

Response to ESAs on supervisory convergence and the single rulebook

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Contact person:	ECOFIN Team	E-mail:	ecofin@insuranceeurope.eu
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Key messages

Insurance Europe supports the work of EIOPA. A well-functioning EIOPA is a crucial element of an effective and efficient single market (for insurance).

The ESAs regulations went through a review very recently, which already provided for some new powers for EIOPA to fulfil its objectives. There is no need for any further significant changes at this stage.

Introductory Question

About which ESA(s) will you be providing responses in this questionnaire?

Please select the ESA that you know best. You can select one, two or the three ESAs.

In case you choose more than one ESA you will be asked, in certain questions, to provide answers for each ESA. (at least 1 choice)

- About the European Banking Authority (EBA)*
 - About the European Securities and Markets Authority (ESMA)*
 - About the European Insurance and Occupational Pensions Authority (EIOPA)*
- About the European Insurance and Occupational Pensions Authority (EIOPA)

A. Questions for the assessment of the European Supervisory Authorities (ESAs) and the recent changes in their founding Regulations

General questions

Q1. *EIOPA: How do you assess the impact of each EIOPA's activities on the following aspects?*

- 1 (less significant impact)
- 2 (not so significant impact)
- 3 (neutral)
- 4 (significant impact)
- 5 (most significant impact)
- Don't know - No opinion - Not applicable

- The financial system as a whole - **3**
- Financial stability - **3**
- The functioning of the internal market - **4**
- The quality and consistency of supervision - **3**
- The enforcement of EU rules - **3**
- on supervision - **3**
- Strengthening international supervisory coordination - **4**
- Consumer and investor protection - **3**
- Financial innovation - **3**
- Sustainable finance - **3**

Please explain your answer to question I on EIOPA:

Insurance Europe supports the work of EIOPA. A well-functioning EIOPA is a crucial element of an effective and efficient single market (for insurance). EIOPA has had significant impact across many areas of its work.

However, the industry highlights that EIOPA should be clearly focused on ensuring that the rules applicable to the financial sector are adequately implemented across member states and on developing a common supervisory culture and facilitating a single European financial market. Stakeholders should be able to know what to expect from EIOPA, and as such it should act within the boundaries of its explicit mandate.

Irrespective of the merits of recent EIOPA papers on impact underwriting or open insurance, those papers are illustrative of an advocacy role taken by EIOPA to set expectations in terms of "good" or "bad" market developments and ways to pursue insurance business. EIOPA's role is not to influence the functioning of the insurance single market or to develop business cases, which raises accountability concerns. IFRS and sustainable finance are also examples of areas where EIOPA tends to act as a lobbyist. With respect to financial innovation, the industry highlights that EIOPA should only act only as a facilitator.

Regarding customer protection, there are several limitations and contradictions in the way customer protection is supervised. For instance there is maybe an exaggerated focus on price without looking at the broader picture of the services attached to a contract. There is a streak towards too much standardisation of approaches which does not do justice to the different business models and products.

Insurance Europe considers that EIOPA is fully pursuing its mandate when it acts as a neutral and impartial referee with respect to the implementation of the European prudential regulation and national supervisory practices.

The assessments have been made based on EIOPA's actual impact and not on its mandate. For example, with respect to EIOPA's impact on financial stability, the industry notes that insurers present very little systemic risk or issues for financial stability. Their business model allows them to avoid procyclical behaviour. While EIOPA

has implemented monitoring and assessment processes to ensure this remains the case (eg regular stress testing exercises), it has not had a significant impact on financial stability.

The industry would also like to stress concerns on pushes from other financial sectors aiming at harmonising some requirements across the whole financial system. Insurance Europe highlights that the different sectoral regulations have been developed as tailored to different business models and consumer relations, which could be deterred by undue harmonisation.

Finally, Insurance Europe highlights the importance of maintaining the regulatory and legislative hierarchy. Neither at European nor at national level should policies be taken by the ESAs which pre-empt the ordinary political process. Insurance Europe believes that regulatory initiatives should remain the sole power of co-legislators to avoid undermining the credibility of the EU law making processes and of co-legislators.

QII. *EIOPA: In your view, do EIOPA's mandate cover all necessary tasks and powers to contribute to the stability and to the well-functioning of the financial system?*

- Yes
- No
- Don't know / no opinion / not relevant

Yes

If you think that there are elements which should be added or removed from EIOPA's mandate, please provide a substantiated answer:

The ESAs regulations went through a review very recently, which already provided for some new powers for EIOPA to fulfil its objectives. There is no need for any further significant changes at this stage. However, Insurance Europe did propose under the past review that the ESAs mandate should include a requirement to take into account the impact of EIOPA's advice and actions on the EU public good (eg the impact on long-term investments if risk and capital charges are not correctly measured or if the framework is too volatile).

While the only area where there is evidence that a change is needed is in the area of cross-border business to ensure an appropriate cooperation and communication between NSAs, this should be dealt with under the Solvency II Review, where EIOPA made some good proposals to improve supervision of cross-border business. It is key that EIOPA uses its existing powers and make further efforts to integrate the single market, increase supervisory convergence and ensure fair competition and consistent consumer protection. EIOPA's coordination function is a central element of the development of a common supervisory culture and the consistent application of the regulatory and supervisory framework. In cases where the supervision of insurance group is considered, the group supervisory system and the colleges of supervisors provide for an effective and efficient vehicle for the exchange and coordination of NCAs and EIOPA.

In all other respects, EIOPA's powers are sufficient.

The only change in EIOPA's mandate that could be considered would be to expand it to require EIOPA to act in the best interest of the European public good. This could — together with other governance improvements — help ensure that the ESAs always take a proportional and balanced approach to their supervisory activities as well as their advice and consider unintended consequences. The ESAs should then be required to include in their annual reports the steps they have taken to fulfil this obligation.

Q III. *EIOPA: In your view, does EIOPA face any obstacles in delivering on their mandates?*

- Yes
- No
- Don't know / no opinion / not relevant

No

Please explain what you consider to be the main obstacles for EIOPA:

While there are challenges, there are not obstacles that require regulatory changes. Challenges include lack of a common supervisor culture and approach across NSAs and also the tendency for some NSAs to gold-plate the EU regulatory requirements. These challenges can be addressed by ongoing effort from EIOPA and full use of their powers.

It is important to note that the objective of convergence of supervisory practices is sometimes confused with a need for all NSAs to take identical actions. However, convergence is about applying the same rules and requirements and this can lead to different outcomes depending on the specific and situations. There are also examples where gold-plating of rules in one or member states has led to EIOPA to seek convergence by having all NSAs apply the same gold-plating. This leads to ever increasing levels of regulatory and operational burdens over and above those specified in the legal texts.

For convergence to be achieved, EIOPA should take actions to ensure that all NSAs **apply, and do not exceed or undermine**, the requirements set by the legal texts. In addition, EIOPA's mandate should not be to replace local supervision in accordance with the subsidiarity principle but rather to foster good supervision by adequate guidance issuing, transparent monitoring and reporting.

The cultural change among NSAs is key for achieving a common understanding and convergence. EIOPA has achieved some progress in that area, however cultural change and commitment from member states and their NSAs still needs improvement. A good example regards the application of the principle of proportionality, where not all NSAs appear to be willing to broadly allow for proportionality measures to be applied where the risks justify it. The solution in this case is a combination of changes under the SII Review to define the circumstances under which insurers can apply proportionality automatically without prior approval, and an alignment of common culture to ensure proportionality is also allowed in other cases in a consistent way with NSA approval.

1. The supervisory convergence tasks of the ESAs

1.1 Common supervisory culture/supervisory convergence

Q1.1.1 EIOPA: To what extent does EIOPA contribute to promoting a common supervisory culture and consistent supervisory practices?

- 1 - the less significant contribution
- 2 - (not so significant contribution)
- 3 - (neutral)
- 4 - (significant contribution)
- 5 - the most significant contribution
- Don't know / no opinion / not relevant

■ 4

Please explain your answer to question 1.1.1 for EIOPA and indicate if there are any areas for improvement:

EIOPA contributes considerably to convergence, however there is still room for improvement (see answer to question III).

It is important to recognise that supervisory convergence needs a common regulatory basis. Divergence in the fundamental rules cannot be compensated at supervisory level.

In the case of Solvency II, the regulation is already harmonised and provides a common legal basis to all member states, that needs to be complemented by consistent supervisory practices under the umbrella of EIOPA.

A good example showing room for improvement is the supervision of cross-border activities. Some failures of cross-border business in several member states over the past years have highlighted the need for more cooperation and better dialogue between NSAs. However, Insurance Europe highlights the need to preserve the "home-country" principle. These concerns have been addressed by some good proposals in the EIOPA opinion for the Solvency II 2020 review to address shortcomings in terms of NSAs cooperation.

Another example could be the application of proportionality in Solvency II. To ensure a cultural change among NSAs, regulatory changes are needed to make it clear that NSAs are not only able to deviate from the detailed requirements and allow companies to make use of proportionality measures, but they also have an obligation to do so. Including some automaticity will also avoid that NSAs create a significant burden of proof that negate the benefits of proportionality. Insurance Europe has recommended such changes as part of the SII Review and while EIOPA's advice is a step in the right direction, their proposals need additional elements to work as intended.

With regards to the specific activities of EIOPA, the tools exist already to achieve the necessary convergence, namely peer reviews, the development of a common understanding of the regulatory framework, supervisory guidance, the identification of best practices and the development of the supervisory handbook are of major importance for the development of a common supervisory culture across the EU.

In general, Insurance Europe considers that EIOPA's should aim at preventing national gold-plating practices and provide guidance. The regulation already provides the right tools to achieve that, unfortunately EIOPA's opinions, statements, guidelines, and advice are using the supervisory convergence argument only to align with the most conservative and tightest interpretations of the regulation. This bias has tended to materially increase the level of prudence and burden of Solvency II over time, at the detriment of the balance sought by the legislators in terms of proportionality.

Q1.1.2 EIOPA: *To what extent the following tasks undertaken by EIOPA have effectively contributed to building a common supervisory culture and consistent supervisory practices in the EU?*

- 1 - the less significant contribution
- 2 - (not so significant contribution)
- 3 - (neutral)
- 4 - (significant contribution)
- 5 - the most significant contribution
- Don't know / no opinion / not relevant

- Providing opinions to competent authorities - **4**
- Promoting bilateral and multilateral exchanges of information between competent authorities - **5**
- Contributing to developing high quality and uniform supervisory standards - **5**
- Contributing to developing high quality and uniform reporting standards - **4**
- Developing and reviewing the application of technical standards - **5**
- Contributing to the development of sectoral legislation by providing advice to the Commission - **4**
- Establishing (cross)sectoral training programmes – **don't know/no opinion/not applicable**
- Producing reports relating to their field of activities - **3**
- Conducting peer reviews between competent authorities - **4**
- Determining new Union strategic supervisory priorities - **4**
- Establishing coordination groups - **5**
- Developing Union supervisory handbooks - **5**
- Monitoring and assessing environmental, social and governance- related risks - **1**
- Adopting measures using emergency powers - **1**
- Investigating breaches of Union law – **don't know/no opinion/not applicable**
- Coordinating actions of competent authorities in emergency situations (e.g. Covid-19 crisis) - **2**
- Mediating between competent authorities – **don't know/no opinion/not applicable**
- Monitoring the work of supervisory and resolution colleges - **4**
- Publishing on their website information relating to their field of activities - **3**
- Monitoring market developments - **4**
- Initiating and coordinating Union-wide stress tests of financial institutions - **3**
- Developing guidelines and recommendations - **2**
- Developing Q&As - **4**
- Contributing to the establishment of a common Union financial data strategy - **2**
- Providing supervisory statements - **1**
- Other instruments and tools to promote supervisory convergence - **3**

Please specify to what other instruments and tools to promote supervisory convergence you refer:

Other tools include "statements" and "recommendations" developed by EIOPA with respect to Article 29(2) of EIOPA regulation.

Please add any qualitative comments you may wish to explain your reasoning when answering question 1.1.2 on EIOPA:

Convergence and consistency are key factors for the success of the CMU. Nonetheless, the provision of services across the EU is not only beneficial for insurance providers, but for customers. The availability of insurance products, increased competition and consumer choice are key advantages of an integrated EU insurance markets.

In Insurance Europe's opinion, EIOPA has two essential roles to play in these regards:

1. Facilitating consistent supervision across the Union
2. Supporting the development of a convergent and sound regulatory regime

Insurance Europe would like to insist on the fact that the number and variety of tools used by EIOPA (as highlighted in the table above) is confusing for insurance undertakings and further complicate the legal framework applicable to insurance activities. A streamlining of all the tools, especially opinion, guidelines, recommendations, at EIOPA's disposal is needed to increase the efficiency and transparency of EIOPA's action. Moreover, guidelines are at level 3 regarding the hierarchy of EU legal norms. Therefore, these should not anticipate a delegated act or a legislative act which are under discussion at EU level or which have not even been published by the EC. In this respect, EIOPA's Guidelines on ICT or cloud have been adopted without any text at level 1 or 2. Furthermore, EIOPA's Guidelines on ICT have been published while DORA is still under discussion and provide that RTS will be developed by EIOPA. It is essential that the hierarchy of measures is ensured and that the measures are build-upon each other and not developed in parallel.

With regards to the consistent supervision across the Union, Insurance Europe believes that there is a particular role for EIOPA in ensuring supervisory cooperation and a consistent application of the common EU supervisory framework. From the issues mentioned in the table above, the following items should be focus areas for EIOPA activities:

- Promoting bilateral and multilateral exchanges of information between NSAs
- Conducting peer reviews between NSAs
- Determining new Union strategic supervisory priorities
- Establishing coordination groups
- Developing Union supervisory handbooks
- Contributing to developing high quality and uniform supervisory standards

In addition, Insurance Europe also considers that EIOPA has a role to play in the development and interpretation of the common regulatory framework. The following activities of EIOPA are essential for EIOPA in fulfilling its mandate:

- Contributing to developing high quality and uniform reporting standards
- Developing and reviewing the application of technical standards
- Contributing to the development of sectoral legislation by providing advice to the Commission
- Developing guidelines and recommendations
- Developing Q&As

With regards to the Q&As and the guidelines, the recent ESAs review brought improvements with regards to the mandate and the governance process around these tools. It will have to be awaited how effective the amendments are in practice. Nonetheless, a proper governance process and a clearly defined mandate are a step in the right direction. The need for a sufficiently clear mandate is also underlined by the ECJ Advocate General in his Opinion on Case C-911/19.

With regards to the role which EIOPA played in the current crisis and the use of supervisory statements, Insurance Europe is more critical. EIOPA's recommendations of 20 March 2020 on annual and quarterly reporting and publication deadlines was helpful to provide insurers with the necessary relief to focus on continuity of activities. However, while EIOPA's first statement on dividends (20 March 2020) was appropriate and reasonable, it issued a second one (2 April 2020), introducing a blanket ban which ignored and undermined the prudent and risk based provisions in the Solvency II framework and sent misleading signs to capital markets. Instead, EIOPA should have taken the approach now suggested in their financial stability report (18 December 2020), emphasizing the need for a cautious and risk-based approach.

To ensure legal certainty, an exhaustive list of EIOPA supervisory convergence tools pursuant to Article 29 (eg "opinions" or "supervisory statements") should be available. NSAs should also be more transparent as to whether or not they choose to follow the guidance provided in these non-binding tools.

In addition, Insurance Europe believes that the legitimacy and credibility of EIOPA lays in its ability to act as a neutral and impartial oversight function with respect to the implementation of the European prudential regulation and national supervisory practices.

Finally, whether EIOPA has a more political advocacy role to drive and orient market developments and the functioning of the internal market for insurance within its mandate is problematic and has been often challenged. There is no role for EIOPA in terms of political advocacy or development of business models.

