

European Commission proposal for a regulation amending the European supervisory authorities' regulations (ESAs review)

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Executive summary

Structure: Insurance Europe welcomes the European Commissions' recognition of the need for stability and sectoral expertise. This is achieved by maintaining the European Insurance and Occupational Pensions Authority (EIOPA) as a stand-alone authority, responsible for both prudential and conduct of business supervision.

Mandate: Insurance Europe is concerned that the underlying responsibility of the European supervisory authorities (ESAs) as independent EU agencies is reflected too narrowly in the ESAs' founding Regulations (Article 1 para 6). The obligation to protect the public good by contributing to the stability and effectiveness of the financial system should be expanded to require the ESAs to act in the best interest of the European public good. This could — together with other governance improvements — help ensure that the ESAs always take a proportional and balanced approach to their supervisory as well as their regulatory activities and consider unintended consequences. The ESAs should be required (Article 43 para 5) to include in their annual reports the steps they have taken to fulfil this obligation.

Governance: The current governance structure of EIOPA does not provide for adequate checks and balances, and the EC's proposed changes exacerbate rather than address it. Insurance Europe calls for amendments to and clarifications about the proposed Executive Board and its interaction with the Board of Supervisors (BoS).

- Executive Board composition: The Executive Board should be composed of the Chairperson, three (experienced and senior) independent full-time members and at least four members of the BoS.
- Executive Board full-time members:
 - The full-time members of the Executive Board should be recruited externally (not, routinely, from existing or recent ESA senior management) with a high level of seniority and industry experience, so that they can provide not only support but also a degree of challenge to the Chairperson.
 - The European Parliament should play a more active role in the appointment and re-appointment.
 - The Vice Chairperson as well as the Member in charge should both be designated by EU institution(s) and not by the Chairperson.
- BoS tasks: Notwithstanding Insurance Europe's concerns over the new powers attributed to EIOPA in the following areas, the BoS should continue to make decisions related to Articles 22 (systemic risk), 29a (strategic supervisory plan), 32 (market developments and stress tests), 31a (outsourcing and risk transfer to third countries), and 35b to 35h (direct information requests and enforcement thereof), while the Executive Board should prepare these decisions.
- In cases of conflict of interest BoS members should be excluded from the decision-making of the Executive Board, ie these decisions alone should be made by the Chairperson and full-time members of the Executive Board independently. Such cases of conflict of interest are breach of Union law investigations (Article 17), settlement of disagreements between national competent authorities (NCAs) in cross-border situations (Article 19) other than on internal model approvals, and reviews of NCAs (Article 30).

Oversight and transparency: Effective governance and external oversight mechanisms are essential to achieve a credible supervisory landscape. Both the European Parliament and the EC should play a role here. Transparency is one key element to ensure efficient oversight; the annual report of the activities of EIOPA transmitted to the European Parliament, the EC, the Council of the EU, and the Court of Auditors, and the European Economic and Social Committee (Article 43 para 5) is another important mechanism. However, further improvements — in addition to the suggested governance changes — are necessary.

New and refined powers: Insurance Europe remains unconvinced that EIOPA requires any significant changes to its powers to fulfil its mandate, although there may be a need to improve information-sharing between NCAs and EIOPA in certain areas. Care must be taken not to undermine the principles of subsidiarity and proportionality. The role of the NCAs should not be compromised; they are vital elements of the supervisory system due to their local expertise, direct contact with entities and, crucially, local accountability.

European Systemic Risk Board (ESRB): It is crucial that the ESRB has sufficient sector-specific expertise and conducts stakeholder consultations in advance of finalising all its reports or other workstreams.

Funding/budget: Firstly, there is insufficient evidence for the need to change the current funding of the ESAs and the EC's proposal furthermore appears to lack a suitable legal basis, as set out by the Council Legal Service in its opinion dated 2 February 2018. Secondly, the role of the budgetary authority (European Parliament and Council), as well as the EC, to properly scrutinise the budget (*ex ante* and *ex post*) should be strengthened. There is currently no forum in which those approving the budget (European Parliament, EC, and Council) meet to discuss and — where necessary — challenge the ESAs' budget/work proposals (see Article 63). It is regrettable that the EC proposal on the ESAs review does not take the opportunity to address this, especially as the need for strong budgetary discipline and oversight would become even more important under the proposed changes.

Furthermore, Insurance Europe is concerned that the EC's proposal on the ESAs' budget determination and allocation would lead to the dilution of the EU contribution from its current 40%. This could also create the risk of continuous increases in the ESAs' budget, paid for by an industry excluded from all discussions. The proposals could also lead to double-charging of the industry.

1. Mandate — the European public good

Insurance Europe is concerned that the ESAs' underlying responsibility as independent agencies of the European Union is reflected too narrowly in the ESAs' founding Regulations (Art 1 para 6¹). The obligation to protect the public good by contributing to the stability and effectiveness of the financial system should be expanded to require the ESAs to act in the best interest of the European public good.

Including “acting in the interest of the European public good” as an explicit part of the ESAs' mission in Art 1 para 6 could — together with other governance improvements (please see below) — help ensure that the ESAs always take a proportional and balanced approach in their supervisory activities. This would result in an obligation to always consider the potential effects and possible unintended consequences of their activities on the European public good, in addition to and supporting their role in maintaining the stability and effectiveness of the financial system. The explicit inclusion of this objective in Art 1 para 6 could be achieved by the following, for example:

*“The objective of the Authority shall be to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. **When performing its tasks, the Authority shall consider whether its activities are conducive to the wider European public good and document its considerations in a transparent, timely and easily accessible manner. A section of the report referred to in Article 43(5) should be dedicated to the way in which the Authority performed its tasks in consideration of the European public good.** [...]”*

For the ESAs, a wider European public good obligation could cover issues such as: the principles of better regulation; the need to follow a balanced and appropriate approach in their work; the need to consider the impact of their work on the European economy, stability and competitiveness, and its effect on the availability and cost of products, as well as the potential effects on the stakeholders directly concerned. This would help ensure that growth and innovation is not inadvertently negatively impacted in pursuit of stability.

Insurance Europe supports the inclusion of such obligations in other European bodies endorsed by the European Commission. For example, the European Financial Reporting Advisory Group (EFRAG) is already required to consider whether its planned actions are conducive to the European public good.

Insurance Europe is further convinced that a European public good obligation would ultimately also support the European Commission in its work on financial services legislation, since the expert advice and guidance received from the ESAs in advance or during the legislative drafting process would already reflect the European public good.

