment protection insurance and found that commissions of up to 87% were paid on such policies.
  - The FSA took action against 24 firms for failings in relation to PPI sales with fines totalling nearly £13 million.
  - The Ombudsman Service faced a deluge of PPI complaints. It made up 60% of the total 264,000 claims in 2011. Some 64% of these claims were upheld, compared with 51% previously. In May 2012, the service was taking on 500 extra staff to process them.
- Insurances protecting against the lack of snow during winter holidays without informing the client on the limited protection. The contract guarantees the repayment of holidays if *all* cross-country ski trails are 2 days long closed (even in the shade of pine trees) or if 50% or two third of an alpine ski resort is closed (knowing that almost all ski resort can use snowmaking machines).

- Contracts of insurance and assistance are actively recommended by energy and water suppliers for repairs and emergency work. Consumers receive phone calls, emails, letters alarming them on possible risks: plumbing assurance for water lines inside the apartment; insurance for the water pipe outside, and water loss; insurance for wiring from the electricity meter; insurance for gas lines... According to the French Syndicat des Eaux (official body) on the one hand, and the French federation of insurance on the other hand, the annual number of claims is very limited. Such insurances are usually useless, but this is never explained to consumers.
- Insurance to protect against the theft of a mobile phone sold when purchasing the device: consumer is usually not aware that this insurance applies only in case of theft with violence; if the thief has extracted the mobile phone from your pocket or your bag without your knowledge, the insurance does not protect the policyholder. This is almost never explained to the consumer before subscribing to this insurance. This is the same in case of damages to the device: numerous exclusions are not detailed to consumers when taking out the insurance contract. A recent survey published by our French member<sup>1</sup> UFC Que Choisir shows that the commissions for the distribution of mobile phone insurance reach an average of 55% as well as that those insurances are almost always unnecessary useless due to the limited risks covered and the numerous exemptions.

#### In the life insurance area:

- Different types of investment life insurances (Woekerpolissen) have been miss-sold by insurance intermediaries in The Netherlands:
  - According to an inquiry of the Dutch market authority (Autoriteit Financiële Markten) in 2006, products were often too complex, expensive, with a lot of risks and specifically risks of loss if ended before term. It was sold to consumers even if not suitable for them and without sufficient information. Information was sometimes even wrong.
  - It is difficult to know how many families are hit by those products. 100,000 registered to an NGO created to support victims of this mis-selling practice..
  - Delta Lloyd, ING en Fortis ASR repaid respectively 300, 365 and 750 million euro. SNS Reaal accepted to repay 320 million euro to consumers.
- Sparselect: A large Dutch intermediary firm recommended mortgage loans together with an investment in unit-linked life insurances. Several hundreds of families are in financial struggle due to the unsuitable risks taken. The intermediary bankrupted when the sales fell.

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<sup>1</sup> Assurance téléphonie mobile Un vrai problème de couverture, published in December 2012 by UFC Que Choisir.

<http://www.quechoisir.org/argent-assurance/assurance/assurance-des-biens/communiquer-assurance-telephonie-mobile-un-vrai-probleme-de-couverture>

- Life insurances undertakings have had to guarantee Belgian clients against the losses due to structured products wrapped in investment life insurances when Lehman Brothers Holdings Inc. went bankrupt.

### **Findings of the European Commission Report on business insurance as regards remuneration schemes and conflicts of interests**

In September 2007, the Commission published a Communication <sup>2</sup> based on its sector inquiry on business insurance. Although the survey was focusing on business insurance, some of the findings and conclusions of the Commission are relevant for insurance distributed to consumers and should be taken into account for the recast of the IMD.

