



SPEECH

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The future of European market conduct regulation



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Good morning to you all. I am very pleased to be here today to share with you my thoughts on the future of EU conduct regulation, which is central to today's focus on consumer protection in financial services.

Following the financial crisis there have been many important measures and initiatives taken at the EU level. Some will say an avalanche or tsunami of change. The highlights will be familiar: Solvency II, changes to the IMD, the PRIIPs Regulation.

So the focus is very often on the new approaches that are emerging.

But EIOPA has already achieved a lot in this field. To pick a few highlights:

- We have harmonised complaints handling across NCAs, with Guidelines published in 2012 and 2013;
- We have developed a robust 'Consumer Trends' methodology;
- We have worked on professional training standards, and financial education;
- We have worked on identifying issues and coordinating supervisory action on payment protection insurance; and
- We have issued a report on information provisions for DC pension schemes approaching the topic from the perspective of behavioural economics.

On PRIIPs, we are in fact leading the work to develop new 'Key Information Documents' (KIDs) for all kinds of investment products. This will introduce, by the end of 2016, new simple two or three page disclosures across the different sectors, with risk, reward and cost summaries that are comprehensible and comparable for ordinary consumers.

This is a much more challenging piece of work than it seems at first glance. I will highlight two reasons why.

First, because the financial services - and I must admit also their regulators - are not so good at communicating in simple terms. For this reason, we are currently using consumer testing as part of our work on developing the KIDs, to develop the KID with the capabilities and needs of consumers at its heart.

Second, because developing comparability on risks, rewards and costs across sectors is technically difficult. We are doing this work very carefully, because it is very important to be fair to all the different products. One size doesn't fit all, but completely separate KIDs for every kind of product are not a solution either.

We will be publishing our final consultation paper on this work in the autumn. I recommend you all seek it out, as your input will be critical in developing a KID that is useful.

This offers just a taste of the work that we have been doing.

But today I want to take a step back, to adopt a broader perspective, to capture for you some of the upcoming issues which I think could have an important impact on the next period of conduct regulation.

I will highlight three themes today.

These are:

- Smart Conduct Regulation, which is risk-based and preventative;
- Product Oversight and Governance; and,
- The 'digitalisation' of financial services.

Smart Conduct Regulation

Through the crisis, new kinds of regulatory perspective have started to emerge. Traditional approaches have proved insufficient. I believe new kinds of regulatory perspective and new regulatory tools will take an increasing prominence.

I will call this 'smart regulation'.

What is 'smart regulation'?

- It takes consumer behaviour into account: we regulate for consumers as they really are, not as we might wish them to be;
- It is proportionate: we reflect the evidence of what works and what doesn't;
- It is risk-based: we robustly identify the scale and depth of issues, and prioritises resources accordingly;
- It looks forward: we anticipate issues in a preventive manner, rather than just reacting post an event.

Smart regulation means tailoring regulation to the problems identified, in a risk-based and pragmatic fashion.

It also means moving beyond a 'tick-box' approach to rule making.

While there remains a place for detailed prescriptive rules – and the legal certainty they bring – innovation and change call for adaptability too.

Compliance with detailed rules does not always guarantee the right outcomes for consumers, and the answer is not always going to be by making more and more detailed rules.

There are different strands to smart conduct regulation – all of our work on consumer protection at EIOPA relates to this theme in one way or another, Solvency II being a good example as will be addressed by other speakers later in today's programme.

Today I would like to focus in how we are developing stronger supervision and market monitoring in relation to conduct issues through our existing work at EIOPA on Consumer Trends, and future work on Thematic Reviews.

Our Consumer Trends Reports provide a snapshot each year of existing and emerging cases of consumer detriment in the insurance and pensions markets.

It has taken hard work to develop the Reports, to build their robustness, but I believe we are starting to see the benefits. This year-on-year reflection, from a pan-European perspective, on the issues consumers are facing is essential for building a common EU supervisory perspective and approach.

This is one cornerstone of developing a properly 'risk-based' perspective on supervision: aiding us over time in focusing our priorities and resources where they matter most.

