

IAIS Consultations

Print view of your comments on "Application Paper on the Composition and the Role of the Board" - Date: 13.08.2018, Time: 18:40

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Treat my comments as confidential	No

Question	
	Q1 General comments on the Application Paper
Answer	<p>ICMIF welcomes the opportunity to share some general comments on the draft application paper on the Composition and Role of the Board.</p> <p>We agree with the introductory statement of the Paper, i.e. that the effectiveness of the Board is pivotal to an insurer's long term success and sustainability.</p> <p>Board effectiveness is a challenge that goes far beyond judging structural elements such as Board composition and the definitions of roles and responsibilities. A key driver lies in Board dynamics, where independence (of mind) and professionalism play a crucial role.</p> <p>Whilst we recognise the importance of both formal and behavioural aspects in a well-functioning Board, we note that all proposals are based on a potentially increased possibility for the supervisor to interfere in the functioning of the Board in order to verify that the above principles are respected. These go far beyond the supervisor's role and ability. We firmly believe that supervisors should concentrate on the formal aspects and leave undertakings to determine how their business, including functioning of the Board, is being run. This view is underpinned by national corporate legislation in which the Board has a certain status, duties and rights. In a corporate context the Board is appointed by the owners of an undertaking; its main purpose is therefore to make sure that the company is being run according to the owners and member-policyholders' interest. The challenges and risks in the functioning of the Board are of general nature and applicable to all companies in all sectors, and are not specific to insurance. Jurisdictions have mechanisms to address these challenges – mainly resorting to corporate law and corporate governance practices. We thus fail to understand why a supervisor should intervene in a Board's functioning even when no requirements are being infringed. In other words, if an undertaking meets its regulatory obligations we suggest that the supervisory focus should be on the result, not on the way business is conducted. -</p> <p>We deplore the absence of any mention of the proportionality principle in the document, which in our opinion, should take into account the nature, scale and complexity of the institution's activities for the assessment of adequate knowledge, skills and experience of the Board.</p> <p>Lastly, we believe that some measures contained in this draft Application Paper (ex- ante interviews, individual and collective suitability, minimum number of independent directors) would require a legislative and regulatory basis, which most certainly do not currently exist in a number of jurisdictions and would not be realistic or appropriate.</p>
	Q2 General comments on Section 1: Introduction

Answer In its introduction, the IAIS takes the precaution of stressing that the governance of an undertaking can be influenced by the structure of the organisation, such as its legal statute, and that some of the challenges or proposed supervisory responses depend on a number of factors and specific characteristics applied to a particular case. We welcome this recognition that each case is particular and that there should not be a general opinion based on corporate structure. Yet we note that the recommendations contained in the draft Application Paper do not include any differentiation between organisations and the analysis conducted only consider the public limited company model.

Q3 Comment on Paragraph 1

Answer

Q4 Comment on Paragraph 2

Answer

Q5 Comment on Paragraph 3

Answer While we welcome the acknowledgement that stock companies, mutual and cooperative insurers have distinctive features that may justify slightly different governance practices, we do not find any useful reference to these and their supervisory response in the paper (apart from one, in para. 15, which will comment on then). In fact, without explicit reference to it, the last sentence suggests that resorting to some proportionality is called for. We suggest it should be rephrased to make it clearer that the 'one size fits all' model does not work. We believe the document should have a separate paragraph dedicated to proportionality. The excerpts below are from the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders. These Guidelines aim to harmonise and improve suitability assessments within EU financial sectors, and to ensure sound governance arrangements in financial institutions in line with the Capital Requirements Directive (CRD IV) and the Markets in Financial Instruments Directive (MiFID II). The Guidelines highlight the importance for institutions to consider whether candidates have the knowledge, qualification and skills necessary to safeguard proper and prudent management of the institution. The Guidelines also foster more diverse management bodies and, therefore, contribute to improved risk oversight and resilience of institutions. The joint Guidelines are applicable since 30 June 2018 to competent authorities across the EU, as well as to institutions on an individual and consolidated basis.

Title I - Application of the proportionality principle 20. The proportionality principle aims to match governance arrangements consistently with the individual risk profile and business model of the institution and takes into account the individual position for which an assessment is made so that the objectives of the regulatory requirements are effectively achieved. Institutions should take into account their size, internal organisation and the nature, scale, and complexity of their activities when developing and implementing policies and processes set out in these Guidelines. Significant institutions should have more sophisticated policies and processes, while in particular small and less complex institutions may implement simpler policies and processes. Those policies and processes should, however, ensure compliance with the criteria specified in these Guidelines to assess the suitability of members of the management body and key function holders and the requirements to take diversity into account when recruiting members to the management body and to provide sufficient resources for their induction and training. While we welcome the acknowledgement that stock companies, mutual and cooperative insurers have distinctive features that may justify slightly different governance practices, we do not find any useful reference to these and their supervisory response in the paper (apart from one, in para. 15, which will comment on then). In fact, without explicit reference to it, the last sentence suggests that resorting to some proportionality is called for. We suggest it should be rephrased to make it clearer that the 'one size fits all' model does not work. We believe the document should have a separate paragraph dedicated to proportionality. The excerpts below are from the Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders. These Guidelines aim to harmonise and improve suitability assessments within EU financial sectors, and to ensure sound governance arrangements in financial institutions in line with the Capital Requirements Directive (CRD IV) and the Markets in Financial Instruments Directive (MiFID II). The Guidelines highlight the importance for institutions to consider whether candidates have the knowledge, qualification and skills necessary to safeguard proper and

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All members of the management body and key function holders should, in any event, be of good repute and have honesty and integrity, and all members of the management body should have independence of mind regardless of the institution's size, internal organisation and the nature, scope and complexity of its activities and the duties and responsibilities of the specific position, including memberships held in committees of the management body.

