

Response to European Commission's consultation on the operations of the European Supervisory Authorities

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Related documents:	Annex 1: Summary of key positions Annex 2: Table showing our understanding of EIOPAs current empowerments Annex 3: Legal advice dated 7 April 2015 Annex 4: The significant differences between insurance and banking undertakings		
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A. Optimising existing tasks and powers

1. Supervisory convergence

1. In general, how do you assess the work carried out by the ESAs so far in promoting a common supervisory culture and fostering supervisory convergence, and how could any weaknesses be addressed? Please elaborate on your response and provide examples.

These responses mainly focus on the work of EIOPA, which is where Insurance Europe has the most experience and expertise to offer this review.

In Annex 1 there is an executive summary of Insurance Europe's key messages.

Since its creation, EIOPA has made a positive contribution to promoting a common insurance supervisory culture and fostering supervisory convergence. However, it should be noted that we are at a relatively early stage in terms of the development of a Europe-wide regulatory framework. The Solvency II Directive has been in force for less than a year and a half. The PRIIPS Regulation and Insurance Distribution Directive, for example, which will form major parts of the regulatory landscape on which supervisory convergence will be built, are not yet implemented.

While it is therefore too early to consider mergers or changes of powers for EIOPA, governance is an area in which issues have become apparent. Improvements made now will ensure both that there are the necessary controls and oversight to ensure EIOPA remains within its mandate and that EIOPA has the necessary independence to apply its powers in achieving convergence.

On structure

The stability of the supervisory and legislative framework is crucial to its success. The ESAs were only established in 2011, so have been operating for just a short period of time. To maintain stability and to build up a longer period of operation for review, it is clear that **the current supervisory architecture of the three ESAs should not be changed**. Solvency II, for instance, was only implemented in 2016, providing an extremely limited period to review EIOPA's supervision of this new regulatory framework for insurers. Current efforts should therefore be directed towards refinements and ensuring that the ESAs operate in the best way possible under the existing framework.

The ESAs should retain their existing powers, make full use of them and work on ensuring that they are able to use them effectively. A key point here is to recognise the differences between the supervised sectors and the need for each of the ESAs to tailor their work to the industry they supervise. The **measures** taken after the review may — and in many cases **should** — **vary for the three ESAs**. As will be shown in further comments, differential treatment and frameworks for the ESAs are needed, in particular in the areas of governance and powers.

On governance

To be effective, **EIOPA should remain a stand-alone insurance supervisor at EU level**. However, to be successful in this role, **EIOPA's current governance structure must be improved to strengthen accountability**. A strong and properly functioning governance regime could then solve practical barriers that may have deterred EIOPA from using some of its existing powers, while ensuring that EIOPA does not extend beyond its mandate.

On EIOPA's current empowerments

In general, EIOPA's powers should not be increased at this stage, but assessed and optimised. Focus should be on ensuring that existing supervisory powers (such as Art. 17 on breach of Union law) are used properly and fully. Technical obstacles to using existing powers — if there are any — need to be identified and addressed. A detailed list of EIOPA's current empowerments that Insurance Europe has prepared and used to inform its input into this consultation can be found in Annex 2.

Insurance Europe would furthermore suggest that more time and experience is needed to evaluate whether EIOPA's tools are sufficient. Before granting any additional powers to EIOPA — or to the ESAs in general — the full potential of the current tools should be realised and then evaluated. This can only happen once the new supervisory philosophy under Solvency II has been fully implemented by EIOPA and the NCAs.

On supervisory culture and convergence

The broad mandate on supervisory convergence represents a challenging task and in order to ensure the ongoing success of EIOPA's work, improvements are needed in certain areas.

- In the field of **Freedom of Services**, Insurance Europe welcomes initiatives launched by EIOPA in recent months (please refer to Q4 for more detail). These initiatives and the full use of its powers could allow EIOPA to mediate in situations requiring swift action.
- The recently published [Decision on the collaboration of the insurance supervisory authorities](#) and [annex](#), which replace the former "General Protocol relating to the collaboration of the insurance supervisory authorities of the Member States of the European Union of 2008" (**Siena Protocol**), have the potential to promote a common supervisory culture and facilitate exchange of information between supervisory authorities.
- The **Supervisory Handbook** is a tool to promote supervisory convergence. A way to further promote convergence would be to make the content of the Handbook known to the supervised undertakings.

2. With respect to each of the following tools and powers at the disposal of the ESAs:

- peer reviews (Article 30 of the ESA Regulations);
- binding mediation and more broadly the settlement of disagreements between competent authorities in cross-border situations or cross-sectorial situations (Articles 19 and 20 of the ESA Regulations)
- supervisory colleges (Article 21 of the ESA Regulations);

Please elaborate on questions (a) and (b) and, importantly, explain how any weaknesses could be addressed.

To what extent:

- a) have these tools and powers been effective for the ESAs to foster supervisory convergence and supervisory cooperation across borders and achieve the objective of having a level playing field in the area of supervision;
- b) to what extent has a potential lack of an EU interest orientation in the decision-making process in the Boards of Supervisors impacted on the ESAs use of these tools and powers?

Please elaborate on questions (a) and (b) and, importantly, explain how any weaknesses could be addressed.

Insurance Europe supports these existing powers, which – if fully used – can address a range of actual and potential issues and contribute significantly towards supervisory convergence. However, Insurance Europe does not believe that EIOPA has used all its powers effectively to date. Further powers are not justified at this stage, however further investigation should be carried out to identify and assess potential barriers to EIOPA being able to apply its powers in practice.

Peer reviews

- Insurance Europe considers peer reviews to be an important tool for EIOPA to ensure a harmonised application of regulatory standards and appreciates that a link is made to EIOPA's power to establish best practices as a direct outcome of these reviews. Insurance Europe recognises that these peer reviews involve significant resources on both sides; EIOPA as well as the NCAs. Therefore, in order to make this tool practicable, it is crucial that enough resources are allocated on both sides to this activity.
- However, wherever EIOPA establishes new best practices that result in new requirements not just for NCAs but also for (re)insurance companies, they should carry out adequate consultation procedures with relevant stakeholders before the practices are finalised.

