Insurance Europe response to the European Commission green paper on the Capital Markets Union.

13 May 2015

Executive Summary

Insurance Europe welcomes the opportunity to provide input to the Commission on the Capital Markets Union Green Paper. In particular, Insurance Europe would like to highlight the following:

High level points:

- The **EU Investment Plan** is the key strategic priority to help support economic recovery, strengthen job creation, enhance Europe's competitiveness and to stimulate investment in the real economy. **Insurers are Europe's largest institutional investors** and, therefore, significant contributors to European growth. Consequently, the availability of attractive long-term assets and the removal of barriers for insurers investing in them is crucial to further develop their positive role in the European economy.

- Insurance Europe believes that the Commission should continue to support market-led standardisation and best practices for investments, such as private placements and covered bonds. To ensure that the initiatives taken by the Commission in these areas are successful, it is important that they:

  - leverage existing national experience and standards that have proven to work well;
  - ensure that any European solutions can work in parallel with, rather than replace local standards which work well; and
  - give equal prudential treatment to European and local frameworks.

  If European initiatives are not developed in this way, then there is a risk that there would not be support from those member states who have already developed working solutions. It would also remove incentives for member states to innovate and develop the solutions on which European initiatives could be based.

- **Impact assessment**: Before initiating any new piece of legislation, the Commission should undertake an in-depth assessment of how recent regulatory developments, including Solvency II and the European Market Infrastructure Regulation (EMIR), might negatively impact the provision of long-term financing.

- Current **macroeconomic policy**: (Re)insurance companies are crucial for long-term investment in the economy to help Europe's population ensure they cover their protection and income needs throughout their lives. The current macroeconomic environment, with extremely low interest rates, presents significant challenges for pension savings in Europe where risks are increasingly shifted to individuals. Although the insurance and pension industry provides solutions, the challenge for future pensioners to make provisions for old age could increase significantly. Therefore, this situation leads insurers – in their capacity to provide security for savers – to make necessary adaptations. Care must be taken that regulatory changes are not negatively impacting the capacity of insurers to fulfill their key activities: namely providing retirement protection to customers and investing in economies. Furthemore, the European Insurance and Occupational Pensions Authority (EIOPA) and national supervisors must not exacerbate these effects through goldplating or excessively conservative interpretations of legal texts.

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Specific recommendations

- While an impact assessment is needed before initiating any new piece of legislation, capital charges and/or definitions relating to infrastructure, SME investments and securitisations need to be urgently refined in order to remove disincentives for investment. This should be addressed by the Commission **immediatly** in order to minimise obstacles to long-term investment:
  - Insurance Europe strongly supports a tailored prudential treatment of infrastructure in Solvency II. This should include a flexible definition of infrastructure as well as changes to the standard formula for both infrastructure debt and infrastructure equity to better reflect the true risks:
    - Unlisted infrastructure equities should be captured under a new sub-module in the market risk, with a 22% charge and a correlation of zero with other sub-modules.
    - For infrastructure debt, Insurance Europe recommends a treatment under the counterparty default risk module to better reflect the real risk to which the companies are exposed.
  - In the area of securitisations, a number of **improvements in the Solvency II** approach for qualifying securitisations are needed:
    - Changes to the capital charges for Type I high quality securitisations, so that they are aligned with the current charges for corporate bonds.
    - Recognition of **junior tranches** as part of Type I qualifying securitisations.
    - Recognition of Collateralised Loan Obligations **(CLOs)** as part of Type I, qualifying securitisations.
    - Consideration of high-quality **short-term securitisations** (eg Asset Backed Commercial Paper (ABCP)) as cash instruments, with similar prudential treatment.
    - Changes to capital charges for securitisations of residential loans, to be capped at the level of charge applied to the underlying pool of residential loans.
  - Transitionals designed for listed equity should also apply to unlisted equity to avoid unnecessary forced selling.

- **European Long-Term Investment Funds (ELTIFs) can be a success if the assets they invest in (eg infrastructure, SMEs) have more appropriate capital charges, as described above, and a look through approach is applied** (as with other funds), so that the ELTIFs get the capital treatment in line with their underlying investments. Fund initiatives similar to ELTIFs that have been launched in a number of member states should be allowed to continue to work in parallel with ELTIFs and given a similar prudential treatment. Insurance Europe understands that the Commission is currently considering treating ELTIFs as Type I Equity. **Care must be taken that any changes to the Delegated Act do not prevent a look through approach being applied to ELTIFs**.
- ESAs Review: **No new powers should be considered for ESAs at this time.** The ESAs already have been assigned regulatory, supervisory, financial stability and consumer protection roles and powers. Given the huge level of regulatory change in recent years, time should be given for the ESAs to act within their existing mandate.
- To increase retail investment, **the provision of high-quality rather than high-quantity of information to consumers is essential.** The disclosure of too much and even duplicative information is counterproductive; it confuses consumers and distracts them from key information. Insurance Europe calls on the Commission to assess the cumulative impact of the overload and duplication of disclosure requirements for retail investment products and to take necessary steps to address them.
- International Financial Reporting Standards (IFRS) accounting requirements can have a major impact on the ability of insurers to invest long-term. **IFRS 4 (Phase II) must be finalised so that it reflects insurers' long-term business model** and interacts appropriately with IFRS 9 in order to avoid creating accounting volatility. Insurers should be **allowed to delay application of IFRS 9, so that they can implement at the same time as IFRS 4,** and therefore avoid misleading accounts and unnecessary costs.

Questions

1) Beyond the five priority areas identified for short-term action, what other areas should be prioritised?

