

Interview with Gabriel Bernardino, Chairman of EIOPA, conducted by Michael Faulkner, Insurance Risk (the United Kingdom)

Why are the guidelines necessary?

We are in a situation where we are moving closer to the date of implementation of Solvency II. We all know that we have final decisions that need to be taken at the political level later this year, mostly on elements relating to pillar 1, and what we see is that the preparation for Solvency II is starting to evolve in the different countries in Europe.

If there is not a consistent way of doing this, we may find, when we start the implementation, there may be varying degrees of preparation and varying elements being implemented in the different countries.

So we took these two elements into account: first that we need to prepare in a convergent way and second we need to keep the momentum in the work that has already been done on Solvency II. We issued an opinion in December and the objective is to keep the momentum going and to keep supervisors and companies preparing themselves in a way that means we will be in a better shape when Solvency II is enacted.

To what extent are these measures driven by concerns that inconsistencies are emerging in the elements of Solvency II that some national regulators are introducing?

When you are living in a Solvency I world where you've got so many differences and when everybody can have the opportunity to include new elements in their regimes, national competent authorities of course will start to include elements of risk-based supervision. As time goes by if we don't have any push to have a consistent and convergent approach, we will have a situation where we start to see some differences. We already see some of them emerging for good reasons as national supervisors need to start implementing elements of risk-based supervision, but it is better to do it in a convergent way.

The other aspect is that we want to make these improvements in a way which is consistent with what we expect to have in Solvency II when we start to implement it. That is why when you look at our guidelines, you see that there are areas where some countries have already implemented certain measures. If

we don't do it right now, in 2 years' time we would have more divergences. So the idea is to have preparedness within consistency.

So there are already concerns that divergent practices are emerging?

We are in Solvency I, so of course everybody is inputting elements in their Solvency I regimes, picking here and there from Solvency II, so if we don't do anything we will have a much worse situation in terms of the internal market. That's what we want to avoid.

Given the delays to Solvency II, some may say that this is about keeping Eiopa relevant?

It is not the guidelines that give Eiopa relevance it is the Regulation establishing EIOPA, and we have a duty under this Regulation to foster consistency and convergence in regulation and supervisory practices in Europe. What we are doing is our duty.

There are challenges in making this work. One is implementing the measures at the national levels as some national supervisory authorities will have to put in place primary legislation. That will make it difficult to have a consistent implementation of the guidelines across Europe.

The guidelines are to work on a 'comply or explain' basis and by nature they are preparatory for the implementation of Solvency II. We have been quite clear in our communication when we launched the consultation: we understand that compliance with guidelines will be different in different countries depending on what has already been done. It depends on their legal framework because some countries will easily incorporate the guidelines into their regulatory framework as supervisors are able to do that and they will change their supervisory rules or guidelines. Other countries will probably need to have some legislative change to do this. We are quite aware of that but what we want is to have this preparatory phase as a phasing-in.

We are not expecting to have all the guidelines being complied with by all the national authorities on January 1, 2014. What we expect is that national authorities will start on January 1, 2014 to implement in their own national framework these guidelines and then we will see an evolution. That is why we included very clearly a progress report that national supervisors will need to send to Eiopa on an annual basis to analyse how these preparations are being

made in the different countries. These guidelines focus on preparation and we know that the timings will be different timings in different countries.

The aim is to have the same level of preparedness from supervisors and the industry at the end of this exercise when Solvency II is implemented to have a much bigger level of preparedness from supervisors and the industry.

Eiopa does not have the powers to compel NSAs to adopt this. Are you concerned that some countries will not comply?

This process is decided by the national supervisors in the Board of Supervisors, so I expect national supervisors will make all efforts to comply with the guidelines. We understand the preparatory nature of the guidelines and that different countries have different powers to introduce these guidelines, so we also know that the pace of phasing-in guidelines will be different at national level. But there is a clear wish from national authorities to use these guidelines as the basis for their preparations for Solvency II. As it is in the regulations, the guidelines work on a 'comply or explain' basis and we will have communications from NSAs if they comply or intend to comply and then there will be the progress report on an annual basis.

What if they choose not to comply?

It is comply or explain and this will be a transparent process. There will be reasons and we expect to receive their information and explanations why it is not possible. It is not a question of having a penalty. But that will only happen in extreme situations because there is a willingness from the supervisory community to move in a consistent way.

Did all supervisors indicate they are supportive?

The guidelines were put out for consultation as they were approved by the Board of Supervisors. We had discussions since November and the Guidelines represent a result of a long work by people at EIOPA and national supervisors. The decision when to start the consultation is a decision by the Board of Supervisors' members. To be approved the consultation needs simple majority of the Board, but when we issue guidelines, qualified majority [of the board] will be needed.

How many supervisors voted against the consultation?

We had full Board support for the consultation. We had more people who were completely happy with the final outcome [than those who were not], but that is the nature of the process. Consultation is consultation and we will see [the outcome] when we issue the guidelines later on.

But don't focus on this - that is not the issue. At the end [of the process] we will issue guidelines or other instruments which are voted in by [qualified] majority. It will be implemented on a 'comply or explain' basis.

How do you get firms to follow the guidelines? What is the incentive for insurers to comply with the guidelines as they are implemented?

We are talking about preparatory measures; we are talking about putting in supervisory moves [relating to] elements of pillar II and some submission of information. The objective is not that supervisors will analyse the information as if Solvency II were in force. The enforcement will be in relation to the current regime - Solvency I. We want to be sure that companies do the preparation for Solvency II, so when they submit information on the asset side, on the capital requirements and all the calculations in there, the objective is that supervisors will look at it, understand it and will analyse the quality [of the submission] and will provide feedback to the company on the quality of the information. So when Solvency II starts, we will not have the same kind of problems.

