



The European Federation of Insurance Intermediaries

La Fédération européenne des intermédiaires d'assurances

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POSITION PAPER

Public consultation on responsible lending and borrowing in the EU

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BIPAR, the European Federation of Insurance Intermediaries

is a non-profit European organisation grouping professional associations of insurance intermediaries in Europe. It presently has a membership of 47 national associations, established in 31 countries, and represents some 80,000 insurance agents and brokers, employing in all about 250,000 people.

Founded in Paris in 1937, BIPAR headquarters were moved to Brussels in 1989. It is today the official and recognised voice of insurance intermediaries with the European Institutions.

I. General comments

BIPAR welcomes the opportunity to comment on the European Commission's possible measures on responsible lending and borrowing in the EU, including a reliable framework on credit intermediation, which aims at restoring consumer confidence and delivering responsible and reliable markets for the future.

This BIPAR response is mainly based on the experience of its Dutch, Belgian and UK associations¹.

BIPAR acknowledges that there is a need for adequate protection for consumers when taking out credit, and recalls that the presence of credit intermediaries always represents an additional guarantee of consumer protection through professional services and advice.

Credit intermediaries are a valued facilitator to the mortgage market by credit providers. They also offer consumers the best means in obtaining a suitable product for their needs. In addition, the credit intermediaries' role will be an essential instrument for increasing cross border trade between EU Member States and will allow for greater access between EU Member States' mortgage markets, providing a ready-made distribution channel for those wishing to enter EU national markets.

II. Specific comments

A. PRACTICES PRIOR TO THE LENDING TRANSACTION

1. Advertising and marketing

The Commission believes that advertising and marketing should be fair, not misleading and should not place undue pressure on prospective customers. Whilst the Consumer Credit Directive (CCD) addresses the information that should be presented in the advertising of consumer credit, there are no such requirements in place with regards to the advertising and marketing of mortgage credit.

Comments on the UK situation

The UK already has existing legislation covering the regulation of financial promotions, albeit split across its Consumer Credit Act (for unsecured and non-FSMA secured lending), and the Financial Services and Markets Act (FSMA) for first-charge secured residential lending. AMI would not welcome an increase in the level of financial promotions regulation per se, although standardisation at an EU level across Member States may be beneficial. We would however like to see a greater regulation for websites operating as price comparison sites, lead generators and aggregators. We believe that this would lead to enhanced consumer protection.

2. Pre-contact information

The Commission believes that borrowers should be in possession of all necessary information to make an informed decision when borrowing. Consumer tests by the Commission concluded that it is very important for consumers to obtain pre-contract information in a standardised form in order to allow for a comparison between products. The CCD prescribes the use of the Standard European Consumer Credit Information (SECCI) but the CCD does not apply to secured mortgage credit.

In the area of mortgage credit the European Standard Information sheet (ESIS) forms part of the Code of Conduct for Home Loans but ESIS is a non-binding self regulatory instrument. Its

¹ UK : AMI (Association of Mortgage intermediaries) and AIFA (Association of Independent Financial Adviser) – Belgium : FEPRABEL and FVF – Ireland : IBA (Irish Brokers Association) – The Netherlands : NBvA, NVA as Fidin and in close cooperation with OvFD, the association of mortgage intermediaries

adoption at Member State level has been mixed and it is only applicable where lenders sign up to the code.

The Commission is currently reviewing the policy option relating to ESIS and the disclosure of fees paid to intermediaries and bank client-facing staff.

Comments on the UK situation

Whilst AMI is open to the use of the ESIS, it has been shown that such documents are rarely used by consumers as a tool for product comparison. The Key Fact Illustration (KFI), the UK equivalent to the ESIS, has been shown to be used more as a post sale review document (an aide memoire) rather than being used as a product or pricing comparison tool. The Financial Services Authority (FSA) Mortgage Effectiveness Review Stage 2 Report stated that, “*While the Key Facts Illustration (KFI) was seen as an important document and used to check any points of detail and clarify uncertainties, it was not viewed primarily as a means for product comparison or shopping around*”.

