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Statement

Public hearing on the “European System of Financial Supervision” Printed paper 18/7539

EIOPA welcomes the initiative of the Finance Committee of the German Bundestag to hold a public hearing to discuss this important matter. Moreover, EIOPA acknowledges the adopted proposal 18/7539 from 2016 “Further develop the European System of Financial Supervision efficiently”. It emphasises the main purpose of the European Supervisory Authorities (ESA’s), namely ensuring supervisory convergence throughout Europe.

EIOPA welcomes the European Commission’s public consultation to seek views on possible changes to the current ESA’s operational framework. The focus of the Commission’s consultation is on the effectiveness of the current governance structure and funding framework, the ESAs’ tasks and powers, and the reconsideration of the European financial supervisory architecture in light of the new challenges to financial integration.

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. For EIOPA open discussion – as our today’s discussion – and transparency is key to ensure further progress on supervisory convergence, to enhance consumer protection and financial stability with the ultimate objective to boost financial market

integration as well as the development and implementation of the Capital Markets Union in Europe

For EIOPA in consultation with its Board of Supervisors the following three key areas should be at the heart of the discussion:

1. A holistic and integrated approach to supervision

To ensure a sound and effective supervision of the insurance and pensions sector, a holistic and integrated approach towards European prudential and conduct of business supervision is needed.

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 developments have shown how conduct of failings can lead not only to consumer detriments 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. An assessment that goes beyond the balance sheet with incorporated qualitative and conducts related information.

Examples of a strong integrated supervisory approach are:

- ✓ ***Supervision of with-profit insurance policies***: strong interlinkages between fair treatment of the different categories of policyholders and the solvency position of the insurance undertaking.

- ✓ ***Product oversight and government requirements***: risk management aspects are strictly related to and enhanced by a cultural approach focused on consumer protection, ensuring that consumers' interest 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.

Increased importance to the conduct of business supervision needs to be also given due to the most recent legislative frameworks, i.e. the Insurance Distribution Directive (IDD) and the Packaged Retail and Insurance-based Investment Products (PRIIPs) Regulation. This needs to be reflected in terms of resources and governance structures recognising the increasing interconnectedness between the different financial sectors. A stronger conduct related focus should be realised through the work of the Joint Committee (JC).

Therefore changes to the institutional architecture should ensure the continuation of an effective holistic and integrated approach. In addition efficient exchanges of expertise and information for building up a holistic supervisory oversight capacity remain crucial.

2. Supervisory convergence

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

In this respect, EIOPA issued guidelines for a convergent application of common requirements among national supervisory authorities. The guidelines do not introduce any new requirements; instead they specify the supervisory expectations related to the proper fulfilment of the requirements specified in legislation. A maximum harmonisation directive such as Solvency II requires its provisions to be interpreted with a certain level of detail throughout Europe to ensure the required level playing field.

The basis for all guidelines is 'comply or explain' providing flexibility in compliance where justified. Moreover, of the 29 Solvency II guidelines, 25 are directed at national supervisors. Furthermore, many stakeholders welcome the greater detail provided by guidelines.

In EIOPA's view the alternative to guidelines would be more burdensome, as it would lead to the emergence of national guidelines and thus contradictory to the objective of supervisory convergence. Including all the details in directives or delegated regulation would result in less flexible requirements compared to the guidelines. Restricting EIOPA in all circumstances to statements of good practice would not be sufficient to achieve supervisory convergence, and create uncertainty about how to meet legislative requirements.

Therefore, 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 the 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 as 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,
- ✓ dedicating work to benchmark studies, peer reviews on both substance and form of Internal Model approval processes, and
- ✓ using non-binding mediation. An enhanced set-up should allow the Authority to express an independent and non-binding recommendation to NCA's, regardless whether at request of a national authority or at EIOPA's staff own initiative.

To perform these tasks effectively, EIOPA should be in a position to have access to all the relevant information.

3. Equivalence

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.