However, as indicated, the addition of the European public good to the ESAs' mandates will have to be accompanied by changes to the current and proposed governance framework. These changes are needed to ensure that the necessary checks and balances are in place to hold the ESAs accountable for fulfilling their mandates under the consideration of the European public good.

¹ Where not indicated otherwise, Articles refer to the EIOPA regulation 1094/2010 amended as proposed by the EC.

2. Governance — Executive Board & Board of Supervisors

Insurance Europe has repeatedly raised concerns over gaps in EIOPA’s current governance structure, and is calling for improvements to ensure that EIOPA fulfils, but does not exceed, its mandate and uses its existing powers effectively. Whilst some of the amendments proposed on governance seem to be aimed at enabling EIOPA to operate to its fullest potential, Insurance Europe believes that this would come at the unnecessary cost of too much independence without oversight. The proposed framework lacks sufficient control mechanisms to ensure that EIOPA operates within the limits of its mandate and mission at all times. Insurance Europe believes the governance structure in the proposal can be improved with the changes outlined below. Most notably, Insurance Europe believes that, in addition to the explicit inclusion of the European public good in EIOPA’s mandate, the balance of responsibilities between Executive Board and BoS, as well as the concentration of powers in the Chairperson must be reconsidered.

In its proposal, the EC introduces a new Executive Board to replace the current Management Board. Insurance Europe welcomes the possibility for senior external parties to be included in the governance structure of EIOPA. Nonetheless, the role and responsibilities of the Executive Board are significantly different to those of the current Management Board, which it would replace. The composition and the decision-making process in the Executive Board, as well as the distribution of responsibilities between the Executive Board and the BoS, warrant closer review.

Executive Board composition: The Executive Board should be composed of the Chairperson, three (experienced and senior) independent full-time members, and at least four members of the BoS.

The EC’s current proposal effectively excludes the BoS from the work of the Executive Board.

- Insurance Europe believes that retaining BoS members in the Executive Board, under the same conditions as in the Management Board, is important to ensure the preparatory role of the Executive Board for BoS decisions can be fulfilled efficiently. In areas where conflicts of interest between NCAs are inherent and independence is needed, the Executive Board should decide in a smaller constitution, ie without the EC representative and its BoS members (see more concrete suggestion below). However, for all other areas, the inclusion of BoS members and the availability of national supervisory expertise in the debates is valuable and should not be dismissed.
- In terms of the decision-making process, the current proposal would afford the Chairperson a casting vote where a simple majority of the Executive Board cannot be reached. Under the current EC proposal for an Executive Board - without the inclusion of at least four BoS members - this would mean that the three members of the Executive Board would only be able to “out vote” the Chairperson, where all three chose to vote together. The proposed voting mechanism is unclear and would not enable sufficient independence for the members of the Executive Board. However, this problem would not arise if at least four BoS members were to continue to be part of the Executive Board.
- Insurance Europe welcomes the retention of a representative of the EC as a non-voting member and the continuation of their vote in matters relating to the establishment of the budget (Articles 63 and 64).

Executive Board full-time members: The full-time members of the Executive Board should be recruited externally (not, routinely, from existing or recent ESA senior management) with a high level of seniority and industry experience, so that they can provide not only support, but also to a degree of challenge to the Chairperson. Only sub-option 3 as considered in section 7 of the impact assessment, which proposes external recruitment and independent full-time board members, would achieve the objectives the review has.

- If sufficiently senior and experienced, the addition of independent full-time members from outside of the ESAs, can be part of the solution to make EIOPA operate more efficiently on a day-to-day basis and to

reach decisions on more contentious issues. These members should be appointed by the European institutions to, amongst other issues, prevent institutionalised thinking.

- Insurance Europe welcomes the role of the EU co-legislators in the appointment (and extensions of mandates) of the members of the proposed Executive Board. In addition to this external appointment, it is important that the full-time members are independent. The [impact assessment](#) proposes in its policy sub-option 2 on governance that the full-time members of the Executive Board could be recruited from existing *ESA senior managers*. This would not achieve the key benefits of injecting independent and senior industry expertise into the governance structure of EIOPA. Only sub-option 3 (Set-up of Executive Board *with independent full-time board members*) would effectively address the identified concerns on EIOPA's governance structure. Insurance Europe would furthermore welcome the following addition to the proposed Art 45 para 2:

*"...merit, skills, knowledge **and practical experience** of financial institutions and markets, and experience relevant to financial supervision and regulation"*

- The independent full-time members to be appointed by the European institutions should have levels of experience and seniority that enable them to challenge and collaborate on equal terms with the Chairperson and other members of the Executive Board. To attract appropriate candidates through the external appointment process, this required seniority should be reflected in the proposed pay grades allocated to these new posts of independent full-time members of the Executive Board; ie, at least equivalent to the current Executive Director.

Executive Board full-time members: The European Parliament should have a more active role in the appointment and re-appointment process.

Insurance Europe supports the selection and appointment of the Chairperson and the full-time members of the Executive Board by the European institutions by open call and subsequent involvement of both the Parliament and Council (Art 45 paras 2-4 and 48 para 2). This underlines the continued oversight and involvement of the EU institutions in relation to EIOPA's tasks and empowerments, while reiterating that the ESAs' powers are derived from the EU institutions as a matter of delegation. Nonetheless, Insurance Europe would have welcomed a more active role for the Parliament, rather than merely the ability to approve the shortlist of candidates selected by the EC. Additionally, it is unclear why the Parliament is not also involved in the extension of appointments (Art 45 para 4), as is currently the case (see below).

Executive Board full-time members: The Vice Chairperson as well as the Member in charge should both be designated by the Council, and not by the Chairperson.

Insurance Europe understands that, under the proposal, the current role of the Executive Director will be extended and transferred to the Member in charge (Art 45 para 1, Art 47 para 9) who will be designated as such upon their appointment by the Council. The role of the Vice Chairperson (who will be separate from the Member in charge) should also be assigned by the Council upon appointment, and not by the Chairperson. Additionally, the reference to the annual report on EIOPA's activities to be drafted by the Member in charge in Art 47 para 6 to *"the draft report referred to in Art 53 para 7 to the Board of Supervisors for approval"* requires updating, as the EC proposal foresees the deletion of Art 53. The link should be made to proposed Art 47 para 9 lit (f) where the specific tasks of the Member in charge are listed.

Board of Supervisors' tasks: Notwithstanding Insurance Europe's concerns over the new powers attributed to EIOPA in the following areas (see below), the BoS should make decisions related to Articles 22 (systemic risk), 29a (strategic supervisory plan), 32 (market developments & stress tests), 31a (outsourcing and risk transfer to third-countries), and 35b to 35h (direct information request and enforcement thereof), while the Executive Board should prepare these.

