

bipar

ANNUAL REPORT

06/2008-05/2009

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The European Federation of Insurance Intermediaries

ANNUAL REPORT

06/2008-05/2009

Foreword

Dear Colleagues and Friends,

I am particularly proud and happy to chair our European association. I have been taking part actively in its meetings since 1991.

The Outgoing Chairman, Manuel Vila, insisted on transparency in his foreword. Some of you will remember that I have tried in the past years to bring you this transparency in the analysis of the BIPAR accounts when I was deputy treasurer and then treasurer. I really believe that BIPAR has become over the years an increasingly transparent association, at the service of its members. This transparency has been reflected in our relations with the various European authorities, which consider us today not only as a serious interlocutor, but also as the single and indisputable representative of our profession.

And this, to the greatest benefit of us all. To be able, together, to dare look at the problems we are faced with and to collectively find a solution is a sign of wisdom and great strength. This is what we did in Berlin and Budapest and on many other occasions, and I hope that it will always be so. This is what gives your European association an important strength of conviction during the meetings with the European institutions or other authorities.

I also had the opportunity to tell you that I believe that we should go beyond the old agents/brokers structure. On the one hand, there are the problems encountered by large brokers and agents, who mainly deal with business customers. On the other hand, there are the problems of agents and small brokers, who deal mainly with private customers and mass products. Those agents and small brokers should not be in conflict with one another, but work together. There is a tendency anyway for agents to become multi-mandate or place certain risks outside their company. Moreover, as companies become increasingly bigger and fewer, the small broker is no longer able to have an important flow of business with several companies operating in the same branch. Consequently, we are alike, which is a good reason to unite. It is a Belgian who tells you that “united we stand”, even if in my country some seem to have forgotten this motto.



Alain de Miomandre
BIPAR Chairman

You will read in the following pages the most significant activities carried out by your association. Implementation of the directive, coinsurance, transparency, conflicts of interests, VAT, intermediary's role, financial services: all these issues were successfully dealt with by BIPAR in the direction wished for by its member associations.

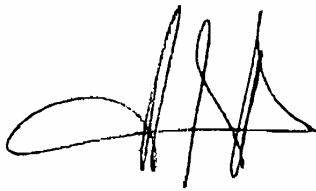
Equally, as a provider of information, we improved the quality of our publications and we have also given a new look to our website.

At the Budapest meeting, you had the opportunity to discuss with senior officials of the European institutions who hold our fate into their hands. One more proof of our representativeness.

We are working on our next meetings and European Forum that will be held in June. During our General Assembly, we will present you our new by-laws, which will become unquestionable since they have been passed before a notary.

All this work is accomplished daily by the team of your Secretariat, whose members carry out perfectly the tasks that are expected of them, and which is masterfully managed by our Director. I congratulate them all on your behalf and I wish to thank them all.

My career is coming to an end, I would like to tell you that it has been a pleasure to work with you all. I thank you for honouring me with the chairmanship of our association, and I wish you happy sailing

A handwritten signature in black ink, consisting of a large, stylized initial 'A' followed by several vertical strokes and a final flourish.

Alain de Miomandre
Chairman

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Foreword

One has to look no further than the content of this report to both understand and appreciate the breadth and strategic importance of the work being undertaken by BIPAR. In response to the tumultuous events in the financial markets over the last year we are clearly moving to a new phase in the legislative programme and in the development of the EU. The financial storm over the last year has been nothing short of seismic and it has fundamentally changed the financial and insurance world as we know it.

As a result less emphasis will be placed on the move towards “better regulation” and inevitably there will be a move towards a more prescriptive approach. This will need careful attention and management to ensure that regulation is effective but does not strangle the business with red tape which will be to the advantage of nobody including the consumer.

The Annual Report addresses in some detail the various EU issues that have commanded that attention of BIPAR over the last year and that will form the basis of much of the work for years to come. In this foreword I wish to offer some passing comments regarding just a few key issues.

A major benchmark was established in recent months with the adoption of the Solvency II Directive. This will now be followed by the drafting of detailed regulations which will radically change the regulation of insurers throughout the EU. It may ultimately lead to the concept of a lead regulator for insurers in the Union. BIPAR will closely monitor the drafting of the detailed regulations that will give effect to the Directive to ensure, as far as it can, that the Directive meets its objectives and that no unintended consequences arise which leads to the diminution of choice available to the consumer both personal and business.



Paul Carty
Chairman of the
EU Standing Committee

Of more direct consequence to intermediaries is the decision to revise the IMD a process which will probably lead to an “IMD II” being adopted around 2012. A new Directive will build on the undoubted success of the current IMD but will be significantly different. The key difference is that it will be a “Lamfalussy Directive” which will result in much greater harmonisation and the elimination of national “opt outs”. This will lead to much more consistent transposition of any future Directive into national law. BIPAR favours this approach and will continue to work closely with the European Commission, the European Parliament and with CEIOPS on the future content and shape of any future Directive.

BIPAR will use all its influence to ensure that any future regulation in particular any future regulations regarding the provision of information or in relation to the sale process is imposed on all insurance distribution channels and not just to insurance intermediaries.

Much work has been done over the last year and as you will note from the report much work has yet to be undertaken. I would like on behalf of all members to acknowledge and thank all members that have contributed to our work and in particular to the frequently unsung heroes of the various working parties who spend hours pouring over and scrutinising many papers across a myriad of issues such as VAT, coinsurance, life pensions and investment matters to name but a few. Finally I would like say how much the members associations that constitute BIPAR appreciate the skill, dedication and good humour of the staff of the BIPAR Secretariat in Brussels who work tirelessly on our behalf and most importantly to great effect.

A handwritten signature in black ink, reading "Paul Carty". The signature is fluid and cursive, with a long horizontal stroke extending from the end of the name.

Paul Carty
Chairman of the EU Standing Committee

Implementation and revision of the Insurance Mediation Directive

The Directive on Insurance Mediation (IMD) (2002/92/EC) was adopted on 9 December 2002 and EU Member States had until 15 January 2005 to implement the IMD text into national legislation. The two main objectives of the IMD are to enable insurance intermediaries to market their services in the EEA by way of freedom of services (FOS) or establishment (FOE) on the basis of their home country registration and to ensure a high level of consumer protection.

State of play on the implementation – Implementation checks and future revision

The Commission systematically plans evaluations of all the European legislation which have been adopted. At BIPAR's last mid-term meetings in January 2009 in Budapest, Tomas Kukal, DG Internal Market, European Commission, announced that his services had started to check the conformity of the different national implementations with IMD provisions. A first questionnaire was sent to Member States in August 2008 focusing on information requirements. A second one was sent in March, mainly focusing on the cross-border provision of services and on the use of general good rules by Member States to restrict it.

Tomas Kukal confirmed that the revision of the IMD may start in 2010, once the implementation check is over. The review of the IMD had been announced in the Commission's Green Paper on retail financial services issued in April 2007 with the aim of ensuring that the IMD is achieving its objectives of protecting consumers while promoting the Single Insurance Market. The European Parliament is also requesting a revision of the IMD. Indeed it introduced a recital in the recently adopted Solvency II Directive (see page 30) formally requesting the Commission to work on the revision of the



Tomas Kukal

Insurance Mediation Directive and to come forward with the proposal for revision of the IMD as soon as possible, but no later than at the end of 2010, taking into account the consequences for policyholders of the Solvency II Directive.

The practical planning and execution of the review of the IMD will follow on from the Commission checks of both the implementation and enforcement of the IMD. Its content will be determined by the outcome of this assessment and the practical experience of the Directive in action. This will also mean an extensive prior consultation of concerned parties, including BIPAR, and furthermore a full impact assessment of any proposed legislative changes.

A revised IMD could take the form of a Lamfalussy Directive with maximum harmonisation to avoid goldplating from Member States and too divergent national transpositions. The current level of information requirements and transparency, as well as the conflict of interest issue are expected to be looked at in the framework of a revised IMD. It is also expected that provisions regarding the CEIOPS Luxembourg Protocol definition of freedom of services and mutual recognition of qualifications under the IMD will also be included in a revised IMD (see below).

CEIOPS work on the IMD

CEIOPS Committee on Consumer Protection

In March 2008, CEIOPS set up a Committee on Consumer Protection (CCP) to deal with consumer-related issues. It takes up some work streams from CEIOPS' former Insurance Mediation Expert Group¹. The new Committee's work covers both fields of CEIOPS' competence - insurance and occupational pensions – with regard to consumer information and education, market conduct supervision, further enhancement of the cooperation in the handling of consumer complaints, general good provisions and contributions regarding the development of insurance guarantee schemes.

As far as the IMD is concerned, the Committee has been continuing the exchange of information on the practical implementation of the IMD, updated the

Luxembourg Protocol (see below), intends to publish in June 2009 some "Best Practices on the implementation of the IMD" based on the conclusions reached by CEIOPS' Intermediaries' Expert Group, and will contribute to a future review of the IMD by the European Commission. It will also publish links to the CEIOPS' members' and observers' web pages listing the general good provisions of the respective national jurisdiction, in their own language(s) and/or in English and help the European Commission carry out an inventory of national general good provisions.

¹ In October 2004, CEIOPS, the Committee of European Insurance and Occupational Pensions Supervisors, set up a Working Group - composed of experts from the national supervisory authorities - on insurance mediation (IMEG) to work on the implementation of the IMD.

Amended CEIOPS Luxembourg Protocol

In April 2006, CEIOPS issued a Protocol (known as the *Luxembourg Protocol* as it was signed in Luxembourg) that provides a framework for the cooperation of national competent authorities with regard to the implementation of the IMD. In November 2008, CEIOPS published its amended Luxembourg Protocol including new provisions on mutual recognition of professional qualifications and definition of freedom of services (FOS) under the IMD.

▪ Mutual recognition

The IMD does not contain any provision on mutual recognition of professional qualifications. Further to discussions with BIPAR and the European Commission, the amended 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.

▪ Definition of freedom of services under the IMD

The IMD enables insurance intermediaries to market their services in the EEA by way of freedom of services (FOS) or establishment (FOE) on the basis of their home country registration. These are passporting rights of intermediaries granted by the IMD. These rights can be exercised after following a simple notification procedure. In this context, BIPAR deems it very 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 have to be complied with by the intermediaries when they are considered as carrying out FOS in that Member State. The IMD is silent on the triggering element for FOS of the intermediary. It simply defines the host Member State as the Member State "*in which an insurance or reinsurance intermediary has a branch or provides services*". No precise definition of the Member State of the provision of the services is given.

In November 2008, after months of discussion on the issue between BIPAR and DG Internal Market, CEIOPS published its definition of FOS under the IMD. It is based on the intention of the intermediary to carry out cross-border activities and on the location of the policyholder and the risk. BIPAR welcomed the publication of this definition in the Luxembourg Protocol. Although this protocol is not a binding instrument contrary to a Directive, including these two provisions on FOS and mutual recognition commits the concerned authorities to use this definition and ensures more legal certainty.

CEIOPS definition of FOS activities

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

*The intermediary should notify his/her 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 MS.*

*If the intermediary already notified its intention to operate under FOS in a MS other than the one where the intermediary 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 intermediary 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.***

Non-exhaustive lists of examples:

- The intermediary asks for and organises, on its own initiative, meetings with clients established in another country.

- Re advertisement: the intermediary gives/sends information on specific products, conditions etc. to selected groups of clients established in a given country / in specific languages of some EU MS etc. Here the advertisement has an active character, the intention of the intermediary to contact clients in another country is clear.

