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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 44 national associations, established in 28 countries, and represents some 80,000 insurance agents and brokers, employing in all about 250,000 people.

Founded in Paris in 1937, BIPAR has been established in Brussels since 1989. It is today the official and recognised voice of insurance intermediaries with the European Institutions.

28 July 2004

BIPAR response to the CESR call for evidence on the second set of mandates from the European Commission on the markets in the financial instruments Directive

I. Introduction/ General comments

BIPAR is pleased to offer the following comments on CESR call for evidence on the second set of mandates from the European Commission on the markets in financial instruments Directive (MIFID) which will affect many of its national associations' members.

Independent financial advisers and insurance intermediaries which are predominantly small and medium-sized firms are brought within the MIFID because of its coverage of investment advice. We ask CESR to bear this in mind when it will draft its final advice on possible implementing measures of the MIFID. Its proposals will impact on such SMEs as well as on the larger institutions on which the MIFID is primarily focused.

In the explanatory memorandum of its proposal adopted on 19 November 2002, the European Commission clearly explained that *"The proposal seeks to establish a situation in which inclusion in this regulatory framework should not impose unjustified or over-onerous regulatory demands on investment advisers."*

In Recital 3 of the same proposal, it added that *"Due to the increasing dependence of investors on personal recommendations, it is appropriate to include the provision of investment advice as an investment service requiring authorisation. Therefore **proportionate and relevant requirements** should be imposed on investment advisers to ensure that the content of **personal recommendations** is not influenced by factors other than the financial situation, investment objectives, knowledge, risk profile and expertise of the client."*

In many EU Member States the activity of investment advice is very often undertaken concurrently with the activity of insurance mediation as defined in the 2002/92/EC Directive on insurance mediation (IMD). Therefore any inconsistencies between the two regulatory regimes set up by the IMD and the MIFID could lead to major difficulties for an insurance intermediary/financial adviser who would have to operate under the two regimes, advising on the two sets of products.

We ask CESR to allow a smooth undertaking of these two activities by the same legal or natural person and to advise the European Commission to avoid any contradictory or duplicative application of the Insurance Mediation Directive and the MIFID in its technical implementing measures of the MIFID.

In this respect BIPAR would suggest that CESR work in close collaboration with CEIOPS and its consultative panel on this issue. The Insurance Mediation Directive was not adopted within the Lamfalussy procedure but it is also CEIOPS role to give advice on any issues related to insurance and implementing measures.

II. Specific comments

1. Definition of investment advice (Article 4(4))

In response to the European Commission request regarding the criteria for differentiating a personal recommendation from general recommendations, marketing communications and a simple offer, BIPAR would suggest that CESR inspires from Recital 3 of the Commission proposal:

*“(Due to the increasing dependence of investors on personal recommendations, it is appropriate to include the provision of investment advice as an investment service requiring authorisation. Therefore **proportionate and relevant requirements** should be imposed on investment advisors to ensure that the content of **personal recommendations** is not influenced by factors other than the financial situation, investment objectives, knowledge, risk profile and expertise of the client.) Those requirements should not apply to the mere provision of information of a general nature on financial instruments, provided that the purpose of that activity is not to help the client conclude or fulfil a contract for an investment service or financial instrument.(...)”*

This definition of the mere provision information of a general nature would be very much in line with the Insurance Mediation Directive in which Recital 12 stipulates that *“the Directive should not apply (...) to the mere provision of information of a general nature on insurance products, provided that the purpose of that activity is not to help the customer conclude or fulfil an insurance or reinsurance contract (...).”*

In order to have a clear and coherent legal framework it is crucial that the same logic is followed in those two Directives that will apply in many EU Member States to a same intermediary/adviser carrying out distribution and advisory activities in respect of insurance/life insurance and MIFID products.

2. Activity provided in an incidental manner

Recital 12 and Article 2 c) specify that persons providing an investment service in an incidental manner in the course of a professional activity that is regulated do not come within the scope of the MIFID. Referring to Article 2.3 of the MIFID, BIPAR would urge CESR to provide technical advice to the European Commission on how to define the criteria for determining when the activity of providing an investment service is provided **in an incidental manner**.

3. Tied agents

BIPAR would welcome clarifications on the activity of **tied agents** as the approach is different from that of the Insurance Mediation Directive. Indeed tied agents, as defined by the MIFID, are not deemed to be investment firms and do not benefit directly from the European passport described in Article 5 and 31 of the MIFID.

4. Overlap between the MIFID and the IMD

BIPAR regrets that no footbridges exist between the MIFID and the IMD to establish a clear legal framework for firms operating in accordance with both Directives. That is why BIPAR requests CESR to take appropriate steps to ensure compatibility between the two texts, in particular regarding their respective organisational and information requirements.

In granting authorisation to provide investment advice, the competent authority or body to whom it delegates this responsibility, should be able to take into account any authorisation conditions required for registration as an insurance intermediary which overlap with the requirements laid down in the MIFID.

For example a firm that satisfies the registration requirements of the IMD should also be deemed to fulfil most of the organisational requirements of the MIFID. CESR should ensure that no contradictory or duplicative application exists.

Without asking that one firm should automatically be authorised under both Directives, BIPAR would request that CESR advises the Commission to clearly allow Member States to establish a single process operated by national authorities which would cover both activities.

BIPAR would be very happy to contribute further to CESR deliberations in the course of 2004 and 2005.