

## CEA response to the European Commission's consultation on the review of the Insurance Mediation Directive (IMD)

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### CEA Key Messages on the Review of the IMD

- *Respecting the diversity of insurance distribution across the EU*

- Any future legislation must recognise the diversity of insurance distribution markets and be flexible enough to accommodate this diversity. A minimum harmonisation approach is therefore necessary.

- *Adopting a proportionate approach towards insurance distribution*

- The CEA believes that the same principles with regard to the level playing field between distribution channels should apply to all insurance products and should be modulated according to the distribution channel, the demands and needs of the customer, the complexity of the product and the level of risk to the customer.

- *Enhancing conduct of business rules*

- The CEA proposes a set of six high-level principles on selling practices for all insurance products and all distribution channels:
  1. Selling practices must be focused on the fair treatment of the customer
  2. A distributor has to offer advice on request or on own initiative when the circumstances indicate there is a need, as a result of the information provided by the customer.
  3. A customer should always be informed about the type of the service provided (non-advised sale, advice, fair analysis).
  4. Where advice is given, it should be based on an analysis of the customer's needs, on the basis of information provided by the customer.
  5. Any distributor providing information or advice on an insurance product must understand and be able to explain the key features of the product.
  6. Before a contract is concluded, the customer should be given the information about the insurance product, which allows the customer to make an informed decision.

- If a definition of advice is introduced, it is crucial that it reflects the nature of insurance, and be based on Article 12(3) of the IMD.
- Non-advised sales of insurance products should remain possible.

- ***Managing conflict of interest and transparency of remuneration***

- The current IMD provisions provide a good starting point to mitigate conflicts of interest.
- Conflicts of interest can be prevented by disclosing the distributor's status and his/her role towards the consumer and the insurance company.
- If the Commission decides to take steps to improve transparency over the way intermediaries are remunerated, the CEA believes that it should follow a minimum harmonisation approach and that an appropriate solution would be to encourage mandatory, automatic disclosure of the form (fee/commission) and the source (insurance undertaking/policyholder) of the intermediary's remuneration, regardless of the type of insurance product.

- ***Promoting the single market for insurance distribution***

- The CEA calls for greater transparency of general good rules. The lack of information on national general good rules is one of the biggest barriers to cross-border insurance business. The provision of such information would increase legal certainty and transparency for insurance intermediaries and companies operating on a cross-border basis.

## Introduction

The CEA welcomes the opportunity to contribute to the European Commission's work on the revision of the Insurance Mediation Directive (IMD). The CEA wishes to stress that the comments contained in this document should be considered in the context of the CEA's overall position and therefore read in conjunction with the comments made in its response to the Commission's concurrent consultation on legislative steps for the Packaged Retail Investment Products (PRIPs) initiative.

As a preliminary remark, the CEA would like to comment on the use of the term "PRIP" in this consultation document. In its consultation on legislative steps for the PRIPs initiative, which it is stated should be read alongside the review of the IMD, the Commission has recently been seeking the views of stakeholders on a possible PRIPs definition. The CEA wishes to highlight the fact that there is still uncertainty as to the PRIPs definition. Moreover, we believe that the same high-level principles with regard to the level playing field between distribution channels should apply to all insurance products and should be modulated according to the distribution channel, the demands and needs of the customer, the complexity of the product and the level of risk to the customer. For these reasons, the CEA generally refrains from using this term in its response, but rather refers to insurance products generally.

The CEA believes that any future legislation must recognise the diversity of insurance distribution markets. Insurance distribution systems differ across the EU as they have adapted to different consumers' cultures, needs and preferences, and reflect local traditions and social environments. This diversity ensures that consumers have better access to insurance products, and stimulates competition on price and quality of products and services between product providers and intermediaries for the benefit of consumers. Therefore, any future regulation should be flexible enough to accommodate this diversity. The CEA is concerned that any EU-wide "one-size-fits-all" legislation will not capture the differences between distribution structures, and would have a different impact in different markets and interfere with the capacity of the markets to develop innovative and appropriate consumer-oriented solutions.

The CEA believes that an EU-wide minimum harmonisation regime will better accommodate the diversity of the existing distribution structures, which are tailored to local market features and specificities, and local consumers' needs. We believe that high-level principles would thus provide sufficient flexibility to allow markets to develop in a way that best matches local consumer needs. We therefore support a classic directive for the revised IMD, as this provides for an adequate and appropriate degree of flexibility.

The CEA would add that there has been no assessment or study carried out by the European Commission as of yet on the IMD, its impact, or its associated costs and benefits. In CEIOPS' report of 2007, it noted that there were diverging implementations of the directive and that unclear concepts necessitated a clarification of IMD terminology, but that this did not give rise to any failure or detriment to consumers. We would also stress that it is important that the review of the IMD is conducted in accordance with the Commission's Better Regulation Agenda and its focus on simplifying existing legislation and reducing administrative burdens. As the Commission's Communication on "Smart regulation in the European Union"<sup>1</sup> said: *"The Commission considers it essential to ensure that the measures it proposes are necessary, cost-effective and of high quality."*

The CEA believes that the issue of the level playing field is already addressed to a certain extent under the IMD, and this therefore provides a good starting point to build upon. However, we would like to offer further clarifications on

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<sup>1</sup> [http://ec.europa.eu/governance/better\\_regulation/documents/com\\_2010\\_0543\\_en.pdf](http://ec.europa.eu/governance/better_regulation/documents/com_2010_0543_en.pdf)

the level playing field (see box below), which should be borne in mind when considering the CEA responses to the various questions contained in this consultation document.

### Level Playing Field

The CEA believes that the same principles (see our response to question A.1) with regard to the level playing field between distribution channels should apply to all insurance products and should be modulated according to the distribution channel, the demands and needs of the customer, the complexity of the product and the level of risk to the customer. Differentiating regulation in such a way is not contrary to the level playing field principle, but ensures a consistent and proportionate approach.

A “level playing field” means that where distributors perform the same role, then they should comply with comparable rules. Conversely, where the role performed is not the same, then different rules should be applicable. A level playing field is important to allow for ease of comparison for consumers between the different distribution channels, and to ensure a fair competitive environment between all participants.

The organisation of a level playing field must fit within the framework of:

- freedom of choice for the consumer as to whether he wants advice or not, and if so, what form of advice;
- free competition between product originators and between distribution channels; and
- freedom of choice for advisers regarding their business model and advisory role.

Due to the diversity of insurance distribution markets and the different roles of distributors, we wish to emphasise the fact that we refer during the course of this paper to non-advised sales, advised sales or advice based on fair analysis.

The playing fields of advice versus non-advised sales, and advice based on a fair analysis versus advice which is not, are different with regard to:

- the demands and needs of the customer;
- the distributor’s relationship with suppliers;
- the risk of conflicts of interest; and
- the range of services and liability.

It should always be clear for the consumer what the role of the distribution channel is. If a particular channel claims to be acting on behalf of the consumer, then it should be safeguarded that it behaves in that way and complies with the applicable rules. All intermediaries who present themselves as independent advisers to the customer should meet similar requirements.

