

Interview with Karel Van Hulle

Head of Unit Insurance and Pensions, European Commission, DG Internal Market

State of play of some crucial European dossiers for insurance intermediaries



July is a perfect moment to make a state of play on various regulatory initiatives which are in the pipeline. BIPAR is extremely pleased that Mr Karel Van Hulle, Head of Unit Insurance and Pensions, of the European Commission's DG Market, has taken the time to share with us some of his views, his state of play, on some important dossiers on his and our agenda.

(It is possible that, in between the interview and the time of publication, some papers which are referred to in this interview, are published)

Everyone is talking about Solvency II. Has the crisis influenced the process ?

I have put on a green tie today to show that there is hope and that Solvency II will come. We adopted a framework Directive last year after considerable discussions and we are now in the process of developing the implementing measures. We can all agree on principles but once we have to apply these principles in specific cases, that is where it really gets tough and that is where we are now.

Will the 2013 deadline be met and what will happen in between now and then?

European legislation comes after impact assessments and that is why we are now carrying out the quantitative impact study no 5. We want 60% of companies to participate in this exercise, that is about 3,000 companies and 75% of groups, i.e. 100 groups in Europe. That is a formidable exercise. We would not be testing if we knew everything. So we are going to test

and see what the impact of the test is. As said in the public hearing in May, if the test shows that the standard formula for the solvency capital requirement, and this is what we are testing, is still not right, we will change it. If that means that we have to make a further test to fine-tune certain things, we will do it because the objective is to have a regulation that is not based on the wildest imagination of whoever but on data from the real world.

We will finalize the implementing measures which we have been drafting since the end of last year since we received the advice from CEIOPS. We will finalize these implementing measures by spring next year. We will then include the results of QIS 5 and then the Commission will make its official proposal in spring 2011 for approval by Council and Parliament following the new procedure under the Lisbon Treaty, so that the legislation could be ready for application on 1 January 2013.

What will be the likely impact of Solvency on the intermediation sector ?

Solvency II will have a major impact on the insurance sector. Consolidation is already happening. There may be further consolidation as a result of Solvency II. That will depend on what the actors in the market decide. There may be a slight increase in capital for some insurers, those who are operating in a more risky business in particular, although we believe that overall for the sector, Solvency II should not lead to major capital increases. There will be changes in product lines, companies will reorient themselves depending on what they see as being their best products. The use of reinsurance may or may not become more important in the market, depending on reinsurers' behaviour.

Very positively, we will have an improved risk management, which means that companies will know better what they are doing and therefore offer a better service to their policyholders. There will be changes in asset portfolio allocations : some assets will become less popular than others, that is also part of risk management.

For you it means that your counterparts, the companies you are dealing with today may not be the same in the future, because they may have changed or their behaviour will have changed. Your clients, the policyholders, will expect you to inform them about the quality of the products and the product providers. There will be more transparency in the markets so better comparison and your clients will expect you to help them to understand which are the good companies offering the right products.

Since the crisis, the insurance supervisory system is under revision. CEIOPS will become EIOPA and this will have a major impact also on intermediaries – what will this mean in terms of IMD II ?

The Commission has made proposals after the financial crisis. We will have an introduction of macro economic supervision, and at micro level, the proposal is that supervision will remain at national level but that the existing committees, like CEIOPS, will become authorities. CEIOPS will become EIOPA, the European Insurance and Occupational Pensions Authority. A

Commission's proposal called Omnibus II will come out in the coming weeks. The first Omnibus was proposed in September and deals with the sectoral adaptations in banking and securities regulation. Following the introduction of these new authorities, Omnibus II will deal with that for the insurance sector. To give you some ideas, EIOPA will have a specific role in providing agreed interpretations of Community legislation, always under the supervision of the Commission. Why is that important? When we talk of the IMD, we see that today people read that text differently. When the French supervisor says "I read it this way" and the German supervisor says "I read it that way", the question is who is right. Well in the future, someone will say "that is the interpretation", always under the supervision of the European Commission and the European Court of Justice. But at least there is going to be some active system to get these issues resolved. If the Italian supervisor disagrees with his Spanish colleague, what happens today? Nothing. What happens tomorrow? EIOPA will decide. This is still being negotiated but it will be one of the proposals.

