

European Novelties as regards the Regulation of Insurance Intermediation

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Role of insurance intermediaries

- The total contribution in 2010 of the 27 EU MS intermediary sector, including indirect effects (spending of the intermediaries on wages and goods and services from other sectors), is estimated at 143 EUR billion or 1.2% of 27 EU MS GDP

(Source: Insurance Intermediaries in Europe - 2012 update, Report to BIPAR, Prepared by London Economics, September 2012)

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- decrease search and matching costs (by coordinating market transactions in a market characterized with different insurance products);
- allow economies of scale (higher volume of transactions..);
- help reduce adverse selection (more significant for more complex products or services);
- help overcome moral hazard issues ;
- help identify risks;
- reduce uncertainty;
- provide support to insurance buyer following the event;
- support and facilitate competition in the insurance product markets;

Market share of non-direct sales channels in the EU27-2010 (life&non-life)

Austria:	74.3%	Latvia:	n.a.
Belgium:	80.6%	Lithuania:	55.7%
Bulgaria:	80.6%	Luxembourg:	92.9%
Czech Republic:	n.a.	Malta:	87.0%
Cyprus:	n.a.	Netherlands:	56.7%
Denmark:	n.a.	Poland:	72.8%
Estonia:	47.7%	Portugal:	95.5%
Finland:	n.a.	Romania:	77.2%
France:	78.2%	Slovenia:	80.1%
Germany:	96.8%	Slovakia:	70.8%
Greece:	n.a.	Spain:	86.0%
Hungary:	n.a.	Sweden:	n.a.
Ireland:	60.6%	United Kngdom:	89.8%
Italy:	92.1%	Total:	79.5%

Source: Insurance Intermediaries in Europe - 2012 update, Report to BIPAR, Prepared by London Economics, September 2012

Market share of non-direct sales channels in the EU 27-2010 (life and non-life)

- *In all of 19 EU MS* (with detailed information), insurance intermediaries represent a very important channel, in almost all cases accounting for more than 50% of all premiums;
- In 10 of mentioned 19 EU MS, intermediaries accounted for 80% or more of all insurance premiums;
- The intermediary channel in the group of 19 EU MS is more important in the life sector than in the non-life sector, accounting for 89% of total life premiums and 77% of total non-life premiums;
- The relative importance of intermediaries in the life and non-life sectors varies across the EU MS:
 - The intermediaries' market share in life is larger than in non-life in Austria, France, Malta, Portugal, Netherlands, Slovenia, Spain and the United Kingdom;
 - The intermediaries' market shares in life and non-life are broadly identical in Belgium, Bulgaria, Germany, Italy, Lithuania, Luxembourg, Portugal and Romania;
 - The intermediaries' market share in non-life is substantially larger than in life in Estonia, Ireland, Poland and Slovakia.

Source: Insurance Intermediaries in Europe - 2012 update, Report to BIPAR, Prepared by London Economics, September 2012

Market share of agents and brokers in 2009

Country	Life Insurance		Non-life Insurance	
	Agents	Brokers	Agents	Brokers
Austria	16.8%	83.2%	24.5%	75.5%
Belgium	13.6%	86.4%	14.5%	85.5%
Bulgaria	73.3%	26.7%	42.8%	57.2%
France	33.3%	66.7%	66.0%	34.0%
Germany	71.0%	28.1%	72.0%	28.0%
Ireland	17.2%	82.8%	0.0%	100.0%
Italy	94.3%	5.7%	66.9%	33.1%
Lithuania	77.2%	22.7%	32.1%	67.9%
Malta	50.0%	50.0%	65.9%	34.1%
Poland	86.0%	14.0%	78.0%	22.0%
Portugal	90.6%	9.4%	73.7%	26.3%
Romania	71.9%	28.1%	51.1%	48.9%
Slovenia	86.3%	13.7%	93.4%	6.6%
Slovakia	n.a.	n.a.	78.9%	21.1%
Spain	60.6%	39.4%	55.8%	44.2%
United Kingdom	24.5%	75.5%	8.5%	91.5%

Source: Insurance Intermediaries in Europe - 2012 update, Report to BIPAR, Prepared by London Economics, September 2012

Market share of agents and brokers in 2009

- the relative importance of the agents and brokers channels varies across EU MS;
- in life insurance, the agent channel is the most important in 9 EU MS (out of 15 with according to vailable data), e.g. Bulgaria, Germany, Italy, Lithuania, Poland, Portugal, Romania, Slovenia and Spain; and the broker channel is the most important one in Austria, Belgium, France, Ireland and United Kingdom;
- in non-life insurance, the agent channel is the most important in 10 EU MS (out of 15 according to available data) e.g. France, Germany, Italy, Malta, Poland, Portugal, Romania, Slovakia, Slovenia and Spain; and the broker channel is the most important in Austria, Belgium, Bulgaria, Ireland, Lithuania and the UK;
- **Agents dominate as an intermediary channel**, but even though the share of the agent channel in the intermediary channel is somehow smaller in the case of non-life insurance than in the case of life insurance and in few cases (Belgium and Spain) the shares are more or less identical. However, in France, Malta, Austria and Slovenia, the opposite pattern is noted.