On substance, the Reports so far has seen similar issues arising such as misleading advertising, poor disclosures and weak management of conflicts of interest in sales. The development of trends takes time and there is a real need for change in some practices from the market to address some of these trends.

I am certain that as it develops, our Trends Report will become an essential tool for testing, guiding, prioritising and developing our focus on a preventive approach to conduct risk and the European response regarding the same.

I would like here to underline that I believe the success of our Trends Report will in the future be seen not only through its use by supervisors, but also by market participants themselves.

A market that pro-actively identifies and tackles negative trends is the market we are seeking – a market that places consumers and their needs at its heart.

But I also believe that more needs to be done both by us, by national supervisors, and on the side of industry.

There is little appetite for seeing a repeat of the mis-selling scandals of the past. If lightning always struck twice in the same spot, perhaps this would not be a difficult problem to tackle. But mostly lightning doesn't. Regulators increasingly have realised, therefore, that they need to shift from a focus on fixing the problems of the past – though this is important – to looking also to the problems of the future.

This is why market monitoring, data gathering, and developing the analytic capacity to read the data intelligently, are so crucial. It is only by doing this that we will be able more reliably to spot the signs of new problems. Once we can spot the new problems early, we can pick the right tools to 'nip them in the bud', if this is what should be done.

This raises new challenges and calls for new tools.

EIOPA has already been looking at social media monitoring, and at the systematic identification and gathering of early quantitative and qualitative indicators of conduct risk. We are also looking at the use of thematic reviews to dig deeper into specific market issues.

Concerning thematic reviews more specifically, these represent a technique used by supervisors to focus resources on emerging issues so they can analyse and react to the issues in a timely, well-evidenced and appropriate way in view of the risks these issues pose. Thematic reviews give us as supervisors a valuable ability to adapt our reaction to the nature of the problem – exactly what is needed to develop preventative and forward-looking conduct regulation.

This is an approach that EIOPA is putting a lot thought into, and you will hear more on this in the coming years.

Indeed, I would like to underline that I strongly believe that EIOPA should and will play a central leadership role in defining, embedding and developing the new supervisory tools and regulatory perspectives needed, if we are to move to a more risk-based and preventative approach.

National authorities across the EU face the same or similar consumer protection challenges; it is I believe the role of EIOPA to coordinate their responses – and trigger them, as appropriate.

Product Oversight and Governance

Now I come to my second theme, which is closely linked to what I have been saying on smart and risk-based regulation, in particular in regards taking a more preventative approach.

I believe we will only create sound markets for consumers if firms do put consumers at the heart of their businesses.

- We need leadership from within the industry in this.
- We need Boards that take responsibility. We need consumer champions in firms who command authority.

In this, a new focus for us is on ensuring effective product oversight and governance. Getting it right is essential for laying down sound foundations on which to build.

This is a new holistic approach, looking at the entire life cycle of products, covering product design, testing, the identification of target markets, the choice of distributors, the setting up of remuneration, commissions and other incentives so as to ensure customer interests are put foremost.

'No', we don't want to see more bureaucracy, more paper.

A sign of smart regulation is after all a focus on outcomes, rather than a 'tick-box' approach to procedures.

So, what we are looking for is improved outcomes for consumers, through product oversight and governance arrangements tailored for the specific situation of each undertaking, tuned to the risks it has, to its customers and their needs.

What might this look like?

We want to be sure that where a product or service is not suitable for a consumer, then Boards decide that the product or service is not sold. Even if it could be sold. Even where the consumer could be readily encouraged to buy it.

This seems to be common sense but it is important to emphasise that trust and confidence is gained by doing business in a honest and fair way, on the basis of a sound product portfolio, and a deep understanding of ones customers and their needs. This must be rooted in good governance.

To move things forward, EIOPA issued at the end of October last year a public consultation on POG arrangements by insurers, the deadline for which was end of January, with some interesting and useful responses. We are currently in the process of further analysing and reflecting on these, to see how to take them into account in the revised draft guidelines, scheduled for final adoption around June this year.

The proposed Guidelines aim to better protect consumers during the early stages of product development and to prevent mis-selling of insurance products due to poor product design.

