



The European Federation of Insurance Intermediaries  
La Fédération européenne des intermédiaires d'assurances

## **BIPAR views on the revision of the IMD**

October 2011

*BIPAR is the European Federation of Insurance Intermediaries. It groups 51 national associations in 32 countries. Through its national associations, BIPAR represents the interests of insurance agents and brokers and financial intermediaries in Europe.*

*Besides some large multinationals, the insurance intermediation sector is composed of hundreds of thousands of SMEs and micro-type operators. It accounts for 0.7% of European GDP, and over one million people are active in the sector. Insurance and financial intermediaries facilitate the insurance and financial process for several hundreds of millions of customers. The variety of business models, the high level of competition and the geographical spread in the sector ensure that everyone in Europe has easy access to tailor-made insurance and financial services.*

*BIPAR is a member of the World Federation of Insurance Intermediaries (WFII).*

## Introduction

The Insurance Mediation Directive (IMD) entered into force on 15 January 2003 and EU Member States had to comply with its provisions by 15 January 2005 at the latest. It established a legislative framework designed to ensure a high level of professionalism and competence among insurance intermediaries. National registration systems for insurance intermediaries enables the proof of professional requirements and facilitates cross border activities by way of freedom of establishment and freedom to provide services. The IMD also guarantees a high level of protection of customers' interests.

BIPAR notes the intention of the European Commission to revise the IMD in 2012, following a thorough implementation check by both the Commission and the Committee of European Insurance and Occupational Pensions Supervisors (now EIOPA). Hundreds of thousands Insurance intermediaries employing over 1 000 000 employees across the Member States will become addressees of these modified and/or new rules regulating insurance intermediation.

Most intermediaries are smaller or micro enterprises, established near to the consumer in the high streets of each and every city and village. They render personalised services to mostly local private clients and smaller businesses. They are confronted with growing competition from alternative forms of distribution. Many intermediaries are SME type enterprises servicing SME's in all sectors of the economy at regional or national level. These intermediaries follow increasingly their clients abroad when the clients export or import or set up branches or subsidiaries outside their national borders. Some intermediaries are large multi-national enterprises. They work Europe-wide or even globally serving a wide range of mainly business clients. Some intermediaries also handle reinsurance business.

The current IMD has been transposed and implemented only relatively recently in most Member States. Still, BIPAR recognises that the world moves on and that regulation dating back to 2002, like the IMD, may benefit from a revision and adaptations or clarifications. However, changing regulation may be disruptive for all firms and in particular for smaller ones, in particular in difficult economic circumstances. BIPAR therefore calls upon the European as well as national regulators to consider the following in relation to the IMD revision:

- The insurance intermediation and distribution landscape in Europe is still very different from one Member State compared to another. This is mainly due to cultural and historical reasons. Although the basics of the regulation and consumer protection rules should be applicable in all EU markets, the revised IMD should take into consideration these national differences by leaving some level of flexibility to national markets.
- What would be the cost/competition impact of more or changing regulation or over-regulation compared to the degree of risk to consumers removed?
- From a competition and consumer protection perspective it is essential that a level playing field with alternative forms of distribution such as direct writers is established.
- Any future changes to the IMD should continue to cover all those involved in insurance mediation as defined in the IMD i.e. an activity based approach. Every legal and natural person undertaking an activity defined as insurance mediation should comply with the same rules. The scope of the IMD II should be as broad as possible and there should be no new exceptions, in the interest of consumer protection.
- The IMD II should take into consideration that there is a difference between non-life/pure life insurance on the one hand and life with investment element insurance on the other.
- Improvements to the "Single Licence" provisions are required, in particular to create more legal certainty relating to freedom of services (FOS) & freedom of establishment (FOE).

## Intermediaries are ... intermediaries

Insurance intermediaries ,brokers as well as agents , and somewhat uniquely, render services and add value to the insurance process for all parties involved, for clients and insurers. In general terms:

For clients, intermediaries:

- identify the risks clients face,
- ensure that clients take informed decisions about the risks they wish to insure.
- design new and innovative solutions
- reduce the clients' asymmetric search costs
- put their market knowledge at the service of the clients.
- put their infrastructure (often geographically nearby) to the disposal of the client
- assist clients in the preparatory phase of the contract and at the time of the conclusion of the contract (search, administration)
- assist their clients with claims related services and policy administration services.

- **Consumers have the choice to use or not to use intermediaries.**

For insurers, intermediaries:

- facilitate entry into the market by new insurance companies, as the latter can reach a wide client base without having to incur the costs of building a distribution network. This is important in terms of European Single Market development.
- put their market knowledge at the service of the insurers.
- put their infrastructure (often geographically nearby the client) to the disposal of the insurers
- assist insurers in the preparatory phase of the contract and at the time of the conclusion of the contract (search, administration)
- assist their clients with claims related services and policy administration services.

