

AMICE Position on the European Commission's proposal for a review of the European System of Financial Supervision

About AMICE (Association of Mutual and Cooperative Insurers in Europe)

AMICE is the voice of the mutual and cooperative insurance sector in Europe. The Brussels-based association advocates for appropriate and fair treatment of all mutual and cooperative insurers in a European Single Market. It also encourages the creation and development of innovative solutions for the benefit of European citizens and society.

Mutual and cooperative insurance follows the principles of solidarity and sustainability and is characterised by customer-membership and a democratic governance. The mutual business model, with its focus on using surpluses for the benefit of its members, is the natural way to provide insurance.

Mutual and cooperative insurers have a market share of more than 30% of the European insurance sector, with more than €420 billion in premiums written and over 410 million policyholders across Europe.

Introduction

AMICE welcomes the European Commission's decision to maintain EIOPA as a standalone authority responsible for both prudential and conduct of business supervision and distinct from EBA and ESMA. This demonstrates recognition that insurance plays a vital role in European society and the European economy.

However, it is important to point out that EIOPA is not a direct supervisor unlike the other ESAs and the role of national supervisors should be recognised as they have an in-depth knowledge of local markets, culture, legal and fiscal realities and the diversity of providers. The principle of subsidiarity should therefore be respected. Furthermore, we believe that a fully centralised supervision with little or no knowhow on local premises would not be in the best interests of consumers. However, this should not result in differences in interpretation by national supervisors leading to inequality or gold-plating: supervisory convergence must remain an objective. EIOPA's role is to ensure that European legislation is correctly and fairly applied by national supervisors.

EIOPA should also ensure that supervisory practices are appropriate for all existing business models given that some national competent authorities have experience with only some business models. Supervisory convergence should respect the diversity of business models of insurers across the EU.

I. Governance of the ESAs

Executive Board | We favour changes which aim at enabling EIOPA to effectively fulfil, but not exceed, its mandate. In this context, if we believe that the full-time members of the Executive Board, selected for their expertise and knowledge of the markets, may benefit the decision-making process, we have concerns regarding this new structure, in particular with regard to the lack of adequate checks and balances:

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- **Role of the Chairperson** | The fact that the Chairperson has a casting vote while only four members compose the Executive Board (with a simple majority rule) will likely result in a concentration of the decision-making power in the hands of the Chairperson, who is responsible for preparing the work of the Board of Supervisors and chairs both the meetings of the Board of

Supervisors and the Executive Board. Adequate check and balances should avoid any concentration of power and favour a collegial approach.

- **Composition** | The number of voting members of the Executive Board should notably increase to six (like ESMA), whether or not they are full time members. In order to ensure sound governance, the composition of the Executive Board should be carefully considered and reflect the Union as a whole. A geographical balance should be ensured, with transparency in the nomination process.
- The representative of the Commission, which participates in meetings of the Executive Board without the right to vote, should be granted the right to ask for a further deliberation on every decision taken by the Executive Board.
- **Selection procedure** | A balanced selection procedure should apply. While before, the European Parliament was fully involved in the nomination process of the Chairperson (hearing and right to object to the candidate selected by the Board of Supervisors) as well as in the removal process or the extension of the mandate of the Chairperson, this is not the case anymore as the European Parliament may now only approve the short list submitted by the European Commission. The full-time members of the Executive Board, including the Chairperson, should be jointly selected by the co-legislators (i.e. three by the Council and three by the European Parliament), with the Council responsible to select the Chairperson and the European Parliament responsible to select the member responsible for budgetary matters. In addition, the European Parliament should be involved in the renewable process of Board Members mandate to increase the democratic legitimacy and accountability of the Executive Board.
- We also believe that a better democratic control might be achieved by strengthening the general accountability of the Chairperson before the European Parliament and the Council. Hence, we support a regular use of the “Report” procedure in Article 50 by making it compulsory (especially in the process of issuing EIOPA’ Strategic Supervisory Plan).

Allocation of tasks between the Board of Supervisors and the Executive Board | The principle of separation of powers between the Board of Supervisors and the Executive Board should be guaranteed.

In view of the Commission’s proposal seeking to achieve efficiency in decision-making, competences of the new Executive Board to act and take decisions in certain situations such as a breach of Union law (Article 17), disagreements between competent authorities in cross-border situations (Article 19), threats to the stability of the financial system (Article 22), the review of competent authorities (Article 30), may be envisaged.

However, we believe that some powers given to the Executive Board may exceed the intended objective and are not currently justified. As such, we believe that the Board of Supervisors should continue to take decisions on the new Strategic Supervisory Plan (Article 29a), the delegation and outsourcing of activities as well as risk transfer (Article 31a), market developments & stress tests (Article 32); the request for information to financial institutions (Article 35b to 35h). Moreover, the Board of Supervisors should not be fully excluded from dispute settlement.

Board of supervisors | The proposal to set up an Executive Board weakens considerably the role of the Board of supervisors and does not address the double-majority issue and the factual veto situations where Member States are able to block Board decisions. We believe that the Board should remain the ultimate decision-making body.