- The EC's proposal seeks to achieve efficiencies in decision-making that can otherwise become blocked within the BoS, by moving a significant proportion of the tasks of the ESAs into the sole remit of the Executive Board (Art 47 para 3). However, Insurance Europe is not persuaded of the necessity for such a drastic reallocation of responsibilities away from the BoS. Upholding the principle of subsidiarity and in view of the NCAs' local accountability, as well as their expertise and knowledge of local conditions and problematics, their involvement in supervisory issues must be retained. Insurance Europe understands that at least one member state (Sweden) may have concerns over the EC's proposal in terms of its respect of the principle of subsidiarity². Insurance is distinguishable from other financial services due to its often-close linkages with national legal, tax or social systems. For instance, pension products reflect national tax and social systems, liability insurance the local civil legal systems, and so on. The direct supervision at national level by NCAs is therefore pertinent in insurance supervision, where NCAs understand the local context. Convergence of EU law should be the focus at EU level while direct supervision should remain the preserve of the NCAs. The BoS should therefore continue to be involved in decisions related to Articles 22, 29a, 32, 31a, and 35b to 35h (see more on the respective powers below).

Only in "conflict-of-interest matters" should BoS members be excluded from the decision-making of the Executive Board; ie, these decisions alone should be made by the Chairperson and full-time members of the Executive Board independently.

- Insurance Europe understands that the EC's proposal seeks to achieve efficiencies in decision-making that can otherwise become blocked by individual NCAs by proposing to exclude BoS members from the Executive Board. However, Insurance Europe is convinced that the experience and closeness of NCAs to local markets is key for all supervisory and convergence decisions. Independent decision-making is only necessary where conflicts of interests between EIOPA and an NCA and/or between NCAs can arise and jeopardise the efficient use of EIOPA's tool set. Such "conflict-of-interest matters" are breach of Union law investigations (Art 17), settlement of disagreements between NCAs in cross-border situations (Art 19) other than on internal model approvals, and review of NCAs (Art 30). In line with the above proposition to retain at least four BoS members in the Executive Board, Insurance Europe would therefore suggest that only "conflict-of-interest matters" are discussed and voted on in the Executive Board by the Chairperson and full-time members alone, ie excluding the BoS members and any other member who may have any controversial interests in the matter or direct link to the NCA/ member state concerned. The decision-making on "conflict-of-interest matters" within the Executive Board should be designed in a way to avoid centralisation of power in the Chairperson, as described above.

3. Oversight and transparency

Insurance Europe has long called for both legally clarified competences and better external oversight mechanisms of the ESAs to ensure that mandates are not exceeded. Transparency is one key element to ensure efficient oversight. The report referred to in Article 43 para 5 is another useful mechanism but further improvements – in addition to the suggested governance changes - are necessary.

In Insurance Europe's view, the Parliament would be best suited to take on a stronger and increased external oversight role.

² European Parliament's [Briefing](#) – an initial appraisal of a European Commission Impact Assessment on "the Review of the European Supervisory authorities (ESAs)(micro-prudential supervision)", December 2017.

The current proposal fails to address the need for the Parliament's strengthened and increased role as overseer of the ESAs' founding regulations. Independent from eventual improvements to the current governance deficiencies, external oversight by the co-legislators is vital to ensure that, as agencies of the EU institutions that derive their powers from those delegated by the co-legislators, the ESAs keep to their mandates and do not go beyond the powers entrusted to them. A strengthened and increased role for the Parliament does not jeopardise the independence of the ESAs, but benefits the ESAs by giving credibility to the validity of their work and merely underlines the significant powers already entrusted to them. The Parliament has previously, in its 2016 stocktaking exercise on the [EU Financial Services Regulation](#), insisted that the EC and the ESAs, when drafting delegated and implementing acts and guidelines, keep to the empowerments laid down in the basic acts and respect the co-legislators' agreement.

- As mentioned before, one necessary improvement of the proposal would be to retain the involvement of the Parliament in the appointment and renewal of the Executive Board members and Chairperson.
- Furthermore, the Parliament should be required to call the ESAs to answer questions under Art 50 where there are well-founded stakeholder complaints over the work of the ESAs relative to their mandates under the founding regulations, and requiring the ESAs to account to the Parliament for how the public interest obligation has been met in its performance of tasks and empowerments.
- The Parliament should also be afforded an overseeing role in respect of the newly introduced Strategic Supervisory Plan (SSP), due to its potential budget implications at national and EU level (see more below).

Similarly, the EC should have a broader role in holding EIOPA accountable for all actions where it exceeds its powers.

This should, by definition, not interfere with EIOPA's independence (as it is limited to scenarios that are outside of EIOPA's mandate) but rather avoid abuse of such by the authority. For guidelines and recommendations, the proposal already foresees such power for the EC in Art 16 para 5 subsequent to a stakeholder group opinion that EIOPA has exceeded its powers. This should be further extended:

- A widening of the empowerment to other tools beyond merely "guidelines and recommendations" should be introduced, so as to future-proof the outcomes of the ESAs review and again strengthen the expanded role of the stakeholder groups. Several of EIOPA's previous initiatives (not limited to guidelines) have raised questions over their legal basis or their appropriateness in the light of political agreements, such as opinions, Q&As, and best practices. A concrete recent example would be the decision to change the Ultimate Forward Rate (UFR) ahead of the 2020 Solvency II review.
- The EC should not be dependent on stakeholder groups to point out cases where EIOPA may have exceeded its competences, but should be able to become active on its own-initiative. It would be inappropriate to entrust such a significant oversight or governance role solely to the stakeholder groups due to their composition of members acting in their personal capacities.
- Where the stakeholder groups submit their opinions, Insurance Europe would welcome a lowering of the two-thirds threshold to make the new empowerment more practicable as a means of exerting an effective "checks and balances" mechanism on the ESAs.
- The appointment of members of the stakeholder groups should not be done by EIOPA.

There is a need to ensure transparency in relation to agendas and supporting documents in the BoS, the proposed Executive Board and in the joint committee.

Generally, public hearings are organised and take place at a stage where formal decisions have already been taken and major changes are impracticable. Public hearings should be launched at a stage where interested parties and EIOPA's formal stakeholder groups' suggestions and remarks will be taken into account.

The annual report on the activities of EIOPA transmitted to Parliament, EC, the Council, the European Court of

Auditors, and the European Economic and Social Committee (Article 43 para 5) should clearly reflect the ESAs' consideration of the "European public good" for every activity undertaken.