Q 1.1.3 EIOPA: *One of the roles of EIOPA is to promote and facilitate the functioning of supervisory colleges, where established by sector legislation, and foster the consistency of the application of Union law among them. Please rate EIOPA's contribution to the objectives below:*

- 1 (less significant contribution)
- 2 (not so significant contribution)
- 3 (neutral)
- 4 (significant contribution)
- 5 (most significant contribution) *Don't know - No opinion - Not applicable*

- Promote the effective and efficient functioning of colleges of supervisors - **3**
- Foster consistency in the application of Union law among colleges - **1**
- Promote converging supervisory practices among colleges - **4**

Please explain your reasoning when answering question 1.1.3 on EIOPA:

Overall, Insurance Europe considers the colleges of supervisors to function very well. Therefore, the role of EIOPA should focus on a consistent application of regulation and standards across colleges. Where EIOPA considers divergence, non-application or arbitrary application of regulations and standards, it should raise such issues in its role as observer and participant in the colleges.

In addition, EIOPA can facilitate the proper exchange of information and cooperation in the colleges.

In the framework of the 2019 ESAs review:

Q1.1.4 *How do you assess the new process for questions and answers (Article 16b)?*

Insurance Europe believes that the new provisions as laid down in Article 16b of EIOPA regulation should improve the processes. The integration of a right for three BoS members to request addressing the issue of the admissible question in guidelines pursuant to Article 16 EIOPA regulation, to request advice from the Stakeholder Group referred to in Article 37 EIOPA regulation, to review questions and answers at appropriate intervals, to conduct open public consultations or to analyse potential related costs and benefits in the new Article 16b increases checks and balances and the credibility of the Q&As.

In order to strengthen checks & balances, Insurance Europe believes that a provision accompanying the one of Article 16b (4) should be foreseen for a pro-active engagement of the stakeholders groups. Where one third of the members of the IRSG/OPSG decides that it want to provide advice on a question or the suggested answer, EIOPA should take this advice into account when developing the final answer. EIOPA should regularly inform the IRSG/OPSG about the questions which it receives and, where advice is provided by the IRSG/OPSG, how this advice was taken into account when answering the question.

Insurance Europe further stresses the importance that EIOPA forwards questions which require the interpretation of Union Law to the European Commission (Article 16b (5)). The extent to which EIOPA's answers might require such an interpretation should be carefully considered, given their potential impact. This provision should apply to answers which might have a material impact on the own funds position of insurance undertakings or calibration of risks.

For example, the response to Q&A 1788 was been changed in March 2020, without particular communication. Insurance Europe has concerns with both the lack of transparency of the process by which this has taken place

and also the new content of the Q&A because it deviates from a risk-based approach and leads to unnecessary and unjustifiable increases in capital.

As a consequence, several NSAs have changed requirements regarding the inclusion of expenses for SCR calculation for life expense risk. While the impact varies significantly across markets it is very material in a number of cases¹.

Besides disagreeing with the outcome of this change, as it appears to deviate from a correct risk-based approach, adding more undue capital requirements, Insurance Europe highlights the significant concerns over the governance process and lack of transparency it poses.

Q 1.1.5 *In your view, does the new process for questions and answers allow for an efficient process for answering questions and for promoting supervisory convergence?*

- Yes
- No
- Don't know / no opinion / not relevant

- Yes

Please explain your answer to question 1.1.5:

The Q&A process has proved generally to be working overall well and as intended, but must be transparent and avoid the issue highlighted in response to question 1.1.4.

The impact which the Q&A process has on supervisory convergence depends on the consistent adaptation of the answer which EIOPA provides. This is a very critical aspect as the Q&A should only respond to questions relating to the practical application or implementation of the provisions of legislative acts referred to in Article 1(2), associated delegated and implementing acts, and guidelines and recommendations, adopted pursuant to those legislative acts. However, as highlighted in the response to question 1.1.4, in practice it can provide an interpretation of Union law or concern areas in which no EIOPA empowerment for streamlined requirements was foreseen.

It is important that the "soft" powers granted to EIOPA do not replace ordinary regulatory and legislative procedures. In the recent years, tools, like (supervisory) statements, opinions and guidance have excessively been used. The impact of the use of these tools is significant and interferes with the existing regulatory framework or, in the recent extreme case on the ban of dividends and similar transactions, with the freedom of capital (ie where intra-group payments were prohibited). The importance of a sufficiently clear and defined mandate is also underlined by ECJ Advocate General Michal Bobek's Opinion on Case C-911/19.

Insurance Europe believes that the Q&A procedure should rather inform the process for identifying potential areas of diverging and fragmented interpretation and application of the regulatory framework. The appropriate tool for enhancing regulatory/supervisory convergence needs to be in line with the impact and dimension of the subject matter. EIOPA has a wide range of tools at hand (eg the supervisory handbook) but should carefully assess if subject matters might overstep its mandate. EIOPA's advice to the European Commission on inconsistencies is an extremely valuable and important function of the authority.

¹ More specifically, question 1788 deals with a request for clarification on whether or not investment management expenses and overhead expenses need to be stressed when calculating the capital requirement for life expense risk:

- The initial response clarified that 'for calculating the capital requirement for life expense risk, investment management expenses should not be stressed while overhead expenses should be stressed'.
- The updated response (dating 20 March 2020) states that 'all expenses taken into account into the valuation of the best estimate should be included when calculating the capital requirement for life expense risk'.

This change does create a problem for (re)insurers because by referring to all expenses, it indicates that even expenses which cannot vary such as acquisition expenses should be included.

1.2 No action letters

In the framework of the 2019 ESAs review:

Q1.2.1 *In your view, is the new mechanism of no action letters (Article 9a of the ESMA/EIOPA Regulations and Article 9c EBA Regulation) fit for its intended purpose?*

- Yes
- No
- Don't know / no opinion / not relevant

- Yes

Please explain your answer to question 1.2.1:

The mechanism has not been used by EIOPA, yet. In accordance with the joint industry position expressed during the ESAs review in 2019, Insurance Europe believes that no action letters are an important tool.

1.3 Peer reviews

Q1.3.1 *To what extent peer reviews organised by the ESAs have contributed to the convergence outcomes listed below? Please distinguishing between the situation before the 2019 review and afterwards:*

- 1 (less significant contribution)
- 2 (not so significant contribution)
- 3 (neutral)
- 4 (significant contribution)
- 5 (most significant contribution)
- Don't know - No opinion - Not applicable

■ Situation before the 2019 ESAs review for EBA:

Don't know - No opinion - Not applicable

- Convergence in the application of Union law
- Convergence in supervisory practices
- More wide spread application of best practices developed by other competent authorities
- Convergence in the enforcement of provisions adopted in the implementation of Union law
- Further harmonisation of Union rules
- Other

■ Situation before the 2019 ESAs review for EIOPA:

- Convergence in the application of Union law - **3**
- Convergence in supervisory practices - **3**
- More wide spread application of best practices developed by other competent authorities - **4**
- Convergence in the enforcement of provisions adopted in the implementation of Union law - **3**
- Further harmonisation of Union rules - **3**
- Other - **don't know/no opinion/not applicable**

■ Situation after the 2019 ESAs review for EIOPA:

- Convergence in the application of Union law - **4**
- Convergence in supervisory practices - **5**
- More wide spread application of best practices developed by other competent authorities - **4**
- Convergence in the enforcement of provisions adopted in the implementation of Union law - **5**
- Further harmonisation of Union rules - **3**
- Other - **don't know/no opinion/not applicable**

Please explain your reasoning when answering question 1.3.1 for EIOPA and give examples:

Peer reviews are an essential element of the work of EIOPA. Insurance Europe is not in the position to differentiate between their impact before and after the ESAs review. There is a subjective feeling that the peer reviews conducted after the ESAs review are more ambitious and provide more direct recommendations and best practices to NSAs.

In general, the new provisions and the increased degree of freedom for EIOPA had a positive impact on the quality of the peer reviews and the comparability of the contained information. Particularly, the adoption on a non-objection basis, the greater influence on and lead of the peer review committees (PRCs) by EIOPA seem to have had an impact. In addition, the ability for EIOPA and NSAs to consider dissenting views in the reports is important. The necessity to ensure consent might have limited the provision of critical views and diverging opinions. The provision allowing EIOPA to conduct ad-hoc and follow-up peer reviews is also important.

In order to ensure that peer reviews improve the supervisory consistency and convergence, the newly implemented mandate for EIOPA to include recommendations and the mandatory follow-up after two years can play a significant role.

From an industry perspective, the end impact is hard to appreciate. However, based on the public reports, the industry stresses a peer reviews should not systematically encourage the stricter application of requirements by highlighting national "best practice" that are actually gold plating.

In conclusion, Insurance Europe believes that the new tools improve the framework for supervisory peer reviews, keeping in mind that the need to avoid gold plating becoming the rule should remain one of the main objectives.

Q1.3.2 How do you assess the impact of each of the changes below introduced by 2019 ESAs review in the peer review process?

Please distinguishing between the situation before the 2019 review and afterwards:

- 1 (least effective)
- 2 (rather not effective)
- 3 (neutral)
- 4 (rather effective)
- 5 (most effective)
- Don't know - No opinion - Not applicable

- Ad-hoc Peer Review Committees (PRC) composed of ESAs' and NCAs' staff and chaired by the ESA are responsible for preparing peer review reports and follow-ups. - **4**
- The peer review report is now adopted by written procedure on non-objection basis by the BoS. - **4**
- Transparency provisions: if the PRC main findings differ from those published in the report, dissenting views should be transmitted to the three European Institutions. - **4**
- PRC findings may result in recommendations to NCAs under Article 16 of the ESAs. Regulations that are now distinguished from guidelines, addressed to all NCAs. The use of this type of individual recommendations entails the application of the "comply or explain" mechanism and allows a close follow-up. - **5**
- Mandatory follow-up to peer reviews within two years after the adoption of the peer review report. - **4**
- The possibility to carry out additional peer reviews in case of urgency or unforeseen events (fast track peer reviews) - **4**
- The Management Board is consulted in order to maintain consistency with other peer reviews reports and to ensure a level playing field.- **3**

Please explain your reasoning when answering question 1.3.2:

As stated in the answer to question 1.3.1, the new provisions and the increased degree of freedom for EIOPA had a positive impact on the quality of the peer reviews and the comparability of the contained information. Particularly, the adoption on a non-objection basis, the greater influence on and lead of the PRCs by EIOPA seem to have had an impact. In addition, Insurance Europe considers the ability for EIOPA and NSAs to consider dissenting views in the reports important. The necessity to ensure consent might have limited the provision of critical views and diverging opinions. Finally, the provision allowing EIOPA for conducting ad-hoc and follow-up peer reviews is also important. Altogether, the new tools improve the framework for supervisory peer reviews.

In order to ensure that peer reviews improve the supervisory consistency and convergence, the newly implemented mandate for EIOPA to include recommendations and the mandatory follow-up after two years can play a significant role.

Q1.3.3 EIOPA: Do you think mandatory recurring peer reviews, covering also enforcement aspects, could be introduced in some sectoral legislation?

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Please specify the piece of legislation and concrete provision under which mandatory peer reviews could be introduced for EIOPA:

Peer reviews have proven to be valuable in fostering convergence of supervisory practices. While the industry welcomes the quality of recent peer review such as the December 2020 "[peer review on EIOPA's Decision on the collaboration of the insurance supervisory authorities](#)", the industry highlights that their follow-up is crucial to ensure their effectiveness.

Please explain your answer to question 1.3.3 for EIOPA:

When EIOPA presents its multi-annual peer review work plan, an empowerment for a limited number of members of the BoS to request EIOPA to conduct a peer review and a potential role for the IRSG/OPSG to suggest areas for peer reviews might also be appropriate.

A peer review report on the findings of the peer reviews conducted is very valuable and EIOPA already includes such information in its activity report.

Q1.3.4 Are there improvements that could be made to the peer review process?

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Please explain your answer to question 1.3.4:

A potential role for the IRSG/OPSG to suggest areas for peer reviews might be a good addition or a potential feedback/input mechanism for the multi-annual peer review programme might be beneficial.

1.4 Other tasks and powers

Q1.4.1 EIOPA: In your view, is the collection of information regime (Art 35 ESAs Regulations) effective?

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Q1.4.2 In the framework of the 2019 ESAs review, in your view, are the new Union strategic supervisory priorities an effective tool to ensure more focused convergence priorities and more coherent coordination (Article 29a ESAs Regulations)?

- Yes
- No
- Don't know / no opinion / not relevant

Yes

If you identify any areas for improvement, please explain:

Insurance Europe reiterates its position expressed during the 2019 ESAs review, that common supervisory priorities can be an important driver for supervisory convergence.

It will be important that supervisory priorities are sufficiently defined in order to ensure a common approach. The priorities as presented by EIOPA, might fall short in this respect. However, further, underlying coordinative measures might not have been made public.

In general, the EU-wide priorities (as the general supervisory activity) will have to adhere to the regulatory mandate given to EIOPA and the NSAs and should focus on its common and consistent application.

Q1.4.3 EIOPA: Do you think there is the need to amend or add a tool to the toolkit of the ESAs for achieving supervisory convergence?

- Yes
- No
- Don't know / no opinion / not relevant

No

If you think there is the need to amend or add a tool to the toolkit of EIOPA, please specify which one(s):

The tools at EIOPA's disposal are sufficient.

The use of convergence tools as provided by Article 29 of EIOPA regulation has become common over the past months and years (eg "supervisory statements" and "statements"). While such tools are meant to support a common supervisory culture, they must not function as self-fulfilling prophecy and be seen as mandate to go beyond the regulatory and supervisory framework. However, in the past months, EIOPA increasingly used such tools and by national implementation through NSAs acted as a quasi-regulator.

Moreover, clarity would be needed regarding the differences between all these tools, to ensure legal certainty.

Q1.4.4 Please assess the significance of the new ESAs' task of fostering and monitoring the supervisory independence of national competent authorities:

- 1 - Not significant at all
- 2 - Rather not significant
- 3 - Neutral
- 4 - Rather significant
- 5 - Very significant
- Don't know / no opinion / not relevant

- Rather significant

Please explain your answer to question 1.4.4:

Insurance Europe is of the view that the independence of NCAs is very important.

Q1.4.5 What criteria would be the most relevant, in your view, for the ESAs to perform effectively their new task of fostering and monitoring supervisory independence of national competent authorities?

- 1 - (irrelevant)
- 2 - (rather not relevant)
- 3 - (neutral)
- 4 - (rather relevant)
- 5 - (fully relevant)
- Don't know / no opinion / not relevant

- Operational independence - **4**
- Financial independence - **2**
- Appointment and dismissal of governing body - **2**
- Accountability and transparency - **5**
- Adequacy of powers and ability to apply them - **5**
- Other - **Don't know / no opinion / not relevant**

Please explain your answers to question 1.4.5:

Insurance Europe strongly believes that the ESAs already are sufficiently operational and financially independent. In fact, it often appeared that the budgetary control mechanism as executed by the European Parliament seems to be the most effective tool for checks & balances for the authorities. Compliance and adherence with their mandates is an essential factor for the credibility of the ESAs, the financial accountability towards the EU institutions and the operational accountability towards the Board of Supervisors are important in this respect.

The ESA Regulations do not foresee decision-making by unanimity. Therefore, it is ensured that no single interest or group of minor interest can block the ESAs in their ability to fulfil its mandate. It is also important to avoid an "ivory tower" situation where EIOPA is able to ignore valid concerns of its members. The current governance system is a good balance between independence, collaboration and collective decision making.

With regards to the specific task of monitoring and fostering the supervisory independence of NSAs, EIOPA's observations and concerns should be shared with the European Commission, particularly, where the lack of independence might present a threat to the compliance of the NSA with Union Law or where it is a threat to supervisory convergence, fair competition and consistent consumer protection.

Q1.4.6 *EIOPA: What are, in your view, the main remaining obstacle(s) to allow for a more effective supervisory convergence?*

Insurance Europe believes that supervisory convergence needs to be based on regulatory convergence and consistency. Further regulatory integration of the single market will allow the ESAs and NSAs to supervise markets more consistently.

National gold-plating, arbitrary implementation and application of the regulatory framework and lack of transparency present the major threats.

