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June 2011

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## **Consumer protection is the priority these days. What about growth and the Internal Market ?**

Consumer protection is an issue which is very much at the heart of the European activities today. It is the result of the financial crisis. A couple of years ago, in autumn 2008, we, financial services people, were sitting here in close contact with all Member States and we had a feeling of a descending elevator. We really thought the financial markets would break down completely. We faced an incredible global crisis. The G20 got together and they said that in order to have stability again in the markets, we need to create confidence in the markets and that confidence would not return unless we protected consumers better. This issue was in 2008 on governments' agenda worldwide. Consumer protection plays a more important role now because the European Commission (EC) has realized that when we in the past were working on Internal Market measures to promote cross-border trades, we have started to realize now that consumer protection per se itself will help the Internal Market to grow.

These concerns for consumer protection were clearly reflected in the creation of EIOPA. It has a mandate that is specifically provided for in its charter. In the EC, consumer protection is handled by different departments, i.e. DG Sanco, DG Justice and DG Markt. There is a sort of tacit agreement between all the departments within the Commission that financial services are the realm of DG Markt. But if I mention for instance gender equality and the recent ruling of the Court of Justice on this issue, that subject in itself is handled by DG Justice although it clearly affects financial services and insurance in particular. The European Parliament (EP) is very committed to improve consumer protection in the European Union. We know in the EC consumer protection does not come without a cost. That is why we do impact assessments and cost/benefit analysis before putting down our proposals.

## **Can you give an update on the current state of thinking regarding the IMD revision and more in particular why a revision ?**

A first reason for the revision of the IMD is that it is a good example of a classical minimum harmonization Directive. Many people do not like this anymore. Member States have indeed a tendency to use that minimum to add to it, i.e. gold-plating. For instance, we have had discussions in Europe of what it means to give advice. We need to have more clarification on what advice is. There clearly is a way between the current level and what we have achieved in a number of Member States. The minimum harmonization process as we have seen it is in itself an instrument of market distortion. There is a lot a debate today about that. The EC will come out with a proposal to implement Basel III, it is called CRD4.

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What is the big debate in the press ? The question is whether the EC should have a maximum harmonization initiative or should leave it up to Member States to add further more stringent requirements. This is not necessarily in the best interest of Europe and its Single Market. There is no doubt that the minimum level of the IMD has been by-passed by events. We need a higher degree of harmonisation in the interest of all parties concerned. This means an upgrade in some Member States and possibly no change in other Member States. The difficult question will come when we have to decide whether some requirements in Member States are so stringent that they create an obstacle for the Single Market. Are these requirements proportionate and what are their effects on cross-border provision of services?

A second reason for the revision of the IMD was that it was specifically asked for by the EP during the negotiation of the Solvency II Directive. One of its recitals states that the Commission was due to make a proposal to revise the IMD before the end of 2010. The EP insisted on this because in 2009, it argued that Solvency II was giving an advantage to the insurance industry: it would allow insurance companies to operate with capital requirements which they could, to a large extent, decide themselves. The better risk management, the lower capital requirements could be. So the EP argued that this could be unfair for the consumer.

A third reason why we need a review is the consistency with other sectors, and with the PRIPs (Package Retail Investment Products) initiative in particular. We still do not know exactly what a PRIP is. But there will be a definition of PRIP, which will be different from a non-PRIP and an insurance PRIP etc. The idea is basically that certain retail investment products with an insurance wrapper around should no longer escape the treatment of retail investment products. So when you buy the products, you will have the same rights of information, transparency, disclosure,... We intend to have that included in a horizontal Commission's initiative, which will come out later this year. The selling practices will be MiFID for the non-insurance PRIPs and for insurance PRIPs, the selling practices will be IMD II. We all know that there has been quite a lot of mis-selling in this area, where people do not know what they are buying and what they are selling. This is an area where there is definitely room for improvement in terms of consumer protection.

### **What is the timing of the process ?**

The process started last year, when the EC sent a letter in January 2010 to CEIOPS, asking them a number of questions on the review of the IMD. CEIOPS gave us its advice in November 2010 and we organized a public hearing in December 2010. We launched a public consultation in November 2010, which we extended. Then, we started with the impact assessment, which is now well underway, and we hope that we will present a proposal in February 2012. The system is getting clogged with legislative proposals. The machinery is not necessarily following and this has been one of the causes for this delay (the proposal was initially scheduled for early December).

