Insurance Europe feedback on the European Commission's proposal for a directive amending the Solvency II Directive

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Contact person:	ESAs review team	E-mail:	esas@insuranceeurope.eu
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General points

Insurance Europe appreciates this opportunity to provide feedback to the European Commission at an early stage in the review of the European supervisory authorities (ESAs) via the "Have your say" platform.

Insurance Europe believes that an efficient, effective and credible system of financial supervision is essential at EU level. The stability of the supervisory framework is crucial to achieving this. Insurance Europe has prepared additional comments on governance and the new and redefined powers in the ESAs review in its feedback on the proposal for a regulation COM(2017)536/948972. The comments provided below refer not only to the changes proposed to the Solvency II Directive but also to Articles 21 and 21a of that proposal for a regulation amending the current EIOPA Regulation.

EIOPA's role in ensuring convergence in the supervision of internal models

The European Insurance and Occupational Pensions Authority (EIOPA) should play a role in ensuring that internal models remain a core part of Solvency II and that a convergent approach to them is achieved. For that, EIOPA should have access to data, and providing opinions upon request from the national competent authority (NCA) or the supervised entity could be beneficial. However, powers to provide opinions on own-initiative that over-rule NCAs are neither appropriate nor efficient and would undermine the principle of subsidiarity.

a. EIOPA's role in convergence of internal models

Insurance Europe is supportive of EIOPA's role in ensuring convergence in the supervision of internal models, however internal model 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 already initiated over recent years, eg identifying inappropriate inconsistencies between internal models across the industry (as opposed to the use of the standard formula) and its recent opinion on the supervisory assessment of internal models including a dynamic volatility adjustment. In the context of internal models, it is worth noting that convergence does not mean all companies applying the same calibrations and methods because in many cases differences in internal models are appropriate and even necessary.

Insurance Europe aisbl
Rue Montoyer 51, B-1000 Brussels
Tel: +32 2 894 30 00 • Fax: +32 2 894 30 01
E-mail : esas@insuranceeurope.eu
www.insuranceeurope.eu

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

b. EIOPA's role in the approval process

- **EIOPA should have full access to internal model applications.**

Insurance Europe agrees with the need for EIOPA to have full access to internal model applications and related information in order to fulfil its role in ensuring convergences in individual model approvals.

- **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 undermine the subsidiarity principle and lead to inefficiencies. The approval of sometimes complex internal model (changes) involves assessment of (re)insurers' governance systems. Supervision of a governance systems cannot be split between the NCA 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 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, the proposed Article 231a para. 1 of the 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 wording in bold means that the text could be interpreted as EIOPA having the power, on its own initiative, to issue an opinion on internal models (under its power under Article 29 para. 1 lit. a) and that such an opinion once issued could require the supervisory authorities to change an internal model decision or provide reasons why the decision is not in line with the EIOPA opinion. The current wording is ambiguous and the bold text is not required in the new Article 231a of the 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 on internal model approvals between NCAs in cross-border situations should not be decided without NCA involvement.**

While Insurance Europe generally agrees that EIOPA may require more independence to use the powers under Article 19 efficiently, disputes between NCAs on internal models are of a highly technical nature and require local expertise. Insurance Europe therefore believes that BoS members should continue to be involved in EIOPA's internal decision-making process.