Insurance Mediation: Regulatory Framework

- **EC : DG Internal Market and Services: Directorate H: Financial Institutions: Unit H5: Insurance and Pensions**
- Insurance Mediation is placed as one of the consumer issues besides Non-Discrimination, Motor Insurance, Insurance Guarantee Schemes, Disaster Insurance
- Directive 2002/92/EC on Insurance Mediation (requested transposition to 15 January 2005) - **IMD1**
- **CEIOPS Luxembourg Protocol** adopted in 2006 as a framework for cooperation between competent authorities with regard to the implementation of IMD1

Revision of IMD 1?

- IMD 1 is a directive of minimum harmonisation and implementation of its provisions varies across EU MS significantly;
- the same level of supervisory and regulatory implementation → **equal level playing field**;
- the same requirements for all participants involved in the insurance intermediation business → **market integration, equal level playing field , undistorted competition** (*IMD 1 only applies to persons who provide insurance mediation services to third parties in exchange for remuneration. It does not include the direct selling (insurance companies) as well as sellers who are insurance intermediaries at ancillary basis*); 49% of the sellers of the insurance products and other market players involved in the after-sales process (e.g. direct writers, car rental firm, bankassurers, travel agents, claims handlers, loss adjusters etc) fall outside the scope of IMD1;
- **equal and higher level playing field** as regards the professional qualifications;
- harmonisation as regards national sanctioning regimes → **the same level playing field, undistorted competition**
- proper and transparent cross-border business → **market integration, undistorted competition**;
- cross-sectoral consistency as regards the consumer protection (MiFID II, PRIIPs) → **market integration, the same level playing field**;

Proposal for a revision of the IMD1 - IMD 2

- On 3 July 2012 EC adopted a proposal for a revision of the IMD 1 (IMD2)
- Under the Italian Presidency the aim is to achieve a general agreement between EC, Council EU and EU Parliament as regards the proposal of IMD2;
- Anticipated adoption in 2015;
- The proposal is tabled for adoption as part of a „consumer retail package“ together with PRIPs and MiFID II;
- IMD 2 has also a feature of a minimum harmonisation directive (but minimal standards are raised significantly) as EU MS are allowed to adopt further measures for consumer protection in regard to insurance intermediation;
- IMD 2 provides for wide authorisations to EC for adoption of delegated acts and to EIOPA to prepare and adopt guidelines for EU MS;
- IMD 2 consists of 9 chapters, 59 introductory notes, 39 Articles and 2 Annexes;

IMD 2 contents

Chapter I - Scope and Definitions

Article 1: Scope: enlarges the scope to direct sales of insurers and reinsurers, to claims management activities by and for insurance undertakings, loss adjusting and expert appraisal of claims (the limit for exclusion from the IMD 2 scope is 600 EUR premium on annual basis - in IMD1 the limit was 500 EUR on annual basis; for instance opticians selling complementary insurances on glasses still remain out of scope of IMD2)

Article 2: Definitions:

Changed definitions: *Insurance mediation* includes the scope from Article 1; *Insurance investment products* follow the definition of „investment products“ in PRIIPs; *Tied insurance intermediary* is extended to include intermediaries working under the responsibility of another insurance intermediary;

New definitions: advice, contingent commission, cross-selling practice, close links, remuneration, tying practice, bundling practice, professional customers
Advice is defined as a personal recommendation to a customer on request or otherwise.

IMD 2 contents

A contingent commission is defined as a commission where the amount payable is based on the achievement of agreed targets;

A cross-selling practice defines a practice where two or more products are bundled together in a single sale;

A tying practice is defined as the offering of one or more ancillary services with an insurance service or product in a package where this insurance service or product is not made available to the customers separately;

Article 21 prescribes that EU MS shall allow bundling practices but not tying practices. It also requires EIOPA to develop guidelines for the supervision of such practices.

(bundling practice is defined as the offering of one or more ancillary services with an insurance service or product in a package where this insurance service or product is also made available to the customers separately but not unnecessarily on the same terms or conditions as when offered bundled with the ancillary services);

A professional customer is defined in Annex I as a customer who possesses the experience, knowledge and expertise to make his own decisions and properly assess the risks that he incurs;

Close links are defined as arrangements with connected persons and arrangements which might affect a supervisory ability to supervise effectively;

IMD 2 contents

A *remuneration* is defined to include not only payments (fees, commissions etc) but also economic benefits of any kind.