Stakeholder Groups | AMICE welcomes the proposed changes concerning the greater involvement of the Stakeholder Groups in the process of issuing guidelines and recommendations, as well as the possibility for the members of the Stakeholder Groups to challenge them.

Nevertheless, we still have concerns that the appointment process of the members of EIOPA’s Stakeholder Groups and their replacement lacks transparency, which leads to doubts about the representation of the members of the Stakeholder Groups. The composition of the Occupational Pensions Stakeholder Group does not reflect its remit, which in reality has extended beyond occupational pensions and does not properly reflect the profile of stakeholders.

EIOPA should also demonstrate where stakeholder proposals have been incorporated into EIOPA's decisions.

II. ESAs' operations

AMICE remains unconvinced that EIOPA needs new powers and would rather encourage it to fully use and apply its existing powers in an effective and transparent manner.

We welcome the proposal to amend Article 39 specifying that the decisions of the ESAs shall be made public.

Supervisory handbook (Articles 8 and 29) | The Commission's proposal enables EIOPA to develop a supervisory handbook. We believe that the content of this should be made available to the industry which would assist in providing transparency on best practice and supervisory convergence. EIOPA should remain a coordinator rather than a "second supervisor" for the sake of clarity and consistency.

There should be sufficient safeguards in place in order to ensure that a supervisory handbook would not establish a set of new separate supervisory rules on top of the existing EU regulations. The legal status of a supervisory handbook should be clearly established with convergence as its key ambition.

Union-wide stress-tests (Article 32) | AMICE believes that EIOPA's existing powers with respect to Union-wide stress tests are sufficient. Stress tests provide national supervisors and EIOPA with information which allow them to ensure the industry is functioning satisfactorily: there is no case for public disclosure. We oppose the proposed amendment to Article 32 (publication of stress-test results on entity level). The principle of professional secrecy should be duly applied as test results contain sensitive company information.

Reporting requirements | Reducing and streamlining reporting requirements should be prioritised. The principle of proportionality should be applied in respect of reporting and where appropriate, the requirements need to be reduced and streamlined in order to ensure a harmonised approach across different national regulators.

Requests for information (Articles 35b to 35h) | We acknowledge the proposal to empower EIOPA to make direct requests for information from insurance entities and to impose fines. But we believe that the utmost care should be taken to the significant reputational and financial repercussions for financial institutions receiving any direct requests for information from EIOPA. There is a lack of safeguards in the Commission's proposal. In addition:

- It should be requested from EIOPA to duly justify the necessity of the data, whereas it is a simple request or a decision. It is also necessary to have clear procedures and timetable provided in the level 1 text to avoid any arbitrary decision by EIOPA's Executive Board.
- It is not clear under which circumstances EIOPA can address a simple request (response on a voluntary basis) or a decision (mandatory with periodic penalty payments) to the financial institution. In addition, it should be clarified in the level 1 text what constitutes an "incorrect or misleading" information.
- Fines and periodic penalty payments are disproportionate. Furthermore, AMICE is concerned by the lack of separation between regulatory and sanctioning functions. In this context, a "sanction college" should be established, distinct from the Board of Supervisors and the Executive Board.
- The right to appeal the ESAs' decisions to impose fines should be introduced in order to fulfil a minimum level of legal certainty.

Under Solvency II, the industry is already providing EIOPA with extensive and detailed information under the reporting requirements.

Guidelines and recommendations | AMICE considers that the proposed improvements in the Commission's legislative package addressing the concerns that the ESAs go beyond their mandate when issuing guidelines and recommendations are insufficient. We invite the co-legislators to introduce an amendment requiring that a right to object to guidelines or recommendations is also granted to the European Parliament and to the Council before their publication (following the same procedure as for the Regulatory Technical Standards).

In addition, the European Commission should not rely on the Stakeholder Groups raising cases where EIOPA may have exceeded its competences; there should be other oversight mechanisms put in place. Therefore a legal review of level 3 measures should be introduced.

In line with the Better Regulation Agenda, we welcome the proposed requirement for EIOPA to conduct open public consultation and to carry out cost-benefit analyses prior to issuing guidelines and recommendations.

III. ESAs' funding

AMICE is in favour of maintaining the existing funding system (60% obligatory contributions from the national public authorities, generally recharged to industry, and 40% subsidy from the EU budget). Given that EIOPA does not directly supervise the insurance industry – a mechanism which AMICE supports – the proposed funding system is unsuitable. AMICE is concerned that the proposal to allow voluntary contributions to finance the delegation of tasks and responsibilities from national competent authorities to ESAs could lead to a difference in treatment.

It is critical that the industry should not be double-charged. If some of the burden is transferred to the insurance industry directly, it should be ensured that the contribution is proportional to the size of the insurer to avoid overburdening SMEs. However, the system should not become over-dominated by larger players due to their financial weight, and ensure there is fairness in approach. The diversity of the insurance sector in terms of business models and size contributes to financial stability, and therefore it should not be put at risk by increased supervisory costs.