

IAIS Consultations

Print view of your comments on "Consultation on The Supervisor: ICP 1 (Objectives, Powers and Responsibilities of the Supervisor) and ICP 2 (Supervisor)" - Date: 29.08.2017, Time: 12:28

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Question	
Answer	Q1 General Comment on ICP 1
	<p>Insurance Europe appreciates the opportunity to comment on revised ICP 1 and generally supports the proposed changes. However, some clarifications should be made relating to the objectives of insurance supervision and Insurance Europe further proposes the addition of good regulatory practices to guide supervisors in achieving these objectives.</p> <p>The new wording of ICP 1 could be improved as follows:</p> <p>"Each authority responsible for insurance supervision, its powers, as well as the general objectives of insurance supervision are clearly defined."</p>
Answer	Q2 Comment on Guidance 1.0.1
Answer	Q3 Comment on Guidance 1.0.2
	<p>Insurance Europe proposes the following clarifications to the section on updates of supervisory responsibilities and objectives:</p> <p>"However, when those responsibilities and objectives are updated, it should be done in a manner that avoids creating instability, as a stable business environment is important for the insurance market and consumer confidence."</p> <p>"Aspects that should undergo frequent updating due to environmental or other changes should be supplemented as needed with updated legally enforceable rules and Guidance."</p>
Answer	Q4 Comment on Standard 1.1
Answer	Q5 Comment on Guidance 1.1.1
	Q6 Comment on Guidance 1.1.2

Answer	In practice, some frameworks have separate entities responsible for supervising (re)insurers and (re)insurance distributors. This could be reflected in the list of examples.
	Q7 Comment on Guidance 1.1.3
Answer	
	Q8 Comment on Standard 1.2
Answer	Insurance Europe believes that the terms used for the second principle objective are highly subjective (“fair” and “safe”) and potentially misleading (“stable”). Stability should be clarified to mean stability of the overall financial system (as per the third principal objective) to not imply that there could be any justified interference by the supervisor with free competition in the insurance market – instead, the promotion of competition could be included as an objective.
	Q9 Comment on Guidance 1.2.1
Answer	Insurance Europe would like to point out that the suggestion in Guidance 1.2.1 to include “promoting insurance market development” as a supervisory objective may and, in practice, has invited supervisors to take protectionist measures against foreign (re)insurers under the justification of promoting local insurance markets and their developments. Insurance Europe would therefore urge the IAIS to not encourage such behaviour and would suggest that a further objective to promote fair competition could be added to mitigate that unwanted effect.
	Q10 Comment on Guidance 1.2.2
Answer	
	Q11 Comment on Guidance 1.2.3
Answer	<p>Insurance Europe considers that the ICP could be further enhanced to set out good regulatory practice that the supervisors should consider in fulfilling their mandate. Therefore, the following wording to the end of Guidance 1.2.3 should be added.</p> <p>“In fulfilling its objectives, the supervisor should have regard to the following regulatory principles:</p> <ul style="list-style-type: none"> • The need to use its resources efficiently, and transparently; • The principle that a burden of restriction imposed should be proportionate to the benefits; • The general principle that consumers should take responsibility for their decisions; • The benefit of competitive markets to good consumer outcomes; • That the regulator should act in a transparent manner; and • The potential detriment that publishing information relating to persons may have on them.”
	Q12 Comment on Guidance 1.2.1
Answer	
	Q13 Comment on Standard 1.3
Answer	
	Q14 Comment on Guidance 1.3.1
Answer	

	Q15	Comment on Guidance 1.3.2
Answer		
	Q16	Comment on Guidance 1.3.3
Answer		
	Q17	Comment on Standard 1.4
Answer		
	Q18	Comment on Guidance 1.4.1
Answer		
	Q19	Comment on Guidance 1.4.2
Answer		
	Q20	Comment on Guidance 1.4.3
Answer		
	Q21	General Comment on ICP 2
Answer		<p>Insurance Europe generally supports the changes proposed to ICP 2.</p> <ul style="list-style-type: none"> • In alignment with the comments provided to the recent IAIS consultation on revised ICP 3, Insurance Europe strongly believes that the information received by authorities, bodies and persons should be covered by the obligation of professional secrecy, as opposed to confidentiality. In fact, in a number of jurisdictions professional secrecy is an absolute principle that has no limitation in time and from which one of the parties cannot be discharged by the other party. • The principle of proportionality should be explicitly reflected in a number of the revised Standards and Guidance. • The supervisor or its staff should not per se be excluded from criminal liability for actions taken in the course of discharging their responsibilities. • The publication of supervisory action taken can have significant detrimental effects and supervisors should have sufficient leeway to refrain from such measures. <p>On the ICP itself, Insurance Europe does not support the IAIS decision to delete the reference to confidentiality in ICP 2 and would ask this be reconsidered and potentially extended to professional secrecy.</p>
	Q22	Comment on Guidance 2.0.1
Answer		
	Q23	Comment on Guidance 2.0.2
Answer		Insurance Europe generally appreciates and supports the additional Guidance added on operational independence, accountability, and transparency.
	Q24	Comment on Guidance 2.0.3

