Key messages on the EC proposal for a regulation amending the European supervisory authorities' regulations (ESAs review)

An efficient, effective and credible system of financial supervision is needed at EU level. Insurance Europe generally appreciates the level of ambition of the European Commission's proposal to review the ESAs regulations. However, amendments to the current regime must be based on sufficient evidence for the need for change and the proposal goes beyond what is needed. The key areas below — elaborated on in more detail in Insurance Europe's full position paper — should be taken into consideration.

Structure: Insurance Europe welcomes the EC's recognition of the need for stability and sectoral expertise. This is achieved by maintaining the European Insurance and Occupational Pensions Authority (EIOPA) as a stand-alone authority, responsible for both prudential and conduct of business supervision.

Mandate: Insurance Europe is concerned that the underlying responsibility of the European supervisory authorities (ESAs) as independent EU agencies is reflected too narrowly in the ESAs' founding Regulations (Article 1 para 6). The obligation to protect the public good by contributing to the stability and effectiveness of the financial system should be expanded to require the ESAs to act in the best interest of the European public good. This could — together with other governance improvements — help ensure that the ESAs always take a proportional and balanced approach to their supervisory as well as their regulatory activities and consider unintended consequences. The ESAs should be required (Article 43 para 5) to include in their annual reports the steps they have taken to fulfil this obligation.

Governance: The current governance structure of EIOPA does not provide for adequate checks and balances, and the EC's proposed changes exacerbate rather than address it. Insurance Europe calls for amendments to and clarifications about the proposed Executive Board and its interaction with the Board of Supervisors (BoS).

- Executive Board composition: The Executive Board should be composed of the Chairperson, three (experienced and senior) independent full-time members and at least four members of the BoS.
- Executive Board full-time members:
  - The full-time members of the Executive Board should be recruited externally (not, routinely, from existing or recent ESA senior management) with a high level of seniority and industry experience, so that they can provide not only support but also a degree of challenge to the Chairperson.
  - The European Parliament should play a more active role in the appointment and re-appointment process.
  - The Vice Chairperson as well as the Member in charge should both be designated by EU institution(s) and not by the Chairperson.
- BoS tasks: Notwithstanding Insurance Europe's concerns (see below) over the new powers attributed to EIOPA in the following areas, the BoS should continue to make decisions related to Articles 22 (systemic risk), 29a (strategic supervisory plan), 32 (market developments and stress tests), 31a (outsourcing and risk transfer to third countries), and 35b to 35h (direct information requests and enforcement thereof), while the Executive Board should prepare these decisions.
- In cases of conflict of interest BoS members should be excluded from the decision-making of the Executive Board, ie these decisions alone should be made by the Chairperson and full-time members of the Executive Board independently. Such cases of conflict of interest are breach of Union law investigations (Article 17), settlement of disagreements between national competent authorities (NCAs) in cross-border situations (Article 19) other than on internal model approvals, and reviews of NCAs (Article 30).

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Oversight and transparency: Effective governance and external oversight mechanisms are essential to achieve a credible supervisory landscape. Both the European Parliament and the European Commission should play a role here. Transparency is one key element to ensure efficient oversight; the annual report of the activities of EIOPA transmitted to the European Parliament, Commission, Council and Court of Auditors, and the European Economic and Social Committee (Article 43 para 5) is another important mechanism. However, further improvements — in addition to the suggested governance changes — are necessary.

New and refined powers: Insurance Europe remains unconvinced that EIOPA requires any significant changes to its powers to fulfil its mandate, although there may be a need to improve information-sharing between NCAs and EIOPA in certain areas. Care must be taken not to undermine the principles of subsidiarity and proportionality. The role of the NCAs should not be compromised; they are vital elements of the supervisory system due to their local expertise, direct contact with entities and, crucially, their local accountability.

European Systemic Risk Board (ESRB): It is crucial that the ESRB has sufficient sector-specific expertise and conducts stakeholder consultations in advance of finalising all its reports or other workstreams.

Funding/budget: Firstly, there is insufficient evidence for the need to change the current funding of the ESAs and the EC's proposal furthermore appears to lack a suitable legal basis, as set out by the Council Legal Service in its opinion dated 2 February 2018. Secondly, the role of the budgetary authority (European Parliament and Council), as well as the EC, to properly scrutinise the budget (*ex ante* and *ex post*) should be strengthened. There is currently no forum in which those approving the budget (European Parliament, Commission and Council) meet to discuss and — where necessary — challenge the ESAs' budget/work proposals (see Article 63). It is regrettable that the EC proposal on the ESAs review does not take the opportunity to address this, especially as the need for strong budgetary discipline and oversight would become even more important under the proposed changes.

Furthermore, Insurance Europe is concerned that the EC's proposal on the ESAs' budget determination and allocation would lead to the dilution of the EU contribution from its current 40%. This could also create the risk of continuous increases in the ESAs' budget, paid for by an industry excluded from all discussions. The proposals could also lead to double-charging of the industry.