insurance europe

To: Gabriel Bernardino,
Chairman of EIOPA
Westhafen Tower
Westhafenplatz 1
60327 Frankfurt am Main
Germany

Our reference: ECO-SLV-14-396

Subject: Insurance Europe comments on EIOPA Guidelines (Set 1)

Brussels, 29 August 2014

Dear Gabriel,

Insurance Europe welcomes the opportunity to provide comments on the first set of Guidelines for the implementation of the Solvency II Directive and remains committed to continuing a constructive dialogue with EIOPA as final preparations are made for Solvency II. We have submitted detailed feedback on many of the individual paragraphs of the Guidelines as set out in the template provided by EIOPA but would like to highlight some important general comments.

The industry recognises the important role that guidelines will play in helping to ensure Solvency II meets the harmonisation objectives set by the Directive. We therefore understand and appreciate that EIOPA has proposed guidelines under their own initiative in addition to the very limited number required by the Level 1 text. The majority of the proposed combined text -draft guidelines and supporting explanatory text– has the potential to provide valuable information for companies and supervisors; however, as we highlight in our comments, the number of actual guidelines at launch of Solvency II should be significantly reduced.

Reviewing and commenting on this very extensive consultation of over 700 pages including 521 guidelines has been a challenge for the industry but most likely for all other stakeholders too, especially as it has taken place during the holiday period. To properly assess and provide feedback, the draft guidelines need to be analysed in conjunction with the consolidated Solvency II/Omnibus II text of over 130 pages and draft Delegated Acts of over 400 pages and the latter are not final or even formally available.

Yet avoiding inappropriate guidelines is very important as each guideline creates a cost for supervisors, the industry and for policyholders and adds to an already very challenging implementation time-table. Costs are generated by the need for translation, for supervisors to carry out the comply or explain mechanism, for every company to integrate the guidelines into their policies and practices and subsequently for the ongoing monitoring carried out both by companies and supervisors to assess and ensure compliance. In addition, overly extensive and prescriptive guidelines will tend to go further than the Level 1 and 2 texts intended, creating additional and unintended constraints which ultimately impact policyholders adversely.

As a general principle, therefore, we believe that the guidelines required at the launch of Solvency II should be limited to material which is essential to ensure appropriate levels of harmonisation across Europe. As the European Commission highlighted in their recent report, ESAs "*need to take into consideration the two objectives for issuing guidelines and recommendations set out in Article 16 of the ESAs Regulations, which should be read* ***cumulatively*** *to establish "consistent, efficient and effective supervisory practices"* **and** to ensure the "*common, uniform and consistent application of Union law*".[1] We suggest that guidelines removed from the draft could be considered for

[1] Commission report on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS). Please note that the bold formatting is ours in order to highlight some parts of the quotes.

inclusion in the explanatory text. It is also important that in drafting the guidelines, it is recognised that harmonisation does not mean all companies must do everything using an identical method but that the range of appropriate methods allowed should be consistent. There are many instances where the current guidelines, in seeking to provide greater clarity, go beyond the legal text by providing overly narrow definitions. While such text is not appropriate as a guideline, it may provide useful examples of good practice and be moved to the explanatory text. Our analysis indicates roughly 60% of the current draft should remain as guidelines, about 30% should be removed, possibly to explanatory text, and about 10% should be deleted because it duplicates the legal texts or is inconsistent with them.

We believe that it should be made clear for each guideline which Level 1 or Level 2 article(s) it applies to. -This would also help to clarify if the guideline is indeed required-. It is currently often not clear which specific point a draft guideline is aiming to harmonise.

We recommend that EIOPA convenes stakeholder workshops in order to achieve consensus on the guidelines needed at launch of Solvency II and on appropriate improvements to the wording of these guidelines as well as on the most important parts to be kept as explanatory text. EIOPA recently held a workshop on Internal Models and we believe this was found by all parties to be a very useful and efficient way of dealing with a great deal of feedback and ensuring high quality outcomes.

Our detailed feedback on the guidelines include the following key concerns:

- Some guidelines are not needed but may provide useful examples of good practice and can be moved to explanatory text;
- Other guidelines should be deleted because they duplicate existing legal text or are inconsistent with it;
- Some guidelines are unnecessarily burdensome to implement;
- Draft wording can be improved to clarify intended meaning. In particular Group Solvency and the guidelines related to groups specificities in the other sections are often quite confusing and need some improvement;
- Draft wording should be improved to avoid unnecessary implementation and operational costs and difficulties;
- Timescales are not realistic or do not provide enough certainty to undertakings regarding supervisory approval processes;
- Additional restrictions over Level 1 and Level 2 texts create unnecessary constraints on how insurers can finance themselves with admissible own fund capital.

Finally, we welcome EIOPA's commitment to review the guidelines in light of experience. The impact of guidelines will only become clear following implementation which is another reason to keep the guidelines at launch of Solvency II to a minimum. We recognise that as well as improvements to existing guidelines, this may result in additional guidelines being identified as necessary.

Insurance Europe remains at your disposal to discuss any of our feedback.

Yours sincerely,

Olav Jones
Director, Economics & Finance / Deputy Director General