

## REVIEW OF THE INSURANCE MEDIATION DIRECTIVE

ea Consulting Group welcomes this opportunity to respond to the above consultation reviewing the operational effectiveness of the Insurance Mediation Directive (IMD) since it was originally implemented in January 2005.

### RESPONSES TO THE QUESTIONS RAISED IN THE 'REVIEW OF THE INSURANCE MEDIATION DIRECTIVE' CONSULTATION PAPER:

**A 1. Do you agree with the Commission services general approach outlined in the box above? Should information requirements as contained in Article 12 of the IMD be extended to direct writers taking into account the specificities of existing distribution channels?**

*"It would appear logical to require similar requirements from insurance undertakings and insurance intermediaries when distributing insurance policies, taking into account the specificities of existing distribution channels."*

**YES:** Article 12 "Information requirements for intermediaries' should be extended in general to direct sales operations. A level playing field for all insurance intermediaries will provide the greatest level of protection for the consumer. IMD2 must be sufficiently flexible to recognize both the importance and the differences between the various distribution channels in designing measures providing greater transparency to the consumer.

**A 2. Should the exemption from information requirements for large risk insurance products as laid down in Article 12 (4) of the IMD be retained? Please provide reasons for your reply.**

*Article 12 (4) reads: "The information referred to in paragraphs 1, 2 and 3 need not be given when the insurance intermediary mediates in the insurance of large risks, nor in the case of mediation by reinsurance intermediaries".*

**YES:** The new IMD2 regime must be proportionate and should reflect the professional status of those specifically involved with large risk insurance products (eg ships, aircraft). We have identified no evidence of problems in transparency existing for this sector.

**A 3. In the context of the information requirements for the mediation of insurance products other than PRIPs, do you think that the possibility for Member States to impose stricter requirements should be maintained? Please provide reasons for your reply.**

Overall, **YES.**

*Article 12 (5) reads: "Member States may maintain or adopt stricter provisions regarding the information requirements referred to in paragraph 1, provided that such provisions comply with Community law.  
Member States shall communicate to the Commission the national provisions set out in the first subparagraph.  
In order to establish a high level of transparency by all appropriate means, the Commission shall ensure that the information it receives relating to national provisions is also communicated to consumers and insurance intermediaries."*

It is very much hoped that the basic information requirements under IMD2 for non-PRIP products can be universally applied meeting the needs of all Member States. Gold plating of the regulations in general should not be permitted. However, exceptionally, if country-specific products exist requiring additional disclosure to protect the consumer then this should be granted. Exemptions must never be sanctioned if purely supporting national markets from greater pan-European competition.

**A 4. In the context of the information requirements, do you think a definition of "advice" should be introduced? Please provide reasons for your reply.**

**YES:** As the regulatory boundaries between advised and non-advised/execution only business are becoming increasingly blurred it is sensible to introduce a definition for 'advice' in the IMD2 regime. Advice, as with the MiFID definition, must include a personal recommendation thereby providing the means to differentiate an advised from a non-advised sales process and to create specific regulations for each category.

**A5. If you think that a definition of advice is needed for the mediation of insurance products other than PRIPs, would a definition similar or identical to the definition in MiFID be appropriate? Please provide reasons for your reply.**

**YES:** A definition similar to that appearing in MiFID article 4 (4) is suitable highlighting the provision of a personal recommendation.

MiFID article 4 (4) states:

*"Investment advice" means the provision of personal recommendations to a client, either upon its request or at the initiative of the investment firm, in respect of one or more transactions relating to financial instruments."*

Clearly, a specific IMD2 definition for advice should make reference to insurance (and re-insurance) intermediary firms.

A list of current insurance products should not be required especially as new types of products are being created all the time and these might be deemed as unregulated until any such list is updated.