We believe that an outcome-oriented approach, adapted to the different channels, is the best way to achieve consumer protection. It will allow the same level of protection to be achieved for the consumer, but at the same time recognises the fact that the way to reach this outcome has to be adapted to the type of distribution channel concerned.

## 1. Policy objectives

### A. A high and consistent level of policy holder protection embodied in EU law

#### Questions

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

The CEA supports a high level of consumer protection for all consumers buying insurance products and welcomes the Commission's proposal to revise the information requirements for intermediaries. However, we would ask that if the Commission extends these requirements to direct sales, the specificities of existing distribution channels are taken into account. Any information requirements need to be proportionate to the risk to the customer and reflect such specificities. Insurance intermediation and direct selling concern two very different sales models that represent different challenges requiring different protection measures (this is especially the case with regard to conflict of interest and remuneration). We would also highlight the fact that the information requirements contained in Solvency II already apply to all distribution channels, including direct sales. It is important therefore that the Commission avoids any potential duplication of requirements.

Currently, the wording of the information requirements of Article 12 of the IMD cannot simply be applied to direct sales. Insurers' direct sales forces are not comparable to intermediaries as they do not constitute an interface between insurers and policyholders and do not intermediate. In particular, there are fundamental differences between direct sales (where the distributor is employed to sell the product of his/her employer) and independent advisers who complete a 'fair analysis' of the market.

This being said, the CEA considers that it may be appropriate to impose certain relevant information requirements contained in Article 12 of the IMD on direct sales, and thereby streamline the information requirements for all distribution channels. We believe that the following information requirements could apply to direct sales, as long as they are tailored to reflect the specificities of insurance distribution channels:

- Article 12.1 (a) (the identity and address of the company, in this case);
- Article 12.1 (e) (information about complaint procedures);
- Article 12.1 (ii) & (iii), which should be turned into a single information requirement adapted for direct sales to refer to the status of the employee and the company he/she represents;
- Article 12.3 (only where advice is given) and Article 12.4 (exemption for large risks and reinsurance).
- Article 12.5 (regarding stricter provisions) could also be maintained and applied (see our response to question A.3)

By reason of their nature, the following provisions of Article 12 are not appropriate to apply to direct sales: Article 12.1 (b), (c), (d); Article 12.1 (i); and Article 12.2.

We would also add, however, that advisory and documentation requirements with respect to distribution carried out by distance means (eg by telephone, via internet) have to be tailored according to the means of distance communication chosen by the customer and his/her needs and demands.

The CEA also believes that consumers could benefit from the application of the six high-level principles on selling practices for insurance proposed by the CEA – based on Article 12 of the IMD – to all distribution channels, including direct sales (see response to question B.2 below). The CEA high-level principles are flexible enough to allow a proportionate approach when applied to different distribution channels and to accommodate the existing distribution structures’ diversity. For instance, information requirements should not apply in cases where they would only add burden without providing any benefit to consumers. Certain types of general insurance products are straightforward, and consumers are price-focused in their behaviour and hence tend to shop around for the best price, without relying on the disclosure of firms for the purchase of these standardised products. For example, products such as home, pet and private motor insurance do not usually give rise to consumer detriment, eg consumers buying unsuitable or overly-expensive insurance products, or not purchasing a product that would benefit them<sup>2</sup>. The further extension of information requirements, while these markets work well in the interests of consumers, would therefore only add additional burden without providing any further benefit to consumers.

The CEA high-level principles would also fit with the approach of CEIOPS, who have recommended developing high-level principles for information requirements at Level 1, in order to support the creation of a level playing field, and propose to leave the more detailed requirements to Level 2 and 3, and only where appropriate, tailor them to insurance undertakings.<sup>3</sup>

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

The CEA believes that the exemption from information requirements for large risk insurance products should be retained. There is no evidence of any consumer detriment concerning this exemption and purchasers of large risk insurance products are large firms with their own insurance, legal or accountancy trained staff who manage their insurance needs and interact with insurance intermediaries or undertakings at a professional level. The nature and size of their insurance needs are such that they are involved in regular and detailed contact with their insurance intermediary or undertaking. Requests for information would tend to be bespoke, for example focusing in on the level of expertise of the insurance undertaking.

Furthermore, this exemption was discussed in CEIOPS’ advice<sup>4</sup> to the European Commission, where it was stated that no Member States were able to identify any practical evidence to support removing this exemption. CEIOPS concluded in Recommendation 34<sup>5</sup> that this Article should be retained.

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

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<sup>2</sup> UK Financial Services Authority “ICOB Review” Interim Report of March 2007.

<sup>3</sup> Recommendation 30, page 72.

<sup>4</sup> Paragraph 8(c)

<sup>5</sup> Recommendation 34, page 75.

The CEA believes that the possibility for Member States to impose further requirements for all insurance products should be maintained, as there may be some adaptation necessary at national level to meet local consumer needs. Differences between national distribution markets reflect different consumers' realities, ie different consumer needs and demands. The CEA believes that EU-wide "one-size-fits-all" legislation will not be able to capture the differences between the existing national distribution structures. Any regulatory approach which fails to accommodate the diversity of national distribution systems may therefore have significant negative implications for markets, and ultimately for consumers.

Moreover, if the possibility to impose further information requirements is not maintained, it would in fact force some markets to change their existing level of consumer protection that has been adapted to their national market. It is difficult to imagine that this is a desired effect of the IMD review with the declared goal of the Commission to strengthen consumer protection.

The CEA welcomes the fact that CEIOPS, in its advice to the European Commission on the review of the IMD, recommended maintaining the current drafting of Article 12.5 regarding the possibility for Member States to maintain or adopt stricter provisions. It supported maintaining a minimum harmonisation directive due to the differences between European markets for insurance intermediation<sup>6</sup>. The CEA supports such an approach.

In addition, the CEA would point out that attention should be paid by the Commission to situations where stricter information requirements are classified as general good rules. In this case, it is important that they are at least transparent and easily accessible (see our response to question D.5 on general good rules).

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

*A.5 If you think that a definition of advice is needed for the mediation of insurance products other than PRIPs, would a definition similar or identical to the definition in MiFID be appropriate? Please provide reasons for your reply.*

The CEA believes that if a definition of advice is introduced, it is crucial that it reflects the nature of insurance. A distinction should be made among the different kinds of advice that the intermediary could provide taking into account the different nature of the relationship they may have with the insurance company and the policyholder. Therefore, the CEA proposes to take Article 12(3) of the IMD as a basis and suggests to define "insurance advice" as meaning that the distributor, on the basis of the information provided by the customer, provides guidance on whether an insurance product(s) fits the demands and the needs of that customer, and specifies these demands and needs as well as the underlying reasons for any such advice. These details should be modulated according to the complexity of the insurance product being proposed and the level of risk to the customer. In accordance with Article 12(2) of the IMD, and taking into account the said elements, "fair analysis advice" is carried out when the insurance intermediary has informed the customer that he gives his advice on the basis of a fair analysis, ie where that advice is given on the basis of an analysis of a sufficiently large number of insurance contracts available on the market, to enable him to make a recommendation, in accordance with professional criteria, regarding which insurance contract would meet the customer's needs. "Non-advised sales" occur where no insurance advice is provided to the customer. We believe that it is important to ensure that the non-advised sale of insurance products in certain situations also remains possible, such as when requested by the customer or where there is a low risk to the customer. It should not be forgotten that

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<sup>6</sup> Recommendation 35, page 75.

even in such cases where insurance advice is not provided to the customer, all relevant information requirements will still apply, including the provision of factual information (personal or non-personal) to the customer in order to allow him make a comparison, such as in the case of a simple price simulation (see our response to question A.6).