Q1.4.7 *EIOPA: Do you consider that EIOPA ensures that enough information on their activities and on financial institutions is available?*

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Q1.4.8 *Do you consider that the purpose and outcome of inquiries under Article 22.4 is clear?*

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Please explain your answer to question 1.4.8:

Insurance Europe is of the view that the empowerment of EIOPA (and the ESRB) to assess systemic risk at an EU-wide basis and develop guidelines and recommendations is well drafted.

In light of the limited systemic risk of the insurance sector, relative measures of systemic relevance assessed at national level could easily lead to insurers with no material systemic relevance being burdened with unnecessary requirements. Moreover, Insurance Europe notes that in the common market of the EU, systemic risk should be assessed at an EU-wide basis taking fully into account proportionality.

If EIOPA suggests to only provide a framework which will have to be implemented and applied at national level, the systemic risk on insurers would be assessed based on local characteristics, rather than their real systemic footprint. Insurance Europe believes that this is the wrong approach. Instead, and in line with the function described in Article 22 of the EIOPA Regulation, such a determination should be done consistently and at an EU-wide basis. It is also essential that assessment and measures are applied at group level only and not on every entity. The proposals which EIOPA presented risk an inefficient multilayer system which must be avoided, to ensure a consistent implementation of the IAIS holistic framework at EU level.

Q1.4.9 *In your view, is there the need to add any tools or tasks in order to enhance supervisory convergence towards digital finance?*

- Yes
- No
- Don't know / no opinion / not relevant

No

Q1.4.10 Please assess the effectiveness of supervisory convergence tools developed by the ESAs (e.g. common supervisory actions, real case discussions, etc.) for achieving supervisory convergence:

- 1 - Least effective
- 2 - Rather not effective
- 3 - Neutral
- 4 - Rather effective
- 5 - Very effective
- Don't know / no opinion / not relevant

- 4 - Rather effective

Please explain your answer to question 1.4.10:

Insurance Europe believes that particularly peer reviews and the resulting recommendations and best practices can be a significant driver for enhancing supervisory convergence. It is important that supervisory practice is consistent across the Union in order to ensure a level playing field. Gold-plating by some NCAs and potential arbitrary behaviour by others undermine fair competition and the functioning of the single market. A common supervisory culture a consistent interpretation of the tasks and the mandate and a close cooperation across the Union can be essential in this respect.

To achieve this high-level objective, EIOPA has developed different tools which can be grouped in three building blocks:

1/Common benchmarks: Guidelines and recommendations, opinions, Supervisory Handbook, Supervisory Statements, Questions and Answers, Reports on supervisory areas, Training and Events.

2/Review of practices (thematic reviews, peer reviews, consistency projects)

3/EIOPA's independent assessments (bilateral engagement, engagements with several NCAs).

As stated above, the number of tools at EIOPA's disposal should be streamlined at the risk of complexifying the regulatory applicable framework.

Other tools used by EIOPA, eg (supervisory) statements, were of mixed impact and, in case of the statements on dividends, had a substantially negative impact on the consistent and convergent supervision. Already following its first statement, Insurance Europe argued for a case-by-case risk-based approach as provided in Solvency II rather than relying on a (populistic) statement which was implemented significantly different across the member states. Nearly one year into the process, EIOPA renewed the political statement but did not provide for the necessary tools for a consistent application of the regulatory framework under the current conditions.

1.5 Breach of Union law and dispute settlement

Q 1.5.1 Do you think that the ESAs' powers in relation to breaches of Union law (Article 17 ESAs' Regulations) and binding mediation (Article 19 ESAs' Regulations) are effective?

- Yes
- No
- Don't know / no opinion / not relevant

- Yes

Q1.5.2 EIOPA: Do you think that the use of the breach of Union law procedure by EIOPA is adequate?

- Yes
- No
- N.A.

- Before 2019 ESAs' review - **No**
- After 2019 ESAs' review - **N.A.**

Please explain your answer to question 1.5.2 for EIOPA:

The analysis of EIOPA's annual reports 2009-2019 indicate a certain restraint to use this tool. Despite having received a considerable number of requests during this time most cases were rejected on the grounds of non-admissibility. Only few formal proceedings were launched and settled before adopting a decision against competent authorities or financial institutions. This conclusion somewhat contrasts the cases of inadequate supervision that became public in context with insurers operating on a cross-border basis. No assessment can be made with regard to period after 2019 ESAs review.

Q1.5.3 *Should there be other instruments available to the ESAs to address instances of non-application or incorrect application of Union law amounting to a breach ex-post?*

- Yes
- No
- Don't know / no opinion / not relevant

No

Please explain your answer to question 1.5.3:

Insurance Europe is not aware of any cases where EIOPA used its tools against breach of Union law at this stage.

Insurance Europe believes that the inconsistent implementation and application of Union law can be one of the main sources for an unlevel playing field and regulatory and supervisory inconsistencies. Gold-plating/arbitrary implementation and application of Union law should therefore be assessed by EIOPA for subject matters of its own mandate.

Insurance Europe considers the mandate and empowerment of EIOPA sufficient. While further measures in addition to the provisions laid down in Article 17, could eventually be considered where a breach of Union Law leads to an immediate threat to the integrity of the single market, the mandate for these measures would need to be defined.

Q1.5.4 *Do you think that the new written non-objection procedure by the BoS and the new independent panels for the decisions on breaches of Union law and dispute settlements introduced in the 2019 ESAs' review have improved these decision-making processes?*

- Yes
- No
- Don't know / no opinion / not relevant

Don't know / no opinion / not relevant

Q1.5.5 *EIOPA: Do you think that EIOPA has always acted, where needed, under Article 17 and Article 19 of the ESAs' Regulations?*

- Yes
- No
- Don't know / no opinion / not relevant

No

1.6 Emergency situations and response to COVID-19 crisis

Q1.6.1 EIOPA: Please rate the impact of EIOPA's response in the context of the COVID-19 crisis:

- 1 - the less significant impact
- 2
- 3
- 4
- 5 - the most significant impact
- Don't know / no opinion / not relevant

■ 3

Please explain your answer to question 1.6.1 for EIOPA:

Insurance Europe considers EIOPA's emergency response to have had a very significant impact, but, unfortunately, not only in a positive way. While Insurance Europe appreciates the statement that the sector was stable and operationally resilient and the relief on supervisory reporting deadlines, EIOPA's call for a dividend ban was not appropriate. Moreover, the statement undermined the credibility of the regulatory framework, Solvency II.

Solvency II, already, empowers NSAs to assess if the distribution of such payments would risk the ability of the undertaking to comply with its SCR, even in a stressed situation. In cases, where the NSA considers that the distribution of such payments will endanger the solvency position of an undertaking, the NSA can intervene. For the coordination of NSA policy, EIOPA's BoS and technical working groups provide the appropriate vehicles.

Therefore, the EIOPA public statement for a ban on such payments did not provide any additional value. Instead, it led to disturbance of capital markets, a threat to the freedom of capital in the EU and, in fact, to fragmentation of the consistency of supervisory policy across the Union as some NSAs applied a strict ban while others applied Solvency II consequently.

EIOPA could have provided guidance early on for NSAs to assess on a case by case basis insurers ability to pay dividends during the COVID-19 crisis. Until now (May 2021), EIOPA has not provided such assistance which might have enabled a consistent supervisory approach on the basis of the application of the common supervisory regime, Solvency II, and safeguarding the freedoms of the single market.

EIOPA's intense interventions during the peak of the COVID-19 crisis was exaggerated, as insurance undertakings have been able to weather the crisis. The Solvency II framework already provided the necessary safeguards in case of degradation of solvency positions. Most importantly, governance and risk management tools and processes in the insurance undertakings have ensured business continuity for employees and services to consumers.

Q1.6.2 Please rate the effectiveness of the ESAs' follow-up actions on the European Systemic Risk Board (ESRB) recommendations below in the context of the COVID-19 crisis:

- 1 (least effective)
- 2 (rather not effective)
- 3 (neutral)
- 4 (rather effective)
- 5 (most effective)
- Don't know - No opinion - Not applicable

- Market illiquidity and implications for asset managers and insurers – **2**
- Impact of large scale downgrades of corporate bonds on markets and entities across the financial system – **3**
- System-wide restraints on dividend payments, share buybacks and other pay-outs – **1**

- Liquidity risks arising from margin calls - 3

Please explain your answer to question 1.6.2:

Insurance Europe would like to reiterate its statement on question 1.6.1 on the detrimental and extremely harmful impact of the statement on the ban of dividends and similar payments.

On the other aspects, and, particularly the risk dashboards, the information provided was valuable, but of limited additional value for the industry. In addition, the regular data requests from undertakings from NSAs and EIOPA increased the administrative burden significantly during a period in which significant efforts were required to remain operational and resilient to the benefit of policyholders and consumers.

Q1.6.3 EIOPA: *Do you think the coordinating activities carried out by EIOPA has successfully contributed to address the challenges posed by the COVID-19 crisis?*

- Yes
- No
- Don't know / no opinion / not relevant

- No

Please explain your answer to question 1.6.3 for EIOPA:

Insurers took actions needed to ensure their ability to serve customers during the crisis and keep customers and staff safe. Insurance Europe does not believe that the activities carried-out by EIOPA have successfully contributed to address the challenges of the Covid-19 crisis – see answer to question 1.6.1.

In addition, despite EIOPA saying at the outset of the crisis that it will reduce the operational burden on firms by postponing some reporting deadlines, the operational burden increased overall following additional requests in EIOPA statements and the lack of coordination of ad hoc data requests at local level.

Please give examples of situations where the coordinating activities carried out by EIOPA did not successfully contribute to address the COVID-19 challenges:

See answer to question 1.6.1.

Q1.6.4 EIOPA: *Do you think that EIOPA has always acted effectively, where needed, in the context of the COVID-19 crisis?*

- Yes
- No
- Don't know / no opinion / not relevant

- No

Please give concrete examples where you consider that EIOPA should have taken relevant action:

EIOPA's public statements and extracurricular exercises, ie the development of the EIOPA staff document on shared resilience solutions, were neither effective nor necessary during a period of extreme operational challenge.

Insurance Europe believes that EIOPA's preliminary function should have been to coordinate between NSAs and to promote a consistent approach to the supervision of the insurance industry during this period.

In addition, despite EIOPA saying at the outset of the crisis that it will reduce the operational burden on firms by postponing some reporting deadlines, the operational burden increased overall following additional requests in EIOPA statements and the lack of coordination of ad hoc data requests at local level.

Q1.6.5 Do you think Article 18.2 of the ESAs Regulation (declaration of an emergency situation) is fit for its intended purpose?

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Please explain your answer to question 1.6.5:

The insurance sector has proven resilient, as highlighted by EIOPA. Therefore, the declaration of an emergency situation has not occurred. However, EIOPA and the industry had exchanges on the practical activation and there is no evidence that it would not be fit for purpose should the situation justify it.

1.7 Coordination function (Art 31 ESAs' Regulations)

Q1.7.1 EIOPA: Do you think the coordination role of EIOPA is effective?

- Yes
- No
- Don't know / no opinion / not relevant

Yes

If you identify areas for improvement for the coordination role of EIOPA, please explain:

EIOPA's coordination function is important to ensure convergence. Increased transparency with respect to EIOPA's activities in this area would be useful.

Q1.7.2 EIOPA: Do you see a need for greater coordination between EIOPA and/or with other EU and national authorities as regards developing data requirements, data collection and data sharing?

- Yes
- No
- Don't know / no opinion / not relevant

No

If you do see a need for greater coordination for EIOPA, please explain your answer to question 1.7.2 and indicate what changes you propose:

EIOPA's current role is fit for purpose: data submission should continue to be channelled through the NSAs. The industry notes that the EU supervisory system in the insurance sector is fairly recent, and as such improvements in terms of coordination are achieved gradually thanks to lessons learned. However, against the background of the upcoming DORA framework and the management of third party risk, ENISA's work on cloud certification has to be taken into account.

Q1.7.3 *In the framework of 2019 ESAs' review, please rate the effectiveness, in your view, of the tools below in order to fulfil the new coordination role of the ESAs facilitating the entry into the market of actors or products relying on technological innovation:*

- 1 (least effective)
- 2 (rather not effective)
- 3 (neutral)
- 4 (rather effective)
- 5 (most effective)
- Don't know - No opinion - Not applicable

- Exchange of information and best practices - **3**
- Adopt guidelines - **4**
- Adopt recommendations - **4**

Please explain your reasoning when answering question 1.7.3:

Insurance Europe is of the opinion that the tools work well. From the industry perspective, it is difficult to assess potential inefficiencies in the internal processes of EIOPA. However, the processes in place, and enhanced in the 2019 ESAs review, seem to facilitate the coordinative and convergence function of EIOPA.

Rather than amendments to the tools, a more consequent definition of mandates and empowerments and greater adherence to the mandates could be beneficial.

It would also be beneficial to remind the necessity for the guidelines to take a "less is more" approach. Guidelines are often an "afterthought" of the regulation which are used by EIOPA as a quasi-regulatory standard. The concerns raised about the de-facto binding nature of the guidelines and EIOPA's string push to convert many guidelines into binding regulations in its response to EC's calls for advice is an evidence of this. While guidelines should help supervisory convergence, thus reducing the burden on firms, the contrary often happens: guidelines add to the complexity and the compliance burden.

EIOPA should also refrain from issuing guidelines in areas where the legislators have indicated their intention to regulate. An example of this is EIOPA guidelines on ICT operational resilience published end 2020 and for application by H2 2021. These guidelines pre-empt/duplicate the process of the European Commission's Proposal for a Regulation of the European Parliament and of the Council on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 (DORA). Such an approach creates issues with the articulation of texts and unnecessary confusion.

Q1.7.4 *In the framework of 2019 ESAs' review, do you think the new coordination groups (Article 45b of the ESAs Regulations) are effective tools to coordinate competent authorities regarding specific market developments?*

- Yes
- No
- Don't know / no opinion / not relevant

- Yes

These coordination groups should be effective tools to coordinate competent authorities; generally speaking, these coordination groups should focus on each national market legal specificities eg regarding liability rules and attached long-term insurance coverages.

Q1.7.5 EIOPA: In your view, does the coordination function of EIOPA, ensuring that the competent authorities effectively supervise outsourcing, delegation and risk transfer arrangements in third countries, work in a satisfactory way?

- Yes
- No
- Don't know / no opinion / not relevant

- No

Please explain your answer to question 1.7.5 on EIOPA:

The industry is not aware of a coordination group dealing with the supervision of outsourcing, delegation and risk transfer arrangements in third countries.

1.8. Tasks related to consumer protection and financial activities

Q1.8.1 EIOPA: What are, in your view, EIOPA's main achievements in the consumer and investor protection area?

Insurance Europe believes that EIOPA has a role to play in the area of information exchange and coordination between NSAs in the area of consumer protection. Assessing information from national markets and an EU-wide perspective for NSAs are the most important activities in EIOPA's consumer protection mandate. Consumer protection should not lead to the standardisation of product offers. Due respect must be paid to the diversity of products that respond to the national specificities and practices and citizens choices, expectations, culture and habits.

EIOPA has played a role in the development and implementation of the EU retail financial services package. The outcome of these activities is mixed. The right balance between effective consumer protection and excessive regulatory burden will have to be found and the review of the package in 2022/2023 will be decisive for finding the right balance. The development and implementation of guidelines on product oversight & governance ahead of the legislative process on the review of the insurance mediation Directive (which led to the IDD), was pre-emptive and burdensome.

It is critical that EIOPA adheres to the legislative process and focuses on the best, not the quickest, solutions to ensure outputs that are fit for purpose, effectively increasing insurance consumer protection and appropriately considering insurance specific features. To achieve these objectives, EIOPA will need to improve significantly the testing of its proposals on consumers and products in scope.

EIOPA's consumer trends reports are a valuable source for information and for the observation of market developments which might present threats or challenges to consumers. However, findings should always be contextualised and explained to provide a fair view and analysis of the developments. Moreover, positive consumer trends should also be reported to ensure a balanced overview of developments across markets. Furthermore, cultural and market differences as well as differences in consumer habits might set reasonable boundaries for the integrative process.