**A 6. Do you consider that certain insurance products (other than PRIPs) can be sold without advice? If yes, which products would you have in mind and how could possible detriment for consumers be mitigated?**

**YES:** The IMD2 regime must be proportionate. It should recognise in particular that certain products are simple in structure and in the benefits provided. This category will include all those insurance products essentially sold on price (eg motor, travel, buildings and contents) and many 'whole of life' term cover policies. If the consumer can be made fully aware of the premium payable, the policy benefits and any restrictions prior to making "an informed decision" then no restrictions should exist in making the insurance product available on a non-advised basis. Open disclosure and transparency will protect the consumer. If a policy is not suitable for certain types of consumer this must be highlighted in any non-advised sales process. Although 'caveat emptor' should apply, the consumer must be provided succinctly with all the relevant information.

## **A 7. What practical measures could be envisaged for reducing the administrative burden in this area?**

eacg notes that one of the European Commission's general objectives is to reduce the administrative burden on companies. The official definition splits 'administrative costs' into two different cost components - the BAU (business-as-usual) costs and administrative burdens. BAU costs correspond to the costs "resulting from collecting and processing information which would be done by an entity even in the absence of the legislation". However, administrative burdens stem from the part of the process which is done solely because of a legal obligation.

In terms of the IMD2 proposals, the key areas of concern regarding the administrative burden relate to the extension of insurance regulation into direct sales and over large insurance or reinsurance contracts, and the possibility of new training requirements for advisers. Inevitably, the costs associated with such expansion will increase the potential administrative burden. It will be important to minimize changes to those areas requiring improvement rather than adopting change simply for its own sake.

eacg has not been able to identify an area within the IMD1 regime that could permit a lighter touch of regulation if consumer protection is to be maintained at an appropriate level. Indeed, it is important to stress that consumer protection is the key issue and despite calls to ease the administrative burden of insurance regulation we see little opportunity to do so without an added risk of potential consumer detriment.

## **B 1. What high level principles would you propose to effectively manage conflicts of interest, taking into account the differences between investments packaged as life insurance policies and other categories of insurance products?**

eacg recognises that the IMD1 regulations concerning conflicts of interest are not as extensive as those in MiFID1. Conflicts of interest will always exist as in any business operation seeking to operate at a profit. We agree that the IMD rules could be extended to help mitigate significant conflicts of interest although much can be achieved through improved pre-contract disclosure (eg advice offer and product range). It is our belief that a more robust EU disclosure framework will in turn lead to a higher degree of harmonization across the Member States. Simple disclosure of conflicts information as a mitigant should be a last resort. Again, we must be mindful of how the different distribution channels operate. Although high level principles are possible, the regulation of the insurance sector demands more focused and bespoke channel-specific rules if to be sound and cost effective.

Accepting the need for consumer protection and the fact that there is a wide range of insurance products (including insurance PRIPs) it is appropriate that high level principles should apply concerning conflicts of interest for both insurance intermediaries and insurance undertakings. The rules already adopted in the United Kingdom by the FSA have worked well. Essentially, we are looking at enhanced transparency and the consumer must be made aware of any share holding or business relationship with the product manufacturer. For insurance PRIPs, we recommend that these high level principles governing conflicts of interest are based fundamentally on the relevant MiFID1 text although it must not be forgotten that many insurance broker firms are small or one man operations.

In terms of remuneration, we do not support the call to ban the payment of commission as this may decimate the number of smaller insurance brokers and reduce competition. Much attention has been given to remuneration in general in the IMD2 consultation paper. However, eacg firmly

believes that, for most insurance products, consumers might be better served by focusing on the product or service benefits, the premiums and the risks involved.

**B 2. How could these principles be reconciled for all participants involved in the selling of insurance products?**

Please see our response to B1. We must be mindful that the European insurance sector is non-homogeneous. There is a vast array of different products, advisers, brokers, product providers and distribution channels all of varying significance across the various Member States. It is, therefore, appropriate that we only seek to establish high level principles that can have more universal application across all enterprises irrespective of their size if engaged in the selling of insurance products. The principles applying to conflicts of interest are closely related to the underlying disclosure regime which should apply for all retail sales.

As previously stated, for insurance PRIPs, we recommend that the high level principles governing conflicts of interest are based fundamentally on the relevant MiFID1 text although it must not be forgotten that many insurance broker firms are small or one man operations. eacg believes that it is a fair outcome for all parties that commission should be declared for all insurance PRIPs whilst for all other policies the figure must be disclosed only if requested. As previously stated, most general insurance policies are sold on price.