23. For the purpose of applying the principle of proportionality and in order to ensure the appropriate implementation of the governance requirements of Directive 2013/36/EU and Directive 2014/65/EU which the Guidelines further specify, the following criteria should be taken into account by institutions and competent authorities: a. the size of the institution in terms of the balance sheet total, the client assets held or managed, and/or the volume of transactions processed by the institution or its subsidiaries within the scope of prudential consolidation; b. the legal form of the institution, including whether or not the institution is part of a group and, if so, the proportionality assessment for the group; c. whether the institution is listed or not; d. the type of authorised activities and services performed by the institution (see also Annex 1 of Directive 2013/36/EU and Annex 1 of Directive 2014/65/EU); e. the geographical presence of the institution and the size of the operations in each jurisdiction; f. the underlying business model and strategy, the nature and complexity of the business activities, and the institution's organisational structure; g. the risk strategy, risk appetite and actual risk profile of the institution, also taking into account the result of the annual capital adequacy assessment; h. the authorisation for CRD-institutions to use internal models for the measurement of capital requirements; i. the type of clients¹⁶; and j. the nature and complexity of the products, contracts or instruments offered by the institution.

Q6 Comment on Paragraph 4

Answer

Q7 Comment on Paragraph 5

Answer

Q8 Comment on Paragraph 6

Answer

The draft Application Paper notes the importance of a relation based on trust between the Board of an insurer and its supervisor. The IAIS recommendations will appear all the more acceptable if they are practised in this spirit, however the behaviour of certain supervisory authorities' teams that have come to our attention make us question this statement. We therefore welcome the recognition that the relationship should be two-way and suggest adding to the end of the sentence "The interaction should be two-way with supervisors contributing their views and suggestions on issues they think Board members should consider, and listening to the Board members.'

Q9 Comment on Paragraph 7

Answer	
	Q10 Comment on Paragraph 8
Answer	
	Q11 General comments on Section 2: Competence of individual Board members
Answer	
	Q12 Comment on Paragraph 9
Answer	
	Q13 Comment on Paragraph 10
Answer	
	Q14 Comment on Paragraph 11
Answer	
	Q15 Comment on Paragraph 12
Answer	<p>In a mutual or cooperative insurance undertaking, the appointment process of a Board member is elective and so, at least at this stage, members are not recruited. It may be worth noting that in the European Union, the Solvency II directive already imposes a formal process of documentation and information for the supervisor, as to the competence and individual honourability of each member of the Board of Directors, which was the subject of extensive negotiations before its effective implementation, particularly with regard to elected mutualists. It also imposes ad-hoc training programmes.</p>
	Q16 Comment on Paragraph 13
Answer	<p>Our members feel strongly that the recruitment process of Board members should be left solely to the undertaking. This process is organised according to a jurisdiction's corporate legislation and corporate governance principles and the Board is primarily a body representing the owners and member-policyholders' interests. In a mutual or cooperative insurance company, the owners can be the policyholders. The scope of the supervisory control should be restricted to regulatory requirements such as the role, composition, fit & proprietary, reporting etc.</p>
	Q17 Comment on Paragraph 14
Answer	<p>The appendix provides a board composition grid for the individual assessment of directors with regard to certain capacities, particularly in relation to the four key functions but also the specialised committees. In our view, this table provides an exclusive approach to a Board member's abilities / skills and could lead supervisors to a restrictive analysis of individual and collective skills at the expense of a more global approach. We understand this is meant to ensure the Board's effectiveness which, as per the introduction and section 3, should assist in developing a collective vision of the insurer's purpose, its culture, its values and the behaviours it wishes to promote in conducting its business. We however think that such a grid could lead to a stigmatisation of certain directors whose main skills are different.</p>
	Q18 Comment on Paragraph 15

Answer As referred to in the comments to para. 3, the only mention of the mutual structure is done in a negative way, suggesting that mutual Boards have too many members or have a deficit in competent members. Board members of mutual or cooperative insurance companies, especially local ones, require knowledge of the needs of their members/policyholders, which may not be taken into account by supervisors with insufficient knowledge of the sector. Moreover, we do not agree that every individual Board member has to be highly competent in all fields. Within the EU, the requirement is for the Board as a whole to have the necessary skills and competence to deliver their responsibilities and accountabilities. This means, a 'keen novice' or the first time Board member should not be automatically turned down. Indeed if every single Board member has to be highly experienced, that would undermine attempts at (gender) diversity or renewal, as you would continuously go back to the same pool of Board members.

