

Consultation document on the review of the Insurance Mediation Directive (IMD)

Comments and answers of the Czech National Bank

GENERAL COMMENTS

1. On the basis of experience gained from supervisory practice, the Czech National Bank would like the revised IMD to be based on the following principles:

- **the setting of a transparent intermediary structure** through the definition of two basic types of authorised distributors in the financial market, namely
 - an independent intermediary, carrying on activity at its own responsibility (with chaining of intermediaries not permitted)
 - a tied agent, which may have an intermediation contract with only one higher entity (a provider of financial products or an independent intermediary), the said higher entity being fully responsible for the agent's activities;
- **the setting of conduct of business rules for all persons dealing with clients** (intermediaries and employees of providers of financial products), including requirements
 - to act professionally, honestly, fairly and in the best interests of the client,
 - to provide clients with enough information about products or services to enable them to make informed decisions; this should include information on incentives, fees and the overall costs associated with the product or service;
- **the setting of professional requirements for all persons dealing with clients** (intermediaries and employees of providers of financial products); a specific natural person should only carry on activities for which he has sufficient expertise (professional knowledge and the ability to apply that knowledge in practice), although given the various different local conditions it is not appropriate to set detailed professional rules at the EU level. In the case of employees, moreover, ensuring sufficient expertise is a matter for the employer. This is another reason why detailed rules are not appropriate.

The aforementioned principles are the foundation for the formulation of the Czech National Bank's position on the questions contained in the Commission's consultation document on the review of the Insurance Mediation Directive.

2. The Czech National Bank is strongly in favour of retaining the subsidiarity principle and of applying minimal harmonisation in the case of the IMD. It is essential for the directive not to prevent tighter national legislation in certain cases given the specificities and traditions of individual markets. For example, if the IMD continues to allow tied agents to be tied to more than one higher entity in contradiction with our comment above, we request the option of setting tighter rules in the Czech Republic, i.e. of permitting a link to just one entity (within the framework of harmonisation with the MiFID rules). However, the Czech National Bank does not envisage there being many such cases in the Czech Republic.

3. The Czech National Bank supports the efforts of the Commission in the area of limiting and managing conflicts of interest, improving transparency, and extending the scope of the IMD to insurance undertakings. It simultaneously supports the defining of general professional requirements, although it believes the specific rules should be left to national legislation.

4. The Czech National Bank calls on the Commission to ensure that the rules for the distribution of non-PRIPs are to the greatest possible extent a subset of the rules for the distribution of PRIPs, so that the relevant entities are not forced to apply to very different approaches; the CNB is advocating the same approach in the review of MiFID.

ANSWERS TO INDIVIDUAL QUESTIONS

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

A1. 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?

A1: The Czech National Bank agrees with the suggested approach. As regards taking into account the specificities of existing distribution channels, we consider it important for insurance undertakings distributing their own products to be exempt only from provisions specific to the activities of independent intermediaries (such as the obligation to conduct a fair analysis of competing products) and to be subject to all other obligations.

A2. 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.

A2: The Czech National Bank is in favour of retaining the existing exemptions for “large risks”. These risks are associated with the provision of services to large corporate clients, who have sufficient economic and professional expertise and do not need public protection when dealing with providers of insurance products.

A3. 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.

A3: The Czech National Bank supports the option of imposing stricter information requirements at national level for the distribution of non-PRIPs. This opinion is in line with general comment 2, according to which the IMD should generally allow the imposition of stricter requirements at national level given the different levels of knowledge of clients on different markets and other local specificities.

A4. In the context of the information requirements, do you think a definition of "advice" should be introduced? Please provide reasons for your reply.

A5. 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 MiFID¹² be appropriate? Please provide reasons for your reply.

A4&A5: The Czech National Bank supports harmonisation of definitions across sectors wherever appropriate. The Czech National Bank agrees with the conclusion of the 3L3 Task Force on PRIPs, according to which it is necessary to amend the existing definition of advice in MiFID in a way that does not give rise to doubts and is usable for all PRIPs.¹ The Czech National Bank is also of the opinion that the issue of advice in the field of insurance should be harmonised as closely as possible with that in the capital markets area. It is essential to distinguish between advice as a service provided to a client at his request (this activity should be carried on by persons independent of the provider of the insurance product) and advice in the sense of advising clients of any risks associated with products they request. In this regard, we also consider it desirable for the revised IMD to contain clear criteria for differentiating between advice and intermediation (or sale of insurance products).

If a single definition and unified rules of advice are created for PRIPs (using MiFID as a starting point), then the same definition and rules should be adopted for non-PRIPs (see general comment 4). A requirement to act with professional care should be imposed on providers of insurance products and intermediaries as a fundamental obligation for the provision of advice and for intermediation (or direct selling), but not directly in the definition of advice.

