

IAIS Consultations

Print view of your comments on "Application Paper on the Composition and the Role of the Board"

Organisation	Insurance Europe
Jurisdiction	Europe
Role	Other (not IAIS Member)
Email	mihai@insurancееurope.eu
Phone	0032490562487
Treat my comments as confidential	No

Question	
	Q1 General comments on the Application Paper
Answer	<p>Insurance Europe appreciates the work and objective of the draft application paper on the composition and role of the Board. The format chosen for the paper (as described in paragraph 8) is very clear and efficient for the intended use of the paper, and the links made to ICPs 5 and 7 are helpful for assessing the underlying requirements together with the proposed supervisory practices. In respect to the latter, Insurance Europe would like to stress that further comments on the mentioned ICPs, may be provided in response to the upcoming ComFrame consultation in August.</p> <p>On content, Insurance Europe would like to convey the following general observations:</p> <ul style="list-style-type: none">• While it is appreciated that a clear distinction between supervision and regulation is difficult to achieve, Insurance Europe would like to highlight that some of the concrete measures proposed in the draft application paper would clearly require legislative/regulatory basis (eg paragraph 60). It is not clear whether an IAIS application paper with the stated scope of providing “further advice, illustrations, recommendations or examples of good practice to supervisors on how supervisory material may be implemented” is the correct tool to propose such measures.• Supervisory measures should not interfere with the natural process and functioning of Board processes. Some of the measures put forward in this paper have the potential to be overly intrusive in some instances, eg participation of supervisors in Board meetings, asking the Chair to convey supervisory views, and supervisors having a strong hand in picking the composition of the Board and influencing the composition/rotation of the Board over time.• As is referenced several times in the draft paper, often there is an overlap between national company law and proposed (insurance-specific) governance measures. Insurance Europe would like to underline that in such cases, supervisors will be able to apply the recommended measures only within their respective legislative frameworks.• While Insurance Europe generally agrees with the distinction between formal and behavioural aspects of the proper functioning of a Board, a number of supervisory practices proposed on the latter (under 9.) seem to be overly intrusive and not necessarily fit-for-purpose. Some of the challenges listed under 9. can indeed raise significant governance concerns, however, the supervisory methods to identify and address such scenarios require further elaboration in Insurance Europe’s view. In particular, the attendance of supervisory staff in Board meetings is inappropriate, unless it follows the explicit invitation from the insurer. • Insurance Europe suggests that the application paper includes a reminder for supervisors of the need to take a proportionate approach in their application of requirements to insurers. While this is reflected in part in the examples from the DNB and PWC in the annexes, it would be helpful if the paper provided a more objective framework for the application of proportionality.

Q2 General comments on Section 1: Introduction

Answer

Q3 Comment on Paragraph 1

Answer

Q4 Comment on Paragraph 2

Answer

In the context of the overall ComFrame review and introduction of the IAIG-relevant requirements into ICPs 5 and 7, it would be useful to clarify whether the proposed material should be applied in the supervision of non-IAIGs only, or in implementing the governance regime applicable for IAIGs as well as non-IAIGs.

Q5 Comment on Paragraph 3

Answer

Insurance Europe appreciates the recognition in this paragraph of different types of Board and corporate structure.

Q6 Comment on Paragraph 4

Answer

While Insurance Europe is generally supportive of this paragraph's introductory content and of the overall procedures to clearly remain in the hands of the Board, it is not clear what is meant by the very last sentence, ie "whether or not its own dynamics and culture pose any particular risks to the organisation". A clarification or reference to the relevant later sections of the application paper would be helpful.

Q7 Comment on Paragraph 5

Answer

Q8 Comment on Paragraph 6

Answer

Communication ensures transparency and is positive for all stakeholders involved. However, the process of running the company and its supervision must not overlap. The Board is responsible for making the Board decisions. Supervisor should not intrude into the decision-making. The Board's responsibility should not be undermined.

Q9 Comment on Paragraph 7

Answer

Q10 Comment on Paragraph 8

Answer

Q11 General comments on Section 2: Competence of individual Board members

Answer

Q12 Comment on Paragraph 9

Answer

Considering the referenced (current) wording of ICP 5.2 (ie "The supervisor requires that in order to be suitable to fulfil their roles, Board Members (individually and collectively) [...] possess competence and integrity.") the notion elaborated on in paragraph 10 should also be clarified at ICP guidance level.

Q13 Comment on Paragraph 10

Answer

Q14 Comment on Paragraph 11

Answer

Q15 Comment on Paragraph 12

Answer

Q16 Comment on Paragraph 13

Answer

Insurance Europe believes that – subject to full compliance with the regulatory criteria on fitness and properness – it should remain a business decision who is appointed as a member of the Board. The following sentence could, however, indicate that the role of the supervisor in the selection process may go beyond ensuring that the ultimate choice ensures the undertaking’s compliance with the governance standards applicable:

“Those documents may provide together a useful basis for a discussion between the supervisor and the insurer.”