Insurance Europe believes that the annual report on EIOPA's activities under Art 43 para 5 is a valuable tool. Insurance Europe supports its retention and the allocation of responsibility to a full-time member of the Executive Board to prepare the first draft. In line with Insurance Europe's view that an explicit obligation to take account of the impact of the ESAs' work on the European public good should be introduced, the ESAs should also be accountable to the public about how this obligation has been addressed and met. A section of the annual report should therefore be dedicated to this obligation. The full-time Executive board member responsible for the first draft should provide an overview of how the work of the ESA has observed the European public good and, where the public good may have been impacted, an explanation for why this has been judged proportionate and appropriate. One objective of requiring transparent accountability towards the European public good is to minimise the inadvertent negative impact of the ESAs' work on factors other than stability and effectiveness of the financial market. Achieving financial stability at the expense of innovation, for instance, should be prevented. These more nuanced supervisory objectives would, ultimately, support and benefit consumers as well as insurers.

4. European Systemic Risk Board (ESRB) & Union-wide stress tests

The ESRB must have sufficient sector-specific expertise. Insurance Europe is not convinced that the proposed permanent appointment of the president of the European Central Bank (ECB) as ESRB chair would contribute to achieving this.

Insurance Europe appreciates that the review addresses legal certainty concerns via the now permanent appointment of the president of the ECB as the Chair of the ESRB. However, this, together with the general tasks assigned to the ESRB in Capital Requirements Directive/Regulation (CRD/CRR) and in the context of the Capital Markets Union, evidences that the focus of the ESRB is on the banking sector and capital markets. Insurance Europe is conscious that the process of identifying opinions and reports within the ESRB is undertaken upholding the highest professional standards; eg, in its advisory technical committee. However, sector-specific expertise is crucial to take fully informed decisions, especially given the ESRB's role in designing insurance stress test scenarios (see below).

The ESRB should be obliged to conduct stakeholder consultations in advance of finalising every report or other workstream, not just "where appropriate".

It is further appreciated that the proposal foresees an equivalent provision for stakeholder consultations in the remit of the advisory technical committee as was already foreseen for the advisory scientific committee (Art 13 para 4a ESRB regulation). However, Insurance Europe would encourage the ESRB to always consult with affected stakeholders in advance of finalising its reports or other workstreams (and not just "where appropriate").

Granted that the ESRB's powers are essentially non-binding (as stated in the [EC staff working document SWD\(2017\) 313/949118](#), page 12), the reports and opinions nevertheless influence policymaking significantly (not at least due to their highly technical nature in content) and, therefore, indeed have strong effects on the industry in practice. EIOPA and NCAs are further required by Art 36 to act on recommendations received from the ESRB or explain the reasons for not doing so to the ESRB and the Council (or the BoS respectively), which would further indicate that the ESRB recommendations are indeed of a quasi-binding nature.

It should, therefore, be mandatory common practice for the ESRB to seek and consider stakeholder feedback before finalising opinions, reports, recommendations, or any other (advisory) tools. Insurance Europe believes that, for example, the recent ESRB report on insurance recovery and resolution³ would have benefitted from additional expert views from the industry in the later drafting process.

Union-wide stress test results (Art 32) should only be made public at an aggregate level.

The proposed amendments to Art 32 on Union-wide stress tests are of concern to the industry and could be addressed by the following measures:

- The current interval of conducting stress test exercises every other year is sufficient as the Solvency II regime is already based on stress tests. Given the long-term nature of the industry, its exposure to risks that are not covered by Solvency II does not change quickly and represent very expensive additional processes. In the event that additional stress tests are required on an exceptional basis, EIOPA should be required to undertake a cost-benefit analysis to justify such an exercise. In view of the proposed changes to EIOPA's budget, it is key that the impact on the resources of EIOPA, the NCAs, as well as the affected financial institutions are adequately considered.
- Results should only be made public at an aggregate level, because Solvency II is already based on stress tests and company level results would inevitably lead to the stress tests becoming a capital setting exercise, overriding the 1 in 200 solvency requirements set through the legislative process. An alignment with the current stress testing regime for banks under the European Banking Authority is unnecessary and inappropriate for several reasons, including:
 - Unlike other regimes, Solvency II is already based on stress tests so plenty of individual company information is available as part of regular Solvency II reporting.
 - The public disclosure of individual results is not required to fulfil EIOPA's financial stability mandate. The focus of the exercise should remain at a macro-prudential level.
- EIOPA should continue to provide the industry with the opportunity to bilaterally liaise prior to the publication of the results (as was done for the 2016 stress-test exercise).
- The European standard of professional secrecy is valuable and should not be impaired by the proposed changes in Art 32 of the EIOPA regulation.

5. Insurance-specific empowerments: internal models

EIOPA should play a role in ensuring that internal models remain a core part of Solvency II and that a convergent approach is achieved. Providing opinions upon request from the NCA or the supervised entity could be beneficial, however, acting on own-initiative would not be appropriate.

a. EIOPA's role in ensuring convergence in internal model supervision

Insurance Europe is supportive of EIOPA's role in ensuring convergence in the supervision of internal models, however, internal models convergence has natural limitations.

Insurance Europe supports the idea that EIOPA should generally have a strong role in the supervision of internal models to foster supervisory convergence. Challenges relating to internal models and convergence in their supervision have come to light in the past, and the proposed amendments would now provide an explicit legal basis for some of the workstreams EIOPA had already initiated over the past years; for example in identifying inappropriate inconsistencies between internal models across the industry (on market and credit

³ [Recovery and resolution for the EU insurance sector: a macroprudential perspective \(August 2017\)](#).

risk calibration) and its recent [opinion on the supervisory assessment of internal models including a dynamic volatility adjustment](#). In the context of internal models (as opposed to the use of the standard formula), it is worth noting that convergence cannot be achieved for all areas; for example, insurance risk, and some inconsistencies are indeed appropriate and called for in individual circumstances.

The inclusion of internal models in the 2020 review by the EC is welcomed to further improve the approval process and assist in addressing potential shortcomings that may have led to an inconsistent application of the requirements across the EU.

b. EIOPA's role in the approval process

It is crucial that the group supervisor remains responsible for examination, approval, and monitoring of the group internal model pursuant to the current Solvency II regime.

Insurance Europe agrees with the need for EIOPA to have full access to internal model applications and related information to fulfil its role in ensuring convergence and relating to individual model approvals. On the latter, it is appreciated that the EC does not yet foresee a full transfer of responsibility to EIOPA, but Insurance Europe would nevertheless suggest that – at least at group level, considering EIOPA's stronger role in actions taken by the supervisory college (see below) – EIOPA's increased involvement could lead to a quasi-leading function in the process. According to proposed Art 231a Solvency II Directive, supervisory authorities are bound to take their decision on model (change) approvals in accordance with the opinion issued by EIOPA, or are required to explain in writing why the decision deviates. In practice, Insurance Europe expects that EIOPA would therefore be empowered to dictate individual decisions at its choosing (as EIOPA can issue opinions on its own initiative).

