

## **EIOPA's reply to the European Commission's public consultation on the integration of EU capital markets**

### **Introduction**

In the insurance sector, the Single Market is a functioning reality. Many insurance groups conduct a significant portion of their business across multiple Member States. Notably, the twenty largest groups account for approximately 59% of insurance premia underwritten in the European Economic Area (EEA), while groups using internal models represent around 53% of total insurance premia<sup>1</sup>. Insurers can operate across borders under a single license, either through the freedom to provide services (FoS) or the freedom of establishment (FoE). In such cases, the home supervisor – who has licensed the undertaking – is responsible for prudential supervision as well as for product governance, manufacturing, and policy servicing across the Single Market. Host supervisors, on the other hand, typically oversee product distribution, although certain disclosure requirements remain under the remit of the home authority. Currently, around 11% of insurance premia in the EEA stem from cross-border activity – a share that is steadily increasing and expected to grow further as digitalisation transforms business models.<sup>2</sup>

Although the Single Market is an established reality for businesses, evidence from real cases shows that consumer protection remains inconsistent within and across Member States. Yet, trust is fundamental for consumers to engage with insurance and pension products. According to EIOPA's 2024 Eurobarometer, more than 20% of consumers refrained from purchasing insurance products from providers in other Member States due to a lack of trust. While different factors contribute to low consumer trust, company failures, and divergent levels of consumer protection across Member States are certainly some of them. Once lost, trust can take generations to rebuild.

Insurance is an intangible product and often involves, especially in life insurance, long-term commitments, making a strong and reliable supervisory system essential – particularly in the context of cross-border business. The current supervisory framework has been instrumental in developing and supporting the Single Market. However, to address current and emerging challenges and to bolster consumer confidence, further improvements are needed. Trust in insurance depends on well-designed and well-governed products, fair and transparent distribution, and effective supervision that enforces prudential, governance, and conduct standards. Well-functioning supervision contributing to the stability of and trust in the market and its products is key to achieving the Savings and Investments Union's objectives in full.

### **Assessment of Supervisory Convergence Tools**

EIOPA is committed to fostering a well-functioning Single Market by promoting effective and consistent prudential and conduct supervision – particularly in the context of cross-border business – strengthening the protection of policyholders and beneficiaries, and addressing gaps in supervisory

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<sup>1</sup> Data is based on year-end 2023, at group-level. For Internal Model (IM) users, we consider either Full or Partial IM.

<sup>2</sup> Data is based on year-end 2023 solo undertakings.

powers and responsibilities. This work is carried out in close cooperation with National Competent Authorities (NCAs). All decisions are taken by the EIOPA's Board of Supervisors (BoS) representing the entire European supervisory community, as provided for in EIOPA's founding Regulation. Hence, the responsibility attributed to EIOPA should be understood as a shared responsibility of the supervisory community in the EU.

EIOPA's efforts to promote high-quality supervision and supervisory convergence are rooted in the ongoing development of a shared supervisory culture, common benchmarks for supervisory practices, and a harmonised implementation of the supervisory review process. This is achieved through the issuance of Opinions, Supervisory Statements, Guidelines, the Supervisory Handbook, Q&As, Peer Reviews, the use of targeted oversight activities (e.g. country visits<sup>3</sup>, inquiries<sup>4</sup>, mystery shopping exercises to test real-world selling practices) and other tools (e.g. Union-wide Strategic Supervisory Priorities (USSP) and Retail Risk Indicators (RRI)).

**Efficiency:** a distinction exists between supervisory tools that lack a “comply or explain” mechanism or do not lead to a recommendation – such as Opinions and Supervisory Statements – and those that include it, like Guidelines, Peer Reviews<sup>5</sup> and Inquiries. The former are generally quicker to adopt, while the latter often require a more extensive approval process (including the setting up of peer review committees and inquiry panels). However, even some non-binding tools such as the Supervisory Handbook and Q&As<sup>6</sup> (including those questions that require legal interpretation of Union law by the European Commission) tend to involve lengthy adoption procedures. Other tools, such as country visits and mystery shopping exercises are efficient tools enabling in-depth understanding of, respectively, NCA supervisory practices/market specificities and market selling practices. Finally, the concrete use of tools such as USSP is very limited due to their limited impact.

