



FERMA

Federation of European
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Position Paper

BUSINESS CUSTOMER CONCERNS REGARDING PROPOSALS TO REFORM THE EU FRAMEWORK FOR INSURANCE INTERMEDIATION (IMD2)

The Federation of European Risk Management Associations (“FERMA”) welcomes the opportunity to contribute to the current debate surrounding the proposals to reform the EU framework for insurance intermediation (“IMD”).

FERMA is a European association which brings together the national risk management associations from 22 European countries. FERMA’s 4,200 individual members are corporate insurance buyers (“business customers”) representing a wide range of business sectors, including manufacturing, financial services, health, non-governmental and local governmental organisations. Members manage their organisations’ risks and insurance needs on a daily basis. FERMA members have a significant interest in ensuring that the review of the EU legislative framework governing the activities of insurance intermediaries serves all business customers, irrespective of the size of the customer or the risk insured.

In recent years FERMA has pursued an industry solution to improve the level of information provided by intermediaries to business customers. This has resulted in a voluntary system of information on request. In preparation for the proposal, FERMA urged the Commission enshrine this industry solution into Union legislation. In parallel CEIOPS/EIOPA recommended that intermediaries provide information on request to both life and non-life insurance customers.

At this stage in the negotiation process, neither the proposal by the Commission nor the preliminary views of the European Parliament provide an entirely satisfactory response to these recommendations. The Council is proceeding with discussions at attaché and expert level, and FERMA looks forward to learning more about the Member States’ views.

FERMA calls on the co-legislators to consider business customer concerns and, as a minimum, provide them with a legal basis on which to request information from their intermediary. This would enable business customers to make fully informed decisions about their insurance coverage.



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THE GENERAL FRAMEWORK FOR DISCLOSURE UNDER IMD2

In essence, the Commission's proposal would require intermediaries to provide customers with information:

- about the intermediary (or insurer acting as intermediary);
- in relation to the contract proposed; and
- the nature and amount of remuneration.

As regards remuneration, the proposal distinguishes between life and non-life insurance products. For life products, intermediaries would have to indicate whether payment is on the basis of:

- a fee paid by the consumer;
- a commission that is included in the insurance premium; or
- a combination of both.

Intermediaries would also have to disclose the total remuneration, or at least the basis on which the fee or commission is calculated.

For non-life products, the Commission contemplates a five-year transitional period. During this period, the intermediary would only be bound to inform the customer that they may request information. The intermediary would also be bound to disclose on request whether they have a significant holding in a given insurance company.

Although FERMA recognizes that the European Parliament has not yet adopted its position, it is concerned that business customer needs are not being adequately addressed. Rapporteur Langen for the Economic and Monetary Affairs Committee (ECON) advocates in his draft report removing most of the proposed provisions on conflict of interest and disclosure, including the transitional period, but leaving Member States the discretion to introduce or retain additional national requirements as they see fit. Rapporteur Stihler for the Internal Market and Consumer Protection Committee (IMCO) has not tabled any specific amendments on this aspect of the proposal.

The Commission's proposal is not FERMA's preferred approach but it would, at least, ensure that all customers receive a minimum level of information regardless of the national market(s) in which they operate. FERMA is concerned that the preliminary position in ECON in particular assumes that such information is both "unnecessary" and "confusing to consumers". Given the varied needs of different types of non-life customer, including business customers, FERMA respectfully requests a minimum European standard of disclosure in IMD2 to be available to all customers.



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EXEMPTION FOR LARGE RISKS AND PROFESSIONAL CUSTOMERS

There is a general assumption in the Commission's proposal that the following types of non-life customer do not require access to the information outlined above. These are:

- customers seeking coverage for large risks which are defined either with reference to the nature of the risk (e.g. ships and aircraft) or the size of the undertaking;
- professional customers, a new customer category which is defined in the Annex to the proposal.

The definitions include a range of criteria to determine whether or not a given customer falls under the exemption. Both definitions include criteria to define a large undertaking. They are as follows:

- for large risks, the criteria remain the same as defined in the current IMD. They are based on Directive 88/357/EEC, which has never been updated. Two of the three criteria must be met: a balance sheet total of € 6.2 million, net turnover of € 12.8 million and an average number of 250 employees;
- for professional customers, the legislator has introduced separate criteria based on different Union legislation, Directive 2004/39/EC ("MiFID"). A large undertaking is defined as an entity meeting two of the three criteria - a balance sheet total of € 20 million, net turnover of € 40 million and own funds of € 2 million.

