

To: MARKT-H2@ec.europa.eu

28th February 2011

**Re: Internal Market and Services Directorate General of the European
Commission
Consultation document on the Review of the Insurance Mediation Directive
(IMD)
Commission Staff Working Paper**

We refer to your invitation to comment on the current functioning of and a number of possible changes to the Insurance Mediation Directive (IMD); please find set out below the observations of the Society of Chartered Surveyors (SCS).

Overview of the Society of Chartered Surveyors

Dating back to 1895, the Society of Chartered Surveyors is the independent professional body for Chartered Surveyors working and practicing in Ireland.

Working in partnership with RICS, the pre-eminent Chartered professional body for the construction, land and property sectors around the world, the Society and RICS act in the public interest: setting and maintaining the highest standards of competence and integrity among the profession; and providing impartial, authoritative advice on key issues for business, society and governments worldwide.

Advancing standards in construction, land and property, the Chartered Surveyor professional qualification is the world's leading qualification when it comes to professional standards. In a world where more and more people, governments, banks and commercial organisations demand greater certainty of professional standards and ethics, attaining the Chartered Surveyor qualification is the recognised mark of property professionalism.

Members of the profession are typically employed in the construction, land and property markets through private practice, in central and local government, in state agencies, in academic institutions, in business organisations and in non-governmental organisations.

Members' services are diverse and can include offering strategic advice on the economics, valuation, law, technology, finance and management in all aspects of the construction, land and property industry.

All aspects of the profession, from education through to qualification and the continuing maintenance of the highest professional standards are regulated and overseen through the partnership of the Society of Chartered Surveyors and RICS, in the public interest.

Registration of Title Quantity or Building Surveyor

The SCS is also designated in legislation as the **competent authority** for the registration of title for ~~Quantity Surveyor~~ and ~~Building Surveyor~~ under the Building Control Act 2007. As the competent authority, the SCS has a role in the registration, and therefore regulation, of our members who use either the title Building Surveyor or Quantity Surveyor in the provision of professional services to the property and construction industry.

In order to be registered, and regulated, under the Act a surveyor must:

- initially demonstrate, and then maintain, professional competence
- comply with a Code of Professional Conduct Standards
- establish, with the consumer, a clear agreement for the provision of services and conditions of engagement
- comply with the registration body rules for operating client accounts
- maintain the appropriate professional indemnity insurance.

Registration as an Insurance Intermediary

The Irish Financial Regulator has advised that persons, who operated as loss assessors, are required to register as an insurance intermediary, as defined in the European Communities (Insurance Mediation) Regulations 2005, with the Financial Regulator. The SCS has met with and sought guidance from the Financial Regulator as to what services, carried out by surveyors, would require such surveyors to become registered as an insurance intermediary, under the Regulations. If a surveyor provides a service of insurance Claim Negotiations and directly and expressly, *in return for remuneration provides*:

- (a) the submission and execution of claim forms directly as agent of the insured,
- (b) the negotiation directly with the insurance company as agent of the insured in relation to insurance claims, or
- (c) is the principal point of contact in relation to claims handling on behalf of the insured,