**Effectiveness:** convergence is, and will continue to be, influenced by the fact that supervision is embedded in national administrative and judicial systems, and shaped by the distinct supervisory cultures of individual Member States. Additionally, part of the regulatory framework relies on principles-based legislation or laws that do not mandate full harmonisation, instead allowing Member States discretion in implementation. While significant progress has been achieved, supervisory convergence across the EU is still uneven – particularly in new and emerging areas – and gaps remain. A key limitation is the lack of enforceable tools. Compliance is typically monitored through the “comply or explain” mechanism or assessed via Peer Reviews. Yet, any recommendation is by law non-binding and not always followed up (even when published). Alongside these non-binding instruments, there is no mechanism that, if necessary, would ensure enforcement. Finally, USSP are too high-level and thus not effective.

### Vision for enhanced insurance supervision in the Single Market

EIOPA's activities aim to ensure high-quality and effective supervision across Europe. They also help address cross-border cooperation challenges and investigate issues that arise across multiple Member States, enabling more efficient responses and greater supervisory convergence. The following

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<sup>3</sup> Conducted by EIOPA across prudential (4 visits per year, on average), conduct (5 visits per year, on average), pensions (1–2 visits per year, on average), and internal model supervision (1–2 visits per year, on average).

<sup>4</sup> Used once on group supervision.

<sup>5</sup> EIOPA has recently agreed to implement some improvements in the process to enhance efficiency, e.g. reducing the scope, limiting number of NCAs and recommended actions.

<sup>6</sup> Between November 2013 and April 2025, 3,108 Q&As have been addressed on sectoral legislation (e.g. mostly on Solvency II, but also on IDD, IORPs, a few on PEPP), and 229 joint Q&As on horizontal legislation (PRIIPS, DORA, FICOD).

provides an overview of the main issues and tentative proposals to enhance trust in the Single Market and the ability of the EU supervisory community to mitigate consumers detriment.

## **1. Cross-border business supervision – insufficient powers**

Recent experiences have highlighted persistent challenges at both national and EU level, particularly in conducting joint assessments, coordinating interventions, and enforcing supervisory measures – resulting in divergent national approaches.

EIOPA's legal instruments lack enforceability and rely heavily on the willingness and capacity of home NCAs to act. Even its stronger tools – such as the Breach of Union Law proceedings – may only result in non-binding outcomes. In some cases, despite agreement within EIOPA's Board of Supervisors on serious supervisory failings and consumer protection concerns, certain providers continued to market products and collect premia.

Also, consumers across the EU experience inconsistent levels of protection, as the Single Market suffers from a fragmented landscape, including in supervision, but also in areas such as civil law, social security and broader welfare provisions. To ensure that all policyholders – especially in cross-border situations – benefit from equal protection, meaningful enhancements to the supervisory framework are needed, as well as a minimum harmonisation of Insurance Guarantee Schemes (IGSs) across the EU. Where an insurer operating on a cross-border basis fails, consumer protection depends heavily on the insurer's home country and the policyholder's place of residence, as IGSs vary – or are even absent – in some Member States.

Premise: the legal framework shall take more effectively into account the possibility of the lack of compliance by the home NCA, or by the individual undertaking.

### → How the supervisory community can respond under the current legal framework

#### 1) Recommendations or Breach of Union Law (Article 16 and 17 of EIOPA Regulation)

- When the home NCA fails to act, the tools currently available are not binding or may not be effectively used.

#### 2) Insurance undertaking not complying with the legal provisions

- In cases where the home NCA does not intervene, host NCAs may take action to address the issue (Article 155 of the Solvency II Directive).
- However, in practice, coordination of such actions is often lacking, resulting in harm to the integrity and functioning of the Single Market.
- In the absence of a truly European solution, host NCAs may increasingly resort to unilateral national measures to protect their consumers. This trend risks fragmenting the market, un-levelling the playing field in supervision.