- **Insurers have the choice to use or not to use intermediaries.**

The insurance (and insurance intermediation) market is a very competitive market with many players. The greatest competition an intermediary faces is from other intermediaries and alternative forms of distribution, there being no barriers to switching from one intermediary to another.

**...intermediaries contribute to the efficiency in all phases of the insurance process...**

**they assist both clients and insurers in the servicing of the contract**

The above illustrates that intermediaries contribute to the efficiency in all phases of the insurance process : They put an infrastructure (often geographically nearby the client) at the disposal of both clients and insurers, they assist both clients and insurers in the preparatory phase of the contract, they assist both clients and insurers in concluding the contract and they assist both clients and insurers in the servicing of the contract. At all times the client can decide to switch from one intermediary to another.

Consumers have the choice to use or not to use intermediaries: they can find insurance without intermediaries and the competition from alternative distribution channels is growing.

## Market shares of insurance intermediaries

Though few statistics exist on the precise market shares of the main distribution channels for insurance (namely direct sales by insurance companies, sales through agents and sales through brokers), the information available shows a great deal of variation across Member States in market shares of various insurance distribution channels.

There is wide variation across EU Member States in the number of intermediary firms present. The number of intermediary firms does not appear to be systematically related to the size and income level of the various Member States. This is because, in some Member States, there has been a longer tradition for intermediaries to provide services to customers than in other countries.

Source: "London Economics"

Market shares of the various insurance distribution channels in the EU (in %) - selected countries (non-life insurance)				
	Insurance Intermediaries (brokers+agents)	Banks/Post Offices	Direct Insurance	Other
<b>Austria</b>	48	5	43	4
<b>Belgium</b>	73.4	6.3	20.2	-
<b>Czech Republic</b>	65	3	29	3
<b>Denmark</b>	15	5	40	40
<b>Estonia</b>	60	10	30	
<b>Finland</b>	15	10	70	5
<b>France</b>	53	9	33	3
<b>Germany</b>	87	5	1	7
<b>Greece</b>	88			12.5
<b>Ireland</b>	75		25	
<b>Italy</b>	91.5	2	6.5	0.1
<b>Lithuania</b>	36	0	48	15
<b>Luxembourg</b>	80	3	6	11
<b>Malta</b>	60		30	10
<b>Netherlands</b>	42	17	38	3
<b>Poland</b>	69.3	7.4	23.2	0.1
<b>Portugal</b>	70.6	9.9	12.6	6.9
<b>Romania</b>	60	10	30	-
<b>Slovakia</b>	59			41
<b>Spain</b>	61.53	8.48	18.21	11.78
<b>Sweden</b>	55			45
<b>UK</b>	Personal lines: 42 Commercial lines: 88	Pers.: 16 Comm.: 0	Pers.: 31 Comm.: 9	Pers.: 11 Comm.: 3

Source: National associations, members of BIPAR (February 2010 - estimates)

## Scope of the IMD II

### **BIPAR believes that the IMD should remain a Directive on intermediation...**

From a consumer protection perspective, it is important that insurance intermediation be differentiated from insurance distribution/ direct writing. The IMD II should continue to reflect market reality and should continue to reflect that insurance intermediation is regarded as an activity of self-employed professionals who provide an added value in their services to their clients and who are different from insurers.

From a consumer protection perspective, it is also crucial that a level playing field is ensured between insurance intermediaries and direct writers. It is important that the same or similar minimum level of consumer protection is ensured regardless of the distribution channel through which they choose to purchase their insurance. From a Single Market perspective, it is also essential to avoid any discrimination and distortion of competition between persons or corporate entities carrying out the activity of insurance mediation and distribution.

The current IMD does not apply to direct writers and therefore does not ensure such an adequate coverage in terms of insurance intermediation and distribution activities. Direct writers are covered by existing EU Directives on insurance that provide some information obligations. However, with regard to the distribution of insurance products by direct writers (or their employees), these Directives do not confer equivalent rights on consumers to the ones provided by the IMD. For example, the Insurance Directives do not require employees of direct writers to disclose their status or to state in writing the reasons for any advice on a given insurance product.

### **...a level playing field should be ensured, between the intermediaries and the direct writers.**

BIPAR therefore proposes to require similar requirements from insurance undertakings (and/or their employees) and insurance intermediaries when distributing insurance policies, taking into account the specificities of the respective existing channels.

BIPAR proposes an approach which would ensure that information requirements and conduct of business rules as well as training requirements applicable to insurance intermediaries are also in an equivalent way applicable to (direct) insurance distributors, while taking into account the specificities of the respective existing channels.

These requirements should be structured accordingly for different distribution channels in the IMD II and some of its articles, such as Article 2.3 second indent, Article 4 and 12 of the IMD should be amended accordingly. For example, we do not believe that the registration requirements of the IMD II (Article 3) should apply to employees of insurance undertakings. Article 12.1 c) d) would not be appropriate to apply to insurance undertakings. However, Article 12 2 should be amended to ensure that whatever the channel of distribution chosen, the consumer is informed on the status of the operator he is dealing with.