- Re electronic distance or distance marketing activities: If the content of the website of the intermediary is general and only in the language of the MS of the intermediary, if it is not addressed to a specific group of clients or clients in specific countries, then the intermediary cannot be considered as actively seeking for these clients and therefore cannot be considered as having the intention to carry out FOS in the countries where those clients are established. If the intermediary is contacted by those clients it will not be considered as carrying out FOS in the countries of these clients.

CEIOPS market participants' consultative panel

BIPAR is represented by Paul Carty, Chairman of BIPAR EU Committee, in CEIOPS market participants' consultative panel which regularly meets in Frankfurt. The role of the panel is to:

- Express views on the work programme of CEIOPS;
- Provide comments on the way in which CEIOPS is exercising its role and, in particular, the adequacy of the consultation with the market actors, consumers and end-users;
- Assist CEIOPS in the definition of priorities;
- Alert CEIOPS on regulatory inconsistencies in the Single Market and suggest areas for Level 3 work.

The appointment of **Mr Paul Carty** as a member of the CEIOPS consultative panel is a welcome recognition of BIPAR's long-standing position as experts in all EU insurance-related matters. It ensures that the voice of the profession will continue to be heard at the most relevant level in the new legislative process.

Recent developments regarding netquoting

Background

In 2002 the idea to introduce netquoting started in Norway and Finland. Since then the idea has spread into some other markets. BIPAR has been and is assisting its national associations in the battle for freedom of choice of remuneration systems, based upon BIPAR's four principles of remuneration.

BIPAR principles on remuneration

Principle 1 :

Every insurance intermediary has the right to be remunerated fairly for his or her services.

Principle 2 :

Any remuneration or compensation for services of an intermediary should be considered as an issue between the parties.

Principle 3 :

Legislation or concerted market agreements (or behaviour) limiting or imposing the rate or the means of remuneration is considered by BIPAR as a serious infringement of basic free market principles and would be against international market practice.

Principle 4 :

Intermediaries may charge fees in addition to, in lieu of, or in combination with, commissions. In such case, the customer should be informed.

Timeline

- › **June 2002:** Norwegian insurers decide together to introduce netquoting in a « code of conduct ».
- › **October 2002:** Finnish insurers adopted a « recommendation » to introduce netquoting.
- › **June 2003 :** Some Danish insurers terminated commission agreement with Danish brokers - « information letters »
- › **May 2003 :** Swedish insurers asked for the introduction of a netquoting system

Denmark

Law since 01.07.2007

- Bans commissions (on both life and non-life)
- Transitional period until 01.07.2011

Finland

The Finnish Insurance Mediation Act (2005), FIMA, "*prohibits brokers to accept commissions from other source than their principal after 1 September 2008.*" There is currently (May 2009) a political debate on the system. In April 2009, the European Commission's DG Internal Market wrote a letter to the Finnish government, asking critical questions about the impact of the law on the Single Insurance Market.

Sweden

- Netquoting not yet law
- It was recently announced that it will not become law
- Some companies netquote, others do not

Norway

Netquoting came in the law with exceptions (marine) in 2008.

Switzerland

Also in 2008, the issue of netquoting came on the agenda of the Swiss regulators. BIPAR shared information and documentation with the Swiss Insurance Brokers Association (SIBA) in this respect. In early 2009, a project for a law became public. It includes provisions resulting in the situation that brokers may receive commissions but must forward these commissions to the client. Also according to this project, a broker cannot have binding authorities from insurers. SIBA and BIPAR are working together and preparing a reaction.

EU Competition inquiry into business insurance - Follow up

Background

In June 2005, the Competition Directorate of the European Commission launched a sector inquiry into business insurance. The purpose of the inquiry was to examine the strength of competition in this market, possible distortions of competition and to provide an empirical basis for considering any future measures. The inquiry examined the provision of insurance products and services to businesses. The Commission's mandate covered the entire scope of products. Insurance intermediation was also part of the inquiry.

On 25 September 2007 the Directorate-General for Competition of the European Commission published its final report on its inquiry into competition in the business insurance sector. The report raises concerns about three main areas: co- and reinsurance, insurance intermediaries and Block Exemption Regulation, and invites the parties involved in the various identified issues to carry out their own assessment and to engage in a dialogue with a view to either clarifying or to reviewing the practices in question. No deadline is given for such action.

Reinsurance and coinsurance markets

According to the Commission, the alignment of premiums in the reinsurance and coinsurance markets may lead to higher prices for large risk commercial insurance. The report leaves open the question of whether these constitute infringements of the prohibition on restrictive business practices (Article 81), and invites the industry to either justify the business practices concerned under the competition rules, or to reform them. DG Competition made clear that *"the market should change its procedures or face further mandatory requirements."*

BIPAR activities

After consultation with the consultant, "London Economics", and a working party of experts from some of its member associations, BIPAR decided to develop high-level principles for placement of a risk with multiple insurers. In April 2008, the high level principles were distributed to the national associations with the invitation to further distribute them to intermediaries who are active in coinsurance and to take as soon as possible initiatives which would

create or reinforce awareness about the concerns of DG competition and about the BIPAR high level principles.

In December 2008 DG Competition confirmed that they will organise a follow-up to the coinsurance part of their report in 2009. This follow-up will most probably take the form of a questionnaire to mainly clients (and also some intermediaries and (co-) insurers may be contacted). The objective of this follow-up will be, amongst other things, to test clients' awareness about the coinsurance concerns of DG Competition and about BIPAR high level principles. The questionnaire will probably also test on how far procedures have indeed changed in recent coinsurance processes and contracts and on how far they have improved the clients' situation.

Further to a consultation of its members and in cooperation with "London Economics", BIPAR working party on coinsurance is preparing examples of how intermediaries have changed their coinsurance procedures.

BIPAR high level principles for placement of a risk with multiple insurers

Background

- A. The coinsurance market plays a vital role in facilitating the placement of business risks among multiple insurers.
- B. The 2007 EC DG Competition report on the sectoral inquiry into business insurance recognises the important function of the coinsurance market but expresses concerns about the absence of an opportunity for the following market to compete on the premium.
- C. These principles aim to sustain a vibrant coinsurance market in which the client has choice and premium alignment is not automatically adopted as the mechanism for placing the risk in the coinsurance market.
- D. It is important that the client has a clear understanding of the role of the intermediary, the nature of his/her relationship with insurers (such as contractual obligations to one or more insurers), the basis on which any advice is provided (such as fair analysis or not), the services provided, the nature of the insurance required and the possible approaches to placing that insurance.

BIPAR high level principles for placement of a risk with multiple insurers

- 1. The intermediary shall, based on information provided, specify the demands and needs of the client as well as the underlying reasons for any advice.
 - 2. Before placing a risk, an intermediary will review and advise a client on market structures available to meet its needs and, in particular, the relative merits of a single insurer or a multiple insurer placement.
 - 3. If the client, on advice of the intermediary, instructs the latter to place the risk with multiple insurers, the intermediary will review, explain the relative merits and advise the client on a range of options for multiple insurer placement. (1)
Intermediaries will expect insurers to give careful independent consideration to the option requested.
 - 4. In the case of a placement of a risk with a lead insurer and following insurers on the same terms and conditions, the previously agreed premiums of the lead insurer and any following insurers will not be aligned upwards should an additional follower require a higher premium to complete the risk placement. Indeed, the intermediary should not accept any condition whereby an insurer seeks to reserve to itself the right to increase the premium charged in such circumstances.
 - 5. During the placement of the risk, the intermediary will keep the client informed of progress.
- (1) There are a range of options for multiple insurance placements. Two examples of which are the following:
- (i) Selection of a lead insurer through a competitive process and subsequent invitation to potential following insurers to cover part of the risk on the same contract conditions and premium, it being understood that nothing should prevent following insurers quoting a different premium;
 - (ii) Selection of lead insurer through a competitive process followed by a series of negotiations between the broker and potential following insurers for the coverage of part of the client's risk not covered by the lead insurer with identical contract conditions and different premiums across all or some of the participating insurers.

Block Exemption Regulation

The current 2003 European Commission's Insurance Block Exemption Regulation (BER) exempts under certain conditions four categories of insurance-related agreements from EC Treaty antitrust rules' ban on restrictive business practices:

- agreements for the exchange of statistical information for the calculation of risk;
- agreements establishing non-binding standard policy conditions for direct insurance;
- the setting up of insurance pools for the joint coverage of certain risks;
- agreements relating to specifications for security devices.

This Regulation expires on 31 March 2010 and the European Commission has to decide whether or not it should be renewed in full, in part, or at all.

In April 2008, the Commission therefore launched a consultation with the industry and national competition authorities to assess whether the Insurance BER should be reviewed. One of the Commission's main concerns is whether this Regulation still has a purpose to serve under the new European competition regime. Indeed, since December 2002 companies and associations of all sectors, including insurance, must now assess for themselves whether their agreements are compatible with Article 81, i.e. whether the benefits brought about by an agreement outweigh any restriction of competition. In 2003, when the current Insurance BER came into force, agreements that restricted competition had to be notified individually to the Commission to obtain the exemption. The BER therefore helped cut down the number of notifications. Today, according to the Commission, the Insurance BER "primary original objective" has been removed. Consequently, the Commission has been focusing on whether the insurance sector is special – as compared to other sectors – to the extent that there is an "enhanced need" for insurers to be able to cooperate with each other and whether that need should be protected by a legal instrument.

BIPAR views

BIPAR submitted its response to the consultation in July 2008, explaining that any change to the BER should maintain or improve the high level of legal security already achieved by the current EU legislation, as well as the strict safeguards established in the interest of consumer protection and competition. BIPAR drew attention to the fact that the current Regulation ensures legal certainty, allowing practices to be easier to evaluate, supervise and control, both under national and EU

competition authorities. In its response to the consultation, BIPAR also recognised that there was a need for a minimum level of possibility for collaboration and agreements between insurance carriers to ensure the efficient functioning of the insurance sector. A BER in the insurance sector achieves a balance between the conflicting imperatives of cooperation and competition between insurers, which is necessary for reasons of economic and consumer policy.

European Commission's report

Taking into account the responses received to the consultation, the Commission adopted on 24 March 2009 its report on the functioning of the Insurance BER.

The report concludes that at this stage two forms of cooperation specific to the insurance sector, namely agreements in relation to joint calculations, tables and studies and co(re)insurance pools, should continue to benefit from a block exemption.

Calculation of risk is key to the pricing of all insurance products and is a factor that differentiates insurance from other sectors. The BER currently requires that when insurers agree to share statistical data, they give access to that information on a non-discriminatory basis. The Commission believes that if the block exemption for joint calculations, tables and studies is not renewed, access to this type of information could become more limited,

particularly for smaller insurers. As far as insurance pools are concerned, they increase the number of insurers potentially able to cover a particular risk and so generally increase market access, availability of cover and competition. The Commission's view at this stage is that there are several arguments in favour of an exemption to protect or facilitate such agreements. However, the report comments that some insurers are applying the current exemption too broadly. Many coinsurance and coreinsurance pools in practice fall outside its scope. So, although the Commission is proposing to renew the exemption in some form, the report warns that it is likely to be significantly redrafted.

The Commission's report shows that neither agreements on standard policy conditions (SPCs) nor agreements on security devices appear to be specific to the insurance sector. SPCs are also agreed in other sectors- in particular in the banking sector, without the need for a Block Exemption Regulation. Security devices and their installation fall into the general domain of standard setting, which currently benefits from guidance under the EU Guidelines on horizontal cooperation agreements.

Should the Regulation not be renewed in relation with these two categories, this would not necessarily mean that agreements previously falling under the Regulation will become illegal. A legal assessment pursuant to Articles 81 (1) and 81 (3) of the Treaty will then be necessary, as in the rest of the sectors.