**B 3. Do you agree that the MiFID Level 1 regime could be regarded as a starting point for the management of conflicts of interests? If not, please explain why.**

**YES:** It is a starting point.

The IMD2 consultation paper rightly recognises the MiFID regime for managing conflicts of interest as 'sophisticated' reflecting the greater complexity of the retail and wholesale investment market. Article 18 (MiFID L1 Directive) and Articles 21 and 22 (MiFID L2 Implementing Directive) deal with the identification, management and disclosure of conflicts of interest. Importantly, they provide some flexibility for a business to determine its own approach to such issues, depending on the nature, size and complexity of the firm. The IMD2 rules should be more high level, offer the same flexibility and will have to be adapted as insurance intermediation business are often operated by 'natural persons'.

**B.4. How can the transparency of remuneration in the sale of non-PRIPs insurance policies be improved for all participants involved in the selling of insurance products, taking into account the need for a level playing field?**

As previously stated, most general insurance is sold on price and irrespective of any commission arrangements. The lack of spontaneous disclosure should not lead to consumer detriment if operating in a competitive marketplace. Many product providers include this information voluntarily in the post-sale documentation. Insurance price comparison websites are becoming of increasing importance in the UK ensuring better value for the consumer and commission is not an issue.

If a tied broker, this fact should be declared to the consumer and, similarly, if a product has been selected from a panel of providers. A broker/adviser should always act in the best interests of their clients. Promoting a product solely on the basis of the commission payable is contrary to what should be the overarching principle of always treating the customer fairly.

As previously stated, eacg believes that commission should be declared for all insurance PRIPs whilst for all other policies the figure must be disclosed if requested.

We are in agreement that “*practices aimed at inciting brokers to place business with particular insurers have the potential to undermine fair competition and might result in insurers competing with each other on the level of remuneration afforded to brokers, in an attempt to influence the brokers' choice.*” Such activities, including soft commission unrelated to customer service improvements and if contrary to normal business margins, must be outlawed.

**B 5. Do you agree that all insurance intermediaries should have the right to be treated equally in terms of the structure of their remuneration, e.g. that brokers should be allowed to receive commissions from insurance undertakings as insurance agents?**

**YES:** This is a level playing field. Commission must be viewed as the normal business trading margins. The latter are never released in any normal retail trading situation (eg supermarket, car dealership).

We understand that the European Commission's Business Insurance Sector Inquiry 2007 raised concerns in this area in relation to potential conflicts of interest. The inquiry recognized that the dual role of brokers as advisers to their clients and as a distribution channel for the insurer could lead to a clash of objectivity between the advice provided and their own commercial considerations. It is eacg's belief that disclosure by the broker of their trading relationship (tied/multi-tied/whole of market) will clarify to their client the range of advice on offer. The final IMD2 text must stress that the broker must always act in the best interests of their client.

**B. 6. What conditions should apply to disclosure of information on remuneration?**

As previously stated, eacg believes that commission should be declared for all insurance PRIPs whilst for all other policies the figure need only be disclosed if requested. Where required or if requested, consumers should be informed of all commission payable and on what basis (eg on renewal).

Where remuneration is uncertain, the information provided by the insurance intermediary should consist of a description of the benefit received or a description of the calculation criteria (eg for any contingent commission). Any estimated amount or basis of calculation for non-PRIPs insurance products should still only have to be disclosed if the consumer requests such information.

It is important to remember that most general insurance policies will be sold on price. A consumer will not opt for a more expensive product paying a lower rate of commission! Insurance price comparison websites are becoming of increasing importance in the UK ensuring better value for the consumer and commission is not an issue.

**B. 7. What types/kinds of remuneration need to be included in the information on remuneration?**

If remuneration is to be disclosed it should include the commission payable on the individual policy together with details of any soft commission (eg other inducements). The latter should only ever be payable if directly related to improved customer service.

