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Consultation Paper on draft Opinion on Remuneration

Fields marked with * are mandatory.

Responding to this consultation

EIOPA welcomes comments on the Opinion on Remuneration

Comments are most helpful if they:

- respond to the question stated, where applicable;
- contain a clear rationale; and
- describe any alternatives EIOPA should consider.

Please submit your comments to EIOPA **by 30 September 2019** responding to the questions in the survey below.

Contributions not provided using the survey or submitted after the deadline will not be processed and therefore considered as if they were not submitted.

Publication of responses

Contributions received will be published on EIOPA's public website unless you request otherwise in the respective field in the template for comments. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.

Please note that EIOPA is subject to Regulation (EC) No 1049/2001 regarding public access to documents and EIOPA's rules on public access to documents^[1].

Contributions will be made available at the end of the public consultation period.

Data protection

Please note that personal contact details (such as name of individuals, email addresses and phone numbers) will not be published. They will only be used to request clarifications if necessary on the information supplied.

EIOPA, as a European Authority, will process any personal data in line with Regulation (EC) No 45/2001 on the protection of the individuals with regards to the processing of personal data by the Community institutions and bodies and on the free movement of such data. More information on data protection can be found at <https://eiopa.europa.eu/> under the heading 'Legal notice'.

[1] Public Access to Documents ([https://eiopa.europa.eu/fileadmin/tx_dam/files/aboutceiops/Public-Access-\(EIOPA-MB-11-051\).pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/aboutceiops/Public-Access-(EIOPA-MB-11-051).pdf))

Information about the Respondent

*Name of organisation

Insurance Europe

***Email**

prudential@insuranceeurope.eu

***Contact Name**

Gipsie DOUDEAU

Public Consultation Questions

Please enter your response into the field below each question. The reference document is available on the right side of this webpage.

Question 1

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

Insurance Europe acknowledges that it is EIOPA's task to ensure an effective and consistent level of supervision and that convergent supervisory practices should be built upon a common understanding of Union laws and regulations. However, the issuance of more detailed opinions on the interpretation of laws and regulations must always be proportionate to the detrimental effects of differences in application. Insurance Europe is not aware of any detrimental effects of divergent market practices across the European Union or evidence thereof, and the convergence of market practices is not part of EIOPA's mandate.

While the EBA was clearly mandated by the CRD IV Directive to issue guidelines on sound remuneration policies, the Solvency II Directive never mentions this topic. For the insurance sector, the European co-legislators provided instead a general requirement for a system of governance. The requirement to develop remuneration policies was set out in Article 275 of the Delegated Regulation, in which the European Commission chose to not establish fixed thresholds or quantitative ratios, in respect with Solvency II Directive's principle-based approach. This fundamental judgement should not be undermined by EIOPA. With this opinion, EIOPA would create additional obligations rather than interpreting requirements within the limits set by the legislator, and therefore exceed its mandate.

Question 2

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

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

Although Insurance Europe does not deny that sound compensation practices are part of a sound and prudent risk management framework, the regulatory framework should not intend to prescribe particular designs or levels of individual compensation. Insurance Europe supports EIOPA's intention to ensure convergent supervision of remuneration policies within the EU.

However, while for the banking sector, EBA developed guidelines on remuneration as expressly mandated by the CRD IV Directive, there is no such legal basis for EIOPA to develop a detailed opinion on remuneration principles, as stated above.

In addition, Insurance Europe highlights that it is of the responsibility of national supervisory authorities (NSAs) to assess whether remuneration policies exist and are effectively applied and, on a risk-based approach, consider a closer monitoring of companies whose practices differ widely compared to local market practices.

A one size fits all approach could in fact be detrimental to sound risk management in certain jurisdictions, considering the widely diverging cultures among the insurance sector across member states (see response to question 3).

Insurance Europe acknowledges EIOPA's statements regarding the importance of a risk-based approach and supervisory judgement. However, it may be easier and less resource consuming for NSAs to apply indicative figures regardless of the local specificities of their market. Therefore, despite the non-binding nature of this opinion, it is likely to result in an application of arbitrary figures across the Union.

Additionally, paragraph 2.9 suggests that for the staff out of the scope of this opinion, NSAs " may also adopt a proportionate and more flexible approach". However, EIOPA considers that a proportionate approach should only result in the widening of the scope, which is clearly unbalanced. Likewise, paragraph 2.11 explicitly states that NSAs may impose stricter requirements. Although paragraph 2.9 acknowledges that thresholds need to be adapted to local practices, EIOPA's opinion is too prescriptive to do so. This further enhances concerns regarding the legitimacy of EIOPA's opinion to ensure convergence, since NSAs are encouraged to impose stricter requirements, and to follow a risk-based approach, since a lower risk cannot result in lower requirements.