Next steps

The Commission will hold a public event on 2 June 2009 in order to hear further representations on the Commission's report and accompanying working document. The Commission will then decide whether to renew or partially renew the BER. If it decides to renew any part of the Regulation, the Commission will consult on a draft Regulation. If the Commission decides not to renew any part of the Regulation, it will publish a Communication to that effect before the end of 2009. BIPAR was invited to participate in a panel on SPCs on 2 June.

The de Larosière Report and the Commission's consultation on the improvement of supervision for the financial services sector

On 25 February 2009, the de Larosière Group¹ published its Report on financial supervision in the EU. The Report presents a new regulatory agenda to reduce risk and improve risk management, to improve systemic shock absorbers and to weaken pro-cyclical amplifiers. It also aims at strengthening transparency and getting incentives in financial markets right and seeks stronger coordinated supervision, both macro- and micro-prudential.

The de Larosière Report singles out insurance companies, pointing out that they have not been immune from the crisis. It wants the Solvency II proposed Directive to be adopted as soon as possible. Solvency II must include a balanced group support regime, coupled with enough safeguards for host Member States and a binding mediation process between supervisors and harmonised insurance guarantee schemes.

The Report also tackles the current absence of a truly harmonised set of rules, recommending that the Commission and the Level 3 Committees be more proactive identifying and removing national exceptions that are detrimental to the regulatory landscape. This would foster the functioning of the single financial market.

¹ The Group is a high-level group chaired by **Jacques de Larosière**, former IMF Managing Director and ex-Bank of France Governor, and comprising seven other experts including Callum McCarthy, former FSA Chairman. The Group has acted on a mandate from the European Commission to give advice on the future of European financial regulation and supervision.



Commission's 5 key objectives:

(1) To provide the EU with a **supervisory framework** that detects potential risks early, deals with them effectively before they have an impact, and meets the challenge of complex international financial markets.

(2) To fill gaps where European or national **regulation** is insufficient or incomplete, based on a 'safety first' approach.

(3) To ensure that European **investors, consumers and SMEs can be confident** about their savings, access to credit and their rights as concerns financial products, the Commission will come forward with:

- A Communication on **retail investment products** to strengthen the effectiveness of marketing safeguards (April 2009)
- Further measures to reinforce **bank depositor, investor and insurance policy holder protection** (Autumn 2009)

(4) To **improve risk management** in financial firms and align **pay incentives** with sustainable performance. To this end, the Commission will:

- Strengthen its 2004 Recommendation on **remuneration of directors** (April 2009)
- Bring forward a new Recommendation on **remuneration in the financial services sector** (April 2009) followed by legislative proposals to include remuneration schemes within the scope of prudential oversight (Autumn 2009)

(5) To ensure **more effective sanctions** against market wrongdoing. To this end, the Commission intends to:

- Review the **Market Abuse Directive** (Autumn 2009)
- Make proposals on how **sanctions** could be strengthened in a harmonised manner and better enforced (Autumn 2009)

Commission's Communication

In its 4th March Communication "Driving European Recovery", the European Commission endorses the key principles set out by the de Larosière Group and presents its programme of financial sector reform.

The Commission intends to come forward by the end of May 2009 with a Communication setting out its proposals on the future of the EU supervisory architecture followed by specific legislative measures in Autumn 2009. Before doing so, it took into account the views of all interested parties on the proposals made in the de Larosière Report and in the Commission Communication of 4th March.

In its response to the Commission consultation, BIPAR recognises the need for EU initiatives for revising the European supervision of the financial services sector based on the recommendations in the de Larosière Report. However BIPAR claims

that in this process, specificities of insurance, which differentiate this sector from other financial sectors, must be taken into account. BIPAR also welcomes the initiative announced in the Communication to provide the EU with a supervisory framework that detects risks early and meets the challenge of complex international financial markets. At an international level BIPAR is of the opinion that an efficient and regular cooperation between supervisory bodies, both within the insurance sector and across the financial services sectors, is critical in order to ensure the effective supervision of internationally active insurers, insurance groups and financial conglomerates. As for the real economy, BIPAR reiterates its support to the initiative to boost it, as the sector of insurance intermediaries consists mainly of SMEs, employing thousands of personnel around Europe.

Commission Recommendations on remuneration

Commission Recommendation on remuneration in the financial services sector

On 29 April 2009 the European Commission adopted a non-binding Recommendation on remuneration in the financial services sector. According to this Recommendation, Member States should ensure that financial institutions have remuneration policies for risk-taking staff that are consistent with and promote sound and effective risk management. The text sets out guidelines on the structure of pay, on the process of design and implementation of remuneration policies and on the role of supervisory authorities in the review of remuneration policies of financial institutions. The Recommendation covers all sectors of the financial services industry so as to avoid loopholes and prevent distortions of competition between different sectors and financial institutions.

The Recommendation does not apply to fees and intermediaries' commissions

According to the Commission, the objective of the Recommendation is to introduce principles on remuneration policies within financial institutions in order to reduce perverse incentives and excessive risk-taking by individual staff. Fees and commissions paid to third parties fall outside the scope of this objective. Indeed, although fees and commissions are considered by the Commission "to potentially create in some

cases perverse incentives for service providers, especially by encouraging them to maximise their own results and act against the client's interests", they do not fall under the scope of the Recommendation as they are considered as being already partially covered by special regimes, in particular the Markets in Financial Instruments Directive (2004/39/EC) and the Insurance Mediation Directive (2002/92/EC).

The Recommendation invites Member States to adopt measures in four areas:

- **Structure of pay:** remuneration policies for risk-taking staff should be consistent with and promote sound and effective risk management. For this purpose, financial institutions should strike an appropriate balance between the level of the core pay and the level of the bonus.
- **Governance:** remuneration policy should be transparent internally, should be clear and properly documented and contain measures to avoid conflicts of interest.
- **Disclosure:** remuneration policy should be adequately disclosed to stakeholders. The disclosure should be made in a clear and easily understandable way and contain core elements of the remuneration policy, its design and operation.
- **Supervision:** supervisors should ensure, using the supervisory tools at their disposal, that financial institutions apply the principles on sound remuneration policies to the largest possible extent and have remuneration policies consistent with effective risk management.

Next steps

The Commission has invited Member States to inform it by 31 December 2009 of what they are doing to promote the application of the Recommendation. That will allow the Commission to monitor closely the situation within the EU and to assess whether greater convergence of remuneration practices has been achieved, and to report on this basis to the Council and to the European Parliament. BIPAR is closely monitoring this dossier.

Commission Recommendation on the remuneration of directors of listed companies

On 29th April the European Commission adopted another Recommendation, which refers to the regime for the remuneration of directors of listed companies. According to this Recommendation, an appropriate remuneration policy should ensure pay for performance and stimulate directors to ensure the medium and long term sustainability of the company. While the current Directors' remuneration Recommendation is based on the idea of pay

for performance through disclosure of the remuneration policy, the new Recommendation provides further guidance on how to achieve these goals by setting out best practices for the design of an appropriate remuneration policy. Certain aspects of the structure of directors' remuneration and the process of determining directors' remuneration, including shareholder supervision, are highlighted in the text.

Next steps

The Recommendation invites Member States to adopt the necessary measures to promote the application of this Recommendation by 31 December 2009. Member States are therefore invited to organise national consultations with stakeholders on this Recommendation and to notify the Commission of measures taken. The Commission will closely monitor the situation, and assess whether further measures are needed. BIPAR will follow up this dossier.

BIPAR Life and Investment Committee is monitoring the implementation of these recommendations carefully.

Proposed Directive on Consumer Rights

In the context of the review of the consumer acquis, on 8 October 2008 the European Commission published a proposal for a Directive on Consumer Rights that would provide consumers in the EU with a high common level of protection whether they buy goods and services in person or online. Trying to reduce the internal market legislation fragmentation, the proposed Directive merges four existing Directives dated from the 1980's and that deal with doorstep sales, unfair terms in consumer contracts, distance contracts and the sale of goods and associated guarantees.

Impact on insurance intermediaries

The application of this proposed Directive to our sector and to insurance/financial/credit intermediaries in particular, is limited but not negligible. Indeed provisions of this Directive cover contracts relating to financial services (including insurance, credit and investment) only insofar as this is necessary to fill the regulatory gaps. Consequently, if the proposed provisions on consumer rights concerning contract terms relate to financial services, including insurance, the proposed provisions for improving consumer rights

when buying online would not apply to financial services and the proposed provisions introduced for contracts made and negotiated away from business premises would not apply to insurance and credit agreements. Indeed, they are covered by the current distance marketing of financial services and consumer credit directives. Mortgage and other loans on real estate negotiated at the consumer's home would however be concerned by the new proposed rules on off-premises sales.

Consumer rights concerning contract terms

The section on consumer contract terms concerns financial services. It applies to standard terms, i.e. terms drafted in advance by the trader or a third party to which the consumer agrees without being able to influence their content. For the most part, however, the proposed new rules are a restatement of existing requirements in the Unfair Terms in Consumer Contracts Directive. Standard terms must still be "*expressed in plain, intelligible language*", although there is now a requirement that they be legible (rather than just "written"). If the term is illegible, then the trader would be in breach of the requirement for clearness and legibility in any event. As under the previous Directive, a term will be judged unfair if "*contrary to the requirements of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the contract to the detriment of the consumer*". Unfair terms are not binding on the consumer.

The proposed new additions and rearrangements are as follows:

- The test for unfairness must consider all the circumstances, and these now expressly include "*the manner in which the contract was drafted and communicated to the consumer by the trader*".
- There is also a requirement that standard terms must be made available to the consumer "*in a manner which gives him a real opportunity of becoming acquainted with them before the conclusion of the contract*". And, in providing the terms, the trader must pay "*due regard to the means of communication used*".
- Sales by default are prohibited. A trader must obtain the express consent of the consumer to any payment in addition to the main contract price; otherwise the consumer is entitled to that money back. The Commission here is targeting pre-ticked "optional" boxes for buying extras, such as travel insurance and priority boarding or baggage. Under the new rules the consumer would have to make an active choice (e.g. by ticking an empty box) to purchase the additional item.

Black and grey lists

Annexed to the unfair contract terms chapter is a list of terms that are considered **unfair in all circumstance (the black list)** and a list of terms that are **considered unfair unless the trader proves otherwise (the grey list)**. One important difference compared to the current system is that the grey list expressly places the burden of proving whether or not a term is unfair on the trader.

Newly included in **the new black list** are terms excluding or limiting liability for death or personal injury, or which limit the trader's obligation for commitments undertaken by his agent, or make the trader's commitments subject to some condition wholly within his own control. Similarly upgraded are terms that limit the consumer's right to take legal action (e.g. a compulsory arbitration clause), restrict the evidence available or reverse the burden of proof on to the consumer. Terms that give the trader the right to decide whether goods or services comply with the contract or to interpret any term of the contract are also banned.

As far as **the grey list** is concerned, the only completely new item is a term enabling the trader

unilaterally to amend contract terms already communicated to the consumer in a durable medium through online contract terms that have not been agreed by the consumer.

The grey list includes terms that allow unequal right of termination, or termination by the trader without reasonable notice except where the consumer has committed a serious breach of contract. Also on the list are terms enabling the trader to increase the price without giving the consumer the right to terminate, or which enable the trader unilaterally to alter the terms of the contract. **This list is modified in the case of contracts for the supply of financial services.** A supplier of financial services may, for instance, include a term allowing it to terminate an open-ended contract unilaterally and without notice, provided it is required to give notice to the consumer immediately. Terms that reserve the trader's right to alter the terms of a financial services contract without notice may also not be unfair where there is a valid reason and provided the supplier informs the consumer as soon as possible and the consumer has the right to dissolve the contract immediately.