Appropriate measures on financial education must also be considered to enable consumers to understand the nature and limitation of advice, as well as the necessity to read the pre-contractual information and to provide all necessary information to enable the distributor to provide advice.

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

Consumers should be able to buy, and distributors should be able to sell, insurance products without advice, in certain circumstances. For many simple and basic insurance products, consumers do not always need or request advice, such as in the case of collectively agreed policies, or cases where there is no contact between customer and provider. There are also examples in the areas of occupational pension, home, pet and private motor insurance where consumer protection is sufficient without advice. In this respect, the CEA would refer to its high-level principles on selling practices for insurance (see response to question B.2 below), in which the CEA advocates the approach that a distributor has to offer advice on request, or on own initiative when the circumstances indicate there is a need, as a result of the information provided by the customer. Advice should be based on an analysis of the customer's needs, on the basis of information provided by the customer.

The CEA believes that the possibility for non-advised sales should be maintained for all insurance products. The customer is of course always free to seek advice, but advice should not be imposed when specifically declined by the customer. In many cases, customers are not actually in need of, or indeed willing to receive, advice, in which case they should be free to exercise the right to make such a choice. Otherwise, it would involve imposing a service upon a customer who neither wants nor requests such a service, with no economic basis for such an imposition. For example, there are certain member-directed DC pension schemes where the employer gets to choose where the contributions from the employer should be placed. The different options will have been decided by the employer or the social partners, thus taking into account the appropriateness of the different options.

It is crucial therefore to ensure that non-advised sales may continue, so as not to limit or interfere with consumer choice, and to prevent restricting a consumer's ability to access products if advice were mandatory and he/she were not in a position to afford such advice. In any case, it should not be forgotten that even in the case of non-advised sales, all relevant information requirements will still be followed.

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

The CEA would stress the importance of not introducing prescriptive requirements into the legislation. We believe that the directive should be flexible enough to allow national supervisory authorities to adapt it to the local needs of their market and to accommodate the diversity of existing distribution structures.

The CEA believes that allowing the possibility to maintain non-advised sales would be a way of avoiding increased administrative burden in this area. In addition, the CEA favours maintaining the current exemptions under the directive, as their removal would inevitably lead to an increase in the administrative burden. The IMD currently

exempts insurance distribution activities which have a very limited scope and concern simple (uncomplicated) products. Until now, there has been no evidence of detriment to the consumer due to these exemptions. Extending the IMD to the current exemptions would result in imposing burdensome requirements and generating additional costs for customers.

In those countries where insurance companies are liable for their agents, the IMD registration requirements for agents may present an unnecessary administrative burden for supervisory authorities and insurance companies. Therefore, Member States should be allowed to decide whether or not to maintain such requirements. In addition, it may be useful for the Commission to call on Member States to engage in dialogue with relevant industry representatives to exchange views on introducing improvements to the registration process to ensure that the objectives are achieved in a cost-effective and timely manner.

The CEA also believes that it is important to give consideration to the concept of a durable medium in the context of administrative burden. We believe that information need not necessarily be provided in a durable medium, but may also be given to the customer by the distributor upon request and be made available by any means, including via a website. Essential contractual information should of course be provided in a durable medium. However, certain pre-contractual non-personalised information should be possible to present via a website, as an alternative to presenting the customer with a paper copy. This would also allow for layered information to be provided to the customer, whereby further layers of more detailed information beyond the key information can be easily accessed by an interested customer, for example via the use of hyperlinks, without resulting in information overload for the average consumer. It also provides an effective tool to process the information and present it in such a way that makes it more easily understood by the customer, while at the same time it reduces the administrative burden and cost for companies.

The Commission should ensure that the requirement of a durable medium for personalised and essential information does not hinder the use of electronic communication in any way. We would suggest that the Commission takes note of the current trend towards an increased use of public websites for non-personalised information and password protected websites for personalised information, as a supplement to email contact. The use of such websites provides benefits over the use of traditional paper communication as the internet makes it possible to make updated and targeted information available to the customer, while allowing him/her to pursue the appropriate level of detail in the information that meets his/her individual demands. Electronic communication is thus the most efficient way to avoid the risk of overloading the customer with information, while at the same time safeguarding the customer's access to all relevant information.

Appropriate consideration should also be given to cases where contracts are concluded by means of electronic communication. If a customer chooses to conclude a contract via electronic means, he/she generally seeks a simple, uncomplicated way of concluding an insurance contract without the need for detailed advice. An obligation to provide advice or documentation in such cases would be against the customer's wishes. Advice has to be offered on request or when the circumstances indicate there is a need (as indicated in the CEA's high level principles).

## B. Effective management of conflicts of interests and transparency

### Questions

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

The CEA agrees that in order to achieve a high level of consumer protection, selling practices must be focused on the fair treatment of consumers. We would also refer the Commission to our comments made in the section regarding the level playing field in the introductory remarks to this paper, where we state that any rules should be modulated according to the distribution channel, the demands and needs of the customer, the complexity of the product and the level of risk to the customer.

The CEA believes that the current IMD provisions provide a good starting point to mitigate conflicts of interest:

- One way in which the IMD addresses the problem of conflicts of interest is by requesting the disclosure of any contractual obligations between intermediaries and insurance undertakings. According to Article 12 para.1(ii) of the IMD, insurance intermediaries are obliged to inform their customers whether they are under contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings. Such disclosure helps to mitigate potential conflicts of interest as the consumer is informed of the intermediaries' capacity, is able to better assess the transaction, and can act and respond accordingly.
- Appropriate disclosure of insurance intermediaries' financial relationship with insurance companies also helps mitigate conflicts of interest. Before purchasing a specific product, consumers should have no doubts regarding the interests that an intermediary has in an insurance company. Article 12 para.1(c) and (d) of the IMD requires the disclosure of capital links between intermediaries and insurance undertakings, and intermediaries have to inform consumers about mutual investments.
- Furthermore, consumers should always be able to buy products which suit their needs. Conflicts of interest can be mitigated by requiring an adequate assessment that the product meets the consumer's demands and needs. Article 12 para.3 of the IMD already requires insurance intermediaries to specify consumers' needs and demands and the underlying reasons for any advice on a given insurance product. This should be done prior to the sale of any specific insurance product. Moreover, intermediaries are also required to inform consumers whether they give advice based on a fair analysis, i.e. an analysis of a sufficiently large number of insurance contracts available on the market (Article 12 para.2.).
- Consumer protection in cases of conflicts of interest is also enhanced by Article 8 para.3 of the IMD, which requires Member States to introduce sanctions in case of an insurance intermediary's failure to comply with national legislation implementing the IMD. This liability provides strong incentives for intermediaries to act in the interest of their customers and limits the emergence of conflicting interests.
- In addition, consumers are also protected by withdrawal rights which were included in Article 186 of the Solvency II Directive. The cancellation of a contract by an insurance policyholder is usually very costly for intermediaries and providers. These withdrawal rights are an incentive to act in the interest of their customers.