Question 3

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

Alignment to CRD (IV in force, V applying 29/12/20), raises question whether it has been copied from what is appropriate for banks. It is questionable if differences in governance req between 2 industries have been considered. Banks have more prescriptive requirements (req) due to nature of products or activity, especially trading activity that could pose a risk to whole financial system. Implementing banking rules without taking insurers' business model into account&considering specific activity undertaken by individuals within a company, is inappropriate

EIOPA should act within its mandate&seek convergence of supervisory practices, not of figures across member states

Opinion suggests proportionality should only apply for employees with variable (var) remuneration (rem) < €50k&< 1/4 total rem

Objective to apply opinion only for material var rem is welcome, to avoid disproportionate burden&costs

However materiality is relative&its appreciation should be left at discretion of NSAs, with a risk-based approach suited to respective markets. Such an arbitrary absolute threshold inst appropriate&doesn't capture economic differences across EU. Since implementation of SII, interpretation of Art275 Directive by NSAs has allowed much more proportionate implementation this opinion

Diverging practices can exist between markets regarding average share of var component of rem due to cultural/historical reasons. Co-legislators refrained from imposing certain ratios in Art275-2-a of Delegated Regulation (DR), consistently with risk-based approach of SII framework

There havnt been significant cases of excessive/detrimental use of var rems in insurance sector which would justify removing this crucial flexibility/competitiveness on labour market

3.3 implies that a reference ratio 1:1 in form of a fixed/var rem ratio is balanced. No ratio has been set in SII regulation (reg) for insurance. Even under CRD, 100% bonus cap, similar to a 1:1 ratio proposed by EIOPA, can be increased to 200% with shareholder approval. Setting this new req goes beyond current reg&practice in financial sector.

By identifying threshold of 1:1 ratio as potential trigger for supervisory measures, EIOPA exceeds limits set by Level 1&2. No comprehensive evidence that violation of this ratio would encourage excessive risk taking. Simply adopting banking req inst appropriate.

Specific ratio 1:1 var/fixed compensation is overly prescriptive&prevents companies from applying flexible rem policy aligned with risk appetite/sound risk management (RM). Although EIOPA suggests this opinion inst intended to introduce new req, in practice NSAs are likely to introduce hard limits to comply with this opinion. High level, qualitative guidelines should inform each NSA's approach to supervising rem policy, without specific limits on var rem. Any reference at all to a preset ratio between fixed&var rem should be avoided EIOPA states that deferral should apply to all var component, both linked to short term & long term performance. This sentence should be deleted, it implies that deferral may be divided into separate parts subject to different deferral periods. This can't be derived from Art274-2-c, which doesn't include reference to duration of performance goals. Its not consistent with rem practice, regularly based on assumption that period for performance assessment is aligned with deferral period. Purpose of deferral can be achieved without imposing deferral mechanism on each incentive system

Exceeding any preset indicator shouldn't trigger automatic action from NSAs ie engaging with undertaking & investigating policies. Any action should only be taken where NSA deems it appropriate

3.7 indicates deferral rate should be higher than 40% in case of particularly high var, eg in case of ratio var/fixed component>1:1. This specific deferral introduces a threshold which is new to sector & also a tiered approach to applying enhanced req

The quantitative criteria seem rather low&arbitrary. To preserve proportionality, indicators could be replaced by supervision focusing on how companies' approach align with RM. Reg should remain principles-based & encourage proactive supervision. Close monitoring of ratios should remain tool at discretion of NSAs where RM in a company has been proved unsound

3.9 specifying consequences of performance on var, combined with 3.11 asking to document extensive list of criteria may lead to formulaic&bureaucratic approaches which dont lead to improvement in relationship between rem&risk. It should also be clarified that list of criteria for non-quantitative performance indicators set out in 3.11b is illustrative&doesnt require mandatory consideration

PLEASE SEE ATTACHMENT FOR FULL RESPONSE

Question 4

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

Insurance Europe strongly disagrees with the requirement to award 50% of variable remuneration in shares, equivalent ownership or share-linked instruments. Unlike the banking sector regulation, the Solvency II Delegated Regulation does not provide the legal foundation to impose such a requirement. There is no regulatory rationale to adopt this banking rule in the insurance sector. It must be left to the discretion of undertakings to decide whether stock-based remuneration is deemed proportionate and feasible, in order to preserve flexibility.