Mediation and settlement

EIOPA has significant existing powers for mediation and settlement, for example in the process of validating internal models by national NCAs and in the field of Freedom of Services. Insurance Europe believes that these tools can and should be used more than they have so far. However, further investigation should be carried out to identify and assess potential barriers to EIOPA being able to apply its powers in practice.

Supervisory colleges

In line with the general comments made in Q1, Insurance Europe would like to stress that EIOPA has significant existing powers relating to supervisory colleges. The powers granted, if used fully, allow EIOPA to ensure consistent supervision of groups, for example via its participation in on-site examinations, full access to all relevant information, promotion of supervisory activities, etc. The current set of tools even includes a right of veto when EIOPA believes decisions in the college may result in incorrect application of Union law, and a legally binding mediation role when disputes between NCAs arise. Insurance Europe would therefore suggest that, with the limited period available for review, no extension of EIOPA's role in the supervision of groups in colleges is necessary for the time being. The existing powers enable EIOPA to sufficiently ensure supervisory convergence in the colleges. More experience is needed for a full assessment.

3. To what extent should other tools be available to the ESAs to assess independently supervisory practices with the aim to ensure consistent application of EU law as well as ensuring converging supervisory practices? Please elaborate on your response and provide examples.

As mentioned before, EIOPA has significant tools and powers and, where applied properly, these have proved effective. No further tools are needed at this stage and the question should be put again in the next ESAs review, provided that full use of the existing powers can be evidenced then.

4. How do you assess the involvement of the ESAs in cross-border cases? To what extent are the current tools sufficient to deal with these cases? Please elaborate on your response and provide examples.

Insurance Europe appreciates EIOPA's recently increased focus on cross-border cases, with the Decision of the BoS on the collaboration of the insurance supervisory authorities as one important example. However, more and increased efforts are required to successfully resolve freedom of services issues that arise on an ongoing basis. EIOPA has a broad range of tools to deal with such cases which should be fully used.

The abovementioned BoS decision, which should be implemented swiftly, notably includes:

- The exchange of information at the authorisation stage when an applicant intends to operate exclusively (or almost exclusively) on a FOS basis.
- The information to be exchanged between home and host supervisors when an insurer starts operating on a FOS basis.
- The supervision of these operations on a continuous basis and the exchange of quantitative data between supervisors.

2. Non-binding measures: guidelines and recommendations

5. To what extent are the ESAs tasks and powers in relation to guidelines and recommendations sufficiently well formulated to ensure their proper application? If there are weaknesses, how could those be addressed? Please elaborate and provide examples.

Insurance Europe welcomes the ESAs' ability to issue guidelines when necessary. The current powers in this respect are sufficient. However, steps are needed to avoid excessive use of guidelines and to avoid guidelines pre-empting political outcomes. For example, EIOPA produced over 700 guidelines, despite only 34 being mentioned in the Solvency II Directive. The remainder were developed on EIOPA's own initiative. On some occasions, EIOPA has also developed guidelines in advance of legal texts being finalised.

Although in theory guidelines are only quasi-binding, NCAs have to do their utmost to comply and in practice supervisors rarely choose not to. If not rejected, compliance with guidelines becomes mandatory. In some members states they are made part of the national legal regime and therefore become fully binding. Guidelines create significant costs 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 by both companies and supervisors to ensure compliance.

The ESAs are permitted to issue guidelines with a view to achieving consistency in the application of EU law, provided that the EU laws are sufficiently specific and detailed so that they leave no margin for policy choice and do not entail the need for the adoption of further regulatory measures (see para. 114-115 of the Legal Advice of April 2015, attached in Annex 3). In order to achieve supervisory convergence, EIOPA needs to take care to word guidelines in a way that limits the scope for NCAs to set local requirements beyond the guidelines.

The points set out above have implications for EIOPA's approach to own-initiative guidelines. In 2014-15, in respect of product oversight and governance (POG) in the Insurance Distribution Directive (IDD), a second consultation was launched by EIOPA despite it pre-empting the outcome of the EC's empowerment to adopt delegated acts pursuant to the agreed IDD text. EIOPA then adopted the POG guidelines under the label 'preparatory'; a term nowhere to be found in the EIOPA Regulation. EIOPA has also issued 'preparatory' guidelines on Solvency II. A consequence is the legal uncertainty that results from such 'preparatory' guidelines for companies and policyholders until the official application date of Directives or Regulations.

The European Parliament's [Stocktaking Report adopted in January 2016](#) (para. 49) echoes these concerns, drawing attention to the need '...for the Commission and the ESAs, when drafting delegated and implementing acts and guidelines, [to] stick to the empowerments laid down in the basic acts and respect the co-legislators' agreement...'

The steps needed to ensure that guidelines are used where appropriate and not excessively or in a way that pre-empts the political process are:

- Clarification that EIOPA **cannot pre-empt** political decisions, ie no Level 3 can be developed before Level 2 is finalised.
- Clarification that EIOPA can only issue guidelines if either the sectorial legislation specifically empowers it to OR the cumulative requirements of Article 16 are met ("common, uniform and consistent application of Union law" and "consistent, efficient and effective supervisory practices"). The requirement to read the criteria of Article 16.1 cumulatively was confirmed by the EC in its August 2014 report on the European System of Financial Supervision.
- Guidelines should not be issued in areas in which the EC has the power to issue technical standards (cf. recital 25 of the EIOPA Regulation, further details in Annex 3).
- Guidelines should not go beyond the binding provisions laid down in EU law and they must not arbitrarily supplement them by means of general provisions. In this respect, the mandate of the agencies and the principles laid down by the **European courts** should be borne in mind. The Court of Justice of the EU and its General Court set limits and control the legal basis and extent of the EU agencies' actions ([Case T-496/11](#)).
- Governance of EIOPA needs to be improved to ensure the empowerments are used as mandated and in line with its priorities.

The increasing trend of ESAs issuing other types of instruments, such as Q&As, best practices and Opinions should also be noted. The legal implications of these instruments for individual undertakings are unclear. Consultation with interested parties on such instruments at inception would facilitate a better understanding and application.