The current rules under the IMD and Solvency II therefore provide a strong basis for mitigating conflicts of interest and, as noted in CEIOPS' report of 2007, the diverging implementations of the IMD directive have not given rise to any failure or detriment to consumers. However, if the Commission decides to build upon such rules at some point in the future, the CEA would make the following suggestions:

- The CEA believes that conflicts of interest can be prevented by disclosing the distributor's status and his/her role towards the consumers and the insurance company. Consumers should always be informed about the distributor's specific role in the selling process. Therefore, the distributor should disclose whether he/she is acting as a broker, exclusive or multi-tied agent, or employee of an insurance undertaking to enable a consumer to understand whether the distributor is representing a consumer and providing his services independently and on the basis of fair analysis of the market, or if the distributor is acting for and on behalf of the insurance company and on the basis of an analysis of the products offered by the company (for instance, acting as exclusive agent).
- In addition, in order to protect consumers against misselling of products, those providing guidance as to whether a product fits the demands and needs of their customer must understand and be able to explain the key features of the products they sell.

Member States should be allowed to maintain additional rules on conflicts of interest, adjusted to their national market's specificities. It is important to stress, however, that elimination of product misselling cannot be achieved solely by regulation, but must be accompanied by effective supervision.

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

In considering the CEA response to this question, we would refer the Commission to the comments made in the section regarding the level playing field in the introductory remarks to this paper.

The CEA supports a high level of consumer protection for all consumers buying insurance products. However, insurance distribution markets vary significantly across EU markets and any prescriptive regulatory approach may have negative implications both for markets and consumers. In order to guarantee consumers an appropriate level of protection, regardless of the distribution channel, and at the same time accommodate the existing distribution markets' diversity and allow markets to develop, the CEA proposes the following six high-level principles on selling practices for insurance:

1. Selling practices must be focused on the fair treatment of the customer
2. A distributor has to offer advice on request or on own initiative when the circumstances indicate there is a need, as a result of the information provided by the customer.
3. A customer should always be informed about the type of the service provided (non-advised sale, advice, fair analysis).
4. Where advice is given, it should be based on an analysis of the customer's needs, on the basis of information provided by the customer.
5. Any distributor providing information or advice on an insurance product must understand and be able to explain the key features of the product.
6. Before a contract is concluded, the customer should be given the information about the insurance product, which allows the customer to make an informed decision.

We would also point out the fact that as direct sellers offer the products of their employer, this is not considered insurance intermediation. The risks in the intermediated channel are very different to those in the direct selling channel and any future rules must recognise this fact. Therefore, when considering how conflict of interest rules should be applied to all participants involved in the selling of insurance products, a risk-based and proportionate approach is necessary, as conflicts of interest do not arise to the same extent in all distribution channels, eg there are fundamental differences between agents and direct sellers on the one hand, and intermediaries providing advice based on a fair analysis on the other.

Furthermore, in its review of the Markets in Financial Instruments Directive (MiFID)<sup>7</sup>, the Commission acknowledges the fact that disclosure does not always provide a means for managing conflicts of interest; it is simply a measure of last resort.

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

The CEA wishes to stress that the review of MiFID has not yet been completed. We believe that it is crucial to await the results of this evaluation exercise, and as such, it is difficult to comment on the application of these rules while they are in the process of being reviewed.

We would point out, however, that while MiFID applies to asset managers and investment firms, the IMD targets intermediaries, who are often natural persons and SMEs, and who would face significant administrative burden if subjected to similar rules. Furthermore, it should also be borne in mind that insurance products differ greatly from MiFID products, for which the legislation was specifically designed. The CEA would draw the attention of the Commission to the risk of inducing a uniformity of product design in all financial sectors to the detriment of consumers and competition.

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

The CEA is generally in favour of transparency for consumers to aid in their comparisons between products, but wishes to stress that this is an issue which varies according to distribution channel and market structure. As already stressed above, conflicts of interest do not arise to the same extent in all distribution channels, which is particularly true considering the inherent differences between direct sellers and intermediaries providing advice based on a fair analysis. We believe that conflicts of interest can be prevented by disclosing the distributor's status and his/her role towards the consumer and the insurance company. Consumers should always be informed about the distributor's specific role in the selling process. Therefore, the distributor should disclose whether he/she is acting as a broker, exclusive or multi-tied agent, or employee of an insurance undertaking to enable a consumer to understand whether the distributor is representing a consumer and providing his services independently and on the basis of fair analysis of the market, or if the distributor is acting for and on behalf of the insurance company and on the basis of an analysis of the products offered by the company (for instance, acting as exclusive agent). If the distributor is an employee of an insurance undertaking, we believe that disclosure of this status would be sufficient for transparency purposes.

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<sup>7</sup> p. 70.

The CEA is pleased to see therefore that Member States have found their respective, appropriate ways with regard to transparency, in respect of their national legal, social and cultural context and distribution structure. For example, the Netherlands has detailed disclosure of remuneration rules in place to address the dual role of brokers, while Germany is introducing transparency of costs by disclosing one single figure which factors in all distribution costs, including remuneration, and can thus be compared between all products. These examples serve to further illustrate the diversity of markets across the EU.

This being said, it is important that information should be useful for customers, as otherwise it would only be an additional information requirement to be met. For example, an overly-elaborate breakdown of distribution costs could be confusing for consumers because for a similar product the type of remuneration varies depending on the nature of the distribution channel and even between companies at the national level. Such a disclosure breakdown would thus require additional information on the remuneration structures for all other types of distribution channels. Such complexity inhibits consumers from comparing costs between products and making informed decisions.

For all these reasons, if the Commission decides to take steps in this area, the CEA believes that it should follow a minimum harmonisation approach and, in addition to the mandatory disclosure of the status of the distributor (see above), an appropriate solution in this regard would be to encourage mandatory, automatic transparency for intermediaries as to the form (fee/commission) and the source of the remuneration (insurance undertaking/policyholder), regardless of the type of insurance product. This has the advantage of ensuring the consumer is informed and aware at the pre-contractual stage of the particular form in which an intermediary is remunerated and by whom he/she is remunerated. This would be particularly important for independent advisers to address their dual role. It would also reflect the need for a level playing field, while remaining compatible with the differences between the various distribution channels.