Insurance Europe believes that, before initiating a new piece of legislation, the Commission should engage in an in-depth assessment of how recent regulatory developments, including Solvency II and the European Market Infrastructure Regulation (EMIR), might negatively impact the provision of long-term financing. Such an assessment should be followed by an initiative to review and, where deemed necessary, correct measures which are not fit-for-purpose and which could create unintended consequences for the European economy. In line with this, Insurance Europe welcomes the call for action that the Commission sent to EIOPA on the identification and calibration of infrastructure investments and believes that it is a good example of actions that are needed to prevent further damage to long-term investment in Europe.

In the short-term, the insurance industry sees the review of Solvency II capital requirements for long-term assets such as infrastructure, SME investments and securitisations as a key priority. Prudential capital charges play an important role in insurers' investment decision-making and the currently envisaged requirements are unnecessarily restrictive and disincentivise insurers' investments. These should be reviewed to better reflect underlying risk exposures and risk profiles of long-term assets.

In addition to prudential regulation, Insurance Europe is concerned over the impact that the implementation of the central clearing obligation for derivatives under EMIR will have on insurers' holdings of long-term assets.

Strong and active involvement of the Commission on accounting issues is important. IFRS accounting requirements can have a major impact on the ability of insurers to invest long-term. The International Accounting Standards Board's (IASB) insurance contracts project (IFRS 4 Phase II, covering insurance liabilities) has been delayed, but is nearing finalisation. It is crucial that, in its final form, it reflects insurers long-term business model and interacts appropriately with IFRS 9 in order to avoid creating accounting volatility.

The delay in finalising IFRS 4 has created a new timing problem. Insurers should be allowed to delay the application of IFRS 9 so that they can implement it at the same time as IFRS 4, and therefore avoid misleading accounts and unnecessary costs.

2) What further steps around the availability and standardisation of **SME credit information** could support a deeper market in SME and start-up finance and a wider investor base?

Access to appropriate credit information, as well as the harmonisation of reporting and accounting standards for SMEs, would significantly support a deeper market for SME finance and a wider investor base.

Investments in SMEs can often be of interest to insurance companies seeking to match liabilities with appropriate assets that can bring additional yield and diversification to their portfolios. Banks have traditionally been, and may continue to be, the main source of financing for SMEs. Over the years, banks have developed an important historical background and analysis on SMEs, which significantly helps their funding decision-making.

Helping other investors, such as insurers, to have access to SMEs related information would ease investment analysis and would help investment decision-making. Such information should include, for example, historical loan experience, historical financial results and performance and business specific information. Harmonisation of reporting standards for SMEs across the EU would help achieve consistency and comparability in the availability of information.

Relevant credit information should be made available to investors by the SME itself (via income statements or other reporting). Banks should not be asked to release information of their customers (via central credit registers) as this risk is threatening banking secrecy laws and protection of customer's confidential information.

Insurance Europe understands that steps in this area have already been taken in some member states[1]. While similar national initiatives would be welcome, cross-border financing of SMEs could be further enhanced by a European initiative that would centralise standardised information of SMEs across the EU. Credit scoring, as referenced in the CMU paper, would also be welcome by the industry as an additional financial indicator that could be used in the analysis of potential investments.

It is important that any European accounting standards for SMEs are harmonised in a global context and aim to support inward investment into the EU as well as encourage cross-border European sources of finance.

3) What support can be given **to ELTIFs** to encourage their take up?

Attractiveness of ELTIFs for insurance companies will largely depend on how individual funds will be structured and on their ability to fulfil insurers' investments needs, such as duration, illiquidity, expected returns and embedded diversification. In principle, ELTIFs can prove to be interesting when it comes to providing access to a diversified pool of assets, including real estate and infrastructure.

As part of national growth agendas, some member states have over recent years developed national frameworks for investments in similar assets, such as the FPE (*fonds de prêts à l'économie*) in France.

Prudential treatment of these assets will also play an important role in insurers' decision-making. From this perspective it is important that:

- Any specific prudential treatment is given to both ELTIFs and national initiatives.
- Any specific treatment involves a look-through approach as a preferred methodology for deriving capital charges. If this is not the case, the key concept of pooling risks to diversify would no longer be reflected in the prudential treatment and would create disincentives to investing in the pool.

4) Is any action by the EU needed to support the development of private placement markets other than supporting market-led efforts to agree common standards?

Private placements can often be an attractive investment for insurers' portfolios' needs. Insurance Europe is supportive of market-led standardisation and best practices. From this perspective, at a European level, any support for market-led efforts on standardisation would be welcome and would help ease access to private placements by institutional investors.

Insurance Europe believes that standardisation of contractual documentation and funding agreements for private placements will make it easier for investors to assess investment opportunities and will, therefore, increase the investor base and will improve cost efficiency of lending for SMEs and corporates.

If the Commission decides to undertake an initiative for an EU framework on private placements, this should leverage on existing, national initiatives[2] and work in parallel with them.

Debt financing of infrastructure projects in some European countries (Belgium, Italy, Spain, UK and Poland) is subject to withholding tax ("WHT") if the financing instrument is a loan or unlisted private placement, whereas listed Eurobonds are generally exempted from WHT. A new law abolishing WHT for infrastructure debt is going to be introduced by the UK government and a similar approach should be encouraged by the Commission in other Member States.

5) What further measures could help to increase access to funding and channelling of funds to those who need them?

[1] FIBEN database managed by the Banque de France.

[2] Euro PP charter in France, Schuldscheindarlehen in Germany.

The current insolvency and enforcement rules vary significantly across member states and this hinders cross-border investment. Insurance Europe sees merit in further investigating potential obstacles and disincentives deriving from differences in national insolvency and enforcement laws.