A6. 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?

A6: The answer to this question is linked with the future definition of advice. The Czech National Bank is of the opinion that the requirements for advice and potentially for intermediation could be greatly reduced or eliminated as regards the sale of

- a) simple products (vehicle accident insurance, luggage insurance, household insurance and certain other non-life insurance products),
- b) products for which the maximum insurance payout is limited to, say, EUR 5,000.

However, basic information about the product and its terms and conditions, information about the intermediary and the provider of the service, and other relevant information, should be provided during the intermediation of these products.

¹ The 3L3 Task Force on PRIPs also came out in favour of not using a dual definition of advice for MiFID PRIPs and non-PRIPs.

A7. What practical measures could be envisaged for reducing the administrative burden in this area?

A7: We see significant scope for reducing the administrative burden in a system where the rules for non-PRIPs are a mere subset of the rules for PRIPs.

B. Effective management of conflicts of interests and transparency

B1. 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?

B1: The high level principles in the IMD should contain only a general requirement to act professionally, honestly, fairly and in the best interests of the client. It goes without saying that there should also be mandatory disclosure of conflicts of interest.

B2. How could these principles be reconciled for all participants involved in the selling of insurance products?

B2: The Czech National Bank recommends minimising any exemptions for direct distribution, because even employees of insurance undertakings are usually remunerated on the basis of sales, and conflicts of interest occur as frequently among employees as among those involved in indirect distribution.

B3. 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.

B3: The Czech National Bank regards the conflict of interest rules laid down in MiFID Level 1 as an appropriate starting point for the management of conflicts of interests in the IMD. This position is in line with our general comment 4, according to which there should be no special rules for non-PRIPs and selected parts of the PRIPs regulations should be used instead (and the use of MiFID as a starting point is envisaged in the case of PRIPs).

B4. 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?

B4: In line with our general comment 4, the rules relating to transparency of remuneration of insurance intermediaries for PRIPs and non-PRIPs should be harmonised with each other. We also regard it as appropriate for information about remuneration (commissions) for intermediation to be disclosed to clients obligatorily and not merely on request, with the exception of products with reduced intermediation requirements (see above). In such cases, it would be sufficient for the client to have the right to information about remuneration on request. If the exact amount cannot be disclosed, at least the principles for setting the remuneration and an estimate of the amount of the remuneration should be disclosed. The only exceptions would be the insurance of large risks and the activities of reinsurance intermediaries, where this information would not have to be disclosed.

As for the issue of remuneration in the distribution chain, we regard it as essential for the client to have access to information about the total amount of remuneration regardless of the structure of the chain. It is unacceptable for only the final link in the chain to disclose its remuneration; such an approach would make it impossible to compare the costs of a policy.

B5. 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?

B5: The Czech National Bank is of the opinion that it is necessary to distinguish between dependent intermediaries (agents) and independent advisers (brokers). Independent advisers should be remunerated only by clients and not by insurers so as to ensure that their obligation to protect the interests of their clients is not weakened.

B6. What conditions should apply to disclosure of information on remuneration?

B6: Disclosure of information on remuneration should be specific, clear and precise so that the client is able to make an informed decision based on information about the costs and about the relationship between the intermediary and the provider of the insurance product.

B7. What types/kinds of remuneration need to be included in the information on remuneration?

B7: In the opinion of the Czech National Bank, the information on remuneration should include all types of remuneration (i.e. monetary and non-monetary).

C. Introducing clearer provisions on the scope of the IMD

As regard the scope of the directive generally, the Czech National Bank is in favour of it being based on the definition of individual activities and not individual types of insurance intermediaries, owing mainly to the existing fragmented legislation in individual Member States, where the number of categories differs considerably. Scope based on services and not on types of entities is also commonly and successfully used in other sectors – banking and investment services.

C1. 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.)

C1: The Czech National Bank is in favour of making direct sales subject to the IMD, as clients should receive the same standard of professional care regardless of who sells them the product. The provisions governing sales and disclosure of information to clients should therefore apply to insurance undertakings (and thus also indirectly to their employees). The issue of the specific expertise/registration of employees should not be addressed in the IMD (and should be left to the national legislation of the Member States) for the purposes of both direct sales and indirect sales (sales of other insurers' products). Responsibility for employees

is borne by the relevant intermediary (or insurance undertaking) and there is no reason to impose further administrative requirements on businesses and supervisory authorities.

C2. A lack of clarity about the scope of the IMD could lead to unnecessary administrative burdens. What are the possible clarifications that could be brought to the current scope of the IMD in this respect?