Chapter II: Registration Requirements

Article 3: Registration: the article leaves the registration requirements of IMD1 largely unchanged, but requires the establishment of a single electronic register by EIOPA, which will link national databases (6 months the time available for the in script into the register)

Chapter III: Declaration Procedure

Article 4: Declaration procedure for providing insurance mediation; professional management of claims or loss assessment services

The article introduces a simplified procedure which exempts two groups of person from registration procedure: those who conduct insurance mediation as an activity ancillary to their principal professional activity and who met certain other conditions (such as products are complementary to another product; products do not cover life assurance or liability risks), e.g. travel agents, car rentals; and those whose activities are limited to the professional management of claims and to loss adjustments.

IMD 2 contents

Chapter IV: Freedom to provide services and freedom of establishment

Articles 5, 6 and 7 reflect the provisions of Article 5 of IMD1, the MiFID II and the Luxembourg Protocol. They also address the division of competence between Home and Host EU MS supervisors, particularly in situations where an insurance or reinsurance intermediary is not meeting its obligations when transacting business in the Host EU MS.

Chapter V: Other Organisational Measures

Article 8: Professional and organisational requirements

Article sets out the professional and organisational requirements that comprise Article 4 of IMD 1 (e.g. requirement to have appropriate knowledge and ability; requirement to be of good repute; requirement to hold professional indemnity insurance and measures to protect against the intermediary's inability to transfer premium to the insurance undertaking or claims money or return premiums to the insured). It also includes **a new requirement for continuous professional development**. The proportionality is achieved with rules applying to those pursuing intermediation activities on an ancillary basis or whose activities are limited to the professional management of claims. The EC is empowered to adopt delegated acts to specify the notion of adequate knowledge and ability.

IMD 2 contents

Article 9: Publication of general good rules, requires EU MS to publish the general good rules and requires EIOPA to collect and publish information about such rules **NEW!!**

Articles 10 to 12 restate the former Article 7, 9 and 10 on competent authorities, exchange of information between EU MS and complaints;

Article 13: Out - of- court redress: concerns procedures for the out-of-court settlement of disputes and strengthens the former Article 11 of IMD1 by requiring EU MS to set up procedures and to ensure participation in them;

Article 14: Restrictions on use of intermediaries: Article prescribes that insurance and *reinsurance* undertakings as well as *intermediaries* shall use the insurance and reinsurance mediation services only of registered insurance and reinsurance intermediaries or of the persons who have fulfilled the declaration procedure (widen the scope of former Article 3(6) of IMD1)

Chapter VI: Information requirements and conduct of business rules

Articles 15 to 20 restate the disclosure requirements, the large risk exemption, the stricter provisions and the information conditions (Articles 12 and 13 of IMD1). They also set out the following additional provisions:

IMD 2 contents

- General principle for intermediaries that they should act in the **best interests of their customers**;
- A requirement to **disclose the basis and amount of the remuneration** (amount payable by the client, amount payable by insurance company, exact amount, ...);
- A requirement to disclose the amount of any variable remuneration received by the sales employees of insurance undertaking and intermediaries;
- A mandatory **„full disclosure“ regime** for the sale of life insurance products and an **„on request“ regime for the sale of non-life products** within a transitional period of 5 years (after 5 years a regime of full disclosure also for non-life insurance);
- An obligation to **give the customer**, prior to the conclusion of a contract, **sufficient information** about the insurance product to allow him to make an informed decision;
- **EC is empowered to prepare and adopt delegated acts as regards Article 17 (conflict of Interests)** specifying appropriate criteria for determining how the remuneration of the intermediary - including contingent commission - shall be disclosed to the customer; appropriate criteria for determining in particular the basis of calculation of the fee or commission or the combination of both..

IMD 2 contents

Article 19: Information exemptions and flexibility clause:

The information need not to be given when insurance intermediary or insurance undertaking mediates in the insurance of large risks, in the case of mediation by reinsurance intermediaries or reinsurance undertakings, or in relation to professional customers;

Article 21: Cross - selling: introduces a provision on bundling products together and requires that the customer is informed that the products may be purchased separately and be given certain information in this regard. It also requires EIOPA to develop and thereafter update guidelines for the supervision of such practices.

Chapter VII - Additional customer protection requirements in relation to insurance investment products NEW!

Article 24: General principles and information to customers: Article is based on Article 23 of MiFID II and sets out the MiFID requirement to act honestly, fairly and professionally with the best interests of customers;

Article 25: Assessment of suitability and appropriateness and reporting to customers:

Article 25 sets out how suitability and appropriateness is to be assessed and requires information to be obtained from the customers.

IMD 2 contents

Chapter VIII: Sanctions NEW!