Inefficiencies and delays in the approval process must be avoided.

As for EIOPA's proposed stronger role in colleges, the distinction between direct and indirect supervision would be blurred in the case of internal models in the (re)insurance sector. Insurance Europe believes that this would inevitably lead to numerous inefficiencies and would interfere with the local accountability of NCAs. The approval of often complex internal model (changes) involves assessments of (re)insurers' governance systems. Supervision of governance systems cannot be split between the NCA and EIOPA. In addition, internal model approval requires detailed knowledge of the company, its risk profile, and products. Only the group supervisor has in-depth knowledge in this regard. Therefore, splitting responsibilities between EIOPA and the NCAs would result in duplication or less informed internal model discussions. While the pre-defined escalation process in cases of EIOPA involvement (Art 21a) foresees maximum periods within which the respective authorities are required to move the approval process along, the overall model (change) process could potentially take significantly longer than under the current regime. From a business planning and continuity perspective, this is excessively onerous and Insurance Europe doubts that this empowerment relating to *individual/group model (change) approvals* would increase convergence across the EU to a significant extent.

In the interest of legal certainty and to avoid undermining the subsidiarity principle, EIOPA should not interfere where internal models have already been approved.

Insurance Europe understands that the proposed texts were not intended to give EIOPA powers to open or to challenge internal models that have already been approved. However, proposed Art 231a para 1 Solvency II Directive states that

*"EIOPA may, at its own initiative or at the request of supervisory authorities or insurance or reinsurance undertakings, issue an Opinion to the supervisory authorities in accordance with Art 21a(1)(a) and 29(1)(a) of Regulation (EU) No 1094/2010, on **internal models and** approvals of internal model*

applications as set out in Arts 112 to 127, Art 230, Art 231 and Art 233, with a view to foster supervisory convergence. [...]”

The inclusion of the bold underlined wording creates the possibility for the text to be interpreted as EIOPA having the power, at its own initiative, to issue an opinion on internal models (under its power under Art 29 para 1 lit a), and that such an opinion, once issued, could require the NCAs to change an internal model decision or provide reasons where the decision does not concur with the EIOPA opinion. The current wording is ambiguous and the bold underlined text above is not needed for this new Art 231a Solvency II Directive.

EIOPA should not have the power to provide quasi-binding opinions on individual internal model approvals on its own-initiative, but only upon request from an NCA or the supervised entity and without binding effects for the NCA.

According to the proposed Article 231a of the Solvency II Directive, supervisory authorities are bound to take their decision on model (change) approvals in accordance with the opinion issued by EIOPA, or are required to explain in writing why the decision deviates. In practice, Insurance Europe expects that EIOPA would hence be empowered to dictate individual decisions at will (as EIOPA can issue opinions on its own initiative). Insurance Europe appreciates that a strengthening of EIOPA’s role — also at the level of individual/group model (change) approvals — could support NCAs in some instances and mitigate the burden that internal model approvals may place on the resources of smaller markets. To achieve this, it would however be sufficient to enable EIOPA to issue opinions upon request from one or more NCAs or via an escalation requested by the financial institution itself (eg in the case of disputes between authorities) and not on its own initiative.

Settlements of disagreements between NCAs in cross-border situations on internal model approvals should not be decided without NCA involvement.

While Insurance Europe generally agrees that the powers under Art 19 may require more independence for EIOPA to be efficiently used, disputes between NCAs on internal models are of a highly technical nature and require local expertise. Insurance Europe therefore believes that within EIOPA’s internal decision-making procedure, BoS members should continue to be involved in these decisions.

6. Other empowerments

The regulations foresee sufficient powers to enable EIOPA to carry out its tasks, although clarification of certain existing powers may be beneficial.

Insurance Europe refers to the Parliament’s December 2017 Briefing⁴ which notes in reference to the EC’s 2017 public consultation on the ESAs review that “*there was no...majority for changes to the ‘current toolkit available to the ESAs’ meaning that opinions [of respondents to the consultation] on increasing the ESAs’ powers were split, especially as regards EIOPA*”. While Insurance Europe is generally supportive of some of the proposed changes on, for example, the ESAs’ role in the international context (monitoring of equivalence), other aspects should certainly be reconsidered as they could – together with the changes in the governance structure proposed by the EC – have unwanted effects on EIOPA’s lack of accountability and transparency. It is important to realise that EIOPA is not a (direct) supervisor. Comparison with the Single Supervisory Mechanism (SSM) is imperfect, since a distinction has been made at European banking level between the “regulator” EBA and the “supervisor” ECB. This distinction is important to prevent these two roles from ending

⁴ European Parliament’s [Briefing](#) – an initial appraisal of a European Commission Impact Assessment on “ the Review of the European Supervisory authorities (ESAs)(micro-prudential supervision)”, December 2017.

up in the same hands. Insurance Europe is therefore cautious about the allocation of (mainly) supervisory roles to EIOPA that compromise the NCAs' role as the responsible direct supervisor.

a. Cross-border and international aspects (Articles 17, 19, and 33)

Insurance Europe is generally supportive of the changes proposed in relation to breaches of Union law investigations (Art 17), disagreements between NCAs in cross-border situations (Art 19), and international relations (Art 33).

Some smaller clarifications would, however, be welcomed:

- Moving the competences related to breaches of Union law and the settlement of disagreements between competent authorities in cross-border situations into the remit of the Executive Board (subject to the above listed concerns on governance being addressed) is positive. However, it is unclear why certain tasks are specifically assigned to the Chairperson in this context (eg, Art 19 para 1b on deciding when EIOPA should get involved) and not the Executive Board as a whole. In any event, it is important to effectively manage any conflicts of interest.
- Where EIOPA is empowered to request information on potential **breaches of Union law** from financial institutions directly (Art 17 para 2), reasons provided on why the information is necessary for the purposes of investigating an alleged breach or non-application of Union law should also include reasons why the request is addressed to that specific financial institution. More so, all stakeholders should be able to bring potential breaches to EIOPA's attention and provide necessary background information on their own initiative.
- Insurance Europe is supportive of the clarifications proposed to Art 19 on the settlement of disagreements between **NCAs in cross-border situations**. EIOPA's role to act as a mediator (para 2) is particular noteworthy and Insurance Europe would support EIOPA using this empowerment to its fullest: eg, via establishing platforms for NCAs to find solutions in cross-border disputes, under the processes established in Art 19. However, Insurance Europe continues to believe that specific new powers are not necessary and therefore the specification under proposed Art 19 para 3 under which EIOPA, when taking a decision in cases where NCAs cannot reach an agreement, may require NCAs to revoke or amend a decision is questionable in terms of legal certainty.
- Insurance Europe is generally supportive of the increased scope of EIOPA's **international responsibilities** (Art 33). However, monitoring the continued equivalence of entire regulatory regimes in third-countries requires extensive expertise and significant resources. Insurance Europe believes that, as is proposed for breach of Union law investigations (Art 17), interested stakeholders could play a role in mitigating these resource constraints. Many larger European (re)insurers and groups are active in equivalent third countries, have the required knowledge, and would have an interest in assisting EIOPA by providing information necessary for the ongoing monitoring.

