Response to EIOPA's consultation paper on undertakings under dominant/significant influence or managed on a unified basis

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Introduction

Q1. *Do you have general comments on the consultation paper?*

The industry appreciates EIOPA's efforts in establishing appropriate conditions for effective group classification and the opportunity to provide feedback on the proposals.

Overall, in Insurance Europe's view, EIOPA's preference for Option A.2 reflects a reasonable approach. However, we would welcome further clarity on the application of the criteria and its intended purpose in the Regulatory Technical Standards (RTS). Key concerns are outlined below as well as several suggested amendments to the draft RTS to address these in the detailed comments. Insurance Europe would be happy to discuss these further with EIOPA and/or the Commission.

Broad criteria

Insurance Europe is concerned that the broad definition of certain criteria within the proposal could lead to unintentionally expanding the range of undertakings that could be classified as an insurance group beyond the Solvency II Directive's intent. Criteria such as Articles 2(c) (reinsurance), 3(f), and 4.1(b)(i) and (v) (similar strategies), as well as Articles 3(g) and 4.1(x) (coordinated feedback) describe typical industry practices that are common across companies and do not inherently imply significant or dominant influence or management on a unified basis. There is a risk of over-inclusive application if national supervisory authorities (NSAs) combine these criteria too broadly, potentially classifying many undertakings as part of a group where this would make no logical sense.

The criteria, as currently drafted, may also inadvertently capture stand-alone undertakings that belong to equivalent third-country groups. For example, undertakings within the same third-country group may share a brand, strategic goals or administrative links, potentially leading to their classification as a horizontal sub-group, which would not add value for policyholder protection due to existing group supervision at the third-country holding company level. It would furthermore be beneficial to clarify that an undertaking that is already part of a group under group supervision is not attributed to another group.

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Lack of clarity on scale of issue
It is not clear from an industry perspective how many undertakings/groups would be in scope and whether the 'problem identified' would be proportionately resolved by EIOPA's proposals. The impact assessment could be improved to address this.

Consistency with other frameworks
Insurance Europe would support the introduction of wording which indicates that NSAs should also consider the scope of the group under International Financial Reporting Standards (IFRS) or other applicable financial frameworks in its assessment. Although Solvency II and IFRS/other financial frameworks serve different regulatory purposes, there is no compelling reason why the accounting concept of control or significant influence should not serve as a blueprint for the prudential concept of dominant or significant influence.

Clarity on intended purpose of regulation
Finally, a recital should be added that clarifies that decisions on group supervision based on management on a unified basis should be taken only when the group supervisor assesses that the application of group supervision on the undertakings in question leads to an actual improvement of supervision in relation to the best interest of the policyholders.

Q2. *Do you have comments on the following sections in section 1 with background and rationale?*

N/A

Amendments to the Solvency II Directive

Mandate for draft regulatory technical standards

Approach to the RTS

Q3. *Do you have any other comments on the background and rationale section?*

N/A

Q4. *Do you have comments on the following recitals in section 2?*

Insurance Europe supports the addition of an introductory recital explaining the scope of groups targeted with this RTS, in line with the background information of the consultation document. The number of criteria listed in the RTS is so broad that without further clarification of the targeted scope, almost anything and everything could in principle be considered a group.

Introducing such a recital would help to avoid creating uncertainty for existing groups where the scope of supervision is well established. It would also enhance predictability for projects leading to an evolution of the corporate structure. In light of this, Insurance Europe suggests the addition of the following recital:

> "*This Regulation aims to facilitate the identification of undertakings which form a group, in particular with respect to groups which are not in the scope of Directive 2013/34/EU and horizontal groups, with no or weak capital links between undertakings.*"

Recital 1

It could be further clarified whether recital 1 should be interpreted that only the types of evidence explicitly mentioned in the text are considered acceptable or valid, excluding other forms of supporting evidence.

Recital 2

Recital 3

Insurance Europe welcomes the clarification that the supporting evidence stated in the draft RTS is not a checkbox but needs to be challenged by the competent authorities in terms of significance, continuity and consistency. It would be helpful if EIOPA would offer further guidance and clarity on the role of the factors "continuity" and "consistency" to better understand how these are expected to be applied.