3. Consumer and investor protection

6. What is your assessment of the current tasks and powers relating to consumer and investor protection provided for in the ESA Regulations and the role played by the ESAs and their Joint Committee in the area of consumer and investor protection? If you have identified shortcomings, please specify with concrete examples how they could be addressed.

The current tasks and powers in relation to consumer and investor protection are sufficient and EIOPA has undertaken effective work in this area, including on fintech and distribution. The ESAs also have a clear mandate in the field of consumer financial literacy and Insurance Europe would welcome further work in this area.

When deciding on new consumer policies and specific consumer protection legislation, the benefits to consumers and their needs should be carefully assessed beforehand. Such benefits must in turn be balanced against both the costs of implementation and, even more importantly, against the risk of overloading consumers with too much information, which in turn can hamper product innovation, greater competition and, ultimately, the objectives of the Capital Markets Union.

Such an assessment process should carefully consider the benefits to the consumer (looking in particular at factors such as: cost, access (digital), choice/diversity, innovation, quality/usefulness, understanding, comparability, competition, economy/growth, etc.). It should then assess the cumulative impact of further regulation, looking at factors such as the risk of overregulation, the coherence of the regulatory framework and the implications for prices, access, choice, innovation, understanding and compatibility. If regulation is still deemed desirable and necessary – taking account also of consumer diversity, change versus regulatory stability, whether action should be at EU or local level, and the need to future-proof regulation – then consumer testing is still required. This would ensure that the consumer needs targeted are indeed protected in a balanced manner and that unforeseen, detrimental consequences for consumers are avoided.

Insurance Europe welcomes EIOPA's efforts over the last few years to produce an increasingly balanced and constructive annual Consumer Trends Report. This has been possible due to EIOPA's willingness to engage openly and constructively with stakeholders.

To safeguard policyholders, both the ESAs and the Joint Committee must take an insurance-specific perspective. In insurance, there are two dimensions to policyholder protection: individual and collective policyholder interests. These need to be balanced. Furthermore, customers have to be protected in up to three different roles: as a policyholder, an insured or a beneficiary. These three roles can be taken by three different natural persons: person A signs the insurance contract and pays the premium, the life of person B is the insured risk and person C receives the payments if the insured event occurs.

Cross-sectoral legislation, such as the PRIIPs Regulation, has introduced a significant level of uncertainty for the insurance sector. Imposing one, uniform template on to different sectors (insurance, banking and asset management) will not deliver the desired results in consumer protection particularly, in terms of transparency. Future initiatives should fully respect sectoral differences. Insurance Europe believes that EIOPA, as a stand-alone ESA, will be best placed to ensure that insurance specificities are appropriately taken into account.

7. What are the possible fields of activity, not yet dealt with by ESAs, in which the ESA's involvement could be beneficial for consumer protection? If you identify specific areas, please list them and provide examples.

Insurance Europe believes EIOPA's current field of activities is sufficient.

Insurance products are dependent on the local market and local legal environment, eg the social security system, tax system, legal liability legislation, contract law and customer expectations. A proper understanding of the local environment is therefore vital to assess consumer protection. When considering possible further activity, care is needed to ensure that EU-level measures are appropriate for the whole internal market.

4. Enforcement powers – breach of EU law investigations

8. Is there a need to adjust the tasks and powers of the ESAs in order to facilitate their actions as regards breach of Union law by individual entities? For example, changes to the governance structure? Please elaborate and provide specific examples.

Insurance Europe believes that no additional powers are needed under Article 17. The procedure on the breach of Union law by an NCA is an essential tool not fully used by EIOPA to date which may benefit from minor clarifications.

In one example, the NCA of a member state has introduced price-control mechanisms in motor third-party liability insurance. This raises serious concerns over the compatibility with Article 21 of the Solvency II Directive on policy conditions and scales of premiums, as well as the principle of freedom to set rates in the non-life insurance sector, including compulsory insurance such as insurance covering third-party liability arising from the use of motor vehicles as stipulated by the Court of Justice of the EU in [Case C-59/01](#).

Although new powers are not necessary, the Article 17 procedure needs to be clarified to establish the Insurance Single Market as an economic area of legal stability. One solution could be to make it more workable by enabling supervised undertakings to call on the ESAs to intervene, since they are well placed to react on EU law breaches. Article 17 requires refinement so that a request for a breach of Union law procedure can be filed by any legal or natural person and the NCA concerned is not involved in the decision on an investigation procedure as this would constitute a conflict of interest. Potential related improvements to the governance structure are outlined in Q22.

5. International aspects of the ESAs' work

9. Should the ESA's role in monitoring and implementation work following an equivalence decision by the Commission be strengthened and if so, how? For example, should the ESAs be empowered to monitor regulatory, supervisory and market developments in third countries and/or to monitor supervisory co-operation involving EU NCAs and third country counterparts? Please elaborate and provide examples.

No, further powers should not be added at this stage, not least because additional work, for example monitoring developments in third countries, would require significant additional resources. More transparency about EIOPA's mandate to engage in international fora is warranted.

Equivalence assessments

Insurance Europe appreciates and supports EIOPA's role in international relations, including but not limited to Solvency II equivalence assessments. The industry further appreciates that EIOPA has a key role in providing technical advice and assistance to the Commission in preparing Solvency II equivalence decisions.

EIOPA can play an important role more generally in establishing common understandings in supervisory cooperation. For example, the EU-US dialogue was a key discussion platform that made a significant contribution to the negotiation of the EU-US bilateral agreement on (re)insurance, which the industry very much welcomes. Looking ahead, EIOPA's participation in the Joint Committee that is to be established under the agreement would be very important.

Via the necessary (re)allocation of resources, EIOPA should be enabled to address ad-hoc requests by the European authorities or react to market participants to monitor international developments in third countries whose regulatory frameworks have been deemed equivalent or who are party to a bilateral agreement with the EU. Such monitoring, triggered by specific requests from European institutions only, could be done within

the existing framework of powers. It would ensure that third countries preserve the regulatory provisions that supported a positive equivalence assessment and develop the regulatory provisions they committed to during the equivalence assessment process.