When we have Directives, we also need to have more agreement on the details and application of these Directives. This is why the authorities will have the right to set binding technical standards. That goes in the direction of what we want, what the finance ministers want. They want a EU rule book that is applied consistently in the same way everywhere in the EU. The technical standards will be developed by EIOPA and the Commission will give it binding legal force. For you it means that the work carried out at European level will become more relevant also for you because it will affect you. The decision is not going to be taken in The Hague, Paris or London, it will be taken by EIOPA in Frankfurt. That is an important change. The decisions might no longer be taken by the national supervisors and that means that your supervisors will also have to be more careful.

As I said, the proposal will come out in the coming weeks, there are still negotiations ongoing on Omnibus I between Council and Parliament and we hope that a deal will be reached before the autumn.

The Green Paper on pensions was just published. What is in a nutshell the objective of this paper?

The objective of this Paper is to call the awareness of the Member States and all interested parties to the major challenge that pension financing creates in all our Member States. Of course the Community is not competent for the first pillar, the social security, which is a national competence, but the Community has some competence for the second pillar, that of the occupational pension funds, and the third pillar, all the pension products which are offered through life assurance. That debate on pensions will be very important in the coming months. What is the relevance for you? It could affect you directly if your country decides to increase the age before you could go on pension.

The Green Paper may also contribute to a greater awareness in our Member States, also with the industry to provide more pension products, which will be insurance products. And that is good news for you, because it is a bigger market.

Then there is the debate about guarantee schemes. Will there be European regulation on this in the near future?

An other area to which, I believe, you should pay attention to is the recent publication of a **White Paper on insurance guarantee schemes**. The Commission has now come up with a conclusion that when the bankers have it, the investment funds have it, we also need it in insurance. Is there an urgent need in insurance ? We have examined this as part of the impact assessment. There are less insolvencies in the area of insurance. It is clear that particularly in the life insurance area the insolvency of an insurer could have a major impact on private households and that is why it is important that we have a system which in that case steps in to make sure that people do not go through that hardship. The White Paper from the Commission will be followed by a discussion and a proposal for a Directive may come some time next year.

Moving on to “PRIIPs insurance”, will the specificities of the insurance sector be taken into consideration when these are regulated ?

PRIIPs (Packaged Retail Investment Products) is a very complex exercise. It is the intention to have a cross-sectoral harmonization. We decided to postpone this until 2011 to allow us more time to prepare it. Two major work streams : a horizontal directive dealing with information requirements and sectoral legislation dealing with the selling practices and business conduct. It means for your sector that the selling practices will move into the IMD as part of the IMD revision.

The introduction of PRIIPs will make the regulation more complicated because you have the PRIIPs products and the other products and the rules may not be entirely the same. So in that sense, it is also important for you to follow this.

With all this in the background the IMD II is under preparation. Can you give us an insight in the state of play ?

The last time I discussed this with you was about a year ago when you had your Forum in Brussels. I know that you had a very successful conference in the European Parliament, which is good. I think it is important that you prepare this file, you need to be there before things happen. The world is divided in three categories : the people who make it happen, the people who watch how other people make it happen and the people who wait until things fall on their heads. I hope that you will be involved with those who make it happen or at least with those who are aware that things are happening and that you try to influence them by giving them the benefit of your experience.

Before entering into the heart of the discussion, I would like to share with you some facts relating to the timing of this exercise. We started the process with a letter that we sent to CEIOPS in January in which we asked CEIOPS very specific questions. The questions we asked CEIOPS to work on turned out to be rather difficult questions. CEIOPS told us that they would

not be able to bring the report forward in July, as we had initially hoped, but only in September or even October. We will have to speed up things a little bit. After we have seen CEIOPS' (draft) report, we will make a consultative document which will be put out for consultation and which will be the subject of debate at our public hearing planned on 10 December 2010 in Brussels. You are all very welcome to attend this hearing. At that hearing, we will of course invite BIPAR. Several people from the intermediation sector will be on the various panels that we will organise. I cannot be more specific at this stage because we have not yet started to draft the programme for the public hearing. In any case, the public hearing should allow for exchanges of views between all interested parties.