Through these new measures we will achieve a win-win situation; we believe what is good for consumers is also good for the industry. And the more we can move to consumer-centred markets, the more those markets will flourish in the absence of heavy supervision and regulation.

Digitalisation

My third theme could also be far reaching in its impact.

It is a theme on which we do not yet know the answers, but I introduce it here to give a flavour of one of the upcoming issues for conduct regulators.

This is the 'digitalisation' of financial services.

EIOPA has already touched on this. We have published a Report on Good Practices for Comparison Websites and we have issued an opinion on online sales.

However, I believe these initial considerations will be followed by deeper challenges and questions to come.

Rapid IT development is undoubtedly reshaping the financial services, creating the conditions for new kinds of products, new types of distribution, perhaps leading to new types of risks to consumers.

This is in a context of the increasingly digital lives led by consumers, and the rapid development of new communication and distribution channels.

We know from other markets that the on-line world does not always work in the same way as the off-line world.

It allows for quicker market evolution and lower costs to market entry. This can open the door to profound disruptions to existing business models from newcomers, and also to incredible concentrations of power. Often, a digital market has a 'winner-takes-it-all' form.

What could this mean for insurance providers and distributors, and for consumers?

It is, as I already said, difficult to forecast what the impact will be.

This is part of the point: we will need to be well-positioned to understand new consumer protection challenges as they emerge.

To pick one example: consider the potential impact of growing digitalisation on how insurance products are sold. Two aspects leap out.

First, new sources of information and opinions, driven by the rise of social media, coupled with a new speed of transmission and ability for good and bad messages to snowball in impact. This may give consumers much-increased power over insurers and intermediaries.

While some might say this could reduce the need for regulation, it may not lead to better consumer decision-making. New kinds of regulatory approaches might therefore need to be made.

Second, new technologies might allow for the development of new sales models, such as those that incorporate algorithmic or automated recommendations, so as to blur the boundary between advice and self-service.

These will raise great regulatory challenges on liability and responsibility. As a champion for consumer protection, I would naturally resist putting too much responsibility on the consumer.

Today's consumers are increasingly living digital lives, and as Regulators we shall have to follow the consumers where they are going, and seek to ensure appropriate and pragmatic regulation is there to protect them.

Again, a case for smart regulation.

EIOPA – a European Authority

Before I conclude, I would like also to reflect on a very important aspect of EIOPAs 'DNA' – its existence as a 'European' authority.

This gives us a vantage point to see similarities and the differences across the EU.

It is a diverse continent, and consumers face different challenges depending on where they are. But this diversity does not I think undermine the importance of cooperation. By sharing experience and working together, it is possible I think for supervisors to learn from the successes – and, yes, failures – of others, and to see in the evolution of other markets what the future locally might look like.

In EIOPA, we are acutely aware of the importance of talking with stakeholders – and listening too, and for this reason, I am very happy to be able to attend this conference here in Bucharest.

I am also very happy to hear recently that the Romanian Financial Supervisory Authority has announced the creation of a consultative group focused on consumer protection.

I would be very interested in hearing the views and reflections of that group on the themes I have touched on today. And, in the spirit of my remarks today, I would likewise be very interested in hearing about the problems I have missed, the problems that are not so obvious when sitting in Frankfurt, Paris or London.

Recap / conclusion

I would like again to thank you for the opportunity to speak today.

I hope I have given you good flavour of what EIOPA has been up to, and what is coming down the road in the future in EU conduct regulation.

I have emphasised the need for new approaches – on product oversight and governance, for supervision through a smarter and more risk-based perspective, for taking a more preventative forward-looking stance. I have highlighted the challenges arising from digitalisation.

I am confident however that EIOPA can play a strong and positive role in developing these approaches to consumer protection.

EIOPA is a new authority, but one that is here for the long haul. It will stand on its ability to bring value for all stakeholders.

By ensuring convergence and coherence in the EU insurance and pension markets, by acting as a voice for the interests of consumers, and by driving smarter, outcome-focused and risk-based supervisory approaches for national competent authorities, I am confident in the value we already bring.

Thank you.