Other aspects of international engagement

EIOPA plays an important role in representing Europe in international fora and discussions. Given that international standards (such as the global insurance capital standard) have the potential to inform the development of European rules, engagement by ESAs in the development of such standards should be more transparent, especially in cases where standards have a high potential to change existing European regulation. Based on recent experience of EIOPA's engagement with and in the work of international organisations, Insurance Europe notes that:

- More transparency is required on EIOPA's mandates, both from European institutions and from its Board of Supervisors, on engagement in international organisations (eg the IAIS).
- EIOPA needs to develop its mandate consistently with a clear strategic direction from the European Commission and Parliament.
- EIOPA's international engagements should be based on clear internal mandates that EIOPA needs to develop in coordination with the NCAs and, where appropriate, in consultation with stakeholders.

Linked to the latter point, ESAs should take a more active role in the coordination of European views in international organisations:

- Only when speaking with one voice at international fora can European interests be defended efficiently.
- This should be closely linked to EIOPA's role in the EU of fostering supervisory convergence and culture.

6. Access to data

10. To what extent do you think the ESAs powers to access information have enabled them to effectively and efficiently deliver on their mandates? Please elaborate and provide examples.

Insurance Europe considers EIOPA's access to information sufficient at this stage. For example, EIOPA has access to all Quantitative Reporting Templates (QRTs) for every company via an agreement with the NCAs (and recently published the Decision on the collaboration of the insurance supervisory authorities which, through the provisions in the annex, should ensure access to other information when needed). The current power granted to EIOPA in supervisory colleges further ensures full access to data relating to group supervision.

While the experience with the extensive Solvency II reporting data remains limited at this stage, Insurance Europe believes that that EIOPA should make increased use of the data it has available already and such use should be balanced and transparent. EIOPA should analyse the data and assess its usefulness and relevance for more efficiency and effectiveness in the pursuit of its supervisory mandate. Redundancies and overlaps should be identified and addressed. Furthermore, and related to Q11, the power to require data submissions directly from undertakings should rest with NCAs only, since it is an intrinsic part of exercising supervision.

Insurance Europe believes that the above steps should be taken before any additional powers to access data are considered.

11. Are there areas where the ESAs should be granted additional powers to require information from market participants? Please elaborate on what areas could usefully benefit from such new powers and explain what would be the advantages and disadvantages.

No, Insurance Europe is not aware of any areas in which the ESAs should be granted additional powers to require information from market participants.

As already mentioned in Q10 EIOPA has access to all QRTs for every company and therefore has a comprehensive overview of business data. It is of particular importance that undertakings report to the NCAs, which then provide the ESAs with the necessary information. This single entry point ensures that NCAs and the ESAs share a common information base. It is likewise very important for undertakings to have a central contact point for two reasons. Firstly, questions concerning supervisory reporting relate to national provisions and, secondly, the single entry point avoids identical information being requested repeatedly, making reporting processes efficient.

However, Insurance Europe recognises that EIOPA may require more information on freedom of services operations. The recent platform created by EIOPA should address this need.

7. Powers in relation to reporting: Streamlining requirements and improving the framework for reporting requirements

12. To what extent would entrusting the ESAs with a coordination role on reporting, including periodic reviews of reporting requirements, lead to reducing and streamlining of reporting requirements? Please elaborate your response and provide examples.

A reduction in overlaps of reporting requirements between different regulations is desirable, but EIOPA does not need a newly defined role to achieve this. Insurance Europe believes that such reviews could be achieved within its existing powers via a request from the European Commission. Insurance Europe would be very supportive of such a request.

The uniform application of European reporting templates for the insurance sector across all EU member states could significantly contribute to supervisory convergence, the reduction of duplications and overlaps, as well as a level playing field. National reporting templates and processes that deviate from the European reporting templates could be identified and streamlined (eg the ignoring of proportionality provisions in the legal texts, earlier reporting deadlines than those defined by EIOPA, non-acceptance of XBRL, additional quarterly data reporting, etc).

One area in which Insurance Europe would agree that EIOPA could use its existing powers to have a more active coordinating role would be that of ensuring proportionality in relation to the coherent application of reporting requirements. Particularly for smaller market players, Insurance Europe has witnessed significant divergence in the approaches taken by NCAs in terms of the level of granularity of reported information required.

13. In which particular areas of reporting, benchmarking and disclosure, would there be useful scope for limiting implementing acts to main lines and to cover smaller details by guidelines and recommendations? Please elaborate and provide concrete examples.

Insurance Europe believes that as Solvency II has only been implemented recently, stable reporting requirements are of crucial importance for insurance companies. Therefore, implementing acts should not be revised as a result of this review. However, at a later time, Insurance Europe would welcome a revision to streamline reporting requirements and reduce complexity.

When revising implementing acts and guidelines, recommendations, etc, the following aspects should be borne in mind:

- The total amount of implementing acts, guidelines, etc needs to be manageable;
- Existing binding legal texts (such as regulations) should not be switched to the level of guidelines as this could be a further source of supervisory divergence;
- Guidelines, recommendations, etc should not create binding legal requirements.

8. Financial reporting

14. What improvements to the current organisation and operation of the various bodies do you see would contribute to enhance enforcement and supervisory convergence in the financial reporting area? How can synergies between the enforcement of accounting and audit standards be strengthened? Please elaborate.

Insurance Europe is against changes in the organisation and responsibilities of the various bodies. ESMA has a key role to play in enforcement and supervisory convergence. Enforcement of accounting standards for listed entities in regulated markets should remain a national responsibility. The CEAOB (Committee of European Auditing Oversight Bodies) has only just started operations and it is premature to consider changes.

Enforcement and supervisory convergence in financial reporting

Enforcement of accounting standards for listed entities in regulated markets in the EU is key to strengthening confidence in EU securities markets. Insurance Europe therefore supports the current scope of the ESMA mandate, ie enforcement and supervisory convergence in financial reporting for listed entities in regulated markets. ESMA has appropriate, well-designed and efficient tools at its disposal for the enforcement of financial reporting and the consistent application of IFRS for listed entities in regulated markets. These tools include guidelines, public statements and opinions, extracts of IFRS enforcement decisions, annual reports, etc and there is no need for an increase in tools at this stage.