C3. What conditions/reasons for exemption from IMD2 should be in place taking into account the need to ensure legal certainty and consumer protection?

C2&C3: The Czech National Bank is against retaining exemption from the IMD for simpler products. In our opinion, the maximum number of products should fall under the IMD, so it is not desirable at present to introduce a third regime (alongside PRIPs and non-PRIPs) in the area of distribution of insurance products. However, we cannot express a final opinion until the final form of PRIPs has been clarified. Furthermore, we do not regard it as desirable to allow the distribution of certain insurance products via entities not falling under the IMD, in the interests of eliminating potential arbitrage between regulated and unregulated selling of such products. Providers of other services, e.g. travel agents, car rental companies, etc. distributing, for example, certain insurance products, could operate simply in the position of tied agents of insurance undertakings. This would ensure that they fulfilled the standard requirements of the directive but were not subject to excessive and unnecessary demands given the specific nature of their activities and the limited range of products they distribute. We agree with the suggestion to maintain the current setup whereby those who just give information do not fall under the IMD. We consider the current definition of intermediation to be appropriate.

C4. 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?

C4: In the case of a website, the most important thing is whether a hypertext link leads directly to an e-shop or similar application where it is possible to buy a selected insurance product on which the website operator earns a commission. It is also important whether the given application process assesses the client's individual situation before redirecting him to particular products or to the products of a particular insurance undertaking (as this would be brokering rather than just the provision of information).

C5. 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?

C5. See the answer to questions 2 and 3.

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?

C6: The Czech National Bank considers it sufficient for the revised IMD to contain a general provision stating explicitly that Member States shall ensure that the requirements stemming from the DMFS apply also to insurance intermediation. At the same time, it is essential in our view to retain the basic model of responsibility in which an insurance undertaking or higher intermediary is responsible for a tied agent.

Above and beyond the answers to questions 1–6 given above, we request the deletion of the current wording defining a tied insurance intermediary in such a way that it can be tied to more than one insurance undertaking (Article 2(7) of the IMD). In our view, a tied agent should be tied to only one service provider, including with regard to possible notification through an insurance undertaking.

D. Increased efficiency in cross-border business

D1. Do you agree with the inclusion of the definition of the freedom to provide services (FOS), as laid down in the Luxembourg Protocol of CEIOPS²¹, in the text of the IMD?

D1: The Czech National Bank agrees with the suggestion to include the definition of the FOS as laid down in the Luxembourg Protocol of CEIOPS.

D2. Is there a need to further clarify the rules regarding freedom of establishment (FOE) and integrate these rules in the IMD?

D2: Yes, we regard it as important for the FOE rules to be integrated into the IMD so as to avoid doubts about interpretation.

The test of place of characteristic performance is not currently used in the area of intermediation of insurance products. In the view of the Czech National Bank, it has generally proved to be unsuccessful and leads to uncertainty, so we are against its use in the future as well. One possibility is the location of the insurance risk, with exemptions for travel insurance and some other cases; another possibility is localisation of the service in the place where it is received by clients, especially as regards services provided on the basis of proactive contacting of clients in a particular country.

D3. How can the notification process be made more efficient and useful?

D3: The Czech National Bank is in favour of electronic receipt of notifications for both FOS and FOE; however, this should be addressed not in the text of the IMD, but as part of the cooperation within EIOPA.

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?

D4: We agree – see our position on question 2.

D5. 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.

D5: In its supervisory practice the Czech National Bank has not encountered any problems with the interpretation of “general good” in relation to cross-border insurance intermediation.

D6. 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?

D6: We are not aware of any major problems, nor have market participants indicated any problems in response to our request for comments.

D7. Would the integration of the CEIOPS Luxembourg Protocol clause on mutual recognition in a revised IMD be useful in this respect?

D7: The Czech National Bank supports harmonisation in the area of recognition of professional qualifications. At the same time, however, we wish to point out the need for unification of the national definitions of the various types of insurance intermediaries so that they are defined according to activity rather than category.

D8. 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?

D8: The Czech National Bank does not have a strong opinion on this issue at present, owing to its limited experience of applying the E-Commerce Directive.

E. Achieve a higher level of professional requirements

E1. 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?

E2. Should these requirements be adapted according to the distribution channel? If so, how?

E1&E2: The Czech National Bank is in favour of establishing common principles for the knowledge and ability of insurance intermediaries and employees of insurance undertakings. In the case of insurance intermediaries, we strongly support having the same general requirements for all categories. We feel that the setting of specific requirements should be left solely to national legislation; BTS is an inappropriate form in this area.

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

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

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

F1&F2: The Czech National Bank will comment on PRIPs in its opinion on the PRIPs consultation paper.