Inertia sales

The proposed Consumer Rights Directive would also close a loophole by providing a contractual remedy for consumers who fall victim to "inertia selling". This provision, which would apply to unsolicited goods and services including financial services, confirms that the consumer does not have to pay for such goods or services and that a lack of response from the consumer does not constitute consent or agreement.

Off-premises contracts and insurance contracts

The proposed Directive updates existing rules on doorstep sales, which it widens to cover contracts concluded anywhere where both parties are face to face and the contract is negotiated or concluded away from business premises. The proposed Directive introduces specific information requirements and a standard withdrawal period.

Insurance contracts remain excluded from the scope of the off premises proposed provisions. While drafting its new proposal the Commission had wondered whether this exemption needed to be modified in the light of the new market developments and had launched a consultation on the issue in October 2007. Taking into account BIPAR's response, the Commission decided to continue not to apply the rules of off-premises contracts to insurance contracts as the Community Acquis in the field on insurance already provides for consumer protection - in particular the Life Insurance Directive - and that insurance should be treated separately due to its specific nature. **Credit agreements** that fall within the Consumer Credit Directive are also outside their scope. **Mortgage or other loans on real estate** negotiated at the consumer's home are within the scope of the off premises proposed provisions.

Next steps

The proposed Directive is currently being discussed at Parliament level in first reading. BIPAR is closely monitoring the dossier.

BIPAR Life & Investment Committee

Chaired by Chris Cummings



Chris Cummings

➤ European Commission's Communication on Packaged Retail Investment Products

Packaged retail investment products provide retail investors with easy access to financial markets. According to the European Commission, the regulatory framework for these products must provide a robust and coherent foundation for effective and responsible retail investment. A substantial body of Community law already exists to protect investors (MIFID, IMD, UCITS Directive, Consolidated Life Directive etc...). However, legal requirements on product transparency, sales and advice differ according to the legal form of the product and the distribution channel. This situation does not provide a coherent basis for the protection of the retail investor or for the balanced development

of the market for packaged retail investment products. The level of protection afforded to the retail investor should not vary according to the legal form of these products.

Therefore, on 30 April 2009 the European Commission issued a Communication explaining its proposed steps to introduce horizontal rules both for the production of key disclosures by the manufacturers of packaged retail investment products, and the selling of these products by intermediaries or any other distributor, including the product originator. Separate legislative initiatives are envisaged for the two fields of action – principally because different entities are involved in selling and product origination. These separate instruments would need to effectively dovetail with one another.

What is proposed in the Communication?

▪ Key investor disclosures provided by product originators

- The goal would be to achieve as great a degree of harmonisation and standardisation of key retail disclosures as possible to allow for comparison between products, though with some tailoring of detailed rules to the specificities of products.
- The new horizontal instrument would be applicable to all manufacturers of packaged retail investment products. This would be irrespective of whether the product is a remanufactured form of another underlying product, as where product wrappers are in use.
- Products that are in-scope would be those that fall within the definition of a packaged retail investment product.

What are Packaged Retail Investment Products (PRIPs)?

PRIPs are at the core of the retail investment market. They cover a range of investment products that are marketed to retail investors, which taken together make up a market in Europe worth up to 8 trillion EUR. Although there is no rigid definition of PRIPs and they take a variety of legal forms, they can be distinguished by the broadly comparable functions they perform for retail investors. They typically combine exposures to multiple underlying assets; they are designed to deliver capital accumulation over a medium- to long-term investment period; they entail a degree of investment risk, although some provide capital guarantees; and they are normally marketed directly to retail investors. Broadly speaking, they can be categorised into four groups: investment funds, insurance-based investment products, retail structured securities and structured term deposits.

Principles on the basis of which the key investor disclosures will be designed:

- Product disclosures should be fair, clear and not misleading.
- They should contain the information necessary to take an informed investment decision
- They should be presented in a format appropriate for a retail investor.
- The disclosures should be provided to the investor in a timely fashion so as to be capable of influencing the decision on whether to buy an investment. All who sell packaged retail investment products should be required to provide the mandatory disclosure produced by the product manufacturer to the investor. This obligation would apply to both intermediaries and manufacturers selling their own products; and irrespective of whether a service such as advice is offered in conjunction with effecting the sale.
- Any associated marketing communications should be fair, clear and not misleading, and should be clearly distinguished from the mandatory disclosures while being fully consistent with them.

▪ **Selling of packaged retail investment products by intermediaries and other distributors**

The European Commission considers that the right approach is to apply the same legislative requirements across all sales of packaged retail investment products, irrespective of the distribution channel employed:

- Consistent conduct of business, inducements and conflict of interest provisions, with MiFID as the benchmark, would be applied to all those selling packaged retail investment products, irrespective of whether the entity is an intermediary or the product manufacturer themselves. Detailed requirements might need to take into account the service being offered.

Principles

- Selling practices must be focused on the fair treatment of the investor.
- When an investor receives investment advice, the advisor should undertake the necessary steps to ensure products sold correspond to the profile and needs of the investor, and that the investor understands the nature of the service being provided by the advisor.
- If a product is sold without such advice, the limits to the service provided and risks for the investor must be clearly communicated. An assessment of the adequacy of the product for the investors' needs may still be required in some circumstances.
- For both advised and non-advised sales, conflicts of interest must not adversely affect investors. They should be avoided where possible, or be identified, managed and disclosed in a way that investors can understand.
- For both advised and non-advised sales, investors must receive clear and effective disclosures of remuneration arrangements and all charges, commissions or fees paid, in a form they can use.
- Those assessing the suitability of products must fully understand those products and their features.

What are the next steps?

The Commission will now begin work on developing detailed proposals. Input from all stakeholders, including BIPAR, will be sought in the development of these proposals. An orientation on the content and nature of these proposals will be published by the end of the year for public consultation. The results of this process will then form the basis of detailed legislative proposals and accompanying impact assessment work.

BIPAR has been monitoring this dossier very carefully (see previous annual report) and will participate in the coming public consultations.

➔ **European Commission's policy initiatives on credit (retail financial services)**

Commission's survey on credit intermediaries

Since 2007, the European Commission has been working on a possible European legal framework for credit intermediaries (mortgage, consumer credit, etc.). Before deciding whether or not to come forward with a formal proposal for a Directive on credit intermediaries, the Commission decided to undertake a study to analyse the EU credit intermediation market, to review the regulatory framework in which credit intermediaries operate, and to examine possible consumer detriment. The Commission also seeks to gather information on the role of credit intermediaries in facilitating cross-border trade in credit products. On the basis of this study, the Commission will examine whether it is necessary to propose an appropriate EU instrument.

The European Commission charged the consulting firm Europe Economics Research Ltd. with the task of carrying out this study on credit intermediaries in Europe. In order to draft its study, the UK consultant gathered information and views from key stakeholders across the 27 Member States. To this end it prepared a questionnaire on the activities of credit intermediaries (national market, fees, cross-border lending, trends and regulatory environment) and requested BIPAR to forward it to its national member associations that represent intermediaries carrying out credit mediation and also to these intermediaries themselves.

The study should have been released by the European Commission in October 2008 but its official publication was delayed. And it was finally published on 14th May 2009.

Commission's study on credit intermediaries

The study explores the nature and scale of credit intermediation in the following credit markets: residential mortgage credit, point of sale retailer credit, other consumer credit and business finance. It defines "credit intermediaries" as individuals or firms that do not directly provide credit themselves, but rather facilitate an individual or a firm (tied or fully independent) obtaining access to such credit from a third party credit provider.

The study indicates that the main credit intermediary activities relate to market search, product distribution and the provision of advice. This implies that the chief benefits to consumers should come in terms of reduced prices, increased product choice and more transparent credit markets. The report states that although valuable, the economic benefits of intermediation may not be achieved. The key sources of potential market failure and consumer detriment that the study identifies relate to asymmetric and incomplete information and

to the misalignment of incentives. The report further states that the most significant form of consumer detriment is the recommendation of products that are either unsuitable to the borrower's personal circumstances or else are not price competitive. Conflicts of interest are pointed out to be the main reason for the latter. The study states that well-designed regulatory intervention can resolve or mitigate some of the market failings that result in detriment to the consumer.

With regard to intermediaries and cross-border activities, the report acknowledges that the scale of such activity in retail financial services is extremely limited. According to the study, there are currently a number of potential barriers to such trade (linguistic, cultural, regulatory, tax) and a trusted credit intermediary could be of use in overcoming as least some of these barriers. However the study indicates that intermediaries play only a limited role in this at present.

Next steps

The Commission is now preparing a consultation paper on responsible lending and borrowing that will include some of the issues raised in the study. The consultation should be launched by July. The Commission will also be hosting a public hearing on 3 September, to bring the consultation period to a close. It will then assess what is the most appropriate follow up to this dossier.

Together with its working party on credit, BIPAR will study this report carefully and will participate in the consultation process as well as in the public hearing.

The Credit agreements for consumers Directive

On 7 April 2008 the Council of EU Ministers adopted a Directive on credit agreements for consumers. It applies to credit above €200 and below €75,000 and only covers credit contracts, not guarantors. It only applies to loan contracts on which interest is paid, and not products such as deferred payment cards (charge cards) or mortgage credit. It sets out new requirements specifying the list of items to be provided to consumers, including type and duration of credit, APR, borrowing rate, total amount of credit and charges included, amongst others.

Intermediaries

Certain provisions of this Directive apply to intermediaries who *“in the course of their trade, business or profession, for a fee, present or offer credit agreements to consumers, assist consumers by undertaking preparatory work in respect of credit agreements or conclude credit agreements with consumers on behalf of the creditor”*. This Directive regulates only certain obligations of credit intermediaries in relation to consumers, where applicable, for example, pre-contractual information requirements or duty to assist the consumers. Member States remain free to maintain or introduce additional obligations incumbent on credit intermediaries, including the conditions under which a credit intermediary may receive fees from a consumer who has requested his services.

In accordance with the Directive, Member States shall ensure that a credit intermediary indicates in advertising and documentation intended for consumers the extent of his powers, in particular whether he works exclusively with one or more creditors or as an independent broker. The credit intermediary shall also inform the consumer of any fee that has to be paid for his

services. This fee is agreed between the consumer and the credit intermediary on paper or another durable medium before the conclusion of the credit agreement. Eventually, any fee payable by the consumer to the credit intermediary for his services is communicated to the creditor by the credit intermediary, for the purpose of calculation of the annual percentage rate of charge.

According to the study on credit intermediation recently published by the European Commission and which has been elaborated by Europe Economics Research Ltd (see page 24), the Credit agreements for consumers Directive is likely to have a significant impact for consumer credit intermediaries. Indeed it provides for an increase in comparability of products that could lead to some consumers becoming confident enough in their own financial ability that they no longer require the services of an intermediary. On the other hand consumers who were not engaged in search because of lack of financial confidence and unwillingness to rely on intermediaries' judgment may start consulting intermediaries.

According to the study published by the Commission, the Directive is likely to impose additional costs to credit intermediaries, depending on the nature of their activities, and whether they undertake these on behalf of their lenders or not. The Directive is likely to have a greater impact on those intermediaries who provide pre-contractual information, whilst it is less likely to affect those intermediaries whose sole activity is to compare products and refer potential borrowers to lenders. Moreover, further costs for intermediaries could arise, if intermediaries screen potential borrowers on behalf of lenders, or if they have to assess the credit-worthiness of the potential borrower. Another factor likely to influence the impact on intermediaries is the remuneration arrangements with lenders and consumers, thus it is expected that intermediaries remunerated by lenders would seek to renegotiate their fee arrangements. Intermediaries remunerated by consumers may increase charges levied on borrowers.