Insolvency and enforcement laws determine the legal status of creditors and have an important impact on pricing and risk management of specific investments. Different legal frameworks make it difficult for investors to assess opportunities on a comparable basis across the EU. For example, in the case of residential mortgages, the enforcement periods for foreclosures of mortgages vary from one to ten years in the EU. Harmonisation of enforcement periods would help create a more competitive and standardised market for residential mortgages in the EU.

6) Should measures be taken to promote greater liquidity in corporate bond markets, such as standardisation? If so, which measures are needed and can these be achieved by the market, or is regulatory action required?

Insurance Europe believes that greater liquidity can be achieved in the area of covered bonds, by harmonisation, at EU level, of quality and information standards. This could lead to the creation of a single market for covered bonds across the EU and would help enlarge the investor base as investment analysis would be easier to carry on a cross-border basis.

With respect to covered bonds, any EU initiatives aimed at harmonising quality and information standards should leverage on existing national frameworks that have proven experience and a track record of high investor protection.[3] In particular, existing and well proven standards and financial instruments should not be put at risk.

7) Is any action by the EU needed to facilitate the development of standardised, transparent and accountable ESG (Environment, Social and Governance) investment, including green bonds, other than supporting the development of guidelines by the market?

No, there is no need. Insurance Europe believes that the EU should continue to support the development of Environment, Social and Governance (ESG) guidelines by the market.

Many European insurance companies have already implemented ESG criteria as part of their strategic asset allocation. Initiatives in this area have largely been driven at national level, with often a different understanding and/or focus of ESG elements in investment decision-making.

Compliance and inclusion of ESG criteria as part of corporate governance is a company-specific decision and should not become a binding requirement.

Finally, Insurance Europe notes that the Commission is already obliged to *"prepare non-binding guidelines on methodology for reporting non-financial information, including non-financial key performance indicators, general and sectoral, with a view to facilitating relevant, useful and comparable disclosure of non-financial information by undertakings. In doing so, the Commission shall consult relevant stakeholders"*. This requirement of Article 2 of the Directive 2014/95/EU of 22 October 2014 amending Directive 2013/34/EU, as regards disclosure of non-financial and diversity information by certain large undertakings and groups, has to be fulfilled by 6 December 2016.

Insurance Europe is committed to contribute to the successful outcome of this consultation and sees no need for any further actions at EU level before the outcome is known and evaluated.

8) Is there value in developing a common EU level accounting standard for small and medium-sized companies listed on MTFs? Should such a standard become a feature of SME Growth Markets? If so, under which conditions?

[3] For example, the German "Pfandbrief" framework for covered bonds.

High quality accounting standards for SMEs would help achieve an appropriate level of information and transparency that investors need. However, accounting rules should not be understood as a prerequisite for SMEs to get access to financial markets, but rather as an important tool to enhance transparency and the availability of information on a consistent and comparable basis, which will in turn help SMEs have access to a wider investors base. This will improve investors' access to standardised accounting and reporting information from SMEs, which will ease investment analysis and will foster comparison of SMEs investment opportunities across the EU.

It is important that any European accounting standards for SMEs are harmonised in a global context and aim to support inward investment into the EU as well as encourage cross-border European sources of finance..

9) Are there barriers to the development of appropriately regulated crowdfunding or peer to peer platforms including on a cross border basis? If so, how should they be addressed?

No comments.

10) What policy measures could incentivise institutional investors to raise and invest larger amounts and in a broader range of assets, in particular long-term projects, SMEs and innovative and high growth start-ups?

The prudential treatment of long-term assets, such as infrastructure and SMEs, is an important factor in insurers' investment decision-making and it should be carefully considered as part of the follow-up on the Capital Markets Union green paper. The currently envisaged Solvency II treatment for both infrastructure and SME investments disincentivises investment in these assets. Therefore, it should be reviewed to better reflect the actual risks that insurers are exposed to when investing in such assets.

Detailed comments on infrastructure are part of Insurance Europe's answer to question 12.

Regarding SMEs, Insurance Europe would like to note that the current Solvency II treatment of unlisted SMEs equity investments is identical to the treatment of hedge funds and it creates a capital charge of 49%. This approach does not reflect the non-volatile nature of unlisted SME investments and creates unnecessary capital burden for insurance companies wishing to invest in SMEs. Insurance Europe believes that the capital charge on unlisted SMEs equity should be aligned to the capital charge on strategic participations (ie 22%) and unlisted equities, similar to listed ones, should benefit from the Solvency II transitional clause, which would allow for a phase-in of a standard capital charge over seven years from the beginning of Solvency II.

Similarly, in the case of SME debt, the existing capital charge is the same as for any unrated corporate bond and does not reflect higher recovery rates in the case of SME debt with embedded guarantees.

In addition to the prudential treatment of investments, the overall investment environment plays a crucial role in decision-making. Infrastructure is an area where funding commitments are made over long-term, often 20 to 30 years. Uncertainty regarding the regulatory environment and political risks are key elements that insurers reflect in their investment analysis.

Insurers will buy infrastructure assets to match their long-term liabilities and promises to policyholders. Past experience revealed unfortunate cases where governments retroactively changed taxation or tariff rules on infrastructure, which led to a direct change in the cash flows that were available to investors who had funded the projects.

The uncertainty and political risks of government interference is challenging for the risk/return profile of an investment and can significantly increase insurers' perception of risk for a given project. Political risk is perceived to be high, especially in the case of long-term projects. Addressing political risks through, for example, commitment to a stable regulatory environment is, therefore, key.

Lastly, the insurance industry supports the G20/OECD high-level principles for long-term investment financing, including Principle 1.5: *A favourable business and investment climate and the consistent and effective* *enforcement of the rule of law are essential for long-term investment. Governments should create predictable, stable, transparent, fair and reliable business regulation and supervision and administrative and procurement procedures.*

11) What steps could be taken to reduce the costs to fund managers of setting up and marketing funds across the EU? What barriers are there to funds benefiting from economies of scale?

