

BIPAR Update

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1. EIOPA virtual workshop “Consumer disclosures: what needs to change?”

On Wednesday 27 (9.00-11.30 CEST) and Thursday 28 October 2021 (9.00-12.10 CEST), EIOPA is hosting a virtual workshop on “Consumer disclosures: what needs to change?”. BIPAR will be represented at this workshop through its Vice-Chair and member of EIOPA’s Insurance and Reinsurance Stakeholder Group (IRSG), **Juan Ramón Plá**.

During the workshop, EIOPA wishes to explore how current approaches to disclose information about insurance and pension products can be improved. Disclosures are one of the aspects the European Commission is looking into in the framework of its upcoming Retail Investment Strategy -EIOPA however explicitly states that this workshop is part of a broader initiative within EIOPA looking at consumer disclosures that is not limited to the sale of insurance-based investment products (IBIPs).

The objective is not to focus simply on the regulatory framework, but to explore a range of different important themes relating to consumer disclosures including, inter alia:

- The role of disclosures in achieving consumer protection objectives
- How to reflect behavioural principles when designing disclosures
- If and how disclosures can be simplified or made more user-friendly
- What tools or techniques can be used to promote improved consumer engagement, in particular in a digital age
- How the regulatory approach can best promote good consumer outcomes - **Juan Ramón will participate in this panel discussion on Thursday morning**

If you are interested in attending the workshop, you can register [here](#) and consult the detailed programme there as well. Dial-in details will be shared 1 day prior to the event only with registered participants.

2. EIOPA second report on “Failures and near misses in insurance”

In early October, the European Insurance and Occupational Pensions Authority (EIOPA) published its second [“Failures and near misses in insurance” report](#).

The report aims to provide a better understanding of the kind of actions that are taken by insurers and NCAs when the companies are entering into two specific stages of the crisis management flow:

- i. **The recovery phase** (this covers measures taken before the breach of the capital requirements - more specifically known as preventive measures - and measures taken after the breach of the capital requirements) and
- ii. **The resolution phase** (this phase refers to actions that taken by the authorities in charge of the resolution and/or liquidation process).

A number of additional issues such as **potential policyholders’ loss, external funding and cross-border aspects** featuring insurers’ failures and near misses are also studied in the report. It is based on the information contained in the EIOPA database, which comprises a sample of 219 affected insurance undertakings in 31 European countries,¹ dating back from 1999 to 2020.

According to the report, **the most common measures** taken by the insurers and/or requested by the NCAs before and during the recovery phase were: i. **Presenting a recovery plan** to restore compliance with the requirements; or (seldom) activating the existing pre-emptive recovery plan. ii. **Requesting cash injections** by shareholders or the parent company. iii. **Require the reinforcement of internal governance arrangement and risk management.** iv. **Require commitment and/or actions from shareholders to support the company.** v. **Request additional provisioning** (i.e. building up a higher level of technical provisions).

Certainly, whenever the insurer operates in a manner that is likely to affect its ability to protect policyholders’ interests or pose a threat to financial stability, the supervisor should act more urgently in requiring recovery measures. In particular, the supervisor should have available a range of measures broad enough to address insurers of all sizes and complexities. **EIOPA includes a comprehensive list of recovery measures currently used by the NCAs in this context, one being prohibiting the insurer from continuing a business relationship with an intermediary or an outsourced provider or requiring the terms of such a relationship to be varied.**

With regard to the resolution phase, the most common measures used by the NCAs were the following: i. **Discontinue the writing of new business and continue administering the existing contractual policy obligations for in-force business (run-off),** ii. **Liquidation (i.e. the closure and orderly liquidation of the whole or part of a failing company),** iii. **Sale of all or part of the insurers’ business to a private purchaser.**

Regarding the policyholder losses, the external funding received and potential cross-border issues during the resolution process, the main conclusions are:

- **Policyholders’ loss.** Policyholders in resolution suffered a loss of some kind in 30% of the cases, which proves that they are not immune to losses.
- **External funding.** There was a need for external injections in 33% of the failures. This has taken place in a majority of cases through the intervention of an IGS, but in some cases, also public funds were compromised.
- **Cross-border issues.** The report points out that the most common cross-border issue identified by NSAs is the current fragmentation in the landscape of the national IGSs in the EU.