When a supervisory regime is changed, especially on the information side, [the quality] will not be 100% in the first submission, you will need to have a quality check and a dialogue and that's what we want to provide before the full implementation. That's why we want to have at least one annual report before the start of Solvency II and also to start to get some quarterly information two quarters before the implementation of Solvency II. That's why we say that it is not because of these guidelines that there will be enforcement, it is for supervisors and companies to increase the level of preparedness. It is about helping all the preparation to be made and, thus, to contribute to Solvency II implementation.

It is not just for undertakings but for supervisors. We expect national supervisors will also start to analyse and review the information they receive from companies so that they are better prepared when Solvency II starts.

Do you envisage action against firms if they don't comply?

The implementation of the guidelines is up to national supervisors so we are not telling how the national supervisors will implement them in their countries. For example, you could have countries which are more advanced and which have incorporated these into their legal requirements, so they have enforcement powers.

I am not expecting that those will go back on what they have implemented in their regimes. That is not the purpose of these guidelines; we are not issuing these guidelines in order to give enforcements powers before the directive is fully transposed, we are issuing these guidelines in order to have companies and supervisors better prepared before Solvency II starts.

The focus is not enforcement, the focus is on improving the quality. In that sense I don't really see why both national supervisors and the industry will not be in a shape to comply with these guidelines as it is in their own interests. We have all elements in terms of proportionality and phasing-in in here, so I would say it is a win-win situation at the end of the day and will put us in a much better situation when Solvency II is in force.

We could end up with inconsistencies between different member states, with some a lot further ahead in implementation and others a lot further behind?

We are in a situation now where we are seeing evolution and developments in Member States, so this situation is already there. The guidelines will bring more consistency and more convergence. But let me be frank and clear, it is not just because a European authority issues guidelines or technical standards that implementation will be 100% equal in all the countries. That is where supervision enters; that is the biggest challenge. If you believe that the biggest challenge is to have a single rulebook then think again as the biggest challenge is to have a consistent supervisory approach on how to implement this single rulebook. I don't have the expectation that by having guidelines, everyone will behave in the same way. That is not reality so that is why we have a number of elements in terms of monitoring. We will not only receive an indication from authorities if they want to comply but we will also have a progress report on an annual basis where we will get information about what the progress towards the

implementation of the guidelines and that is the tool we will use for checking consistency.

We have other tools in terms of implementation of consistent supervisory approach, for example, EIOPA is starting to develop a supervisory handbook where we will develop a number of good practices in different areas of Solvency II; how to approach the implementation of the new regime; how to assess the risks. This is long-term work. If people think that you will have immediate consistency in all the supervisory practices then that is wishful thinking; it is going to be tough, it's going to take some years. But we are starting on the right track so that everything we can do, we are doing and I am quite optimistic that we will implement Solvency II in a way which is consistent. It will not be always 100% completely equal in all the countries because we have different markets, products and cultures at a supervisory level. You cannot change the culture in one or two years, this will take time; but there is a clear vision and objective from Eiopa as to where we want to be in three, four, five years' and I think we are going to get there.

On the details of the proposed measures, some people have expressed surprise at how far they have gone. Some express concerns on the reporting side – there are a lot of requirements.

We have been working on harmonisation of reporting for Solvency II for a number of years. We have extensively used public consultations; we have worked with all the stakeholders and integrated a huge number of elements coming from our stakeholders so we had, at the end of last year, a stable package of templates. What we are asking for right now - quality checking - is a minor part of the reporting requirements; these are just the basic elements of Solvency II. So when people say there were expecting less, I don't know what is less. We have just covered the fundamental elements; namely reporting on the asset side, on technical provisions, on the basic elements of own funds and capital requirements. All of the other more technical details and granular information we're not asking for it right now.

This is predicated on a stable Pillar 1. There is a risk of that not being achieved by the end of the year. How will that affect the guidelines?

We all need to work with assumptions. Our assumption is that in order to have this submission of information in 2015, we will need to have a stable Pillar 1 at

the end of this year or the beginning of next year. That is our assumption. If the world evolves in a different direction, then we will revise this deadline. But it is our duty right now to be transparent and have a clear communication with our industry and to say that the expectation from supervisors and the current timings is that in 2015 we could have the first submission of information. But if, at the political level, there are different decisions, then we will change this. But I think it is a question of transparency.

If there are further delays, could these guidelines become the *de facto* Solvency II regime?

That is not our intention and that it is not on our table right now. These guidelines are of a preparatory nature and are due to be there during the preparatory phase. When this phase is finished, we will publish the technical standards and the proper guidelines for the Solvency II regime. What we wanted is not to first do something and then in a couple of years to do something completely different. It is important that during the preparatory phase people know with sufficient detail and proper transparency, what the expectations of supervisors are as it will help them be better prepared.

I don't think it is interesting to do these 'what if' scenarios. If at the end of the year or the beginning of next year we don't have a political decision on Solvency II, then I will gladly talk again and I am sure I can provide information on what we intend to do as we will have ways to evolve, but that is not the scenario right now. The current scenario is that we will have a political agreement and that Solvency II will be implemented - and I believe it is still possible to have Solvency II starting in 2016. If that is not the case, then later in the year or next year we will see what to do.

How is the LTGA progressing?

Companies have sent information to national supervisors and now there is period of analysis. We expect that around 500 undertakings participated in the exercise. So there was a good level of participation considering that the exercise is very much focused on long-term guarantees. We are reviewing and analysing the results which we will do at EIOPA during May, and in June we will make our report.