Recital 4

Insurance Europe agrees that evidence derived from contractual agreements should prevail over any other evidence.

Recital 5

Recital 6

Recital 7

Recital 8

Recital 9

Q5. *Do you have comments on the following articles in section 2?*

Feedback on Articles 1-4: While most factors are suitable to identify dominant or significant influence, they fail to operationalise the assessment by defining a clear threshold for assuming at least significant influence.

Insurance Europe suggests incorporating, for corporate groups, a rebuttable presumption for exercising significant influence if an undertaking holds, directly or indirectly, 20% or more of the voting power of another undertaking. And, vice versa, for corporate groups, holding less than 20% of the voting rights would justify the rebuttable presumption that an undertaking does not exercise significant influence. However, for non-corporate groups, the existence of significant influence can be established through other means, such as the existence of constitutive convention.

In addition, to mitigate the risk that the criteria inadvertently capture stand-alone undertakings that belong to equivalent third-country groups, an additional paragraph should be added to clarify that criteria in Articles 1 to 4 should not be taken into account by the NSA if they apply solely because undertakings are linked through membership of the same equivalent third-country group.

Article 1 - Control or ability to influence decisions

Article 1 in general: If EIOPA refrains from establishing a presumption that the accounting group is similar to the Solvency II group (see general comments above), Insurance Europe suggests leveraging the guidance of IFRS 10 and IAS 28 and hence achieve consistency to the extent possible.

Article 1(1)(b)(ii): The industry notes that "key, critical, or important functions" needs to be defined in the RTS. While this likely includes "key functions", it remains unclear whether it extends to the administrative, management, and supervisory body (AMSB) or other specific functions. Further clarity on the functions included in this category would be beneficial.

Article 1(1)(b)(iv): The industry recommends using "material changes" in place of "significant changes" for consistency, because "material" has a better-defined meaning in the Solvency II body of rules.

Article 2 - Strong reliance on an undertaking or natural person

Insurance Europe would support refinement of the application of the criteria in Articles 2 and 3 to avoid misinterpretation:

- **Article 2 in general**: While acknowledging that transactions between two undertakings can have a significant impact on the business model or solvency and financial position of one undertaking, the concept of strong reliance should be drafted in more general terms as creating a dependency on tangible and intangible resources or capabilities of one undertaking which are critical to the ability of the other undertaking to continue its business activities on a going concern basis.
- **Article 2(c) - Reinsurance**: Limited reinsurance providers and common use of specific natcat models make it inevitable for companies to share reinsurance partners. Identifying companies based on shared reinsurers would be unduly restrictive.
- **Article 2(d) - Outsourcing**: The limited market for critical service providers, such as cloud computing vendors, leads to unavoidable overlap in outsourcing among companies, which should not be misperceived as group affiliation.
- **Article 2(e) - Shared functions**: Economies of scale and limited software provider options mean companies may share systems for efficiency. Shared solutions, such as those facilitated by industry associations, should not imply unified management.
- **Article 3(c) – Key staff rotation**: European labour mobility norms mean that personnel frequently move between companies within the insurance sector, reflecting industry specialisation rather than group influence.
- **Article 3(g) - Coordinated feedback**: Insurance companies often provide coordinated feedback to NSAs via industry associations, such as Insurance Europe. This form of coordination is standard practice and does not imply unified management or control.

Article 3 - Coordination of financial or investment decisions

- Insurance Europe suggests refining the application of the criteria in Articles 2 and 3 to avoid misinterpretation. In addition, the interrelationships described in Article 3 should be explicitly linked to financial or investment decisions.
    - **Article 3(c) – Key staff rotation**: European labour mobility norms mean that personnel frequently move between companies within the insurance sector, reflecting industry specialisation rather than group influence.
    - **Article 3(g) - Coordinated feedback**: Insurance Europe suggests deleting this criterion. Insurance companies often provide coordinated feedback to NSAs via industry associations, such as Insurance Europe. This form of coordination is standard practice and does not imply unified management or control.