### → How the supervisory community could respond under a revised legal framework

#### **Option 1: Joint supervision at EU Level**

Supervision of individual (re)insurance undertakings with significant cross-border activity – i.e. where more than 50% of the business is conducted under FoE or FoS across multiple host Member States – would be transferred to EIOPA (i.e. joint supervision with relevant NCAs). This would apply to undertakings not part of a group with an existing college of supervisors. Implementing this model would require revising EIOPA's Regulation to define its supervisory powers (including the enhancements to relevant tools as proposed below), governance, and operational framework.

#### **Option 2: Strengthened role within the existing framework**

Maintain the current system where NCAs supervise all cross-border activities, but introduce the enhancements to relevant tools, as proposed below, allowing mechanisms for effective enforcement. Such enhancements shall also enable EIOPA's BoS to take direct actions to suspend cross-border business originating from a Member State, where necessary. This option would require further harmonisation of national supervisory powers and convergence on how and when these tools are applied.

Disclaimer: any new proposal would need thorough consideration of its legal implications, governance structure, accountability measures, and enforceability.

#### Breach of Union Law (BoUL):

- Use: EIOPA used this tool twice.
- Efficiency: lengthy and complex, involving EIOPA, NCAs and the Commission.
- Effectiveness: Article 17(6) limits EIOPA's ability to issue binding decisions directly. There are no tools to protect policyholders before non-binding recommendations are implemented by the addressee, nor mechanisms to enforce them if not implemented. Additionally, there is a lack of clarity on publishing outcomes involving individual undertakings, further limiting the tool's use.
- **Suggested enhancements:** to grant EIOPA's BoS the power to act directly in exceptional circumstances, i.e. when recommendations are not followed. In such cases, targeted changes to Article 17 of the EIOPA Regulation could be introduced to allow EIOPA i) to adopt individual decisions addressed to a financial institution by removing the legal requirement that legislative acts shall be directly applicable to financial institutions, and ii) to be able to intervene directly before any formal opinion is issued by the Commission.

#### Recommendations (Art. 16):

- Use: two formal recommendations issued; one additional process resolved before completion.
- Efficiency: adoption is manageable; delays may occur depending on case complexity.
- Effectiveness: non-binding. No tools to ensure implementation, or to address policyholder detriment until it is implemented, or clarify publication in individual cases.
- **Suggested enhancements:** In cases where an NCA fails to comply with a recommendation, Article 16 should be amended to allow such recommendations to become directly enforceable upon EIOPA's BoS decision.

#### Collaboration platforms:

- Use: 27 platforms since 2017, i.e. 22 under Art. 152b(1) and 5 under Art. 152b(2). Used to coordinate with NCAs on specific cross-border cases.
- Efficiency: useful in practice when collaboration occurs.
- Effectiveness: dependent on NCA's willingness to participate and share information; recommendations are not enforceable.
- **Suggested enhancements:** in case of lack of cooperation – i.e., in those cases where the lack of willingness to participate or share information hinders good outcomes and affects overall policyholders' protection – to grant EIOPA's BoS the power to ask the NCA(s) to share information with EIOPA and other platform Members, and where needed with the BoS. To extend the possibility to create collaboration platforms also for intermediaries and mixed-activity groups (MAGs).

#### The Solvency II Review

The revised Solvency II Directive grants EIOPA additional powers. While they are welcomed enhancements, they do not address all issues of enforceability. Also, EIOPA cannot conclude on their efficiency/effectiveness at this stage, as they have not yet been used. In particular,

- The introduction of binding mediation for cross-border cases: should EIOPA be requested to settle a disagreement between home and hosts in the context of a collaboration platform, EIOPA may take a binding decision requiring the home NCA (or host NCAs) to take specific action, or to refrain from certain action. Moreover, EIOPA may require NCAs to revoke or amend a decision that they have adopted or to make use of the powers which they have under the relevant Union law. This enhancement of EIOPA's powers in these situations is welcome, yet its actual use would still depend on the willingness of NCAs to request EIOPA's mediation.