Q1.8.2 EIOPA: Please assess the impact of EIOPA's work on analysis of consumer trends, reviewing market conduct, developing indicators, contributing to level playing field, financial literacy and follow up to work in this area:

- 1 (less significant impact)
- 2 (not so significant impact)
- 3 (neutral)
- 4 (significant impact)
- 5 (most significant impact)
- Don't know - No opinion - Not applicable

- Analysis of consumer trends - **4**
- Reviewing market conduct - **4**
- Developing indicators - **4**
- Contributing to a level playing field - **5**
- Financial literacy - **3**
- Follow up to work in this area - **Don't know - No opinion - Not applicable**

Please explain your answer to question 1.8.2 for EIOPA:

As outlined in its answer to question 1.8.1, Insurance Europe believes that the most important contribution of EIOPA to a consistent consumer protection is the information collection, analysis and coordination between NCAs. Developing indicators for measuring the effectiveness of policy measures and identifying best practices can facilitate regulatory and supervisory level-playing field.

On consumer protection, it is important that a one-size-fits-all approach with the aim to streamline products and policies must not be the desired outcome.

Q1.8.3 In the framework of 2019 ESAs' review, the ESAs can now, where sectoral legislation enables them, use their product intervention powers for practices and products that cause consumer harm and after two prolongations of six months, an automatic one-year prolongation of the prohibition is possible (Article 9.5): In your view, are these powers effective for their intended purpose?

- Yes
- No
- Don't know / no opinion / not relevant

- Don't know / no opinion / not relevant

Please explain your answer to question 1.8.3:

EIOPA has not used this power until now. However, EIOPA played an important role in supporting NCAs in the assessment of circumstances or practices potentially bearing challenges and threat to consumers.

Nonetheless, new powers of EIOPA under Article 9.5 of the EIOPA Regulation might be valuable where NCAs fail to deliver on their mandate and further action is required.

Q1.8.4 *Would you consider it useful if the ESAs could adopt acts of general application in cases other than those referred to in Article 9(5) of the ESAs Regulations?*

- Yes
- No
- Don't know / no opinion / not relevant

- No

Please explain your answer to question 1.8.4:

Insurance Europe strongly believe that such far-ranging powers need to be exceptional and limited. Rather than broad empowerments, Insurance Europe considers concrete powers more appropriate. Notwithstanding the aforementioned, Insurance Europe believes that primary supervisory intervention must always come from the responsible NCAs (prudential or conduct). EIOPA should only be empowered to act where NCAs fail to deliver on their mandate or in cases of fundamental disagreement, in the latter through its dispute resolution mandate.

Q1.8.5 *EIOPA: Could you provide concrete examples where enabling the use of the product intervention powers in sectoral legislation would be useful?*

No

Q1.8.6 *EIOPA: In the framework of 2019 ESAs' review, please rate the new EIOPA's task to coordinate mystery shopping activities of competent authorities, if applicable, according to its relevance to promote consumer protection at EU level:*

- 1 - irrelevant
- 2 - rather irrelevant
- 3 - neutral
- 4 - rather relevant
- 5 - fully relevant
- Don't know / no opinion / not relevant

- 4 - rather relevant

Please explain your answer for EIOPA and indicate whether you consider enhancing national competencies for conduct supervision may be beneficial for the overall coordination of mystery shopping activities:

Insurance Europe notes that mystery shopping activities are a matter of national discretion and that there are no harmonised requirements at European level. It considers the new tasks of EIOPA to coordinate mystery shopping in accordance with Article 9.1 (f) as a significant addition to EIOPA's mandate on consumer protection. As indicated above, the mandate of EIOPA needs to be sufficiently described, and the changes made in the 2019 ESA-Review are an important step in this respect.

A coordinated approach to supervisory mystery shopping could strengthen awareness of emerging trends and problems across member states, coordination of assessment and of potential measures to address potential threats to consumers. However, differences and specificities across European markets, for example regarding local market and distribution structures, regulatory requirements, product features, as well as consumer behaviours, cultures and needs will have to be well considered.

Q1.8.7 *EIOPA: What are, in your view, the main strengths and weaknesses of the current framework on consumer protection (Article 9 ESAs Regulations) and what would you suggest to address any possible shortcomings?*

The biggest strength of the current framework of Article 9 of the EIOPA Regulation is in its strong focus on a common and coordinate identification of potential challenges and threats to consumers across the single market. A potential weakness might appear in an overly broad interpretation of the mandate given to EIOPA under Article 9 of the EIOPA Regulation. The 2019 ESA-Review was a major improvement in this respect.

Insurance Europe believes that the framework of Article 9 EIOPA Regulation is fit for purpose and does not need further changes. Further empowerments and concrete mandates for EIOPA should be based on the specific regulatory requirements in sectoral regulation. Stronger adherence to the mandates of EIOPA and an increased attention to getting such mandates right during the review of the EU retail financial services package will be essential.

Q1.8.8 *EIOPA: Are there areas for improvement in the toolkit of EIOPA when it comes to coordinating supervisors in the area of consumer protection?*

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Please explain your answer to question 1.8.8 for EIOPA:

EIOPA's powers and tasks provided by Article 9 are already very important. Moreover, NCAs also have a role to play and are in the best position to assess the risks relating to consumer protection in the light of the specificities and laws applicable on their national market.

Insurance Europe believes that EIOPA could make better use of its existing powers to play a bigger role in the coordination of information exchange in cases of cross-border service provision.

The focus of the efforts under the current decision of EIOPA on cross-border supervision, the amendments to the Solvency II Directive as part of the 2019 ESA-Review and the discussions on the upcoming Solvency II Review are focused on the information which can be shared by the prudential supervisor (home authority).

The information provided on these platforms strongly focuses on the prudential supervision. However, essential information about market data and trends, changing regulations and potential stressed situations could be shared by the host authority through the platforms as well. EIOPA can enhance such an information exchange by identifying relevant data and, where appropriate, the development of standardised formats based on existing data without additional reporting burdens for insurers.

1.9 International relations

Q1.9.1 *EIOPA: How do you assess the role and competences of EIOPA in the field of international relations? Are there additional international fora in which EIOPA should be active?*

EIOPA is the European voice of insurance supervisors. It plays an important role in working towards global convergence and consistency of supervisory practices and also in promoting the European regulatory and supervisory framework across the world. Indeed, as the EU is leading the way in many pioneering fields as data protection and sustainable standards, EIOPA should continue emphasizing its expertise in international fora.

Besides, EIOPA plays a key role in the International Association of Insurance Supervisor (IAIS) through which EIOPA is a key driver in the development of international standards. The role of EIOPA in this forum is critical as the development of international standards might have a significant influence on the future of (insurance) regulation in Europe. Therefore, Insurance Europe believes that the scrutiny role of EU legislators with respect to EIOPA mandate and positions should be strengthened, and believes that the inclusion of EIOPA's work into the accountability regime towards the European Parliament (Article 3.9 EIOPA Regulation) is valuable. The industry fully supports this role in discussions with global supervisory bodies, providing that the role of the European Commission when it comes to financial regulatory issues beyond supervision is not undermined. However, there is an institutional loophole, in particular, with respect to the IAIS Insurance Capital Standard (ICS) project. As the ICS may have strong implications for the Solvency II regime, the scrutiny role of the EU Co-Legislators with respect to EIOPA mandate and positions is crucial.

With regards to the mandate assigned to EIOPA under Article 33 EIOPA Regulation, particularly the cooperation and coordination with competent authorities in third countries plays a major role – not only with those considered equivalent. Through the administrative arrangements which EIOPA can conclude, notwithstanding the equivalence status, supervisory cooperation and coordination can be enhanced significantly.

The industry would like to stress that, currently, in the international fora, EIOPA adopts a too passive role and accepts initiative coming from the banking sector. The Solvency II regime is very different from regimes in other parts of the world and from banking regimes.

Q1.9.2 *EIOPA: In the framework of 2019 ESAs' review, how do you assess the new EIOPA's role in monitoring the regulatory and supervisory developments, enforcement practices and market developments in third countries for which equivalence decisions have been adopted by the Commission?*

As the equivalency decision by the European Commission is unilateral, Insurance Europe believes that the EIOPA mandate to monitor the developments in the markets, supervisory practice and regulation is essential to maintain the credibility of the system.

Moreover, EIOPA's support to European Commission when granting equivalence decisions to third country is indeed critical. EIOPA also plays a key role in ensuring that equivalence decisions are adjusted to evolving regulatory environments in order to maintain a level playing field across insurance markets.

However, EIOPA should be more transparent regarding its findings and possible conclusions. Especially in relation with the question on outsourcing, if no issues exist with an equivalent regime, no gold plating should be allowed.

Q1.9.3 *EIOPA: Are the powers and competences in the field of international relations as set out in Article 33 of the ESAs' Regulations adequate in light of the tasks conferred on EIOPA?*

- Yes
- No
- Don't know / no opinion / not relevant

No

If you identify areas for improvement for EIOPA, please specify:

It seems pivotal that EIOPA's mandate and positions in international fora are duly scrutinised by EU lawmakers. Indeed, the development of international standards, to which the EIOPA contributes through the IAIS, may have a significant influence on the future of (insurance) regulation in Europe. For instance, the development of the ICS may have strong implications for the Solvency II regime. While the EC also seats in the IAIS, it seems also crucial to ensure EIOPA's accountability towards the European Parliament and the Council of the EU with respect to its contribution to international standards, in particular the ones developed by the IAIS such as the ICS.

In any case, EIOPA should take direction from co-legislators ahead of international negotiations so as to ensure it doesn't pursue its own political goals.

Q1.9.4 EIOPA: *How do you assess the role of EIOPA in the development of model administrative arrangements between national competent authorities and third-country authorities? Should this role be further specified?*

Through the administrative arrangements which EIOPA can conclude, notwithstanding the equivalence status, supervisory cooperation and coordination can be enhanced significantly. It is valuable to enhance mutual understanding, ease trade relations and promote level playing field between insurance markets. The EIOPA mandate in that area seems satisfactory.

1.10 The role of the ESAs as enforcement actors/enforcers

Under Articles 17 (breach of Union law), 18 (action in emergency situations) and 19 (settlement of disagreements between NCAs in cross-border situations/binding mediation), in case a competent authority fails to ensure that a market participant or financial institution complies with requirements directly applicable to it, the ESAs have the power to investigate the alleged breach or non-application of Union law and, following a specified procedure and under certain conditions, adopt an individual decision towards the market participant or financial institution requiring it to comply with EU law.

Q1.10.1 EIOPA: *How do you assess the role of EIOPA under these articles of the founding Regulations?*

Insurance Europe believes that EIOPA's role in assessing and detecting breaches of Union Law is central with regards to the formation of the EU single market for insurance, and considers the basis which Article 17 of EIOPA Regulation provides as very accurate. The interplay between EIOPA, the European Commission and NSAs is essential to ensure a credible system which provides for the necessary legal gravitas.

With regards to the emergency powers of EIOPA in accordance with article 18 EIOPA Regulation, Insurance Europe reiterates its comments with specific regards to the recent emergency situation under the COVID-19 crisis. While EIOPA's powers under Article 18 EIOPA Regulation are balanced and well-designed, it was particularly the political activity of the Authority which challenged the insurance market. EIOPA, in close cooperation with the NCAs and the ESRB, should focus on coordinating a consistent reply to an emergency situation rather than focusing on public declarations. The COVID-19 crisis presented a challenge to the European insurance industry, but not an emergency, as confirmed by the decision not to declare an emergency situation under article 18.2 of EIOPA regulation. Insurers made great efforts to adapt to the operational challenges immediately and served their customers without any major disruption. Furthermore, there have been no incidents which might have challenged the stability of the insurance market.

On the third aspect, EIOPA's powers to settle disagreement between NSAs in cross-border situations, Insurance Europe believes that EIOPA has an essential role to play. A consistent supervision across the single market is fundamental for its integrity, consumer protection and fair competition. The powers, as laid down in Article 19 of the EIOPA Regulation are considered appropriate. Particularly, the strengthened competences of the Authority (by action of its Chair) in Article 19.1b as introduced by the 2019 ESA Review are considered a valuable addition. At the same time, Insurance Europe believes that the process recognises the responsibilities in the EU supervisory framework, namely the interaction between home and host authorities. Insurance Europe is advocating for an enhanced information exchange between concerned NSAs and increased transparency on supervisory processes through permanent exchange mechanisms and pre-defined information requirements to home and host NSAs, as proposed in the ongoing review of the Solvency II Directive. This would allow for a more substantial interaction between NSAs and a more consistent application and enforcement of regulation.

Q1.10.2 *EIOPA: Do you see room for improvement in the way EIOPA could ensure that competent authorities enforce more effectively EU rules towards market participants/financial institutions?*

- Yes
- No
- Don't know / no opinion / not relevant

No

Q1.10.3 *In your view, are the powers of the ESAs to enforce EU rules towards market participants/financial institutions under Articles 17, 18 and 19 ESAs Regulations well balanced, adequate and effective?*

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Please explain your answer to question 1.10.3:

Insurance Europe believes that the provisions of Articles 17-19 of the EIOPA Regulation are well-balanced, adequate and effective. It is important to note that the primary addressee of EIOPA action under these provisions are not insurance undertakings, but NSAs. Only where NSAs fail to act/comply with Union law (Article 17.6 EIOPA Regulation), an opinion adopted by EIOPA (Article 18.4 EIOPA Regulation) or an EIOPA decision (Article 19.4 EIOPA Regulation), EIOPA measures might be directly applicable to financial institutions. One important point is that EIOPA's actions are taken sufficiently early to be effective. Insurance Europe considers this provision as important. NSAs, which should generally be expected to respect Union law and EIOPA opinions and decisions, are in the position to apply the respective measures in a manner appropriate to the respective situation in its market. Consistent substance should always prevail consistent form in supervisory policy.

Nonetheless, where an NSA does not ensure compliance with Union law, an EIOPA opinion or a decision, Insurance Europe supports the empowerment of EIOPA to overrule the NSA. However, it needs to be ensured that the measures are applied consistently and do not constitute a competitive disadvantage for an individual undertaking.

Q1.10.4 *Do you think the respective roles of the ESAs and of the Commission are clearly defined in Article 17, 18 and 19 ESAs Regulations?*

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Please explain your answer to question 1.10.4:

Insurance Europe believes that the cascade of roles by EIOPA and the European Commission is important to ensure the credibility of the regulatory framework. While EIOPA is in the position to assessing the technical nature and impact of potential breaches of Union Law, potential emergency situations and disagreement between NSAs, it is important that the legal, political and strategic nature is assessed at the right level. EIOPA should not become a quasi-regulator body. Therefore, the additional provisions which allow the European Commission to adopt an opinion which takes the recommendation from EIOPA into account in case of a breach of a Union law is appropriate (Article 17.4 EIOPA Regulation).

In the case of an emergency situation, the additional step of a formal decision (Article 18.2 EIOPA Regulation) is an equally well-balanced safeguard to ensure the integrity of the process. Neither the European Commission nor the Parliament of the Council have a formal role in the process on settling disagreement between NSAs as per Article 19 EIOPA Regulation. However, Insurance Europe believes that the process is sufficiently balanced. Any interference with Union law which might either prevail or occur from the disagreement between NSAs can be escalated through the procedures foreseen in Article 17 of EIOPA Regulation.

Q1.10.5 *EIOPA: Do you think the use of sanctions laid down in the EU acquis by competent authorities in case of non-compliance of market participants/financial institutions with EU rules is, in practice for EIOPA, sufficiently dissuasive or disproportionate?*

- Sufficiently dissuasive
- Disproportionate
- Other
- Don't know / no opinion / not relevant

- Sufficiently dissuasive

2. Governance of the ESAs

2.1 General governance issues

Q2.1.1 *Does the ESAs' governance allow them to ensure objectivity, independence and efficiency in their work/decision making?*

- Yes
- No
- Don't know / no opinion / not relevant

- Yes

Please explain your answer to question 2.1.1:

The right balance between independence, accountability and control is a key aspect of the regulations to establish the ESAs. The system of governance has been reviewed and new powers for the ESAs and additional checks and balances have been implemented.

