

Markets in financial instruments

2002/0269(COD) - 11/04/2007 - Follow-up document

The Commission is required by Article 65(6) of Directive 2004/39/EC on markets in financial instruments ('MiFID') to report to the European Parliament and Council on the continued appropriateness of the requirements for professional indemnity insurance ('PII') that are currently imposed on intermediaries under Community law. This is the purpose of this report.

Professional indemnity insurance is a liability insurance designed to cover, either entirely or in part, sums to be paid by professionals, either as damages or resulting from approved negotiated settlements, to third parties as compensation for losses arising from acts, errors or omissions committed by the professional during the conduct of its business activities. Community law requires some investment and all insurance intermediaries to obtain such insurance as a precondition to be able to provide services. The relevant requirements are derived from two Directives:

- Directive 2002/92/EC on insurance intermediation ('IMD');
- Directive 2006/49/EC on the capital adequacy of investment firms and credit institutions (re-cast) ('the re-cast CAD').

In March 2006, the Commission addressed a questionnaire to the Member States and their respective competent authorities asking for information concerning the application of professional indemnity insurance under the IMD and the re-cast CAD. 19 responses to the questionnaire were received. The responses have been compiled and published as part of the Draft Report on 14 August 2006. As we understand it, the incomplete number of responses is due to the fact that, at the time, the transposition of the IMD had only been completed recently in many Member States and that the transposition deadline for most of the provisions of the re-cast CAD had not yet expired. For the same reasons, it is clear from the available responses that Member States generally have little experience and available data on which to base an adequate assessment of the impact of the regime introduced by these directives on firms and protection it offers to consumers. Furthermore, it is hard to predict what the impact will be on MiFID intermediaries that also carry on insurance intermediation business under the IMD. It seems that adequate data which would allow for a proper evaluation will not be available until early 2008.

The Commission invited interested parties to comment on the Draft Report by 31 October 2006. The recommended format was for respondents to submit general remarks followed by answers to specific questions. Comments were received from 7 organisations. One was pan-European and represented the joint response from insurance intermediary associations from 14 EU Member States. Of the others, 4 were based in the UK, one in Germany and one in Austria. The respondent organisations represented various sectors of the insurance industry (brokers, agents, insurers, underwriters), one represented independent financial advisers and one was a regulator.

Some respondents argued for stricter PII requirements while others favoured a more flexible approach adapted to the size and risk profile of individual firms.

Two respondents said that firms should be permitted to supplement or wholly replace PII protection with capital requirements to ensure that the lack of affordable PII would not lead to the failure of intermediaries.

One respondent representing insurance agents described the PII requirements as a significant and unnecessary burden which had prompted insurers to shift the cost of PII onto their agents.

Two respondents urged the Commission to undertake a further review of the situation once the Directives are in full operation in all Member States to enable a more complete assessment.

To conclude, the analysis of the information provided by Member States as well as stakeholders in response to the two rounds of consultation suggests that, on the limited evidence that is currently available, the policy reasons that motivated the PII requirements imposed under community law remain valid, and there is insufficient evidence to indicate that those requirements are no longer appropriate.

However, it is also clear that it is too early to make a comprehensive assessment of how those requirements impact on the service providers and consumers. The regime under the IMD has only been in place in Member States for a short time, and States have no experience at all of the application of the new PII requirements for investment firms under the re-cast CAD. A proper evaluation of the continued appropriateness of those requirements cannot be made without more practical experience and data, and that will not be available until the requirements under the re-cast CAD have been implemented and applied in Member States for at least one year. Then, it may be appropriate to further investigate whether PII and capital requirements are adequate substitutes. Accordingly, the Commission will continue to monitor the situation if evidence of market failure emerges.