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EUROPEAN COMMISSION
Internal Market and Services DG
FINANCIAL INSTITUTIONS
Insurance and pensions

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Dear Mr Kiviniemi,

According to the information available to the Commission, Finland introduced in Act No 570/2005 on Insurance Intermediaries (hereafter "Act on Insurance Intermediaries") so-called net-pricing (net-quoting) for brokers, obliging them to receive remuneration only from their clients and prohibiting brokers from receiving any compensation from insurance companies. This regulation entered into effect on 1 September 2008. We understand that insurance undertakings had already changed their practices accordingly before the entry into force of this Act.

Directive 2002/92/CE on insurance mediation (hereafter "IMD"), in line with the principles of the Internal Market, does not regulate compensation arrangements between parties in the context of insurance or reinsurance mediation. The general rule is that this remuneration is a contractual matter for the parties involved.

It is true that the IMD is based on the concept of minimum harmonization and consequently leaves room for Member States to design additional or stricter rules. The question, however, is how to interpret minimum harmonization and what are its limits.

In this regard there are a number of points that we would like to raise:

1. Equal treatment

Consumer protection and transparency have been mentioned as justifications for the new regulatory regime that prohibits brokers from being remunerated by insurers. However, there are no equivalent rules which impose for example acquisition cost disclosure by insurers who distribute insurance through agents, banks or on a direct writing basis. This

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could also unfairly favor insurers' in-house sales forces and agents to the competitive disadvantage of brokers.

In this context we would like to recall the principle contained in recital 9 of the IMD according to which various types of persons or institutions, such as agents, brokers and "bancassurance" operators, can distribute insurance products. Equality of treatment between operators and customer protection requires that all these persons or institutions be covered by the IMD. This provision introduces equality of treatment between all those who are pursuing insurance mediation business.

Furthermore, the Commission understands that the prohibition on remuneration does not apply to an insurance intermediary (typically an agent) who is not under a contractual obligation to conduct insurance mediation business exclusively with one or more insurance undertakings and does not give advice based on the obligation to provide a fair analysis within the meaning of Art. 12(1)(iii) of the IMD.

2. Consequences for cross-border business and market integration

A. Non-Finnish brokers working in Finland by means of freedom of establishment and freedom to provide services

We would recall the wording of Art. 3(5) of the IMD according to which registered insurance and reinsurance intermediaries shall be allowed to take up and pursue the activity of insurance and reinsurance mediation in the Community by means of both freedom of establishment and freedom to provide services. Intermediaries working on such a cross-border basis in Finland can do so under the Single License obtained through their home Member State. This legal provision is the fundament for creating a European Single Market for insurance intermediaries across the EU.

The Commission is aware that the restrictive provisions of the Act on Insurance Intermediaries also apply to the activities of brokers who are registered in another EU/EEA Member State and who pursue their insurance mediation activity in Finland by means of freedom of establishment and freedom to provide services. It therefore appears to the Commission that the Act on Insurance Intermediaries contradicts Art. 3(5) of the IMD, despite the fact that it is a minimum harmonization Directive.

In this perspective, the general good argument should not conflict with the fundamental objective of creating a Single European Market for insurance intermediaries. In addition, it should be emphasized that where this argument is relied on, the competent authorities of the host Member State need to ensure appropriate publication of the conditions under which the business concerned must be carried on in their territories.

B. Indirect effects on EU insurance market integration

The Commission has been informed that, as a consequence of the Act on Insurance Intermediaries, many brokers operating in Finland have changed their professional status to that of an insurance agent. A reduction in the number of brokers may very well have

implications in terms of EU market integration. In this respect we refer to the Communication from the Commission on the inquiry into the European business insurance sector pursuant to Article 17 of Regulation 1/2003, which recognizes that the absence of a strong independent brokerage network available at national level may be a barrier to entry into the market for distributors of insurance products (especially for foreign insurers).

3. General considerations

The IMD in its current form contains a separate chapter on consumer protection, titled "Information requirements for intermediaries". The provisions of this chapter are designed to provide an adequate level of protection for customers at the EU level.

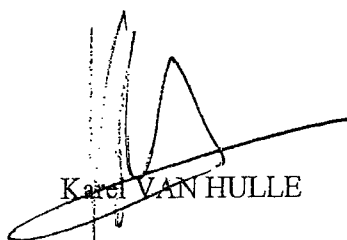
The Act on Insurance Intermediaries attempts to change an established system common to many countries with a long tradition of insurance brokerage. There may be other more proportionate measures having the same effect in terms of consumer protection, whilst still conforming to the principles established through the IMD and minimizing the risk of unwanted side effects in terms of market integration.

4. Conclusion

In the light of the concerns raised above, we invite you to consider whether the Act on Insurance Intermediaries is effective in the way it deals with the remuneration of brokers conducting insurance mediation activities in Finland and whether it provides for sufficient guarantees of independent service to the customers. The Commission understands that a review has already been launched in this regard and sees this as a useful opportunity to reflect on the design of the Act.

It would be helpful if you could keep us informed on any development in this matter as this is relevant in the perspective of the Commission's ongoing implementation check of the IMD in the Member States.

Yours sincerely,



Karel VAN HULLE
Head of Unit