

AMICE Response to EIOPA's Consultation paper on draft Opinion on the supervision of remuneration principles in the insurance sector

Question 1

Do you have any comments on section 1 of the Opinion: Legal basis

AMICE is not aware of any adverse effects of divergent market practices in the European Union or any evidence of such practices.

Article 275 of the Solvency II Delegated Regulation, in which the European Commission chooses not to establish fixed thresholds or quantitative ratios, sets out the obligation to develop remuneration policies, in compliance with the general principles under the Solvency II Directive. However, with its draft opinion, EIOPA would create additional obligations rather than interpret the requirements within the limits defined by the legislator, and thus, exceed its mandate. Building common supervisory culture and practices as well as ensuring uniform procedures should be done without adding new detailed rules.

Question 2

Do you have any comments on section 2 of the Opinion: Context and objectives?

Even though EIOPA's intention is not to add new requirements or to create administrative burden, AMICE is of the view that the quantitative criteria and targets might cause excessive burden for insurance undertakings, mainly because the national supervisory authorities (NSAs) could request the mechanical application of the mentioned thresholds, which would unduly restrict the undertakings' flexibility to make their entrepreneurial choices related to the remuneration policies.

AMICE believes that the supervision should "focus on a reduced scope of staff identified as potential higher profile risk-takers to promote a proportionate approach".

Paragraph 2.11 provides that "the indicative thresholds mentioned in this Opinion do not preclude the supervisory authorities to have stricter requirements if it is deemed appropriate" and does not even foresee the possibility that the supervisory authorities may adopt a more lenient approach, which could be well appropriate on the basis of a proportional and risk-based approach.

In order to avoid introducing unduly regulatory burdens, which would be incompatible with the proportionality principle and with EIOPA's intent of not creating new requirements or hard targets, we suggest a rewording of paragraph 2.11 specifying that the supervisory authorities may have more flexible/less burdensome requirements if it is deemed appropriate.

It should be the responsibility of the NSAs to assess whether remuneration policies exist and if they are actually applied and, where appropriate, to consider closer monitoring of firms whose practices differ widely from local market practices, which should be organized as part of a risk-based approach.

A “one-size-fits-all” approach is not appropriate, in that it does not take into account the specificity of certain players on the European market and in particular, those belonging to the mutual insurance business model.

Question 3

Do you have any comments on section 3 of the opinion: EIOPA’s expectations on supervision of remuneration policies?

The opinion of EIOPA is in line with the text of the Capital Requirements Directive (CRD IV and CRD V). The transposition of the banking regulations does not seem appropriate to the insurance sector.

The banking sector necessarily has stricter remuneration requirements, in particular because of the nature of the products sold. As a result, the application of banking rules to the insurance sector is inappropriate because it does not take into account the insurers’ business model.

“Scope of application”

EIOPA’s proposal to introduce the threshold of EUR 50,000 seems arbitrary and does not allow for the diversity of the European insurance market to be taken into account. It should be left to the NSAs to use their supervisory judgement taking into account the specificities of each local market.

“The fixed and variable components of remuneration have to be balanced”

AMICE considers that a flexible remuneration policy applied by companies in line with their risk appetite and sound risk management is preferable to the implementation of a maximum 1:1 ratio between the fixed and variable components of remuneration.

There is currently no empirical evidence on the effects of variable remuneration on the conduct of risk-takers. It is worth pointing out that with reference to the banking sector, which was the first to introduce a comprehensive set of rules on remuneration policies, the European Commission stated that “it is too early to appropriately and fully assess the impact of the maximum ratio” and acknowledged the absence of a consensus among scholars and stakeholders on how variable remuneration affects the conduct of risk-takers (see: Report from the Commission to the European Parliament and the Council – Assessment of the remuneration rules under Directive 2013/36/EU and Regulation (EU) No 575/2013 – Doc. No COM/2016/0510).

Given the lack of evidence to draw conclusions on the impact of the rule on the ratio between fixed and variable remuneration EIOPA should restrain from laying down new requirements. The introduction of quantitative benchmarks may lead to unintended distortions.

Moreover, the 1:1 ratio for the fixed and variable components of remuneration appears to be incompatible with the principle of proportionality considering that it applies indiscriminately to all the personnel within the Opinion’s scope. In this regard, it is worth considering that top managers such as CEOs and General Managers have different roles and responsibilities compared to other material risk takers falling within the Opinion’s scope, which normally translates into different remuneration schemes.

AMICE proposes to disregard the mentioned 1:1 ratio considering that (i) there is mixed/lacking evidence on the effectiveness of the maximum ratio and that (ii) “one size does not fit all” and is incompatible with the principle of proportionality.

"A substantial portion of the variable remuneration has to be deferred"

The introduction of a new threshold in paragraph 3.7 (a deferral rate higher than 40% in the case of variable remuneration) goes beyond the mandate of EIOPA and would lead to a toughening of the requirements.

