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**Position paper: the European Banking Authority (EBA) Consultation Paper on the minimum monetary amount of the professional indemnity insurance for mortgage credit intermediaries**

The European Federation of Building Societies (EFBS) welcomes the opportunity to participate in the European Banking Authority (EBA) consultation on the minimum monetary amount of the professional indemnity insurance or comparable guarantee for mortgage credit intermediaries.

The European Federation of Building Societies is an association of credit institutions and organisations that promote and support the financing of home ownership. Its purpose is to encourage the concept of home ownership in a Europe that is converging, both politically and economically. The concept of savings for Bauspar loans is based on the principle of bundling the savings of a group of savers to provide the funds required to finance home ownership within a shorter period of time than would be possible for savers acting on their own. To this end, customers conclude a contract with their Bausparkassen in which the amount which they would like to save is specified, and thus commit to save on a regular basis. The Bausparkassen grant loans secured by residential property to finance home ownership as a bulk business. In addition to this Bauspar business in the stricter sense, Bausparkassen are also allowed to make investments, however only in particularly safe investment vehicles.

**General remarks:**

On the specific question of the minimum monetary amount of the professional indemnity insurance or comparable guarantee for mortgage credit intermediaries, it is essential to give particular consideration to the difference in net loan amounts in the individual EU Member States. For that reason, it is not appropriate to specify a single indemnity figure for the EU as a whole to cover risks in mortgage credit intermediation; moreover, such an approach would conflict with the principle of subsidiarity. Professional indemnity insurance coverage that is the same throughout Europe would, in all probability, be too low for countries with higher-volume credit agreements, such as the United Kingdom and Germany, and far too high for countries with much lower net loan amounts, such as Bulgaria and Romania. An excessively high monetary amount of professional indemnity insurance would lead to disproportionate costs for the intermediaries of such loans, ultimately constituting intervention in established business operations.

**Entry into force and applicability of the EBA Regulation**

In connection with the EBA's mandate to stipulate the minimum monetary amount of the professional indemnity insurance or comparable guarantee for mortgage credit intermediaries, the question of the date of entry into force and applicability of the planned new EBA requirements arises.

As Article 43(1) states that the Directive shall not apply to credit agreements existing before 21 March 2016, the application of these technical standards as of 22 March 2016 at the earliest, or from the date on which the Directive is transposed into national law by the Member State, is possible.

As the Directive is not binding upon a Member State until it has been transposed into national law (Article 288 TFEU), a corresponding national provision is required for the arrangements adopted on the basis of this Directive. The EBA Regulation should therefore make reference to the date specified in Article 43 of the Directive on credit agreements for consumers relating to residential immovable property and to the date of transposition into national law.

**Q1: Do you agree that, of the four options presented, option 4 (i.e. setting the minimum amount at the average of the amounts used in Member States) is the option the EBA should pursue, resulting in a minimum amount of EUR 584 000 per claim, and EUR 886 000 per year?**

In stipulating the minimum monetary amount of the professional indemnity insurance or comparable guarantee for mortgage credit intermediaries, the different levels of risk in the mortgage credit intermediation in each Member State must be considered. Of the options proposed by the EBA, option 3 takes greatest account of national differences and is thus the EFBS's preferred option. This means that EUR 100 000 per claim and EUR 150 000 per year should be stipulated in the regulatory technical standards. Giving Member States the possibility of establishing different minimum monetary amounts of professional indemnity insurance for particularly low-risk sectors (such as Bausparkassen) should also be considered.

Due to the connection between the level of coverage and the contribution payable, it is important to ensure that the minimum amounts are sufficient to cover a realistic level of risk. Any uniform minimum amount stipulated for professional indemnity insurance should therefore be set to the lowest amount of cover regarded as necessary from the Member State's perspective.

Generally speaking, intermediation by Bausparkassen intermediaries can be regarded as posing a very low risk. Furthermore, the loans provided by the Bausparkassen can in general be classed as small-scale lending. Both these factors mean that an excessively high minimum amount of cover would not be appropriate for our professional group. The Member States should therefore be given the opportunity to adopt exemptions in order to take account of these circumstances.

**Q2: Do you consider the number and the compensatable loss of compensation claims arising from the activity of mortgage intermediation to be lower than, the same as, or higher than those arising from insurance intermediation? Please explain your reasoning.**

The average loan granted by our members in 2013 amounted to approximately 33,000 euros. Average life insurance cover amounts to around 150,000 euros. An insurance intermediary also handles many more higher-volume contracts, such as pensions, buildings insurance, incapacity insurance and life insurance, which together amount to a much higher volume of business than the intermediation of a single mortgage loan.

The professional indemnity insurance for insurance intermediaries therefore can and should be much higher than the amount of professional indemnity insurance for mortgage credit intermediaries; indeed, such a solution is entirely justified.

**Q3: Do you know of options other than those listed in this consultation paper that the EBA should consider when deciding on the minimum amount of coverage?**

Article 29(2)(a) of the Directive on credit agreements for consumers relating to residential immovable property also requires the EBA merely to stipulate the minimum monetary amount of the professional indemnity insurance. In line with the basic principle of minimum harmonisation established in this Directive, the EBA should stipulate a very low minimum amount. This minimum amount should therefore be based on the Member State with the lowest average volume of net loan amounts.

Setting the minimum amount at the average of the amounts used in Member States is clearly not compatible with the minimum harmonisation approach stipulated in the Directive on credit agreements for consumers relating to residential immovable property. Nor is it compatible with the specific mandate to stipulate the minimum monetary amount of the professional indemnity insurance for credit intermediaries under Article 29(2)(a) of the Directive.

**Q4: Do you consider threshold(s) that distinguish between more than one minimum amount of PII coverage to be a desirable feature? If so, please explain how such a threshold should be devised.**

The Directive differentiates, in Article 4(5) and (7), between tied and non-tied credit intermediaries. Article 15(1)(d) in conjunction with Article 22 of the Directive additionally establishes different standards according to whether the credit intermediary offers advisory services. The possible level of damage to be covered by professional indemnity insurance also varies according to the status of the intermediary and whether or not he or she offers advisory services. The provision of advisory services increases the indemnity risk disproportionately compared with straightforward intermediation. Within the framework of the future EBA regulatory standards stipulating the minimum monetary amount of professional indemnity insurance, we therefore support an approach which differentiates according to the status of the intermediary and whether or not advisory services are offered.