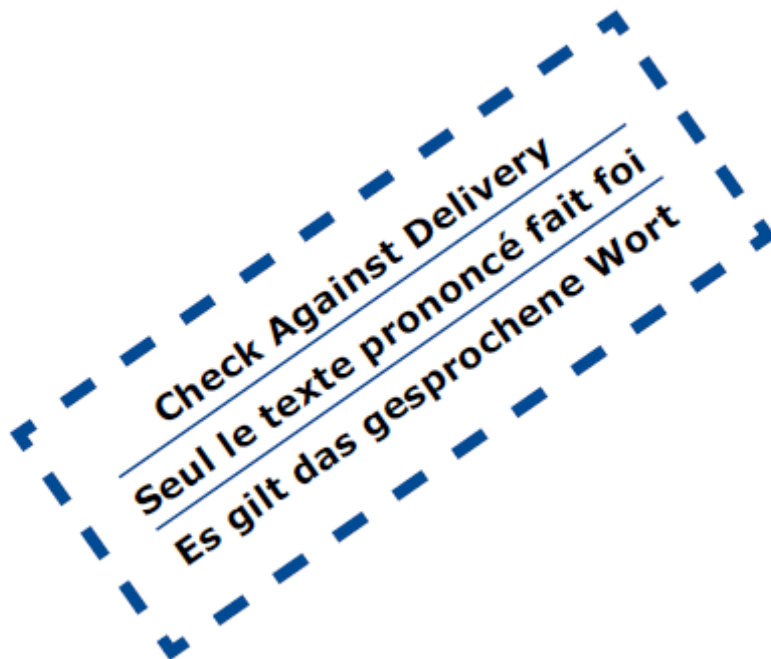


WELCOME ADDRESS

Gabriel Bernardino
Chair Joint Committee

European Supervisory Authorities: our joint effort in enhancing consumer protection in Europe



Joint ESAs Consumer Protection Day
Paris, 25 June 2013

Ladies and Gentlemen,

It is my great pleasure, in my capacity as the current Chair of the Joint Committee of the three European Supervisory Authorities (EBA, ESMA and EIOPA), to open this Consumer Protection Day we are organising for the first time as a joint effort.

Consumer protection is a high priority for all three institutions. We consider it very important to have a platform where organisations and experts dealing with protection of financial services' consumers can meet, exchange their views and share expertise.

All three Authorities already have experience in organising their own sectoral Consumer Events and based on this experience, I can say that those events provided very valuable input for all participants. Participants obtained the latest updates on our initiatives and activities and we had a good opportunity to see a different perspective on the most essential issues and to better shape the priorities in our work related to consumer protection.

Today, we are going to discuss a variety of issues. Our first panel is dedicated to Product Disclosure, in particular Key Information Documents. And, after lunch, we will have three simultaneous break-out sessions: on consumer trends and financial innovation; on sales incentives and on product intervention. We have great panellists for each session, so I am sure discussions will be very interesting and challenging. Following these discussions, Andrea Enria, Chairman of EBA, will wrap-up all three discussions while Steven Maijor, Chairman of ESMA, will close the day.

As part of my intervention, I would like to make reference to the on-going work of the Joint Committee in the area of consumer protection and share with you some personal views on a number of challenges going forward.

Achievements of the ESAs Joint Committee

Consumer protection is gaining importance in the work of different European and international organisations. At the international level, the G20 published a series of high-level principles on financial consumer protection in October 2011. These covered areas such as disclosure and transparency, responsible business conduct, financial education and awareness and complaints-handling and redress. The focus of the work has now moved to supporting the implementation of these High-level Principles.

At the European level, the three European Supervisory Authorities have received the same mandate under their founding legislation, to take a “leading role” in promoting transparency, simplicity and fairness in the market for consumer financial products or services. We also have the similar tools at our disposal, such as issuing guidelines to competent authorities or financial institutions or warnings to consumers. Consumer protection is, therefore, in the “DNA” of our Authorities and we take our responsibilities and obligations in this regard, very seriously.

Our discussions today will be focused on the work of the Joint Committee in the area of consumer protection and financial innovation. The Joint Committee was established on 1 January 2011 with the aim to serve as a forum for information exchange and common work between our institutions. Through the Joint Committee, we cooperate regularly and closely and ensure cross-sectoral consistency in our practices. Cross-sectoral consistency is crucial in preventing regulatory arbitrage. We are indeed required under our founding Regulations to “prevent regulatory arbitrage and promote equal conditions of competition”. But sectoral specificities also need to be properly taken into account. (I will talk about this later).