- The introduction of publication rules: it will enable EIOPA to publish the name of individual insurers and the actions/findings stemming from supervisory work in the context of the collaboration platform. The assumption is that publication will result in consumers' and/or NCAs' actions on the basis of this such information, but this is not a given. In the absence of action, the situation will not change.

*Board of Supervisors' view: a majority of Members support Option 2 – enhancing the tools outlined above – though they express differing views on its practical implementation. There was strong support for EIOPA's recommendations as adopted by its Board of Supervisors to be implemented promptly, particularly in cases involving consumer detriment, where swift action is deemed essential. There is broad consensus that any increase in enforceability must be underpinned by robust governance and careful consideration of legal risks, including possible conclusions for effective legal protection. Where such differences in legal environments across jurisdictions are unavoidable, binding coordinated actions at the EIOPA level – enforced by host Member States, where empowered, and as a last resort after non-binding measures have been unsuccessful – could also be considered. Members also voiced strong support for the use of collaborative platforms to address issues related to intermediaries and MAGs. Only a few Members favour Option 1, while some do not support any change.*

## **2. Simplification of the supervision architecture**

Equal treatment of policyholders across the EU requires high-quality supervision in all Member States, underpinned by a robust supervisory review process and adequate supervisory and enforcement powers to ensure compliance with EU law. However, divergences in national implementation have been observed – particularly concerning key powers such as asset freezes, application of rules to undertakings in liquidation or whose licence has been withdrawn, and inconsistent transposition of product oversight and governance requirements. There is a clear need to address these issues more systematically through EU-level legislation.

Furthermore, a more coordinated and simplified approach is needed for conduct risks that emerge across multiple Member States. While joint assessments help identify common issues, follow-up remains fragmented and duplicative, as it occurs solely at national level. This leads to inefficiencies, unequal consumer outcomes, and resource waste – as shown in the recent thematic review on credit protection insurance, where Member States with stronger follow-up saw tangible improvements, while others did not.

Moreover, building on a future report on integrated data collection under the revised Solvency II Directive, EIOPA could act as a central data hub – both receiving from and providing access to all NCAs across both the insurance and pensions sectors – thereby supporting greater simplification and consistency. EIOPA and the NCAs shall be joint data owners in their practiced administrative network. Improved data access would enable more effective regulation and supervision. New data

requirements – especially in the pensions area – should be centralised from the outset. For instance, IORP II data could be the first to be collected and processed by EIOPA, then shared with relevant stakeholders. It would also be valuable for EIOPA to have a mandate to access and integrate Pillar 1 pension data into its pensions work, allowing for more comprehensive analysis and a deeper understanding of market trends.

Furthermore, possibly centralising certain supervisory decisions could streamline litigation and reduce legal and administrative costs as the complexity of the supervisory system also impacts litigation.

Finally, the increasing volume and complexity of EU legislation – both sector-specific and horizontal – has not been matched by corresponding resources at national or European level. NCAs are under pressure, and a more centralised supervisory model in select areas (e.g. AI, SupTech, behavioural supervision, or pan-European products) could enhance convergence while ensuring that limited supervisory capacity is deployed more efficiently across the EU.

**Option 1: Assign EU-level competence for highly specialised lines of business or areas where supervisory capacity is still developing.** This would enhance efficiency by avoiding duplication across 28 authorities (27 NCAs + EIOPA), creating a single centre of expertise to attract talent and achieve economies of scale. Relevant areas could include SupTech, behavioural economics and culture, internal model supervision for natural catastrophes, AI, and digital distribution. Highly cross-border specialty lines, such as cyber and travel insurance, could also fall under this scope.

**Option 2: Retain the current system, but strengthen existing supervisory convergence tools.** This would involve further developing tools as outlined below.

