



SPEECH

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IMD2 and Solvency II – The road to better policyholder protection and financial stability



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Good evening ladies and gentlemen,

I would like to start by thanking BIPAR for the invitation to speak to you today and for the opportunity to meet again with the representatives of EU intermediaries.

In my speech, I will bring forward some personal reflections about the current challenges in revising the regulatory framework in the insurance area, namely IMD2 and Solvency II and will finish by pointing out some strategic reflections on the way to achieve further consistency of EU regulation and supervision.

Let me start with IMD2.

The review of the Insurance Mediation Directive is very relevant for EIOPA, because this directive affects almost all our stakeholders. Intermediaries are, and will continue to be, a key link in the retail distribution chain. We recognise that at EIOPA, in the same way that we see protection of consumers as a fundamental goal for us and an area where we are required to take a "leading role". For us, intermediaries are an essential part of the insurance market and play a crucial role in consumer protection.

Therefore, we welcome the publication of the Commission's proposal to recast the existing IMD ("IMD2") in July 2012. I must say that it has certainly been a long time in the making ever since the review of IMD1 was first introduced into the Recitals of Solvency II by the European Parliament and then our predecessor, CEIOPS subsequently provided advice to the Commission on the Directive in 2010 with 39 different recommendations.

We support the Commission's objectives of making retail insurance markets work better and promoting a more level playing field by, for example, extending the scope of the Directive to include direct sales. Indeed, preventing regulatory arbitrage and promoting equal conditions of competition are key objectives for EIOPA too.

From EIOPA's perspective, it is important that the final legislative text creates a regulatory regime in the retail insurance market that can be effectively supervised both from a national and a European perspective, bearing in mind the wide variety of existing structures at national level for supervising insurance distribution.

IMD2 also needs to adopt a proportionate approach as regards the objectives to be achieved. There needs to be proper consideration of existing market specificities such as a very diverse range of distribution channels at national level, from high street brokers to multi-nationals.

As I say, I welcome the Commission's proposal. Nevertheless, there are a number of points where I would personally recommend further reflection:

Transparency of remuneration

- *The proposal introduces a mandatory disclosure of the full amount of remuneration for life insurance products and a 5-year transitional period allowing for an "on-request" disclosure regime for non-life products; at the end of the 5-year period, mandatory disclosure would apply.*
- *Furthermore, insurance undertakings are only required to inform the customer about the nature and the basis of the calculation of any variable remuneration received by any employee of theirs i.e. not disclosure of the full amount.*

For non-life insurance, I consider an "on request" regime as a better way to move further at an EU level, while maintaining the possibility for Member States to impose stricter requirements. In my view, this would be the best possible and balanced solution to improve the transparency of remuneration.

Furthermore, both insurance undertakings and insurance intermediaries should have to comply with the same high-level principles as regards information requirements and conflicts of interest provisions.

I also believe that disclosure is not a panacea to managing conflicts of interest. The introduction of a general "duty of care" would help as would the implementation of proportionate and robust administrative and organisational arrangements to help systematically identify and manage conflicts of interest.

Scope – Comparison Websites

- *Comparison websites are caught under the Recitals, but not under the definition of "insurance mediation", creating legal uncertainty.*

In my opinion, it is important that new forms of on-line distribution such as

comparison websites, are properly caught under the scope of the Directive to ensure a level playing field and adequate protection for consumers.

Some would argue that they are already caught by IMD1, but we need more clarity on this issue. Indeed, we are currently working on a Report on Good Practices regarding supervisory standards relating to comparison websites which we hope to publish before the summer.

It would also be useful if EIOPA could clarify by means of Guidelines the application of the Directive to aggregators or price comparison websites.

Advice

- **"Advice"** is defined under the proposal as "the provision of *a recommendation* to a customer, either upon their request, or at the initiative of the insurance undertaking or the insurance intermediary".

I am surprised that the definition of "advice" was not personalised as at present it captures generic advice as well. We think a clearer definition of advice is required where advice is provided on the basis of a "**personal**_recommendation...."

Freedom to provide services/ Freedom of establishment

- *The proposal deletes the provision providing for a European passport based on a single registration and is not re-stated in the new Chapter IV regarding freedom to provide services and freedom of establishment*

I am surprised that the provision was deleted as it was the foundation of IMD1 so as to encourage the cross-border activities of insurance intermediaries. In my view, **this needs to be reinstated** to send out the right message.

Cross-selling

- *The proposal recognises the practice and risks of bundling products and requires certain information disclosure on sale of bundled products. Tying is outlawed*

Tying and bundling is an issue that has regularly cropped up in discussions in EIOPA (with regard to sales of PPI or linking life insurance to sales of mortgages).

Several of our Members have taken action already at national level to combat this practice.

I support action on tying but a blanket ban on all tying has important implications, as there are an enormous amount of tied products on the market in the EU. We need also to consider that a complete ban might also prevent consumers from getting cheaper deals.

It is important to have the same approach in IMD2, MiFID II and Mortgage Credit Directive to ensure consistency on this issue. This is an area we have foreseen work under the Joint Committee of the ESAs.

Insurance PRIPs

- *The proposal introduces special requirements for insurance PRIPs e.g. requirement to identify, prevent, manage and disclose conflicts of interest when selling insurance investment products.*

I believe that these provisions should be kept within IMD2 and we should avoid a simple "cut and paste" as the distribution channels involved are very diverse so a "one size fits all" approach could have major impact on the market.

