

BIPAR Update

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Editor: BIPAR Secretariat
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Sector inquiry into business insurance: follow up – BIPAR high-level principles on co-insurance

On 26 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 either to clarifying or to reviewing the practices in question. No deadline is given for such action.

Regarding the **co- and reinsurance market**, the final report raises concerns about industry practices in this sector, involving the alignment of premiums, which 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 either to justify the business practices concerned under the competition rules, or to reform them.

BIPAR principles

After consultation with the UK 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. At the BIPAR mid-term meeting in Madrid, a representative of the European Commission's DG Competition said the following about these high-level principles: *"The Commission very much welcomes BIPAR's initiative and these High Level Principles. They are constructive and in the spirit of discussions we have had with market*

parties. Implementation will now be key but if practices change in accordance with these high level principles it will remove our immediate concerns. We are calling on market parties to develop new and creative ways of completing placements at the most advantageous terms for clients. We will closely monitor the situation going forward." 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 co-insurance. The CEA, the European insurance and reinsurance federation, declares the following about these principles: *"The CEA, the European insurance and reinsurance federation, welcomes the following high-level principles for placement of a risk by brokers with multiple insurers. The CEA calls on its member associations and their member firms to give adequate consideration and follow-up to these principles"*.

Other issues of concern

Regarding **insurance intermediaries**, the report highlights conflicts of interest and a lack of transparency in the way that insurance intermediaries are remunerated. The Commission believes that in some cases this could lead to less competition, less choice and higher prices, especially for SMEs.

Together with its member associations, BIPAR is working on possible actions on this issue, and, more in particular, on industry driven initiatives which would deal with the concerns in the final report.

In respect to the **Block Exemption Regulation (BER)** - the EC Treaty prohibits anti-competitive

agreements, but the BER grants an exemption for certain forms of insurance and reinsurance cooperation agreements- which will expire on 31 March 2010 unless it is renewed and although the industry supports it, the Commission does not see at present any compelling reasons for renewal. At

the end of April 2008, the European Commission launched (the announced) consultation paper on block exemptions. BIPAR created a Working Party to prepare an answer by mid-July 2008.

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IMD: Commission's implementation checks and possible review-CEIOPS IMEG last report – New CEIOPS committee on consumers' protection

The Insurance Mediation Directive (IMD) has now been transposed by all Member States although full transposition was only achieved recently despite the transposition deadline of 15th January 2005.

The BIPAR Secretariat will send at the beginning of June to its member associations the latest update of its survey on the IMD implementation in the EU Member States.

Commission's implementation checks and possible review

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. In its comments on the Green Paper, BIPAR said that as the IMD has just been implemented, it is too early to assess whether it has achieved its goals. The Commission should ensure that once the IMD has been absorbed by national legislation, the profession will be allowed an adequate period without having to further adapt to a fluctuating legislative environment.

In its recent speeches on this issue, European Commissioner for the Internal Market, Charlie McCreevy, stated that no immediate legislative changes were necessary and that amendments could only be considered after a proper examination of the IMD implementation, a full impact assessment and an extensive consultation. At the moment, the Commission (DG Internal Market) is therefore completing the checks on the transposition of the IMD in cooperation with CEIOPS and BIPAR. They have also received three complaints on wrongful transposition in three countries. If the focus today is on thorough implementation and enforcement, the Commission does not exclude however that a review could take place at a later stage which does not mean that there will be legislative changes.

It must also not be forgotten that in its final report on business insurance, the Commission stated that it intends, in the framework of the review of the IMD, to look at conflicts of interest and lack of transparency in the way that insurance intermediaries are remunerated.

Last CEIOPS IMEG survey on possible amendments of IMD/ Luxembourg protocol¹ – New CEIOPS committee on consumer protection

Further to the publication of its status report on the implementation of the key provisions of the Insurance Mediation Directive - the report was prepared by the members of the Insurance Mediation Expert Group (IMEG) which was chaired by Victor Rod (Commissariat des Assurances (CAA), Luxembourg) - which indicated that there is a need for clarification on some terminology used in the IMD and that some of the IMD's requirements are impractical from the perspective of day-to-day supervision or providing insurance mediation, CEIOPS decided to conduct an inquiry on possible amendments to the IMD and the Luxembourg Protocol with a view to improving the regulation of cross-border services and facilitating mediation activities. BIPAR has been discussing the issue with IMEG and has already strongly requested that any revision or amendments that may be considered by the European Commission or CEIOPS be first properly assessed so that they do not lead to unjustifiable costs on market practitioners and ultimately, consumers. The consolidation phase is of crucial importance.