#### ***2.3. Distribution of business insurance***

- 18. The Interim Report provided a detailed overview of the main aspects relating to the distribution of business insurance products and services in the European Union. Insurance is distributed through independent brokers, tied agents, banks (so-called bancassurance) and direct sales, including internet sales. Brokers, tied agents and direct sales account for the vast majority of sales. The need to build a distribution network may be a barrier to entry in the absence of a strong independent brokerage network available at national level.*
- 19. Brokers act both as an advisor to their clients and as a distribution channel for the insurer, often with underwriting powers and binding authorities. This dual role is a potential source of conflict of interest between the objectivity of the advice they provide to their clients and their own commercial considerations. Such conflicts of interest can also arise from a number of sources linked to their remuneration, including contingent commissions.*
- 20. In respect of insurance intermediaries, the market surveys and the public consultation highlight the fact that current market practices - in particular the lack of spontaneous disclosure of remuneration received from insurers and other possible conflicts of interest - create an environment in which business insurance clients, in many cases, are unable to make fully informed choices.*
- 21. Practices aimed at inciting brokers to place business with particular insurers have the potential to undermine fair competition in the insurance market around terms and conditions of cover, service and insurers' financial strength. Such practices might, instead, result in insurers' competing against each other on the level of remuneration afforded to brokers in an attempt to "buy" distribution, or at the very least influence the broker's choice.*
- 22. Disclosure of relevant information by intermediaries, in relation to remuneration received from insurers and services provided to insurers, may help mitigate conflicts of interest. At present, even where disclosure takes place, it does not always appear to be complete, clear and understandable to the client. In the light of similar situations that arise in other financial sectors, notably in securities and*

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions; Sector Inquiry under Article 17 of Regulation (EC) No 1/2003 on business insurance (Final Report), page 5.  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0556:FIN:EN:PDF>

*banking, it is questionable, however, if disclosure alone is sufficient to mitigate conflicts of interest, in particular in relation to those types of remuneration that specifically aim at aligning the interest of brokers with that of insurers.*

The Commission gives more details on the possible impact of remuneration schemes on conflict of interest and competition in the Conclusions of the Commission Working Document accompanying the Communication above<sup>3</sup>:

*On **distribution channels** for business insurance products, it is noted that certain distribution structures (e.g. networks of exclusive agents) can, under specific circumstances, act as entry barriers. Conversely, the existence of a broker channel can facilitate market entry for foreign insurers. However, the predominant mode of remuneration of brokers, namely commissions paid by insurers, is characterised by a lack of transparency in respect of the (separate) prices of the insurance cover and of the mediation service, which reduces the scope for competition in the market and is susceptible to creating conflicts of interest that risk to be damaging to the interests of customers and leading to higher prices. This is all the more so when additional remuneration is paid by the insurer to the broker that is contingent on the achievement of agreed targets relating to the business placed by the broker with that insurer. Any form of remuneration that has the capacity to unduly influence brokers' advice to clients might harm competition in the insurance market for the provision of the most suitable insurance products and services to clients and might, instead, result in insurers' competing against each other on the level of remuneration afforded to brokers. Full and automatic disclosure of relevant information by intermediaries to their clients about remuneration received from insurers and services provided to insurers could help mitigate conflicts of interest, but may not be sufficient to mitigate such conflicts in relation to those types of remuneration that specifically aim at aligning the interest of brokers with that of insurers.*

The IMD2 is a unique opportunity to tackle both the conflicts of interests issue and the competition issue highlighted by the Commission in 2007. BEUC considers that the IMD2 proposal does not go far enough in this area and should be improved.

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<sup>3</sup> Commission Staff Working Document Accompanying the Communication from the Commission; Sector Inquiry under Article 17 of Regulation (EC) No 1/2003 on business insurance; page [http://ec.europa.eu/competition/sectors/financial\\_services/inquiries/final\\_report\\_annex.pdf](http://ec.europa.eu/competition/sectors/financial_services/inquiries/final_report_annex.pdf)

## ***Analysis of the proposed provisions***

### ***Article 1: Scope***

BEUC welcomes the extension of the IMD scope to insurance undertakings, price comparison sites, travel agents, airlines and car rental companies selling insurances. This contributes to a level playing field in the distribution of insurances.

However, BEUC is concerned by the exclusion for intermediaries selling insurances complementary to supplied goods (such as mobile phone insurance). Because of the lack of information given to consumers about contract exceptions, the fact that high remuneration schemes push salespeople to sell actively these insurances and the involved high premiums, intermediaries selling such insurances should comply with the IMD provisions.