Insurance Europe believes that the current system of governance provides for such a balance. However, the measures to do so, ie budgetary control, are used sufficiently. In addition, the consideration of the BoS as major decision-making body is an important prerequisite for the effective and efficient operation of the ESAs.

New voting regimes in the BoS (eg the written non-objection procedure or the exclusion of BoS members for decisions of vested interests) improved the system of governance of the body. While potential national interests influencing the decision-making within EIOPA can have a negative impact in this respect, Insurance Europe believes that national interests are not only present in EIOPA's top-level decision-making, but throughout the process. Nonetheless, the agreement to EIOPA measures by NSAs (either by qualified or simple majority) ensures responsibility for the majority of NSAs for EIOPA decisions.

The newly implemented Single Programming Document which provides a clearer link between multi-work program and resource planning increased the transparency of the organisation. Such an increased transparency facilitates the use of the measures of greater independence by the Management Board and the EIOPA Chair to act.

Q2.1.1.1 *If you consider that there should be differences in governance between different types of tasks, please explain:*

Insurance Europe believes that the measures foreseen by the 2019 ESAs review, particularly on peer reviews, voting rights in case of vested interests and the introduction of the written non-objection procedure, improved the governance of EIOPA.

The balance between independence of the management and control by its own bodies has also been improved.

Insurance Europe does not consider any additional differentiation of the system of governance in relation to specific tasks necessary.

Q2.1.2 *In the framework of 2019 ESAs' review, in your view, has the new provision in Article 42 of the ESAs' Regulations according to which the Board of Supervisors members must abstain from participating in the discussion and voting in relation to any items of the agenda for which they have an interest that might be considered prejudicial to their independence, improved the decision making process?*

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Please explain your answer to question 1.2.2:

Insurance Europe believes that the amendment excluding BoS members from discussions and decisions in relation to any items of the agenda for which they have an interest that might be considered prejudicial to their independence as important. The amendment fixed a flaw of the regulations establishing the ESAs. The practical impact of the provision cannot be easily assessed. However, it is an important prerequisite for the credibility of the Authorities that BoS members with potential conflicting interests abstain from discussions and decisions.

Q2.1.3 *In the framework of 2019 ESAs' review, do you think the requirements in Articles 3 and 43a of the ESAs' Regulations are sufficient to ensure accountability and transparency?*

- Yes
- No
- Don't know / no opinion / not relevant

No

If you identify areas for improvement, please explain:

The transparency decisions adopted by the Board of Supervisors could be enhanced if the record according to Art. 43a would also disclose the vote of each member on every decision made by the BoS.

Moreover, as highlighted in the responses to questions 1.9.1 and 1.9.3, the accountability of EIOPA with respect to its engagement at the IAIS level on international standard setting should be significantly improved.

Article 6 of the EIOPA Regulation sets out the objective of EIOPA to protect the public interest by contributing to the effectiveness of the financial system for the Union economy, its citizens and businesses. Against this background, EIOPA must demonstrate the added value of its initiatives and its tools such as guideline, statement, opinion in relation to the EU priorities and the principles of subsidiary and proportionality. The execution of EIOPA's tasks and powers must be done with all the required checks and balances and with the adequate transparency.

Q2.1.4 *In the framework of 2019 ESAs' review, to what extent the recent enhancements in the role of Chairperson improve the decision making process?*

- 1 (less significant impact)
- 2 (not so significant impact)
- 3 (neutral)
- 4 (significant impact)
- 5 (most significant impact)
- Don't know - No opinion - Not applicable

- Request to the Board to establish internal committees for specific tasks - **4**
- Set the agenda to be adopted by the Board and table items for decision - **3**
- Call a vote at any time - **3**
- Propose the composition of independent panels for breach of Union law investigations and dispute settlements - **4**
- Propose the composition of peer review committees for peer reviews - **4**
- Propose a decision to launch an inquiry and convene an independent panel for the purposes of Article 22 (4) ESAs Regulation - **3**
- Vote in the Board of Supervisors (except on matters that are decided on the basis of qualified majority voting) - **1**
- Other - **Don't know - No opinion - Not applicable**

Please explain your answers to question 2.1.4:

Among the new empowerments, Insurance Europe considers the ability to propose the composition of independent panels for breach of Union law investigations and dispute settlements and to propose the composition of independent panels for breach of Union law investigations and dispute settlements as most valuable.

In contrary, the powers for the Chair with regards to activities targeted at a specific financial institution as per Article 22.4 ESA Regulations should be carried-out in conjunction with the group of NSAs.

Insurance Europe highlights that the main decision body is and should remain the BoS, and concentration of powers in the hands of the chairperson needs to be avoided.

Q2.1.5 *Should the role of the Chairperson be strengthened in other areas?*

- Yes
- No
- Don't know / no opinion / not relevant

- No

Please specify in which area(s) the role of the Chairperson should be strengthened:

Insurance Europe highlights that the main decision body is and should remain the BoS, and concentration of powers in the hands of the chairperson or EIOPA staff needs to be avoided.

2.2 Decision-making bodies and preparatory bodies

Q2.2.1 Does the current composition of the Board of Supervisors (BoS) and of the Management Board (MB) ensure that decisions are taken efficiently and independently?

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Q2.2.2 Do the current voting modalities (e.g. simple majority, qualified majority...) of the BoS ensure efficient decision making?

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Q2.2.3 Does the current allocation of tasks between the BoS and the MB ensure that the ESAs are run effectively and perform the tasks conferred on them?

- Yes
- No
- Don't know / no opinion / not relevant

Yes

If you identify areas for improvement, please explain:

Insurance Europe reiterates that the main decision body is and should remain the BoS.

Q2.2.4 In the framework of 2019 ESAs' review, to what extent the enhanced role of the Management Board has improved the decision making process?

- 1 (less significant impact)
- 2 (not so significant impact)
- 3 (neutral)
- 4 (significant impact)
- 5 (most significant impact)
- Don't know - No opinion - Not applicable

- The MB can give opinions on all matters to be decided by the Board of Supervisors - **4**
- The MB ensures the consistent use of a methodology for all peer reviews conducted - **4**
- The MB proposes a peer review work plan every two years- **5**
- The MB can set up coordination groups on its own initiative - **3**

Please explain your answers to question 2.2.4:

Due to its composition as laid down in Article 45 EIOPA Regulation, the MB provide for a sub-set of BoS members. It can, therefore, be expected that the MB acts in the interest of the members as a whole. The MB can provide opinions on decisions taken by the BoS where it considers it necessary (Article 47.3a EIOPA Regulation) which might provide for the opportunity to express views not reflected in the BoS process due to procedural or governance provisions (the MB decides on a simple majority basis).

Q2.2.5 *Should the role of the Management Board be strengthened in other areas?*

- Yes
- No
- Don't know / no opinion / not relevant

No

Q2.2.6 *In the framework of 2019 ESAs' review, do you think the written non-objection procedure for core convergence tools (breaches of Union law, dispute settlements and peer reviews) is effective for achieving its objective?*

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Please explain your answer to question 2.2.6:

Insurance Europe considers the introduction of the written non-objection procedure for matters subject to Article 17, 19 and 30 EIOPA Regulation as a major improvement to ensure the credibility of the decision-making process and the ability of EIOPA to investigate and assess critical policies and activities by NSAs (and member states).

The newly introduced procedure, in conjunction with the provision of Article 42.3 EIOPA Regulation that members of the BoS (voting and non-voting and observers) and the chairperson must abstain from participating in the discussion of, and voting upon any item on which there might be interests which can be considered prejudicial to their independence, should enhance the independence of the decision-making of EIOPA on these fundamental issues.

Q2.2.7 *Do you think ad hoc committees composed of staff of the ESAs and members from the competent authorities (e.g. peer review committees) are effective tools to improve the decision making process?*

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Q2.2.8 *Do you think the functioning of preparatory/supporting bodies of the ESAs (e.g. technical working groups, standing committees, task forces etc.) is effective and efficient?*

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Q2.2.9 *EIOPA: Please assess the impact of the work undertaken by preparatory/supporting bodies of EIOPA (e.g. technical working groups, standing committees, task forces etc.) on the EIOPA's overall work and achievements:*

- 1 (less significant impact)
- 2 (not so significant impact)
- 3 (neutral)
- 4 (significant impact)
- 5 (most significant impact)
- Don't know - No opinion - Not applicable

- Standing committees and other permanent committees - **5**
- Other preparatory bodies (e.g. technical working groups) - **4**
- Committee on consumer protection and financial innovation - **4**
- Proportionality Committee - **4**

If you identify any shortcomings for EIOPA please specify how these could be addressed:

Insurance Europe considers the standing structures of EIOPA to have the most impact on its day-to-day work. The specific committees and working bodies seem to provide some additional value, particularly where specific aspects or tasks have to be fulfilled, eg on regulatory reviews. However, objectives of those committees should be well prioritized.

With regards to the Consumer Protection and Financial Innovation Committee, Insurance Europe believes that these can play an important role in facilitating an EU-wide and consistent approach if those objectives are clearly defined. Also, EIOPA's consumer trends report is a valuable assessment and benchmarking exercise for a consistent supervision across the Union. Particularly on Financial Innovation, Insurance Europe considers EIOPA's work to be important. The ongoing consultation on Open Insurance, for example, can help identifying measures to facilitate and regulate the insurance market of the future.

With regards to the Advisory Committee on Proportionality (ACP), Insurance Europe believes that it can have a crucial impact on EIOPA's/NSA's proportionate application of all pieces of regulation and on supervisory policy in the future. Based on developments in the ongoing review of Solvency II, Insurance Europe believes that the ACP will take a leading role to enhance the proportionate application of regulation and supervisory policy as provided in the EU Treaty more consistently rather than leaving it to NSAs. The annual report on proportionality that EIOPA has yet to develop (as an extension of the scope of the report on exemptions and limitations of reporting) should be a valuable tool in this respect.

2.3 Financing and resources

Q2.3.1 *Do you consider the provisions on financing and resources for the general activities of the ESAs appropriate to ensure sufficiently funded and well-staffed ESAs taking into account budgetary constraints at both EU level and the level of Member States?*

- Yes
- No
- Don't know / no opinion / not relevant

- Yes

Please explain your answer to question 2.3.1:

Funding and financing arrangements are core subjects where a differentiated approach between the different ESAs is indispensable and needs to be maintained. The major differences stem from the direct mandate and the consequent direct income generated by ESMA in comparison to EIOPA.

For EIOPA, where no directly attributed charges can be assigned, it is important that any contribution, in addition to the contribution from the Union budget, is channelled through NSAs. This immediate approach is an important safeguard to ensure that there is no double-counting and no overlap in funding the same activity being carried-out by EIOPA and NSAs. NSAs are generally largely industry funded, and EIOPA's activities are either directed at NSAs or the legislative process and EU institutions. Therefore, it should be ensured that all funding of EIOPA which is not stemming from Union budget, is coming from/through NSAs. The NSAs need to provide for the right measures of checks and balances to ensure that EIOPA's budget is appropriate and that no duplication of tasks and activities occur. This two-stage approach is indispensable for an efficient system of supervision.

Q2.3.2 *Do you think that the ESAs have sufficient resources to perform their tasks?*

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Please explain your answer to question 2.3.2:

The increase in EIOPA's resources is worrisome, especially in the area of internal models. While the ESAs review provided EIOPA with the power to help NSAs that request it in the approval process, EIOPA's activities in the area of internal models go far beyond this new task.

Q2.3.3 *Do you think there are enough checks and balances for how the ESAs spend their budget?*

- Yes
- No
- Don't know / no opinion / not relevant

Yes

2.4 Involvement and role of relevant stakeholders

Q2.4.1 *In your view, are stakeholders sufficiently consulted or, on the contrary, are there too many consultations?*

- Yes
- No
- Too many consultations
- Don't know / no opinion / not relevant

Yes

Please explain your answer to question 2.4.1:

Insurance Europe notes a great improvement in EIOPA's transparency and efforts to involve stakeholders in its initiatives.

However, the industry reports that the number of requests for (data) input either from EIOPA directly or through the NSAs is excessive. The reduction of stakeholder involvement while maintaining the number of policies and activities must not be a solution in this respect.

Activities and policies must be based on sufficient evidence and all interested stakeholders must be heard during the process. It is already a challenge for a significant number of undertakings to participate in the relevant consultations and discussions. Representative bodies play a central role in supporting their members and

providing stakeholder input. However, the high number of policy initiatives and activities carried-out by EIOPA require significant resources for stakeholders (individuals and representative bodies). The result is that the number of stakeholders which can provide input on the number of processes and in sufficient detailed is increasingly limited.

In conclusion, the answer to the question is not "less consultations", it is less and more targeted policies and extra-curricular activity by EIOPA. As highlighted in responses to questions 1.1.1, 1.1.2 and 1.7.3, possibilities for implementing a "less is more" approach for EIOPA are:

- Focusing on its oversight role in a neutral mindset, and refraining to engage in works meant to move the insurance market;
- Refraining from taking local gold-plating practices and guidance as benchmark to issue guidelines, opinions, and statements which only adds conservativeness and burden in the regime;
- Refraining to issue guidelines on areas where the legislators have indicated their intention to regulate.

Q2.4.1 *In your view, are stakeholders sufficiently consulted or, on the contrary, are there too many consultations?*

- 1 (lowest quality)
- 2
- 3
- 4
- 5 (highest quality)
- Don't know – No opinion – Not applicable

- General consultations launched by EIOPA - **4**
- Specific consultations when developing data collection requirements - **4**

Q2.4.3 *EIOPA: Is EIOPA sufficiently transparent and accessible for stakeholders to ensure effective and efficient interaction?*

- Yes
- No
- Don't know / no opinion / not relevant

- Yes

Please explain your answer to question 2.4.3 for EIOPA:

Insurance Europe appreciates the accessibility of EIOPA and the efforts made by the Authority and its staff to provide feedback in an appropriate timeframe. The workshops, hearings and information sessions organised by EIOPA are very valuable, although in some instances, they seem to be a "tick-the-box" exercise.

At the same time, the transparency on planned initiatives and decisions taken by EIOPA can be increased. The publication of the agendas and minutes of the BoS six weeks after the decision has been made, is of limited value. Furthermore, the information published is not sufficiently detailed. Insurance Europe would appreciate if the information is provided timely and in more detail.

In addition, EIOPA should provide a rolling list of activities and upcoming consultations to allow interested stakeholders to participate while managing resources. This remark is not only valid for the industry, as it would be also very valuable for less resourceful categories of stakeholders, eg consumer representatives.

Q2.4.4 Please rate the impact of stakeholders groups within the ESAs on the overall work and achievements of the ESAs:

- 1 (less significant impact)
- 2 (not so significant impact)
- 3 (neutral)
- 4 (significant impact)
- 5 (most significant impact)
- Don't know / no opinion / not relevant

- EIOPA Insurance & Reinsurance Stakeholder Group - **5**
- EIOPA Occupational Pensions Stakeholder Group - **4**
- ESMA Securities and Markets Stakeholder Group - **Don't know / no opinion / not relevant**
- EBA Banking Stakeholder Group - **Don't know / no opinion / not relevant**

Please explain your answers to question 2.4.4:

Insurance Europe believes that the IRSG and the OPSG play significant roles for the work of EIOPA, in particularly the IRSG which is in the focus of many of the EIOPA policy initiatives. It has to be noted that the IRSG's mandate is difficult to be fulfilled on the sometimes very technical dimension of the subjects, its set-up and constitution. It is important that the different members of the groups do not limit the ability of contributions. As per the nature of the topics, the impact of the subject matter on the different individuals in the stakeholder groups can vary significantly. The provision that one third of the members of a stakeholder groups can issue a statement of advice no agreement at group level is, therefore, an important prerequisite to ensure the functioning of the groups.

Insurance Europe highlights that the IRSG could also be able to provide its advice on EIOPA policies in accordance with Article 29 EIOPA Regulation (Article 37.6 EIOPA Regulation). Particularly on the increasingly used (supervisory) statements by the Authority. Therefore, the industry welcomes that EIOPA seems to have taken the approach to systematically consult the IRSG. An early and due involvement of the IRSG is important to ensure a balanced approach and avoid collateral effects.