Enforcement of accounting standards for listed entities in regulated markets should remain a national responsibility. NCAs are in a position to intervene more efficiently, as they have a better and more direct knowledge of their markets, and European countries have organised their enforcement operations in different ways based on their own national legislations. These differences should not present an issue *per se* as long as ESMA coordinates actions and ensures that national enforcers respect the common rules applicable.

However, it is important that ESMA and national enforcement bodies regularly reaffirm that their role is not to assume the role of standard-setter nor its interpretative role.

Strengthening synergies between the enforcement of accounting and audit standards

The organisation of EU audit supervision was much debated during the recent reform of the EU audit legislation (Directive 2014/56/EU and Regulation (EU) 537/2014). The outcome was the establishment of the CEAOB (Committee of European Auditing Oversight Bodies), which started operation only very recently, ie from mid-2016, with the first period of its work programme covering the period ending 31 December 2017. Modifying a framework that was put in place less than a year ago is premature. NCAs are closer to the audit market and may thus intervene more efficiently as they have a better and more direct knowledge of their

markets. However, to ensure that all the parties continue to be well-represented in the supervision of the audit market, Insurance Europe urges the CEAOB to establish stakeholder groups representing audited entities to reinforce cooperation and efficient dialogue between all parties.

Were ESMA to be granted the role of EU audit supervisor, Insurance Europe believes this would necessitate the set-up of well designed and efficient “safeguards” to avoid conflicts of interests between audit supervision and enforcement in financial reporting.

15. How can the current endorsement process be made more effective and efficient? To what extent should ESMA's role be strengthened? Please elaborate.

The European Financial Reporting Advisory Group (EFRAG) has an established role in supporting the development of sound IFRS standards and advice on endorsement to the EC. EFRAG's role and governance were the subject of the recent Maystadt report, which led to welcome improvements in governance. EFRAG is currently working well. The report specifically considered, and rejected for good reasons, any structural changes, such as moving responsibilities to ESMA.

The structure of the endorsement process of IFRS was much debated in the [Maystadt report](#) published in November 2013. The option of a more radical reform of the EFRAG was considered at this time, including the option to integrate EFRAG within, or replace EFRAG with, an agency of the EU. These options were not retained, as a result of the comments made by various stakeholders. The final recommendations presented by Maystadt at the ECOFIN Council meeting of 15 November 2013 regarding the current endorsement of IFRS in Europe have received wide support from member states.

Insurance Europe does not see valid reasons for modifying the current endorsement of IFRS in Europe, the organisation or mandate of EFRAG. The changes made to the endorsement process and to the organisation of EFRAG in 2014 are satisfactory and have been implemented efficiently. EFRAG provides professional support and expertise — reflecting the views of stakeholder groups — to the Commission in the assessment of international accounting standards that are subject to endorsement. The additional involvement of the Accounting Regulatory Committee (ARC) representing the views of member state governments ensures that the Commission receives a balanced picture of the implications of international accounting standards prior to endorsement. As a result, the Commission's evaluation of Regulation (EC) 1606/2002, dated 18 June 2015, did not identify material shortcomings or inefficiencies in the endorsement process.

Insurance Europe fails to see what benefit could arise from a strengthened role for ESMA. In contrast, there is a legitimate concern that the endorsement process would end up more burdensome and onerous. Besides, ESMA is an observer on the EFRAG board and therefore already sufficiently involved in the decision-making process.

B. New powers for specific prudential tasks in relation to insurers and banks

1. Approval of internal models under Solvency II

16. What would be the advantages and disadvantages of granting EIOPA powers to approve and monitor internal models of cross-border groups? Please elaborate on your views, with evidence if possible.

The group supervisor has to remain responsible for examination, approval and monitoring of the group internal model. Existing inconsistencies in requirements of national competent authorities for internal models should be addressed by EIOPA within its existing powers.

Challenges relating to internal models and convergence in their supervision have come to light. However, these do not, at this stage, justify any significant changes in powers or responsibilities. The examination, approval and monitoring of internal models should remain with the group supervisor. Insurance Europe would further like to highlight that approving and monitoring internal models involve assessments of undertakings' governance systems. Supervision of an undertaking's governance system cannot be split between the national supervisor and EIOPA. In addition, internal model approval requires detailed knowledge of the company, its products and its risk profile, and it is the group supervisor that has this knowledge; splitting responsibilities would result in duplication or less informed internal model discussions.

In order to assure a sound approval process, EIOPA's existing role and powers as a mediator between the group supervisor and the NCAs should play an important part. In addition, EIOPA should provide support and expert training for national supervisors.

Within its existing powers, EIOPA has already initiated several workstreams to achieve increased convergence relating to internal models, eg via inclusion of the relevant chapters in the supervisory handbook. Furthermore, it is Insurance Europe's understanding that EIOPA is already working to identify inappropriate inconsistencies between internal models across the industry (eg on market and credit risk calibration) and will use existing processes and powers to work with its members and the industry to address them. In light of this already extensive ongoing work and looking ahead, Insurance Europe does not believe that a further enhancement of EIOPA's role in the direct approval or monitoring process of internal models is required. Instead, the group supervision process, including college of supervisor meetings, should be streamlined, in order that group-wide internal models work more efficiently (please refer to Insurance Europe's general comments on supervisory colleges in Q2).

2. Mitigating disagreements regarding own funds requirements for banks

17. To what extent could the EBA's powers be extended to address problems that come up in cases of disagreement? Should prior consultation of the EBA be mandatory for all new types of capital instruments? Should competent authorities be required to take the EBA's concerns into account? What would be the advantages and disadvantages? Please elaborate and provide examples.

No comment

3. General question on prudential tasks and powers in relation to insurers and banks

18. Are there any further areas where you would see merits in complementing the current tasks and powers of the ESAs in the areas of banking or insurance? Please elaborate and provide examples.

Insurance Europe believes that no additional powers are merited at this stage. Nevertheless, if it is finally decided to allocate more tasks, insurance tasks should be dealt with by EIOPA, as it has the means, resources and knowledge required.

C. Direct supervisory powers in certain segments of capital markets

Please elaborate on your responses to questions 19 to 21 providing specific examples.