Furthermore, I would definitely include in IMD2, the organisational requirements needed by distributors in order to manage conflicts of interest.

At EIOPA, we are following closely the negotiations in the Council and Parliament. It is very interesting to see the wide range of different opinions coming to the fore on this issue. This is not surprising because IMD2 seeks to perform a very tricky "balancing act": enhancing the possibilities for cross-border retail trade, but at the same time, raising the bar in terms of adequate safeguards for consumers. This balancing act is even more difficult in the aftermath of the financial crisis.

EIOPA stands ready to support the EU political institutions in the negotiation process.

Let me know turn to Solvency II.

The EU is faced with an outdated and fragmented regulatory regime in insurance. Solvency II has been developed during the last 13 years to answer to concrete needs. It increases policyholder protection by using the latest developments in risk-based supervision, actuarial science and risk management. We should be proud that Solvency II is based on sound core principles.

Obviously, the financial crisis had a number of consequences on Solvency II. Some lessons were incorporated early on in the regime, but other challenges are still creating uncertainties on the final design and calibration.

The huge market volatility proved to be a challenge in a market-consistent regime, especially for long-term guarantees. The sovereign crisis led to questions on the concept of the risk-free rate. The changes in banking regulation create pressure on the role of insurers as providers of long-term bank funding. The low interest rate environment is threatening some insurance business models, especially in life insurance.

This year will be a crucial year for Solvency II. So, what are we doing?

Following the agreement by the EU political institutions, EIOPA have launched the long-term guarantee assessment that aims to test various measures that have been discussed in the Omnibus II negotiations.

We are encouraged by the level of participation in the different member states, covering big, medium and smaller players. EIOPA will present its final report in June.

It is essential for policyholder protection and financial stability that Solvency II appropriately reflects the long-term financial position and risk exposure of undertakings carrying out insurance business of a long-term nature. We need a robust framework that would price correctly any options embedded in the contracts. We need to recognise that guarantees have a price; there is no "free lunch".

On top of the long-term guarantee assessment, EIOPA sees it as of key importance that there will be a consistent and convergent approach with respect to the preparation of Solvency II.

That is why, in December 2012, we issued our Opinion on interim measures regarding Solvency II. Our plan is to develop Guidelines that will ensure that national

supervisory authorities will start in 2014 to put in place certain important aspects of the new prospective and risk based supervisory approach.

These Guidelines will cover the system of governance, including risk management and the process of developing an own risk and solvency assessment, pre-application of internal models, and reporting to supervisors.

We are not anticipating Solvency II, but preparing supervisors and undertakings for the new regime in a consistent way. The guidelines are addressed to national supervisory authorities and will be subject to comply or explain procedure.

We are working in close cooperation with the European Commission and maintaining an informal dialogue with EIOPA's Insurance and Reinsurance Stakeholder Group and the different stakeholders.

We plan to have a public consultation on the Guidelines in April/May 2013 and they will be tabled to EIOPA Board of Supervisors in the autumn.

Going forward, one of the most critical challenges in the EU supervisory landscape is to ensure consistency of supervisory practices.

I believe that the convergence of supervisory practices is as important as the single rule book. By assuring that day-to-day supervisory oversight of financial institutions is done within a consistent framework, we can effectively contribute to an increased level of protection of policyholders and beneficiaries in the European Union. The single market requires it and EIOPA is committed to deliver it.

A first step should be the development of a Supervisory Handbook that would work as a guidebook for supervision in Solvency II, setting out good practices in all the relevant areas of supervision. This handbook will foster the implementation of a more consistent framework for the conduct of supervision. EIOPA is starting to work in this area.

I believe that it is fundamental to build on the experience of what has been achieved by EIOPA under the current Regulation and start a reflection on the further steps (tasks and powers) needed to deliver a truly consistent supervisory process and, in particular, to assure the consistent oversight of cross-border insurance groups.

Furthermore, EIOPA needs to have resources to play its challenging oversight role according to the Regulation, by conducting inquiries into a particular type of financial institution, or type of product, or type of conduct in order to assess potential threats to the stability of the financial system and make appropriate recommendations for action to the competent authorities concerned.

In order to perform this independent assessment in a transparent, efficient and risk based way, EIOPA needs to reinforce its human resources, should have access to the relevant individual information available to the national supervisors and also have direct access to the individual institutions.

Another strategic challenge is the level of regulatory consistency in the financial sector. I believe it is very relevant to achieve an appropriate level of convergence of the rules protecting retail consumers in the different areas of the financial sector. Nevertheless, proportionality and good sense should prevail. By covering the different angles of disclosure and selling practices in the insurance market, IMD2 should avoid the tendency to apply a one-size-fits-all approach.

Insurance business and insurance products have their own specificities that need to be carefully considered. Some may argue that these specificities are a sufficient argument to maintain the status quo. I don't believe that this is the case. We need to recognize that an evolution is also needed in the way consumer protection is ensured in the different distribution channels. We need to learn from the mis-selling events that occurred in certain markets involving products like PPI, unit-linked products and pensions.

Consumer's attitudes and needs are changing, and that should be viewed positively. The insurance market cannot and will not be out of this evolution.

Insurance intermediaries should support this trend and should view IMD2 as a good opportunity to improve consumer protection, preserve the relevant insurance specificities and increase consumer confidence.

Thank you for your attention.