Consumer protection is a very important part of Joint Committee work. To this effect, we have established within the Joint Committee a specific Sub-Committee on Consumer Protection and Financial Innovation: This Sub-Committee has set up sub-groups on three main workstreams:

1. Packaged Retail Investment Products – PRIPs;
2. Product Oversight and Governance; and
3. General Consumer Protection.

I will now briefly touch each of these three areas. All the three sub-groups have achieved some important milestones, which I would like to highlight today.

Firstly, PRIPs - retail investment products - are referred to as an example in our founding Regulations of where cross-sectoral consistency should be sought and the PRIPs Sub-Group is accomplishing important milestones in anticipation of the final Level 1 text of the draft Regulation on a Key Information Document for investment products.

Soon after the release of the Commission’s proposal, the PRIPs Sub-Group was established to ascertain the most effective way of preparing the work on the implementing measures foreseen in the proposal. We started by conducting an extensive mapping exercise of the products falling in scope of the regulation and identifying potential options for presenting pre-

contractual information on the various disclosure elements foreseen in the proposal in order to feed into its consumer testing work. Let me expand on both preparatory work streams:

On the basis of a standardised product mapping table, national supervisory authorities have been invited to submit details on the types of investment products encountered in their national markets. The outcome of the product mapping will help to inform the work to tailor the KID. In doing so, the PRIPs Sub-Group aims at a “targeted standardisation”, with flexibility for addressing different products, but as much standardisation as feasible of key information on risks, costs and performance.

In parallel, the PRIPs Sub-Group is examining possible options for presenting the pre-contractual information on the various disclosure elements foreseen in the KID like costs and risks. The starting point consists in defining the most appropriate measures to convey pre-contractual information. However, deciding on the methodology, on which disclosures should be based (such as a total expense ratio or a reduction in yield for cost disclosure), constitutes only the first step in designing the KID. In a second step, various options of presenting this information will have to be assessed to determine, which way works best for retail investors. Consumer testing serves an important role to ensure that the KID is designed in such a way that it is as effective as possible in communicating key product features for consumers, taking into account their capacities and capabilities and how they use information in practice.

The same methodology was used in one EIOPA product in the pensions area - the Report on Good Practices relating to the provision of information for Defined Contribution schemes, the “Max” Report. In this Report, we encourage policymakers to base their policies on behavioural economics because people on average, are not as rational as we have expected them to be, or, to borrow the term – they are not *homo economicus*.

Regarding the issue of *Product Oversight and Governance*, the idea behind this work is to produce a set of cross-sector high-level principles and/or best practice on the product approval process for use by the Boards of financial institutions.

The objective is to set forth manufacturers’ responsibilities in organising processes, functions and strategies aimed at designing, operating and bringing products to market.

We do not want to reduce or replace the existing or forthcoming regulation on distributors. Indeed, manufacturers’ responsibilities should not detract from distributors’ responsibilities in the area of product governance, but rather complement them.

The sort of principles we are currently envisaging, include the need for Boards to:

1. Identify and analyse the characteristics and objectives of the target market;
2. Make sure senior management are involved in developing product oversight and governance processes;
3. Conduct product testing to assess how a product operates in different scenarios;
4. Provide information about product features and charges that are relevant for the target market;
5. Select appropriate distribution channels that are adequate for the target market;
6. Monitor products and the target market on an on-going basis to ensure that distribution channels are still appropriate for future offerings; and
7. Take appropriate action when challenges in the product oversight and governance processes are identified.

These principles will need to be complemented with more focused and tailored details appropriate to each of the specific sectors.

Regarding the work on *general consumer protection*, the initial focus has been on complaints-handling. We are taking the Guidelines EIOPA has issued on complaints-handling by insurance undertakings and applying these to the banking and securities sectors. They are essentially a set of important high-level principles on issues such as setting up a complaints management policy and function and registering and reporting on complaints, which could be transposed to virtually any sector of financial services. A public consultation on Guidelines for the banking and securities sectors is due to be published later this year.

But we do not want to stop just at complaints-handling as we see benefits in tackling other areas of commonality such as the whole question of tying and bundling (or “cross-selling”) of financial products. We have seen this with regards to mis-selling of payment protection insurance (PPI), which was a product predominantly sold by banks. Both the IMD2 and MiFID II proposals currently envisage joint work between the ESAs on this issue.