Article 4 - Coordinated and consistent strategies, operations or processes

- **Article 4 in general**: Insurance Europe believes that the repeated reference to "similar" strategies, policies, arrangements, systems, etc. is not sufficient to assume at least significant influence. There must be an economic dimension in terms of, eg, synergies or cost savings because of the close coordination between two undertakings. It is also important that the coordinated efforts are related to essential business activities (eg sales, distribution, investments) other than activities without a direct impact on the performance of an insurance undertaking (eg HR, tax, accounting).
- **Article 4(1)(b)(iii)**: A shareholders' representative can be either a natural person or a legal person, potentially including a proxy advisor as referenced in the Shareholders' Rights Directive. However, proxy advisors do not appear to be relevant in this context. This term also needs to be defined better in the RTS.
- **Article 4(1)(b)(ix)**: It is suggested to delete this provision as shared premises are not related in any sense to the relationship between undertakings in terms of exercising influence.
- **Article 4(1)(b)(ix)**: It is suggested to delete this provision as coordinated representation of undertakings towards supervisory authorities is not related in any sense to the relationship between undertakings in terms of exercising influence.
- **Specification:** The industry suggests adding the coordinated target setting for the deployment of financial resource as evidence for coordinated and consistent strategies, operations or processes.

Article 5 - Entry into force

Q6. *Do you have any other comments on the draft technical standards in section 2?*

As highlighted in the Impact Assessment, Solvency II's primary objective is the adequate protection of policyholders and beneficiaries.

As such, Insurance Europe would support the introduction of a recital to clarify that the decision to identify a horizontal group should be a discretionary tool for supervisory authorities, to be applied only when their assessment indicates that such identification would genuinely enhance supervision for the protection and benefit of policyholders. As explained above, this should also include the consideration of the scope of the group under IFRS or another financial framework, if applicable. In absence of significant reasons against this, like decisions not to include an undertaking in the group supervision pursuant to Article 214 of Directive 2009/138/EC, the scope of the group under Solvency II should generally be the same as under the IFRS or another financial framework. At the same time, it should be possible for undertakings to voluntarily form a group.

This approach aligns with Recital 61 of the Directive, which affirms that "the group supervisors should have the power to identify the existence of a group", as well as with Article 212(6), mandating that RTS may supplement or further specify the criteria for identifying horizontal groups. Additionally, it reflects EIOPA's recommendation in its "Opinion on the 2020 Review on Solvency II" to the European Commission, suggesting that supervisory authorities should be empowered, but not obligated, to apply group supervision based on unified management of undertakings, ensuring such decisions are in the best interest of policyholders.

Therefore, the industry proposes adding the following recital after the current Recital 7:

"*8. Supervisory authorities should decide to identify a group that, in the opinion of the supervisory authority, consists of undertakings that are managed on a unified basis only when it assesses that the application of group supervision on the undertakings in question leads to an actual improvement of supervision in relation to the best interest of the policyholders. This should also include a consideration of the scope of the group according to IFRS and other applicable financial frameworks. Groups that deviate from the scopes based on IFRS or other applicable financial frameworks should only be identified if this leads to significant improvement of supervision In parallel, however, this should not preclude undertakings from voluntarily forming a group."*

Q7. *Do you have comments on the analysis of the following policy issue?*

N/A

Article 5 - Entry into force

Q8. *Do you have any other comments on the impact assessment in Annex?*

N/A

Q9. *Do you have any other comments on the consultation paper?*

N/A

Insurance Europe is the European insurance and reinsurance federation. Through its 37 member bodies — the national insurance associations — it represents all types and sizes of insurance and reinsurance undertakings. Insurance Europe, which is based in Brussels, represents undertakings that account for around 95% of total European premium income. Insurance makes a major contribution to Europe's economic growth and development. European insurers pay out over €1 000bn annually — or €2.8bn a day — in claims, directly employ more than 920 000 people and invest over €10.6trn in the economy.