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

The CEA believes that there can be no “one-size-fits-all” approach and that the legislation should allow for the possibility of national approaches that are adapted to local market features, taking into account various national specificities. Any future European legislation on the distribution of insurance products should be proportionate and take the form of high-level principles, which are flexible enough to accommodate the existing distribution structures’ diversity and to adapt to specificities of national markets.

In addition, it should be borne in mind that in the various distribution structures, conflicts of interest arise to different extents. The risks of conflicts of interest in the intermediated channel are very different to those in the direct selling channel and any future rules must recognise this fact.

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

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

As previously highlighted, the Commission acknowledges in the MiFID review<sup>8</sup> that disclosure does not always provide a means for managing conflicts of interest, but simply is a measure of last resort. It should therefore not be seen as a panacea. Moreover, the Commission acknowledged during its recent public hearing on the IMD that the quality of the products sold was at least as important as remuneration transparency, and information on remuneration should not result in diverting the customer's attention away from the key features of the product.

The CEA would point out that there are other solutions to addressing the issue of conflicts of interest than disclosure of remuneration, and there should be a possibility to maintain such solutions. Member States should not be hindered from adopting their own national solutions based on the principles appropriate to their market.

In any case, as stated in our response to question B.4, if the Commission decides to take steps in this area, the CEA believes that an appropriate solution with a minimum harmonisation approach would be to encourage, in addition to the mandatory disclosure of the status of the distributor, transparency for intermediaries as to the form (fee/commission) and the source of the remuneration (insurance undertaking/policyholder), regardless of the type of insurance product.

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<sup>8</sup> p. 70.

## C. Introducing clearer provisions on the scope of the IMD

### Questions

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

The CEA stresses the importance of affording consumers a high level of protection when purchasing insurance products regardless of the method of distribution. However, it is important to bear in mind that the current IMD concerns insurance mediation activities and has been designed for insurance intermediaries, not for direct sellers. Moreover, if the Commission wishes to extend the scope of the IMD, it should be careful not to create further administrative or financial burden without providing any real advantage for consumers. This being said, as explained in our response to question A.1, the CEA would ask that if the Commission extends the current requirements in the IMD to direct sales, a risk-based and proportionate approach is taken. Further, a level playing field is one where customers are no more at risk buying through one distribution channel than another. It is not about applying to all insurance distributors, the same legislative requirements.

The CEA would refer the Commission to its answer to question A.1, for instance, which addresses where it may be appropriate to impose certain information requirements contained in Article 12 of the IMD on direct sales. Further, we wish to refer the Commission to the six high-level principles on selling practices for insurance which the CEA has developed (see our response to question B.2). For example, Principle No. 5 requires that any distributor providing information or advice on an insurance product must understand and be able to explain the key features of the product, which we believe should also be applicable to direct sales.

The CEA would also like to highlight why other provisions of the IMD would not be relevant to be applied to direct selling in any case, as they address the employer-employee relationship between insurance undertakings and their direct sale forces. This is particularly relevant for liability, registration and notification rules.

- **Requirements on PII, registration and notification**

Consumers are already protected by the insurance undertakings' liability and responsibility for their employees. These are enshrined in employment contracts. The same applies with respect to registration and notification requirements. Insurance undertakings have to obtain authorisation in their home state and notify their services abroad. The inclusion of insurers' employees in a register for self-employed persons, or requiring them to notify their activities, would have no added value and would increase administrative burden. For the same reasons, there is no need to require professional indemnity insurance and financial capacity from insurer employees.

- **Requirements of good repute, knowledge and ability**

In contrast to insurance intermediaries, insurance undertakings and their employees are subject to the requirements of Solvency II. The Solvency II Directive already implies requirements of good repute, knowledge and ability for insurance companies' direct sales forces. It introduces new governance rules requiring insurance undertakings to adopt a good governance policy and to introduce internal control systems to ensure that their employees meet high standards on good repute, knowledge and ability. Art 41 of the Solvency II Directive requires insurance undertakings to establish an effective system of governance which provides for sound and prudent management of the business. According to Art 42 of the Solvency II Directive, all persons who effectively run the undertaking or have other key functions should possess adequate and sufficient professional qualifications, knowledge and experience, and be of good repute and

integrity. Article SG1 para.1 (d) and (g) of the draft Commission Document on System of Governance from January 2010 (implementing measures for Article 41 of the Solvency II Directive) requires insurance undertakings to establish a good governance system which complies with 1) a requirement to employ personnel with the skills, knowledge and expertise necessary to discharge properly the responsibilities allocated to them, and 2) a requirement that any performance of multiple tasks by individuals does not prevent the persons concerned from discharging any particular function in a sound, honest and professional manner. Compliance with these requirements is essential for obtaining authorisation to carry out insurance business. Therefore, additional provisions on this matter introduced by IMD2 on direct sales would mean an unnecessary duplication and complication of requirements, and lead to an increased administrative burden.

Should any requirements with regard to good repute be added on insurance undertakings, the CEA wishes for them to be applied on a minimum harmonisation basis, so as to allow Member States to go further in their national markets, where appropriate. This approach would also ensure that such requirements are fully consistent with national labour law and data protection provisions. It is also essential that insurance undertakings wishing to access relevant information to check the good repute of their employees, as proposed by CEIOPS, should not be prevented from doing so.

With regard to professional requirements, we believe that it is important to have appropriate requirements in place, but would point out the fact that such requirements are met by insurance undertakings in a variety of different ways, such as under Solvency II and national labour law. Insurance companies are responsible for training their employees and they design their own training programmes. These programmes are an element of competition with other insurers and should not be standardised. This would be consistent with CEIOPS' advice to the European Commission recommending that it should be the responsibility of the insurance undertaking to check the qualification of its employees<sup>9</sup>, which would meet the need for a proportionate, risk-based approach avoiding creating an unnecessary administrative burden.

- **Mutual recognition of qualifications**

Since rules on mutual recognition of qualifications concern the access to regulated professions, there is no need to introduce these rules for direct selling.

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

The CEA supports maintaining the exemption in Article 1(2) (see our response to question C.3). However, we believe that more clarity is generally needed in the text of the Directive. This is especially the case in relation to Article 2 (3) para.3, which describes which activities are not considered insurance intermediation. Under the existing rules, the activities of an insurance mediator are very widely described.

In order to provide further clarification, the CEA believes that the following two points should be addressed:

- Where individuals or companies simply refer potential customers to an insurer, without carrying out intermediation activities, this is not considered to be insurance intermediation and thus should be excluded from the scope of the IMD.

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<sup>9</sup> Recommendation 11, Page 42.

- Insurance undertakings can outsource some of their functions (eg premium collection, management of insurance claims, loss adjusting and claims appraisal) to third parties, such as intermediaries. Where outsourcing takes place, this is not considered to be insurance intermediation, and will be covered by the rules on outsourcing contained in Article 48 of the Solvency II Directive.