Replacing the KFI with the ESIS would clearly result in a cost increase for intermediaries. AMI would want to see the justification for this additional cost burden. If adopted by the Commission, we would like to stress the importance of the ESIS being appropriately and proportionally constructed.

BIPAR strongly emphasises the importance of the Commission in ensuring that the ESIS will offer substantial additional benefits for the consumer and that it is not merely used as a product review document.

3. Risk Guidance

The Commission is considering the development of risk guidelines to be provided to consumers before they purchase a credit product. The guidelines could be provided once discussions have taken place with the borrower or they could be made generally available from lenders, intermediaries, and the internet or by other organisations and authorities.

Commission’s question 1: *Do you have evidence of misleading or unfair advertising or marketing practices with regard to mortgage and consumer credit?*

BIPAR answers to questions 1

In Belgium, some misleading or unfair practices were evidenced some years ago (Example: Some supermarkets tried to convince elderly people to buy basic products (food, household product etc...) with a special credit card. The targeted groups had to pay extremely high interest rates on their purchased basic products). These practices have gradually disappeared as far as consumer credit is concerned, since the adoption of specific legislation in the nineties.

In the Netherlands, there have been cases of lenders and intermediaries who were advertising a low misleading interest rate. But since the new 2006/2007 Financial Supervision Act, stringent rules regulate the way lenders and intermediaries can make publicity. For example: As of April 2009, consumer credit advertisements must include a prescribed warning statement: “*Attention! Borrowing money costs money.*” accompanied by a prescribed icon. The supervision on market compliance of these rules is severe.

Commission’s question 2: *What are your views on the development of risk guidelines?*

BIPAR answer to question 2

BIPAR is in favour of such extended risk guidelines for both mortgage and consumer credit. In our view, it is important that the credit intermediary, as a professional who has a relationship of trust with his client, has the possibility to deliver the guidelines to his client.

BIPAR believes that buyers of mortgage and consumer credit are provided with sufficient and clear information to make informed decisions about the purchase of the product.

To achieve this, BIPAR believes that lenders should provide product information for their own products that is clear, fair, not misleading and timely. As far as is reasonably possible, the product information should be provided by the lender in a format that facilitates comparison of the features with other comparable products.

If risk guidelines are to be considered, it should be the responsibility of the lender to supply this information to the intermediary or, when the product is sold directly, to the end consumer in a timely manner and appropriately presented. It should be then the responsibility of the intermediary to pass this information on to the end investor.

In the Netherlands insurers and banks who sell complex products (life) and mortgages have to produce risk guidelines for the consumers. These guidelines are presented in the form of a financial information leaflet (prescribed standard form). In this leaflet, information is given on the cost of the product, the risks and the return. The provided information has to be correct, comprehensible and must help the consumer to make a responsible decision when buying a product.

B. BUSINESS PRACTICES IN THE CONTEXT OF LENDING TRANSACTIONS

1. Suitability and Creditworthiness

There are concerns in the Commission about some borrowers being issued credit which was unsuitable for their needs. The Commission considers that this issue can be approached in two ways – the suitability of the product design and the suitability of the product for a particular borrower. Some Member States place statutory limits on loan to value (LTV) and loan to income (LTI) ratios. Although the quantity of high LTV and LTI products being offered to borrowers has reduced as a result of the current market conditions, the suitability of such products has still been called into question.

The Commission believes that there is room for improvement in the suitability of particular credit products for particular borrowers. It is particularly concerned about the sale of ‘teaser rate’ loans, where the borrower would need to refinance after a short period of time and the sale of foreign currency loans without the borrower understanding the effects of currency fluctuations.