Moreover, unlike the banking sector, the insurance sector comprises numerous mutuals and cooperatives. The requirement to award 50% of the variable remuneration in shares "if proportionate and feasible" seems also simply copied from the rules of the banking sector, and may create an unlevel playing field between shareholder companies and mutuals/cooperatives where it cannot apply.

The proposal in paragraph 4.1 which requires firms to provide 50% of variable remuneration in the form of shares or similar instruments, would prove impractical and limit the benefit of reward packages. This requirement is highly prescriptive and will limit firms' ability to design appropriate and competitive remuneration policy.

In addition, the combination of the requirements proposed in paragraph 4.1 with those in paragraph 4.2, which require a retention policy to be included in share linked instruments, could quite easily lead to confusion regarding the amount and ratio of variable remuneration deferred, as share price fluctuates. Unless clarified this could lead to an unfair and disproportionately high deferral rate for certain individuals. It is unclear whether this was EIOPA's intention.

Furthermore, paragraph 4.4 should be deleted as it remains unclear how, and under which rationale, undertakings should be "encouraged" to develop equivalent non-cash instruments.

Question 5

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

Question 6

Any other comment you would like to make?

There should be no limit to the number of characters allowed to respond to a public consultation. It is crucial to adequately consider feedback provided by stakeholder.

PLEASE REFER TO ATTACHMENT FOR FULL RESPONSE

Insurance Europe key messages on the draft opinion:

Legal basis

Insurance Europe acknowledges that it is EIOPA's task to ensure an effective and consistent level of supervision.

However, Insurance Europe is not aware of any detrimental effects of divergent market practices across the European Union or evidence thereof, and the convergence of market practices is not part of EIOPA's mandate.

While for the banking sector, EBA was clearly mandated by sectoral regulation to issue guidelines on sound remuneration policies, there is no such legal basis for EIOPA to develop a detailed opinion on remuneration principles in the Solvency II Directive or Delegated Regulation.

The Solvency II regulation follows a principle-based approach, and, unlike other financial sectors, its design was not intended to prescribe specific detailed requirements on the level of remuneration.

With this opinion, EIOPA seeks to create additional obligations rather than interpreting requirements within the limits set by the legislator, and therefore exceeds its mandate.

Context and objectives

The regulatory framework should not intend to prescribe particular designs or levels of individual compensation.

A one size fits all approach could in fact be detrimental to sound risk management.

Despite the non-binding nature of this opinion, it is likely to result in an application of arbitrary figures across the Union.

EIOPA's expectations on supervision of remuneration policies

General comments on EIOPA's expectations

EIOPA's opinion is aligned to the text of CRD IV and CRD V, which raises a question whether it has been copied across from what is deemed appropriate in the banking sector.

Implementing banking rules without taking the specific nature of insurers' business model into account, as well as considering the specific activity undertaken by individuals within a company, is inappropriate.

Scope of application

EIOPA set thresholds for the application of this opinion, which are significantly lower than currently applied in some jurisdictions. Any reference at all to a preset ratio between fixed and variable remuneration should be avoided.

A more appropriate implementation of proportionality is needed.

Comments on specific requirements proposed by EIOPA

Diverging practices can exist between markets regarding the average share of the variable component of the remuneration due to cultural and historical reasons.

EIOPA's proposed ratios go beyond the scope of interpretation of level 1 and 2 regulation, and it is not in EIOPA's mandate to implement additional requirements via opinions.

High level, qualitative guidelines should instead inform each NSA's approach to supervising remuneration policy, without setting specific limits on variable remuneration.

Specifically:

Establishing a specific ratio 1:1 between variable and fixed compensation is overly prescriptive and prevent companies from applying a flexible remuneration policy that aligns with risk appetite and sound risk management.

SII regulation does not offer the scope of interpretation to consider that performance assessment should be informed by 20% or more of non-financial indicators.

Considering a deferral rate of the variable remuneration higher than 40% in case of a "particularly high variable remuneration" not only introduces a new threshold, but also a tiered approach to applying enhanced requirements.

EIOPA goes beyond interpretation of the current regulation and creates unnecessary burden by requiring an exhaustive description of downwards adjustments of the deferred part of the variable remuneration.

Insurance Europe strongly opposes termination payments being considered a form of variable remuneration and, consequently, subject to deferral.

Upload any supporting document(s) here

ECO-SLV-19-211.pdf

*Do you allow us to publish your comments on EIOPA's website?

- Yes
 No

Background Documents

Draft_Opinion_on_Remuneration.pdf

Contact

Marieke.VanGrevenstein@eiopa.europa.eu