Q2.4.5 In the framework of 2019 ESAs' review, please assess the significance of the recent changes in the composition, selection, term of office and advice of the stakeholders groups (Article 37 ESAs Regulations)?

- 1 (less significant impact)
- 2 (not so significant impact)
- 3 (neutral)
- 4 (significant impact)
- 5 (most significant impact)
- Don't know / no opinion / not applicable

- Composition of stakeholders groups - **5**
- Selection of members - **4**
- Term of office - **3**
- A third of its members can issue a separate advice - **4**

Please explain your answers to question 2.4.5:

Insurance Europe believes that the amendments to the composition of the groups as laid down in Article 37.3 EIOPA Regulation have been a significant improvement.

The ensured balance between industry and the combined group of users / consumer representatives is an improvement to ensure a technically sound and balanced IRSG.

Q2.4.6 Does the composition of stakeholders groups ensure a sufficiently balanced representation of stakeholders in the relevant sectors?

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Please explain your answer to question 2.4.6:

See answer to question 2.4.5.

Q2.4.7 In your experience, are the ESAs' stakeholders groups sufficiently accessible and transparent in their work?

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Please indicate the areas where the transparency could be improved:

The transparency of stakeholder groups' advices is valuable, and Insurance Europe notes a significant improvement recently in their timely publication.

2.5 Joint bodies of the ESAs

Q2.5.1 Please assess the aspects described below regarding the Board of Appeal (BoA) of the ESAs:

- 1 (least effective)
- 2 (not so effective)
- 3 (neutral)
- 4 (rather effective)
- 5 (most effective)
- Don't know – No opinion – Not applicable

- Organisation - **2**
- Functioning and time limits - **Don't know – No opinion – Not applicable**
- One joint Board of Appeal for the 3 ESAs - **4**
- The composition of the BoA - **4**

If you identify areas for improvement, please explain:

Insurance Europe is concerned that there are limitations for the ability to appeal against the decisions of an Authority based on the prerequisite that the decision has to be addressed to the appealing person, or the appeal has to be against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person (Article 60.1 EIOPA Regulation).

While Insurance Europe acknowledges the improvement that a supervised entity might call on the Board of Appeal with regards to decisions against the NSA which supervises the entity, there is still no possibility for representative bodies to call on the Board of Appeal for decisions by the ESAs which concern the wider group of its membership. Due to the nature of EIOPA decisions being usually addressed to NSAs, Insurance Europe believes that a right of appeal should be granted to representative bodies proving that they represent a material group of natural or legal persons for which the provisions of Article 60.1 apply.

Q2.5.2 Please assess the aspects described below regarding the Joint Committee of the ESAs:

- 1 (least effective)
- 2 (not so effective)
- 3 (neutral)
- 4 (rather effective)
- 5 (most effective)
- Don't know – No opinion – Not applicable

- Functioning - **3**
- Working methods - **3**
- Ensuring cross- sectoral cooperation - **4**
- Ensuring consistent approaches - **3**
- Decision making process - **3**
- The legal structure (no legal personality) - **4**

If you identify areas for improvement, please explain:

Insurance Europe believes that the Joint Committee of the ESAs plays an important role for the exchange of information and coordination of cross-sectoral supervisory policy. Nonetheless, certain flaws and challenges emerged in the cooperation of the ESAs and particularly where there is diverging impact of policies on the different sectors (eg of the Packaged Retail and Insurance-based Investment Product Regulation, PRIIPs). Therefore, it is important that the ESAs are operating as individual legal persons and that the Joint Committee remains as a coordinative group without an own legal personality.

Q2.5.3 Please assess the work of the Joint Committee of the ESAs in the areas below:

- 1 (less significant impact)
- 2 (not so significant impact)
- 3 (neutral)
- 4 (significant impact)
- 5 (most significant impact)
- Don't know – No opinion – Not applicable

- Consumer Protection and Financial Innovation - **3**
- Coordination and cooperation for bi-annual Joint Risk Reports, published in spring and autumn - **4**
- Financial Conglomerates - **Don't know – No opinion – Not applicable**
- Securitisation - **3**
- European Forum of Financial Innovators - **3**

If you identify areas for improvement, please explain:

With respect to financial conglomerates, there should be more attention to the differences in insurance led or banking led conglomerates. Not all conglomerates are the same. The dominant sector results in the regime applied at holding level. This results in different approaches because the fundamental principles of the underlying regimes are different. This should be taken into consideration in all the activities of the JC and ESA's.

3. Direct supervisory powers

Q3.1 Please assess ESMA's direct supervisory powers in the field of:

- 1 (lowest rate)
- 2
- 3
- 4
- 5 (highest rate)
- Don't know – No opinion – Not applicable

Don't know – No opinion – Not applicable

- Credit Rating Agencies
- Trade Repositories under EMIR
- Trade Repositories under SFTR
- Securitisation Repositories (STS)

Q 3.2 Please assess ESMA's performance as a direct supervisor of the entities below:

- 1 (lowest rate)
- 2
- 3
- 4
- 5 (highest rate)
- Don't know – No opinion – Not applicable

Don't know – No opinion – Not applicable

- Credit Rating Agencies
- Trade Repositories under EMIR
- Trade Repositories under SFTR
- Securitisation Repositories (STS)

Q3.3 How do you envisage the future scope of direct supervisory powers of ESMA or any other ESA?

What principles should govern the decision to grant direct supervision to the ESAs?

If you see room for improvement, please provide evidence where you see weaknesses of the current set-up:

With regards to EIOPA's mandate and the regulation of the EU insurance market, Insurance Europe believes that there are no direct supervisory powers necessary. Rather than direct supervisory mandates, it is essential that EIOPA fulfils its current mandate, particularly with regards to the consistent application of the regulatory framework, supervisory convergence and effective coordination of NSAs.

Of specific nature is the supervision of critical third-party ICT service providers. As considered in EIOPA's guidelines on the use of cloud services, EIOPA's guidelines on ICT security and in the current European Commission proposal on the Digital Operational Resilience of the Financial Services Sector (DORA), centralised supervision of such service providers is important. The existing provisions on the outsourcing of critical functions and services to third parties and the foreseen oversight duties for the outsourcing undertakings might fall short where there is a significant imbalance of power between the contractual parties. Furthermore, the size and concentration of the markets for some of these services (eg cloud) would make a centralised supervisory assessment and certification very efficient, avoiding repetitive procedures for outsourcing undertakings/users and supervisors alike. If IE is in favour of having a centralised supervisory system within the framework of DORA, IE does not support the recent EU Council's proposal on DORA to designate EBA as the only supervisor for the oversight framework of critical ICT third party service providers.

Furthermore, regarding AML-CFT, IE is concerned by the future EU supervisory authority. IE does not want EBA to be the exclusive AML supervisory authority for financial sector. The specificity of insurance in relation to EU AML regulation need to be taken into account.

EIOPA must remain the lead supervisor for the insurance sector even for trans-sectoral issues such as AML. . In the context of oversight of critical ICT third-party providers under DORA, it is important that EIOPA remains on equal footing with the other ESAs.

Q3.4 *Have you identified any areas where supervision at EU level should be considered?*

- Yes
- No
- Don't know / no opinion / not relevant

- Yes

Please explain your answer to question 3.4:

As per its answer to question 3.3, Insurance Europe believes that the EU-wide and centralised supervision and certification of critical third-party ICT service providers (eg cloud service providers) would be advisable.

4. The role of the ESAs as regards systemic risk

Q4.1 *EIOPA: Please assess the aspects described below regarding the role of EIOPA as regards systemic risk:*

- 1 (lowest rate)
- 2
- 3
- 4
- 5 (highest rate)
- Don't know – No opinion – Not applicable

- The quality of the analysis of market developments - **4**
- The quality of the stress test and transparency exercises that were initiated and coordinated by the ESAs - **3**
- The interaction between the ESRB and ESAs on the development of a common set of quantitative and qualitative indicators to identify and measure systemic risk - **3**
- The cooperation within the European System of Financial Supervision (ESFS) to monitor the interconnectedness of the various subsectors of the financial system they are overseeing - **3**
- The broader cooperation between the ESRB and the ESAs within the ESFS - **2**
- The contribution of the ESAs to facilitating the dialogue between micro- and macro- supervisors - **2**

If you identify room for improvement for EIOPA, please specify how this could be addressed:

Insurance Europe is of the view that the cooperation between the ESRB and the ESAs as part of the ESFS functions well overall.

The recent experience during the COVID-19 crisis, however, highlighted a significant problem for the ESRB. At least for the insurance market, ESRB policies seem to be either repetitive of EIOPA policy decisions or driven by a desire to apply banking-inspired policies across the financial sector. The report of the ESRB on the distribution of dividends in the financial sector during the COVID-19 crisis called-out ensuring a level-playing field between financial services sectors as an argument why insurance undertakings should not make discretionary payments such as dividends or the repayment of intra-group loans. Insurance Europe believes that such an approach based on decisions taken for the banking sector is highly biased and in fact deteriorating as the long-term nature

of the insurance industry was a key parameter for the stability of financial markets. Prohibiting insurers from making payments to other, usually, long-term oriented investors such as pension funds increased the pressure on these players which was already building-up due to the disruptions immediately caused by the crisis.

On more general policy areas, the ESRB acts to support the repetitive call of EIOPA for additional powers for the macroprudential supervision of the insurance market, ie liquidity tools and systemic risk measures. The highly interlinked governance of the ESFS threatens the independence of the ESRB from the ESAs.

B. Questions on the single rulebook

5. The ESAs work towards achieving a rulebook

Q5.1 EBA: Do you consider that the technical standards and guidelines/recommendations developed by EBA have contributed sufficiently to further harmonise a core set of standards (the single rulebook)?

- Yes
- No
- Other
- Don't know / no opinion / not relevant

- Don't know / no opinion / not relevant

Q5.1 EIOPA: Do you consider that the technical standards and guidelines/recommendations developed by EIOPA have contributed sufficiently to further harmonise a core set of standards (the single rulebook)?

- Yes
- No
- Other
- Don't know / no opinion / not relevant

- Yes

Please explain your answer to question 5.1 for EIOPA:

Insurance Europe believes that the guidelines and recommendations of EIOPA, when they are adopted as level III in accordance with level I and level II, are an important contribution to the single rulebook, and generally appreciates the efforts of the Authority to develop uniform and consistent standards for the application by NSAs. However, there is a concern that these guidelines and recommendations could be "adopted" (with the comply or explain procedure) into national markets by NSAs with a reinforcement of the proposed rules leading to divergences and local gold plating.

Furthermore, the recent opinion published on April, 15 of the Advocate General of the CJEU on EBA guidelines regarding Product Oversight and governance arrangements for retail banking products showed that guidelines could be declared null when ESAs are exceeding their competences. While the final judgment of the CJEU on that case is not expected before end of 2021, this case is showing that soft law enacted by ESAs such guidelines must be limited.

The guidelines and recommendations are to be developed based on concrete empowerments and should be designed accordingly (Article 16.1 EIOPA Regulation). The issuance guidelines and recommendations, often, require an interpretation of the legal acts which they empower the Authority to develop the tools. It is, therefore, vital that the process on guidelines and recommendations considers potential conflicts and sticks as close to the mandate as possible and do not create new requirements/concepts different from those provided by legislative acts.

Article 16.2 EIOPA Regulation requires the consultation of guidelines and recommendations, where appropriate. Insurance Europe notes that EIOPA has recently extended this consultation process to most of the tools it issues, which is welcome. However, a better consideration of the results of the consultations should be reflected. The feedback reports sometimes go above the concerns raised during consultation process and an appropriate discussion resolving of the concerns is not included.

In addition, it is important that the guidelines and recommendations are regularly reviewed. A specific example is the EIOPA Guidelines on Basic Risk (EIOPA-BoS-14/172). The guidelines have been heavily criticised by stakeholders during their development. Since the application of the guidelines, some of the elementary concerns materialised as these guidelines fail to harmonise the interpretation and application rules, their core aim in accordance with paragraph 1.4 of these guidelines. Nonetheless, there is divergence among NSAs on what constitutes basis risk and how it should be quantified in the standard formula. The guidelines lead to inefficiencies in undertakings' risk management: The exclusion of mitigation techniques from insurance companies' risk management as they are limiting undertakings' abilities to transfer insurance risks to reinsurers. In consequence, the guidelines hinder an efficient insurance market. Insurers are retaining risk and capital that may otherwise be desirable to transfer to reinsurers in a mutually beneficial transaction. These concerns have been highlighted from the beginning. The according guidelines, however, have not been reviewed.

The European Commission asked EIOPA to assess the treatment of basis risk under its Call for Advice to the Authority in preparation of the Solvency II Review in 2019. The according advice from EIOPA is not a reconsideration of the guidelines, but an upgrade of the guidelines to the Solvency II Delegated Acts.

Insurance Europe believes that this example emphasises the need for a regular review. The guidelines which were issued in 2014 (two years before the start of the application of the regulation which they are interpreting), should have been regularly reviewed and an appropriate report on the concerns raised by stakeholders should have been published.

Finally, Insurance Europe reiterates its response to question 1.7.3. It would be beneficial to remind the necessity for the guidelines to take a "less is more" approach.

Q5.2 *Do you assess the procedure for the development of draft technical standards as foreseen in the ESA Regulations effective and efficient in view of the objective to ensure high quality and timely deliverables?*

Yes

No

Other

Don't know / no opinion / not relevant

- Yes

Please explain your answer to question 5.2:

Insurance Europe believes that the process as foreseen in Article 290 TFEU and Article 10 EIOPA Regulation can provide for an effective and efficient process. The challenges and problems encountered often originate in the legislation delegating the powers for the development of regulatory technical standards (RTS). Insufficiently clear empowerments and short timelines present considerable threats to the quality of the RTS.

An example in this respect are the RTS and delegated acts (DA) which are developed as part of the sustainable finance package. Extremely short and overlapping timelines were further tightened by the delays caused by the operational challenges posed by the Covid-19 crisis. The result is:

- the Sustainable Finance Disclosure Regulation (SFDR) being applied by undertakings without the necessary subordinated regulation being in place
- the RTS under the SFDR on the environmental taxonomy, which provide an essential catalogue for the assessment of "environmental sustainability", not being available

- the draft amendments to the DA aiming to incorporate sustainability objectives into Solvency II and the Insurance Distribution Directive (IDD) potentially being inconsistent with the SFDR and the Taxonomy (see joint [letter](#))
- consumer testing run in parallel with the ESAs public consultation did not allow the ESAs to factor-in the outcomes of the consumer testing in the proposals included in the public consultation and obliged stakeholders to comment on incomplete or work-in-progress options.

The procedures, as foreseen by Articles 10-14 EIOPA Regulation provide for all necessary means to ensure effective and efficient processes and compliance with better regulation standards. However, it is not possible for EIOPA (ESMA and EBA) to run these processes properly if there is insufficient time to ensure that the better regulation targets are met.

In addition, Insurance Europe believes that higher governance standards on the processes of the European Commission is required. Between the submission of the draft RTS and the publication of the proposal for a DA the European Commission should assess how the empowerment has been fulfilled and what alternative measures had been considered. Particularly where the RTS required interpretation of the Level 1 regulation, the European Commission should inform the European Parliament and the Council how the rules were interpreted and why the European Commission and EIOPA (the other ESAs) came to this interpretation.

With regard to the timetable, Regulatory Technical Standards (see art.10 to 15 of EIOPA regulation) could be problematic for financial entities when they are published one year after the entry into force of the Regulation or the Directive, as it is the case for the DORA regulation and future RTS art. 14.

If you have identified areas for improvement, please explain:

See previous answer.

Q5.3 *When several ESAs need to amend joint technical standards (e.g. PRIIPs RTS) and there is a blocking minority at the Board of Supervisors of one of the ESAs, what would you propose as solution to ensure that the amendment process runs smoothly?*

Insurance Europe believes that it is an important prerequisite for the quality of technical standards (and other tools which are jointly developed) that the ESAs have to adopt the standards in unanimity. Each of the ESAs has a specific role and expertise to contribute to the process. The process can only run "smoothly" if the concerns and technical problems arising from the standards have been duly considered and appropriately addressed.