The CCD only requires lenders to assess consumers’ credit worthiness based on the information supplied by the consumer and information from the consumer’s credit file. It is left to the individual Member State to promote responsible lending practices. Some, but not all Member States already have legal requirements for mortgage lenders and credit intermediaries when assessing creditworthiness.

Although it is expected that lenders and credit intermediaries carry out creditworthiness assessments, the Commission is concerned with the number of disincentives of doing so. Lenders may opt for more risky loans if they can sell the property in the event of default, if it can transfer the risk default by issuing residential mortgage backed securities or by selling the portfolio. In addition, the creditworthiness assessment may be skipped to speed up the application process and credit intermediaries in the UK do not have access to credit details when making such assessments.

Commission’s question 3: *In your view, are there certain (categories of) credit products that are inherently unsuitable for sale to retail borrowers? Would you welcome a set of standardised or certified credit products to be offered to consumers?*

BIPAR answer to question 3

BIPAR is not in favour of standardised credit products as this may block the development of new products. This would not be in the best interest of the consumer. It is important that the product is appropriate and suitable for the consumer.

Any further regulation which the Commission decides to adopt should be based on the regulation of the wholesale market, rather than an increase at a retail level. We do not believe that a standardised or ‘approved’ set of credit products should be provided as this will most likely be a barrier for an efficient market. It would seem more suitable to let market forces decide what type of credit products to offer to consumers, whilst ensuring that the wholesale market is sufficiently regulated to offer responsible funding levels.

In summary: a maximum of free competition should be allowed for within a regulated market frame in order to provide adequate consumer protection.

Commission’s question 4: *Do you consider that mortgage lenders and credit intermediaries should always perform creditworthiness and/or suitability assessments before granting consumer and mortgage loans? For mortgage credit, what are your views on the criteria to be used in assessing suitability such as loan-to-income ratios or loan-to-value ratios?*

BIPAR answer to question 4

BIPAR is of the opinion that creditworthiness is an effective criterion for granting mortgage loans or consumer credits. It is mainly distribution channels other than the credit intermediary, which sell consumer credits without checking the creditworthiness of the client.

In the Netherlands there are already legal requirements in place for mortgage lenders or credit intermediaries to assess the creditworthiness of a consumer and his compatibility with particular credit products. Intermediaries also have to assess the suitability of mortgage products to the personal circumstances (financial position, financial needs/goals, knowledge, experience and the ability of handling risks) of the consumer. They have to decide which credit product is appropriate for his needs and financial situation. The Code of conduct for mortgage lenders (based on ESIS) is well implemented in the Netherlands (lenders as well as intermediaries comply with this code). The loan income ratio is prescribed, however it is possible for lenders to grant a higher loan if they can explain on what grounds a higher loan is acceptable (for example personal circumstances of the consumer). The intermediary is bound by the same ratio, if s/he advises a higher loan then he must provide an explanation as to the reasons. S/he can not say that it is the responsibility/decision of the lender to grant a higher loan. The intermediary must himself, provide a good explanation why he thinks the consumer is suitable for a higher loan.

A very helpful instrument in performing creditworthiness is granting credit intermediaries access to credit databases in combination with ensuring that clients provide correct information about themselves.

Many consumers are not aware of their debts. Often they do not have the complete overview of their total debts. Granting credit intermediaries access to credit databases enables these intermediaries to obtain the credit situation of the consumer. It would therefore have substantial added value for consumers. It would allow credit intermediaries to facilitate an assessment of the consumers' creditworthiness when assessing the suitability of a product corresponding to their needs. It can also be concluded that this would encourage responsible lending and borrowing.

The Commission will need to consider the interaction and effects of the CCD and the Capital Requirements Directive (CRD). It will also need to take into consideration the Markets in Financial Instruments Directive (MiFID) and Packaged Retail Investment Products (PRIPs). The Commission should ensure that appropriate harmonisation takes place between these Directives to produce an effective market and avoid any unnecessary additional costs. Should any additional costs be identified, the Commission should produce a cost benefit analysis to justify the increased costs.

