

**Interview with Gabriel Bernardino, Chairman of EIOPA,  
conducted by Ottmar Berbalk, Newsletter of the German Business  
Association of Financial Advisers (DAV)**

**1. Could you give us a little insight in the self-concept of EIOPA after its first five years?**

At the start of EIOPA in 2011 my main goal has been to build a modern, competent and credible European supervisory authority. In the past five years, EIOPA has grown into an entity with a strong voice and has been a driving force in regulatory convergence. We have been delivering high quality regulation, technical advice and analysis at the European Union level, reinforcing consumer protection and strengthening the European supervisory position in the international arena.

My vision for the next five years is to further develop EIOPA as a credible supervisory authority within the European System of Financial Supervision. In this context my three main strategic priorities are:

1. Enhancing supervisory convergence
2. Reinforcing preventive consumer protection
3. Preserving financial stability

In future I see EIOPA as a European authority having made a significant contribution to the creation of a common European supervisory culture with consistent supervisory practices across the European Union, a culture, which is safeguarding financial stability, enhancing consumer protection and fostering innovation.

**2. What - in your personal view - were the main successes and the biggest challenges?**

Well, in the last years both successes and challenges were quite numerous.

One of the main achievements is of course the introduction of the new risk-based supervisory regime for insurance – Solvency II, which is a huge step forward for policyholder protection and the single insurance market in the European Union.

From the regulatory perspective, EIOPA has been heavily engaged in the development of Solvency II. To ensure a consistent and convergent path towards its implementation and avoid market fragmentation, in 2013, we issued

Guidelines for the preparation of Solvency II. These Guidelines helped us to keep momentum and provided supervisors and companies with two additional years to set up structures and get familiar with the new requirements.

In order to ensure consistency of Solvency II, EIOPA delivered in total 18 Implementing Technical Standards (ITS) as well as two sets of Guidelines that cover the most relevant areas and elements of the Solvency II framework.

So our first – regulatory – journey is practically completed, but the new challenge only begins. This challenge is to ensure the consistent and convergent implementation of the new regulatory framework across the EU. EIOPA has the responsibility to make sure that National Supervisory Authorities (NSAs) conduct supervision under Solvency II in a consistent way across Europe. I see EIOPA's mission in building a stronger and more coordinated supervision at the European Union level. Credible and independent supervision is a key element in achieving and preserving consumers' and investors' confidence. We are in an internal market, and the quality of national supervision is no longer solely a national or regional issue; it is a European issue.

### **3. How did the relation between the national supervisors united in EIOPA change compared to the time when EIOPA's predecessor CEIOPS was in charge?**

It is really hard to compare CEIOPS and EIOPA because they have very different missions and responsibilities.

In CEIOPS the supervisors were providing recommendations and analysis to the EU institutions based on consensus or referring to different positions.

In EIOPA the national supervisors form part of its main decision-making body – the Board of Supervisors, which comes up with a common decision and one voice. All the main deliverables of EIOPA are approved by either a qualified or a simple majority of votes in our Board of Supervisors.

Another important difference is that CEIOPS did not have powers to monitor the implementation of the EU regulation and supervision. EIOPA has those powers and tools.

For example, building on the new harmonized Solvency II reporting, we are going to set up a comprehensive information system in order to provide the NSAs with the reliable risk analysis and early warning indicators, both at individual, group and system-wide level. With this system the European

supervision will receive a strategic asset, which will reinforce the quality of both micro- and macro-supervision in the EU.

EIOPA has shifted its strategic focus from regulation to the supervisory convergence, and we will be instrumental in ensuring the consistent implementation of Solvency II.

Furthermore, EIOPA is developing a Supervisory Handbook with the objective to build an array of good supervisory practices on different areas of Solvency II and we encourage NSAs to adequately implement these good practices in their supervisory processes.

In 2013, EIOPA created a Centre of Expertise in Internal Models, which proved to be very useful in developing new tools and practices in such an innovative Solvency II area as internal models.

The Solvency II Implementing Technical Standards and Guidelines delivered by EIOPA in 2015, also represent an important step towards convergence. Some Guidelines concern the basic alignment of supervisory processes while others provide clarity to firms on what supervisors' expectations are and limit the risk of divergent interpretations by national supervisors. I am convinced that without Solvency II Guidelines, undertakings would have faced hundreds of pages with different national solutions and it would have been much more complicated for EIOPA to achieve supervisory convergence.