Q17 Comment on Paragraph 14

Answer

Insurance Europe believes that IAIS should avoid overly detailed theoretical approaches as they would not guarantee success, may provide false comfort and may lead to Board compositions that are not functional in practice.

Q18 Comment on Paragraph 15

Answer

The wording of the example ‘In certain cases, it could be an opportunity for the supervisor to encourage more competent members to be appointed to the Board’ is not ideal in Insurance Europe’s view. It enables bad supervisory practices focused on manipulating the composition of the Board. Supervisors should refrain from this.

Q19 Comment on Paragraph 16

Answer

Q20 Comment on Paragraph 17

Answer

Q21 Comment on Paragraph 18

Answer

Q22 Comment on Paragraph 19

Answer

Q23 Comment on Paragraph 20

Answer

It would be helpful if an example (eg from the referenced McDonnell paper) could be included here to clarify what is meant by “after such changes” and the subsequent loss of required skills at Board level.

Q24 Comment on Paragraph 21

Answer

Insurance Europe appreciates the IAIS encouraging Boards to develop proper training processes to ensure effectiveness of the Board in dealing with the pace of changes. The supervisor's role overseeing rather than prescribing the training needs represents, in Insurance Europe's view, the right balance of responsibilities. Insurance Europe would encourage the IAIS to choose the same approach across the scope of the application paper, including in relation to paragraph 15 for example.

Q25 Comment on Paragraph 22

Answer

While Insurance Europe does not necessarily disagree with encouraging a scheduled rotation of Board members in certain situations, it is worth noting that a level of stability in the steering and direction provided to an undertaking is valuable. Any supervisory intervention in that area should therefore balance the need for change with the need for stability, considering certain long-term strategies and projects for example.

Q26 Comment on Paragraph 23

Answer

Q27 General comments on Section 3: Diversity of competencies of the Board

Answer

Q28 Comment on Paragraph 24

Answer

It is not entirely clear where the list in footnote 8 links to and what it aims to suggest.

Q29 Comment on Paragraph 25

Answer

Q30 Comment on Paragraph 26

Answer

Q31 Comment on Paragraph 27

Answer

Q32 Comment on Paragraph 28

Answer

Q33 Comment on Paragraph 29

Answer

Similar to the IAIS' proposal in paragraph 24, Insurance Europe supports the balance struck in paragraph 29 between responsibility and self-assessment of the Board and extern supervisory oversight and interference.

Q34 Comment on Paragraph 30

Answer

Insurance Europe would like to note that a grid/matrix approach, observed by the IAIS as supervisory practice in the Dutch market, may carry some danger of over-engineering processes and therefore may not be suitable for all markets.

Q35 Comment on Paragraph 31

Answer

Q36 Comment on Paragraph 32

Answer

Insurance Europe appreciates that this aspect of diversity will be difficult for supervisors to assess and would suggest that in some cases there could be a link to the issues described under section 9 of this application paper, on behavioural aspects. Interviews and examination of minutes may be good tools to collect further indications of a lack of diversity becoming prevalent in the Board's decision-making, however, the causal effect on the undertaking's governance would also have to be assessed and likely over a longer assessment period of the respective Board constitution. More formal considerations on the enforcement of diversity at Board level – where the respective jurisdiction includes such – may be more practicable / efficient from a supervisory perspective.

Q37 Comment on Paragraph 33

Answer

Q38 Comment on Paragraph 34

Answer

Q39 Comment on Paragraph 35

Answer

Insurance Europe is concerned that this paragraph suggests supervisor meetings with individual Board members. Supervisory contact with the Board should be as a whole, or with the Chair on behalf of the Board, and on a formal basis to ensure appropriate records are taken.

Q40 General comments on Section 4: Allocation of the roles and responsibilities

Answer

Q41 Comment on Paragraph 36

Answer

Q42 Comment on Paragraph 37

Answer

Q43 Comment on Paragraph 38

Answer

Q44 Comment on Paragraph 39

Answer

Q45 Comment on Paragraph 40

Answer

Q46 Comment on Paragraph 41

Answer

Q47 Comment on Paragraph 42

Answer

Q48 Comment on Paragraph 43

Answer

This paragraph should be clarified to add that a request for internal audit reports or a direction that an internal audit be undertaken, can only be made where the supervisor possesses the power to require internal audit reports or that the undertaking conducts extraordinary internal audit reviews on specific topics (refer also to comment on paragraph 64).