### **In April 2011, you received the answers to the consultation on IMD II. What are the results of this consultation ?**

There was a large degree of agreement with the EC's initiative to review the IMD and most of the items in the CEIOPS advice. This means that there is a willingness in the market to move in this direction. Most comments deal with information requirements, conflicts of interests and the scope. Vocal Member States are Germany, UK, Belgium and the Netherlands, sometimes because of a lot of mis-selling. It has led to changes in national legislation.

With regard to information requirements, I think there is agreement that there should be similar requirements for insurance undertakings and insurance intermediaries when they sell insurance products. The new Directive may therefore need to have a new title. There is no reason why there should be a difference between distribution channels. This does not mean that we need to have the same rules because we must look at each channel as well but on the substance, we must have the same approach. A number of people support the business card solution, whereby the person who sells the insurance product will disclose who he or she is and whom he or she represents.

Conflicts of interests is no doubt the area where we will spend most of our discussions on at all levels, within the EC, in the EP and in the Council. People want to have more transparency about the remuneration of insurance intermediaries. There are Member States that want a system in Europe where commissions will no longer be allowed. I am not in favour of the EC regulating the way intermediaries are remunerated. This depends on business culture. What I believe to be necessary is transparency of remuneration upon request. Disclosure upon request seems to be the right way forward. We can impose a lot of disclosure but if people are not interested

in it then it creates unnecessary bureaucracy. But if people want to know, they must have the possibility to request the information. Continuing on what I indicated before in relation with requirements that may be too restrictive, I want to make sure in this Directive that certain practices will no longer be allowed. Member States should not be allowed to impose netquoting. It is not in the interest of the markets nor of consumers.

Another issue is advice. We must be clear as to what is advice. We must be sure that we do not over-regulate. A private conversation between two citizens about an insurance product delivered by an insurance undertaking should not be regarded as intermediation.

As far as the scope is concerned, we will not only extend it to cover also insurance undertakings in order to have a level-playing field. We will also deal in the scope with some of the exemptions that we currently have. We need to look at these exemptions in terms of what the consequences are for consumers.

There should be clarity in the Directive on what cross-border business means. What does freedom to provide services cross-border and freedom of establishment, all concepts of European law that we have been working with for so many years, mean in the context of insurance mediation? Here again, we need to provide for a regime which works in the interest of consumers. We should also have a system of mutual recognition concerning professional qualifications. All 27 Member States believe that their system is the best. We cannot have this. This is not an Internal Market. If you have gone through a process of qualification, you should be accepted in the other Member States. In addition, we should have a central registration and try to soften the current system which is sometimes a bit burdensome.

The level of professional requirements should be proportional to the complexity of the products sold. In the chapter on PRIPs, we will have to include how to sell these products, the qualifications, whatever specificities are needed. There is a big debate at present whether the conduct of business rules for insurance PRIPs should be moved directly to MiFID, without separate rules of conduct in the IMD.

Personally, I am not in favour of this because I believe that there is an insurance specificity here that I want to be recognized. I also want to have proper supervision of these practices because insurance products are complex products, they are different from investment products. So I think that insurance PRIPs should be regulated in IMD II.

### **What are the next steps ?**

We published a summary of our November 2010 consultation in March 2011. It has now been agreed to present the revision of MiFID in October 2011 and to propose the horizontal disclosure rules for PRIPs in February 2012 together with the proposed revision of the IMD. It has not been decided yet if there is going to be level II work, i.e. delegation in the framework Directive to the EC to issue implementing measures with the help of EIOPA. Should it be decided to have level II measures, then we will work on this during 2012-2013. Then in 2014-2015, a new regime can come into force.

This is an overview of where we are at this stage. We are already drafting texts and have already had a first meeting with the Member States to share some of the initial ideas. We will continue this over the coming months. We will finalize the impact assessment before the Summer and then go to the impact assessment board sometime in November. Then we will have a Commission's proposal out as indicated.

### **Any message for BIPAR and its members ?**

I believe that it is very important that BIPAR fully participates in the process by coming up with good ideas and suggestions. Try and come up with common views and then make sure that these are well-known so that there is no filibustering in the corridors. It is important that we raise the level of harmonization. This is in your interest because it makes cross-border activities easier and it increases the credibility of your activities.

It is also important when you formulate your views that you think about the principle of proportionality. We do not want a market in Europe where insurance intermediation will be the practice of a few large market players. We want diversity to continue. Help us ensuring this and make proposals on how we can achieve this. People will say during the process that we are making their lives more difficult. But we live in a world that has changed and I think that consumers today expect from insurance intermediaries a level of professionalism that they did not expect maybe 20 years ago. Help us to ensure that we have in the EU a profession of insurance intermediaries that we can all be proud of.

I hope that when we have concluded this work, you will agree with me that IMD II is good for you.