## Scope of the IMD II | Exemptions

For consumer protection and level playing field purposes, the requirements of **the IMD II should apply equally to all those involved in the intermediation or distribution of insurance products**, while taking into account the specificities of existing channels.

The twofold objectives of the IMD are to ensure adequate protection of consumers vis-à-vis any person transacting the activity of insurance mediation and to create a true Single Insurance Market. To this end, only strictly limited exceptions were brought to the scope of the IMD. It has allowed an efficient protection of the consumers as stated in the CEIOPS report on the implementation of the IMD key provisions (CEIOPS Doc 09/07): *“The survey results also show that the IMD’s goal of achieving a high level consumer protection has been achieved in all Member States. IIMs are required to provide comprehensive information to the customer before contracts are signed. Complaints procedures are organized by the Competent Authorities or by specific bodies dedicated to this matter. Member States are also beginning to establish out of court settlement procedures to handle complaints”*.

**BIPAR is therefore opposed to extending the exclusions of Article 1.2 of the IMD. For consumer protection reasons, it is important that the IMD continues to apply- with only very limited exceptions - to anyone involved in the activity of insurance mediation.** Exceptions should continue to be activity-based and not based on types of profession.

- **Introducing**

BIPAR believes that some clarity on what aspects of introducing should or should not be within the scope of the IMD II, could be brought in a revised IMD. Indeed, it appears that the activity of introducing has been implemented in different ways in the Member States.

It is important to avoid that unintended activities are caught by a revised IMD and also **to avoid that some “introducers” (e.g.: comparison websites, aggregator) carry out insurance mediation activities without being registered as insurance intermediaries.** For example, if it is possible for the consumer to select products based on price or features and conclude or be diverted to an insurers website this should be regarded as an insurance intermediation activity.

- **Vehicle rental companies**

The IMD aims at protecting insurance consumers. For consumer protection reasons, the IMD II must remain activity based. In other words if a car rental company is carrying out an activity that can be qualified as an insurance intermediation activity then the rental company should comply with the requirements of the IMD II. In practice, we are not aware of serious problems in this field.

- **Travel Agencies**

In some countries, the exemption of Article 1.2 e) ii) no longer applies. The UK, for example, has had experience with mis-selling of travel insurance. Travel insurance policies are fairly complex, with multiple sections, where an inadequate sale (bought in connection with a holiday) could result in very serious consumer detriment (e.g. inadequate medical cover). It is illogical to regulate the sale of this product by competent intermediaries and leave the sales of travel agents unregulated.

BIPAR suggests therefore that the exemption applying to this activity be removed from the IMD.

- **Article 1.2f)**

BIPAR believes that the exemption in Article 1.2 f) should be defined more strictly in the revised Directive, for instance, by reducing the threshold foreseen from 500€ to 250€. The current ceiling of 500€, apart from being already a considerable amount for the average consumer, could be easily circumvented by unscrupulous players.

- **Large risks should continue to be exempt from the information requirements**

In the current IMD, the provisions on the information to be provided by intermediaries to customers do not apply to insurance intermediaries dealing with customers who require cover for large industrial and commercial risks. Nor do they apply to reinsurance intermediaries, who deal only with professionals (insurance and reinsurance undertakings).

Large risks are defined by Article 13 (27) of the Solvency II Directive<sup>1</sup>.

The clients covered by this definition or who ask for cover in respect of these large risks are sophisticated and professional purchasers. They are in general large firms with their own insurance and legal staff who manage their insurance needs and interact with insurance intermediaries at a professional level.

The Commission and the EU legislators considered at the time of the adoption of the IMD that “less protection was necessary for transactions between professionals”. And in its advice to the European Commission on the IMD revision, CEIOPS (now EIOPA) also explains that this exemption should be maintained for similar reasons. BIPAR agrees with EIOPA.

BIPAR believes that for large risk insurance products there is significant discussion between the intermediary and his clients where relevant information relating to that risk is passed on. Therefore regulated disclosures are unnecessary and may even be an obstacle to the freedom of contract terms. Larger commercial customers are usually sophisticated in terms of knowledge and financial capability; they receive information and advice often tailored to their needs and rendered by professionals with whom they have a long-standing relationship. Those dealings have often an international character.

On this particular issue, it is interesting to note that BIPAR and FERMA signed in December 2010 a protocol on the transparency of intermediation in business insurance. It is true that the complexity of the business insurance sector can sometimes create a perception of a lack of transparency. This protocol addresses these concerns to underpin and enhance trust in the purchase of business insurance (see [www.bipar.eu](http://www.bipar.eu)).

BIPAR also believes that keeping the current exemption (which only concerns the information requirements) would help to avoid any extra unnecessary administrative burden.