A report was issued end of March 2008. Three proposals were adopted by the updating of the Luxembourg Protocol. They concern the addition of an informational reference to the Directive on mutual recognition, the adoption of the out-of-court handling of consumer complaints and the completion of Annex I with the list of the competent authorities for registrations under the IMD. The majority of the IMEG members agreed that no amendment to the IMD is necessary for the moment and that the implementation of the IMD is still in its infancy. It was further agreed that the two proposals made by the IMEG members with regard to the scope of the IMD and the geographical adjustment of PII requirements were worthwhile to analyse more deeply, for example, in the framework of the review of the IMD by the European Commission. With the publication of this report, CEIOPS IMEG considered its mandate as achieved. However, IMEG members confirmed their willingness to contribute to a possible European Commission's review of the IMD and to the publication of best practices in the implementation of the IMD. They intend to continue

¹ framework for the cooperation of competent authorities of the EU Member States with regard to the implementation of the IMD

the exchange of information on these issues in the context of CEIOPS' new working group on consumer protection.

Indeed, 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 Group. The new Committee's work will cover 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 will continue the exchange of information on the practical implementation of the IMD, publish "Best Practices on the implementation of the IMD" based on the conclusions reached by CEIOPS' Intermediaries' Expert Group, update the Luxembourg Protocol regularly, contribute to a future review of the IMD by the European Commission, 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 good provisions.

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Proposal for a Directive on VAT for insurance and financial services

On 27 November 2007, the European Commission published a proposal for a directive aimed at modernising and simplifying the VAT rules for financial and insurance services. These services are generally exempt from VAT but the exemption dates from 1977 and no legislation has been updated further to be in line with the developments that have occurred since then in the sector.

CONTENT OF THE DIRECTIVE

The proposal follows a three-fold objective:

1. Redefinition of the scope of the exempt services

This redefinition should ensure that the exemption better reflects the complexity and diversity of today's financial services. The proposal for a directive is accompanied by a proposal for a regulation which gives examples of exempted and non-exempted financial services.

The proposal for a directive sets a new definition of exempted mediation services. The BIPAR Working Group on VAT considers that this new definition covers 95% of insurance intermediaries' activities. The remaining 5% refers to very technical and detailed issues. In this respect, the BIPAR Working Group continues to work with the European Commission to ensure that the remaining 5% are exempted. It also wants to make sure that the new definition on mediation reflects the conclusions drawn on 3 April 2008 by the European Court of Justice on the "Beheer" case². According to this case, application of exemption to mediation activities

"does not preclude the activity of insurance broker and agent from being broken down into separate services which may then fall within" the exemption. These services would therefore not be subject to VAT.

2. Possibility for banking and insurance companies to opt to tax their services if they wish.

The BIPAR Working Group on VAT is currently analysing the practical impact of such an option at European level. The proposal for a directive does not include any details on this.

3. Introduction of an industry specific exemption from VAT on cost sharing arrangements, including those which are cross border.

PROCEDURE

Once published by the European Commission, the proposal for a directive must be adopted unanimously by the Council of the European Union. The latter has already started discussing on the directive and is expected (according to an optimistic scenario) to adopt it in 2009.

Even if only the Council has the decision power, the European Parliament has the right to issue an opinion on the proposal. In this regard, Mr Joseph Muscat (Malta) has been appointed as "rapporteur" and is preparing the opinion of the European Parliament. The BIPAR VAT Working Party has already contacted him to explain the BIPAR position on the issue.

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² Case C-124/07, J. C. M. Beheer c) Staatssecretaris van Financien, of 8 April 2008

Commission's public consultation on insurance guarantee schemes

Only a few EU Member States have insurance guarantee schemes in place. The lack of Community harmonisation in this area may create problems for the protection of policyholders in case of the winding-up of an insurance undertaking. For some years the European Commission has therefore been examining with the Member States and the industry the possible elements and areas of harmonisation of guarantee schemes for insurance policyholders at European level. In its White Paper on Financial Services Policy 2005-2010 the Commission recognised that a decision was needed on whether or not to propose legislation in this area. In order to have a comprehensive picture of the situation in the EU Member States and a better insight into the functioning of existing schemes, the Commission contracted the OXERA consultancy to conduct a study on IGS in the EU, both for life and non-life insurance (excluding motor insurance).

The report, issued in November 2007, provides a detailed description and comparative analysis of the existing EU IGS for life and non-life insurance. The report examines the need for, and role of, an IGS as

a last resort protection mechanism, and the cost of establishing such a scheme. Based on the assessment of the current situation and the potential problems arising from the coexistence of different national approaches to IGS, the report also presents an evaluation of the options available to improve the status quo, both at national and EU level.

In order to provide stakeholders with the opportunity to comment on the main findings of the OXERA and to make known their views on the desirability and feasibility of Community action in this area, the Commission has now launched a consultation on the report. The Commission will take account of the results of this public consultation when making its policy decision on the way forward on the IGS dossier. The Commission will also hold a **public hearing** on IGS in Brussels on **02 June 2008**.

BIPAR will consult its members before submitting its views to the Commission by 7 July as requested and will also participate in the Commission's public hearing.

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Adoption of the Consumer Credit Directive

In April 2008 a new Consumer Credit Directive was adopted by the EU legislators after six years of debate. The Directive applies to credit above €200 and below €75,000 and it only covers credit contracts, not guarantors. It will only apply to loan contracts on which interest is paid, and not products such as deferred payment cards (charge cards) or mortgage credit.

