

Gabriel Bernardino
Chairman

European Commission
Olivier Guersent
Director-General, DG FISMA
Rue de Spa 2
1000 Brussels
Belgium



EIOPA-16/150
21 March 2016

Green Paper on retail financial services: better products, more choice and greater opportunities for consumers and businesses

Dear Mr Guersent, *Olivier*,

EIOPA welcomes the opportunity to respond to the European Commission's Green Paper on retail financial services: better products, more choice and greater opportunities for consumers and businesses.

EIOPA strongly supports the importance of the work announced in the Green Paper to continue to identify specific barriers that consumers and businesses face in making full use of the Single Market for retail financial services and ways to overcome them.

As pointed out in the Green Paper, the benefits that may derive from the Single Market for retail financial services have not yet been fully exploited and impediments to cross-border provision of retail financial services are still significant. These impediments reduce choice and competition and keep the European market unnecessarily fragmented, leading to, on the one hand, consumers not always being able to access retail financial services offered in other Member States and, on the other hand, companies based in one Member State not always being able to offer retail financial services in other Member States, or not being able to do so without facing unnecessary additional burdens.

Removing the barriers faced by both consumers and providers requires a combination of different tools, depending on the service, sector or root cause(s) being addressed. Further analysis will be required to assess the further steps needed and which actions would be most effective in promoting the development of a Single Market for retail financial services.

In which concerns the insurance sector, specific further steps and actions must inevitably take into account its distinctive features. Insurance is a service where a basic role is played by the quality of the services provided after the selling phase. One explanation for the limited free provision of services may be related to the need for insurance undertakings offering some lines of insurance products to be established close to their customers. Customer proximity allows for accurately assessing the risks involved and, furthermore, providing post-sales services such as claims handling. The lack of high standards of services provided to policyholders lodging, for example, motor vehicle insurance claims may be

seen as slowing down the development of the insurance market. High litigation costs linked to certain lines of business may also be pointed out as another reason leading to the low development of cross-border business.

From a regulatory and supervisory perspective, I note the many EU measures recently adopted in the retail financial services area. Some of these instruments are innovative and are still to be fully implemented. More specifically, measures related to distribution, transparency and product oversight and governance are foreseen in the IDD, and transparency measures within the PRIIPs Regulation. It will be important to allow the existing regulatory work plan to be completed and to assess its effectiveness before reaching conclusions as to potential further regulatory work.

EIOPA is supportive of the view that further work is needed to build a strong Single Market in retail financial services. As further detailed in the Annex to this letter, I would like to take this opportunity to highlight that the Green Paper underlines a number of areas of action that already sit high on EIOPA's agenda, where in EIOPA's view progress will contribute to the removal of unjustified barriers in the Single Market. These are:

- Supervisory convergence
- Improving transparency for consumers
- Digitalisation of financial services
- Analysing the potential use of the Pan-European Personal Pension product approach for life insurance products

Further detail on the above action areas is included in the Annex to this letter.

We stand ready to contribute on our experience in these areas. EIOPA would like to reiterate that it stands ready to further support and advise the European Commission in the development of a true European market for retail financial services.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'C. Ferrero', with a long horizontal flourish extending to the right.

cc: Mario Nava, Director, DG FISMA,
Nathalie Berger, Head of Insurance and Pensions Unit, DG FISMA
Olivier Salles, Head of Retail Financial Services and Payments Unit, FG FISMA

Annex - EIOPA's action areas contributing to a strong Single Market in retail financial services

Supervisory convergence

Supervisory convergence constitutes one of EIOPA's main goals as set out in its founding Regulation. Supervisory convergence is essential to ensure a consistent application and enforcement of EU legislation, promote a level playing field and prevent regulatory arbitrage.

From EIOPA's perspective, a consistent EU supervisory framework will make a positive contribution in addressing barriers that stand in the way of a more integrated and competitive Single Market for retail financial services.