19. In what areas of financial services should an extension of ESMA's direct supervisory powers be considered in order to reap the full benefits of a CMU?

No comment

20. For each of the areas referred to in response to the previous question, what are the possible advantages and disadvantages?

No comment

21. For each of the areas referred to in response to question 19, to what extent would you suggest an extension to all entities or instruments in a sector or only to certain types or categories?

No comment

21. For each of the areas referred to in response to question 19, to what extent would you suggest an extension to all entities or instruments in a sector or only to certain types or categories?

No comment

II. Governance of the ESAs

Assessing the effectiveness of the ESAs governance.

22. To what extent do you consider that the current governance set-up in terms of composition of the Board of Supervisors and the Management Board, and the role of the Chairperson have allowed the ESAs to effectively fulfil their mandates? If you have identified shortcomings in specific areas please elaborate and specify how these could be mitigated.

Insurance Europe considers changes to EIOPA's current governance necessary to enable it to effectively fulfil, but also not exceed, its mandate. A number of EIOPA's initiatives have raised questions over their legal basis or their appropriateness in the light of political agreements. These include the excessive guidelines for Solvency II, guidelines on POG and the decision to change the UFR ahead of the 2020 Solvency II review. Furthermore, as the legal advice in Annex 3 confirms, the current governance structure differs from general good practice.

EIOPA's current internal governance structure lacks regular external oversight over its work and agenda-setting. There are, for example, no non-executive directors in the Board of Supervisors (BoS) or Management Board (MB). This creates a risk of "group think", since challenges to initiatives or proposals only come from BoS members (ie the NCAs). Similarly, the BoS representatives from the ESRB and the other ESAs cannot objectively be viewed as external. Please see the legal advice in Annex 3. The EU institutions' Joint Statement of 19 July 2012 also emphasises the need to develop a coherent policy on preventing and managing conflicts of interest concerning management boards in all agencies (para. 11).

Under the ESAs' Regulations, the Chairperson chairs the meetings of both the BoS and MB. Although the Chairperson has no vote in the BoS, having the same person in both roles may make it more difficult for the BoS to exercise effective oversight over the MB. The fact that the Chairperson chairs both boards places him in a position where he can exercise a very high degree of influence on the decision-making of the MB. This, in

combination with the lack of any external or independent BoS members, suggests that power in decision-making is heavily concentrated and not subject to sufficient oversight. Since the ESAs enjoy wide powers, they should be subject to more extensive (external) controls. Please see again Annex 3.

Improving governance

Concrete (and not mutually exclusive) ways to address the governance concerns are:

Qualified majority voting (QMV) for all BoS decisions and increased transparency

Currently, decisions are generally reached by simple majority, while exceptions apply when the BOS deals with draft RTS and guidelines. It is difficult to understand that decisions of equal importance, such as technical advice on delegated acts or opinions, are reached by single majority. QMV should be the general principle, ensuring that all decisions are treated with equal importance, fitting the powers of the ESAs. The agenda of BoS meetings and informative meeting minutes, including information on votes cast, should be published consistently and in a timely manner on EIOPA's website. Similar calls have been made by the European Parliament (6 March 2017 Opinion of ECON on EIOPA's 2015 budget discharge).

Clarifications and enforcement for use of guidelines

EIOPA should confirm the following internal controls over the use of guidelines and adherence to such controls should be confirmed by Council and Parliament through oversight processes (see Q5 for more detail):

- EIOPA cannot pre-empt political decisions; no Level 3 can be developed before Level 2 is finalised
- EIOPA can only issue guidelines if empowered to do so by sectoral legislation OR if they meet the cumulative requirements of Art. 16
- No guidelines will be issued in areas in which the EC has the power to issue technical standards (cf. recital 25 of the EIOPA Regulation)
- Guidelines will not go beyond the binding provisions laid down in EU law, and they must not arbitrarily supplement them by means of general provisions. Guidelines will, however, be worded to achieve convergence by minimising the risk that NCAs will go beyond the binding provisions in EU law.

An Oversight Board

We recognise the necessity to organise an efficient and functioning oversight of the ESAs. We believe that it is in the first place the role of the European co-legislators to organise a proper control of the ESAs. Hence, another option could be the introduction of an independent Oversight Board (OB). Several jurisdictions within the EU have such oversight (DK, DE for budgetary oversight) comprised of independent members. Such a board would focus on governance and not technical decisions (which would remain with the BoS). Its objective would be to ensure that the ESAs act within their mandate (for example on own initiative work), at all times in the interest of all stakeholders and the EU economy, and under adequate conditions of independence.

23. To what extent do you think the current tasks and powers of the Management Board are appropriate and sufficient? What improvements could be made to ensure that the ESAs operate more effectively? Please elaborate.

Insurance Europe's concerns over governance raised in Q22 about lack of effective oversight also apply to the Management Board and its role. The legal advice received (in Annex 3) notes the significant influence the Chairperson has on both the BoS and MB. Although the Chairperson does not have any voting rights in the BoS, by virtue of chairing both the BoS and MB, the Chairperson exercises a very high degree of influence on the decision-making of the MB.

Insurance Europe would welcome strengthened review mechanisms that would match the extensive powers that the ESAs possess. Ways to improve the ability of the Council and the European Parliament to ensure accountability of the ESAs should be considered. The current mechanisms for this, namely calling ESA Chairs to answer questions (Article 50 of Regulation 1094/2010) and budgetary control, are not sufficient.

Insurance Europe supports the Parliament's increased interest in overseeing the work of the ESAs. The Parliament has in the past identified areas for improvement. For instance, the Parliament in its 2016 stocktaking exercise on the [EU Financial Services Regulation](#) reminds the ESAs (para. 54) that:

- Level 3 measures are bound by the principle of proportionality;
- They must adopt a careful approach to the number of guidelines, particularly where they are not explicitly empowered in the basic act; and,
- Such a restrictive approach is warranted due to the ESAs' limited resources and need to prioritise tasks.