Product Intervention (Article 16(2) of PRIIPs Regulation 1286/2014):

- Use: used only once, limited to IBIPs.
- Efficiency: considering the high thresholds to be met, including proving NCAs cannot and/or are unwilling to act, can lead to a very cumbersome and lengthy process.
- Effectiveness: while being directly enforceable, it depends on the home NCA's willingness to act. The tool is also narrowly scoped and rarely used. There is also ambiguity about whether it is a temporary tool or a measure of last resort.
- **Suggested enhancements:** retain all existing requirements for cases involving significant cross-border activity across multiple Member States, except the condition requiring competent authorities not to have taken action to address the threat, or that the actions that have been taken do not adequately address the threat. Clearly extend the scope to cover all insurance products and financial activities. Clarify its use as a justified measure of last resort, designed for swift intervention, allowing temporary suspension pending further supervisory actions based on a decision of EIOPA's BoS.

Warnings:

- Use: issued in three cases to date.
- Efficiency: simple to adopt but legally and procedurally constrained (not usable for prudential issues as designed to address general market-related issues).
- Effectiveness: cannot be used for individual undertakings; not enforceable.
- **Suggested enhancements:** if BoUL and Art. 16 recommendation tools are improved as suggested above, any findings from the warning could be effectively addressed through the use of such tools.

Technical Assistance:



- Use: targeted support to NCAs, especially for internal models or in areas requiring capacity building.
- Efficiency: efficient when requested (yet Members do not often make use of this tool); it could create serious resource constraints if used widely.
- Effectiveness: effective in the areas of internal models (as foreseen in Solvency II).
- **Suggested enhancements:** NCAs have expressed strong interest in receiving guidance on complex and innovative models – especially those related to natural catastrophe risks. Technical assistance in other areas beyond Internal Models could be formalized.

#### Thematic Reviews:

- Use: 5 to date, to identify and address cross-border / EU-wide issues.
- Efficiency: effective in digging deeper into an issue and identify common European trends.
- Effectiveness: non-binding outcomes; limited follow-up by NCAs can hinder impact; its further effectiveness depends on the tools used as a follow-up.
- **Suggested enhancements:** if not provided by NCAs (i.e., NCAs not participating due to other priorities or resource constraints), envisage ability for EIOPA to help collecting data and carry on the review. Based on the findings, in case of serious issues not followed up by NCAs, to explicitly envisage the possibility for EIOPA to issue an Article 16 Recommendation and follow-up measures, to ensure the issues are addressed.

*Board of Supervisors' view: a majority of Members support Option 2 (with a few Members not endorsing all suggested enhancements); only a few Members favour Option 1. Some Members highlighted that EIOPA could also consider providing stronger support, in terms of expertise and tools, to NCAs, particularly in relation to new areas or products, to facilitate harmonization at the European level from the outset. A few Members remain opposed to any change.*

### **3. Better using EIOPA on Internal Model supervision**

Another area where supervisory simplification could be pursued is the oversight of internal models (IMs). EIOPA's recent work – through comparative studies, technical assistance, and on-site visits – has highlighted the importance of greater consistency in both the approval and ongoing supervision of IMs, as well as in the scrutiny of how these models are applied in calculating Solvency Capital Requirements. The wide variation in supervisory outcomes across Member States underlines the need for effective convergence tools.

Strengthening the supervision of insurance groups using IMs is essential to maintain a level playing field and build trust in their use. Greater coherence among Member States in the approval and supervision of IMs used to calculate capital requirements – particularly for large insurance groups – would enhance the competitiveness of the Single Market. It would also support insurers with centralised risk management functions and more advanced internal risk assessment capabilities. Improving supervisory convergence in this area could facilitate broader adoption of IMs, where relevant. Currently use of IM's is approved by NCAs in 16 of the 27 Member States.

#### Colleges of supervisors:

- Use: EIOPA staff participates in ~60% of colleges annually (37 out of 60 in 2023), contributing to group supervision and decisions on internal models.