Next steps

Member States are currently transposing this Directive into national law, with a deadline of 11 May 2010. The Commission shall undertake, every 5 years and for the first time on 12 May 2013, a review of the thresholds laid down in this Directive and its annexes and the percentages used to calculate the compensation payable in the event of early repayment. Together with its working group on credit, BIPAR is studying the transposition of the Directive into national legislation.

Mortgage Credit

Study on the role and regulation of non-credit institutions in EU mortgage market

The European Commission issued in December 2008 a study on the activities, regulation and supervision of mortgage lenders that are not defined as 'credit institutions' under EU law. The study shows that in the majority of Member States, lenders operating outside the EU legal framework for credit institutions are regulated and supervised by national authorities, and that their national market share is small compared with that of fully-fledged credit institutions. The study is a follow-up to the White Paper on the Integration of EU Mortgage Credit Markets issued in 2007, and will contribute to the Commission's assessment of whether further action in this area is needed at EU level. Building upon the responses received, the Commission will undertake the most appropriate action.

Credit Histories

Following the White Paper on the Integration of EU Mortgage Credit Markets issued in 2007, the European Commission appointed in September 2008 an Expert Group on Credit Histories (EGCH), composed of experts in the field of credit data. The group's objective is to identify solutions that will maximise the circulation of credit data within the EU, and hence increase the level of consumer protection. The Group mainly concentrates its work on the credit registers' framework, and on access to credit data and content and quality of data, and will issue a report in 2009 on the outcome of its investigations.

Study on the costs and benefits of the different policy options for mortgage credit

The European Commission has asked consultants to carry out a study on the costs and benefits of the different policy options for mortgage credit. The study began in December 2008 and is expected to be finalised by September 2009. The study seeks to assess the different policy options for pre-contractual information, annual percentage rate of charge, responsible lending and early repayment. The study will also assess the costs and benefits to different stakeholder groups, which cover consumers, mortgage lenders, credit intermediaries (where relevant), Member States, and any other relevant stakeholder group identified in the impact assessment accompanying the White Paper on Integration of EU mortgage credit markets. The analysis will include an examination of potential administrative costs for Member States, as well as an identification of the most vulnerable stakeholders or those stakeholders who hold advantages. The study seeks to achieve the consideration of wider economic and financial consequences of potential policy options, namely the impact on financial stability. The results of the study should set the grounds for future policy considerations in this area. Concerned BIPAR member associations have been contacted by the consultants and will be soon requested to answer a detailed questionnaire on the issue.

BIPAR Life and Investment Committee is monitoring these issues closely.



Proposal for a new Directive on VAT for insurance and financial services

On 27 November 2007, the European Commission adopted a proposal for a new Directive with the objective to simplify and update VAT provisions for financial services and insurance services. The services specified in the Directive are exempt from VAT. However, these exemptions date from 1977 and the legislation has not been revised since then. The aim of the European Commission is to create greater legal certainty and security for Member States and financial institutions by laying down clear definitions of exempt insurance and financial services that correspond to today's market.

Contents of the proposal

Redefinition of the scope of the exempt insurance and financial services

The proposal for a Directive is accompanied by a proposal for a regulation which expands the definitions of exempt services and will be directly applicable in all Member States. The regulation sets out a non-exhaustive list of examples of services which are considered to fall both within and outside the scope of the relevant exemption. Concerning intermediation, there is a new definition on insurance and financial intermediation services, as intermediation in insurance and intermediation in financial services are considered together.

Over the last year the French and the Czech Presidencies respectively have proposed different definitions of insurance and insurance intermediation. It is expected that the incoming Swedish Presidency (1 July – 31 December 2009) will also come with its own definition.

The current proposed definition by the Czech Presidency (1 January – 30 June 2009) reads as follows: *“Intermediation in insurance and financial transactions” means services rendered by a third party whose purpose is to do what is necessary in order for the parties to enter into, prolong, alter or terminate a contract in insurance of financial transactions as referred to in points (a) to (gd) of article 135 (1).*

Option to tax

The Commission's original proposal included the possibility for financial suppliers to opt for taxation of their services. The objective was to allow institutions to reduce their exposure to non-recoverable tax particularly in business-to-business activities.

Cost-sharing agreements

The Commission's original proposal also included the introduction of an industry exemption from VAT for cost-sharing agreements, including those which are cross-border. Financial institutions which are members of a group may pool their operations and share costs between the members of the group without creating additional non-recoverable VAT.

With regard to the option to tax and the cost-sharing measure, the Czech Presidency, as opposed to the Commission, has not pursued these measures when drafting their proposal due to the difficulties of finding a compromise in the Council. The Czech Presidency has chosen to concentrate on the definitions and in parallel work on the accompanying Regulation which lays down implementing measures for the Directive.

Legislative process and actions of the BIPAR VAT working party

The draft proposals are currently being debated by the Council of Ministers (EU presidencies) and could be implemented from 2011 onwards. Unanimity is the form of decision-making used by the Council of Ministers of the EU on tax issues. In decisions taken by unanimity, the European Parliament has no deciding power and can only offer its non-binding opinion to the Council.

The BIPAR VAT working party, chaired by David Jordorson, has been successful in communicating its view to all parties involved in the drafting and adoption of these proposals. In July 2008, it actively monitored the drafting of the EP opinion on the VAT proposal, avoiding the adoption of any amendments which could have gone against the interest of intermediaries and that could have been debated in the Council.



David Jordorson

Furthermore, over the last five months in 2009, BIPAR has been adamant in communicating its general position on this issue to the Czech Presidency. BIPAR has always been of the opinion that core activities of intermediation services, where an intermediary delivers services in an intermediation capacity, should continue to be exempt. In this regard, the BIPAR VAT working party has identified some issues that need to be clarified so as to allow our interests to be protected in the Directive.

- **Co- and sub-intermediation:**
The BIPAR VAT working party opposes any interpretation that excludes from the VAT exemption intermediaries who are not in direct relation with the contractual parties of the main service.
- **Administrative tasks:**
An administrative task which is inherently part of the intermediation or insurance process should be exempt from VAT.
- **Outsourcing:**
If outsourced services are exempt when provided to insurers they should also be exempt for intermediaries so as to ensure a level playing field.
- **Claims handling activities:**
If claims handling activities are exempt when provided to insurers they should also be exempt for intermediaries so as to ensure a level playing field.
- **Non-concluded contract:**
The remuneration of the intermediary when the contract is not ultimately concluded should be exempt.
- **Option to tax:**
BIPAR would support such a measure. However, the modalities of the application of this option to tax must be clarified in order to achieve a workable solution.

The BIPAR VAT working party has been very active in ensuring that the current formal proposal reflects the interests of our sector in terms of exemption and application as much as possible. BIPAR VAT working party has been asked by the Czech Presidency to propose examples of intermediation activities which should be exempt from VAT and that the working party would like to see in the Regulation as guidance when interpreting the Directive. It has provided these examples on the basis that the exemption should be determined on an activity-based approach.

In the coming months, the BIPAR VAT working party will continue to work with the outgoing Czech Presidency and the upcoming Swedish Presidency (1 July – 31 December 2009) in order to continue to argue for our cause and to fine-tune and clarify the VAT proposal.

Directive on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II Directive)

On 5th May 2009 the European Council approved the proposed Solvency II Directive, that had already obtained the green light from the European Parliament on 22nd April. The Directive on the taking-up and pursuit of the business of insurance and reinsurance, replaces 14 existing Directives with a single one. The approved legislation seeks to ensure the financial stability of the insurance industry (and reinsurance) companies by introducing more sophisticated solvency requirements which will take better account of the risks the companies must deal with: insurance risks at present, and also market, credit and operational risks.

The Solvency II Directive is a framework Directive, which means that it sets out the principles to which the new system will be subject. On a large number of issues, more detailed implementing measures will be set down by the Commission, following consultations with market participants and Member States, under the supervision of the European Parliament.

The Solvency II Directive and the new supervisory approach

The new legislation changes the role of supervisory authorities from merely giving compliance, to a more proactive role, thanks to the supervision of risk management of individual companies based on a set of principles. As for Group Supervision, the text approved by the Parliament and the Council contains some improvements with regard to the current system, even if it does not go as far as to introduce the Group Supervision as proposed by the Commission. Supervisory colleges, made up of the various national supervisors responsible for a group and its subsidiaries, have been created. Their aim is to facilitate cooperation, exchange of information and consultation between supervisors. A review clause has been introduced in the text, enabling the Commission to come back to this issue in the future, when further progress has been achieved.

The Solvency II Directive and the IMD revision

Recital 95c of the Solvency II Directive formally requests the Commission to work on the revision of the Insurance Mediation Directive. The recital reads as following:

“Adoption of this Directive changes the risk profile of the insurance company vis à vis the policyholder. The European Commission shall as soon as possible, but no later than at the end of 2010, come forward with the proposal for revision of Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation taking into account the consequences for policyholders of this Directive.”

Solvency II and general impact on intermediaries

BIPAR working party on Solvency II published a guidance paper on Solvency II in December 2007 as well as another document entitled « Solvency II and captives » in July 2008 (both documents are available upon request at the BIPAR Secretariat).

Entry into force, review clause and next steps

Member States will have to transpose the new Directive by at the latest 31 October 2012. Two years after the Directive enters into force, the Commission is requested to put forward a legislative proposal to improve, if necessary, the application of some aspects of the Directive, including the cooperation of supervisory authorities. Three years after the Directive enters into force, the Commission will have to propose legislation to enhance Group Supervision and capital management within a group of insurance. BIPAR is closely monitoring this dossier.

Harmonisation of European Insurance Contract Law

On 17th December 2007, a European project group (several academic groups) published a draft set of Principles of European Insurance Contract Law (PEICL). The PEICL aims to set up a voluntary insurance contract law regime across the EU. It is part of a wider programme for the creation of a common frame of reference for European general contract law.

Although there has been significant progress towards a single European insurance market, relatively little cross-border insurance business is actually being done outside the field of large commercial risks. Differences in national laws and regulations mean that insurers still need to tailor their wordings to meet local requirements. By allowing parties to opt out of national law regimes and agree that the insurance contract will be governed by the PEICL, could change this situation. Once chosen, the PEICL would apply as a whole. There is some flexibility, however, in that any provision not designated mandatory can be derogated from, as long as it is not to the detriment of the insured. And in the case of certain risks (broadly, transport, credit and suretyship and commercial insureds over a certain size) derogation is allowed for the benefit of either party.

What is the scope of the PEICL?

The PEICL cover a wide range of matters. They include a cooling off period, an opt-out system of automatic annual renewals and time limits on making claims under the policy and damages for additional losses arising

from late payment of insurance claims. Under PEICL, insureds are only obliged to provide insurers with information in response to questions asked.

Impact on intermediaries

According to their authors, the PEICL aims initially at the possible adoption of an optional model of insurance contract. Consequently, the parties must be free to agree on the application of the PEICL, irrespective of any limitations of their contractual freedom existing on other grounds. As insurance intermediaries are not parties to the insurance contract, the PEICL does not therefore apply to them. Indeed, they could not be obliged to comply with provisions they would not have chosen. The PEICL contains no obligation for intermediaries. However, intermediaries

may be indirectly concerned by some of the provisions of the PEICL (for example, information requirements).

Furthermore, the PEICL contains a chapter on insurance agents but only states that an insurance agent is authorised to perform all acts on behalf of the insurer that according to current insurance industry practice are within the scope of his employment. Any restriction of the agent's authority shall be clearly notified to the policyholder in a separate document.