Answer	<p>Insurance Europe suggests making the following amendment to this Guidance to explicitly include the overarching concept of proportionality and to broaden the circumstances in which the actions of the supervisor may be challenged:</p> <p>“[...] Accountability means that the supervisor operates within the bounds of its delegated authority, in a proportionate, fair and equitable manner that is open to scrutiny and review by the government and the public, and that the actions of the supervisor may be challenged as part of a judicial appeal process or by an alternative appeal forum/body. Strong internal governance processes, sufficient and skilled human resources and maintenance of high standards of integrity and professionalism underpin the accountability of the supervisor.”</p>
	Q25 Comment on Guidance 2.0.4
Answer	
	Q26 Comment on Guidance 2.0.5
Answer	
	Q27 Comment on Guidance 2.0.6
Answer	
	Q28 Comment on Standard 2.1
Answer	
	Q29 Comment on Guidance 2.1.1
Answer	<p>While Insurance Europe agrees with the principle of operational independence, it recommends amending the guidance as follows to better reflect the need for proportionality in the exercise of supervisory objectives:</p> <p>“Operational independence of the supervisor includes having the discretion to allocate its resources, including financial and human resources, and to carry out the supervisory process proportionally, taking account of cost benefit analysis, in accordance with its objectives and the risks the supervisor perceives. Having this discretion, which underpins operational independence, should be reflected in primary legislation.”</p>
	Q30 Comment on Guidance 2.1.2
Answer	
	Q31 Comment on Guidance 2.1.3
Answer	<p>Insurance Europe agrees that the supervisor and government relationship should be clearly defined in legislation. Legislation should also enable the government to direct the supervisor to take account of public policy objectives in the exercise of its supervisory objectives.</p> <p>Insurance Europe therefore recommends inserting the following sentence to follow the initial sentence in Guidance 2.1.3:</p> <p>‘This should include provision for the government to notify the supervisor of public policy objectives which it should have regard to in the exercise of its supervisory objectives’.</p> <p>Furthermore, while Insurance Europe agrees that the daily operations of the supervisor should not be subject to consultation with or approval of the government, it should be noted that the phrasing in this Guidance that supervisors may consult in ‘exceptional circumstances’ and where there are ‘major socio-economic consequences’ does not reflect the reality, and that consultation between the government and the supervisor tends to take place more frequently than the wording suggests.</p>
	Q32 Comment on Guidance 2.1.4

Answer	<p>Insurance Europe generally agrees with the importance of structural independence between the supervisor and supervised entities. However, the second half of 2.1.4. seems to be overly prescriptive in listing potential risks that an overly close relationship could bring. It is not clear what value is added by the list of risks. Insurance Europe would hence propose the following deletions:</p> <p>“In addition to independence from the government, the supervisor should be independent from the entities it supervises. In cases where there are industry representatives on the governing body of the supervisor, the composition of the governing body should be sufficiently diverse to prevent industry representatives from controlling the supervisor. The supervisor should not have an excessively close relationship with supervised entities. The supervisor’s policies, for example, post-employment, anti-corruption and accountability in decision-making, should seek to avoid such close relationship.”</p>
	Q33 Comment on Guidance 2.1.5
Answer	
	Q34 Comment on Standard 2.2
Answer	
	Q35 Comment on Guidance 2.2.1
Answer	
	Q36 Comment on Guidance 2.2.2
Answer	<p>Insurance Europe has strong concerns about the Guidance provided in 2.2.2. While a certain level of legal protection of individuals is necessary to ensure operational independence, Insurance Europe strongly disagrees with criminal liability being included in this scope. Furthermore, criminal liability, by definition, requires an element of illegality which is not clear from the last part of the Guidance.</p> <p>Insurance Europe would propose to redraft Guidance 2.2.2, potentially to a wording closer to the former 2.10.1.</p>
	Q37 Comment on Standard 2.3
Answer	
	Q38 Comment on Guidance 2.3.1
Answer	
	Q39 Comment on Guidance 2.3.2
Answer	
	Q40 Comment on Guidance 2.3.3
Answer	
	Q41 Comment on Standard 2.4
Answer	<p>In general, it is not entirely clear what the IAIS means to be stakeholders that supervisors are accountable to. Insurance Europe would appreciate a clarification of this term used in the context of ICP 2 (as used in, for example, 2.4, and 2.4.3).</p> <p>In addition, Insurance Europe recommends that a further guidance paragraph (Guidance 2.4.5) is added to support the principle of accountability anticipated in Standard 2.4, as follows:</p>

“2.4.5 The Supervisor should publish a public annual report of its activities and how its resources have been deployed over the period in order to facilitate public understanding and scrutiny of the supervisor.”