Commission's question 5: *How should the lender or credit intermediary demonstrate or document the adequacy of the creditworthiness and suitability assessment?*

BIPAR answer to question 5

The intermediary/direct writer should make a profile of the customer (the financial experience, the financial position, the consumer's knowledge, the financial needs and the ability of handling risks).

As stated above, granting credit intermediaries access to credit databases would help in serving the consumer's credit situation. Also the consumer should be encouraged to provide the correct information to lenders and intermediaries.

The issue of 'teaser rate' loans has also been raised by the Commission. However, the Commission does not define what exactly would constitute as a 'teaser rate'. This could lead to confusion as there is no clear message. Would the Commission consider a two year fixed rate mortgage loan to be a 'teaser rate' if the loan then reverted to a higher Standard Variable Rate (SVR) at the end of its fixed rate term – or in the current market where the SVR can be less

than the initial rate? Or would the loan contract be required to have a defined increase in its rate at the end of the fixed rate period to be considered to have a ‘teaser rate’?

The Commission should recall that there is already national legislation covering this area. In addition, at EU level the Unfair Contract Terms Directive (UCTD) has already been implemented. BIPAR is of the opinion that the Commission should first consider the existing UCTD before drawing its conclusion as to whether further legislation is required.

2. Advice standards

The Commission’s view is that information merely describes a product whereas advice implies the provision of a recommendation for an individual customer to opt for a given product. Any advice should be objective and commensurate with the consumer’s needs and profile. The Commission appears to believe that a potential conflict of interest could arise from credit intermediaries and bank staff being remunerated based on sales commissions and fees. The CCD does not regulate advice but does call for an adequate explanation to be provided to the borrower. However, there are currently no rules on the provision of mortgage advice at an EU level.

The 2007 White Paper on the Integration of EU Mortgage Credit Markets stated that mortgage lenders should provide full information and explanation to consumers so that they could make an informed decision but they should not be legally compelled to provide advice.

The Markets in Financial Services Instruments Directive (MiFID) and the Insurance Mediations Directive (IMD) already present some advice provision at EU level. In addition, a number of member states also apply advice standards.

Commission’s question 6: *Do you think that these advice standards would be appropriate in an EU context? Are there others that should be considered? What would be the most appropriate means to introduce and enforce the application of advice standards? Please explain.*

BIPAR answer to question 6

While BIPAR fully endorses the Commission’s view that “*providing advice is distinct from providing information*”, BIPAR however, would not support the mandatory provision of advice.

In the UK and in the Netherlands there are existing advice standards, relating to the assessment of affordability, to the suitability, to the providing of disclosures in durable mediums, and to a series of risk warnings.

Formulation of aspects of the advice process would not be welcomed, in particular prescription as to good or appropriate advice. BIPAR believes this should be left to the judgment of the adviser and client on a contract to contract basis. However, proposals mirroring the UK requirements surrounding suitability or affordability may be appropriate, although these are currently under review in the UK statutory regulator’s (FSA) Mortgage Market Review.

C. RESPONSIBLE BORROWING

The Commission considers that responsible borrowing means that consumers will make an effort to inform themselves of the products available. It will also mean that consumers are honest when providing information and take their personal and financial circumstances into account when making their borrowing decision. The Commission considers that if borrowers do not act responsibly it will undermine the positive effects that could be achieved through its policies on responsible lending.

The Commission believes that a necessary condition of responsible borrowing is consumer education. It has adopted a communication on financial education aiming to empower consumers understanding of financial products. However, it accepts that it does not always follow that enhanced financial education leads to responsible borrowing.

In most cases the borrower is requested to provide information that is relevant to the assessment of their financial situation. The borrower should be able to evidence their financial situation and the lender should be able to verify the information.