Thus intermediaries would not need to provide the information specified in the general framework: a medium-sized buyer might fail to meet the professional customer criteria but might still be meeting the large risks criteria and, as such, would not be entitled to information on request. By contrast, the larger professional customer would be able to request a certain level of information (on the nature of the risk to be insured and by written agreement). This raises a fundamental policy issue as to whether the two criteria should be aligned more closely to ensure that all business customers qualify for disclosure, at least the partial information on request.

The European Parliament has not yet fully addressed this point. Rapporteur Langen for ECON has narrowed the list of entities that may be deemed professional customer and has removed the provision entitling such customers to request information. Rapporteur Stihler for IMCO has not yet tabled any amendment on this point.

FERMA is not convinced the right balance has yet been struck between providing business customers with adequate information on which to base insurance decisions and avoiding excessive regulatory burden for intermediaries. In particular FERMA recommends that:



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- the exemptions are reexamined to ensure they reflect market reality and identify the consumers that genuinely do not need disclosure; and
- the categories of large undertaking are amended to provide common criteria. This would ensure that a significant number of business customers are not left without access to information.

FERMA recognizes that the proposal is a minimum harmonization Directive, but nevertheless regrets the Commission and Parliament's readiness to leave Member States discretion to introduce or maintain national rules as this will result in different solutions across the EU. While this may reflect the state of the EU insurance market, it will do little to promote a single market approach.

FERMA'S PROPOSED SOLUTION FOR BUSINESS CUSTOMERS

As the representative organization for European business customers, FERMA closely follows the development of risk management practices and market realities. In response to problems reported by members, FERMA pursued an industry solution with the European Federation of Insurance Intermediaries (BIPAR).

This resulted in both associations adopting a non-binding Protocol in November 2010 which sets a framework for information disclosure by intermediaries to business customers. It covers: the nature of the services rendered; the capacity in which intermediaries operate; and remuneration levels. Information is provided on an on-request basis.

FERMA has consistently called for the incorporation of these standards in EU legislation, principally IMD2.

By introducing provisions to allow professional customers to request certain information in writing, the Commission made a step towards meeting FERMA's expectations.

FERMA, therefore, regrets the initial approach by the European Parliament to remove this provision in the Annex, and respectfully requests its reinstatement.

FERMA also requests the co-legislators to include rights for business customers to request information on remuneration from intermediaries.

FERMA would be pleased to engage with the co-legislators to ensure that a solution is found which enables business customers to make fully informed choices about their insurance coverage without placing an undue burden on intermediaries.



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ANNEX I: Beyond simple disclosure, the transparency and the management of conflict of interest

BIPAR-FERMA Protocol on Transparency for Business Insurances

Intermediaries should, identify manage and mitigate potential conflicts of interest in an appropriate and transparent manner. In order to do so, intermediaries will provide fair and clear information to their business clients about:

1. the nature of their services and the capacity in which they operate so that business clients can make informed decisions about the purchase of insurance products.
2. any underwriting powers and delegated authorities they may hold from insurers in relation to the contract.
3. the nature of the remuneration they receive for placing and servicing the business insurance contracts. In particular, intermediaries will inform clients if:
 - a. they operate on the basis of fees and / or
 - b. the remuneration is included in the premium and / or
 - c. remuneration involves a combination these

Furthermore, upon request, intermediaries will provide information about:

- The amount or (as appropriate) the basis of the calculation of any remuneration included in the premium directly related to the placing and servicing of each business insurance contract.
- Any types of payment received by the intermediary* from the insurer* (other than payments directly related to placing and servicing) that take into consideration the business insurance contract as part of the calculation of the payments. The intermediary will give a generic description of the nature of the agreement that gives rise to these payments.

* including its parent company and / or subsidiary and / or affiliated company

Brussels, 22 November 2010

Please note that the current position is the one endorsed by the majority but not all of FERMA members.