- **Efficiency:** well-established coordination tool with regular engagement; efficiency can be improved when submission of information to EIOPA (in addition to information regularly exchanged in the college) is requested.
- **Effectiveness:** effective tool for group supervision although in the area of internal models EIOPA's views are not always duly considered (legally, EIOPA is not a concerned supervisory authority).
- **Suggested enhancements:** EIOPA's role in colleges could be strengthened to represent the broader EU perspective.<sup>7</sup> This is especially important since not all Member States participate in joint decisions within supervisory colleges, and such decisions can set market precedents that are harder to challenge once established in other jurisdictions. Moreover, when it comes to decisions on internal models, EIOPA's internal model Unit already actively supports requesting NCAs. Broader involvement of EIOPA decisions can further enhance the expertise of both EIOPA and NCAs, thereby enhancing efficiency and effectiveness. It is therefore suggested to i) grant EIOPA staff the ability to participate in the joint decisions on Internal Models, at par with supervisory authorities concerned (ensuring sound governance in order to still allow EIOPA to act as mediator in case of disputes) – alternatively, there should be a formal requirement for the authorities involved to duly consider EIOPA's opinion in their decision-making; ii) ensure that EIOPA receives all relevant information on the joint decision simultaneously with the supervisory authorities concerned.

#### Joint on-site inspections:

- **Use:** conducted with NCAs to address specific concerns and harmonise supervisory practices; also performed in the context of technical assistance.
- **Efficiency:** valuable for developing a consistent approach across jurisdictions.
- **Effectiveness:** relies on NCA's cooperation to address recommendations resulting from inspections; joint follow-up actions are not binding; intermediaries operating on a cross-border basis are not in scope; not possible for EIOPA to conduct an inspection on its own initiative.
- **Suggested enhancements:** to include in the legal framework (Solvency II and IDD) that *"In the event of disagreement within the platform or college, EIOPA may decide on its own initiative, to initiate and if needed coordinate on-site inspections."*

*Board of Supervisors' view: a majority of Members support retaining the current legal framework as already enhanced by the recent Solvency II review. To ensure that internal models accurately reflect the risk profile of a group, including in host markets, some Members were open to discuss targeted enhancements aimed at promoting greater collaboration within supervisory colleges, including how to better consider EIOPA's view in decisions related to internal model approvals. Some Members expressed support for establishing a centre of competence within EIOPA to consolidate supervisory expertise across the EU and provide support to NCAs. A few Members are also open to granting EIOPA the ability to carry out own-initiative on-site inspections. A few Members remain opposed to any change.*

#### **4. MTPL and Motor Insurance Directive**

Another area where challenges have emerged is in the Motor Third Party Liability (MTPL) business. As the Motor Insurance Directive (MID) falls outside EIOPA's mandate, the Authority lacks the necessary powers to address related issues – such as outstanding liabilities under the Green Card system –

<sup>7</sup> Such enhancement would also be consistent with EIOPA's founding Regulation (Art. 19), according to which if any of the supervisory authorities concerned refer a joint decision to EIOPA, the group supervisor shall await EIOPA's decision and then act in conformity with it.



limiting its ability to protect policyholders and safeguard the financial stability of the sector. This gap also creates confusion among policyholders, many of whom turn to EIOPA for assistance. Addressing this is important for maintaining clarity and building public trust.

**Proposal:** The first step is to include the Motor Insurance Directive within EIOPA's mandate by amending Article 1 of the EIOPA Regulation (while explicitly excluding the scope of coverage and national regulation of insurance contract terms and conditions). The targeted scope of action would address practical cases where national Bureaux and the Council of Bureaux (CoB) have lacked adequate means to act when insurers fail to comply with CoB internal regulations on cross-border claims payments. This has raised concerns about consumer protection, the financial stability of national insurance markets – particularly where market-wide reinsurance cover is imposed – and the integrity of the Green Card system. Once this is achieved, all related tasks and powers would naturally follow. The relationship with the national Bureaux will require further discussion and clarification. Alternatively, if EIOPA's mandate is not extended, greater information exchange between the Bureaux/CoB and EIOPA should be encouraged within the framework of its existing mandate. Regarding this, EIOPA is currently discussing a possible Memorandum of Understanding (MoU) with the CoB to enhance information exchange and cooperation, while remaining within the limits of applicable confidentiality requirements.

*Board of Supervisors' view: while Members recognise that motor insurance is a relevant area for supervisory attention and that it is not within EIOPA's mandate, a majority would welcome further exchange of information between the Bureaux and EIOPA, including in the context of a possible MoU. Some encouraged EIOPA to engage further with the Commission on this issue.*