

To: Distribution TF
From: Single Market & Social Affairs department
cc: Single Market Committee; Joint Retail Investment Products TF; Public Affairs Group
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Subject: Latest developments in the EP on IMD2

Summary

On 6 November, the European Parliament (EP)'s Economic and Monetary Affairs (ECON) Committee had its first exchange of views on the IMD2 proposal. The discussion focused largely on the content of the [working document](#) on IMD2 drafted by rapporteur Werner Langen MEP (EPP, DE), and which is now available on the EP website in EN, FR and DE language versions. During the exchange of views, Langen stressed that his working document was not a final evaluation but rather an overview of the main issues to be discussed. He confirmed that a draft report is due to be ready at the end of November.

The following are the main issues that were raised in Langen's working document and during the exchange of views in the ECON Committee:

- **Proportionality:** In his working document, Langen stresses the importance of the principle of proportionality, adding that the administrative outlay for SMEs has to correlate with the risk and complexity inherent in an insurance product. He adds that over-regulation is undesirable, as it would result in fewer providers and less choice for private customers. This sentiment was echoed by other MEPs (Olle Schmidt MEP – ALDE, SE; Sanchez Presedo MEP – S&D, ES) during the exchange of views.
- **Scope:** With regard to the scope, Langen questions whether the appraisal of claims should be included, given that the policyholder protection interest is not immediately obvious, and said that EIOPA has not recommended their inclusion.
- **Registration requirements:** Langen notes in his working document that the exemption for insurance undertakings and their employees from having to register again under the directive has prompted criticism from some market players who see it as a distortion of competition. During the exchange of views, he confirmed his view that he believes it is not necessary for insurance undertakings to have to re-register.
- **Professional requirements:** Langen's working document states that insurance intermediaries should undergo regular mandatory training to ensure their continuing professional development. During the exchange of views, he added that there were various proposals on the table from different associations regarding training requirements (eg 200 hours training over 5 years), which raises the question as to who should be responsible for carrying out this training – professional organisations or companies themselves. In any case, the procedure should be "as unbureaucratic as possible".

Insurance Europe did not comment on the issue of professional requirements in its key messages but in its response to the EC consultation it stressed that insurance companies are responsible for training their employees and designing their own training programmes, which should not be standardised.

- **Conflicts of interest and transparency:** Langen refers in his working document to the PwC study carried out for the EC and its conclusion that information on remuneration would be unnecessary and confusing to consumers, citing also studies in the UK regarding its on-request regime. He also points out technical difficulties in providing information on the basis of calculation which would allow comparability. As insurance mediation firms are often SMEs, he questions whether the EC's assumed benefit to consumers could outweigh the additional administrative burdens and costs to be imposed on firms.

During the exchange of views, Langen also expressed his opinion that any proposal to have all commissions passed on to the consumer would be wrong, as consumers are more concerned with the price/discounts and may choose on this basis rather than the actual policy itself. He felt that this situation needs to be dealt with properly and not as a result of pressure from consumer associations.

Langen's approach with regard to this issue seems to be generally in line with Insurance Europe's position, as he concluded both in his working document¹ and during the exchange of views that disclosure of the nature and source of remuneration and/or of the acquisition and selling costs factored into the commission would be a far better approach. He said discussions need to be had on how to amend the EC proposal, noting that there is also the option to simply leave things as they currently stand in Member States.

- **Insurance PRIPs:** In both his working document and during the exchange of views, Langen raised the question as to whether insurance investment products are actually comparable with pure investment products and should be subject to the same rules or whether they should be treated differently, as they are not tradable at all times.

He believes that there is doubt about the proposed definition and classification of conflicts of interest and notes that Member States already have conflict management systems which differ greatly from one country to the next. During the exchange of views, he referred to studies in SE and DK that found the market to be too rigid to have only fee-paying advice available and that this actually led to less insurance coverage – citizens were not that well-informed and therefore not adequately provided for. His conclusion in his working document is that present practice should not be called into question too hastily, as it is uncertain whether a fee system translates into better advice or whether several different systems could in fact be used.

- **Delegated acts:** Langen questions whether the delegated acts being proposed, which relate to important substantive aspects of the directive, actually meet the requirements of Article 290(1) TFEU. He feels that these provisions would lead to maximum harmonisation, rather than the desired minimum harmonisation approach. He also raises the issue of the resources to be allocated to EIOPA to enable it to perform the task conferred on it. Referring to the number of delegated acts, he highlighted during the exchange of views that it seems that the EC is seeking to deal with all these issues without the involvement of the EP.