A survey conducted in France by our French member UFC Que Choisir shows that the limited protection and the number of exemptions in the mobile insurance contracts heavily dilute their usefulness for consumers. It also shows that most of time the contract terms are not communicated to consumers before signature, that the oral information given at points of sales overstates the level of protection and does not reveal the exemptions. Sellers use to claim that theft is covered but without explaining that this is only true in case of violence, which is rarely the case. The same types of limitations exist for damages to the device. Similar facts are reported by other BEUC members like in Spain, Belgium and Norway. In several countries (Belgium, Norway...) salespeople recommend consumers to take out such insurance even for cheap devices while the premium is around 1/3 of the device price or even more. Actually, most of such insurance are useless because of the number of exceptions.

There is no serious justification to exempt those intermediaries from the application of consumer protection provisions like Article 13 (out of court redress); Article 15 (general principles of conduct of business); Article 16 (general information provided to the client) and Article 18 (information on the insurance contract proposed).

The exception granted by paragraph 2 of Article 1 creates a loophole in consumer protection. It must be kept in mind that insurance services are not included in the scope of the Consumer Right Directive precisely because the *existing Union legislation relating to consumer financial services contains numerous rules on consumer protection*<sup>4</sup>, which is not the case for all of them. The currently existing loophole should be ended.

### ***Article 2: Definitions***

#### **Article 2.10: Contingent commission**

Intermediaries can obtain commissions not only by achieving targets related to the business placed but also by the reducing number of claims from an intermediary's

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<sup>4</sup> Recital 32 of Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:304:0064:0088:EN:PDF>

clients (less claims = more commissions for the intermediary). The definition of contingent commissions should include all elements that can influence this kind of remuneration.

Some bank-insurance groups calculate their commissions on the base of cross-selling practices: e.g. the amount of commissions on loans differs depending if death insurance is also sold to the same customer. This kind of practice encourages the intermediary to actively sell several products at the same time, even if the client does not need all of them.

#### **Article 2.19 & 2.20: Tying and bundling practices**

Tying and bundling are addressed by the Commission proposal only when other services than insurances are offered together with an insurance service and not when two or more insurance services are sold together. Furthermore, the definition addresses the wrong problem. Usually insurance are offered as the ancillary to a product or service (e.g. a death insurance ancillary to a mortgage loan) and not the other way around.

More and more insurances are proposed as package to consumers. Some insurance undertakings propose an overall contract with all usual protections (car, home, civil liability) payable with a monthly direct debit. Those practices restrict competition in the insurance market making it difficult for consumers to shop around and preventing smaller insurance providers to enter the market or develop new products. It must be tackled by the definition of bundling practices.

#### ***Article 4: Declaration procedure for providing ancillary insurance mediation and professional management of claims or assessment services***

Intermediaries selling insurances on an ancillary basis have to comply with a limited number of IMD provisions. BEUC considers that regarding consumer protection provisions, this light regime is not justified as consumers are very often proposed to subscribe to such insurances and the quality of the information, for instance about the exclusions, is not satisfactory.

A lot of travel insurances are sold to consumers without informing them about the relevance of the medical history to obtain compensation or explaining that any pre-existing disease could lead to the exemption of the insurance benefit. This was the case in the UK until insurances sold by travel agents or car hire companies became subject to FSA regulation in 2009.

Many airlines websites invite consumers to take out travel insurance without preliminary information on coverage and exclusions.

In France, insurances covering delay or cancellation are systematically proposed by the French Railway Company (SNCF) when buying tickets online; but no information is provided and consumers are misled as the covered situations are very restricted.

Other examples of insurances sold together with services or products without due information or assessment of its suitability for consumer:

- insurance against the absence of snow applicable only for high altitude ski-stations (they are all equipped with snow blowers) ;
- insurance for theft of credit card when the consumer liability is limited to 150€ in application of the Payment Services Directive.



Unclear information like in travel insurances and insurances linked to credit cards lead to over protection (with sometimes the problem that each company excludes risks covered by another insurance contract) or lack of protection when a consumer wrongly believes he is protected.

As provided by the Commission proposal, only Articles 15 and 16 out of chapter VI would apply to intermediaries selling insurances on an ancillary basis. This would mean that provisions on conflicts of interest and commission transparency (Article 17), information on the insurance product (Article 18.4), information conditions (Article 20) and cross-selling (Article 21) would not apply. This is not without consequence as financial services are excluded from the scope of the Consumer Rights Directive (see our comments on the IMD2 scope, art. 1) and travel insurances are excluded from the right to withdrawal provided by the Directive<sup>5</sup> on Distance Marketing of Financial Services.