**C 1. In order to guarantee a real level playing field between all participants involved in the selling of insurance products, to what extent should the current IMD requirements also be applicable to direct writers and their employees? Please, specify which particular requirements should apply and reflect on the particularities of direct sales with examples (how, where, under what circumstances, etc.)**

eaCG is supportive of the drive to create a true level playing field for all insurance sales and in including direct sales within the scope of the general IMD requirements. Although insurance intermediaries and direct sales operations represent two different business models they share a common purpose. In particular, the rules governing pre and post contract disclosure should always apply. eaCG believes that the general information requirements should be the same for all sellers of insurance.

An appropriate demand and need must be identified in any advice process and direct sales personnel must always act in the best interests of their clients. As a tied operation, the management of conflicts of interest should not be an issue although the consumer must be made aware of the link between the adviser and the product provider from the outset of the relationship. No doubt consumer groups across Europe will be calling for an equivalent of public indemnity insurance to apply with direct sales operations in light of problems which have arisen in this sphere (eg Equitable Life in the UK).

**C 2. A lack of clarity about the scope of the IMD could lead to unnecessary administrative burden. What are the possible clarifications that could be brought to the current scope of the IMD in this respect?**

In terms of the administrative burden of the existing IMD1 legislation it is accepted that a clearer legal framework is necessary regarding the cross border rules but we must also be mindful that optimal consumer protection is also paramount.

To avoid an unnecessary administrative burden it should be made plain within any new legislation which activities will be in scope (eg sales of insurance products by the means of distance marketing). It is recommended that a comprehensive list of activities and operations outside of the scope of IMD be listed as an annex to the final IMD2 text. As identified in the consultation text, these exemptions from the scope should be activity-based and not based on types of "professions" e.g. travel agents.

**C 3. What conditions/reasons for exemption from IMD2 should be in place taking into account the need to ensure legal certainty and consumer protection?**

Consumer protection is, of course, the primary consideration. Exemptions should only be permitted where potential consumer detriment is not an issue and the sale of insurance products must be an ancillary and/or secondary activity. Legal certainty can be provided by the provision of clear instruction on what activities are in and out of scope.

**C 4. Should a website or a person who just gives information about insurance fall under the scope of the IMD? How could the boundaries be more clearly defined in respect to insurance intermediation?**

**NO:** The provision simply of information should not fall within scope of the IMD. This is clearly within the non-advised sector. The boundary for being within the scope of the IMD and 'advice' can be clearly identified by the provision of a personal recommendation. Essentially, we are looking here at price comparison websites which are becoming very popular for the sale of motor and home insurance policies as the key purchasing factor is price. Advice is not generally required for the selection of such policies as consumers will naturally select and use the most user-friendly websites. The sales process is normally completed by reference to the insurance provider's own website. The consumer benefits as discounts are often available if purchasing online as it represents a lower cost distribution channel.

**C 5. Do you have examples of activities which, in the majority of Member States, fall under the IMD but which you believe should not be covered, such as sales of certain insurance products by car rental companies? Or conversely, do you have examples of activities which currently do not fall under the IMD but which should be covered?**

We are unaware of any insurance products offered in the United Kingdom that are outside of the IMD but which we believe should be included within the scope of IMD2. The example given in the CP text relating to car rental companies presumably relates to the additional accidental damage cover? In our opinion, consumers should be made aware of the standard features, benefits, restrictions and costs of this additional cover.

**C 6. Which particular requirements stemming from the Directive on the Distance Marketing of Financial Services (DMFS) need to be taken into account in IMD2? How does the definition of supplier in the DMFS Directive affect the definition of insurance intermediation?**

The Distance Marketing of Financial Services Directive (DMD) is, of course, a maximum harmonisation directive. IMD2 will therefore be required to reflect all the standard conditions that apply to distance sales. As well as insurance, the DMD governs the sale of pensions, mortgages and other financial products by means of distance communication. Distance communication includes on-line sales, sales by telephone, fax or post and indeed any sale where the contract is concluded by parties that never meet face-to-face.

'Supplier' in the DMD means any natural or legal person, public or private, who, acting in his commercial or professional capacity, is the contractual provider of services subject to distance contracts. The definition of 'insurance mediation' must cover advisers involved in such distance contracts for the sale of insurance products.