No comments.

12) Should work on the tailored treatment of infrastructure investments target certain clearly identifiable sub-classes of assets? If so, which of these should the Commission prioritise in future reviews of the prudential rules such as CRDIV/CRR and Solvency II?

Insurance Europe calls for a tailored treatment of long-term infrastructure under Solvency II and therefore welcomes the call for advice from the Commission to EIOPA. Insurance Europe has delivered a detailed response to EIOPA' discussion paper on this topic and is ready to provide EIOPA with further input in the process of drafting its advice.

The Solvency II standard formula currently assumes that insurers act as traders and could be forced at any time to sell any of their assets. However, insurers are able to use long-term investments in infrastructure in order to match their predictable long-term obligations. Such asset-liability management allows them to avoid exposure to changes in market spreads. This has already been acknowledged in the measures introduced by the Omnibus II Directive. These measures partially dampen the effects of spread volatility in the valuation. In the calculation of the capital requirement, it should also be acknowledged that insurers are not exposed to forced sales for their long-term investments, but rather to defaults.

A tailored treatment for long-term infrastructure projects is needed to better reflect the risk profile of infrastructure assets, as well as the real risks that insurers are exposed to when investing in them. A tailored treatment of infrastructure in Solvency II should cover the following elements:

- A high-level, all-encompassing definition of infrastructure.
- Changes to the standard formula as follows:
  - Unlisted infrastructure equities should be captured under a new sub-module in the market risk, with a 22% charge and a correlation of zero with other sub-modules.
  - For infrastructure debt, Insurance Europe recommends a treatment under the counterparty default risk module to better reflect the real risk to which the companies are exposed. If infrastructure debt remains within the spread risk module, spread calibrations would have to be reduced by a significant factor in order to correctly reflect the better recovery rates exhibited by infrastructure compared to other corporate bonds.

Insurance Europe appreciates the challenging circumstances under which EIOPA is conducting its work on infrastructure. There are many areas of the Solvency II framework where EIOPA has had to use expert judgement because of the lack of historical data. For some areas of infrastructure, such as defaults and recoveries, there are studies to draw on. In other areas, such as correlation and equity risk, economic rationale may need to be relied on and supported by modelling/anecdotal evidence where available.

13) Would the introduction of a standardised product, or removing the existing obstacles to cross-border access, strengthen the single market in pension provision?

Insurance Europe recognises the importance of looking at possible ways of encouraging and supporting citizens to save for their retirement and wish to play a constructive role with the European Commission as it considers this. The introduction of a European standardised Personal Pension Product (PPP) might potentially increase the volume of PPPs sold throughout Europe and impact the allocation of funds towards long-term illiquid investments, however the insurance industry believes that such an initiative faces major challenges, with particular regard to the varying national taxation, welfare and labour law structures.

Insurance Europe believes that any work in this field should be led by the purpose of delivering a true pension product, primarily aimed at providing a retirement income. This means a standardised PPP should present features that differentiate it from investment products.

With regard to the introduction of a standardised product (ie 2nd regime), feasibility should again be analysed thoroughly, particularly in light of close links to areas of national competence and of the different features of PPPs sold across Europe. Hence, in order not to jeopardise existing national traditions and markets, a standardised product would need to adapt to the national context, notably in terms of product features (ie presence of long-term guarantees or profit-sharing mechanisms, risk coverage, pay-out options and surrender options). Furthermore, the demand for such a product is likely to depend on the maturity of the different national markets.

In order for a 2nd regime PPP to be potentially beneficial to the EU economy and the retirement prospects of consumers, the following aspects should be considered:

- In the spirit of creating a Capital Markets Union, and so to generate funding for long-term investments, a 2nd regime PPP would need to allow providers to generate long-term liabilities. This means that consumers should be incentivised to keep saving for a long period, ideally until retirement.
- In addition, any standardised PPP should enjoy appropriate prudential treatment under the relevant framework (ie Solvency II), taking account of the long-term nature of the product and the ability of insurers to manage market volatility in the long term. The same prudential standards should apply to all providers in order to guarantee a level playing field.
- A 2nd regime PPP would need to come with the possibility for the consumer to ask for additional biometric risk coverage during the accumulation phase, as it is currently practice in a number of markets for individual pensions. Insurance Europe stresses that such requirements might be mandatory by law in some markets.
- Since pension products are generally defined by their objective to provide an income in retirement, the protection of longevity risk should be considered among the options offered to consumers, in line with national rules.
- From a consumer protection perspective, a 2nd regime PPP should entail an appropriate level of security for policyholders.
- Any standardised product would need to be adapted to the national context, notably in terms of product features (as stated above).

As regards to the removal of existing obstacles to cross-border access (eg tax), Insurance Europe maintains that pension products do have strong local features. Insurance Europe is sceptical as to whether removing obstacles would have a major impact on demand. Insurance Europe remains open to engage with the Commission and EIOPA to explore the potential of this initiative for citizens and the European economy.

14) Would changes to the EuVECA and EuSEF Regulations make it easier for larger EU fund managers to run these types of funds? What other changes if any should be made to increase the number of these types of fund?

No comments.

15) How can the EU further develop private equity and venture capital as an alternative source of finance for the economy? In particular, what measures could boost the scale of venture capital funds and enhance the exit opportunities for venture capital investors?

A recent Insurance Europe's survey - covering 14 of the largest European insurance companies[4] - revealed a total exposure on private equity and venture capital of more than 22bn of investment. The main barriers to investing in private equity and venture capital that were identified include the Solvency II capital charges and lack of suitable assets to pass stringent selection processes. Insurance Europe welcomes some work on these

[4] Managing 3.8tn assets, which represents around 45% of total European assets under management by insurance companies.

areas at EU level. With regards to Solvency II, the current capital charge applied to private equity and venture capital is 49%, and is not reflective of the long-term nature of insurers' investments in these assets.