Q42 Comment on Guidance 2.4.1

Answer

Q43 Comment on Guidance 2.4.2

Answer

Q44 Comment on Guidance 2.4.3

Answer

Q45 Comment on Guidance 2.4.4

Answer

Q46 Comment on Standard 2.5

Answer

Standard 2.5 establishes elementary aspects of accountability. Structurally, Insurance Europe would propose to split 2.5 in two separate Standards:

“2.5a The supervisor applies requirements and supervisory procedures equitably and consistently.

2.5b There are processes to appeal against supervisory decisions which do not unduly impede the ability of the supervisor to make timely interventions in order to protect policyholders’ interests or contribute to financial stability.”

Q47 Comment on Guidance 2.5.1

Answer

Q48 Comment on Guidance 2.5.2

Answer

Q49 Comment on Guidance 2.5.3

Answer

Q50 Comment on Standard 2.6

Answer

As mentioned in Q21, Insurance Europe believes that confidentiality, being an ‘overarching concept’ of the ICP framework, warrants mentioning at ICP level.

Furthermore, the ambition should be to ensure professional secrecy at supervisory level as opposed to confidentiality only. As was shared in response to the consulted revisions of ICP 3, Insurance Europe believes that the information received by authorities, bodies and persons should be covered by the obligation of professional secrecy; as opposed to confidentiality. Insurance Europe considers the requirement of confidentiality to be of a lesser legal power than the obligation of professional secrecy. In fact, in a number of jurisdictions professional secrecy is an absolute principle that has no limitation in time and from which one of the parties cannot be discharged by the other party.

Q51 Comment on Guidance 2.6.1

Answer

	Q52	Comment on Guidance 2.6.2
Answer		
	Q53	Comment on Guidance 2.6.3
Answer		
	Q54	Comment on Standard 2.7
Answer		
	Q55	Comment on Guidance 2.7.1
Answer	Insurance Europe would like to remark the importance of sufficient leeway for supervisors to refrain from publishing information about problem or failed insurers (5th bullet point). The term ‘supervisory actions’ used in this Guidance is wide-ranging, and publication of such often delicate information can have significant detrimental effects that may not only conflict with other supervisory objectives, but also interfere with existing recovery plans and measures taken in relation to resolution. Please refer to Insurance Europe’s positions on recovery and resolution in the responses provided to the recent IAIS consultation on revised ICPs 10 and 12.	
	Q56	Comment on Guidance 2.7.2
Answer		
	Q57	Comment on Standard 2.8
Answer	Scope and meaning of the term “requirements” are not clear in the context of Standard 2.8. This should be clarified, for example by referring to “regulatory requirements” instead of “its requirements”.	
	Q58	Comment on Guidance 2.8.1
Answer		
	Q59	Comment on Guidance 2.8.2
Answer		
	Q60	Comment on Guidance 2.8.3
Answer		
	Q61	Comment on Standard 2.9
Answer		
	Q62	Comment on Guidance 2.9.1
Answer		
	Q63	Comment on Guidance 2.9.2
Answer		
	Q64	Comment on Guidance 2.9.3
Answer		

	Q65 Comment on Guidance 2.9.4
Answer	
	Q66 Comment on Guidance 2.9.5
Answer	
	Q67 Comment on Standard 2.10
Answer	<p>The general principle that responsibility cannot be outsourced should be reflected in 2.10. Insurance Europe therefore recommends that the reference in Standard 2.10 to “supervisory responsibility” is replaced with “supervisory activity”, as the supervisor should retain responsibility for activities that it outsources.</p> <p>In addition to the bullet points that follow Standard 2.10 a further bullet should be added as follows:</p> <ul style="list-style-type: none"> • “effectively control the costs of outsourced activities in a transparent manner that can be publicly scrutinised.” <p>Insurance Europe would also suggest that in the selection of third party provider requirements on public procurement may be of relevance in some jurisdictions. This could find reflection in the Guidance following Standard 2.10.</p>
	Q68 Comment on Guidance 2.10.1
Answer	
	Q69 Comment on Guidance 2.10.2
Answer	
	Q70 Comment on Guidance 2.10.3
Answer	
	Q71 Comment on Guidance 2.10.4
Answer	