Commission's question 7: *Apart from a focus on financial education, are there any measures that could be taken to encourage responsible borrowing?*

BIPAR answer to question 7

BIPAR believes that financial education is key to encourage responsible borrowing.

In addition, to financial education and to credit intermediaries being able to access consumer credit details in order to assist consumers in finding an appropriate mortgage (see above), BIPAR believes that it is essential to consider the behavioral psychology of borrowers when they are making a financial decision. BIPAR believes that this would be an important factor to take into account when considering any measures to encourage responsible borrowing within the EU.

D. CREDIT INTERMEDIARIES

The Commission recently undertook a broad study of the market of credit intermediaries. The study showed that credit intermediaries play a significant role in the provision of credit in the EU. Credit intermediaries were involved in the intermediation of 41.5% of all residential mortgage issued in the EU between 2006 and 2007.

1. Defining credit intermediaries

The term credit intermediary is defined at EU level in the CCD as, “a natural or a legal person who is not acting as a creditor and who, in the course of his trade, business of profession, for a fee, which may take a pecuniary form or any other form of financial consideration (i) presents or offers credit agreements to consumers; (ii) assists consumers by undertaking preparatory work in respect of credit agreements other than referred to in (i); or (iii) concludes credit agreements with consumers on behalf of the creditor”.

The CCD only regulates certain information obligations for credit intermediaries and concentrates only on credit agreements with consumers. In addition, the CCD only covers credit provisions between EUR 200 and EUR 75,000. Mortgage credit agreements are not included; therefore, it can be questioned if the CCD definition should apply to mortgage credit intermediaries.

At an EU level credit intermediaries can also be classed as tied (agent) and independent (broker). Borrowers may not always be aware of the implications of the different terms on the range of products that are offered and the interest that an intermediary may have in selling a certain product.

Commission’s question 8: *Do you consider that the scope of the definition of Credit Intermediary as set out in the Consumer Credit Directive could also be applied to the mediation of credit not covered by that directive? Would it be appropriate to differentiate between full-time credit intermediaries and persons who offer credit intermediation on an incidental basis? Please explain why (not).*

BIPAR answer to question 8

A clear definition of what constitutes the different types of credit intermediaries at an EU level will need to be established. The Commissions paper does not yet offer such specific definitions. It is also crucial that any future legislation on credit intermediaries is based on an activity based approach in order to ensure a level playing field between operators (ex: The Insurance Mediation Directive).

In addition, the Commission paper does not provide a clear definition of the terms it uses in relation to ‘suitability’, ‘appropriateness’ and ‘affordability’. Whilst these terms may be interchangeable in the eyes of the Commission, within existing national regulations (in the UK for example), these terms represent distinctly different meanings. A misunderstanding of what each terms refers to could have severe consequences for credit intermediaries and consumers.

The Commission seeks to differentiate between full-time credit intermediaries and persons who offer credit intermediation on an incidental basis. BIPAR believes that from a consumer perspective it is important that a level-playing field is ensured. Whether a consumer visits a person who conducts mortgage advice by way of business or not, the same rules must consistently apply to everyone offering this service.

Commission’s question 9: *Do you think policymakers should make distinctions between credit intermediaries in terms of the products they sell (mortgage, consumer credit, 'point of sale' credit)? Should credit intermediaries be treated differently in terms of the status of their relationship with lenders (tied versus untied intermediaries)? Please explain your answer*

BIPAR answer to question 9

Regardless of the status of their relationship with the lender BIPAR believes that intermediaries should be subject to the same level of minimum qualification and regulatory scrutiny. By ensuring a level playing field the Commission can provide enhanced consumer protection and establish a more efficient market.

Regarding the type of products that the credit intermediary advises on, BIPAR's member associations have diverging opinions as to whether a distinction should be made.

In the Netherlands and in Belgium, the concerned associations believe that mortgage is unique. Due to its complexity and huge financial impact, a separate regulation is necessary. This differentiation is made in the Dutch financial services Act.