Next steps

The European Commission has launched an internal selection process with the aim of identifying which parts of the common frame of reference for European general contract law will be integrated into a forthcoming document, e.g. a Commission White Paper on a Common Frame of Reference (CFR).

BIPAR is closely monitoring this issue. On 4 June 2009 one of the authors of the PEICL, Dr Helmut Heiss, will address the BIPAR EU Committee meeting in Brussels. In September 2009 BIPAR will attend a conference on the PEICL in Vienna. The possible impacts of the PEICL on intermediaries will be addressed.

Financial Education: Expert Group and European Database for Financial Education

As announced in the Commission's Communication on Financial Education issued in December 2007, an Expert Group on Financial Education and an online database of financial education schemes and research in the EU were respectively set up in April 2008 and January 2009. While the European Commission considers that the primary responsibility for financial education remains with Member States, non-profit agencies and financial providers, it also thinks that the EU can be instrumental in providing practical assistance and those following two initiatives were identified as a matter of priority.

Expert Group on Financial Education

On April 2008 the European Commission set up an Expert Group on Financial Education (EGFE). The Group is composed of 25 financial education practitioners, representing both private and public stakeholders (national authorities, the financial services industry, consumer associations, academics, etc...). The Group's main objectives are to share and promote best practices on financial education and to advise the Commission on various issues in relation to financial education in the EU.

The first meeting of the Group took place on 7 October 2008 and focused on national strategies for financial education. The outcome of the meeting evidenced that

most of these strategies are coordinated by public bodies. Hence, it was outlined by the Group that ideally such strategies should rely on cooperation between public and private stakeholders. The Group confirmed the compelling need for financial education of European consumers who face increasing responsibility for their personal finance and – consequently – bear more and more financial risks. To facilitate the development of successful national strategies, the Expert Group issued a list of practical recommendations. The second meeting of the EGFE took place on 28 April.

BIPAR is closely monitoring the work of the Expert Group.

Practical recommendations of the Expert Group

- ✓ Relevant **evidence** should be gathered to identify the priority needs in the society, for example, through surveys at national or European level (e.g. the OECD PISA surveys of school curricula);
- ✓ Comprehensive **long-term action plans** should be developed which clearly state the objectives and how these are to be achieved;
- ✓ Single programmes should be **targeted** to specific groups, according to their differing needs;
- ✓ **Direct and proactive provision** of financial education should be encouraged, as much as maximising effectiveness of other provision channels,
- ✓ **Marketing** strategies should accompany each initiative to maximise the effectiveness of their impact on the target groups;
- ✓ Appropriate **funding** must be ensured to guarantee the effectiveness of programmes;
- ✓ **Evaluation** must be planned in the early stages of developing each national strategy as well as individual schemes.

European Database on Financial Education

The European Database for Financial Education (EDFE) is a new tool developed by the European Commission in January 2009 to help the European Consumers to get information on a wide range of schemes available across the EU. According to the European Commission, financial education should not be seen as the only means to address information asymmetries between consumers and providers, but rather as a complement to adequate consumer protection and to the responsible behaviour of financial services providers.

The creation of the EDFE accomplishes one of the priority initiatives laid down by the Communication on Financial Education. The European Commission seeks to improve consumers' financial capability by improving access to information, as reaching a wide audience is one of the success factors for financial education programmes.

The EDFE, which includes standardised information about educational schemes and research projects, has been designed to serve as an electronic library of financial

education programmes offered by public or private institutions within the European Union.

The database is open to all providers and potential users. This database will be open for updates and submission of information about new schemes on a continuous basis. Financial projects can be searched within the EDFE by a number of criteria, such as: the name of the provider, country, subject, matter covered, target audience or method of delivery used. Each entry will contain a brief description of the initiative, as well as standard characteristics and the links to the website and contacts of the provider.

BIPAR is of the opinion that the EDFE is an excellent opportunity for some of our members to make public information on any educational financial project they may currently undertake. In its last BIPAR Update, BIPAR informed its readers about the creation of this database, encouraging member associations to make their financial education schemes public.

Next EU Presidencies

The Council is presided for a period of six months (from January to June, and from July to December) by each Member State in turn, in accordance with a pre-established rota.

The Presidency of the Council plays an essential role in organising the work of the institution, particularly in promoting legislative and political decisions. It is responsible for organising and chairing all meetings, including the many working groups, and for brokering compromises.

2009: Czech Republic-Sweden	2015: Latvia-Luxembourg
2010: Spain-Belgium	2016: Netherlands-Slovakia
2011: Hungary-Poland	2017: Malta-UK
2012: Denmark-Cyprus	2018: Estonia-Bulgaria
2013: Ireland-Lithuania	2019: Austria-Romania
2014: Greece-Italy	

BIPAR mid-term meetings in Budapest

On 27 and 28 January 2009, BIPAR held its mid-term meetings in Budapest. More than 70 participants from 23 countries were present. The mid-term meetings were, as usual, the occasion to inform leaders of member associations about current European dossiers concerning the profession, in particular, the latest EU developments regarding the Insurance Mediation Directive (IMD) implementation and the regulation on retail investment products.

Chaired by Paul Carty, the EU Standing Committee meeting began on 27 January 2009 with a speech by Tomas Kukal, civil servant at the European Commission's DG Internal Market. He informed the participants on the state of play of the IMD implementation check, and more in particular, about some divergences existing in the national implementation of this EU Directive. He invited BIPAR to continue its close cooperation with the Commission on this issue. With regard to a possible future

IMD revision, Tomas Kukal shared with the participants some of the issues he would like to consider in the framework of this possible process, such as the definitions of intermediaries and the information requirements of a revised IMD. He added that a revised IMD could be a Lamfalussy Directive to ensure a maximum harmonisation of the new rules (i.e. Member States would not be allowed to go beyond the revised IMD provisions).

The second part of the EU Committee meeting was devoted to the follow-up of the DG Competition sector inquiry on business insurance, and in particular, on the coinsurance issue.

The second guest speaker at the EU Standing Committee meeting was Niall Bohan, head of Unit "Asset Management" of the European Commission's DG Internal Market. He explained to the participants that the distinction between retail investment products with similar economic



objectives is blurring and products are distributed through increasingly similar channels. He added that competition between products is potentially beneficial for investors but concerns exist that the regulatory framework has failed to keep pace. A fragmented regulatory approach raises the risk that investors do not always receive the information they need in a form they can use and that diverging regulatory frameworks could lead to unlevel playing fields. This could reduce market efficiency and for some products, impede cross-border distribution. Niall Bohan explained that the Commission aims to ensure consistently high product disclosure and sales practice standards for all packaged retail investment products irrespective of how they have been packaged or how they have been sold. Niall Bohan underlined that intermediary or point of sale regulation should ensure fair treatment of the investor and that conflicts of interest should not adversely affect clients.

Participants then exchanged information on national initiatives related to the financial education of the public and related to consumers' associations' surveys focusing on insurance intermediaries. Education of the public is an important issue at European and International level. Insurance intermediaries are increasingly requested to play an important role in this area.

BIPAR Agents' Standing Committee

Chaired by Gérard Lebègue

Foreword

*« Politics is not nominalism with glittering ideas and words, but realism inspired by principles. »
I chose this quotation from a French professor who became the French Prime Minister because it expresses well the value and the meaning of our commitment.*



Gérard Lebègue

The Agents' Standing Committee works unrelentingly to have the fundamentals of our profession - insurance mediation - respected and strengthened. Realism is obvious as we are at our clients' service and are faced daily with human and economic situations that are at the basis of our analysis and recommendation. Our professional ethics are based on principles, which also guarantee our insurance technique.

The report on our work carried out in 2008-2009 shows, if need be, the relevance of our analyses and our ability to implement our realist policy inspired by principles.

4 December 2008 was a successful day for the entire Agents' Committee. Some one hundred qualified persons gathered in the European Parliament to demonstrate the professionalism of European agents, who are in touch with their clients' needs.

Thank you for your work. Thank you for your trust. Let us continue with the same enthusiasm.

A handwritten signature in black ink, consisting of a large, stylized 'G' followed by a series of loops and a long horizontal stroke.

Gérard Lebègue

Conference at the European Parliament

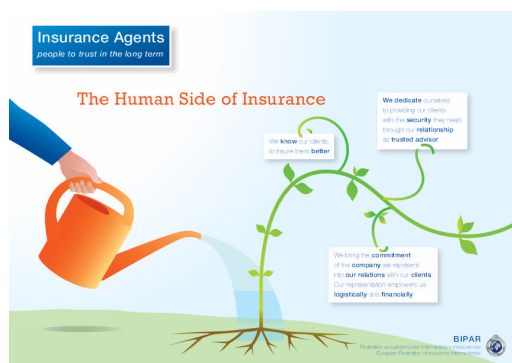
On 4 December 2008, BIPAR Agents' Standing Committee organised a two-hour public Conference at the European Parliament (EP) on the topic: *"Insurance agents and consumer protection in today's Europe"*. The Conference, which was the culmination of a four-day exhibition on the insurance agents' profession at the European Parliament, provided an interesting dialogue between panellists representing European insurance agents, insurers, SMEs, Members of the European Parliament (MEPs) and the European Commission.

Some 100 people attended the event, most of them were insurance agents coming from 10 different countries in Europe as well as their representatives, and there were also MEPs and representatives of other European and national federations (consumers, insurers). The Conference was closed by Mrs. Pervenche Berès, Chairwoman of the Economic and Monetary Affairs Committee.



Pervenche Berès

The purpose of the Conference was to present and to explain the profession of insurance agents' at European level and also to highlight the insurance agent's role in consumer protection. This event also aimed at improving the visibility of the insurance agents' profession with MEPs, who together with the Council of the European Union (Council of Ministers) are the European legislators, the organs in charge of adopting European Directives and Regulations, which, once implemented into national law, directly affect the profession.



First of 5 posters displayed during the exhibition

The Conference and exhibition (5 posters on the profession of insurance agent) at the European Parliament have turned out to be a successful initiative which has reinforced and improved the image of insurance agents at European level.

The exhibition presented the most important aspects of the insurance general agent's profession. The messages on the posters were drafted in a clear and concise way in order to reach both MEPs and the public who are generally not well informed about the agents' profession.

In addition to these posters, booklets containing information on agents in all European countries concerned were also available to the public.



(from left to right:) Isabelle Audigier, Jean-François Mossino, Philippe de Robert, Gérard Lebègue



(from left to right:) Gérard Lebègue, Tomas Kukal

Reinforced cooperation of agents at European level

In addition to the permanent information exchange between its members, BIPAR Agents' Committee decided a few years ago to reinforce agents' cooperation and to bring together the agents' in-house structures - of various countries - of networks of agents from the same company (Axa, Allianz, Generali,...) in order to study the policies of the latter with regard to their agents in different European markets. Today, an increasing number of decisions that concern the profession are taken at national level and it is important to have a global vision of a company's strategies to avoid possible negative effects and to benefit from favourable experiences of colleagues in other markets.

European Associations

The European Association of national organisations of AXA agents was set up on 29 June 2006 in Brussels. It has held three meetings during 2008 and 2009 (Berlin, June 2008; Madrid, September 2008; and Cologne, February 2009). The Association has successfully continued its work bringing together the agents' in-house structures of various countries and exchanging information and best practices. It is currently working on the creation of a European Directory for AXA insurance agents, which will mitigate difficulties for AXA insurance agents when providing their clients with AXA national products to cover risks situated outside their home country. The next meeting of the Association will take place in Rome in September 2009.