### ***Article 8 Professional and organisational requirements***

BEUC supports the requirement to ensure that people in contact with consumers and the management structure have the necessary skills and expertise to perform their tasks and comply with their duties adequately and in compliance with the Directive.

However, BEUC has doubts about the training quality when organised by the insurance undertaking. Such trainings are mainly sales-oriented and less focused on the compliance with legislation as regards the conduct of business rules, e.g. the obligation to act honestly, fairly and professionally in accordance with the best interest of the customer. The training should preferably be organised by a body not directly or indirectly dependent from insurance undertakings. This body should be certified by the competent authority.

### ***Article 10: Competent authorities***

In Article 3 (3), the powers of the competent authorities should be better described in order to ensure that competent authorities in all Member States have the powers needed to perform the duties provided by the IMD which includes the supervision of the compliance with the conduct of business rules.

### ***Article 13: Out of court redress***

BEUC welcomes that alternative dispute resolution is made compulsory for the intermediaries and that ADR bodies must be effective, impartial and independent.

However, BEUC does not agree with Article 13.1 (a) that provides that the procedure results should not be binding.

This provision should be amended in order to be in line with the horizontal ADR Directive, provided that the participation to the out of court procedure should be compulsory if the consumer asks for.

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<sup>5</sup> Article 6.2 b) of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services and amending Council Directive 90/619/EEC and Directives 97/7/EC and 98/27/EC  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2002L0065:20071225:EN:PDF>

### ***Article 15: General principle***

BEUC welcomes that intermediaries must act honestly, fairly and professionally in accordance with the best interest of its customers. This is a key principle to increase consumer confidence in the service provided by intermediaries.

BEUC also welcomes the principle that all information, including marketing communications provided to consumers should be fair, clear and not misleading.

### ***Article 16: General information provided by the insurance intermediary or insurance undertaking***

BEUC welcomes the improvement of the information to be given to consumer about the insurance intermediary or insurance undertaking itself.

This information should be provided by means of a standardised form in plain language.

### ***Article 17: Conflicts of interest and transparency***

Conflicts of interest are one of the major concerns of consumers associations regarding the distribution of insurances. Several recent miss-selling practices would have probably been avoided if conflicts of interest had been effectively tackled:

- investment life insurances in the Netherlands (woekerpolissen);
- a Dutch intermediary recommending mortgage borrowers to invest in unit-linked life insurances (Spaarselect);
- Payment Protection Insurance (PPI) in UK: credit intermediaries were very active in selling these insurances as they received commissions between 66 and 87% of the expensive premium.

The benefit of these insurance for consumers was generally limited and sometimes the maximum compensation was even lower than the premium paid.

#### Disclosure of the remuneration

The client is entitled to know what he (indirectly) pays and if the remuneration scheme may create a conflict of interest between the intermediary and himself. The consumer should be aware that the intervention of the intermediary when taking out a contract or claiming for compensation is never for free.

Part of the intermediary remuneration concerning the insurance products being offered or considered can be a non-monetary benefit. Non-monetary benefits or incentives such as event sponsorship, paid holidays etc. are very common in this sector and have a direct impact on recommendations made by insurance intermediaries. Those benefits and incentive schemes must be disclosed, there is no reason to limit the disclosure to an amount of fees or commissions.

Information on remuneration should not be limited to the remuneration related to specific insurance in connection with the insurance mediation activity.

#### Disclosure is not sufficient to avoid the most detrimental conflicts of interest

The Commission proposal suggests that the conflicts of interest issue could be solved by disclosure, which is not workable in all cases. BEUC does not ask for a ban on commissions in all Member States, but some remuneration schemes which are

particularly detrimental to consumers' interests should be banned. This is the case of remuneration linked to target sales (related to one product, one category of products or to the entire sales amount of products from one insurance undertaking), or remuneration linked to the number of claims from clients of the intermediary.