The Parliament also (para. 49):

- Insists that the Commission and the ESAs, when drafting delegated and implementing acts (IAs) and guidelines, stick to the empowerments laid down in the basic acts and respect the co-legislators' agreement; and,
- Regrets that in the past the ESAs, in drawing up IAs, have not always adhered to the mandate set out by the European legislators.

24. To what extent would the introduction of permanent members to the ESAs' Boards further improve the work of the Boards? What would be the advantages or disadvantages of introducing such a change to the current governance set-up? Please elaborate.

Insurance Europe is not convinced that permanent members on the ESAs' Boards would address the concerns raised over governance outlined in the response to Q22.

Permanent representatives on the ESAs' Boards could help to address governance gaps if they were independent (not part of the supervisory framework) but their potential effectiveness would also depend on their mandate, other positions and appointment procedure, rather than the mere fact they are permanent.

25. To what extent do you think would there be merit in strengthening the role and mandate of the Chairperson? Please explain in what areas and how the role of the Chairperson would have to evolve to enable them to work more effectively? For example, should the Chairperson be delegated powers to make certain decisions without having them subsequently approved by the Board of Supervisors in the context of work carried out in the ESAs Joint Committee? Or should the nomination procedure change? What would be the advantages or disadvantages? Please elaborate.

The current mandate and tasks of the Chairpersons of the ESAs are sufficient but, as noted in earlier questions, the lack of an independent Chairperson raises governance concerns. The involvement and efforts of the European Parliament in the appointment procedure of the Chairpersons of the ESAs is welcomed by Insurance Europe.

Insurance Europe would welcome a detailed and reasoned assessment of the need for altering the role of the Chairpersons because it remains unconvinced of the need for any further powers. Amending the empowerments, tasks and responsibilities entrusted to the Chairpersons, which could create unforeseen consequences, should be carefully weighed against the benefits sought from such a change. One reason for proposing a 'wait and see' approach is the fact that all three Chairpersons are the first and only Chairpersons of the respective ESAs since their inception. Interpretations of the role of Chairperson may evolve as the ESAs develop under new Chairpersons and in response to changing market conditions. Where Insurance Europe sees opportunities for improving the efficiency, effectiveness and credibility of the ESAs is by addressing the current governance structure as proposed above.

Stakeholder groups

26. To what extent are the provisions in the ESA Regulations appropriate for stakeholder groups to be effective? How could the current practices and provisions be improved to address any weaknesses? Please elaborate and provide concrete examples.

The current stakeholder group structure is appropriate. Two separate stakeholder groups are needed for EIOPA to cover the range of issues relating to insurance and IORPs with appropriate time and expertise. However, with only a single insurance representative, the expertise of the OPSG membership does not reflect the significant involvement of the insurance industry in IORPs and this needs to be addressed. In addition, third-pillar pensions and PEPPs tend to be dealt with, by default, at the OPSG despite insurers being the main, or significant providers, of such products. It is also regrettable that the Commission no longer attends the EIOPA stakeholder groups because it is important for the Commission to be aware of the views and nature of discussions as well as to contribute to the meetings with more than a short update on developments.

Insurance Europe believes EIOPA's OPSG and IRSG should be maintained as separate entities. In addition to the need for a wide range of stakeholder expertise and representation to cover the range of technical issues dealt with by EIOPA, the workload over the last five years has been heavy and has only been managed because there are two stakeholder groups undertaking it. There is no indication that the workload will reduce in the future.

The stakeholder groups function well in general and at a cost to EIOPA of about 130,000 euros they represent reasonable value. However, the EIOPA stakeholder groups are collecting comments in a joint paper that steps can and should be taken to increase their visibility and impact. These include greater contact with and possible attendance at EIOPA's Board of Supervisor meetings and for the Commission to also take particular note of stakeholder opinion when it considers EIOPA advice.

Stronger involvement of the IRSG and OPSG would ensure that the BOS increases its awareness of stakeholders' views when taking decisions. Although EIOPA has taken steps to increase interaction between the stakeholder groups and the BOS, the extent to which the stakeholder group opinions are discussed during BoS decision-making remains unclear.

27. To what extent has the current model of sector supervision and separate seats for each of the ESAs been efficient and effective? Please elaborate and provide examples.

Insurance Europe firmly believes that the current structure of the European system of financial supervision has been efficient and effective and should be maintained. In areas as complex and important as financial services, expertise and experience are absolutely core for effective and efficient supervision. There are significant differences between the business models, risks, products, customer needs and selling processes of the banking, fund management and insurance/pension industry. EIOPA has built up a good level of expertise covering insurance and pension-related prudential and conduct of business supervision. It has achieved a significant amount: providing advice on the development of a wide range of new European regulation, supporting the successful implementation of Solvency II and progress towards supervisory convergence.

The main benefit of sector-specific supervision at EU level is sector-specific expertise and focus. Its significance must not be under-estimated. The insurance business model is very different from banking and fund management; the products are different and can vary greatly across Europe. We have seen over the last

six years an increased understanding of EU insurance markets by EIOPA staff. This is welcomed and has enabled more constructive interactions to take place between the industry and the supervisor, bringing efficiencies for both the market and the supervisor.

But we have also witnessed a worrying trend of regulatory initiatives directed at the banking sector being applied to other sectors, such as insurance, without considering the differences between them. This happens because the European financial industry is often, incorrectly, perceived to be one single intertwined industry. This leads to the equally flawed assumption that banking regulation can be used as a blueprint for insurance regulation. Similar risks would exist with an integrated regulator not recognising the important differences between fund management and insurance. Unlike fund management products, insurance products typically combine long-term insurance savings with protection features. This leads to significant differences and needs in terms of prudential supervision as well as conduct of business. A stand-alone EU insurance supervisor can act as a safeguard against such trends and ensure the specific characteristics of insurance and pension products receive the attention they need and that both the technical advice given and the actions to achieve supervisory convergence are based on appropriate expertise.

There is also a need for stability in the supervisory framework. We are not aware of any evidence that another structure would work better and justify the costs, risks and years of uncertainty and distraction that would accompany structural changes. In particular, given that insurers only recently began working under Solvency II and that significant new European regulation will come into force in the coming years, this is the wrong time to create unnecessary distractions.