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<sup>1</sup> "large risks" means: \_

(a) risks classified under classes 4, 5,6,7,11 and 12 in Part A of Annex I;

(b) risks classified under classes 14 and 15 in Part A of Annex I, where the policyholder is engaged professionally in an industrial or commercial activity or in one of the liberal professions and the risks relate to such activity;

(c) risk classified under classes 3, 8, 9, 10, 13 and 16 in Part A of Annex I insofar as the policy holder exceeds the limits of at least two of the following criteria:

(i) A balance sheet total of EUR 6,2 million;

(ii) a net turnover, within the meaning of Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies, of EUR 12,8 million;

(iii) an average number of 250 employees during the financial year.

If the policyholder belongs to a group of undertakings for which consolidated accounts within the meaning of Directive 83/349/EEC are drawn up, the criteria set out in point (c) of the first subparagraph shall be applied on the basis of the consolidated accounts.

Member States may add to the category referred to in point (c) of the first subparagraph the risks insured by professional associations, joint ventures or temporary groupings;

## Definition of particular categories of intermediaries

The IMD contains in its Article 2 three generic definitions of intermediaries (an insurance intermediary, a reinsurance intermediary, and a tied insurance intermediary). Article 3(2) allows Member States to establish different registers for different categories of intermediaries provided that they lay down the respective criteria.

The IMD no longer refers to the distinction between agents and brokers and adopts an activity-based approach. The IMD relies on disclosure on a case by case, so that the consumer is aware of the capacity in which the insurance intermediary is acting.

*The current IMD requires in its article 12 that intermediaries have to inform their customers, on a contract by contract basis, whether they are giving advice based upon a fair analysis, or whether they have contractual obligations with one or more insurers. In addition, the intermediary has to state in writing the reasons for any advice on a given insurance product.*

BIPAR is of the opinion that this approach should be kept in the IMD II.

An intermediary may act in different capacities depending upon the product offered. This system is the best guarantee for a level playing field and a high degree of consumer protection. It also takes into consideration the different business models which exist in the various Member States. This system is now in place and has not raised any specific issues in the various Member States. It creates choice, competition, clarity and transparency, avoids administrative burden and supports the level playing field.

## Advice

As clearly explained in the explanatory memorandum of the proposed Directive on Insurance Mediation issued on 20 September 2000, the types of insurance advice covered by the IMD are those given in the context of insurance mediation. It covers all kind of advice that is given for the purpose of assisting the customer in concluding an insurance contract or with a view to the management or implementation of an insurance contract.

This means that when an insurance intermediary (as defined by the IMD) is advising on insurance, it should be interpreted that this advice is already covered by the IMD definition. We believe that this is sufficiently reflected and covered by Article 12 as well as in the Whereas 18 and 20 of the IMD:

*“(18) It is essential for the customer to know whether he is dealing with an intermediary who is advising him on products from a broad range of insurance undertakings or on products provided by a specific number of insurance undertakings”.*

*“(20) If the intermediary declares that he is giving advice on products from a broad range of insurance undertakings, he should carry out a fair and sufficiently wide-ranging analysis of the products available on the market. In addition, all intermediaries should explain the reasons underpinning their advice”.*

We therefore believe that in *the* context of the IMD information requirements, a definition of "advice" does not need to be introduced.

However should the Commission consider that greater clarity is necessary in this respect then it may be considered to include the term “advising” in a revised definition of insurance mediation as follows:

*‘insurance mediation’ means the activities of **advising** , introducing, proposing or carrying out other work preparatory to the conclusion of contracts of insurance, or of concluding such contracts, or of assisting in the administration and performance of such contracts, in particular in the event of a claim”.*

## Professional requirements

In terms of professional requirements, the IMD requires that all individuals or companies who carry out insurance or reinsurance intermediation must be registered in their home Member State on the basis of the following minimum requirements:

- ✓ possession of appropriate knowledge and ability
- ✓ being of good repute
- ✓ possession of professional indemnity insurance or any other comparable guarantee against liability arising out of professional negligence.
- ✓ sufficient financial capacity to protect customers against any failure by the intermediary to transfer customers' premiums to insurance companies or to pass on to customers money received for claims under the policies they hold.

Member States may adopt more stringent provisions, but only for intermediaries registered on their territory.

## Knowledge and ability

The current IMD (Article 4) already includes various principles which BIPAR supports in the framework of IMD II: *“Insurance and reinsurance intermediaries shall possess appropriate knowledge and ability, as determined by the home Member State of the intermediary.”*

*“Home Member States may adjust the required conditions with regard to knowledge and ability in line with the activity of insurance or reinsurance mediation and the products distributed (...)”*

*“(…)Member States shall ensure that a reasonable proportion of the persons within the management structure... who are responsible for mediation in respect of insurance products... and all other persons directly involved in insurance or reinsurance mediation demonstrate the knowledge and ability necessary for the performance of their duties.”*

BIPAR promotes also that intermediaries have an appropriate system of continuous professional development.