Under the DMD, before the consumer is bound into the contract, the supplier (ie insurance intermediary) must inform the consumer of the supplier's identity, details of the product and details of the contract.

With regard to the definition of 'insurance intermediation' we support the CEIOPS recommendation that the existing wording should be revised removing the word "introducing" and providing clearer instruction on activities in scope and exempt of IMD2.

**D 1. Do you agree with the inclusion of the definition of the freedom to provide services (FOS), as laid down in the Luxembourg Protocol of CEIOPS, in the text of the IMD?**

We note that an insurance intermediary is operating under the freedom to provide services (FOS) if it *"intends to supply a policyholder, who is established in a Member State different from the one where the insurance intermediary is established, with an insurance contract relating to a risk situated in a Member State different from the Member State where the insurance intermediary is established."*

Under the IMD, the "single passport" is based on the principle of registration in the home Member State. It is clear Commission Services believe that it is appropriate to improve the legal framework in relation to the notification process and to integrate the definitions on FOS and freedom of establishment (FOE) into the IMD. This should it is thought render the cross border insurance intermediation process more efficient and effective.

After due consideration, eacg supports this proposal. It will increase legal certainty and thereby promote more cross-border activity which ultimately, through increased competition, should be of direct benefit to the consumer. We are mindful that several parties have stated that the integration of a definition of FOS and FOE into IMD2 is considered as vital.

**D 2. Is there a need to further clarify the rules regarding freedom of establishment (FOE) and integrate these rules in the IMD?**

As previously stated, we note that Commission Services believe that it is appropriate to improve the legal framework in relation to the notification process. The proposal is to integrate the definitions on FOE and FOS into IMD2 in order to render the cross border insurance intermediation process more effective.

The definition of 'freedom of establishment' (or FOE) is *'built upon the principles of Interpretative Communication 2000/C 43/03 on freedom to provide services (FOS) and the general good in the insurance sector'*.

eacg recognises the importance of FOE, to the economic impact of IMD2, and of legal certainty. Any moves to clarify the underlying rules in order to promote common international understanding are to be supported.

**D 3. How can the notification process be made more efficient and useful?**

The notification process can certainly be made more efficient by the use of electronic communication and by improved cooperation between the relevant authorities in the various Member States. There is clearly a 'grandfathering' role for the new L3 supervisory authority - EIOPA. It is recommended that standard procedures are adopted for documentation and arbitration. Details of all agreements should be published on the Commission's website.

**D 4. Do you agree that further rules on FOS and FOE should be included in a revised IMD in order to provide more legal certainty?**

**YES:** See our response to questions D1 and D2.

**D 5. Are there any issues with regard to the general good rules in relation to the cross-border dimension of insurance intermediation? If so, please provide further details.**

We are unaware of any major issues arising from the general good rules applying to cross-border insurance mediation. Many express the opinion that there are too many rules and, in general, we should focus on fewer but more effective rules in delivering a level playing field. With regard to cross-border business we note the comment concerning 'a more transparent use of the general good rules'. eacg will always support greater transparency if to the obvious benefit of the consumer. General good rules should, of course, be accessible for everyone and should ideally be published in a common language. We recommend English as this will have the greatest potential readership.

**D 6. What problems do insurance intermediaries face today when selling cross border? How should the IMD be amended to improve the conditions for FOE/FOS activities?**

The issue here is that relatively few insurance intermediaries appear to operate on a cross-border basis. Many firms are, of course, relatively small serving only a local market. Undoubtedly, larger organisations would have a greater appetite for cross-border business if greater legal certainty existed. For this to occur the IMD2 text must include all relevant material and provide clarity and guidance on all the key issues associated with cross border intermediation.

To date, whilst there may be intermediaries prepared to sell cross border it appears that there may not be insurance product manufacturers willing to offer products on this basis. Cross border insurance business has been hampered by the problem of the law applying being the law of the country of the risk. It is very strange that the laws as understood by client, the insurer and the "risk" could all belong to different jurisdictions.