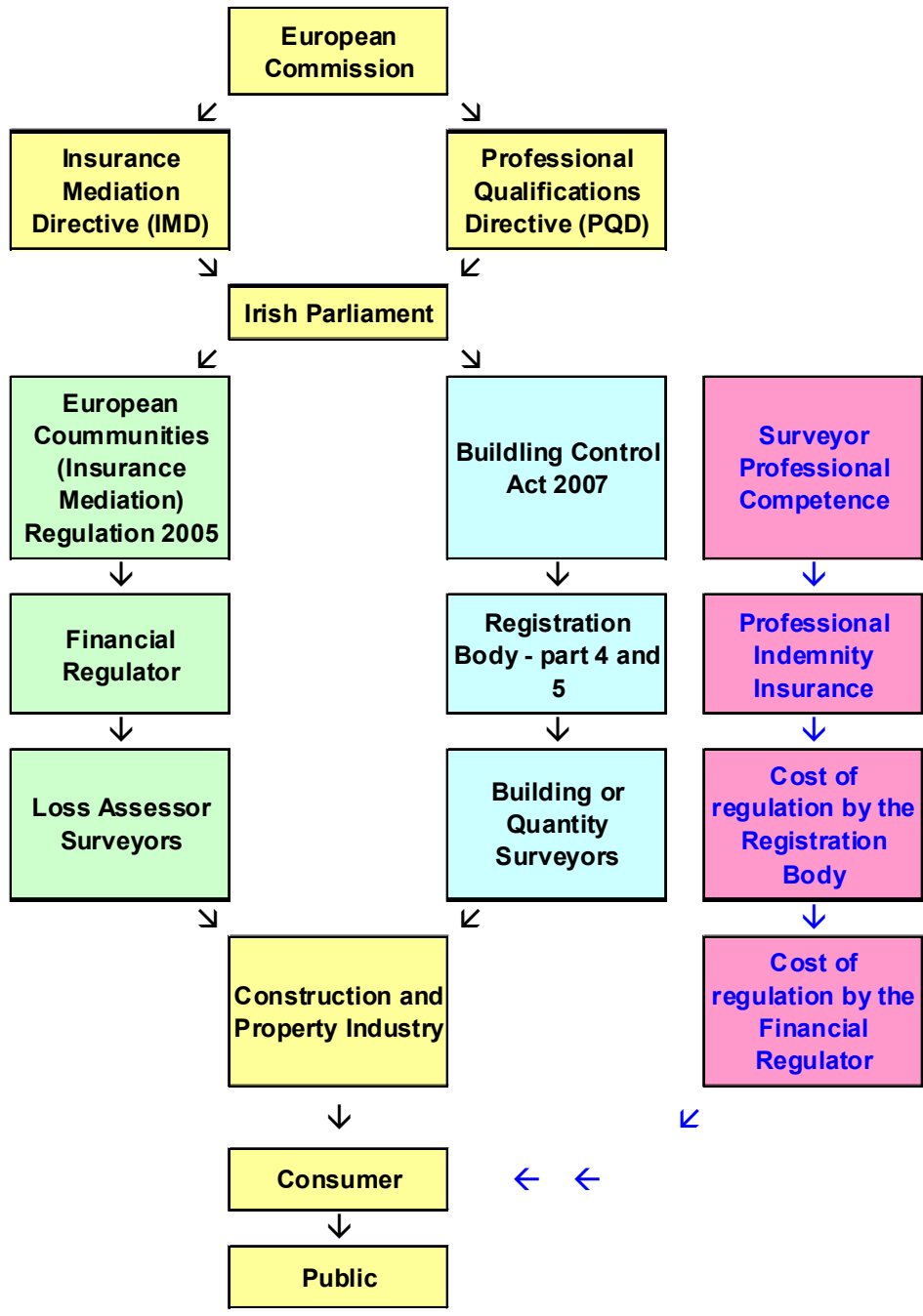
such a surveyor would be required to register as an insurance intermediary with the Financial Regulator.

The SCS has consulted its legal advisers and concluded that the broad definition of “*Insurance Mediation*” in the Regulation (save for the exclusions) is very broad and on a strict interpretation would impose a regulatory regime on many activities that an objective person would not ordinarily think fall within the scope of insurance mediation. By way of example, such an interpretation would imply that many professional activities such as, architects, estate agents and litigation solicitors, should all be regulated by the Financial Regulator under the Regulations, which is clearly not the intention of the IMD.

Better Regulation

The SCS is of the view that the dual registration, and therefore regulation, of surveyors by the SCS Registration Body under the Building Control Act 2007 and the Financial Regulator under the European Communities (Insurance Mediation) Regulations 2005 is

an administrative burden which is a breach of the Irish governments stated objective of Better Regulation that is efficient and necessary.



Conclusion:

We agree with the consultation document that ~~M~~Many of the existing problems in the application of the IMD are caused by legal uncertainty due to diverging interpretations concerning exemptions from its scope. The definition of insurance intermediary which is built on the activity-based principle, seems to conflict with the definition of the scope of the IMD and a whole set of related provisions¹.

Recommendation:

The SCS recommends that all member states are compelled to undertake a 'Regulation Impact Assessment' (RIA) in the application of the Insurance Mediation Directive as it applies to the variety of professions that fall within its scope and that where a Competent Authority for a particular regulated profession is already in place that all efforts are made to remove and/or avoid unnecessary duplication of regulation.

The Society is happy to assist the Commission and provide further comment as appropriate. If there are any queries or clarifications required in relation to this submission, please do not hesitate to contact me.

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¹ Page 6 of the consultation document . **2.2.3. Legal uncertainty due to unclear definition of scope in the IMD** . first paragraph