We support the exemption contained in Article 2(3) para.3 of the IMD where information is provided on an incidental basis in the context of another professional activity. We would also like to clarify that any persons or organisations (such as trade unions or consumer organisations) should be under the IMD where they provide a ranking of insurance products or a discount on the price of a contract and is able at the end of the process to conclude the insurance contract directly (see also our response to question C.4).

The CEA does not believe that where an insurance undertaking (A) sells the products of another insurance undertaking (B), A should be considered to be the intermediary of B and subject to the provisions relating to insurance intermediaries. Indeed, the existence of such a rule is neither justified on grounds of consumer protection nor transparency. Moreover, unlike banks and investment firms, insurance undertakings are subject to the specialisation principle, which explains the “mandatory” existence of distinct entities. Imposing additional formalities onto these undertakings would not be favour fair competition. It would also be confusing for the consumer, as the same undertaking could be treated as a direct seller or an insurance intermediary, with different rules applying depending on the product it offers.

The CEA would also stress that intermediaries selling occupational pensions not safeguarded through insurance should obey the same distribution principles. Otherwise there is a risk of intermediaries having an incentive to sell non-insurance-type occupational pensions in order to avoid the IMD regime. Such regulatory arbitrage would be to the detriment of the customer. When addressing the intermediation of occupational pensions, the IMD should be clear that intermediaries should be allowed to inform their customers and to provide advice also on relevant legal questions in this field (such as labour or tax law).

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

The CEA supports maintaining the current exemptions of Article 1 para.2 of the IMD, as they provide for a proportionate approach. The exempted insurance distribution activities have a very limited scope and concern simple (uncomplicated) products sold on an ancillary basis. Furthermore, there has been no evidence of detriment to the consumer due to these exemptions. Extending the IMD to the current exemptions would result in imposing unnecessary and burdensome requirements (eg requirements on registration, professional indemnity insurance cover or compulsory training) generating additional costs and, as a result, a decrease in the number of points of sale and an increase in premiums of basic insurance products.

We would also request the Commission to delete from Article 1 para.2 (f) the reference to the maximum 5-year duration of the insurance contract. As guarantees for consumer products are backed by insurance, some of which are more than 5 years in duration, we do not believe that the duration of the contract should be of relevance for contracts involving such a minor amount.

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

The CEA is in favour of retaining the activity-based definition of insurance intermediation in the revised IMD and stresses the need to avoid the possibility of regulatory arbitrage. We believe that websites and persons providing information about a specific insurance contract should be viewed as intermediaries and included under the scope of the IMD if the customer receives a recommendation to buy one or more contracts of insurance, for example through a ranking, and is able at the end of the process to conclude the insurance contract directly.

However, if the information is not designed with the purpose of concluding an insurance contract, then the activity should be excluded from the scope.

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

The CEA believes that if a certain activity, such as the sale of insurance products by car rental companies, meets the required conditions for an exemption from the IMD, then it may be excluded from its coverage. Conversely, if the activity does not meet the conditions for an exemption and comes under the activity-based definition, then it should be included under the IMD.

The CEA would cite the example of the pension bulk buyout market in the UK as one such activity that should not be covered under the IMD. In this particular case, employers purchase a bulk buyout which transfers their liability to pay defined benefit pensions to an insurance company. These are effectively a group of deferred annuities for members of the pension scheme which become payable when they retire. There are strict rules regarding how bulk buyouts can be arranged. The rules require trustees to make the decision on whether to opt for a bulk buyout based on advice from lawyers, actuaries and financial advisers. As the trustees make the decisions as to whether a bulk buyout is appropriate for their scheme, any policies sold are done so on an execution-only basis directly between the trustees and insurance provider as a corporate-to-corporate transaction. Although scheme members will be informed that this transaction is taking place, this has no effect on their retirement income, which is secured on the same basis as if it was paid directly by the trustees. At present, this type of business is excluded from the IMD. However, with the proposed extension of the IMD to direct sales, this type of business may be captured, which we do not believe would be the intention of the Commission, particularly as it would add additional requirements that would not benefit consumers or trustees yet add significant expense to transactions.

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

The Directive on the Distance Marketing of Financial Services (DMFS) already applies to the distribution of insurance products at a distance, regardless of the distribution channel used (eg, tied agents, independent advisers, direct sales forces). Distance marketing is simply a means of selling an insurance product, and as such, the DMFS comes in addition to the IMD when a distance contract is concluded.

In any case, as the Commission affirms in its consultation paper, all of the information requirements contained in these different pieces of legislation should be streamlined, as they "*contain overlapping requirements in the area of pre-contractual information because of their different purposes and scope*" (last paragraph 2.2.1).

## D. Increased efficiency in cross-border business

### Questions

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

The CEA wishes to highlight the importance for an insurance intermediary to check that an insurance undertaking has the authority to sell a product on a cross-border basis before a contract is concluded, in order to avoid situations where the intermediary sells a contract in a Member State where the provider of the contract (ie the insurance undertaking) has no authorisation to operate on a FOS basis, as the definition of freedom of services is not exactly the same for insurance undertakings as it is for intermediaries.

Thus, in order to eliminate problems with the applicable law and to guarantee legal certainty for insurance intermediaries operating on a cross-border basis, the definition of freedom of services included in the Luxembourg Protocol should be introduced into IMD2.

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

The CEA notes that impediments to cross-border business have been created due to how the IMD has been implemented in some Member States and in particular with regard to definitions which have been interpreted in a way that limits registration rights. Therefore, in order to ensure a level playing field and avoid distortions of competition in the single market, we would call on the Commission to clarify the rules in this area.

Some Member States request EU insurance intermediaries operating on their territory on a cross-border basis to register with their national authorities. This requirement provides for unnecessary duplication of registration and contradicts the idea of a single European license. Similar cases should be scrutinised to avoid additional administrative burdens.

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

The CEA supports CEIOPS members' proposal to introduce an electronic version for notifications to improve the efficiency and practicability of the whole notification system. For consistency reasons, IMD2 could also introduce one single notification form on the basis of the template already included in the Luxembourg Protocol. Other Luxembourg Protocol provisions on the notification system could also be integrated in the revised Directive, eg sanctions in case of non-notified activities.

We also propose to create an internet website with a notification form in English which should be easily accessible for intermediaries and insurance companies. This would enable insurance intermediaries and undertakings to fill out the form directly online and allow them to better monitor the status of their notification.

We would also suggest that the host supervisor should make public on its website all notifications received from other Member States, which the consumer of the host Member State would also be able to access.

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

The CEA notes that CEIOPS' advice recommends that Article 1(3) of the IMD be amended to clarify the treatment of intermediaries from third countries. We agree that this is desirable. At present, the approach to third country intermediaries varies widely between Member States and a more harmonised approach would be helpful. It is possible for specialist insurers within the EU to arrange distribution of their products through specialist intermediaries outside the EU, so provisions affecting third country intermediaries do have an impact on the single market.

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

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

The lack of information on national general good rules is one of the biggest barriers to cross-border business. The provision of such information would increase legal certainty and transparency for insurance intermediaries and companies operating on a cross-border basis.

