

Towards the revision of the Insurance Mediation Directive

This article reflects an interview BIPAR had with Mr Tomas Kukal, European Commission, DG Internal Market, Chief Lawyer, on the occasion of the European Forum for Insurance Intermediaries organised by BIPAR on 4 and 5 June 2009.

BIPAR, the European Federation of Insurance Intermediaries, is a non-profit European organisation grouping professional associations of insurance intermediaries in Europe. It presently has a membership of 47 national associations, established in 31 countries, and represents some 80,000 insurance agents and brokers, employing in all about 250,000 people. Founded in Paris in 1937, BIPAR headquarters were moved to Brussels in 1989. It is today the official and recognised voice of insurance intermediaries with the European Institutions.



Tomas Kukal is Chief lawyer in the Insurance & Pensions Unit of DG Internal Market & Services. He is responsible for the IMD (Insurance Mediation Directive) and PRIIPs (Packaged Retail Investment Products) and other consumer related issues. He also deals, amongst others, with issues related to legal expenses insurance, infringements and external aspects of insurance.

Before joining the European Commission, he worked, amongst other positions, as legal counsellor for the Ministry of Foreign Affairs of the Slovak Republic.

He has a Ph.D in law from the Comenius University of Bratislava and from the Ludwigs-Maximilian University of Munich, Germany. He also holds various post-graduate degrees.

BIPAR: *You are currently undertaking an implementation check of the IMD. This implementation check mainly aims at checking the conformity of the national implementation legislation with the IMD. Could you give us a brief overview of the first results of this check?*

Tomas Kukal: The Commission systematically plans evaluations of all the European legislation which have been adopted. In summer 2008 DG Internal Market started the IMD implementation check that is expected to be over by the end of 2010. It sent three questionnaires to the EU Member states focusing for example on information requirements and on the cross-border provision of services and on the use of general good rules by Member States to restrict it. The Commission is currently working very closely with CEIOPS in this process. An assessment of the implementation check will soon be issued, taking into account the replies received.

BIPAR: *Will this implementation check be followed by a revision of the IMD? I know it is early days to have a fixed list of issues which you feel should be dealt with in the revised IMD but could you please reveal some aspects you have in mind at this stage?*

Tomas Kukal: Yes, once the IMD implementation check is over and assessed, the European Commission will work on the revision of the IMD. It intends to come forward with a proposal for revision of the IMD no later than at the end of 2010, taking into account the consequences for policyholders of the Solvency II Directive, as requested by the European Parliament.

The content of the IMD revision will be determined by the outcome of the assessment of its implementation 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.

The amendments are expected to consist of two parts: revision of the existing IMD provisions reflecting the outcomes of the implementation checks and necessary adaptations to the IMD resulting from the Commission PRIPs Communication.

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.

BIPAR: *And what about the format of a revised IMD?*

Tomas Kukal: One of the possible forms of a revised IMD is the Lamfalussy model. This means a level 1 framework directive with general principles and level 2 directives or even regulations implementing the principles. This also means more harmonization to avoid gold plating from Member States and to ensure convergent implementation.

BIPAR: *BIPAR believes that the basics of the current IMD should as much as possible be kept in the revision of the IMD. As far as the scope is concerned for example, we feel that the all encompassing scope should remain in place in order to guarantee consumer protection and level playing field. Do you agree or do you feel that the scope should be further fine-tuned?*

Tomas Kukal: I think that the scope of a revised IMD should help to ensure a more open market for insurance intermediaries in Europe, thus I share BIPAR's views in keeping the scope as broad as possible. There are however currently different interpretations of the scope amongst the different Member States. The revised IMD should deal with insurance intermediation. However in order to ensure a the level playing field, there might be some provisions on employees of insurers or on direct distributors of insurance in the revised IMD or in other EU legislative texts.

BIPAR: *The business sector inquiry concludes that more transparency with regard to the services of intermediaries and more transparency about the remuneration of intermediaries may be necessary. The report however concludes that remuneration disclosure is a complex issue and needs careful consideration. As a follow-up, we , as BIPAR , developed principles on transparency which you know. These principles make a distinction between business insurance and private consumer insurance and a distinction between life with investment element and non-life. We also call for a level playing field when considering remuneration transparency because, as you know, in many of our businesses there is an increased competition from Direct writers or alternative forms of distribution.*

What is your opinion about our principles on transparency and do you agree that there should be made a distinction between the various categories ? How do you think can be dealt with the level playing field in practice?

Tomas Kukal: I agree that some of these principles could be embedded in the future revised IMD. There is a need to bring stronger harmonization to product disclosure and selling practices.

BIPAR: *Let us focus now on the Retail Investment Products Communication. What will be the impact of this communication on the revised IMD? In particular how do you believe should in the future unit linked life insurance be dealt with both at the level of product disclosure and at the level of distribution/ sales.*

Tomas Kukal: I think that the IMD II should remain a general tool regulating information requirements for intermediaries with all products, not only unit linked life insurance product.

BIPAR: *Could you give us an idea of the process and the timing of the IMD revision?*

Tomas Kukal: The Commission will be leading the revision process. It intends to present a revised proposal by the end of 2010. It will consult CEIOPS (CCP) and the industry (BIPAR but also CEA) on important changes and adaptations proposed to the IMD. I encourage BIPAR national associations to submit their intellectual input to the IMD revision process in order to provide the European Commission with a better insight of the views of the industry.