16) Are there impediments to increasing both bank and non-bank direct lending safely to companies that need finance?

No comments.

17) How can cross border retail participation in UCITS be increased?

No comments.

18) How can the ESAs further contribute to ensuring consumer and investor protection?

Insurance Europe is supportive of efforts to safeguard consumer and investor protection. Under Article 9 of Regulation 1094/2010 (the 'EIOPA regulation'), the European Insurance and Occupational Pensions Authority (EIOPA) is vested with powers and tasks in relation to consumer protection and financial activities. Insurance Europe considers that the EIOPA regulation already contains sufficient measures for protecting consumers under Article 9.

Where EIOPA has sought to pursue its consumer protection mandate by collecting, analysing and reporting on consumer trends, as in its most recent 2013 Consumer Trends report, the outcome has been disappointing. In Insurance Europe's view, both the report and the related press release give an unfair and misleading image of the insurance industry. The report focuses unduly on consumer detriment aspects, without making references to positive developments. Moreover, the findings are not put into perspective. Insurance Europe has expressed its concerns to EIOPA. In the immediate term, such exercises can damage consumer confidence. Long term, there is a danger that poor analysis and reporting will lead to poor initiatives from EIOPA, which are neither accurately targeted nor effective in achieving the desired outcome of protecting consumers.

Secondly, Insurance Europe agrees with the European Parliament's (EP) Committee on Economic and Monetary Affairs' recent Opinion (2014/2121(DEC), dated 26 February 2015) (the 'ECON Opinion') that EIOPA must stick to its mandate given its limited resources, and that EIOPA must not seek to de facto broaden its mandate beyond those already contained in the EIOPA regulation (point 6). The powers given to EIOPA to issue guidelines and recommendations and its use of the 'comply or explain' mechanism under Article 16 are subject to legal boundaries. Insurance Europe would welcome more clarity, as these are important checks and balances to ensure European Supervisory Authorities (ESAs) accountability.

Clarity would also ensure that the ESAs adhere to their mandate: their role of coordination with National Competent Authorities (NCAs) rather than becoming de facto "second supervisors", and ensuring the consistent interpretation of regulations and promoting convergence in national supervisory practices. This focus will have a positive impact for consumers by ensuring that legislation protecting their interests is properly implemented in each member state, and by minimising costs brought about by unnecessary duplication and layering of supervisory requests; costs that are, ultimately, borne by consumers.

Warning and interventions by the ESAs must be used with great care, as they have strong signalling effects and could have serious and detrimental effects on consumer confidence in a specific market or a specific provider. So far, there has been limited use of this tool. Insurance Europe believes that this is correct, as it should only be used in exceptional circumstances.

Thirdly, Insurance Europe agrees with the ECON Opinion highlighting that EIOPA should check the necessity of drafting guidelines and recommendations (point 6). Insurance Europe would welcome clarification on the use and status of guidelines. Guidelines must not amount to quasi-legislation. There has been a tendency for ESAs' guidelines to take the form of detailed, prescriptive rules, which could be taken to constitute a third-level rule-book. Some guidelines have constrained and, in some instances, even contradicted the principle-based regulations that form the basis for their development.

Insurance Europe agrees with the Commission's conclusion in its August 2014 report that the powers vested in EIOPA to issue guidelines and recommendations set out in Article 16(1) must be read cumulatively. According to article 16 EIOPA may issue guidelines "with a view to establishing consistent, efficient and effective supervisory practices within the European System of Financial Supervisors (ESFS) and to ensuring the common, uniform and consistent application of Union law". Therefore, any guidelines or recommendations developed by EIOPA should be justified accordingly; appropriate oversight by the European institutions to corroborate that the legal bar for developing guidelines and recommendations has been met must be ensured.

Fourthly, Insurance Europe supports the current structure of the ESFS as it safeguards the quality of supervision. The responsibilities of NCAs and EIOPA are, rightly, divisible and distinguishable: EIOPA is responsible for the coordination of supervision and best practice to ensure the consistent application of legally binding Union acts, while the NCAs are responsible for the direct supervision of national undertakings.

This division of responsibility aids consumer protection, so long as there is legal certainty. This is because NCAs understand their local markets best; they are closer to the companies in practical terms, and understand better the needs and expectations of the consumers within their national markets. Maintaining the current structure and mandate is the only way to ensure that the specifics of each sector (insurance, banking, financial markets) are properly considered and the implications of any actions by the ESAs are correctly assessed. This, ultimately benefits the consumers.

When looking at possible means of increasing cross-border availability and offering of financial services products, consideration must be given to factors at a local level which impact product design, pricing, benefits, and availability – product aspects that must remain at the discretion of providers. These influencing factors include the local legal liability regimes, local tax environment and incentives, local customs and customer expectations and needs, and contract and other laws. The impact of these local factors must not be underestimated or it could have detrimental effects on consumers in many member states.

19) What policy measures could increase retail investment? What else could be done to empower and protect EU citizens accessing capital markets?

Insurance Europe supports the Commission's objectives to increase retail investment, as well as to empower and protect EU citizens accessing capital markets. In order to achieve this, consumers must (1) have a variety of choice which fits their demands and expectations; and (2) be in a position to make an informed decision. In this context, Insurance Europe would like to address several important points.