Hans-Peter Albers

*(Chairman of the
European Association of national
organisations of AXA agents)*

Allianz agents set up the European Association of national organisations of Allianz agents in April 2008. The Association has already started work exchanging information and best practices. The next meeting of the Association is scheduled in November 2009 in Munich.



Herbert Pilzweger

*(Chairman of the European
Association of national organisations
of Allianz agents)*

BIPAR Brokers' Standing Committee

Chaired by André Van Varenberg

Foreword

After six years of excellent chairmanship of the Brokers' Committee, Alessandro de Besi became BIPAR Secretary General. Having taken over the chairmanship from him already a year ago, I would like to share with you some questions and thoughts that have preoccupied me during this short period.

My first concern, and rightfully so, is about the role, the task and the place of the Brokers' Committee within BIPAR. I first asked myself whether, like the Agents' Committee, the Brokers' Committee was or not a direct or indirect resource at the disposal of the standing bodies that govern BIPAR and which bring added value to its member associations, i.e. the Steering Committee, the Management Committee, the EU Committee, the Directors' Committee and, of course the Secretariat. From personal experience, I would be inclined to say no. What is then the role of the Brokers' Committee? In my opinion, it is a forum for discussion and debate where all views can be expressed and confronted on various issues specific to this type of mediation which is mainly focused on business-to-business (B2B) activities.



André Van Varenberg

The different sizes of our companies, our multiple kinds of organisations and strategies, the divergent maturity level of our markets ensure a lively discussion on each issue that is taken up, on each personal experience, and as a result of all these mini brainstormings, each participant can benefit from this sharing of collective know-how. Nowhere in Europe have I found a similar place of this quality and credibility, which can be compared to this extraordinary concentration of experience that we have within the Brokers' Committee. As such and as an anticipation and observation tool, the Brokers' Committee can contribute to the added value brought by our standing bodies.


My second, more recent, concern was a result of the initiative taken in Budapest by our Chairman Alain de Miomandre, who launched two new discussion and debate platforms, one on mass markets and another one on B2B activities. I was first worried by this initiative, with regard to the role played by the Brokers' Committee, but then it seemed relevant to me.

If we refer to the issues that were taken up by the Brokers' Committee in Berlin or in Budapest, they fitted perfectly in the commercial lines session, which was tested in Budapest. And vice versa, the issues that were discussed at this commercial lines session, i.e. "international programmes", tax and (non-)admitted insurers were the subjects that are usually dealt with during the Brokers' Committee meeting.

What can we conclude for the future?

We know that Alain de Miomandre is carrying out a campaign to lessen the differences between agents and brokers and bring out their points of convergence. The Hungarian initiative of our Chairman is obviously part of this approach which arouses the interest in each of us. Is the split of our committees according to the intermediaries' status still relevant? Isn't the way in which we carry out our business much more influenced by the clients' profile, whether they are private individuals or companies? Aren't winning strategies, the key factors of success for each of these markets, poles apart?

According to me, the potential consequences of Alain de Miomandre's initiative need to be analysed thoroughly and discussed between us. Let us dare to open Pandora's Box intelligently, with the objective of making this miracle of a united BIPAR at the service of a multiple mediation even more legitimate tomorrow than it is today.

A handwritten signature in black ink, consisting of a large, sweeping loop on the left and a series of smaller, more intricate strokes on the right, ending in a long horizontal line that extends to the right.

André Van Varenberg

The BIPAR Brokers' Standing Committee met on January 28, 2009 at BIPAR mid-term meetings in Budapest, Hungary.

The following issues were discussed:

- **The DG Competition's Business Sector Inquiry follow-up**

The Brokers' Committee was briefed on DG Competition's follow-up strategy to the Business Sector Inquiry that was conducted in 2006-2007. Nic De Maesschalck announced that the European Commission will send out questionnaires to various market players and consumers with the objective to measure the level of impact that BIPAR's high level principles on coinsurance have had.
- **Competition authority survey in France**

Yves Renard, Chairman of the French association CSCA, held a presentation on a competition authority survey conducted in the French market. The Committee was informed that there was a lot of criticism towards the profession of brokers in the French market. A leading French insurance magazine had for instance published an article that reflected the outcome of the French competition authority survey. This presentation highlighted the fact that following DG Competition's business sector inquiry, national competition authorities may begin to take action in their own markets.
- **Insurance carrier security**

The Chairman of the Brokers' Committee, André Van Varenberg, gave a presentation on insurance carrier security which opened a discussion amongst the Committee's members on the role of insurers, supervisors and credit rating agencies. The potential position of intermediaries on this issue was discussed and the contents of this discussion will be taken into consideration in BIPAR's future policy. It was agreed that, an intermediary cannot be responsible for the work of the supervisor. However, the intermediary may take certain precautions so as to protect his reputation and to be able to provide the best service to the client.
- **IT standardisation**

It was highlighted that there are different IT standards in different markets. An exchange of information on market experience on IT standardisation resulted in that the participants agreed that this should be a strategic issue for brokers and that an IT system which allows for easy communication between differing markets would provide for improved efficiency. The Brokers' Committee noted that a Solvency II regime may create a greater need for insurance companies and insurance supervisors to exchange standardised information electronically.

For further information, please consult the minutes of the Brokers' Standing Committee meetings available at the BIPAR Secretariat upon request.

BIPAR EU Social Affairs Committee

Chaired by Didier Pissoort



Didier Pissoort

In 1998 the European Commission decided to launch Sectoral Dialogue Committees promoting dialogue between the social partners in the sectors at European level. The Insurance Sectoral Social Dialogue Committee (ISSDC), which is an informal working group, was established in 1999 and its purpose is to assist in facilitating the integration into the European social dialogue of social partners in the new Member States. The ISSDC comprises, on the one hand, the employers of the insurance sector represented by BIPAR, the CEA (European Insurance and Reinsurance Federation), the Association of Mutual Insurers and Insurance Cooperatives in Europe (AMICE) and, on the other hand, the employees represented by Union Network International–Europa Finance (UNI-Europa). BIPAR has for many years played an active role in this social dialogue between the employers and the employees in the insurance sector. The BIPAR EU Social Affairs Committee, chaired by Didier Pissoort, takes an active role in participating in the European Social Dialogue in order to protect the interests of intermediaries.

BIPAR activities

Demography

The ISSDC working group has for the past year been working on drafting a joint statement on demographic development to be addressed to the industry. The initiative was taken due to the noticeable changing age structure. This represents a great challenge for the industry's future and in particular to pensions insurance. The draft joint statement aims at guiding insurers - as employers - and employees to deal with work and life balance, qualifications and life-long learning and health and safety at work.

The ISSDC working group intends to follow up on this joint statement after its release by monitoring the developments through initiatives such as sending out questionnaires. Furthermore, the working group intends to publish a guidance booklet containing suggestions for "best practices" a year after the release of the joint statement. This booklet will be regularly updated as needed.

Once the ISSDC working group has a final draft proposal of this joint statement, BIPAR will request the approval of the contents from our member associations before it is tabled for approval in the ISSDC plenary.

Enlargement project

The objective of this project is to integrate the partners in the new Member States into the practice of the Insurance industry in the older Member States and also vice-versa. It is important that the new Member States are introduced to the European social dialogue structures as soon as possible so as to ensure exchange of information and integration. In 2008, various BIPAR member associations in the so-called new Member States actively participated in this enlargement project. Ms Anna Palos held a presentation on the Hungarian insurance broker market in one of the Social Dialogue workshops held in Budapest in June 2008. The workshop aimed at facilitating the integration into the European social dialogue of the social partners of the new Member States in the insurance sector.

International Affairs

World Federation of Insurance Intermediaries

Background

BIPAR is a member of the World Federation of Insurance Intermediaries (WFII). WFII was established in 1999 and is now recognised by all international institutions that have influence on our sector (OECD, IAIS, WTO, UN, World Bank, IMF) as the single voice of insurance intermediaries in international Public Affairs. WFII has recognised observer status in the OECD and the IAIS and is regularly consulted on current issues in the market.

Other **members of WFII** are:

- for North America:
 - CIAB (Council of Insurance Agents and Brokers),
 - IIABA (Independent Insurance Agents and Brokers of America)
 - IBAC (Insurance Brokers Association of Canada).
- For Africa:
 - FIA (Financial Intermediaries Association of Southern Africa)
- for Asia/Pacific Rim:
 - CIIBA (Council of International Insurance Brokers Associations)
- for Latin America:
 - COPAPROSE (Confederacion Panamericana de Productores de Seguros)

WFII works on the basis of principles and positions and, in its recent history, the structure has proven to be efficient and effective in the promotion and defence of our sector's interests at international institutions' level.



David Harari

In 2008/2009 David Harari, former chairman of BIPAR, was the Chairman of WFII. Mr Harari's successor who will be chairing WFII in 2009/2010 is Elizabeth Demaret (USA)

The WFII Secretariat is run by the BIPAR Secretariat. Nic De Maesschalck, the BIPAR Director, is also the Director of WFII.



Elizabeth Demaret

In 2008/2009 WFII activities included, amongst others, the following:

The World Council meeting of 2009

The 2009 annual WFII World Council and Executive CSE Committee meeting took place in Washington D.C. on 9-10 March. The following BIPAR representatives participated in the World Council and the Executive CSE Committee in Washington D.C: Alessandro De Besi, Ulrich Zander, David Harari, Alain de Miomandre, David Hough, Jaap Meijers, Niels Mourits. Nic De Maesschalck and Gabriella Almberg were present in their respective functions of WFII Director and WFII legal adviser.

The IAIS Annual Conference 2008

WFII attended the Annual IAIS Conference that took place in October 2008 in Budapest. The underlying discussion throughout the Annual IAIS Conference 2008 was, inevitably, the global financial crisis. There were over 600 participants in this Conference (half were supervisors from around the globe and half insurance industry representatives).

WFII's Chairman, Mr. David Harari, participated as a speaker in a panel on market conduct. Other persons in that panel were: Peter Braumüller, Chairman of the IAIS, Victor Rod, Chair of CEIOPS Committee on Consumer Protection, Mr. Shizuharu Kubono Vice-Chairman, Life Insurance Association Japan, and Ms. Anna Horáth, Consumer Protection Expert, Hungarian Financial Supervisory Authority.

Mr. Harari presented the role of intermediaries and discussed the topics around market conduct with regard to intermediation (speech available upon request at the BIPAR Secretariat).

The IAIS Market Conduct Subcommittee

WFII has observer status in the IAIS Subcommittee on Market Conduct. The WFII attended the Market Conduct meeting in Paris in early December 2008 and got a thorough briefing of the subcommittee's

agenda for the forthcoming years. WFII has again been invited to participate and to give a presentation on the changes to the insurance intermediation sector in the subcommittee meeting taking place in May 2009.

The OECD in 2008 and 2009

WFII attended the OECD Insurance & Private Pensions Committee and the round table in June and December 2008 in Paris.

In December, a session was dedicated to the crisis. Most authorities, even though not active in implementing measures, were preparing potential measures in anticipation of possible problems that might hit the insurance sector.

WFII has been asked to contribute to the OECD survey on insurance intermediation and financial education. Education of the public is an issue currently on the agenda of both the OECD and the IAIS. WFII is actively monitoring and taking part in this discussion. Furthermore, WFII has been invited to present its position on this issue and to nominate an expert on financial education of the public to sit on the panel at the OECD IPPC (Insurance and Private Pensions Committee) round table discussion which will take place in July 2009.

The FATF (The Financial Action Task Force)

The FATF is currently developing guidance on the risk-based approach, guidance to combating money laundering and terrorist financing, dedicated to the insurance sector. The FATF Secretariat is consulting with WFII on the possible involvement of insurance intermediation in this risk-based approach guidance.