Based upon this Article 4 of the IMD, there are specific training and qualification requirements in place in the various Member States which reflect the high level principles in the IMD. These systems are adapted to the national general qualification systems (and education infrastructure) which are still very different in the Member States and therefore a high level approach, as in the current IMD, is preferable.

In some Member States it is however observed that in particular operators who sell insurance as an ancillary activity do not comply with the high level principle that *“all other persons directly involved in insurance mediation demonstrate the knowledge and ability necessary for the performance of their duties.”* This results in the fact that for example someone with the necessary qualifications is not present at “every point of sale”. This may be more an issue of implementation at national level rather than an issue related to the Directive as in many Member States the system works in a good way.

In terms of IMD II, according to BIPAR, **training and qualification requirements should become applicable to the sales force of direct insurers.**

This issue is also related to the scope of the IMD. Every consumer who is in contact with someone who carries on an intermediation activity should have the right and certainty that he or she is in contact with someone who has *the knowledge and ability necessary for the performance of his or her duties.* This is one of the reasons why BIPAR is in favour of a wide and activity- based scope with only very limited exceptions.

BIPAR supports an approach which would ensure that information requirements and conduct of business rules as well as training requirements applicable to insurance intermediaries are also in a comparable way applicable to (direct) insurance distributors, while taking into account the specificities of existing distribution channels.

The training requirements should not be related to the distribution channel. From a consumers point of view what is important is that they are dealing with a knowledgeable competent person. If an intermediary or a direct writer is selling the same product to a consumer then the requirements should be the same.

**BIPAR suggests introducing a Mutual Recognition clause.** The IMD does not contain any provision on mutual recognition of professional qualifications, unlike the previous 1976 Directive.

Natural persons fully qualified as insurance intermediaries in a EU Member State wishing to take up the same profession in another EU Member State on the basis of permanent establishment, without keeping their original license, should be able to do so.

Further to discussions with BIPAR and the European Commission, the CEIOPS Luxembourg Protocol includes a provision stipulating that natural persons fully qualified as insurance intermediaries in a EU Member State wishing to take up the same profession in another EU Member State on the basis of permanent establishment, without keeping their original license, should be able to do so under the general Directive on the recognition of professional qualifications.

BIPAR believes that this provision should be usefully included in a revised IMD. BIPAR believes that such a clause would facilitate the cross-border activities of insurance intermediaries. Such a clause would also help to avoid unnecessary burdens on Member States to put in place systems to recognise qualifications by non – national intermediaries.

### Remuneration transparency

Once the risks of the client are identified and the insurance needs are defined, there are a number of factors determining the recommendation that intermediaries make to their clients when advising them on the choice of a particular insurance or insurer. Clients in their final choice or decision take directly or indirectly these factors into consideration.

Apart from the price, these factors include, inter alia:

- the breadth of coverage available (capacity),
- the insurer's flexibility in agreeing coverage,
- the insurer's image and reputation, especially in respect of claims service (speed, fairness of settlements, additional benefits to claimants),
- the insurer's financial security,
- the quality and clarity of documentation provided,
- the insurer's speed in issuing documentation or in quoting terms,
- timeliness in inviting renewal,
- the technical competence of the insurer's staff,
- the quality and availability of advice/ information provided to policyholders,
- the quality of the other services provided by the insurer, his locational proximity.

This illustrates very well that price is not the only determining factor in the choice of insurance.

The remuneration of the intermediary, being in principle commission-based with the possibility to agree fees, has been a major contributing factor to the successful and competitive development of insurance markets all over the world. The decision to work on a fee or commission basis is a decision that should be taken between the parties based upon a transparent dialogue about the various options. The various options must exist in the market in order to allow for choice.

## What conditions should apply to disclosure of information on remuneration?

**BIPAR, with the largest majority of its members, promotes that before the conclusion of the contract, insurance intermediaries should inform insurance customers about the nature of their remuneration or compensation. They should also, upon request of their customers, disclose their remuneration related to the contract.**

We believe that such a system would ensure that there is a fair opportunity for dialogue between the client and the intermediary about price, quality, services and solutions and, at the same time, it would offer an adequate level of transparency without creating too much administrative burden for operators.

Although we promote this system also for private consumers, we wonder whether in private lines total premium is not the best solution for comparison. These are largely commodity products where the overall price is the key factor. Competition from many differing distribution channels is strong and ensures that the market remains competitive.

**Important for BIPAR is that if such a system would be introduced, a comparable level of transparency from direct writers should be applicable, not only to ensure a competitive level playing field but also to ensure comparability and consumer protection. Any other system would have competitive side effects and may possibly turn into misleading and irrelevant information for the consumer.**

This could be reflected by the following wording in an IMD II:

*“Intermediaries will inform clients about the nature of the remuneration they receive for intermediating the insurance contract.*

*The intermediary will inform the client if for intermediating the insurance contract that is provided, he works*

*a. on the basis of fees, and /or*

*b. if the remuneration is included in the insurance premium, and/or ,*

*c. if he works on a combination of these.*

*In the case of fees the intermediary will inform the client about the amount or the basis of calculation of the fee.*

***Under the strict condition of guaranteeing a level playing field between all intermediaries and direct writers, Member States may furthermore require that intermediaries, upon request of the client, inform the client about the amount or about the basis of the calculation of the remuneration for the intermediation.***

*In order to guarantee the level playing field, the Member State will then also, upon request of the client, require that direct writers disclose comparable costs”.*

BIPAR would also suggest that the IMD II guarantees that the remuneration remains a contractual issue between the parties.