Firstly, a diversity of products with different characteristics offered in retail financial markets across the EU meets different consumer needs and this wide choice of products presents consumers with an opportunity to select the product which suits them best. Although it is important to ensure a level-playing field, aligning the regulatory frameworks on the assumption that investment products are substitutes could interfere with the capacity of the market to develop innovative and diverse consumer-oriented solutions. The EU-level framework regulating conduct of business for investment products must take into account differences in the nature of products, together with a fundamental consideration of consumer needs. For instance, it is of the utmost importance to ensure that the features of insurance-based investment products are appropriately taken into account in the context of the on-going discussions led by the ESAs on the Key Information Document (KID) for Packaged Retail and Insurance-based Investment Products (PRIIPs). For instance, insurance products used for investment often also provide coverage against certain risks.

Insurance Europe would also like to point out that to empower and protect citizens accessing capital markets, the level of information provided to retail investors, its contents and the regularity of its provision, should respond to retail investors' needs. Insurance Europe welcomes greater transparency for consumers when it enables them to compare products and, hence, put them in a position where they can make informed decisions. Frequent changes in the regulatory framework and information overload have the effect of limiting consumer consumers' ability to make appropriate decisions when comparing and purchasing products. The provision of high-quality rather than high-quantity information is the basic principle of consumer protection. For example, Solvency II and the PRIIPs Regulation require equivalent information to be disclosed on areas such as (but not limited to) the insurer's identity, the duration of the contract and the existence of complaints procedures. Another example illustrating such duplication of equivalent requirements under different pieces of legislation is related to the disclosure of costs of the product under the Markets in Financial Instruments Directive (MiFID) and the revision of the Insurance Mediation Directive (IMD 2), as well as the PRIIPs Regulation. Excessively burdensome and prescriptive rules on product disclosure must be avoided. Insurance Europe therefore calls on the Commission to consider consumers' needs and assess the cumulative impact of duplicative requirements as well as take steps to remove them where they exist.

Insurance Europe agrees with the Commission that financial education has a vital role to play in ensuring that European citizens are equipped with the knowledge they need when making important decisions for themselves and their families. Financial education enables individuals to improve their understanding of financial products and concepts and to develop the skills necessary to improve their financial literacy. The European insurance industry is committed to playing an ongoing role in the development of financial education and actively promotes financial literacy through a range of awareness-raising initiatives across Europe. In 2011, Insurance Europe published a "Financial education and awareness - European insurance industry initiatives" booklet on the efforts undertaken by industry to promote financial education across Europe. Although education remains under national competence, Insurance Europe would call on the Commission to come forward with a recommendation to encourage the adoption of national strategies for financial education and their inclusion in school curricula. Insurance Europe would also welcome the promotion by the Commission of a European Day of Financial Education that would allow policymakers, consumers, the financial sector, education providers, social partners and the media to come together to share best practices and discuss future approaches to financial education and literacy at national and European level. Such practices would benefit retail investors by both empowering and protecting them when accessing capital markets.

Lastly, Insurance Europe agrees with the Commission that enhancing competition in retail financial services could bring greater choice, lower prices and better services for consumers. As far as insurance products are concerned, Insurance Europe is calling for the full renewal of Insurance Block Exemption Regulation (IBER) in 2017, notably on the basis the current IBER also leads to the opening of markets, in particular to foreign, as well as to small and medium-sized insurers, by enabling them to access sufficient information and gain the necessary experience to cover risks. This enhances the variety of products and coverage available to consumers at lower prices. In fact, the cooperation facilitated by the IBER enables insurers to offer innovative products and services meeting consumers' constantly evolving needs and expectations also due to the fast emergence of new risks.

20) Are there national best practices in the development of simple and transparent investment products for consumers which can be shared?

As already mentioned in question 19, Insurance Europe is of the opinion that a diversity of products with different characteristics offered in retail financial markets across the European Union is the only way to meet different consumer needs. This wide choice of products presents consumers with an opportunity to select the product which suits them best. In particular, most insurance products that provide investment opportunities also include protection against biometric risks, such as death, longevity or disability. Insurance Europe has noted, in the context of other projects at a European level to increase cross-border availability and offering of financial services products, that several factors at local level impact product design, pricing, benefits and availability – aspects that must remain at the discretion of providers. These influencing factors include the local legal liability regimes, local tax environment and incentives, local customs, customer expectations and needs, and contract laws. The European regulatory framework should respect the different design of products in different member states and avoid stifling growth by hindering innovation and innovative practices. Otherwise, there is a risk that such a narrowing of product choice would be to the detriment of consumers who will no longer find products that meet their needs. Investment products developed in a particular market and which could be considered simple and transparent by EU policymakers, are not necessarily directly transferable from one market to another. All products are designed with specific features and contexts in mind which differ significantly between EU countries – as do companies in their size and the variety of markets in which they operate.

Insurance Europe would also like to highlight that the PRIIPs Regulation, which applies to all products regardless of their form or construction, already aims at establishing uniform rules on transparency at EU level to enhance retail investors' protection. Considering that the PRIIPs Regulation will apply from 31 December 2016, Insurance Europe considers that it would be premature to assess the need for enhancing further the transparency of investment products.

21) Are there additional actions in the field of financial services regulation that could be taken ensure that the EU is internationally competitive and an attractive place in which to invest?

Actions to improve the single market will also be beneficial for non-EU investors for which a larger selection of investment opportunities would be available across EU member states. Standardisation of disclosure and reporting requirements, for example infrastructure, covered bonds, private placements at EU level, as well as access to SMEs information would not only ease investment decision-making for EU investors, but also for non-EU investors who would be interested in diversifying portfolios composition and exposure across EU member states.

22) What measures can be taken to facilitate the access of EU firms to investors and capital markets in third countries?

No comments.

23) Are there mechanisms to improve the functioning and efficiency of markets not covered in this paper, particularly in the areas of equity and bond market functioning and liquidity?