We will then prepare an impact assessment. We have already started a study as part of the PRIPS exercise, which should be available some time in September, but we are not going to write anything before we know what is going to happen with the things we write. That means that we will not be able to come forward with an official Commission proposal before the end of 2011. That should give you comfort : we will be very transparent on everything we plan to do so that you can provide us with your input into the process and be proud with the end result.

What architecture will most likely be applied for the IMD II ?

As things stand today, we want to integrate two new concepts into the IMD II. The first is the inclusion of specific sales rules applicable to PRIPs. There will be a part in IMD II which deals specifically with the selling of packaged retail investments products. As I told you, we are going to see with our colleagues who are responsible for MiFID what we can learn from the MiFID Directive without saying that we necessarily want to take everything on board because an investment product which is a pure investment product is not necessarily also an insurance product.

Secondly, we want to create a level playing field between the direct sale of insurance products and the sale through intermediaries. It may well be that in some Member States, the direct sale of insurance products will increase in the future. We do not want the policyholders to be less well treated when they buy directly from an insurer or when they buy an insurance product through an insurance intermediary who advises them on a particular insurance product.

There is also the question whether to turn it into a “Lamfalussy Directive” or not ?

Indeed that is one of the questions that is open : should the IMD be turned into a Lamfalussy Directive ? Lamfalussy means that you bring life into a directive. The old directives, and unfortunately the IMD is one of them, are minimum harmonization directives. The minimum harmonization directives have the big disadvantage that they almost invite all Member States to come up with their national sauce: « sauce hollandaise, anglaise, milanaise ... ». They also only give you the first course of the menu, leaving you in the dark as to the main course and

the desert. It is important that we provide in some areas for the possibility to further elaborate on the principles of the Directive in order to offer more clarity on what exactly the Directive says. That moves us in the direction of an EU rule book with the advantage that we speak the same language when we sit around the table. As I said, there is not yet a clear view on whether we will do that, CEIOPS is divided on this issue and I am sure that Member States will also be divided on this.

For us, BIPAR, the scope should be broad , do you share this view ?

We agree that the IMD should have a broad scope. One of the reasons for the IMD revision is the divergent interpretation and implementation of the current IMD provisions regulating its scope in Member States. As this creates obstacles to the Single Market for insurance intermediaries and confusion for consumers, we want to increase the level of harmonisation and legal certainty in this area. I am fully aware that BIPAR's position is that the scope of the IMD II should be as broad as possible and that there should be no new exemptions, in the interest of consumer protection and in the interest of a level playing field.

In the further work on IMD II we would like to avoid discrepancies between the various interpretations of the scope in Member States. While doing this, we need to keep an eye on future developments in the insurance distribution area. For example, we need to clearly define when a comparative website of insurance products becomes an intermediation activity and when not. We need a clear answer to the question whether or not someone who gives a name of an insurer or intermediary to a potential client is intermediating or not. Is someone who hands you over the keys of your rental car in a car rental office falling under the Directive or not? Experience has shown that this last question can be the source of great hardship. Many people who sign the contract when they rent a car do not realise the consequences of the various options that they are being offered in terms of insurance. If the compensation limits were the same in all Member States, it would be less of a problem. As things stand now, one can get involved in an accident with a rental and end up having to pay the consequences for the rest of one's life. That is not fair. So, before agreeing to exclude car rental companies, we need to think about the consequences.

Then there is the debate on transparency and conflicts of interest. What are currently your views on this ?

A very important element in the future IMD is indeed transparency. It is a general issue in financial services. People want more transparency, they are very critical about conflicts of interest and remuneration.

You know that we had the Business Insurance Sector Inquiry in 2007. One of the conclusions of this inquiry was that the double role of an insurance intermediary who works both for the consumer and the insurer could lead to potential conflicts of interest, particularly when the intermediary has binding authority. I know that you have been working with the industry to

make these relationships more transparent. We welcome that. I believe that the IMD is only a first start here and that we need further clarifications in particular with regard to the binding authority or claims settlement authority, if only to avoid misunderstandings between the parties.