In its response to the Green Paper on Retail Financial Services, the CEA highlighted the need for one web page with a list of the national general good rules with which business must comply. The CEA thus welcomes CEIOPS' work on publishing information on general good rules. However, we still see some areas for improvement. For instance:

- instead of creating one common website, hyperlinks to the national supervisory authorities' web pages were published;
- hyperlinks for two countries are missing (France, Greece);
- the information is not always accessible in English (eg for Germany, Denmark, France); and
- two links refer to the general websites of the supervisory authorities only (Estonia, Finland).

Moreover, these general good rules are not categorised into different areas of law, which makes it difficult for insurance intermediaries and companies to verify with which particular provisions they must actually comply. For the purpose of better practicability, we refer to our request for a single list in the English language with all the national general good rules categorised into different areas of law (eg insurance law, supervisory law or civil law).

The CEA would also suggest that EIOPA present a standardised information sheet for general good rules that national authorities should fill in, which could be compiled and published on the EIOPA website to make the provisions comparable and enable transparency, as the current lack of transparency and difficulty in accessing information presents a practical obstacle to cross-border business. It is important that such a list should be complete, exhaustive and updated. We would also suggest that intermediaries could sign up on a website and agree to receive a notification whenever the information is updated and new general good rules are added.

The CEA would also propose establishing a point of contact able to provide information on general goods rules in each Member State. Such a point of contact should be an appropriate public authority or supervisor.

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

The CEA is supportive of the idea of introducing a clause on mutual recognition of qualifications into the revised IMD to assist in the realisation of the single market. However, before the Commission takes a decision on this, the CEA would like to draw its attention to the problems related to the current recognition system under Directive 2005/36/EC on the Recognition of Professional Qualifications. This system is very complex as it is based on a “case by case” examination, ie evidence of foreign professional qualifications has to be verified/demonstrated in each individual case and the evaluation criteria are not clear. In addition, due to substantial differences between national legal systems, competent authorities may still require additional adaptation periods or aptitude tests when verifying the minimum level of knowledge required in their country. Therefore, the current system does not fully contribute to achieving the Single Market for insurance intermediaries, and may even defeat such objectives.

We believe that the consumer protection aspect should also be given due consideration when considering any solution to these above-mentioned problems.

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

In order to prevent a situation where certain Member States could create unnecessary barriers by means of general good rules, the CEA supports CEIOPS’ proposal to introduce a notification procedure (to EIOPA) in order to ensure that any further national provisions are not taken without reason.

## E. Achieve a higher level of professional requirements

### Questions

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

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

The CEA believes that it is important to have appropriate requirements on knowledge and ability in place in the revised IMD for insurance intermediaries. However, we would point out that such requirements are already met by insurance undertakings and their employees in a variety of different ways, such as under Solvency II (see our response to question C.1). Additional provisions on this matter introduced by IMD2 on direct sales would mean an unnecessary duplication and complication of requirements, and lead to an increased administrative burden. Moreover, we would also highlight the fact that insurance companies are responsible for training their employees and they design their own training programmes. These programmes are an element of competition between insurers and should not be standardised. This is consistent with CEIOPS' advice to the European Commission recommending that it should be the responsibility of the insurance undertaking to check the qualification of its employees<sup>10</sup>, which would meet the need for a proportionate, risk-based approach avoiding creating an unnecessary administrative burden.

With regard to insurance intermediaries, on the other hand, the CEA believes that high-level principles on insurance intermediaries' knowledge and ability can guarantee sufficient flexibility for market players and continuous development of distribution channels. In order to guarantee a uniform approach in raising the level of professionalism and consumer protection, the CEA proposes the following high-level principles, common for all markets, which should relate to the knowledge and ability of insurance intermediaries and should be based on currently existing national rules:

- **Adequate performance of duties** (in compliance with national rules): this principle aims to ensure that intermediaries have the appropriate knowledge and competences to complete their tasks and missions adequately.
- **Appropriate experience**: this principle aims to guarantee that intermediaries demonstrate appropriate, relevant professional experience, enabling them to guide their customers through the whole selling process.
- **Continuous professional development**: this outcome-oriented principle means that intermediaries should be encouraged to update their knowledge and competences (eg through professional training) in order to ensure a continuous adequate level of performance.

These high-level principles could be introduced for all insurance intermediaries, and adjusted to their status and nature of activities, as long as consumer protection is sufficient.

Should the Commission decide to streamline certain IMD provisions on professional requirements, the CEA believes that rather than defining input requirements (a certain amount of training hours, a specific curriculum), professional requirements should be outcome-oriented. They should target concrete learning outcomes and competences. Such an approach will guarantee a certain level of professionalism and at the same time ensure flexibility. As a reference, the

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<sup>10</sup> Recommendation 11, Page 42.

European Qualification Framework (EQF) could be used to compare and assess qualifications on the basis of “learning outcomes” (what an intermediary knows, understands and is able to do). In this respect, the definition of minimum European qualification standards based on knowledge, skills and competences of insurance intermediaries (as defined in the EQF) could be included.

Furthermore, rules on entrepreneurial ability could be introduced for independent intermediaries at national level, if not already available.

The above-mentioned refinements should not interfere with national training programmes for at least two reasons. Firstly, detailed professional requirements, as well as specific training and education programmes, already exist at national level, and it would be difficult to harmonise them without interfering with the national qualification systems and national trade law regulating the access to professions. Further detailed requirements could result in burdensome requirements and costs, without bringing added-value. Secondly, a number of Member States have started to introduce complex competence-based testing systems in the early 90’s, and the revision of the IMD should not result in the lowering of professional standards in these countries.

Any new additional obligations for insurance intermediaries may have a negative impact on the development of their business, and may lead to structural changes at the expense of price competition (eg market concentration) and job reduction. The insurance sector plays a key role in generating jobs in Europe. Not only do independent insurance intermediaries work within insurance distribution, but also employees of small insurance agencies, bigger broker companies and employees of insurance companies. The insurance sector employs 2 million people in Europe (2008).

## 2. Distribution of insurance PRIPs (investments packaged as life insurance policies)

The CEA wishes to highlight the fact that there is still uncertainty as to the PRIPs definition. In fact, in its consultation on legislative steps for the PRIPs initiative, which it is stated should be read alongside the review of the IMD, the Commission has recently been seeking the views of stakeholders on a possible PRIPs definition. The same is also true for the MiFID rules on conduct of business, which the Commission is considering as a benchmark for the sale of insurance PRIPs, despite the fact that the review of MiFID has not yet been completed.

In considering the CEA response to the questions below, we would therefore refer the Commission to the comments made in the section regarding the level playing field in the introductory remarks to this paper.

### Questions

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

In order to ensure consistency, the CEA believes that the same principles should apply to all insurance products and should be modulated according to the distribution channel, the demands and needs of the customer, the complexity of the product and the level of risk to the customer. This would ensure consistency and take into account differences between the various insurance distribution channels and related advice, if any (ie non-advised sales, advised sales, and advice based on a fair analysis).

