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Consultation on the operations of the European Supervisory Authorities

Dear Mr Guersent,

EIOPA welcomes the possibility to respond to the public consultation on the operations of the European Supervisory Authorities.

During EIOPA's first six years of operation, much progress has been achieved to promote a stronger and more integrated regulatory framework in the European Union. Moreover, EIOPA has fostered more consistent regulation and a higher level of supervision, ensuring better protection of consumers.

The Commission's consultation raises important issues on possible improvements to the existing supervisory framework. An open discussion on these issues is key to ensuring that EIOPA is able to make further progress on supervisory convergence and to enhance consumer protection and stability in the internal market. This open discussion should also tackle if targeted amendments to EIOPA's regulation are needed.

1. A holistic and integrated approach to supervision

To ensure sound and effective supervision of the insurance and pensions sectors EIOPA strongly believes in a holistic and integrated approach towards European prudential and conduct of business supervision.

Insurance and pensions business models necessitate the interlinkages between prudential and conduct of business supervision. Long term promises and variable allocations of risks between insurers and policyholders strongly link the profitability and solvency of the company and the fair treatment of its customers. Recent history has shown how conduct failings can lead not only to consumer detriment but also solvency issues and contagion risks, while the pursuit of solvency can in a crisis put policyholder interests at risk.

These interlinkages, which are reinforced by emerging changes in business models and the trend towards digitalisation, need a holistic and integrated assessment, which goes beyond the balance sheet to incorporate qualitative and conduct related information.

Examples include:

- the supervision of with-profit insurance policies, where the interlinkages between fair treatment of the different categories of policyholders and the solvency position of the insurance undertaking are so strong that an integrated supervisory approach is unavoidable; and
- product oversight and government requirements, where the risk management aspects are strictly related to and enhanced by a cultural approach focused on consumer protection. This ensures that consumers' interests are taken into account at all stages of the product cycle.

For these reasons, the Solvency II framework rightly integrates prudential and conduct perspectives at its core, placing the protection of policyholders and beneficiaries as the primary objective of insurance supervision.

Changes to the institutional set-up should therefore be assessed carefully to ensure the continuation of an effective holistic and integrated approach. Efficient exchanges of expertise and information as well as the build-up of a holistic supervisory oversight capacity remain critical.

EIOPA acknowledges the increased importance of conduct of business supervision due to recent legislative initiatives such as IDD and PRIIPs, which will need to be reflected in terms of resources and governance structures. It also recognises the increasing interconnectedness between the financial sectors. Therefore, it should be enhanced with a stronger focus on conduct related issues which have cross sectoral implications via the work of the Joint Committee.

2. Supervisory Convergence

EIOPA's regulation and its governance structure have been fit for the purpose of fulfilling EIOPA's regulatory mandate. Following the implementation of Solvency II, supervisory convergence is one of EIOPA's strategic priorities. The aim is to support concrete improvements in the quality and consistency of supervision.

However, further progress on supervisory convergence needs to be made, which could require in some areas refinements to the regulation.

This necessity has been given fresh urgency by the implementation of Solvency II and the increasing number of cross-border cases and failures, which amplify risks to consumers and the stability of the financial system. In this respect, the ability to passport services should imply at the same time a sound supervision of such activities throughout the Union. Only strong European responses are able to counter these negative developments, and provide the consumer with additional safeguards. Therefore, EIOPA's regulation should be strengthened with a mandate to act more intrusively when it detects signals of risks of cross-border failures.

In addition, to reinforce EIOPA's capacity to deliver fully on its mandate, it would be important to make clear reference in legislation to supervisory convergence tools that are already in development. This includes for instance the handbook of supervisory practices, the platforms on cross-border business, the EU-wide thematic reviews, and EIOPA's staff assessment of national supervisory practices.

EIOPA's role with regards to supervisory independence and conflict of interests should also be strengthened. These fundamental supervisory principles have gained even more relevance under Solvency II, due to the degree of supervisory judgment necessary in the application of a risk-based regime. It is fundamental

that national supervisors are operationally independent, and that they are accountable for the exercise of their functions and powers. Supervisors should always have adequate powers with proper resources, so they can perform their functions and independently exercise their powers. The question of supervisory abilities goes beyond the national context, as it also impacts the whole internal market. The operational independence, transparency, and accountability of national supervisors therefore need to be enforced, by providing a strong European framework with a clear role for EIOPA in assessing compliance with that framework.

Concerning internal models, their approval and ongoing supervision should go hand-in-hand because a detailed understanding of the undertaking and its supervision is needed in the approval process. EIOPA should reinforce the use of existing powers to achieve consistency and enhance supervisory convergence. This includes improving and promoting EIOPA's participation within colleges of supervisors' Internal Model work, dedicated benchmark studies, peer reviews on both substance and form of Internal Model approval processes and using non-binding mediation, be it at the request of a national authority or at EIOPA's staff own initiative to express an independent and non-binding recommendation to NCA's. To perform these tasks, EIOPA should be in a position to have access to all the relevant information.

3. Equivalence assessments

EIOPA believes that, apart from regular reviews, an effective control of the application of equivalence decisions should be considered. This should be underpinned by technical analyses in the context of a framework for agile monitoring. Going forward, a comprehensive equivalence assessment should include the initial equivalence assessment of a third country regulatory and supervisory framework, the follow-up necessary to assess that the frameworks are being implemented as expected in the equivalence assessment, and the monitoring of upcoming changes in the country's regulatory and supervisory framework taking place once equivalence has been granted.

In order to fulfil this role EIOPA must have full access to all relevant information from the third country concerned.

In summary, EIOPA believes an integrated and holistic approach to prudential and conduct supervision, further refinements in relation to supervisory convergence, and an enhanced approach to equivalence assessments, should be a high priority in the ESA's review.

Yours sincerely,

cc:

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