- *Contingent commissions linked to the amount of sales* create per se a conflict of interest with the potential client: it induces the intermediary to sell that product or products from the same insurance undertaking even if the intermediary could propose more suitable products to the client. This is particularly the case when the level of commission is linked to a threshold to be reached by the intermediary.
- *Contingent commissions linked to the global amount of sales of products from the same undertaking*, when applied by the most important undertakings on a local market, create more difficulties for other undertakings proposing other products to enter the market. This has been highlighted by the Commission (DG Competition) in its Communication and the Work Document accompanying this communication<sup>6</sup>. Such a restriction to competition should be avoided.
- *Contingent commissions linked to the number of claims from clients* should absolutely be banned. It induces the intermediary not to act in the best interest of his clients who are discouraged to declare their claims. Defending the interests of his clients can be directly detrimental to the intermediary's remuneration, which is not acceptable.

Particularly high commissions should also be banned as they incite some intermediaries to distribute products which would not be distributed by an intermediary acting fairly (see the PPI scandal UK: these insurances were easily distributed because of high commissions offered to intermediaries (until 87% of the premium) although they were expensive and with limited benefits). Lessons should be learned from this miss-selling example.

#### Disclosure on demand is not acceptable

There is no serious reason why the intermediary should only disclose the commissions they receive to those consumers who ask for it. A lot of consumers will not ask for it because they fear that such requests could irritate the intermediary and affect the quality of the service they will receive. Information must be disclosed by intermediaries even if the client ignores the commission scheme or does not ask for it. Transparency should not be an optional right only for the most informed or assertive clients.

### ***Article 18: Advice and standards for sales where no advice is given***

#### **Article 18.1: Suitability of the insurance contract**

Paragraph 1 of Article 18 states that the intermediary will identify, on the basis of information *provided by the client*, the demands and needs of the client. In the IMD2 proposal, there is no duty to ask questions to the client to better understand his needs; however most of the time consumer does not necessarily know what is available on the market for the type of insurance he needs, and what information is

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<sup>6</sup> See detailed information in our introduction

relevant to assess the suitability of proposed insurance policies. This is the role of the intermediary who acts as a professional in front of a non-professional to ask the right questions and request information needed to assess consumer needs and decide whether a specific contract is suitable or not, or is the best when the intermediary gives advice on the basis of an analysis of a sufficiently number of contracts.

In order to avoid that intermediaries systematically recommend the product offering them the highest commission without a real analysis of the market, intermediaries should inform consumers on the different insurance policies they have analysed, in addition to the reasons why they recommend one specific policy.

#### **Article 18.4: Information provided in a comprehensible form**

Prior to the conclusion of a contract the insurance intermediary or insurance undertaking shall give the customer the relevant information about the insurance product in a comprehensible form to allow the customer to make an informed decision.

This information should be provided by means of a standardised form in plain language. As for UCITS (KIID), investment products (KID), consumer credit (information sheet) and mortgage credit (ESIS), information on key features of an insurance product should be provided by the means of a standardised form in order to facilitate understanding and comparison between products. The Commissions should consider the creation of such standardised information sheet for all insurance contracts. It can be a different information sheet for each type of insurance contract. A specific form should be designed for each type of insurance product at national level with the involvement of consumer organisations and under the control of the competent authorities, and at a later stage at European level.

The International Association of Insurance Supervisors (IAIS) recommends<sup>7</sup> such product information sheet: *"19.5.13- A helpful means to ensure that accurate and comprehensible information is provided to the customer is a product information sheet containing information on key product features that are of particular significance to the conclusion or performance of the insurance contract. The product information sheet should be clearly identified as such and it should be pointed out to the customer that the information is not exhaustive. Insofar as the information concerns the content of the contract, reference should be made as appropriate to the relevant provisions of the contract or to the general policy conditions underlying the contract. Insurers should consider the use of evaluation by third parties, such as consumer testing, in developing product information sheets in order to ensure their understandability."*

#### **Article 19: Information exemptions and flexibility clause**

It is important for Member States like the Netherlands, Denmark and Finland where a ban on commissions is already in force that such a ban on commissions may remain in place. All Member States should also be allowed to implement such a ban on commissions.

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<sup>7</sup> Insurance Core Principles, Standards and Assessment Methodology adopted in 2011 and revised in 2012, <http://www.iaisweb.org/Insurance-Core-Principles-material-adopted-in-2011-795>

## ***Article 20: Information conditions***

### **Article 20.1: Information provided to consumers**

Paragraph 2 of Article 15 provides that all information or marketing communication must be fair, clear and not misleading. Subparagraph b) of paragraph 1 in Article 20 provides that the information provided in accordance with Articles 16 to 18 must be communicated in a clear and accurate manner, comprehensible to the customer. Article 20.1 should explicitly refer to Article 15.2 and add that information must be communicated in an accurate manner, comprehensible to the customer.