The creation of a regime openly promoting the freedom to provide services and freedom of establishment should encourage far greater numbers of insurance intermediaries to consider and undertake cross border business.

**D 7. Would the integration of the CEIOPS Luxembourg Protocol clause on mutual recognition in a revised IMD be useful in this respect?**

**YES:** In order to encourage cross-border insurance business it would appear appropriate to include the mutual recognition clause in the CEIOPS Luxembourg Protocol in the IMD2 text. This proposal will again improve legal certainty for those considering cross border activities.

**D 8. Could provisions similar to those contained in the E-Commerce Directive regarding an appropriate and transparent use of general good rules be integrated into the IMD2?**

**YES:** eacg believes that it is important that a consistent approach is applied in the interpretation of the general good provisions across all directives. The ECD's (E-Commerce Directive) general good provisions are subject to the 'Community procedure'. This means that the host Member State must notify the Commission and the home Member State of its intention to take such measures. If the measure is deemed by the Commission to be incompatible with EU law it can overrule the Member State. The IMD2 proposals should adopt similar transparency as it will greatly assist the creation of a level playing field across all Member States.

## **E 1. What high level requirements on the knowledge and ability of all participants involved in the selling of insurance products would be appropriate in view of the existing differences in the applicable qualification systems in Member States?**

As already noted, the insurance sector looks very different in each of the 27 full Member States. Inevitably, differences also exist across the various jurisdictions in the professional requirements applying to the sellers of insurance products. However, eacg believes that it is entirely appropriate that common principles should be established within the IMD2 regime setting standards for the knowledge and professional competency of all insurance sellers. This is especially so, as a primary goal is the creation of a level playing. Sellers of insurance PRIPs should follow the same training schemes and obtain the same professional qualifications as those advising on the sale of non-insurance PRIPs.

eacg supports the proposal to impose a Member State requirement ensuring that all employees directly involved in insurance or reinsurance distribution or sales must to be able demonstrate the knowledge and competency necessary for the performance of their duties. To this end, a comprehensive training and competency regime should be in place covering the relevant insurance products ensuring that a client's needs are accurately identified and combined with appropriate recommendations. An individual's suitability for the role should be assessed and monitored over time. It is very important that IMD2 also considers the quality of advice issues and promotes customer service. A competent insurance seller is a minimum requirement. In-house supervisory staff must review and monitor complaints documenting any shortfalls and perfecting personal development plans.

It is noted with interest that although there is no specific mutual recognition clause in the IMD, the situation is covered in the directive governing the recognition of professional qualifications (Directive 2005/36/EC19). This directive is "lex specialis" (ie law governing a specific subject matter (*lex specialis*) will override a law which only governs general matters (*lex generalis*)). Hence, an individual fully qualified as an insurance intermediary in one Member State and wishing to take up the same profession in another Member State on a permanent basis should be able to benefit from Title III, Chapter I of the directive as this particular situation is not covered by the existing IMD.

## **E 2. Should these requirements be adapted according to the distribution channel? If so, how?**

**YES:** Any T & C scheme should reflect the chosen distribution channel(s). Clearly, there are specific issues raised regarding disclosure by distance selling, particularly with telephony sales, as opposed to face-to-face (F2F) advice. Any adviser using a non-F2F channel must be fully aware of the requirements of the Distance Marketing of Financial Products Directive. They must also be reminded of such requirements on a regular basis. IMD2 should encourage insurance sellers to obtain professional examinations for their chosen field as ultimately this must improve customer service.

## Questions:

### **1. What practical challenges do you think should be addressed when drafting new legislation on the distribution of insurance PRIPs?**

First and foremost, new legislation governing insurance PRIPs must be consistent with that being promoted for non-insurance PRIPs in the MiFID2 proposals. Common rules must be applied to both distributors/advisers and product providers concerning conduct of business, conflicts of interest and the disclosure of remuneration. The situation is, of course, further complicated by the life cover element within the product specification and the necessity to fully inform the consumer of all features, benefits and restrictions. It is considered vital that disclosure of the premium paid must also include the amount of the premium actually invested. It is important that the MiFID2 regime recognizes that the pure life/non life insurance market is very different from the insurance PRIP market.