For insurance undertakings, it should warrant a high level of certainty regarding the regulatory framework applicable across different jurisdictions and the supervisory application of these frameworks in practice, and thereby a reduction in compliance costs for undertakings operating cross-border. For consumers, it should contribute to increased trust in the supervision of financial services across the EU, thus promoting confidence when buying products cross-border.

Supervisory convergence will remain one of EIOPA's key priorities going forward both for prudential and conduct of business supervision. In EIOPA's view it is a fundamental building block of a strong Single Market in the EU for insurance and pensions.

Regarding prudential supervision, the implementation of Solvency II on 1 January 2016 constitutes a significant step forward for policyholder protection and for the development of an insurance Single Market in the EU. EIOPA will continue to drive forward supervisory convergence through a collective effort to develop a European supervisory culture across the EU which ensures a consistent and convergent application of the new risk-based regulatory framework.

As part of this objective, EIOPA will continue to develop a Supervisory Handbook with the objective to build an array of good supervisory practices on different areas of Solvency II and encourage National Supervisory Authorities to adequately apply these practices in their supervisory processes.

Regarding conduct of business supervision, EIOPA will continue to implement its strategic approach to preventive and risk-based conduct of business supervision. A strengthening of conduct of business supervision is important for consumers, for insurance undertakings and for the market as a whole, as it promotes the orderly functioning of markets resulting in a level playing field, a healthy competitive environment, increased consumer confidence and financial stability.

Considering that conduct of business regulation and supervision are currently fragmented in the EU and that Member States are at different stages of development as regards their approach to consumer protection, the development of a common EU-wide framework will make a significant contribution to the convergence of supervisory practices and, overall, contribute to a more integrated Single Market for financial services. At the same time, efforts on harmonization should ensure that Member States or national authorities that already have stronger supervisory requirements in place are not jeopardized.

EIOPA will work on building on the new foundation of the Insurance Distribution Directive (IDD) as part of the basis for this convergence, but is also focused on other tools, such as its work monitoring and reporting on Consumer Trends and

Retail Risks, and its use of a targeted Thematic Review methodology where specific issues arise.

In addition to consistent regulation, monitoring and enforcement across Member States, the development a Single Market where consumers can confidently purchase financial products abroad requires, as pointed out in the Green Paper, adequate cross-border redress mechanisms. Some tools have been implemented to facilitate cross-border disputes in financial services such as the Financial Dispute Resolution Network. Consumer confidence in purchasing services in another Member States would certainly benefit from the improvement and increased awareness of existing mechanisms.

EIOPA's ambition is not only to contribute to supervisory convergence across the EU, but also to promote cross-sectoral consistency in financial markets. This work is being mainly undertaken by the Joint Committee of the three ESAs which has been established for this purpose.

However, the joint work of the three ESAs on the development of guidelines on cross-selling of financial products revealed that legal inconsistencies in the Level 1 regulatory frameworks of the three financial sectors can make this task very challenging and difficult to accomplish.

In particular, differences with regard to the legal bases on which the joint draft guidelines were supposed to be based (differences with regard to the scope, the level of granularity and the date of application of the Level 1 legislation) have raised for some NCA's questions on the scope of ESAs' empowerment to adopt these guidelines. In view of these concerns, the ESAs were not in a position to issue final joint guidelines on cross-selling. This outcome has meant regulatory concerns with the cross-selling between banking and insurance products have not yet been addressed, exposing consumers in the EU to an undesirable risk of detriment.

This example shows that having aligned legislative provisions in different pieces of Level 1 legislation is an essential prerequisite and precondition for the ESAs to accomplish their tasks of enhancing the regulatory consistency across the different financial sectors appropriately.

Improving transparency for consumers

One of EIOPA's key tasks in the area of consumer protection is to take a leading role in promoting transparency in the market for consumer products and services across the EU. Accordingly, EIOPA will continue to focus its efforts in improving information provision, comparability of products and fairness in selling practices.