As the consumer is the recipient of the information mentioned in this article, the language of communication should be that of the consumer. This is the principle adopted in the Time Share Directive (art. 4.3) and the Consumer Rights Directive (art. 6.7) on the language to be used.

Furthermore, a paragraph providing that it is the responsibility of the insurance undertaking to draft the standardised information sheet to be provided by the intermediary should be added (see our comment on paragraph 4 of Article 18).

### **Article 20.5: Information provided on a website**

Making information available on a website raises concerns as the content can be changed by the intermediary or the insurance undertaking. In order to be sure that information provided in accordance with Article 16, 17 and paragraphs 2 to 4 of Article 18 can be retrieved unchanged during the entire lifetime of the insurance contract, the version of the website at the moment of the contract should be kept by a certified third body.

The information provided in accordance with paragraph 1 of Article 18 is particularly sensitive and needed in case of any trouble regarding the execution of the contract. It should always be sent to the customer on a durable medium.

## ***Article 21: Cross-selling***

As proposed by the Commission, **tying practices** should be banned.

As mentioned in Recital 41 of the Commission proposal, such practices distort competition and negatively affect consumers' mobility and their ability to make informed choices. Comparisons would become impossible and the market non-transparent if insurance services could be tied with other insurance services or services of another kind. Related risks can be covered by the same insurance contract (e.g. a home insurance covering fire, flood, storm damages or travel insurances covering trip cancellation and delay, lost baggage, medical emergency, repatriation). But tying home insurance with the 'family civil liability' should not be allowed. Home insurances in France, called "Multirisque Habitation" always include 'family civil liability' insurance: both products should be offered separately as they do not form an objective set. This is the same in many countries where death insurance for mortgage credit is sold together with home insurance while there is no objective necessity to sell them together, and certainly not by the same intermediary.

As also mentioned by the Commission, **bundling practices** may also distort competition and negatively affect customer mobility and customers' ability to make informed choices; they at least leave choice to the customer and may therefore present less risk to the compliance of insurance intermediaries with their obligations

under this directive. The use of such practices should be carefully assessed in order to promote competition and consumer choice<sup>8</sup>.

The Commission proposal (see paragraph 1) obliges Member States to allow bundling. It prevents Member States to ban or restrict bundling practices that could be detrimental to consumers. This provision should be amended in order to not limit Member States' powers.

Bundling practices can be detrimental when they prevent consumers to change their package after a certain period of time. This is the case when insurance policies (home insurance for instance) are bundled with a mortgage loan: even if the bundled package is beneficial for the consumer at the beginning of the loan, the market may evolve by offering better deals for consumers both in terms of quality of insurance policies and pricing. Consumers should always have the possibility to deal with other providers for part or the totality of his package after a period of one year. Such possibility should not have an impact on the remaining contract.

### ***Chapter VII: Additional customer protection requirements in relation to insurance investment products***

The IMD2 provisions on life insurance should be fully in line with the similar MiFID provisions in order to achieve a level playing field between investment products. Otherwise, competition distortions and regulatory arbitrage will remain ; and consumer will be the end-looser.

#### ***Product assessment***

The intermediary firm or the insurance undertaking should be responsible for the choice of the products it distributes and the public it targets. Not only the employee but also the management of the intermediary or insurance undertaking must be responsible for the compliance of the marketing strategy with the duties of Paragraph 1 of Article 15. Some small intermediaries could consider that they are not in a position to assess the investment products issued by the insurance undertakings. In this case, they should not recommend or distribute products they do not fully understand.

#### ***Product intervention***

MiFIR gives the national competent authorities and ESMA the power to ban products or practices that give rise to significant investor protection concerns. Similar power should be given to competent authorities in the field of insurances as the same kind of investment products can be distributed in the form of a financial instrument or a life insurance. Otherwise, there would be a loophole allowing banned investment products or banned practices in application of MiFID to be distributed or used in the life-insurances area.

**END**

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<sup>8</sup> See Recital 41 of the Commission proposal.