

IRSG opinion on EIOPA Preparatory guidelines on the System of Governance (CP 13/008)

Introduction and legal basis:

In March 2013, EIOPA initiated the public consultation on the Proposal for Guidelines to national competent authorities (NCA's) on the system of governance (hereafter the governance guidelines) which covers the following:

- a. Guidelines 1 to 57
- b. Annex 1 – Impact Assessment

EIOPA has been preparing the final steps of the implementation of Solvency II in Europe. Under the Regulation establishing EIOPA, EIOPA has the power to develop standards as well as to issue guidelines and recommendations. The standards will become binding after endorsement by the Commission. The guidelines and recommendations are non-binding tools which should ensure consistent, efficient and effective supervisory practices within the European System of Financial Supervisors as well as common, uniform and consistent application of Union Law. It is expected that current proposals included in the governance guidelines will be used for the purpose of future technical standards and guidelines.

The EIOPA Insurance and Reinsurance Stakeholder Group (hereafter IRSG) competence to deliver an opinion towards EIOPA consultation on the governance guidelines is based on Article 37 of EIOPA Regulation (1094/2010/EC), as the outcome of this consultation will be used for the drafting of future technical standards and guidelines.

Prior interaction with EIOPA

EIOPA has been willing to engage with interested members of the IRSG to explain the background to the development of these guidelines and to receive informal feedback and suggestions. This has been a constructive process. This however is the first public consultation on the package of governance guidelines.

Relevant context

Sound governance of fiduciary financial services firms is recognised almost universally as a key element of sustaining financial stability and public confidence. This is particularly the case for insurance undertakings which receive premiums in the expectation that they will be able to meet explicit commitments in specified circumstances, sometimes many years into the future. Most countries already have some requirements in relation to insurance undertaking governance, and the International Association of Insurance Supervisors has addressed this subject within its core principles, principally ICP 7.

IRSG Opinion

The IRSG generally supports the proposed governance guidelines as proposed by EIOPA. Specifically we support the proposed scope and the general balance as between statements of principle and verifiability. Sound governance is more easily recognised in the breach than in the observance, and the proposed guidelines generally combine well soundness of principle with verifiability of practice.

We considered both whether a guideline is necessary in order to drive convergence of sound practice and also whether such guideline is capable of being stated in a verifiable manner, and these perspectives are reflected in our detailed comments.

The impact assessment included in the consultation paper discusses policy options considered by EIOPA in relation to the development of the guidelines, including:

- Whether to specify the difference between, and terminology of, risk tolerance and risk appetite
- Whether to develop Guidelines on Prudent Person Principle as part of the System of Governance for the interim period
- Whether to include minimum requirements on the use of derivatives in the preparatory Guidelines
- Whether to require combined annual information from the Actuarial Function to the AMSB or leave it up to the undertaking to decide how and when the information is to be provided
- Whether or not to have extended notification requirements during the preparatory period

We generally concur with the choices made by EIOPA in the context of these preparatory guidelines, although our attached detailed comments do suggest that some requirements in relation to derivatives may be able to be abbreviated.

EIOPA has also issued an explanatory text in addition to the draft guidelines. While in substance the explanatory text is valuable to both undertakings and supervisors and is indeed in some cases necessary to interpretation of the guidelines, this may create some ambiguity as to its status. We recommend that EIOPA consider how the purely explanatory status of this text be clarified beyond doubt.

Conflicts of interest

The guidelines address conflicts of interest only sporadically. We have advocated a general requirement for procedures to identify and manage conflicts of interest, without specifying what sort of conflicts. Conflicts may exist between stakeholders, between functions, between executive and supervisory/non-executive board members and for non-executives between various roles in their portfolio. The range is so diverse as in our view to suggest a high-level general requirement.

Cross-sector consistency

As noted above, sound governance is to be desired across all fiduciary financial undertakings. While we have not ourselves carried out a full detailed comparison, we understand that the detail of the EIOPA drafting in relation to some matters differs from corresponding material issued by the European Banking Authority even in relation to some generic matters (such as definition of probity). We suggest that the authorities engage in a cross-sector process to in order to have a consistent approach on this subject and to take properly into account the differences existing among the different financial sectors.

Proportionality

EIOPA has clearly stated in several contexts its intention that application of the preparatory guidelines should take account of the nature, scale and complexity of the operations of undertakings. While certain requirements as to appropriate governance may appropriately be universal, our detailed comments identify certain which if interpreted literally would apply disproportionately and anti-competitively to smaller or more specialised undertakings. We recommend EIOPA considers the wider consultation feedback carefully so as to implement the intended proportionality.

Attachment: detailed comments

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Adopted by the EIOPA Insurance and Reinsurance Stakeholder Group via written procedure closed on 18 June 2013,

The Chairperson of the EIOPA Insurance and Reinsurance Stakeholder Group

Michaela Koller