A horizontal approach to regulation in general with the common application of MiFID sales standards and UCITS IV style disclosure (KIID) where appropriate will aid consumer understanding. Disclosure documentation must be adapted to cover the non-investment part of an insurance PRIP without overcomplicating the information displayed. There is a fear of potential information overload for the consumer if non-essential detail is also provided.

A practical challenge will always be posed by the type of advice on offer and MiFID1 introduced rules concerning "appropriateness" with non-advised sales processes. If certain types of insurance PRIPs are deemed as complex then the non-advised route should not be available for retail clients. The rules governing insurance PRIPs must be applied consistently irrespective of sales channel.

### **2. What are the most important practical issues to be considered when applying the MiFID benchmark to the selling of insurance PRIPs?**

eaCG believes that the existing MiFID rules should form the basis of the general benchmark standards for the selling of insurance PRIPs although there are many practical issues in so doing. Consumer protection must always be paramount but careful consideration should also be given to the nature and variety of insurance PRIPs. An intrusive 'one-size fits all' approach will be poorly supported, disproportionate and hinder market innovation.

It should be noted that the client classification rules contained in MiFID have no equivalence in the insurance sector. Also, the diversity of insurance distribution channels has had a very positive impact on competition, choice and innovation.

Over-regulation of insurance PRIPs is viewed by many as a threat to the creation of a level playing field. That being said, certain types of life insurance products might be considered as purely a type of investment and these could simply conform to the rules applying to PRIPs in general! If any consumer detriment is identified in the sale of insurance PRIPs this must be immediately addressed irrespective of these MiFID-based rules or the channel through which the product has been sold.

From experience gained since their implementation in November 2007, the MiFID conduct of business rules have proved both sound and flexible in operation. However, they are geared for the larger corporate firms and the vast majority of insurance intermediaries are SMEs or one-man bands. eacg believes that the most important practical issues with insurance PRIPs will relate to the consistent application of such rules across the different Member States. It is essential that all insurers or insurance intermediaries selling or advising on insurance PRIPs, including tied agents, must always act honestly, fairly and professionally in accordance with the best interests of their clients.

Suitability is also a key requirement. If providing investment advice on insurance PRIPs, the insurance intermediary or the insurer should obtain the necessary information regarding the client's financial situation and investment objectives together with their knowledge and experience of the type of investment under consideration. This information will enable the adviser to identify and recommend to the client the appropriate investment service and/or financial instrument(s) that are suitable for their needs. The insurance PRIP poses its own challenges as it is both an investment and a life policy with a separate underwritten component dependent upon the lifestyle characteristics and sex/age of the policy holder.

Very importantly, remuneration structures must not materially impact on the ability of the intermediary to act in the best interest of the client. They must be designed to ideally avoid or manage any conflicts of interest that might arise. With an insurance PRIP, the adviser must be cognizant of both the status of the life company and the underlying performance of the investment.

In the UK, under the Retail Distribution Review proposals, the payment of all commission on packaged investment products will be banned with effect from January 2013. Advisers will receive remuneration only through an 'adviser charge' paid by the client for the advice received. This will negate the possibility of product or provider bias. An alternative solution will be for insurance intermediaries and insurers to take all reasonable steps to identify potential conflicts of interest between themselves. If organisational or administrative arrangements put in place by the insurance intermediary or the insurer to manage conflicts of interest cannot be considered sufficiently effective, the PRIPs intermediary and insurer might as a last resort disclose details to the client before undertaking any business on their behalf.

The MiFID rules governing 'appropriateness' are also of importance in developing a regime for insurance PRIPs. As this type of product has a dual purpose (life cover and investment) inevitably greater enquiry will be required if selling on a non-advised basis. The client must be able to display both relevant knowledge and experience of both elements if the product is to be considered as 'appropriate'. Should a client wish to proceed despite warnings in this non-advised sales process that the insurance PRIP is considered as inappropriate then care must be taken that clear written information is relayed to the consumer outlining the areas of concern with a suitable disclaimer.

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