The quantitative approach should be discarded in favour of a qualitative approach, based on an oversight by the NSAs taking into account the reality of the local market.

"Financial and non-financial criteria have to be taken into account when assessing an individual's performance"

With reference to paragraph 3.11(a), the need for a multi-year framework for performance assessment raises concerns. The opinion is somewhat open to interpretation, but together with the deferral period it should not lead to "long tails". If an undertaking sets the criteria for i.e. a three-year strategy period and cannot assess the performance until the end of the period, and in addition, the remuneration should be deferred, the result would be unreasonable both for the company and for the person remunerated. Even if the assessment period is longer than 1 year, one should be able to assess the performance on yearly interim criteria.

The ratio of 1/5 (20%) between non-financial and financial criteria should not be deemed inappropriate, as stated in paragraph 3.12. In fact, due to their nature, non-financial criteria (qualitative) are hardly measurable and difficult to be properly implemented in a remuneration policy. In this phase, requiring every insurance undertaking to bind half, or nearly half of the variable remuneration to non-financial criteria may prove burdensome and lead to unintended distortions due to an inappropriate implementation. Instead, the balancing between non-financial and financial criteria should be assessed considering their effective contribution to the performance of the undertaking (*i.e.* the relevance of the non-financial criteria – in terms of additional value brought to the undertaking – is more important than its weight compared to the financial criteria). Therefore, AMICE suggests discarding the quantitative example provided in paragraph 3.12.

"The measurement of performance has to include a downwards adjustment for exposure to current and future risks"

With reference to paragraph 3.14 ("[...] Importantly, if an undertaking is likely to breach or has breached the Solvency Capital Requirement its remuneration policy should prescribe that downwards adjustment will be applied"), linking the remuneration policy to a breach of the Solvency Capital Requirement does not seem appropriate. The remuneration policy should be linked to the observance of the Solvency Capital Requirement Ratio ("SII Ratio"), in particular to the SII Ratio target defined by the undertaking (*e.g.* SII Ratio target coherent with its Risk Appetite Framework).

Furthermore, the provision of paragraph 3.16 about the description of the downwards adjustments is overly prescriptive. A more appropriate approach would be triggering the downwards adjustments only to the SII Ratio. The introduction of further parameters and triggers related to the undertaking would deliver unnecessary complexity with uncertain benefit from the regulatory perspective. Therefore, we suggest to reword paragraph 3.16(a) by replacing the current parameters with the SII Ratio.

"Termination payments have to be related to performance achieved over the whole period of activity and be designed in a way that does not reward failure"

AMICE opposes that redundancy payments may be considered as a form of variable remuneration and, therefore, deferred.

Admittedly, Article 275(2)(f) of the Delegated Regulation requires undertakings to ensure that termination payments do not reward failure. However, these payments cannot be treated as variable remuneration, as suggested in paragraph 3.19.

Termination payments depend on national contract and labour legislation, as well as collective agreements. They are not linked to individual performance achieved during the period of activity. It should not be left to supervisory authorities to assess the appropriateness of the payment the way EIOPA suggests in paragraph 3.25.

For undertakings, it is vital to maintain a sufficient level of appreciation to act and prevent any pre-litigation or litigation phase that allows them, in particular, to protect their interests and reputation.

To conclude, the provisions related to the termination payments seem overly prescriptive and, in particular, that of paragraph 3.25 according to which undertakings shall be able to “demonstrate the reasons for the termination payment, the appropriateness of the amount awarded and the criteria used to determine the amount”. The current provision is vague considering that the termination payment shall only be awarded if the conditions provided by the internal policy are met and the same goes for the amount of the payment. Therefore, AMICE suggests deleting paragraph 3.25.

Question 4

Do you have any comments on section 4 of the opinion: Composition of variable remuneration?

A general requirement to award 50% of the variable remuneration in shares, equivalent ownership or share-linked instruments is not feasible in general in the case of non-listed insurers and mutual entities in particular. Imposing such a requirement may result in an uneven playing field between listed insurance companies and mutual insurers.

Furthermore, importing to the insurance sector rules from the banking regulation seems inappropriate.

AMICE proposes not to introduce such a general requirement for every insurance undertaking, but instead letting the supervisory authorities decide - using a risk-based approach - whether to apply it only in specific circumstances.

Question 5

Do you have any comments on section 5 of the opinion: Reporting requirements?

AMICE is of the view that the current reporting requirements in the SFCR and RSR are sufficient for this purpose and that no further data collection or reporting is required. The data collection duties of the supervisory authorities should not be translated into additional burdensome and/or complex reporting requirements for the insurance undertakings, also considering that most of the data is already available and published in the remuneration policies.

Question 6

Any other comment you would like to make?

No.