The second conclusion of the Business Insurance Inquiry was that more transparency is needed on the remuneration of intermediaries with a view to further competition. We know that you have been working on that also and we welcome that. The move today is apparently in the direction of disclosure of remuneration upon request, which is the absolute minimum. I know that BIPAR is of the opinion that for personal lines insurance the final premium is the most important aspect and that you promote a softer transparency regime in this segment of insurance. I believe that the “upon request” approach should be equally applicable to business and personal lines insurance. This “upon request” approach should be seen against a background of pressures from various countries to go even further. We have the idea in the Scandinavian or Nordic countries on netquoting, we have the MiFID-style inducement rules in the Netherlands. So there are different ways and means to look at this. Sometimes, we hear the slogan “stop commission payments, introduce customer-agreed remuneration and everything will be resolved”. This may be an over-simplification. It is however clear that we need to make courageous progress in this area.

Two weeks ago, when I was chairing a panel at a CEA Conference in London, we had a representative from FERMA who said that he wanted more active involvement from insurance intermediaries and that he was not always getting what he wanted. I said to him : *« if you were to be the regulator, how would you deal with that ? »*. He said *« First thing I would like to have is a requirement to disclose the remuneration »*. I said *« that it is interesting. I want to show you now how difficult regulation is because I’m going to ask this other gentleman on the panel if he agrees with you »*. The other person on the panel representing consumers in the UK responded: *« Disclosure of remuneration ? No ! We have carried out some research in the UK and clearly the majority of consumers are not interested in that »*. What this person wanted was a regulation of the remuneration. So there are different views on this and it is good that you know that.

I believe that the “upon request” approach is a good starting point, we need to see how we can develop that further and any idea that you have in this respect is more than welcome.

On the PRIPs insurance products, we will have to follow what comes out of the MiFID in terms of conflicts of interests. It is my view, and my colleagues share it, that we should not automatically extend all MiFID rules to all insurance products, maybe to PRIPs to some extent but we should be cautious.

It is important that you look into these issues, that you also prepare at national level your authorities for a discussion on these subjects, that you talk to members of the European Parliament, always keeping in mind what I said earlier, that these issues of conflicts of interest and remuneration are extremely tricky today, that people look at them very critically and that if you have a message, it has to be a very solid one, which convinces politicians that your situation is not the same as that of bankers.

What about professional requirements, registration and notification ?

Another area that we want to deal with under the IMD II relates to professional requirements and training. Here again, the views are divergent (should we also apply Lamfalussy to this aspect of the directive ?, ...)

And the last issue is that of the registration. There has been some criticism voiced against the IMD that the registration regime is too burdensome, some people would like to take the tied agents out – we don't agree with that. There is the issue of the cross-border provision of services, where the question is to what extent there should be notification. Can we not make that a bit easier ? I am sure we will find solutions for that. Similarly, we will also have to find a way to deal with the issue of general good, which is often used as an excuse to keep foreigners out of the local market.

Thank you for this interview. Do you have any last messages for BIPAR and the national associations ?

Let me just recapitulate the most important messages :

1. Things have changed since the financial crisis and that will affect insurance regulation in general and the revision of the IMD in particular.
2. The revision of the IMD is politically very sensitive and it will attract a great deal of interest from all parties concerned. You need to be aware of this in your discussions.
3. We have more time to deal with the revision. The CEIOPS report will be the start for the revision work.
4. It is very important that you as intermediaries through BIPAR can come up to Brussels or Strasbourg and speak with one single voice. The stronger that voice is, the more likely it is that you will be heard.
5. An impact assessment will accompany our proposal foreseen for 2011. I told you that I needed time to have a proper consultation. For you, this has the advantage that you will see how we have analysed the potential changes in that impact assessment.
6. Although PRIPs will influence the work, we do not want to input MiFID in the whole insurance area.

I am pleased that there is good cooperation between BIPAR and CEIOPS and I hope that it will continue. I am also pleased that there is a good cooperation between BIPAR and my services, in particular with Tomas Kukal, who spends a great deal of time and energy in dealing with this file. Although we do not always share the same view as BIPAR, we should work with each other and not against each other. The crisis has shown the importance of insurance. This is a sector which will grow if it takes on the challenges resulting from the crisis, i.e. to provide security in a world that is less and less certain and full of risks. You have a unique opportunity to take part in this and to play the important role of intermediary between the policyholder who does not understand insurance and the insurer who often does not know how to sell. If you do this well, you will be in among the winners.