The CEA would therefore wish to highlight the following issues, which need to be taken into consideration when drafting new legislation on the distribution of insurance products, be it PRIPs or non-PRIPs (see our comments in the introduction regarding the Commission's use of the term "PRIP").

- **Current IMD provisions provide good solutions on conduct of business and a good starting point in relation to conflicts of interest**

The CEA asks the Commission to take inspiration from the existing regulatory frameworks on insurance, such as the current IMD and Solvency II. The IMD provides some good solutions to mitigate the potential negative implications of "conflicts of interest". For instance, under Article 12 IMD, the consumer has to be informed about any contractual obligations between insurance intermediaries and insurance undertakings and their financial relationship. Furthermore, the IMD requires insurance intermediaries to make an adequate assessment of the product's appropriateness by specifying the demands and needs of the customer and the underlying reasons for any advice on a given insurance product.

Consumers must also be informed whether intermediaries give advice based on a fair analysis, ie on a sufficiently large number of insurance products available on the market.

Consumer protection in cases of conflicts of interest is further enhanced by Article 8 para.3 of the IMD, which requires Member States to introduce sanctions in case of an insurance intermediary's failure to comply with national legislation implementing the IMD. This liability provides incentives for intermediaries to act in the interest of their customers and limits the emergence of conflicting interests.

- **CEA high-level principles on selling practices for insurance**

The European Commission stressed the importance of high-level principles on selling practices in its April 2009 Communication on PRIPs. The CEA welcomes this approach. However, some principles proposed by the Commission in its Communication are based on concepts which are not relevant to the insurance sector. Therefore, in July 2010, the CEA published a briefing note on insurance distribution and proposed a set of high-level principles on selling practices for insurance which concern conduct of business rules to be respected by insurance distributors when selling insurance products to their customers. The CEA proposes to apply these high-level principles to all distribution channels, including direct selling, and to all insurance contracts. The CEA's set of six high-level principles are outlined in our response to question B.2.

In the context of selling practices, the CEA would stress that the Commission must address the need to ensure that advised and non-advised sales can continue. Non-advised sales may occur, for instance, where the customer specifically requests the possibility or where products containing a low risk are offered to the customer such that he/she does not require any advice. It is crucial to ensure that non-advised sales may continue, so as not to limit or interfere with consumer choice, and to prevent restricting a consumer's ability to access products if advice were mandatory and he/she were not in a position to afford such advice.

- **Transparency of remuneration**

As already outlined in our response to question B.4, if the Commission decides to take steps in the area of transparency of remuneration, the CEA believes that it should follow a minimum harmonisation approach and, in addition to the mandatory disclosure of the status of the distributor, an appropriate solution would be to encourage mandatory, automatic transparency for intermediaries as to the form (fee/commission) and the source of the remuneration (insurance undertaking/policyholder), regardless of the type of insurance product. This has the advantage of ensuring the consumer is informed and aware at the pre-contractual stage of the particular form in which the intermediary is remunerated and by whom he/she is remunerated. This would be particularly important for independent advisers to address their dual role. It would also reflect the need for a level playing field, while remaining compatible with the differences between the various distribution channels.

The CEA wishes to stress that in seeking to add an additional layer of protection for consumers, the Commission needs to take the following factors into consideration:

- **Existence of withdrawal right**

The CEA would point out that life insurance products have a withdrawal right which provides for a higher level of consumer protection. Consumers are also protected by withdrawal rights which were included in Article 186 of the Solvency II Directive. The cancellation of a contract by an insurance policyholder is usually very costly for intermediaries and providers. These withdrawal rights are an incentive to act in the interest of their customers.

- **Importance of proportionate approach**

The CEA believes that a proportionate approach is necessary for any potential regulation of insurance products. For this reason, the CEA has developed a Key Information Checklist (KIC)<sup>11</sup> to help policyholders better understand the key features of unit-linked life insurance. This checklist contains the minimum information that consumers should be provided with before they take out unit-linked life insurance, regardless of the channel

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<sup>11</sup> See the CEA response to the European Commission consultation on legislative steps for the Packaged Retail Investment Products (PRIPs) initiative.

through which they buy the product (internet, mail, broker, insurers' direct sales, bank, post office, etc.). The KIC covers all key characteristics of unit-linked life insurance products such as risks, premiums, contract duration, consequences of early contract termination, etc. Also information on total costs should be provided which should help consumers compare different products costs. The content of each of the information categories can be adapted to local consumers' needs and expectations to avoid additional requirements and costs to operators, as well as any interference with existing national, self- or co-regulatory models.

■ **Importance of national measures to address local specificities**

Any future regulation must recognise the diversity and complexity of insurance distribution markets. The insurance distribution landscape is marked by its diversity. The networks are becoming larger, and new distribution channels are developing (internet sales, independent advisors). Differences between national distribution markets reflect different consumers' realities, ie different consumer needs and demands. The CEA believes that EU-wide "one-size-fits-all" legislation will not be able to capture the differences between the existing national distribution structures.

Any regulatory approach which fails to recognise the diversity of national distribution systems may have significant negative implications for markets, and ultimately for consumers.

Therefore, the CEA believes that the future European legislation on the distribution of insurance should be proportionate and take the form of high-level principles, which are flexible enough to accommodate the existing diversity of distribution structures, to adapt to evolving consumer needs and demands, and to avoid adverse effects on distribution markets.

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

The CEA believes it appropriate to stress the fact that the review of MiFID has not yet been completed. We believe that it is crucial to await the results of this evaluation exercise, and as such, it is difficult to respond to such a question while MiFID is in the process of being reviewed.

This being said, the CEA welcomes the fact that the Commission acknowledges that insurance is specific and that any new requirements for insurance products should acknowledge their specific nature and the different business model for insurance. The CEA would also stress the importance of respecting the diversity of national markets and their respective differences in approach. However, the CEA believes that uncertainties remain as to the applicability of MiFID rules to insurance in all national distribution markets. Whereas the IMD targets intermediaries, who may also be natural persons and SMEs, MiFID addresses investment firms and regulated markets, and thus imposes requirements of a significantly different proportion. Whereas insurance regulation is founded upon categories defined by the nature of the insured risk (large risk/mass risk), banking regulation refers to the classification of clients and products, eg when it comes to the possibilities of non-advised sales, and this classification (eg complex/non-complex products) may not always be relevant or appropriate in the insurance sector, particularly with regard to pre-contractual disclosures. We would like to draw the attention of the EC to the risk of exporting banking and securities rules to insurance, as it may induce a uniformity of product design in some markets across all financial sectors to the detriment of consumers and competition.

Moreover, a proportionate approach needs to be taken concerning the introduction of any new rules or obligations, such as in the areas of conflicts of interest, transparency of remuneration or selling practices, and the Commission will have to give due consideration to the issue of increased administrative burdens. This is particularly relevant in the case of natural persons or SMEs, where the introduction of disproportionate, prescriptive rules or detailed regulatory guidance would have an especially burdensome effect while there is no evidence that IMD current rules are not sufficient as regards consumer protection.