Since February 2015 we have been publishing the relevant risk free interest rate term structures for Solvency II and related components including the volatility adjustment as a preparatory step ahead of the full implementation of Solvency II. The use of harmonised discount rates will ensure the consistent calculation of technical provisions by insurance companies throughout the European Union.

Another important mission of EIOPA is to challenge the national supervisors. Besides providing information and input to NSAs EIOPA has been giving them an independent feedback, which is very important for "enlarging supervisory horizons".

In 2014, we created a Supervisory Oversight Team to continue building our relations with NSAs on a basis of mutual trust. Since then this team that currently consists of four very experienced supervisors already conducted 35 bilateral visits to NSAs.

Issuing Supervisory Opinions addressed to NSAs is also a very powerful tool for convergence. In 2015, EIOPA issued two important Opinions related to Solvency II: the Opinion on Internal Models and on the group solvency calculation in the

context of equivalence. In all our Opinions we provide the relevant guidance to NSAs and later on engage with them in a follow-up exercise to our Opinions. This also raises the consistency level because EIOPA Opinions cannot be ignored.

EIOPA intends to reinforce its participation in the colleges of supervisors. Colleges across the EU have been fundamental in increasing the exchange of information between supervisors and in the processes of internal model approval. Colleges represent a crucial supervisory tool, which should be strongly used to ensure a more common analysis and measurement of risks.

So all these tools at the time of CEIOPS not available are making EIOPA a strong supervisory institution, providing added value to the European financial supervision.

#### **4. The Commission is planning an ESA (European Financial Supervisory authorities) review before 2019: what are the changes you consider necessary for the proper functioning of the ESAs?**

We expect that the European Commission will present a "White Paper on the funding and governance of the ESAs" already before the end of the year. Further improvements in these two areas would help us to deliver on the tasks assigned to us by the Co-legislators and to be able to operate better in a challenging environment.

The governance arrangements would need to reflect our important role on supervisory convergence. We need to be able to challenge the national authorities in a constructive way to help bringing the level of supervision throughout Europe a step forward and to ensure consistent supervisory approaches throughout Europe. The governance arrangements would also need to be adapted to ensure swifter decision making processes and to ensure that decisions are taken with a European perspective. The change from regulation to supervision needs to be reflected in the governance. It is clear that the decision making processes on legal texts must be different to the ones on supervisory approaches. Finally, enhanced supervision throughout Europe will benefit consumers and investors alike.

Another necessary change is related to the current funding system of the ESAs, which seems to have reached its limits. The current funding – 40% from the EU budget and 60% from the EU Member States – is very complex and puts us in competition to our members regarding resources. As suggested in the mission letter addressed to Commissioner Hill it could be more efficient to have a fully

100% industry financed model, which would provide relief for the EU and for the national budgets. Such a funding system should help to improve the efficiency of the authority while safeguarding at the same time its independence.

In the last couple of years EIOPA had quite a high turnover of staff – 14% and 10% in 2015 and 2014 respectively. For an institution that consists of just around 140 people it's a serious threat to the business continuity. To change this situation we need a degree of flexibility in the budgetary framework in order to attract highly qualified staff, especially in critical areas for our mission going forward like the supervision and validation of internal models and the independent assessment of supervisory practices.

**5. As set out in the EIOPA regulation, EIOPA has to play a strong role in consumer protection: do you have a clear vision of ideal consumer protection in the insurance and pensions sector?**

From "Day One", consumer protection has been an integral part of EIOPA's DNA and continues to guide our priorities. EIOPA is pursuing simultaneous work on a number of issues that are crucial for consumer protection, e.g. increasing transparency of products, avoiding conflicts of interest and conducting clear risk assessment and mitigation.

Going forward, EIOPA's absolute strategic priority will continue to be devoted to consumer protection. Protection of policyholders and scheme members is the ultimate goal of every effort done by EIOPA. For EIOPA, consumer protection has two dimensions:

- Firstly, it is about ensuring that undertakings are soundly managed, have robust governance procedures and have a robust solvency position in order to make sure that they can fulfil all their commitments. This is being tackled by Solvency II.
- Secondly, it is about making sure that consumers receive information that they understand on the conditions, costs and risks of the products, that they are treated fairly and that they get value and service for money. In this context PRIIPs and IDD are essential tools.