## Nature of remuneration

BIPAR strongly believes that all insurance intermediaries have the right to be treated equally in terms of the structure of their remuneration. Opposing this key principle would lead to ignoring the value of the service provided by an insurance intermediary in any transaction. An insurance intermediary, somewhat uniquely, renders services to both the client and the insurer.

For example, the intermediary:

- Clearly acts for the client in recommending the type of coverage and in assisting the client in selecting suitable insurers.
- Explains complex insurance issues to the client.
- Sometimes collects and passes the premium between the insurer and insured
- Drafts, in some complex cases, the policy wording.
- Arranges surveys prior to the acceptance of a risk by insurers.

- Transmits instructions, in some cases, from insurers to adjusters or solicitors in the event of a claim.
- Assist the client in case of claims. This is a key aspect of the activity of intermediation.

These activities carried out also in the interest of the insurer make the market more efficient and reduce costs while protecting the insured's interests. We believe, as we have explained above, the key issue is that the client should be properly informed about the nature of the services the intermediary is providing. The client should have the right to ask and receive information about services being provided by the intermediary in the relationship.

The existence of insurance intermediaries allows insurance carriers to extend their geographical and client reach without having to incur the fixed costs of a fully-fledged distribution network. This aspect is well recognised by all observers. The wider reach of each carrier increases the competition in the business insurance marketplace as it increases the choice of carriers for clients. Insurance intermediaries also encourage competition by making it easier for insurers to enter new markets or segments of markets, both within the country but more particularly across borders.

Limiting the remuneration (in terms of possible nature) of the intermediary would limit choice and restrict insurance intermediaries in the development of their business models. In a free market, clients, insurers, and intermediaries (or entrepreneurs in general) should have the opportunity to agree on the terms of their relationship and services in an open and transparent way. It would reduce the range of choice available to consumers and business in agreeing about the service and remuneration model. It would also further reduce efficient ways of finding competitive coverage and solutions for consumers in the European/international insurance placement market.

### Wholesale brokers

The economic pattern of wholesale brokers is not taken into account in the IMD. This has led to problems in a few Member States as to the relationships between wholesale brokers and direct brokers regarding information and advice requirements within the marketing process.

In order to fill in this gap in a revised IMD, BIPAR suggest that the following paragraph be added to the current Article 12:

*“Proposed amendment*

*Article 12.4 bis:*

- 1. In case of plurality of insurance intermediaries, the client is always provided with the information of Article 12 by the intermediary who is in direct contact with him.*
- 2. It is the responsibility of the other intermediaries in the chain to always provide the intermediary who is in direct contact with the client, with the information necessary to the provision of information and advice referred to in Article 12.”*

### Cooperation between insurance intermediaries

In relation to serious problems caused by national implementation in Italy, BIPAR strongly requests that it is made clear in the IMD II that intermediaries can carry out their insurance intermediation activities in cooperation with other intermediaries.

## Conflicts of interest

Conflict of interest arise where someone has competing professional interests. BIPAR believes that it is essential that insurance intermediaries, as in every sector of the economy, put in place reasonable and proportional systems to identify, manage and mitigate conflicts of interest.

With its Article 12, the IMD already addresses the issue though not using the term “conflict of interest”. The IMD requires intermediaries, on a contract-by-contract basis, to tell the customer whether they are giving advice based upon a fair analysis, or whether they have contractual obligations with one or more insurers. As a result, customers know where they stand at the outset of the relationship. In addition, the intermediary has to state in writing the reasons for any advice on a given insurance product and all this is supervised and controlled by the national supervisory authorities.

In order to mitigate the potential conflicts of interest, BIPAR supports transparency. **We promote that before the conclusion of the contract, insurance intermediaries and direct writers shall provide insurance customers with sufficient and clear information to make informed decisions about the purchase of insurance products and about the nature of their services.**

We also promote that insurance intermediaries should inform the insurance customers about the existence of underwriting powers and delegated authorities in relation to the contract.

We therefore suggest that the amendment of the existing Article 12 to include a reference to conflicts of interest could read as follows:

*“Insurance intermediaries and insurance undertakings shall identify, manage and mitigate, conflicts of interest in the following ways:*

- *Before the conclusion of the contract, insurance intermediaries and insurance undertakings shall provide insurance customers with sufficient and clear information to make informed decisions about the purchase of insurance products and about the nature of their services;*
- *Before the conclusion of the contract, insurance intermediaries shall inform the insurance customers about the existence of underwriting powers and delegated authorities in relation to the contract. “*

It is important that conflicts of interest are identified, managed and mitigated in a way that is proportionate with the risk of consumer detriment and in a way that does not lead to administrative burden.