b. Supervisory colleges (Article 21)

Insurance Europe agrees that there may be a need to improve information-sharing between NCAs and EIOPA. However, care must be taken not to undermine the principle of subsidiarity in operations of the supervisory colleges ("colleges"), as well as local accountability of NCAs.

The following clarifications would furthermore be appreciated:

- The proposal empowers EIOPA to participate and "lead on activities" of the colleges including on-site examinations. It is unclear what exactly is meant by "lead activities"; eg, whether this would allow EIOPA to initiate activities in colleges and issue concrete supervisory decisions enforceable on groups. If EIOPA indeed was empowered to lead and initiate all activities in colleges on its own initiative where it assumes that more supervisory convergence is needed, it would exercise direct supervisory powers. The clear distinction between direct and indirect supervision, as it is in place — for example, in the scope of ESMA's

empowerments — would very much be blurred in the case of colleges. The scope and process under which EIOPA can lead activities in colleges should be clarified at legislative level and not upon agreement within the respective colleges.

- Insurance Europe assumes that EIOPA would continue to require consent from the side of the group supervisor on leading activities.
- An unlimited empowerment would further have direct implications on EIOPA's — as well as the involved NCAs' — budget without the necessary checks and balances in place (please refer to comments below on budget determination in relation to the strategic supervisory plan).

c. Consumer protection / market conduct

Insurance Europe welcomes the EC's focus on safeguarding the interests of consumers. However, aspects of the current proposal raise some concerns.

- **New tasks:** The proposal seeks to expand EIOPA's responsibilities in the area of consumer protection. While Insurance Europe welcomes efforts to improve consumer protection within the internal market, the prescriptiveness of the proposal in Art 9 para 1 (aa) and (ab), as well as the expansion in (d) to "developing" common disclosure rules, raises concerns over insurers' freedom to develop, design and price products. Great care must be taken to ensure that these freedoms to contract are protected. It is not clear that the proposal in its current form does so. Coupled with EIOPA's new empowerment under Art 30 para 3a to call on the EC for further harmonisation measures where it sees it necessary, there is a risk that insurers' ability to retain absolute discretion over product features could be jeopardised. It also risks compromising the EU institutional balance whereby the EC is entrusted the right of initiation: ie, the ESAs should not assume the right of policy initiation, but should remain supervisors charged with achieving the convergence of existing EU law.
- **Admission to the Committee on financial innovation:** Insurance Europe welcomes the explicit inclusion of "authorities responsible for consumer protection" in the Committee on financial innovation under Art 9 para 4, although it is more cautious in its opinion on the inclusion of the national data protection authorities. To avoid duplication, inconsistencies, and legal uncertainty in the sphere of data protection, it may be preferable to include the (future) European Data Protection Authority (currently known as the Art 29 Working Party) in the Committee on financial innovation.
- **Guidelines and recommendations:** Insurance Europe would welcome clarification to Art 9 para 2 that states that guidelines and recommendations to promote the safety and soundness of markets and convergence are subject to the cumulative provisions of Art 16 para 2 to confirm the current position (see below).
- **The ESAs Joint Committee:** The remit of the Joint Committee is proposed to be extended to include "consumer and investor protection issues" (Art 54 para 2). Important areas, such as consumer and investor protection, have been approached differently by the different ESAs in the past to ensure sector specificities and needs are addressed appropriately. Insurance Europe would also suggest that the balance between the three ESAs in the discussions of the Joint Committee is not always equal and that there is a risk that the current ESMA standards for consumer and investor protection would find their way into the insurance sector in an inappropriate manner. It is therefore crucial to maintain EIOPA's separate powers and responsibilities in the area of consumer and investor protection, in particular keeping in mind the particularities of consumer protection in the insurance sector that comprises, not only individual, but also collective policyholder interests that need to be duly balanced.

Insurance Europe maintains that Article 16 needs to be clarified as its current drafting entrusts too much discretion to the ESAs when setting guidelines and recommendations.

While Insurance Europe appreciates that guidelines and recommendations have been an important and successful tool for supervisory convergence in certain cases, EIOPA has made excessive use of guidelines in the past.

- It is in the interest of both EIOPA and supervised entities that the competence on setting guidelines or recommendations under Article 16 is clarified in the ESA regulations.
- 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 para 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). 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](#)).
- Furthermore, effective legal protection against EIOPA guidelines and different formats of communications with de facto binding effects is necessary. Insurance undertakings indirectly affected must be granted a formal appeal against such measures. Article 60 only refers to decisions, indicating an immediate legal effect on undertakings that is admittedly not imposed by all guidelines. Therefore, the scope of Article 60 should be extended to guidelines and different formats of communication aiming at the assessment by the Board of Appeal whether the measure in question is equivalent to a decision in terms of its effect on undertakings and should be treated accordingly.

d. Outsourcing and risk transfer to third-country entities (Article 31a)

Insurance Europe understands and appreciates that, in the context of Brexit, more supervisory convergence in the areas of outsourcing and risk transfer (excluding cross border reinsurance and retrocession, see below) is required for all supervised financial services sectors. Regulatory arbitrage and a "race to the bottom" is in nobody's interest and Insurance Europe agrees that EIOPA should play a role in avoiding such developments. However, Insurance Europe believes that the new regime and powers proposed in Art 31a exceed this objective by far. This is exacerbated by the fact that Art 31a is proposed to fall under the sole responsibility of the Executive Board (see above).

