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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 these 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 sector<sup>2</sup> 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 supervision<sup>3</sup>. 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 authorities<sup>4</sup>, 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.

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

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

<sup>4</sup> [https://www.eiopa.europa.eu/content/peer-review-eiopa-decision-collaboration-insurance-supervisory-authorities\\_en](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.*