Consumer trends is also an area where we can work together in sharing experiences on collecting, analysing and reporting on key trends. Trends we have seen such as increased use of comparison websites by consumers are an issue common to all financial sectors.

Main challenges towards enhancement of consumer protection

Let me now share with you some personal observations on the main challenges towards the enhancement of consumer protection. I will refer to three main issues:

1. Regulatory consistency in all the three financial sectors (banks, insurance and pensions and securities' markets);
2. A new paradigm on transparency and fairness towards consumers; and
3. Improved supervision and enforcement of conduct of business.

As regards **regulatory consistency**, we need to ensure that we avoid the risk of regulatory arbitrage. Competing or substitutable products should be subject to similar rules, in particular with regards to the way those products are sold, to avoid consumer detriment. We need to take a courageous look at conflicts of interest. Unfair practices leading to consumer detriment are often due to situations of conflicts of interest. Managing conflicts of interest is not just about disclosure, it is also about having proper internal organisational arrangements in place within financial institutions.

Nevertheless, despite these common approaches, the specificities of each financial sector still need to be preserved. We should always consider what risk we are trying to regulate, who we are seeking to protect and whether the regulatory solution we are proposing is proportionate. This is true whatever the legislation involved. But rules that are designed for one sector or market participant might not necessarily fit one-to-one for undertakings in another sector. It's about getting the best of both worlds!

In this context, I believe that the new Insurance Mediation Directive (IMD2) should include provisions on conflicts of interest in the selling process. A general duty to act honestly, fairly and professionally in the best interest of clients should be incorporated. This would definitely improve regulatory consistency.

We should have a consistent approach towards technical standards and competing products because if supervisors from different financial sectors treat the same issues differently, it will do no favours to consumers. And this is the responsibility of the Joint Committee to ensure such consistency.

My second challenge is the emergence of a **new paradigm on transparency and fairness** towards consumers.

As a result of the crisis, regulators and financial market players have been mainly focused on ensuring financial market stability. In the meantime and also prompted by the crisis, we are assisting towards a fundamental change in the behaviour of consumers.

As consumers, we are more demanding; we are more aware of our rights. And that is a good evolution of our society.

In order to regain the trust and confidence of consumers, financial institutions need to provide an adequate answer to this change. They need to develop more simple and understandable products, devote further attention to the fairness of contractual conditions and they definitely need to review the charges and commissions applied, ensuring that they are not

disproportionate. Furthermore, financial institutions need to develop a new approach towards conflicts of interest because “bad behaviour” in this area will not continue to be tolerated. We see already some good practices emerging.

On the other side, supervisors will need to take a new look at retail risks. The early detection and prompt correction of “bad practices” is key to preventive supervision. We cannot continue to wait for the mis-selling cases to occur. We need to act before they emerge.

Improved supervision and enforcement

The regulatory framework on consumer protection at the EU level is under a period of major change. New legislation is being produced to improve the protection of consumers of financial services. And this is needed.

However, regulation is only one side of the coin. We need to talk also about **supervision and enforcement**.

Consumer protection is mainly achieved by the application of sound conduct of business by market participants and, in this respect, there is a need to have a serious approach to the supervision of the conduct of business coupled with adequate enforcement. This can only work if supervisory authorities have the powers, tools and resources to effectively supervise the conduct of business of market participants.

This is not the case nowadays in the EU. We have a high disparity between the Member States covering the powers, tools and resources available to national supervisors in the area of consumer protection. This needs to be confronted.

Good supervision, both off-site and on-site, is essential to protect consumers. Preventive supervision can have a major effect in avoiding consumer detriment. In my view, the ESAs can have an important role in bringing the supervisory standards in the conduct of business area. The development of “good supervisory practices” in the field of conduct of business would be an essential tool to improve the consistency of supervision in this area and achieve an increased level of protection for consumers.

Conclusion

I would like to conclude my intervention by assuring you that the European Supervisory Authorities are fully committed to continuing their work on the enhancement of consumer protection in the EU. But, we cannot do it alone: the involvement of consumer and industry

representatives through consultations, advice and requests, is essential for our work. And our Consumer Protection Day is a milestone for such co-operation. I am glad that today we can bring together consumer representatives, academics, legal and financial consultants, providers of financial services and products as well as regulators and supervisors, to discuss how to improve consumer protection in the financial sector.

I would like to encourage all of you to profit from this event. Let us exchange views, ask each other challenging questions and argue with each other, in a friendly way of course! In the end, we all have one goal – to protect the interests of the European citizens and to build public confidence in the financial markets.

Thank you for your attention.