Let me mention three areas that I find critical to the success of our consumer protection agenda: the KID for PRIIPs; the Product Oversight and Governance arrangements and the development of key risk indicators for conduct of business.

As said one of EIOPA's strategic priorities for the next years is to reinforce preventive consumer protection.

European Union Member States are at different stages of developing their approach to consumer protection. As a result the conduct of business regulation and supervision is highly fragmented in the European Union.

Strengthening of conduct of business supervision is crucial and important for consumers, for companies and for the market as a whole. Because it promotes the orderly functioning of markets resulting in a level playing field, equal conditions, a healthy competitive environment, increased consumer confidence and financial stability. An effective and efficient conduct of business supervisory framework contributes to a credible deterrence of market mis-conduct and allows for pre-emptive and proactive supervision by acting before a developing issue becomes widespread.

There has been significant reputational and financial damage as a result of consumer mis-selling scandals in the European Union. Moreover, there has been a material loss in consumer confidence, compounded by existing information asymmetry and lack of financial education from the part of consumers.

In EIOPA we strongly advise companies' top management to take on more responsibility to prevent poor product oversight and misaligned incentives for sales staff. Traditional approaches to the conduct of business regulation & supervision, focused on point of sale (disclosure and selling practices) and a "box ticking" approach have proved insufficient to prevent mass mis-selling.

In this context, EIOPA is implementing a strategic approach to a preventive, risk-based conduct of supervision:

- "Risk-based" - because it identifies the depth and scale of issues and focuses on priorities and resources where they matter most in order to build a common European supervisory approach, with constant monitoring and 'dynamic' capacity to respond timely to innovation and change.
- "Preventive" – because by anticipating consumer detriment early, rather than just reacting following the emergence of problems, it solves the problems of the future, rather than of the past.

This can only be done through a forward-looking approach, which concentrates on how to best identify and tackle, in a timely and effective manner, emerging risks for consumers.

EIOPA will use a number of tools to implement this framework: Consumer Trends Reports; deep and effective market monitoring; thematic reviews and retail risk indicators. This will be done in a staggered approach. Ultimately the objective will be to spot outliers, investigate the root causes and develop supervisory responses.

**6. From a policy making point of view the major milestones are set for the moment (Solvency II, PRIIPS, IDD, MIFID2 etc.). Now a lot of work remains with the ESAs: What do you consider being the biggest workload for EIOPA?**

All this projects are equally important for EIOPA, but if we talk about the workload, I would highlight the Insurance Distribution Directive and the Solvency II review.

**7. When it comes to IDD, industry awaits EIOPA's next steps impatiently, could you deliver some insight in the current work?**

Yes, our working plan is aligned with the request of the European Commission.

We are currently developing the technical advice on the IDD Delegated Acts on product governance, conflicts of interest, inducements and appropriateness & suitability. This advice will be publicly consulted at the end of June 2016 and submitted to the European Commission by 1 February 2017.

EIOPA is also working on draft Implementing Technical Standards (ITS) on the standardised presentation format of a Product Information Document for non-life insurance products. The draft ITS will be publicly consulted still in June or in September 2016. The final draft ITS will be submitted to the European Commission by 23 February 2017 – for endorsement.

**8. How to make sure, that the insurance specifics are taken into account? By Delegated acts or technical advice, the differences between IDD and MIFID2 shall not be waived...**

From EIOPA's perspective, the development of policy proposals which take into account the particularities of the insurance sector is of crucial importance. Although the European Commission has asked EIOPA in its request for technical advice to be as consistent as possible with the delegated acts under MiFID II, we think that a "copy & paste" approach is not the appropriate solution, neither with regard to the specificities of the insurance sector nor with regard to fundamental policy decisions which have been taken by the European legislator. Therefore, our objective is twofold: to develop practical solutions which recognize the particularities of the insurance sector and at the same time to further promote the idea of a single European market and a cross-sectoral level playing field.