Article 26: Administrative sanctions and measures: the article requires EU MS to ensure effective administrative sanctions and measures and cooperation on cross-border cases.

Article 27: Publication of sanctions: the article requires publication of the sanctions or measures imposed for breaches.

Article 28: Breaches: the article specifies certain breaches and sets out the administrative sanctions. (Criminal sanctions are not covered by this proposal).

Article 29: Effective application of sanctions: the article sets out the factors to take into account in imposing sanctions and measures and requires EIOPA to issue guidelines in respect of the sanctions.

Article 30: Reporting of breaches: the article requires effective mechanisms to encourage reporting of breaches and an appropriate protection for whistle - blowers and natural persons responsible for breaches;

Article 31: Submitting information to EIOPA in relation to sanctions: the article requires annual reporting of aggregate information regarding breaches to EIOPA as well as publication of that information by EIOPA. The EC is empowered to adopt implementing technical standards in this respect.

IMD 2 contents

Chapter IX: Final provisions

Articles 32 to 39 restate /update the final provisions in IMD 1 concerning the right to apply to the courts, transpositions and entry into force, repeal of prior legislation and addresses. In addition, Articles 33 and 34 set out conditions applying to the EC's power to adopt delegated acts, and Article 35 provides a process for review and evaluation by the EC of the Directive and its entry into force.

IMD2 and possible impacts

- Extension of scope of IMD 2 would cover most of the sales channels, after-sales services and products - **creation of level playing field**
- Proportionality as regards the scope would be ensured for after-sales players and ancillary providers: only a simple declaration of their existence, status information disclosure, basic professional standards and good reputation would be required - this would bring **more consumer confidence in registered after-sales players and would enhance cross-border business for after-sales players** (claim handlers, loss adjusters) - non registration required for sales of insurance complementary to the supply of goods (ancillary + below EUR 600 on annual basis)
- Under IMD 1 48% of the insurance market is covered; the extension of scope will cover about 98% of the insurance mediation market and **the consumer will get the same protection no matter which distribution channel he uses;**

IMD 2 and possible impacts

- Disclosure of the nature, structure and the amount of the intermediary's / direct sellers' employees' remuneration would offer **higher transparency** and would provide clarity with regards to the principal-agent relationship (the products with low premiums and high remuneration may be rejected despite the value of cover). The disclosure of remuneration will enable **the client to choose on the basis of insurance cover, linked services and price.** → sales margins under pressure;
- Remuneration disclosure may have an impact on consumer' behaviour, **as vertical integration may occur** (clients going directly to insurance companies rather through a broker);
- Improved information and increased transparency are likely to lead to **competition and benefit efficient intermediaries, as well as those offering specialised services/an enhanced level of service to their clients;**
- **The increase in internet sales** will probably take place;
- Perhaps it will occur the **growing importance of bank sales;**

IMD 2 and possible impacts

- Advice and qualifications: defining the competence profile of a qualified insurance seller would ensure that **the consumer faces similarly qualified salesperson across all sales channels.** → **expansion of qualification and training measure;**
- The introduction of a general framework of sanctions and sanctioning powers would **limit regulatory arbitrage;**

All mentioned would render the cross-border process in before sales and after sales activities more effective;

Short presentation of Slovene insurance mediation market and legislative framework

- Slovene insurance intermediaries market consists of 1.994 agent companies and 100 brokerage companies;
- On 01.10.2014, 7.501 natural persons hold a licence to perform agency services and 1.553 natural persons hold a licence to perform brokerage services;
- Insurance Act in its chapter No 13 prescribes the performing of agency and brokerage service in Slovenia;
- Decision on the contents of reports and notifications based on Article No 176 and 239 of Insurance Act and on the way and deadlines of reporting;
- Decision on register of insurance agents and brokers and insurance agency companies and insurance brokerage companies;
- Decision on detailed conditions to obtain and to test of the expertise, necessary to perform insurance agency services or/and insurance brokerage services;

Short presentation of Slovene insurance mediation market and legislative framework

- Insurance Supervision Agency (ISA) conducts stricter supervision over the insurance intermediaries market in Slovenia also in the light of future IMD2 implementation;
- ISA has withdraw licenses to several insurance agency companies as well to several insurance agents as natural persons;
- On request of the Ministry of Finance, ISA has prepared amendments to the existing Insurance Act as regards the regulation of insurance intermediaries, but they are not yet in the adoption procedures. The amendments introduce some additional reasons for withdrawal of licence for performing insurance mediation services;
- The amendments to the Insurance Act also prescribe the power of the ISA to adopt detailed rules and procedures of the complaints handling procedures in insurance companies and in insurance agency companies and insurance brokerage companies (in line with EIOPA guidelines) - at the moment Code of Slovene Insurance Association;

Thank you!