28. Would there be merit in maximising synergies (both from an efficiency and effectiveness perspective) between the EBA and EIOPA while possibly consolidating certain consumer protection powers within ESMA in addition to the ESMA's current responsibilities? Or should EBA and EIOPA remain as standalone authorities?

The European insurance industry supports a stand-alone EIOPA, with responsibility for both prudential and conduct of business, as the best way to ensure an efficient, effective and credible system of financial supervision at EU level for insurers and pension funds. A “twin peak” model is not appropriate at European level. In addition, there is not yet any evidence that structural changes are necessary. Changes would result in unnecessary risks, costs and distraction, given the continued work needed now to ensure the success of Solvency II.

Insurance Europe has significant concerns about moving any consumer protection powers from EIOPA to ESMA and also about merging EIOPA with EBA. Insurers comply with different European regulation to banks because they have a completely different business model. Therefore, insurers need a supervisor that is focused on and able to understand that distinct model, risks and consumer needs. Please see Annex 4 for an overview of these differences.

Change can put at risk essential features that must be present to maintain a safe, stable and competitive insurance market:

- Mergers and changes in responsibility risk losing the expertise of the supervisor overseeing the insurance and pension industry, leading potentially to distraction and delays in progress towards convergence and the introduction of financial regulation that has unintended, negative consequences because they are ill-suited to the insurance industry’s business model, products and customer needs.
- Separating conduct of business and prudential supervision risks duplication of work (with the associated costs) but also risks duplication or, worse, contradictions, in the obligations imposed on insurers.
- Insurers must comply with different European regulations to banks because they have a completely different business model. Therefore, insurers need a supervisor that is focused on and able to

understand their distinct business model, risks and consumer needs. Please refer also in Annex 5 to the overview of these differences.

While different models operate at national level, these are close to the companies they supervise and knowledgeable about local conditions and can therefore potentially adapt as needed to the local market. However, we have the example of one member state where the budget needs increased threefold after a split in supervision, and there were subsequent difficulties with inconsistent views between the two supervisors.

IV. Funding of the ESAs

29. *The current ESAs funding arrangement is based on public contributions:*

a) *should they be changed to a system fully funded by the industry;*

Yes

No

Don't know/no opinion/not relevant

What are the advantages and disadvantages of option a):

No, EIOPA should not be fully funded by the industry. EIOPA is already in part indirectly funded by the industry and a key disadvantage of the proposed change would be the loss of an important mechanism for maintaining the efficiency and accountability of the ESAs.

The existing funding and the related approval processes form key parts of the current budgetary control and accountability framework for EIOPA and therefore help keep EIOPA accountable to both the European Parliament and the Council. It is not clear that, even with the governance changes that would have to accompany increased industry funding, it would be possible to fully replace the benefits of maintaining funding from the EU budget.

Although under the current system it is already challenging for adequate oversight of EIOPA to be maintained, the Parliament has played an active role in holding the ESAs to account, as can be seen from the various reports on the ESAs and their budgets. Without any funding from the EU budget, there is a risk that industry contributions would increase year-on-year without sufficient justification.

b) *should they be changed to a system partly funded by industry?*

Yes

No

Don't know/no opinion/not relevant

What are the advantages and disadvantages of option b):

EIOPA is currently already partly funded by the industry, since in nearly all member states the 60% currently funded by national supervisors is in turn paid by the local industry. Insurance Europe sees no advantages in changing the current approach.

However, any changes in the funding mechanism that are considered should reflect that:

- At least some funding should remain from the EU budget line. This ensures the requisite accountability to the European Parliament and Council.

- The industry does not agree to direct funding of EIOPA, as it is not directly supervised by EIOPA. Policy options to be considered should therefore not include an option that depends on industry funding alone.
- Any funding by the industry should flow through the NCAs, and the mechanisms must be transparent and include strict and independent controls around the overall size of the budget.
- References to 'industry funding' must also encompass IORPs and a fair allocation of any funding responsibility should also be allocated to IORPs.

30. In your view, in case the funding would be at least partly shifted to industry contributions, what would be the most efficient system for allocating the costs of the ESA's activities:

a) a contribution which reflects the size of each Member State's financial industry (i.e., a "Member State key"); or

b) a contribution that is based on the size/importance of each sector and of the entities operating within each sector (i.e., an "entity-based key")?

Please elaborate on (a) and (b) and specify the advantages and disadvantages involved with each option, indicating also what would be the relevant parameters under each option (e.g., total market capitalisation, market share in a given sector, total assets, gross income from transactions etc.) to establish the importance/size of the contribution.

No comment

31. Currently, many NCAs already collect fees from financial institutions and market participants; to what extent could a European system lever on that structure? What would be the advantages and disadvantages of doing so? Please elaborate.

EIOPA does not deal directly with individual companies and, as indicated in response to earlier questions, Insurance Europe does not see any need for this to change. Therefore there is no need for any mechanism for EIOPA to collect specific fees from individual institutions.

In terms of general funding, the major share of the ESAs' funding already comes from NCAs, almost all of whom have appropriate mechanisms in place to pass on this cost to the industry. Insurance Europe strongly favours the continued use of this channel, but transparency should be further enhanced by publishing the contribution each NCA makes to EIOPA. This would make it easier to monitor the total costs of supervision per country and in aggregate and encourage efficiency.

We note that direct charging of individual institutions could be considered a tax, since it would be related to general services, and in addition would create significant challenges for EIOPA to fairly allocate between smaller and larger institutions, different types of insurers and IORPs, and different markets.

General question

32. You are invited to make additional comments on the ESAs Regulation if you consider that some areas have not been covered above. Please include examples and evidence where possible.

No comment



Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

- Annex 1: Summary of key positions
- Annex 2: Table showing our understanding of EIOPAs current empowerments
- Annex 3: Legal advice dated 7 April 2015
- Annex 4: The significant differences between insurance and banking undertakings

Insurance Europe is the European insurance and reinsurance federation. Through its 35 member bodies — the national insurance associations — Insurance Europe represents all types of insurance and reinsurance undertakings, eg pan-European companies, monoliners, mutuals and SMEs. 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 generate premium income of €1 200bn, directly employ 985 000 people and invest nearly €9 900bn in the economy.