- The notification requirement in para 3 whereby financial institutions have to inform their NCAs of the outsourcing or delegation of a material part of their activities or any of their key functions, and the risk transfer of material part of its activities to another entity or its own branch established in a third country (in the following referred to as "transfer of material activities") is misplaced in the ESAs regulation. Such requirement is applied in many members states already. Whereas it is appreciated that this provision should exist in similar forms across sectors, the notification from supervised entity to NCA per se does not involve the ESAs in any way (yet) and should therefore form part of the sector specific regulatory regime, ie Solvency II in the case of (re)insurance.
- According to para 2, whenever it considers it necessary EIOPA can issue a quasi-binding opinion on individual entity authorisations/registrations whose business plan entails the transfer of material activities. This is highly concerning for numerous reasons.
 - It empowers EIOPA to directly influence what are clearly direct supervisory micro-prudential decisions. Insurance Europe believes that to achieve overall supervisory convergence, this is neither a necessary nor an efficient tool for EIOPA.

- The collaboration process established in para 2 is complicated and lacks all transparency vis-à-vis the authorisation/registration seeking financial institution on the intervention by EIOPA.
- The double competence between EIOPA and NCA (not unlike as is foreseen for internal model approvals) would lead to inefficiencies in the authorisation/registration processes. A practical implication would be the inevitable delay in approval processes despite the 2-months limitation established for EIOPA to issue its opinion.
- The empowerment proposed in para 4 for EIOPA to issue recommendations that would require NCAs to review its decision or withdraw an authorisation goes against all standards of legal certainty. The practical implications of such supervisory interventions are substantial and, in Insurance Europe's view, not justified – neither in the context of Brexit nor in a general trade context. European as well as UK (re)insurers operate under extraordinarily uncertain conditions since the UK triggered Art 50. Significant, resource-demanding business decisions have to be prepared and executed with great uncertainty of the relationship between the UK and the EU and legislative framework applicable after March 2019. Therefore, the empowerment of EIOPA to de-facto reverse NCAs' legally binding decisions would further increase the difficulties of this environment, which is certainly not called for in the pure interest of establishing supervisory convergence.
- Additionally, the 15-day period for NCAs to defend their decision vis-à-vis EIOPA seems disproportionately short and the proposed publication of EIOPA's recommendations that the NCA decided not to follow, seems to serve no obvious purpose for the public other than blacklisting the respective NCA as well as the financial entity (whilst the latter continues to hold a valid authorisation/registration from the NCA).
- The general inclusion of risk transfer appears to target policymaker's fear of the establishment of pure fronting firms after Brexit. Insurance Europe would like to stress, however, that open reinsurance markets are vital to enable reinsurance markets to operate efficiently, to diversify risk globally and to promote continued growth and recovery of global and national economies. Barriers to trade in reinsurance undermine the efficiency of reinsurance markets. They lead to higher reinsurance costs and less capacity in the long term. Barriers to cross border reinsurance furthermore often represent conflicts with WTO commitments under GATS. Insurance Europe hence believes it should be clarified in the EIOPA regulation, that risk transfer in the context of Art 31a does not refer to cross border reinsurance. This would not hinder policymakers from establishing separate general guidelines on cross border reinsurance, in consideration of existing international standards and EU commitments.

e. Direct information requests and enforcement (Articles 35a – 35h)

The proposal seeks to strengthen the existing empowerment to require the provision of data from financial institutions by adding an enforcement regime. Insurance Europe is supportive of the general retention of the subsidiarity of direct information requests from EIOPA. To avoid any data inconsistencies between national and European level, any flow of data from financial institutions to EIOPA should continue to be channelled through NCAs. As the current system seems to work well in the insurance sector, Insurance Europe is not convinced about the need for an enforcement regime.

- The extent of the potential fines/penalties is not justified and proportionate.
- Additionally, Insurance Europe has concerns over the omission of the safeguard in the existing empowerment, which currently requires EIOPA to explain the 'necessity' for the data requested for its performance of the duty that is in question. This link of 'necessity' is omitted from the current proposal. That, together with the empowerment being for the pursuit of its 'tasks' – rather than 'duties' as is currently the case – means the empowerment may be invoked much more frequently. This could have significant reputational and financial repercussions for financial institutions. A consequence of this is the checks-and-balances linked to the empowerment to require the provision of (sensitive or confidential) data.
- Whereas the existing empowerment is instigated by the BoS (ie, a Board made up of all member states' NCAs) the revised empowerment, as proposed, would be initiated by the Executive Board. This, again, means the empowerment may be used much more frequently than it currently is. Please refer to comments on governance above.

7. Strategic supervisory plan (SSP) and determination of supervisory budget

The proposal seeks to strengthen EIOPA's ability to ensure convergence of EU law, by enabling it to set out objectives in the SSP every three years, which NCAs are subsequently expected to strive to support through their annual work programmes (Art 29a). Reviews of NCAs' work (Art 30) can result in recommendations by EIOPA for NCAs to take action to achieve the SSP.

Insurance Europe welcomes the efforts to increase convergence of EU law by encouraging NCAs to work towards the same objectives and goals as EIOPA. However, there is a legitimate question about how far the SSP will determine budget needs at EU and at national level.

Here, there is an absence of adequate checks and balances in Art 29a to ensure the ESAs do not, effectively, unilaterally determine their own budgets by setting the strategic objectives unchallenged by outside oversight. This is because, under Article 47, the SSP is prepared by EIOPA's Executive Board and subsequently 'transmitted' to the EU institutions, but there is an absence of active participation or acceptance by the NCAs or EU institutions, most notably the Parliament and Council. A strengthened role of the Parliament in this context would be welcomed. Likewise, the proposal would enable EIOPA to address recommendations to NCAs on how to achieve the objectives of the SSP. Again, EIOPA could effectively impact budget needs at national level without the involvement of Council or the Parliament. Insurance Europe is concerned that this could result in unjustified or disproportionate year-on-year budget increases, ultimately to be funded by the sector.

- Firstly, Insurance Europe believes that the BoS should be responsible for deciding on the final SSP, with preparation being undertaken by the Executive Board including at least four BoS members (see above).
- Secondly, the SSP could further be approved by the Parliament and Council before it is adopted.
- Additionally, a requirement at the end of the second para of Art 29a para 1, which would safeguard proportionality and subsidiarity should be added. It could read:
"so long as these specific priorities are best achieved at EU level and do not go beyond what is necessary to achieve the tasks and duties of the Authority".

8. Budget and funding

Insurance Europe has identified several concerns and difficulties arising from the EC's proposal on the ESAs' budget determination and allocation.

The proposal lacks a suitable legal basis.

Insurance Europe agrees with the opinion of the Council Legal Service that the introduction of an obligation for financial institutions to pay annual contributions under Article 61(1)(b) of the proposal is not possible on the basis of Article 114 TFEU, because such an obligation to contribute does not constitute a payment in consideration of a service, but rather a payment of a fiscal nature aimed at contributing to the general expenditure of the ESAs.