The following comments were raised by other MEPs during the exchange of views:

- **Sanchez Presedo MEP (S&D, ES):**
 - Need to ensure level playing field
 - Scope should be universal otherwise competition issues not addressed
 - Have to apply degree of proportionality, as otherwise could lead to disastrous consequences
 - Important to have guarantees regarding professionalism
 - Conflicts of interest must be addressed in a transparent fashion
 - Bundling/tying – consumers should have option available to purchase products separately

¹ However, in his working document Langen incorrectly states that insurance undertakings will be required to disclose the exact amount of variable remuneration received by their employees.

- Advice is supposed to be personalised and take into account personal circumstances of customer
- Need for stricter rules for advisers
- Investment products – must look at what is adopted in other areas to avoid inconsistencies

- Olle Schmidt MEP (ALDE, SE):
 - Need stricter protection but must make sure not over-regulated – must have proportionality and not harm interests of consumers
 - IMD2 should be aligned with MiFID2 and not overlapping
 - Full harmonisation would be best but understand difficulties – cannot have legislation therefore that does not give possibility for Member States to have stricter rules
 - Definition of advice is a key issue, as in MiFID2
 - Transparency and inducements – right decision taken under MiFID2 to allow possibility for those countries that want to ban inducements, but will be complicated in future to allow this non-level playing field
 - Have to protect consumers but not over-protect – have to give them the right information
 - Training and education in general are essential for a well-functioning market – important that both consumers are educated and that the behaviour of those selling products is appropriate

- Philippe Lamberts MEP (Greens, BE):
 - Agree with Schmidt's view that the consumer should be protected but that he should not be stripped of his own responsibilities – want consumers to behave responsibly and not be over-protected so that he does not have to pay for mistakes – have to find right balance
 - Not happy that out-of-court redress is not binding
 - Transparency – need to have a KID here also, providing key data to the consumer (at least transparency on inducements if not banning them)
 - Would also like clear indication of total yield, especially if life insurance product – all costs should be deducted so that the consumer has real clarity as to what he pays
 - Should be key indicators regarding payment of claims and delays to claim payments
 - Definition of professional customer is important – not same definition as EC's SME definition, which means a number of SMEs would be deprived of mandatory information from their insurer
 - Rules on loss adjusters – would like clarity on the role of loss adjusters and to have minimum standards specific to this activity, maybe to be defined by EIOPA

- Ashley Fox MEP (ECR, UK):
 - IMD2 part of wider package (PRIIPs, MiFID2) – need to work toward common definitions and common approach that will create level playing field for all actors, while providing adequate protection for consumers
 - Need to ensure comparability across different products
 - Need to work toward single market but following MiFID/MiFIR discussions there is acute awareness of different traditions in different Member States – need to have some scope for national differences to be taken into account – Member States should not be prevented from adopting stricter consumer protection regime if deemed necessary
 - Major differences between short-term, often annual, insurance policies where disclosure of fees and other compensation mechanisms are less critical than the overall cost or quality of protection they offer – for long-term and investment-linked products, have to encourage maximum transparency and compatibility, and focus on quality advice being offered – hoping for helpful transparency proportionate to the insurance term and investment component of each product
 - Would like to ensure consistency of redress provisions with proposed ADR directive

- Catherine Stihler MEP (S&D, UK), IMCO rapporteur:
 - Welcomed Langen's document and announced hearing in IMCO in week beginning 26 November
 - Stressed importance of working together between the two committees to get the best outcome for consumers

Next steps

Langen confirmed that the draft report is expected to be ready at the end of November. The ECON Committee will vote on 26 March. The full timeline for IMD2 in the ECON Committee is confirmed as follows:

17-18 Dec: ECON consideration of draft report

24 Jan 13: Deadline for amendments

18-19 Feb 13: Consideration of amendments

26 March 13: ECON vote

April 13: Vote in plenary

It was also confirmed during the exchange of views that a decision has not yet been taken on the division of competences between ECON and IMCO, but it seems likely that ECON will be the lead, and IMCO the opinion Committee. The secretariat has received confirmation of the following timeline in the IMCO Committee for their work:

10 Jan 13: Hearing + discussion on draft opinion

22 Jan 13: Deadline for amendments

20-21 Feb 13: Consideration of amendments

4 March 13: IMCO vote

The rapporteur in the IMCO Committee will be Catherine Stihler MEP (S&D, UK), while the shadows are now confirmed as Jorgo Chatzimarkakis MEP (ALDE, DE), Othmar Karas MEP (EPP, AT) and Matteo Salvini MEP (EFD, IT).

The secretariat is currently arranging meetings with key MEPs and the Council to convey its messages on IMD2 and is continuing to work on finalising its amendments to the proposed text.