The conclusions reached in this report support EIOPA’s views on the need for EU a recovery and resolution framework, as well as a minimum harmonised network of IGSs. In the context of the review of the Solvency II Directive, it is to be reminded that the Commission proposed a legislative proposal for a new insurance recovery and resolution directive that includes provision for the designation of a national resolution authority empowered to apply resolution tools and exercise resolution powers in each Member State. However, the Review does not contain proposals on the introduction of harmonized rules for Insurance guarantee schemes (IGS). The Commission explained that it is committed to reassess the appropriateness and timing of any such alignment in the future.

3. EIOPA supervisory opinions on IORPs

On 7 October 2021, EIOPA published two Opinions regarding Institutions for Occupational Retirement Provisions (IORPs) on:

- the supervisory reporting of costs and charges by IORPs and
- the risk assessment of IORPs that provide defined contribution (DC) schemes.

The Opinion on the supervisory reporting of costs and charges can be found [here](#).

EIOPA states that costs and charges can have a substantial **cumulative impact**: a 1% increase in costs can have a 20% impact on the amount of pension received. Hence, in order to protect members and beneficiaries, a transparent and comprehensive view of all costs and charges is essential for IORPs, social partners and supervisors. To address this, the Opinion sets out **expectations on the supervisory reporting of costs and charges of IORPs**.

The Opinion on the supervision of risk assessment by IORPs providing DC schemes can be found [here](#).

EIOPA states that members are more likely to suffer adverse consequences if risks crystallise in **defined contribution (DC)** pension products compared with **defined benefit** products. The supervisory approach to DC products needs to ensure that risks borne by DC IORPs are appropriately monitored and managed.

The Opinion fosters consistent supervisory practices by providing guidance on two aspects of risk management by DC IORPs. Firstly, the Opinion calls for a greater use of **quantitative elements** when managing operational risks. Secondly, it expects DC IORPs to conduct **long-term risk assessments** by using projections of members' future retirement income, comparing the results with the established risk tolerance of the members and beneficiaries, and as appropriate considering the IORP's investment strategies.

The two Opinions are **applicable immediately and addressed to national competent authorities**.



4. ESMA hearing on Retail Investment Strategy advice on 22 November

As announced during the BIPAR's webinar "Europe at a glance" on 14 October, ESMA will organise an open hearing on 22 November in relation to the call for evidence it recently launched with regard to the European Commission's call for advice to ESMA on the Retail Investment Strategy. This will be a virtual event, from 16:00 to 18:00 (Brussels' time).

ESMA explains that the call for evidence as well as the open hearing aim to gather views and qualitative/quantitative information stakeholders may have on the topics as covered by the call for advice and that during the open hearing they will discuss and gather input on the following main topics:

3. **Disclosures:** identification of any significant overlaps, gaps, redundancies and inconsistencies across investor protection legislation that might have a detrimental effect on investors. In particular, the call for evidence seeks input on how the rules work from a retail investor perspective - whether consumers can make informed choices, avoid information overload and overly complex information while ensuring investor protection;

1. **Digital disclosures:** an assessment of how regulatory disclosures and communications can work best for consumers in the digital age and proposes options as to how existing rules might be adapted, such as allowing layered information. But also input is sought on the use of gamification apps and services in the financial realm; and
2. **Digital tools and channels:** an assessment of both risks and opportunities with respect to retail investing stemming from both the increasing availability of digital tools and the increasing levels of direct investor participation via online trading platforms and robo advisors. In addition, the call for evidence also explores the topic of open finance i.e. how far value chains should be opened up by sharing specific investor data amongst investment firms and third party providers.

The detailed programme is not yet available. You can register [here](#) and registration will close on 21 November at 23:59h. Connection details will be sent to registered participants.

The BIPAR Secretariat will attend the hearing. For more details on the Commission's call for advice to ESMA and on ESMA's call for evidence, we refer to BIPAR emails of 7 October and 2 August.

5. Verena Ross officially appointed Chair of ESMA

On 15 October, the Council officially adopted the decision to appoint Verena Ross (German) as the Chairperson of ESMA (see previous article in BIPAR Update of 1 October for more detail).

Mrs. Ross will take up this role on 1 November 2021. Her term of office will run for a five-year period and may be extended once.

Verena Ross, incoming Chair, said: *"I am honoured to have been entrusted with this role as ESMA enters its second decade. I am looking forward to working with the Board members, ESMA staff and our stakeholders in responding to the challenges and opportunities faced by the European Union and its capital markets. I believe that ESMA has an important role to play in ensuring that European markets support the financial needs of its companies and citizens."*

BIPAR has already congratulated Mrs. Ross with her nomination.