For a complete overview of the issues of direct or indirect importance for insurance intermediaries on the agenda of international fora, reference is made to WFII's "**News from the World**" which is regularly distributed to all BIPAR members.

The following are three examples of the issues on the international agenda that are closely followed by WFII:

- **Market Conduct**

In 2008/2009 specific attention was given to the IAIS preparation on new standards and guidance related to market conduct. The IAIS will redefine new international standards for supervisors and regulators on issues such as conflicts of interest, transparency, definition of intermediation and product suitability. With regard to the possible impact on the intermediation sector, this is one of the most important initiatives of the IAIS in many years and the standards will become a reference for national regulators for the years to come.

In 2008/2009 WFII participated in the IAIS and OECD debates regarding market conduct and the positions of WFII were promoted and defended.

- **Multinational placements**

As global trade expands, intermediaries face the challenge of placing insurance policies to cover insureds' global risks. Master policies are often used for certain types of global business risks, i.e. global property, Difference in Conditions (DIC) policies, umbrella liability, D&O liability and E&O coverage. The use of master policies can offer distinct advantages to the insured by providing comprehensive coverage and by helping to avoid coverage gaps. Furthermore, a master policy can help the insured manage its multinational risks more efficiently. Unfortunately, there are many barriers to placing global policies. Conflicting tax and insurance laws and regulations country to country make it difficult to make effective use of master policies.

WFII started a working party on multinational placements in order to identify all issues for intermediaries in this respect and to develop (in the long term) a WFII position.

- **Microinsurance**

The concept of microinsurance is of growing importance in an increasing number of markets. At the World Council meeting in Washington, speaker Michael McCord from the Microinsurance Centre held a presentation on the need for intermediaries in the microinsurance market.

A WFII working group on microinsurance is continuing to closely monitor developments in this area and to evaluate WFII's future role in this issue.

Glossary

AMICE	Federation of Mutual Insurance Companies
APR	Annual Percentage Rate
BER	Block Exemption Regulation
CEA	<i>Comité européen des assurances</i> (European Insurance and Reinsurance Federation)
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CFR	Common Frame of Reference
DG	Directorate General
Directive	“A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.” ¹
EDFE	European Database for Financial Education
EGFE	Expert Group on Financial Education
FATF	Financial Action Task Force
FOE	Freedom of establishment
FOS	Freedom of services
FSA	Financial Services Authority (UK)
Green Papers	“Green Papers are documents published by the European Commission to stimulate discussion on given topics at European level. They invite the relevant parties (bodies or individuals) to participate in a consultation process and debate on the basis of the proposals they put forward. Green Papers may give rise to legislative developments that are then outlined in White Papers.” ²
IAIS	International Association of Insurance Supervisors
IMD	Directive on Insurance Mediation
IMEG	Insurance Mediation Expert Group
IMF	International Monetary Fund
MEPs	Members of the European Parliament
MiFID	Markets in Financial Instruments Directive
OECD	Organisation for Economic Cooperation and Development
OECD PISA	OECD Programme for International Student Assessment
PEICL	Principles of European Insurance Contract Law
PRIPS	Packaged Retail Investment Products
Regulation	“A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.” ¹
SMEs	Small and Medium-sized Enterprises
SPCs	Standard Policy Conditions
UCITS	Undertakings for Collective Investment in Transferable Securities
VAT	Value Added Tax
White Papers	“The Commission’s White Papers are documents containing proposals for Community action in a specific area. In some cases they follow a Green Paper published to launch a consultation process at European level. When a White Paper is favourably received by the Council, it can lead to an action programme for the Union in the area concerned.” ²
WTO	World Trade Organisation

¹ article 249 of the consolidated version of the Treaty establishing the European Community – Official Journal of the EC of 24.12.2002-C325/33

² « Europa », Gateway to the European Union

BIPAR Principles on transparency in insurance

(June 2008)

Introduction (integral part of the principles)

Regarding these principles the following should be considered:

- The overall price of an insurance solution (insurance premium) includes various factors (risk premium, administrative costs, acquisition costs, insurer's profits, re-insurance costs, taxes,...) of which the remuneration⁽¹⁾ for intermediation can be one. The overall price should be considered by the client in relation to the quality of the insurance and the nature and value of the related services.
- The intermediaries sector is highly competitive and existing modern regulation and competition protects the consumer effectively. Competition and regulation mitigates importantly and effectively conflicts of interest. Where conflicts would arise, intermediaries should, as in every economic activity, identify them and manage and mitigate them in a way which is commensurate with the nature of the business and the conflict.
- BIPAR is aware that insurance is a complex business with many aspects. Intermediaries, through their know-how and services, add real value to the process for the client and for the insurer in the interest of the client. The complexity of the sector could create the perception of a lack of transparency in some cases. In order to deal with that concern and in order to further enhance trust, BIPAR developed the principles below.
- It should be recognized that in many markets, regulation, legislation (common law or specific regulation), individual or industry initiatives which reflect some or all of the principles, adapted to national market circumstances, are already in place.
- BIPAR believes that further regulation is not desirable. Regulation would be more expensive for the society than industry led initiatives. Industry led initiatives can be more flexible, efficient and better adapted to market circumstances.
- National associations, members of BIPAR, are invited to develop a policy which reflects the principles and to modulate the details of the principles to take into consideration existing national regulation, complexity of the product, market circumstances, fair competition and level playing fields. BIPAR requires the same level of transparency from alternative forms of distribution to ensure a level playing field.

⁽¹⁾ Remuneration means any form of brokerage, commission, fee or other compensation in connection with an intermediation activity.

Principles on transparency in business insurance ⁽¹⁾

1. Intermediaries should provide business insurance buyers with sufficient and clear information to make informed decisions about the purchase of insurance products and about the nature of their services.
2. Intermediaries should inform the clients about the existence of underwriting powers and delegated authorities in relation to the contract.
3. Clients are entitled to request information regarding any remuneration an intermediary has received as a result of placing the insurance business and regarding any other aspect of the insurance premium. BIPAR requires the same level of transparency from alternative forms of distribution to ensure a level playing field.
4. Intermediaries should inform business clients about the nature of their remuneration.
5. Intermediaries will, upon request of the business client, disclose their remuneration related to the contract. BIPAR requires the same level of transparency from competing alternative forms of distribution to ensure a level playing field.

⁽¹⁾ The definition of business insurance for the purpose of these principles will be developed in the future. At this moment, national associations, members of BIPAR, are invited to define business insurance in function of the national market circumstances and to modulate the details of the principles to take into consideration existing national regulation, complexity of the product, market circumstances, fair competition and level playing fields.

BIPAR principles for transparency for life with investment element products

1. Intermediaries should provide insurance buyers with sufficient and clear information to make informed decisions about the purchase of insurance products and about the nature of their services.
2. Intermediaries should inform clients about the existence of underwriting powers and delegated authorities in relation to the contract.
3. Clients are entitled to request information regarding any remuneration an intermediary has received as a result of placing the insurance business and regarding any other aspect of the insurance premium.
4. BIPAR is of the opinion that transparency about the costs related to a life insurance with an investment element (making clear the difference between the premium paid and the actual invested part of the premium) is desirable.
5. Intermediaries will disclose their remuneration in relation to the contract upon request of the client.
6. BIPAR requires the same level of transparency from alternative forms of distribution and from substitutable (or comparable) investment product providers and their distributors or intermediaries to guarantee the level playing field and to ensure comparability.

BIPAR principles on transparency in private insurance

1. Intermediaries should provide insurance buyers with sufficient and clear information to make informed decisions about the purchase of insurance products and about the nature of their services.
2. Intermediaries should inform clients about the existence of underwriting powers and delegated authorities in relation to the contract.

BIPAR 47 member associations in 31 countries

EU COUNTRIES

► Austria



Fachverband Versicherungsmakler und Berater in Versicherungsangelegenheiten



Verband Österreichischer Versicherungsmakler (VÖVM)

► Belgium



Fédération des Courtiers d'assurances et Intermédiaires financiers de Belgique (FEPRABEL)



Federatie voor Verzekerings- en Financiële tussenpersonen (FVF)



Union Professionnelle des Courtiers d'Assurances (UPCA)

► Czech Republic



Association of Czech Insurance Brokers

► Cyprus



Pancyprian Federation of Professional Intermediaries (PSEAD)

► Denmark



Danske Forsikrings- og Pensionsmæglere

► Estonia



Estonian Insurance Brokers Association

► Finland



Finnish Insurance Brokers Association

► France



Fédération Nationale des Syndicats d'Agents Généraux d'Assurances (AGEA)



Chambre syndicale des courtiers d'assurances (CSCA)

► Germany



Bundesverband Deutscher Versicherungskaufleute e.V. (BVK)



Verband Deutscher Versicherungsmakler e.V. (VDVM)

► Greece



Hellenic Insurance Brokers Association (HIBA)

Hellenic Federation of Insurance Agents (HEFEPI)



Panhellenic Association of Insurance Advisors (PSAS)

► Hungary



Association of Independent Insurance Brokers of Hungary

► Ireland



Irish Brokers Association (IBA)

► Italy



Associazione di Categoria Brokers di Assicurazioni e Riassicurazioni (ACB)

Associazione Italiana Brokers di Assicurazioni e Riassicurazioni (AIBA)



Sindacato Nazionale Agenti di Assicurazione (SNA)

► Lithuania



Chamber of Insurance Brokers of Lithuania

► Luxembourg



Association Luxembourgeoise des Intermédiaires Professionnels d'Assurances (ALUPASS)



Ordre Luxembourgeois des Courtiers en Assurances (OLCA)

BIPAR 47 member associations in 31 countries

► Malta



Association of Insurance Brokers of Malta

► The Netherlands



Nederlandse Vereniging van Assurantieadviseurs en Financiële dienstverleners (NVA)



Nederlandse Bond van Assuratiebemiddelaars (NBVA)

► Poland



Association of Polish Insurance and Reinsurance Brokers



Chambre Polonaise des Intermédiaires d'Assurances et de Finance

► Portugal



Associação portuguesa dos produtores profissionais de seguros (APROSE)

► Romania



UNSICAR

► Slovakia



Slovak Association of Insurance Intermediaries (SASP)

► Spain



Asociación Española de Corredurías de Seguros (ADECOSE)



Consejo General de Colegios de Mediadores de Seguros Titulados

► Sweden



Swedish Insurance Brokers Association

► United Kingdom



British Insurance Brokers' Association (BIBA)



London & International Insurance Brokers' Association (LIIBA)



Association of Independent Financial Advisers (AIFA)

NON-EU COUNTRIES

► Israel



Association of Insurance Brokers and Agents in Israel

► Lebanon



Lebanese Insurance Brokerage Syndicate (LBS)

► Norway



Norwegian Association of Insurance Brokers

► Russia

Professional Insurance Brokers & Consultants Association (PIBCA)

► Switzerland

Fédération Suisse des Agents Généraux d'Assurances (SVVG/FSAGA)



Swiss Insurance Brokers Association (SIBA)

► Turkey



Turkish Association of Insurance Brokers

► Ukraine



Federation of Insurance Intermediaries of Ukraine (FIU)

BIPAR Steering Committee 2008-2009

➤ Management Committee:

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Alain de MIOMANDRE

OUTGOING CHAIRMAN



Manuel VILA

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Jaap MEIJERS

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TREASURER



Ulrich ZANDER

HONORARY SECRETARY GENERAL



Frank E. de JONG

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- Gunnar HÖKMARK
- Hans-Georg JENSSEN
- Philippe MAGNE
- Yossi MANOR
- Jean-François MOSSINO
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