In order to find the right balance, we have closely involved - from the beginning our policy work for IDD - not only the national authorities, but also market participants. For example, at the beginning of this year EIOPA published an online survey asking market participants for their input to have a solid basis for the development of robust policy recommendations. Furthermore, in the course of the public consultation, which we plan to launch in June, we will seek market feedback on our policy proposals. We also plan to organise a public hearing to explain our policy proposals and to have an exchange views with market participants.

I am convinced that the close involvement of market participants and national authorities will ensure development of proportionate solutions, which acknowledge differences between IDD and MiFID2 but at the same time pursue the goal of a level-playing field.

**9. As you know the German market always stipulates to maintain the co-existence of commission based and fee based remuneration systems. The European legislator confirmed this lately at several occasions. What do you consider important in order to maintain both systems in the future while avoiding any potential detriment for the consumer?**

The European legislator made a clear decision to keep both remuneration options in view of existing market structures and business models. However, let's not forget: the European legislator has outlined the circumstances under

which commissions can be paid in the future. As per the new rules, commissions shall not have a detrimental impact on the quality of services provided to the customers.

The new rules emphasise that commissions are still a valid and legitimate business model, despite the fact that the new rules introduce certain limitations. The European legislator has used a rather abstract concept and terminology which will be further specified through delegated measures. And to provide technical advice on these delegated measures is precisely the task of EIOPA on which we are currently working.

It will be very challenging to find the right balance between the customers' and industry's interests. EIOPA is also aware that the markets differ across the Member States and commissions still play an important role for many businesses. Therefore, our objective is to further guide market participants, to help them better understand under which circumstances inducements have a detrimental impact on the quality of the services. In this context, EIOPA considers singling out specific inducements which entail a high risk of customer detriment. The development of this guidance will be done in close exchange with the market participants. EIOPA seeks a vivid discussion and exchange with the market to come up with a policy proposal that takes into account different interests in a proportionate way and fulfils the legislative purpose to restore the trust of the customers in the financial market and its participants.

**10. End of April EIOPA published the feedback statement on the PEPP consultation? You favour a second regime in your recommendations. What other elements are crucial for the success of a PEPP product? What timeline seems realistic for such a huge cross sectorial project?**

From a regulatory perspective, we believe that a Pan-European Personal Pension Product (PEPP) can be designed to be attractive to distributors and consumers alike. The availability of a simple, transparent, trustworthy product such as the PEPP would be central to building a basis for consumer trust. Personal pensions could enable adequate replacement rates in the future, but it would be possible only if those savings are safe, cost-effective, transparent and sufficiently flexible to accommodate the current economic and labour market environment.

After having analysed the possible PEPP from a regulatory perspective, EIOPA concluded that such a product would need to exhibit standardised features, such

as "information provision based on the proposal of a Key Information Document (KID) within the Product Retail Insurance and Investment Product (PRIIPs) framework", "limited investment choices including default investment options", "regulated flexible, biometric and financial guarantees", "regulated, flexible caps on cost and charges" and "regulated flexible switches and transfer of funds".

Further work should be done to build up concrete "product pilots" and the respective prudential regulatory framework. In order to allow for long-term investment strategies and for consumers to benefit from a certain degree of security and more stable returns, appropriate limitations to short term liquidity will need to be considered.

The PEPP should be implemented through a 2<sup>nd</sup> regime, so it will complement the local products but not substitute them.

As for the timeline, first of all, I agree with you that such cross-sectoral project is really huge. And with this regard timing for me is less important than the political will of the European and national institutions and also the readiness of industry to change and constantly look for innovative solutions. Without these two elements we cannot talk about the realistic timeline.

**11. A few months ago you were confirmed as chair for another term: what are your main projects and plans for this period?**

From the very beginning at the start of EIOPA in 2011 my main goal has been to build a modern, competent and credible European supervisory authority. Having already said before, my vision for the next five years is to further develop EIOPA as a credible supervisory authority within the European System of Financial Supervision. In this context my three main strategic priorities are: First, enhancing supervisory convergence, second, reinforcing preventive consumer protection and third, preserving financial stability.

In the long-term prospect, I would like to see EIOPA as a European institution having made a significant contribution to the creation of a common European supervisory culture with consistent supervisory practices across the European Union, a culture, which is safeguarding financial stability, enhancing consumer protection and fostering innovation.