In the UK, AMI believes that no distinction should be made. By creating a level playing field the Commission can provide enhanced consumer protection and establish a more efficient market.

2. Role of credit intermediaries

Credit intermediaries contribute to transparency on a wide range of products and product providers in the market, available to consumers. Credit intermediaries have also been known to finding the best rates for consumers.

However, the Commission believes that credit intermediaries do present a certain risk to consumers given that the remuneration they receive is linked to the advice they provide. Furthermore, in cases where there is no requirement for registration, licensing or authorisation, or where these requirements are less stringent, there is a danger of individuals without the requisite knowledge or with questionable characters, operations as credit intermediaries.

Commission's question 10: *Could you give examples of cases of misconduct, mis-selling or any other instances of consumer detriment linked to credit intermediaries in your country?*

BIPAR answer to question 10

It appears that in the UK and in the Netherlands, there is no evidence to support the view that credit intermediaries are commission biased when advising on mortgage products.

Current regulations and standards in the UK are generally of a high standard. Nevertheless, in the UK, the FSA has taken action against credit intermediaries in around 60 cases of mis-selling and/or misconduct. None of these firms have been members of AMI, despite membership levels of over 70% of the industry. Further details can be obtained from the FSA's Enforcement Division. AMI supports action being taken where bad practice has been identified but is of the view that any regulatory action should be proportionate across all EU member states.

In Belgium, it is difficult to find evidence of cases of misconduct or mis-selling. The profession of credit intermediary has until now no official status and no authority supervise their activities.

3. Framework for intermediaries in the EU

Credit intermediaries per se are not subject to EU regulations as only some aspects of their activities are covered by provisions of the CCD. Some Member States have introduced regulations themselves but this has led to discrepancies in the regulations between Member States.

Commission's question 11: *Does the regulatory patchwork for credit intermediaries present a problem, in your view?*

BIPAR answer to question 11

BIPAR would expect a minimum standard across the regulatory patchwork for credit intermediaries. However, any further regulation by the Commission would need to take account

of each Member State's national characteristics, which differ significantly in the housing market.

Also a cost-benefit analysis would be necessary.

4. Information disclosure on credit intermediaries

The guidelines for mortgages, set out in the ESIS, does not provide for disclosure of information relating to the relationship between the lender and the intermediary, in particular details relating to commission and proc fees.

Furthermore, neither the SECCI nor ESIS deal with commission fees that bank employees receive. The Commission is concerned that the amount of remuneration could influence the product offered. Potential conflicts of interest could be dealt with in a number of ways such as commission caps and ceilings, an up-front fee charged and a ban on commissions or the payment of the commission being divided over the duration of the product terms.

In addition, it would be important that any fee due to be paid by the borrower to the lender or intermediary is fully disclosed.

Commission's question 12: *What would be the most appropriate way to address potential conflicts of interest, particularly with regard to fee/ bonus/ commission structures? Should any measures in this regard apply to bank client-facing staff as well as intermediaries?*

BIPAR answer to question 12

BIPAR strongly supports the idea of an overall cost disclosure on a level playing field.

It would be discriminatory for an intermediary active in segments with strong competition from other distribution channels, and potentially misleading for the client, if this intermediary would have to disclose his remuneration and a direct writer would not have to disclose its (acquisition) costs to the client.

In the UK, the mortgage market is currently very transparent in providing information as to how credit intermediaries are remunerated for their work. The current methods of remuneration are shown to be unbiased and are not to the detriment of the consumer. It is expected that the FSA mortgage market review will reflect this opinion.

In the UK and in the Netherlands, the KFI or DVD (ESIS equivalent) documents disclosure the value of any commission paid or fee earned prior to conclusion of contracts.

5. Registration, licensing and supervision of credit intermediaries

The level of registration, licensing and supervision of credit intermediaries varies across Member States, as does levels of prudential and professional standards. Credit intermediaries are not subject to requirements on prudential standards in the EU.