Q49 Comment on Paragraph 44

Answer

Insurance Europe generally agrees that supervisors should encourage the resolution of any overlap of roles and responsibilities but would stress that not all overlaps between the roles and responsibilities of the Board and Senior Management necessarily lead to conflicts and / or governance concerns.

Q50 Comment on Paragraph 45

Answer

Q51 General comments on Section 5: Delegation of activities and tasks of the Board

Answer

Q52 Comment on Paragraph 46

Answer

Q53 Comment on Paragraph 47

Answer

It is not entirely clear what IAIS' expectations on the Board in terms of "assist with the balance of power and the effective discharge of its duties" are.

Q54 Comment on Paragraph 48

Answer

Q55 Comment on Paragraph 49

Answer

Q56 Comment on Paragraph 50

Answer

Q57 Comment on Paragraph 51

Answer

Insurance Europe notes that not all jurisdictions give supervisors the power to direct an insurer to put in place a delegation policy.

Q58 Comment on Paragraph 52

Answer	While Insurance Europe agrees that this could be a challenge encountered by supervisors, policies not being monitored and reviewed on a regular basis should be a more general area of supervisory scrutiny (not limited to policies on the delegation of activities and tasks).
	Q59 Comment on Paragraph 53
Answer	
	Q60 Comment on Paragraph 54
Answer	
	Q61 General comments on Section 6: Combining the roles of the Chair and the CEO
Answer	It is appropriate that this section does not purport to require a separation of the Chair and CEO roles as in some cases, there may be a case for combining these roles. However, the application paper should present a more balanced picture, recognising that there are positives and negatives to both approaches, and including mitigation strategies for dealing with challenges arising when the roles are split as well as when the roles are combined.
	Q62 Comment on Paragraph 55
Answer	
	Q63 Comment on Paragraph 56
Answer	
	Q64 Comment on Paragraph 57
Answer	A link to the IAIS' definition and/or understanding of "independent members" would be appreciated here.
	Q65 General comments on Section 7: Being a Board member of multiple entities within the same group
Answer	
	Q66 Comment on Paragraph 58
Answer	
	Q67 Comment on Paragraph 59
Answer	
	Q68 Comment on Paragraph 60
Answer	<p>It is not clear what the benefit of the first sentence in this paragraph is. It lists good regulatory practices over which supervisors, who are the addressees of this draft paper, will in most cases not have direct influence. Insurance Europe believes paragraph 60 to be generally over-prescriptive regarding the role of the supervisor. A reference to the respective ComFrame provision instead would be preferable.</p> <p>Insurance Europe furthermore believes that it goes beyond the remit of insurance supervisors to require some (or even the majority) of Board members to be non-executive (first bullet point; see also comment in response to paragraph 77), or to require specific permission for multiple Board positions to be held within the same group (second bullet point).</p>

On the fourth bullet point, ie determining the maximum number of mandates to be held by persons who already perform a similar role in other entities within the same group, it should be clarified that any such supervisory determination would be made on a case-by-case basis. The decision would have to be proportional to the group and individual concerned. A one-size-fits-all approach (ie a maximum of mandates applicable for all entities) would not be appropriate.

Q69 General comments on Section 8: Access to information

Answer

Q70 Comment on Paragraph 61

Answer

Q71 Comment on Paragraph 62

Answer

Q72 Comment on Paragraph 63

Answer

Q73 Comment on Paragraph 64

Answer

As per the comment provided on paragraph 43, Insurance Europe would like to clarify that not all jurisdictions may foresee the supervisory power to instruct specific internal audit reviews to be conducted. Notwithstanding the existence of such empowerment in local regulations, supervisors should be able to assess existing internal audit reports on the Board's decision-making process, where these have been conducted and there is an indication that there may be governance concerns. Regarding the conduct of individual interviews with Board members, please refer to the comments provided in response to paragraph 35.

Q74 Comment on Paragraph 65

Answer

Q75 Comment on Paragraph 66

Answer

Q76 Comment on Paragraph 67

Answer

Q77 Comment on Paragraph 68

Answer

The supervisor should engage with the Board as a whole, or with the Chair on behalf of the Board, rather than with individual Board members, and must ensure that there are appropriate records of meetings.

Q78 Comment on Paragraph 69

Answer Insurance Europe agrees that insurer and supervisor should engage in a dialogue to determine the appropriate level of detail of the minutes according to the expectations of the supervisor. This can be efficient in the sense that a well-communicated and clear reflection of the meeting in its minutes would mitigate the potential need for supervisors to join meetings in person. However, it should be clarified that the main purpose of documenting Board meetings in minutes is not to enable supervisors to enforce governance provisions but to ensure the documentation of efficient and transparent decision-making procedures within the entity. The level of detail of the minutes should therefore serve this purpose first, while providing appropriate levels of insight to supervisors where required.