Availability of appropriate investment assets is key to insurers to perform their role as Europe's largest institutional investors. Insurers invest to match liabilities, so assets need to have duration and risk/return profiles that match such liabilities. Insurers face significant challenges when the availability of assets is scarce or when investment yields are no longer reflective of actual risks embedded in the assets. Such challenges emerge in a number of market conditions (eg periods of market stress and downturns), but also as a consequence of monetary policy interventions when significant resources are deployed by monetary authorities to acquire assets available on the market. Such actions reduce availability of assets for insurers to invest in and also impact pricing as a result of significant demand.

24) In your view, are there areas where the single rulebook remains insufficiently developed?

No comments.

25) Do you think that the powers of the ESAs to ensure consistent supervision are sufficient? What additional measures relating to EU level supervision would materially contribute to developing a capital markets union?

Insurance Europe recognises that the ESAs play a key role in promoting convergence and believes the ESAs Regulations already give extensive powers that they are still getting accustomed to use. Hence, more powers should not be given to the ESAs, as their current powers are sufficient in promoting and ensuring consistent application of Union Law. Additionally, prudential and conduct of business legislative frameworks are already harmonising market approaches – and in some areas to the largest extent possible. For EIOPA, it will be a good test to oversee consistent implementation of Solvency II, IMD II, and PRIIPS across all EU member states. Insurance Europe believes that the powers to do this are already in place.

The ESAs have been given a clear mandate to ensure an efficient and stable supervisory regime that fosters good governance and sound management of the financial sector. However, note should be taken when developing the Capital Markets Union, that powers conferred on the ESAs should be accompanied with proper oversight by the EU institutions. The purpose of the European System of Financial Supervision (ESFS) is to be an integrated network of national and Union supervisory authorities, leaving day-to-day supervision to the national level (recital 8 of the EIOPA Regulation). If an increase in power of the ESAs is foreseen, this should go hand in hand with increased oversight to ensure that a healthy and well-functioning supervisory and regulatory framework is safeguarded.

One example of current oversight is the discharge of the ESAs' budgets by the Committee of budgetary control of the European Parliament (EP). In the EP Committee on Economic and Monetary Affairs' recent Opinion (2014/2121(DEC), published 26 February 2015) (the 'ECON Opinion'), the EP explicitly reminded EIOPA that it must stick to the tasks assigned to it by the Union co-legislators without seeking to de facto broaden their mandate.

Insurance Europe supports and favours the current structure of the ESFS. The current sectorial approach with three separate supervisory authorities and a macro-prudential authority the European Systemic Risk Board (ESRB) ensures that the diversity of the financial markets and the technical knowledge and expertise of each financial sector is appropriately considered and taken into account. Maintaining three separate authorities is the only way to ensure that the specifics of each sector are properly considered and accurately assessed. This seperation will also ensure that insurance expertise is brought to the discussions by EIOPA, being the expert on the long-term nature of insurance. This is especially important as EIOPA is currently looking at infrastructure investments as an area for the insurance industry to invest in long-term. While the outcome of these discussions is currently unknown, it is valuable to the CMU project that EIOPA uses its Solvency II and insurance expertise to good effect.

The ESAs are also increasingly involved in supervisory tasks which go beyond their mandate of coordinating. Consequently, the powers conferred on the ESAs must be grounded in legal texts. In pursuit of EIOPA's mandate promoting convergence, EIOPA should not become a quasi-legislator by issuing guidelines and recommendations without boundaries. This risks limiting the flexibility necessary for the financial markets to function appropriately. Further, a clear justification is needed when the ESAs draft guidelines and recommendations. In the context of the new Commission's objectives on "better regulation" Insurance Europe would welcome an analysis not only of primary and "classical" legislation but also of other outputs from the ESAs, including guidelines and opinions, as the ESAs seem empowered with quasi-legislative competences. The effect of these quasi-legislative instruments should also be addressed in the "better regulation" assessment. As an example, following the Solvency II Directive, the Insurance Authority, EIOPA, has issued 34 consultation papers consisting of more than 1 100 pages with 707 individual guidelines. Out of these 34 consultation papers on guidelines only three were foreseen in the Solvency II Directive.

Guidelines should be strictly limited to ensure a common, uniform and consistent application of Union law as set out in Article 16(1) of the ESAs founding Regulations. Insurance Europe agrees with the Commission's view that the objectives should be read cumulatively (as set out on page 4 in their report on the operation of the ESAs and the ESFS - August 2014 report).

26) Taking into account past experience, are there targeted changes to securities ownership rules that could contribute to more integrated capital markets within the EU?
No comments.

27) What measures could be taken to improve the cross-border flow of collateral? Should work be undertaken to improve the legal enforceability of collateral and close-out netting arrangements cross-border?
The legal status of creditors varies significantly from country to country. For investors, the legal enforceability of collateral is a key aspect when analysing a potential investment. The disparities of enforcement law create serious obstacles regarding credit risk assessments, pricing and risk management for investors that want to invest across borders. To give an example, the different enforcement periods for foreclosures of mortgages (varying from one to ten years) are preventing a better competition in the field of residential mortgages in the European Union. In order to improve this situation, Member States could agree on common standards for investor protection that have to be followed to ensure enforceability with legal certainty and in a reasonable time.

28) What are the main obstacles to integrated capital markets arising from company law, including corporate governance? Are there targeted measures which could contribute to overcoming them?
Insurance Europe believes that no EU actions are needed in the area of company law. Recent Commission initiatives of harmonising elements of company law and governance, through the review of the Shareholder's

Rights Directive, gave rise to a number of concerns from the insurance industry[5], including concerns around potentially significant burdensome reporting requirements.