A proposed framework in which credit intermediaries could operate could include:

- Enabling supervisory authorities to assess whether intermediaries are involved in the provision of high-risk credit (in this context, it is worth noting that unregistered credit intermediaries have been identified as playing a key role in the distribution of inappropriate products to mortgage borrowers in the US, contributing to the current financial crisis);
- helping to give borrowers confidence that the intermediary has suitable qualifications and expertise and that there is an authority to which they could turn in the event of a dispute;
- creating a level playing field between intermediaries at EU level and opening up the possibility to provide cross-border intermediation services under a 'passport' system, as is currently the case for insurance intermediaries;
- providing a basis on which to determine the authorization of access by intermediaries to borrowers' credit data.

Commission's question 13: *What are your views on the registration and supervision of credit intermediaries?*

BIPAR answer to question 13

BIPAR believes that credit intermediaries should be subject to professional qualifications at EU level. The exact system needs further consideration.

BIPAR believes that credit intermediaries should be regulated at both an individual and a firm level. A cost benefit analysis should be provided.

Commission's question 14: *What are your views on prudential and professional requirements for credit intermediaries (such as minimum capital, professional indemnity insurance, educational or professional qualifications)?*

BIPAR answer to question 14

UK prudential requirements are currently set at an adequate level. Within the UK mortgage market credit intermediaries are already required to hold recognised qualifications to provide mortgage advice.

The Belgian and Dutch associations are in favour of a single registration system and supervisory system for the insurance intermediaries and the mortgage/credit intermediaries. Intermediaries often combine different activities (banking, insurance and credit).

(In the Netherlands, only insurance intermediaries have to have a PI cover. It is today not compulsory for credit and mortgage intermediaries).

As for the registration, all procedures for both bank and insurance intermediaries should be harmonized with the registration procedures for banks and insurance intermediaries if necessary. However, such harmonization should take into account the specific characteristics of each activity.

BIPAR is in favour of a single passport system for credit intermediaries.

E. COMPLAINTS AND REDRESS

The Commission believes that the use of out of court redress systems ensure that consumers have means to settle disputes with financial providers without the need for long and costly court procedures. It could also provide for greater consumer confidence in the financial sector.

Commission's question 15: *How do you think the activities of credit intermediaries could be brought within existing complaints and out-of-court redress mechanisms?*

BIPAR answer to question 15

The report proposes the adoption of an out of court redress system as a means for consumers to settle disputes with financial providers without the need for long term and costly court procedures.

BIPAR welcomes this suggestion and acknowledges that several EU Member States already have operating channels of alternative dispute resolution.

BIPAR believes that the European Commission should favour the development of non-litigious individual resolutions of disputes between consumers and companies. In the insurance services sector, Alternative Disputes Resolutions (ADR) mechanisms – whether based on mediation, arbitration, negotiation, etc...- are in place in most of the EU Member States and already deliver efficient and effective outcomes (see CEIOPS survey on the implementation of IMD and its provision on out-of-court settlement).

As stated by the European Commission in its consultation paper on ADR in the financial services issued in December 2008, for consumers, businesses and society in general ADR is the least costly and quickest way of resolving disputes and therefore helps to improve access to law. It also states that *“generally, the existence of ADR mechanisms is considered important in raising consumer confidence in buying financial services from local providers and particularly from providers from other Member States. Therefore, ADR schemes need to be effective, which would also directly contribute to the effectiveness of FIN-NET”*.

BIPAR is a supporter of the Commission's better regulation agenda and believes that there is first a need to ensure that all EU Member States have an ADR system and become members of FIN NET. The development of FIN-NET would enable cross-border ADR to function more smoothly in the area of financial and insurance services.

Once this is achieved and assessed, BIPAR believes that an assessment of the situation being performed in terms of costs and benefits would then be appropriate to indicate the need and the direction for further policy options.