The review of the PRIIPs RTS are a very negative example in this respect. While the EIOPA BoS rejected the draft RTS in October 2020, political pressure was build-up to force the Authority into adopting the standard. EIOPA finally did so in early 2021. Insurance Europe believes that this process is highly inappropriate and flawed. EIOPA BoS members refused to approve the RTS based on its inaccuracy for insurance products and the potential consumer threat which the implementation of the standard will cause. By pushing the standard through the EIOPA BoS without addressing the concerns of the EIOPA BoS the European Commission and the ESAs expose EU consumers to considerable risk caused by the provision inaccurate or misleading information and insurance undertakings to legal uncertainty. More than three quarters of the products in scope of the PRIIPs Regulation are insurance-based investment products (IBIPs). Nonetheless, have the concerns of the authorities in charge of the supervision of the marketing of these products been ignored.

Rather than further undermining the process of the joined development of technical standards by the ESAs in the interest of "smooth" process and at the expense of consumers and market credibility, the governance should be strengthened to ensure that concerns of each of the ESAs are appropriately addressed before the adoption of the technical standard by the European Commission. The PRIIPs RTS will do more harm than good and should be a warning example.

Question 5.4 *In particular, are stakeholders sufficiently consulted and any potential impacts sufficiently assessed?*

- Yes
- No
- Other
- Don't know / no opinion / not relevant

Other

Please specify what you mean by 'other' in your answer to question 5.4:

The stakeholders are sufficiently consulted, but the potential impacts are not sufficiently assessed (see explanation in the following answer).

Please explain your answer to question 5.4:

In general, EIOPA adheres to the standards set out in its establishing regulation and what is understood as better regulation with regards to the development of RTS and Implementing Technical Standards (ITS), guidelines, recommendations etc. It is important to note that measures to improvement to the consultation and assessment process must not lead to a tick-the-box exercised. Providing feedback to consultation involves significant efforts from stakeholders. The assessment and feedback statement should reflect these efforts and provide an appropriate response to the aspects and concerns raised.

Moreover, Insurance Europe also feels that the quality of the reflection of input and feedback differs significantly between the processes. A more standardised approach on how feedback has been taken into account might be helpful.

Nonetheless, Insurance Europe believes that the stakeholder feedback could be better reflected in the preparation and explanation of the draft standards and also in guidelines, recommendations, opinions etc. Particularly where consistent concerns have been raised by stakeholders or a group thereof, a more in dept explanatory statement which also assesses the impact of potential alternative methods would be welcome.

The EIOPA opinion on the 2020 review of Solvency II is a good example. The opinion was prepared based on excessive consultations on various options and additional proposals were requested. Stakeholders and EIOPA made significant efforts on these consultations. Despite the volume of the opinion (about 100 pages), its background analysis document (over 1000 pages) and its background "impact assessment" (almost 500 pages), Insurance Europe does not feel that the views of stakeholders have been sufficiently reflected, specifically with regards to the concerns raised about an alternative method for the extrapolation of the risk-free-rate term structure suggested by EIOPA and a reviewed calibration of the interest-rate sub-module. Rather than taking the concerns into account and testing the impact of alternative suggestions, EIOPA went ahead with its own flawed methodology.

Finally, the potential impact that EIOPA's standards and guidance might have should not be assessed too narrowly and limited to supervisory objectives, but it should also encompass the broader objectives of the European Union. EIOPA should be able to demonstrate how their regulations, guidelines, statements, opinions objectively contribute to deliver the priorities of the EU. This is a matter of accountability of EIOPA action before the EU Co-Legislators, the stakeholders and the wider public.

If you have identified areas for improvement, please explain:

See previous answer.

Q5.5 *Can you provide examples where guidelines and recommendations issued by the ESAs have particularly contributed to the establishment of consistent, converging, efficient and effective supervisory practices and to ensuring the common, uniform and consistent application of Union law?*

Since its establishment in 2010, EIOPA issued 44 guidelines, either by itself or jointly with the other ESAs. Insurance Europe is convinced that the guidelines contributed to the consistency and convergence of supervision in the EU single market for insurance. Often, the question is if the guidelines might have potential negative impact, eg by limiting the freedoms provided in the legal basis or by its interpretation, either for the market as such or to the detriment of particular players. In particular, the preparatory guidelines on Solvency II issued by EIOPA risked such a negative impact, where essential elements of the legal framework (namely the Solvency II Delegated Acts) were not agreed at the time of the issuance of the guidelines.

For the consistency of the single rulebook, it is important that the hierarchy of measures is ensured and that the measures are build-upon each other and not developed in parallel. For example regarding EIOPA's guidelines on ICT, they have been published whereas DORA is under discussion and which provide future RTS prepared by EIOPA. This situation is confusing for insurance undertakings and lead to legal uncertainty. To safeguard the consistency and hierarchy of measures, the addition to Article 16 EIOPA Regulation that "*guidelines and recommendations shall not merely refer to, or reproduce, elements of legislative acts.*" [or add new requirements/concepts] (Article 16.2a EIOPA Regulation) was essential.

With regards to recommendations, EIOPA has issued recommendations to NSAs at multiple occasions. Insurance Europe believes that the already mentioned recommendations in conclusion of the peer review of the EIOPA decision on the collaboration of NCAs provides for a good example for recommendations which can significant improvement the convergent and consistent supervision across the EU.

Question 5.6 *Would you consider it useful if the ESAs could adopt guidelines in areas that do not fall under the scope of legislation listed in Article 1 (2) of the ESAs founding Regulations and are not necessary to ensure the effective and consistent application of that legislation?*

- Yes
- No
- Don't know / no opinion / not relevant

No

Please explain your answer to question 5.6:

Insurance Europe believes that it is indispensable that the mandate of EIOPA (and the other ESAs) for the issuance of guidelines is clearly defined in the underlying legislative acts referred to in Article 1(2) EIOPA Regulation. Therefore, two steps are necessary: a) the definition of the legal acts under which EIOPA can be empowered to issue guidelines and b) the clear description of the mandate and explicit empowerment for the specific guideline in this underlying legislative act. The preparatory guidelines under Solvency II or the pre-emptive guidelines on product oversight & governance ahead of the IMD review provide evidence that processes and mandates need to be clearly defined to ensure legal certainty and respect the rule of law as one of the EU fundamental values.

It is important that to respect the EU legal framework and EIOPA does not become a quasi-regulator. EIOPA is a supervisory authority executing a predefined mandate and representing supervisory expertise and interest. Political and strategic decisions must not be subject to the mandate and the power of the Authority. Such decisions need to remain with co-legislators. In addition, it must be ensured that soft-law measures issued by EIOPA do not present any right of initiative neither explicitly nor implicitly triggering legislative processes or undermine the CJEU's right to interpret the law.

Q5.6.1 If you think of the Wirecard case as an example, how could supervision be improved in the field of auditing and financial reporting?

- Including [Regulation \(EC\) No 1606/2002 \(IAS Regulation\)](#) and [Directive 2013/34/EU \(Accounting Directive\)](#) in Article 1(2) of the ESMA Regulation
- Other
- No improvements are needed
- Don't know / no opinion / not relevant

- No improvements are needed

It is not sufficiently clear what might be the envisaged purpose of the suggestion to include the IAS Regulation and the Accounting Directive into the scope of Article 1 (2) of the ESMA Regulation. We strongly believe that the scope of entities required to apply IFRS in the EU is properly defined. In addition, the existing procedures for the endorsement of the IFRS developed and issued by the IASB (incl. the key role of the endorsement advice to be provided by EFRAG to the Commission after the Maystadt report of October 2013) is properly determined as well. Hence, the endorsement process of IFRS in the EU does not need any changes. And we don't see what kind of role ESMA should play for reporting entities which are not issuers, ie which are outside of the scope of the Transparency Directive.

Insurance Europe believes that legislations listed in Article 1 (2) of the ESMA's founding Regulation strikes the proper balance of what is important to ensure that ESMA can be effective when undertaking actions necessary from the European perspective; specifically as the Article 1 (3) of the ESMA's founding Regulation already provides a basis for ESMA being active in the field of corporate governance, auditing and financial reporting, provided that such actions are necessary to ensure the effective and consistent application of those acts listed in Article 1 (2). Hence, from Insurance Europe's perspective an enlargement of the scope does not seem to be urgently required.

Q5.7 Do you think that the role of ESMA with regard to [Directive 2004/109/EC \(Transparency Directive\)](#) could be strengthened? For example, by including a mandate for ESMA to draft RTS in order to further harmonise enforcement of financial (and non-financial) information:

- Yes
- No
- Don't know / no opinion / not relevant

- No

Please explain your answer to question 5.7:

The industry agrees with the current scope of the ESMA mandate eg enforcement of financial information and supervisory convergence in the consistent application of IFRS for listed entities on regulated markets. However, we are of the opinion that the mandate of ESMA should not be extended, in particular with a mandate to draft RTS on this topic. ESMA and National enforcers should neither assume the role of the standard setter nor an interpretative role. IFRS standard, and IFRS interpretations are within the responsibility of IASB. On the other side, the current process of IFRS endorsement at European level, put in place following the Maystadt report recommendations with a wide support from member states, is satisfactory and we do not see any valid reason to modify it.

Insurance Europe believes that ESMA could undertake, as a later stage, further steps to further harmonise **enforcement** of non-financial information provided by issuers in the scope of the Transparency Directive when the reporting standard would have been issue. However, Insurance Europe is of the opinion that at this stage, ESMA's essential role is to be supportive of the work undertaken by EFRAG which has the primary role regarding the harmonisation of non-financial reporting as indicated by the European Commission. At a later stage a

consistent level of enforcement could be an important element also in the context of the CMU 2.0-related initiatives of the Commission (eg establishment of ESAP).

Q5.8 Do you think that [Directive 2004/109/EC \(Transparency Directive\)](#) should require ESMA to annually report on the supervision and enforcement of financial and non-financial information in the EU on the basis of data provided by the national competent authorities regarding their supervisory and enforcement activities?

- Yes
 No
 Don't know / no opinion / not relevant

No

Please explain your answer to question 5.8:

Insurance Europe believes that ESMA has a legitimacy to play a role, along with national enforcers, by regularly bringing to the attention of the stakeholders the key accounting issues that they encounter. ESMA already provides useful insights for all the related parties, including those who prepare financial statements and auditors, on the enforcement of financial information in the EU. The industry does not see any valid reason to enlarge the ESMA mandate on this topic.

At a later stage when sustainability reporting standard would have been issued ESMA could also play a role, along with national enforcers, by regularly bringing to the attention of the stakeholders the key issues that they encounter on the enforcement of this standards. It could have a positive effect on the adoption of non financial reporting by undertakings.

Q5.9 Do you think that ESMA could have a role with regard to [Regulation \(EC\) No 1606/2002 \(IAS Regulation\)](#) and [Regulation 537/2014/EU \(Audit Regulation?\)](#)

- Yes
 No
 Don't know / no opinion / not relevant

No

Please explain what role could ESMA have with regard to the IAS Regulation could be strengthened:

The industry is of the view that the reform of the EU audit legislation with the establishment of the CEAOB (Committee of European Auditing Oversight Bodies) offers a well-designed and efficient framework.

Insurance Europe does not see any valid reason to extend the ESMA's mandate on this topic.

National competent audit authorities are closer to the audit market and as such may intervene more efficiently as they have a better and more direct knowledge of their markets.

Were ESMA to be granted the role of the EU audit supervisor, the industry believes this would create conflicts of interest between audit supervision and enforcement in the financial reporting area, and would lead to judge and jury in the same case.

Please explain your answer to question 5.9:

Insurance Europe believes that legislations listed in Article 1 (2) of the ESMA's founding Regulation strikes the proper balance of what is important to ensure that ESMA can be effective when undertaking actions necessary from the European perspective; specifically as the Article 1 (3) of the ESMA's founding Regulation already provides a basis for ESMA being active in the field of corporate governance, auditing and financial reporting, provided that such actions are necessary to ensure the effective and consistent application of those acts listed in Article 1 (2). Hence, from the Insurance Europe's perspective an enlargement of the scope does not seem to be urgently required.

Q5.10 *EIOPA: What is your assessment of the work undertaken by EIOPA regarding opinions and technical advice?*

Insurance Europe believes that the majority of opinions issued by EIOPA provide considerable value for the integration of the single market as well as regulatory and supervisory convergence. However, the variety of the opinions provided by the Authority is very wide and their legal basis as well as their legal value are not always clear. It further has to be assessed if the opinions are made in preparation of legislative activities, facilitate consistent supervisory practices or other aspects.

The variety might already be subject to the dilemma of opinions as a tool. In accordance with Article 16a of the EIOPA Regulation, EIOPA is invited to provide opinions "on all issues related to its area of competence". The different nature of the opinions lead to very different consequences for NSAs and undertakings. The most recent opinion by EIOPA on the review of the Solvency II Directive provides the technical advice from as requested by the European Commission in its Call for Advice from February 2019. This opinion does not have any immediate impact on NSAs or insurance undertakings. In contrast, EIOPA's opinion on the supervision of remuneration principles in the insurance and reinsurance sector² aimed to provide "*guidance to the supervisory authorities on how to challenge the application of certain principles [...]*" (para. 2.4 of this Opinion) and thereby might have a substantial impact on NCAs policies and supervised undertakings. Another example is the EIOPA Opinion on non-life cross-border insurance business of a long-term nature and its supervision³. In accordance with paragraph 2.7 of this Opinion, the objective of this Opinion is "*to ensure the appropriate application of the legal requirements and consistent supervisory practices with regard to technical provisions for non-life insurance obligations of a long-term nature.*" Again, it can be expected that the opinion has practical implications for NSAs and undertakings.

In addition, the different tools are not easy to differentiate. The reason why consistent supervisory practices are, in one case, subject to an opinion, and in another subject to recommendations, as eg following the peer review on EIOPA's decision on the collaboration of the insurance supervisory authorities⁴, is not sufficiently clear.

As referred to in the answer to question 2.4.1, the sheer amount of EIOPA activity challenges an appropriate stakeholder involvement. Additional extra-curricular activities should, therefore, be duly considered.

In addition, technical advice and opinions provided by the Authority must not form quasi-legislation or provide for the empowerment/force for NSAs to take regulatory action. One example is the review of the implementing technical standards (ITS) on reporting requirements under Solvency II. EIOPA has proposed substantial changes to the Quantitative Reporting Templates under Solvency II. In accordance with the Solvency II Directive, EIOPA is empowered to draft these ITS for adoption by the European Commission. Notwithstanding the outcome of the review of the Directive, EIOPA already started the review of the ITS. The insurance industry strongly believes that the review of the ITS as subordinated regulation to the Solvency II Directive should await and not pre-empt the result of the legislative procedure.

² <https://www.eiopa.europa.eu/content/opinion-supervision-remuneration-principles-insurance-and-reinsurance-sector>.

³ <https://www.eiopa.europa.eu/content/non-life-cross-border-insurance-business-long-term-nature-and-its-supervision>.

⁴ https://www.eiopa.europa.eu/content/peer-review-eiopa-decision-collaboration-insurance-supervisory-authorities_en.

6. General questions on the single rulebook

*Question 6.1 Which are the areas where you would consider maximum harmonisation desirable or a higher degree of harmonisation than presently (rather than minimum harmonisation?
Please give your reasons for each:*

Insurance Europe believes that regulatory convergence and the further integration of the EU single market (for insurance) should be the key objectives for the European Commission for the upcoming regulatory reviews of the EU financial services regulation. In this respect the opportunity for national gold-plating and regulatory arbitrage can and should be limited in the interest of fair competition and consistent consumer protection in the EU.