In combination with the existing required disclosure in Article 12, this would cover most of the situations which are identified as possible sources of conflicts of interest, both in the CEIOPS advice on the revision of the IMD and in the DG Competition sector inquiry report.

## Level playing field

We believe that the above-mentioned principles should be capable of common application by **all participants involved in the intermediation/distribution of insurance products.**

## Cross-border aspects of insurance intermediation

### Definition of freedom of services (FOS)

It is important for the sake of legal certainty to clearly define the triggering element of the FOS activities of an intermediary as general good rules and stricter information requirements of the host Member State may have to be complied with by the intermediaries when they are considered as carrying out FOS in that Member State (Article 6.3 and 12 of the IMD). The current IMD is silent on the triggering element for FOS of the intermediary.

BIPAR therefore agrees with the Commission proposal that CEIOPS definition of FOS be included in a revised IMD (Article 3.5) as follows:

*“An IIM is operating under FOS if it intends to supply a policyholder, who is established in a Member State different from the one where the IIM is established, with an insurance contract relating to a risk situated in a MS different from the MS where the IIM is established.*

*The IIM should notify its intention to operate under freedom of services in the sole MS where the policyholder is established or has his residence, also in the case when the policyholder acts on behalf of different insured and/or risks established or situated in one or more other MS.*

*If the IIM already notified its intention to operate under FOS in a MS other than the one where the IIM has its residence, this notification procedure is considered as the legal proof of its intention to write business under FOS with residents of that MS.*

*If the IIM did not notify its intention to operate under FOS in another MS, an intermediary shall nevertheless be considered as having the intention to write business under FOS with residents of that MS, when it is marketing, providing insurance mediation services or when it is actively seeking business from a client/consumer resident or established in that MS.”*

BIPAR also proposes that EIOPA is made responsible in the IMD II for making available the notification forms for FOS and FOE activities of the CEIOPS Luxembourg Protocol.

### Definition of freedom of establishment (FOE)

BIPAR considers that it is equally important to introduce a definition of FOE in the revised IMD.

Based on the Commission Communication on the freedom to provide services and the general good in the insurance sector (2000 C/ 43/ 03) published in 2000, BIPAR is suggesting the following proposal:

*“An IIM is operating under FOE if he carries on business in a host Member State for an indefinite period via a permanent presence in that Member State.”*

### General good

It is still difficult today to know the exact national general good rules which the intermediary must comply with in the Member States where he has a branch or an agency (FOE) or for which he provides cross-border services (FOS). No clear lists have been provided. Although it is has to be noted that EIOPA, in order to increase the exchange of information and cooperation among Competent Authorities involved in the supervision of cross-border insurance activities, discloses on its website the lists of the national general good provisions. However most of these lists are published in the national language and are not always very clear.

It also remains unclear as to who is assessing that a local rule can be considered or not as general good and who is monitoring and ensuring compliance with these rules by the intermediary. No clear answer to these questions is given in the Luxembourg Protocol or in the IMD.

The situation in which insurance intermediaries find themselves today is therefore far from clear and they face considerable legal uncertainty, in particular as regards the general good provisions applicable to them in the different host Member States. Any differences of interpretation will seriously undermine the working of the system set up by the IMD and are thus likely to deter intermediaries from exercising the freedoms created by the Treaty which the IMD sets out to promote and, hence, to restrict the free movement of insurance services in the European Union.

If the case law of the ECJ as well as the 2002 interpretative Commission Communication on FOS and general good in the insurance sector provide important guidance on the concept of general good, it still remains unclear as to:

who is **assessing** that local rules can be considered as general good and therefore have to be complied with by a foreign intermediary, and who is **monitoring and ensuring compliance** with these rules by the intermediary.

Of course there are many other obstacles to the cross-border activities of insurance intermediaries, such as the lack of harmonised insurance contract law and tax issues.

In the E-Commerce Directive (Directive 2000/31/EC), general good measures are subject to the Community procedure i.e. the host country must notify the Commission and the home Member State concerning its intention to take such measures. If the Commission concludes that the measure is incompatible with Union law (see Lisbon Treaty) law, it will ask the Member State not to take the measures or to put an end to them.

BIPAR proposes that a similar procedure be followed in the IMD revision to define and assess the general good provisions to be complied with by the intermediaries doing cross-border activities. The E-Commerce Directive applies to insurance intermediaries' e-business. BIPAR believes that it is important that the European Commission pursues a consistent approach in its interpretation of the general good provisions.