There is insufficient evidence for the need to change the budget.

The EC's Impact Assessment summarises the objectives to be achieved in this review, as "funding sufficiency" and "proportional funding"⁵. While Insurance Europe supports the aim for sufficient funding of the ESAs to enable the ESAs to be credible, this should not be tantamount to a "carte blanche" to increase the costs of the European supervisory system. There is insufficient evidence of the need and benefits of change (not only of a changed funding mechanism, but, more broadly, also of the expansion of tasks and empowerments granted to the ESAs, see above). The EC's objective of funding sufficiency mixes the problem of "sufficient funds" with the issue of "who should pay" for the system; a system that, after all, benefits society: governments, market players and consumers.

Further, it is regrettable that ensuring *budget* efficiency of the ESAs is not included as an objective, despite the EC's attention to tightening budgets at national level and the inflexibility this causes to the ESAs' budget needs. If an efficiency criteria for the budget had been included in the Impact Assessment, options 1 and 2 may have featured as preferable to the chosen option 3⁶.

Double-charging must be avoided.

It must be made clear how future direct industry contributions to EIOPA will be deducted from the current indirect industry contributions at national level, to avoid double-charging. Insurance Europe welcomes the EC's clear rejection in its proposal of any such double-charging of insurers, but this should also be reflected in the text of the regulation. Supervision by EIOPA and NCAs should be complementary: increased costs for EIOPA should lead to reduced costs for NCAs and vice versa. The overall size of the supervisory costs must remain reasonable and stable, with a strong and effective control mechanism involving the EU institutions and the NCAs, as well as the supervised industry (see more below).

There is a risk of continuous increases to the ESAs' budgets.

Insurance Europe is concerned over the compounding effect of the increased powers proposed and the growing number of level 1 and level 2 texts that could introduce further tasks for the ESAs⁷, leading to annual increases in EIOPA's budget needs. There is a lack of safeguards in the proposal to prevent the supervised industries facing continuous increases in their contributions to fund the European supervisory system; a system which ultimately benefits undertakings by safeguarding a level playing field through increased convergence, but also consumers and governments through stable and competitive markets.

In fact, the EC's Impact Assessment indicates that an objective of shifting funding over to the industry (see below) is to increase the overall budget for the ESAs. Industry's concerns over budget instability (in particular increases) is too readily dismissed, where the EC reflects:

*"... [option 3] introduces more flexibility to deal with new ESAs' tasks and/or supervisory powers..."⁸ and
"...it would increase the funding independence and flexibility of the ESAs by creating a funding system that is not directly or indirectly influenced by 28 different national budgetary constraints, as growth rates of national budgets may not increase as fast as growth rates of ESAs' activities"⁹.*

⁵ Page 78, table 8.3 of the EC's Impact Assessment (SWD(2017) 308 final).

⁶ Option 1 is 'no policy action' meaning no change from the current system of a 40/60 split between the EU budget and NCAs' contributions, option 2 is an 'adjusted public funding' capping the EU budget line at 40% and changing the calculation of the NCAs' contributions to be a function of the size of the national financial sector, and option 3 is 'mixed funding' as in the EC's proposal where the EU contribution is capped at 40% and the remainder coming from supervised entities, collected via designated authorities. Please refer to pages 78-88 of the EC's Impact Assessment (SWD(2017) 308 final).

⁷ Page 72 of the EC's Impact Assessment (SWD(2017) 308 final), between 2010 and 2017: an increase in level 1 texts from five (5) to seven (7) and in level texts from zero (0) to fifty-six (56) – of which thirty-three (33) are adopted and twenty-three (23) remain to be adopted.

⁸ Page 84 of the EC's Impact Assessment (SWD(2017) 308 final).

⁹ Ibid.

The proposed flexible budget allocation should be reviewed.

Insurance Europe generally welcomes the continued distribution of the EIOPA budget between the EU (retained at 40%) and the national markets. However, processes establishing the budget need to ensure that the EU share remains stable (at 40 %) and does not fluctuate widely over the years. Insurance Europe, along with several other stakeholders, has repeatedly underlined the necessity of maintaining a significant EU budget line to ensure appropriate oversight of the ESAs, most notably by the Parliament. Good supervision serves the general interest and it is therefore reasonable that some of the costs are paid from the European Union budget. This share should remain at 40% to prevent the EU budget share from being diluted over time. Insurance Europe generally appreciates the planned activities-based budget allocation, acknowledging both the insurance and the pensions sector.

Supervised financial entities have no voice in the budget setting and approval process.

The industry to which the added costs would fall has no involvement in the budgetary discussions. While Insurance Europe appreciates that there would be a conflict of interest if supervised entities had influence over the ESAs' strategy and concrete work programme, their interests should at least be taken into consideration in the budget setting and approval process. By way of example, in Germany - where industry bears the costs for national supervision - the annual supervisory budget requires approval from a body that includes industry representatives.

To address the deficiencies of the proposal — identified in the above paragraphs — solutions could include:

- **A strong role for the EU institutions (especially the Parliament) in the budget setting process is a prerequisite for a stable and sound supervisory system.** To achieve transparency and democratic control, the budgetary authority must approve EIOPA's budget on a yearly basis pursuant to Article 314 TFEU. The endorsement of the budget by the budgetary authority under Art 63 para 3 of the proposal, must not merely be a "rubber stamping exercise" but should amount to a proper consideration of the draft ESAs' budgets, as well as the EU's balancing contribution. This process (eg, via the establishment of a dedicated budget oversight and control committee), should be formalised and the committee should coordinate its discussions with the process of the annual ESAs discharge to ensure that the ex-ante and ex-post control of the ESAs budget are aligned and these mechanisms operate efficiently. The budget setting of NCAs in many member states is formalised in a comparable manner (eg, France)
- **Industry views must be considered in the budget setting process** to ensure stability in the funding of the European supervisory system (see above) and to act as regular "checks and balances" of the ESAs' work. A possible solution to address the imbalance between "budget setters" and "payer" under the current proposal would be the inclusion of a consultative process of industry within a formalised approval process of the ESAs' budgets by the institutions. Industry's right to be heard and participate in the debate of the above mentioned dedicated committee would not just enable the institutions to make a fully informed decision on the ESAs' budget in the interest of the European public good, but would also ensure budget discipline from the ESAs both in planning its budget, as well as in operating under the set budget.

About Insurance Europe:

Insurance Europe is the European insurance and reinsurance federation. Through its 35 member bodies — the national insurance associations — it represents insurance and reinsurance undertakings that account for around 95% of total European premium income.