Q6.2 *Which are the areas where you consider that national rules going beyond the minimum requirements of a Directive (known as "gold- plating") are particularly detrimental to a single market?*

- Banking
- Insurance
- Asset management
- Market infrastructure (CCPs, CSDs)
- Market organisation (MiFID, MIFIR, MAR)
- Other

- Insurance

Insurance

Please identify the relevant sectoral legislation in the area of Insurance for which national rules going beyond its minimum requirements and explain:

Solvency II Directive
NIS Directive 2016/114
AML Directives (2015/849 and 2005/60)

Please provide examples of gold plating in the area of Insurance and explain:

On Solvency II, the Central Bank of Ireland (CBI) published new regulation which go beyond the current Solvency II Regime and present a significant burden for insurance undertakings authorised in Ireland. Ahead of the Solvency II review, the CBI is proposing regulation on pre-emptive recovery planning. While this is factually not subject to Solvency II, yet, and, therefore, does not constitute gold plating, it pre-empts the legislative procedure on the review of Solvency II.

EIOPA's Opinion on the Solvency II Review is based on an assessment of a long list of identified supervisory divergences. However, it appears that most divergences arise from gold-plating supervisory practices and not from a group of NCAs not adhering to the EU regulation. The Opinion on the Solvency II review is typical of the asymmetrical treatment of supervisory divergences, where convergence is always sought to be based on the most conservative practices. The Opinion is, in this regard, a tentative to have gold-plating supervisory practices recognised in the hard regulation.

Cybersecurity rules: NIS Directive 2016/114: Even if the insurance sector was not identified at EU level as essential, French legislator decided to include it at French level during the implementation process leading to an unlevel playing field at EU level between insurance undertakings.

AML Directives (2015/849 and 2005/60): French legislator decided to include non life insurance into the scope of the regulation even if EU directives only cover life insurance. German legislation captures any insurance undertaking granting money loans.

Q6.3 Do you consider that the single rulebook needs to be further enhanced to reach the uniform application of Union law or rules implementing Union law and efficient convergent supervisory outcomes?

- Yes
- No
- Don't know / no opinion / not relevant

No

Please explain your answer to question 6.3 and, where appropriate, support your response with examples:

Insurance Europe believes that regulatory convergence is a fundamental prerequisite for the further efficient and convergent supervision across the EU single market. Common standards and a common supervisory culture need to be based on a common regulatory framework.

With regards to the measures enhancing the supervisory convergence, Insurance Europe believes that EIOPA should focus on the common application of the rules rather than acting as a quasi-regulator and implementing new rules or tightening the regulatory framework. The identification of best practices, recommendations on the applications of the review, targeted peer reviews as well as timely and consequent follow-up where shortcomings and overregulation are identified should be the key targets for EIOPA's mission. The aim of EIOPA's ambition should be a common supervisory culture and a consistent application, avoiding gold-plating and supervisory arbitrage across member states.

The impact of the EIOPA statement on the ban on dividends and similar payments is a negative example on how overcompliance by some NSAs disturbed the functioning of the single market and the freedom of capital, in particular. Rather than the public statement, guidance on how to assess the market situation and apply the already existing measures would have been the right measure.

6.4 Questions regarding the appropriate level of regulation

Q6.4.1 In your view, are there circumstances in existing EU legislation where level 1 is too granular, or for other reasons, would rather be preferable to have a mandate for level 2, or guidance at level 3?

- Yes
- No
- Don't know / no opinion / not relevant

No

Please specify the area (and if possible, specific piece of legislation) and explain why (e.g. in order to have appropriate flexibility to adapt the specifics of the regulation in case of change of circumstances):

The industry has witnessed co-legislators transferring responsibility to the European supervisory authorities (ESAs) for crucial technical elements at Levels 2 or 3. This has led to the ESAs becoming quasi-legislators, and the role of the co-legislators in the adoption of Level 2 measures lowered to either fully rejecting or accepting the text proposed by the ESAs and the Commission.

In addition, there are examples where the ESAs' actions have resulted in the blurring of the roles and responsibilities between themselves and legislators, such as by drafting Levels 2 and 3 measures that are not in full compliance with Level 1 or go beyond the Level 1 mandate.

Looking forward, priority should therefore be given to jointly reaching high-quality and technically sound legislation with no legal uncertainty. To this end, co-legislators need to fully play their role of brokering the political compromise, whilst respecting the advisory role of the ESAs. Hence, Level 1 legislation should limit the number of mandates for Level 2 and 3 measures to what is technically necessary, and the ESAs should adhere to the Level 1 text mandate.

Q6.4.2 *On the other hand, in your view, could reducing divergences in rules at level 1 (legislation agreed by the co-legislators), as well as rules regarding delegated acts (regulatory technical standards) or implementation at level 2, (implementing acts and implementing technical standards) and/or level 3 ('comply or explain guidance' by ESAs) further enhance the single rulebook?*

- Yes
- No
- Don't know / no opinion / not relevant

Yes

Q6.4.2.1 *Which of the three levels and/or a combination thereof are more effective in building the single rulebook?*

- Level 1 (legislation agreed by the co-legislators)
- Level 2 (e.g. delegated acts and technical standards)
- Level 3 ('comply or explain guidance' by ESAs)

Level 1, Level 2, Level 3

Please explain your answer to question 6.4.2 and 6.4.2.1:

Insurance Europe believes that an approach focusing on regulatory convergence and consistency would enhance the functioning and integrity of the EU single market (for insurance).

Among the Solvency II framework, the proportionate application of the Solvency II can be a good example on how convergence can be enhanced across all three levels. In its assessment ahead of the current Solvency II review, EIOPA found that the proportionate application of Solvency II is very inconsistent across the Union as it is fully left to member states/NSAs to determine how the rules are applied in accordance with nature, scale and complexity of the risks inherent in an insurance business. This example illustrates how the 3 levels will participate in a harmonised approach.

Insurance Europe has strong reservations vis-à-vis the Level 3 – Guidelines. The “hard” regulation, made of a balance between principle-based regulation at level 1 and more rule-based regulation at level 2 where required to guarantee maximum harmonisation, should be self-explanatory and therefore self-sufficient. There is no evidence of the Level 3 making the level 1 and 2 easier to apply for the industry. On the contrary, although not being binding in principle, they considerably add to the compliance burden in practice. Insurance Europe is of the view that the problem is well described by ECJ Advocate General Michal Bobak in his Opinion on Case C-911/19.

Reasons advanced by EIOPA to issue guidelines are often shallow or hypothetical and concrete evidence of wrongdoings that the guidelines prevent are missing. In reality, guidelines are often more difficult to interpret than the binding legal text they try to explain. As a result, it may well be that the guidelines themselves are interpreted differently from one supervisor to another, so negating the purpose of bringing convergence. In

most instances, the matters addressed by the guidelines are either clearly covered by the Solvency II legislation or could have been simply addressed by more discussions/cooperation between the NSAs that raised the issue.

The industry is proposing to:

- Clarify at level 1 that NSAs are allowed and obliged to consider proportionality
- Define the category of low risk undertakings which would be allowed to apply automatically a set of proportionality measures at level 2
- Develop a non-exhaustive list of measures to apply automatically when some risk-based criteria are met at level "2.5" - ITS
- Review existing guidelines at level 3, develop new ones and publish an annual report on the use of proportionality.

Q6.5 *Generally speaking, which level of regulation should be enhanced/tightened in order to ensure uniform application of the single rulebook?*

- Level 1 (legislation agreed by the co-legislators)
- Level 2 (e.g. delegated acts and technical standards)
- Level 3 ('comply or explain guidance' by ESAs)

- Level 1, Level 2, Level 3

Please explain your answer to question 6.5 and substantiate with examples, where possible:

Insurance Europe believes that a cascade of measures is necessary. As stated above, regulatory convergence is the basis for a uniform single rulebook. Therefore, level 1 and level 2 must be self-explanatory and as a result self-sufficient. Also, the mandate for EIOPA to develop level 3 measures needs to be clearly defined as, at present, guidelines have not contributed to making the single rulebook more manageable or intelligible, quite the contrary. The desire to create a uniform single rulebook must not undermine the legislative process or bring EIOPA into the position of a quasi-regulator filling regulatory gaps. Therefore, a consistent approach is necessary.

In addition, the consistency of the legislative process and the hierarchy of the different levels needs to be maintained. The process of the currently developed sustainable finance package highlights not only how important the timing and sequencing of different pieces of legislation are, but also that they should be coherent with each other and not be developed in parallel.

Q6.6 *In your view, what, if anything and considering legal limitations, should be improved in terms of determining application dates and sequencing of level 1, level 2 and level 3?*

Insurance Europe is of the view that the hierarchy of the legislative process or the sequencing of measures is absolutely indispensable for creating a consistent single rulebook.

Deficiencies in the Lamfalussy process have created unnecessary compliance constraints for the industry, which is often left with insufficient time to implement the required changes in their processes. This has been because the time necessary for the development, adoption, translation and publication of the Level 2 texts that are crucial for proper implementation has rarely been taken into account when setting implementation deadlines.

It is crucial that the industry be provided with enough time to implement new legislation. It is therefore necessary to allocate a minimum of one year from the publication of the Level 2 texts in the Official Journal of the EU.

Similarly, Level 3 measures that are clarifying Level 1 and 2 texts and are therefore necessary for their proper implementation must be finalised a year before the texts they aim to clarify become applicable.

Q6.7 Please indicate whether the following factors should be considered when deciding on the need for further harmonisation in rules:

- 1 (unimportant)
- 2 (rather not important)
- 3 neutral
- 4 (rather important)
- 5 (fully important)
- Don't know - No opinion - Not applicable

- Strong interlinkages with areas of law which remain non-harmonised (e.g. CRIM-MAD and national criminal law) - **4**
- Broad discretion left to national authorities and frequent use of that discretion by these national authorities - **5**
- High level of gold plating by national rules - **5**
- High degree to which supervision of the same type of actors and /or activities render divergent outcomes across Member States - **5**
- All of the above - **4**
- None of the above - **1**
- Other aspects - **Don't know - No opinion - Not applicable**

Q6.8 As part of the Commission's work on enhancing the single rulebook under the Capital Markets Union project, do you consider that certain EU legislative acts (level 1) should, in the course of a review, become more detailed and contain a higher degree of harmonisation? Would any of those legal frameworks currently contained in Directives, or any part therein, benefit from being directly applicable in Member States instead of requiring national transposition?

- Yes
- No
- Don't know / no opinion / not relevant

- Yes

Please specify in which legislative sector(s) should EU legislative acts at level 1 become more detailed and contain a higher degree of harmonisation:

- Banking
- Insurance
- Asset management
- Market infrastructure (CCPs, CSDs)
- Market organisation (MiFID, MiFIR, MAR)
- Other

- Insurance

Insurance

Please identify the specific piece(s) of legislation at level 1 in the area of Insurance that should become more detailed and contain a higher degree of harmonisation and explain:

Solvency II

Please provide examples in the area of Insurance and explain:

In the context of the Solvency II review, the industry is arguing for more harmonisation regarding the application of the principle of proportionality to allow for a harmonised application. While the directive explicitly mentions

proportionality, some NSAs are of the view that the regulation does not allowing them to deviate from specific requirements for reasons of proportionality.

However, the insurance distribution directive (IDD) is a minimum harmonisation directive with member state options, and it is vital that the IDD remain so in the future. The IDD sets a minimum standard, but additional measures can be introduced at national level if deemed necessary. This allows the necessary flexibility to consider and accommodate differences in local market structures and consumer expectations. This is the correct way to regulate insurance markets, but it is inevitable that this approach leads to some divergent national practices. These differences in national rules should not be viewed as a barrier to cross-border business, as they stem from differences in national markets themselves. The IDD should continue to seek to provide a consistent level of consumer protection across all markets, rather than attempt to create identical market structures and accompanying distribution rules. There are also many “natural” divergences between national markets that are not within the remit of the IDD. These are the result of insurance markets that have developed over many years and should not be directly addressed through regulatory intervention.

For example, in some markets, local rules establish mandatory advice for which consumers would not be prepared to pay while, in others, customers are used to accessing financial services without advice but may be willing to pay for this additional service. These differences in consumer expectations need to be reflected in the application of rules at national level. Appropriate national differentiation has a direct consumer benefit.

Please select the legislative sector(s) of the specific piece(s) of legislation you have in mind:

- Banking
- Insurance
- Asset management
- Market infrastructure (CCPs, CSDs)
- Market organisation (MiFID, MIFIR, MAR)
- Other

- Insurance

Insurance

Please identify the specific piece(s) of legislation you have in mind in the area of Insurance and explain:

Insurance Europe believes that the question on whether a specific legislation should be directly applicable in EU member states which is currently in the form of a Directive is too broadly asked. The overarching aim of the reviews of the financial services legislative package should be the further integration of the single market as well as regulatory consistency and convergence. In order to achieve this aim, it will be essential to assess for which legislation or specific provisions within a legislation direct applicability is enhancing the consistency of the application of the single rulebook and where certain limits might exist or create a disproportionate regulatory burden.

Looking at the insurance specific Solvency II framework, Insurance Europe believes that the example of the proportionate application of Solvency II as described in the answer to question 6.4.2.1 constitutes a very good example for a subset of the framework which would benefit from a more direct application across the single market. For other areas like the treatment of insurance claims under Article 275 Solvency II Directive it might be more challenging to make provisions directly applicable across member states.

Q6.9 *Do you consider that on the basis of existing mandates, additional/more detailed rules at level 2 should be introduced to provide the supervised entities and their supervisors with more detailed and clearer guidance?*

- Yes
- No

Don't know / no opinion / not relevant

Yes

Please specify legislation and what these rules at level 2 should regulate:

Insurance Europe believes that further regulatory convergence may in some instances require a deeper level of detail at level 2. However, regulations go through a thorough process and in some cases the co-legislators deliberately leave some flexibility at the discretion of member states to allow to adapt to local markets due to divergent practices/culture. This is why it is important that EIOPA does not act like a quasi-legislator by trying to fill all room for flexibility with its strict own interpretation, which can be detrimental. For example, in the area of group supervision under Solvency II, flexibility is needed due to the unique structure of each group.

Moreover, anything with a political or strategic dimension cannot be left to the mandate of the Authorities and might require a differentiated approach at level 2 between ordinary DA and RTS or Implementing Acts (IA) and Implementing Technical Standards (ITS) respectively.

In addition, it must be ensured that any need for the interpretation of Union law is dealt with at the appropriate level and not left to the Authorities.

As a matter of principle, it should be clear that when co-legislators decide to preserve some flexibility at level 1, there is no hook to address it level 2 or level 3. This principle is key to preserve the hierarchy of norms, prevent regulatory or quasi-regulation inflation and maintain the sense of prudential regulation. The scope of prudential regulation, which is primarily about solvency, cannot be extended indefinitely to cover any emerging topic. However, the reality is that this basic principle has been nullified by years of extension of the quasi-regulation, particularly by "soft-law".

Q6.10 *Against the objective of establishing the single rulebook for financial services, how would you increase the degree of harmonisation of EU financial legislation?*

- Across the board (e.g., via an Omnibus act which amends multiple sectoral acts at the same time)*
- In a targeted manner through individual sectoral reviews*

In a targeted manner through individual sectoral reviews

Other

Please explain how would you increase the degree of harmonisation of EU financial legislation in a targeted manner through individual sectoral reviews:

Insurance Europe believes that a targeted approach is more appropriate. While it agrees to the idea of setting the three ESAs up in parallel, the differences in their development justify a more tailored approach. Already during the 2019 ESA Review, the holistic approach taken created some confusion and limits.

In addition, products and markets across the financial services sector differ significantly and so does the state of regulatory integration. Therefore, a targeted approach is necessary. Nonetheless, these targeted approaches should have the common objective of further integration of the EU single market fostering fair competition and consistent consumer protection across the Union.

For the insurance industry the ongoing review of the prudential supervisory framework Solvency II is the perfect opportunity to drive regulatory and supervisory convergence further and to remove barriers to the single market. It needs to be ensured that a level-playing field will finally exist between market participants across the Union notwithstanding their business model or their location.



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 almost €1 000bn annually — or €2.7bn a day — in claims, directly employ nearly 950 000 people and invest over €10.4trn in the economy.