Of particular relevance to insurance sector is the recent adoption of the IDD which introduces provisions that aim to make it easier for distributors to trade cross-border and, at the same time, strengthen transparency and consumer protection, particularly in the sale of insurance-based investment products. On transparency and information provision, the IDD requires distributors, in respect to non-life insurance contracts, to produce a standardised Product Information Document (PID) to be provided to customers before the conclusion of the insurance contract. Going forward, EIOPA technical standards will establish a PID standard format to be used.

Furthermore, in the context of the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation, EIOPA will continue to lead the work

on the development of a Key Information Document (KID) which enhances the disclosure of key product facts and allows for straightforward comparisons of different PRIIPs.

In the pensions sector, the continuous shift from defined benefit to defined contribution pension schemes and the liberalisation of the decumulation phase in some Member States have led consumers increasingly to bear investment risks and to face complex decisions when planning for retirement. As a result, enhanced transparency and information provision, such as upfront and ongoing disclosures of costs and charges, gradually gain importance in ensuring adequate consumer protection.

EIOPA will continue to monitor the developments that take place in the pensions sector and, as highlighted in the Action Plan on Building a Capital Markets Union, will work together with the European Commission and the other ESAs to further promote transparency of long term retail and pension products and conduct an analysis of the actual net performance and fees.

Digitalisation of financial services

EIOPA shares the view that, as noted in the Green Paper, the introduction of digital technologies is expected to be one of the driving forces behind the development of retail financial services in the coming years, bringing profound impacts on processes, products and how services are delivered both within each national market and cross-border.

Digitalisation of financial services is expected to bring benefits to consumers in several fronts. For instance, the use of modern IT and big data analytics by insurance undertakings may increase the offer of customised insurance products. It is also expected that the use of social media and collaboration tools will accelerate, including an increase in consumers' use of comparison websites. Comparison websites seem to have an important added value in the provision of information on available products and, more generally, may be perceived as a tool for the promotion of cross-border financial services. However, as noted by EIOPA in its report on Good Practices on comparison websites, there is still substantial room for improvement regarding, for instance, market coverage, criteria used to rank products and the way information is presented or how often it is updated.

It is important to acknowledge that digital innovation in financial services and its related business models will trigger new types of risks or increasing existing ones, and for digital innovation to achieve its potential it is important that Regulators and Supervisors consider these risks. In this regard, regulatory measures to address some of these risks include the Electronic Identification and Trust Services for Electronic Transactions in the Internal Market (eIDAS) Regulation and the reform of the legal framework for data protection in the EU.

Likewise, addressing emerging risks of consumer detriment may require a specific regulatory framework which should accompany and not stand in the way of innovation and new product development but, simultaneously, ensure a high level of consumer protection across the EU. Of particular relevance in the context of insurance is the potential use of so-called 'Big Data', a topic which the ESAs are exploring together in view of its cross-sectoral relevance in the Joint Committee. Another issue that has arisen relates to the challenges and

possibilities arising from online distribution of financial services, and in particular the automation of financial advice, another area in which the ESAs are working together to gather further evidence likewise in the context of the Joint Committee.

Analysing the potential use of the Pan-European Personal Pension product approach for life insurance products

EIOPA takes good note of the prospect to use the work carried out on the creation of pan-European Personal Pension product (PEPP) as an inspiration for a potential pan-European life insurance product. Similarly to PEPP, a standardised life product could operate in addition to the existing national regimes of the 28 EU Member States (i.e. 29th Regime) with a "European passport" allowing its distribution across the EU.

Notwithstanding the potential merits of this approach, any specific proposals would require further analysis and consideration. Any such further work might benefit from practical evidence that may be gained from the application of a 29th regime for PEPP, as relevant. EIOPA welcomes a constructive debate on this approach, to which EIOPA stands ready to contribute as it has in regards the PEPP.