The Directive sets out new requirements specifying the list of items to be provided, including type and duration of credit, APR, borrowing rate, total amount of credit and charges included, amongst others.

Pre-contractual information must be provided by means of a Standard European Consumer Credit Information (SECCI) form as set out in the Annex to the Directive. Overdrafts and certain other types of credit agreements are subject to more simplified provisions.

The creditor shall assess the consumer's creditworthiness on the basis of sufficient information, where appropriate, obtained from the consumer, and where necessary, on the basis of a database consultation. Before granting any significant increase in credit, the creditor should update the information at his disposal and assess the consumer's creditworthiness. If a credit application is rejected on the basis of a database search, the creditor shall inform the consumer immediately and without charge of the result of the consultation and the particulars of the database consulted.

There shall be a 14-day period right of withdrawal during which consumers may withdraw from the contract without providing any reason. This may be reduced to three days in the case of linked credit agreements at the explicit request of the consumer (e.g. for the purchase of white goods where consumers want to take immediate delivery).

The Directive gives the consumers the right to early repayment, while entitling the lender to ask for compensation for possible costs, fairly and objectively justified, which are directly linked to the early repayment of credit. The Directive sets out the rules for calculating compensation, defines situations where compensation cannot be claimed and allows Member States to provide that a creditor may exceptionally claim a higher compensation.

BIPAR

BIPAR Life and Investment Committee's lobbying of the EP Committee has succeeded in introducing important amendments re the obligation of credit intermediaries:

Credit intermediaries incur a number of fixed costs in providing advice, which they recover from either the client or lender or a combination of the two. The proposed Directive prohibited credit intermediaries from receiving a fee from their client if they had received commission from the lender or vice versa. The amended and final Directive deleted this prohibition and introduced instead a requirement for a fee to be disclosed to the consumers; it ensures therefore (in return) the advisers and their clients the freedom of choice and flexibility.

The proposed Directive also prohibited intermediaries from charging a fee for their service if the credit agreement with the consumer is not concluded. For BIPAR, professional advice comes at a cost and advisers should be able to charge for it regardless of whether a recommendation is followed through or not. Any remuneration or compensation for services of an adviser should be considered as an issue between the parties. The final Directive deleted this prohibition and states that fees have to be

agreed between the consumer and the credit intermediary on paper or another durable medium before the conclusion of the credit agreement.

Next steps

Member States must transpose the Directive into national law within 2 years of the Directive's entry into force and a review will be undertaken 5 years after the Directive's entry into force.

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Survey on credit intermediaries

As announced in its Green Paper on Retail Financial Services in May 2007, the European Commission is working on a possible European legal framework for credit intermediaries. Before deciding whether or not to come forward with a formal proposal for a Directive on credit intermediaries, the Commission has 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 has recently 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 is gathering information and views from key stakeholders across the 27 Member States. To this end it has prepared a questionnaire, only in English, on the activities of credit intermediaries (national market, fees, cross-border lending, trends and regulatory environment) and has requested BIPAR to forward it to its national member associations that represent intermediaries carrying out credit mediation and also to these intermediaries themselves. BIPAR will also answer some of the questions on the questionnaire regarding EU level regulatory environment.

BIPAR Life and Investment Committee, and in particular its working group on credit intermediaries, met the European Mortgage Federation on 25 April in order to share views on the possible need of EU-wide regulation on credit intermediaries. It has also been discussing what the regulatory situation is with regard to credit intermediaries at the level of some Member States and the likely characteristics of EU-wide regulation, if this should come about.

Link to questionnaire

The questionnaire can be found as follows:

<http://www.surveymethods.com/EndUser.aspx?DCF8948DDF968F86>

At European Parliament level

Gianni Pittella, Member of the European Parliament and of its Economic and Monetary Committee, issued a draft non-binding report on the Commission's competition sector inquiry on retail banking. In this report the MEP called on the Commission to intensify its work on credit intermediaries in order to ensure consumer protection and avoid mis-selling practices. BIPAR proposed amendments to this report saying that it is premature to state this before the drafting and publication of the UK consultant survey on credit intermediaries. Thanks to the lobbying efforts of some of our member associations, these amendments were tabled and voted early May in Committee meeting. Vote in plenary meeting will take place on 4 June 2008.

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BIPAR, the European Federation of Insurance Intermediaries

BIPAR is a non-profit European organisation grouping professional associations of insurance intermediaries in Europe.

It presently has a membership of 46 national associations, established in 30 countries, and represents some 80,000 insurance agents and brokers, employing in all about 250,000 people.

Founded in Paris in 1937, BIPAR has been established in Brussels since 1989. It is today the official and recognised voice of insurance intermediaries with the European Institutions.

BIPAR's current Chairman is Manuel Vila, a Spanish broker. Its incoming Chairman is Alain de Miomandre, a Belgian broker, and its outgoing Chairman is David Harari, a French broker. BIPAR's Director is Nic De Maesschalck.

BIPAR

Av. Albert-Elisabeth, 40
B - 1200 Brussels
Tel: 0032-2-735.60.48
Fax: 0032-2-732.14.18
bipar@skynet.be

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