#### **Waiting period**

BIPAR proposes that the "waiting period" of up to 3 months for FOS activities be removed from the IMD II. Insurance intermediaries could start operating under FOS once their home state competent authority has forwarded the notification to the concerned host state competent authority. They would not have to wait for up to 3 months to start their cross-border activities which can be a true obstacle to their FOS activities. Article 6.1 2. could be deleted accordingly.

#### **Reinsurance intermediaries**

BIPAR also believes that reinsurance intermediaries should not be required to notify their intention to provide services in another Member State anymore. This would be consistent with the approach applied to reinsurance undertakings under Directive 2005/68/ EC which requires notification only in respect of FOE activities. This would also help to reduce unnecessary administrative burden.

## Insurance intermediaries: Some key points

- The insurance (and insurance intermediation) market is a very competitive market.
- The non-life/ pure life insurance market is different from the life with investment element type insurances market.
- Insurance intermediaries foster competition in the local and European insurance market.
- Intermediaries are ... intermediaries. They offer services to both clients and insurers and add value to the insurance process.
- Consumers have the choice to use or not to use intermediaries: they can find insurance without intermediaries and the competition from alternative distribution channels is growing.
- Consumers can switch intermediaries without switching the insurer.
- Insurers have the choice to use or not to use intermediaries.
- The insurance intermediation sector is characterised by the presence of many intermediaries. The majority of these are micro or SME scale undertakings with a local focus.
- Intermediaries make insurance more accessible to consumers and smaller businesses by putting their know-how to their disposal, by creating more choice and competition between insurers .
- Thanks to intermediaries more people and businesses are properly insured.
- Reputation is an important factor that can only be built up over time. It can potentially be lost in an instant, and thus requires on-going attention and maintenance.
- Direct writers compete head-on with insurance intermediaries.
- Companies in every sector of the economy work with intermediaries to find solutions for their risks in the national, European or international market.
- Insurance intermediaries: employ altogether around two hundred thousand employees.
- intermediaries are paid for their services by either commission or fees or a combination
- BIPAR recognises that the world moves on and that regulation dating back to 2002, like the IMD, may benefit from a revision and some adaptations or clarifications.
- BIPAR invites regulators to take into consideration that changing regulation can be disruptive for all firms and, in particular, for smaller companies .
- We have a (very) good regulatory basis since 2002 : the *Insurance Mediation Directive (IMD)*,
- IMD has highly professionalized the sector
- IMD includes balanced, realistic information requirements

## **BIPAR's views on the revision of the IMD: some key points**

### **BIPAR promotes robust but realistic regulation which does not destroy choice by the consumer and promotes competition.**

- BIPAR believes that the IMD should continue to cover all those involved in insurance intermediation . i.e. an activity based approach.
- At the same time : A level playing field should be ensured between the intermediaries and the direct writers of insurance products. Information requirements and conduct of business rules, amongst others, applicable to insurance intermediaries should also be applicable to (direct) insurance distributors.
- At the same time: it is important that insurance intermediation be differentiated from direct writers.
- The IMD II should take into consideration that there is a difference between : non-life/pure life insurance and life with investment element insurance (PRIPS insurances).
- Scope of IMD II : should be wide – in light of consumer protection
- Exclusions : none (a-priori)
- Direct sales : comparable information, training and conduct rules/ level playing field should be applicable.
- Training : mutual recognition clause should be included.
- Training requirements applicable in all markets but various systems...harmonization might be difficult.
- The IMD II should take into consideration that there is a need for clarification regarding:
  - Definition of freedom of services (FOS)
  - Definition of freedom of establishment (FOE)
  - General good (in cross-border activities)
  
- With its article 12, the IMD already addresses to an important extent the issue conflicts of interest though not using the term “conflict of interest”.
- Insurance intermediaries should inform insurance customers about the nature of their remuneration : fees, commissions, combination ?
- Bipar principle : The insurance intermediary will, upon request of their customers, disclose their remuneration or basis of calculation related to the contract. ... under the condition of a level playing field
- Upon request because : Such a system would ensure that there is a fair opportunity for dialogue between the client and the intermediary about price, quality, services and solutions and, at the same time, it would offer an adequate level of transparency without creating too much administrative burden for smaller operators.
- Important for BIPAR is that if such a system would be introduced, the same level of transparency from competing alternative forms of distribution should be applicable, not only to ensure a level playing field but also to ensure comparability and consumer protection.
- Any other system would have competitive side effects and may possibly turn into misleading and irrelevant information for the consumer. (Because in insurance price should not be the only determining factor in the choice of insurance. )
- BIPAR wonders if in personal lines insurances ( car, household, ...) something else than total premium makes really sense (also considering the high competition from direct writers in this segment of the market.
- Reduction of administrative burden ? could be analyzed on the basis of the following question: what is the cost of extra regulation compared to the level of potential consumer detriment avoided ?
- In order to avoid administrative burden “Large risks” should continue to be exempt from the information requirements.
- For more information about the role of insurance brokers and agents, please see the London Economics report on intermediaries available at [www.bipar.eu](http://www.bipar.eu)