Q79 General comments on Section 9: Behavioural aspects of the Board's functioning

Answer Insurance Europe disagrees with the suggestion of proscribing behaviour absent of evidence, based on objective criteria, that behaviour threatens the welfare of the insurer, its shareholders, or its policyholders.

Q80 Comment on Paragraph 70

Answer

Q81 Comment on Paragraph 71

Answer The list and description of behavioural conditions in this paragraph appears to be fairly abstract, however, the reference made to the 2013 paper suggests that leadership issues identified were the sole cause for the subsequent failure of the insurers concerned. While Insurance Europe has no strong reservations against including this paragraph in the application paper, it is not convinced supervisors will benefit much – at least without also studying the referenced Brown / Balasingham paper.

Q82 Comment on Paragraph 72

Answer

Q83 Comment on Paragraph 73

Answer

Q84 Comment on Paragraph 74

Answer The first bullet point is not entirely clear but seems to indicate that supervisors should convey their views directly to the dominating Chair/CEO.

Regarding the second bullet point, the supervisor should engage with the Board as a whole, or with the Chair on behalf of the Board, rather than with individual Board members, and must ensure that there are appropriate records of meetings.

The option for supervisors to attend Board meetings in person, included in the fourth bullet point, is overly intrusive. The presence of supervisors has the potential to interfere with the objectivity of the meeting. To guarantee the independence of both Board and supervisor, the use of this proposed tool should be avoided. It is further unclear in the context of 9.1, whether the purpose of this attendance would be for the supervisor to gather evidence on the inappropriate dominance of the Chair/CEO or to change that alleged behaviour by observing (and thereby evidently influencing) the discussion and decision-making process. In any case, this measure, including the suggestion that the supervisor could have a behavioural expert attend a Board meeting, does not constitute a common supervisory practice in jurisdictions and Insurance Europe doubts that it would be effective to address the issue of dominance long-term. The IAIS should consider deleting the fourth bullet point.

Q85 Comment on Paragraph 75

Answer

Q86 Comment on Paragraph 76

Answer

Q87 Comment on Paragraph 77

Answer

The alternative proposed in the first bullet point – ie that the Chair/CEO should be prohibited from becoming a member of a Board committee – seems to be overly intrusive and should not form part of the general supervisory tool-set for governance issues.

In relation to the second bullet point, Insurance Europe believes that it goes beyond the remit of insurance supervisors to require some (or even the majority) of Board (committee) members to be non-executive or the chairmanship to be assigned to a non-executive director (see also comment in response to paragraph 60).

Regarding the proposed attendance of Board committee meetings, please refer to the comments provided in response to paragraph 74.

Q88 Comment on Paragraph 78

Answer

Q89 Comment on Paragraph 79

Answer

Q90 Comment on Paragraph 80

Answer

Q91 Comment on Paragraph 81

Answer

As per the comments provided above, Insurance Europe would strongly suggest that the participation of supervisors in Board meetings is neither appropriate nor efficient to avoid a “groupthink” tendency in Board meetings. The presence of a representative from the insurer’s supervisor will in all likelihood influence the natural behaviour of the group and the debate and not enable the supervisor to assess the usual interaction and group dynamic. As mentioned in comment 84, supervisors should not use this tool in order to ensure their independence from the Board

Q92 Comment on Paragraph 82

Answer

As per comments provided on paragraph 57 above, it would be helpful to clarify the meaning of “independent members” of the Board in the last bullet point of paragraph 82.

Q93 Comment on Paragraph 83

Answer

Q94 Comment on Paragraph 84

Answer

Q95 Comment on Paragraph 85

Answer

The scenario described in this paragraph should be specified to apply in jurisdictions where the positions of the Chair and CEO may not be combined.

Q96 General comments on Conclusion

Answer

Q97 Comment on Paragraph 86

Answer

Q98 Comment on Paragraph 87

Answer

Q99 Comment on Paragraph 88

Answer

Insurance Europe believes that the IAIS could elaborate more throughout the application paper on some of the tools listed in the paragraph, eg succession policies, self-assessments, profile for new candidates, independent Board members, and information flows.

Q100 Comment on Paragraph 89

Answer

As per comment provided above, Insurance Europe disagrees that observing Board meetings would be an appropriate or efficient tool to ensure Board functioning.

Q101 Comment on Paragraph 90

Answer

Please refer to the comments made in respect of section 9 in response to the proposed tools in the context of behavioural aspects of the Board functioning.

Q102 Comment on Annex I

Answer

Q103 Comment on Annex II

Answer