Countries that already have these protections for shareholders, such as the UK, are supportive of the Commission's proposals. In particular, the consistent rights and disclosures given to European Shareholders who invest cross-border within the EU should help to increase the attractiveness of and confidence in European stock markets. However, other jurisdictions such as those with a two-tier system are concerned because, as currently drafted, the provisions appear to ignore existing arrangements in countries with a two-tier law system, such as Germany, Austria and France. The role of the supervisory body, which is mandatory in these countries according to national company law and whose tasks are defined by law, risks being minimised by the European provisions. For example, in such countries, it's the supervisory board that takes decisions regarding the remuneration policy, and not the shareholders. In addition, the requirements on related party transactions must not undermine the role of managing bodies in Member States where a two tier system exists. Therefore, the final provisions need to allow for an appropriate interaction between the EU directive and local company law in all member states.

29) What specific aspects of insolvency laws would need to be harmonised in order to support the emergence of a pan-European capital market?

The harmonisation of dispute resolution practice for infrastructure investments across the EU would help decrease investors' perception of risk and uncertainty and would also help foster cross-border investment.

30) What barriers are there around taxation that should be looked at as a matter of priority to contribute to more integrated capital markets within the EU and a more robust funding structure at company level and through which instruments?

The Financial Transaction Tax (FTT) increases costs for users of financial markets, be they governments, pension funds, insurers or other corporates. This will inevitably have a negative impact on end-users of financial markets: consumers of financial products, such as insurance policyholders or pensions beneficiaries. In addition, the introduction of an FTT in the EU could have a series of unintended consequences (eg reduced market liquidity of EU shares, increased cost of capital and relocation of trading activities), with all the resulting unfavourable outcomes in terms of economic growth.

Moreover, Insurance Europe believes that the introduction of an FTT in a limited number of EU countries (as it is currently envisaged) would disrupt rather than strengthen the EU single market, as it would increase the differences between FTT markets and non-FTT markets. The entry into force of the FTT would therefore lead to a competitive disadvantage for companies from jurisdictions subject to the FTT. Consequently, the FTT would constitute, in Insurance Europe's view, a significant obstacle to achieving integrated capital markets in the EU.

Insurance Europe understands that one of the aims of the consultation is to identify barriers to longer term capital commitments (ie long-term investments). Imposing an FTT on primary market transactions with a longer term commitment would represent such a barrier.

VAT

The fundamental tax barrier to a capital market union is inconsistent application of the principal VAT Directive within the Member States in matters such as the scope of exemptions, place of supply and reporting of sales, so that taxpayers operating in multiple member states are unable to apply VAT rules consistently across borders within the EU.

An example of this is Article 11 of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax provides EU member States with an option to introduce VAT grouping schemes into their national legislation. This device allows tax authorities to consider all members of a group - under certain

[5] Insurance Europe position paper on the review of the Shareholder's rights directive can be found here: http://www.insuranceeurope.eu/uploads/Modules/Publications/comments-to-ec-proposal-to-revise-the-shareholders-rights-directive.pdf

conditions - as a single taxable person for VAT purposes. Consequently, intra-group transactions are "neutralised" as the rights of deduction are determined at group level. However, only a few member states are currently making use of this option (and they do so in different ways).

The VAT grouping scheme is a very useful tool for cost sharing in sectors which are exempted from VAT and where group members do not fully recover VAT. Hence, this option is important for the financial sector which is largely exempt from VAT on financial activities. In order to avoid any distortion between financial operators located in different member states, Insurance Europe recommends that the VAT directive be amended in order to make the introduction of such a VAT grouping scheme mandatory in every member state’s legislation, to introduce the possibility of cross-border VAT groups and to make the cost sharing exemption (Article 132.1(f) of the EU VAT Directive) more workable to facilitate cross-border trade in a single market.

Withholding taxes

Insurance Europe encourages the Commission to continue its work on simplifying withholding tax relief procedures. Any withholding tax charged in an EU member state must always be eligible for a tax credit in the EU member state of residence of the income beneficiary.

As stated in question 4, debt financing of infrastructure projects in some countries is subject to withholding tax (“WHT”) when the financing instrument is a loan or unlisted private placement, whereas listed Eurobonds are generally exempted from WHT. Therefore, Insurance Europe believes that infrastructure debt should not be subject to WHT.

31) How can the EU best support the development by the market of new technologies and business models, to the benefit of integrated and efficient capital markets?

The EU has a role to play in supporting the development by the market of new technologies and business models, to the benefit of integrated and efficient capital markets, by ensuring that new regulatory initiatives do not prevent unintentionally the markets to promote innovation and seize the opportunities offered by the digital economy.

For instance, an important role that the EU can play in supporting the development and adoption of new technologies concerns the provision of information. Currently, Article 20 of the revised Insurance Mediation Directive (IMD 2) text sets out that all of the information to be provided to consumers must be provided on paper – it is only by way of derogation or exception from this rule that information may be provided in another medium, such as on a website or other digital format. Not only does this fail to adequately capture the growing digital trend and the move towards a paperless electronic environment, it is also not reflective of a consumer-friendly approach, as it fails to appreciate the position in which consumers find themselves.

The logical approach would be to allow consumers to decide for themselves in which format they wish to receive the information, particularly when considering the volume of paper that would need to be provided. This is notably the approach taken by the Distance Marketing Directive (Article 5(1)) which introduces the option to provide contractual terms, conditions and the rest of the pre-contractual information on paper or on another durable medium available and accessible to the consumer.

The introduction of a mandatory default paper requirement within IMD 2 is something that is likely to prevent the further development of the internet as a distribution channel, at a time when the benefits of a digital society are a key focus for the EU.

32) Are there other issues, not identified in this Green Paper, which in your view require action to achieve a Capital Markets Union? If so, what are they and what form could such action take?

Already covered in Question 1.

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