Q19 Comment on Paragraph 16

Answer

Q20 Comment on Paragraph 17

Answer

Q21 Comment on Paragraph 18

Answer

Time allocation, level of commitment, contributions etc. are individual issues both in the context of an undertaking as well as individual Board members so these should not be part of the supervisor's remit. Corporate governance-mechanisms existing in jurisdictions take care of the problem in case a Board member is not capable of handling his/her duties as a Board member.

Q22 Comment on Paragraph 19

Answer

Q23 Comment on Paragraph 20

Answer

Q24 Comment on Paragraph 21

Answer

We agree training is important. However, encouraging supervisors to evaluate if funding and time of the Board member training is adequate would be intrusive and an example of too detailed regulation.

Q25 Comment on Paragraph 22

Answer

Q26 Comment on Paragraph 23

Answer

Q27 General comments on Section 3: Diversity of competencies of the Board

Answer

It is important that the owners of a business are represented on the Board, to ensure that the Board is properly accountable to its owners. In a mutual or cooperative insurance undertaking where the policyholders are the owners, it is important therefore that there is a place for these member-policyholders. Particularly in an affinity mutual, these can ensure the company is run in the best interests of the sector the mutual represents, both in the short and long term. Similarly, there is growing focus, in some jurisdictions, on employee representation on the Board - where the Board sets the direction, the Board members need

to understand the consequences of any strategic change on the company culture and the commitment of the workforce to making the necessary changes. It may therefore be useful to have an employee representative on the Board but that does not mean that that individual must be 'highly competent'. As commented in para. 15, we strongly believe Boards as a whole have to have the necessary skills and competence to deliver their responsibilities and accountabilities.

Q28 Comment on Paragraph 24

Answer

We would like to refer to our comments to para. 15 as there are different views as to what is to be included in the skills and expertise in Boards of small undertakings.

Q29 Comment on Paragraph 25

Answer

Q30 Comment on Paragraph 26

Answer

Q31 Comment on Paragraph 27

Answer

Same comment as for para 12; in a mutual or cooperative insurer, members are not nominated but elected.

Q32 Comment on Paragraph 28

Answer

Q33 Comment on Paragraph 29

Answer

Q34 Comment on Paragraph 30

Answer

Q35 Comment on Paragraph 31

Answer

Q36 Comment on Paragraph 32

Answer

Q37 Comment on Paragraph 33

Answer

Q38 Comment on Paragraph 34

Answer

We welcome the acknowledgement that expertise brought by an outsider is generally very valuable, as you can't expect Board members to be experts in everything.

Q39 Comment on Paragraph 35

Answer

Q40 General comments on Section 4: Allocation of the roles and responsibilities

Answer

Q41 Comment on Paragraph 36

Answer

Q42 Comment on Paragraph 37

Answer

Q43 Comment on Paragraph 38

Answer

Q44 Comment on Paragraph 39

Answer

Q45 Comment on Paragraph 40

Answer

It should be mentioned that the separation between the responsibilities of the Board of Directors and those of the operational staff may be predefined by law or regulation (e.g. the mutual code in France). Should more detailed provisions be provided, they could be included in written policies. Solvency II requires regular reports to the supervisor in response to the need to regularly check the adequacy of the governance procedures.

Q46 Comment on Paragraph 41

Answer

We members believe the role of supervisors should not include the assessment of the Board's key roles and responsibilities, at least as long as all the legal and regulatory requirements are met. As to the responsibilities' map such as applied by the Financial Stability Board, we should like to point out that the FSB's objectives are to 'address vulnerabilities affecting financial systems in the interest of global financial stability'. While global financial stability is part of the IAIS' mission, we believe the protection of policyholders takes precedence over it. Insurance plays a social role that should not be seen as secondary to global financial stability. As argued in para. 15 we would like to see the proportionality principle applied in assessing whether the 'responsibilities' map' should be expected from each insurer, regardless of its size, nature or complexity.

Q47 Comment on Paragraph 42

Answer

Q48 Comment on Paragraph 43

Answer

Q49 Comment on Paragraph 44

Answer

Q50 Comment on Paragraph 45

Answer

Q51 General comments on Section 5: Delegation of activities and tasks of the Board

Answer	
	Q52 Comment on Paragraph 46
Answer	
	Q53 Comment on Paragraph 47
Answer	
	Q54 Comment on Paragraph 48
Answer	
	Q55 Comment on Paragraph 49
Answer	
	Q56 Comment on Paragraph 50
Answer	
	Q57 Comment on Paragraph 51
Answer	
	Q58 Comment on Paragraph 52
Answer	
	Q59 Comment on Paragraph 53
Answer	
	Q60 Comment on Paragraph 54
Answer	
	Q61 General comments on Section 6: Combining the roles of the Chair and the CEO
Answer	
	Q62 Comment on Paragraph 55
Answer	
	Q63 Comment on Paragraph 56
Answer	
	Q64 Comment on Paragraph 57
Answer	Independent directors should not be mentioned in this paragraph which is supposed to be about combining CEO & chair
	Q65 General comments on Section 7: Being a Board member of multiple entities within the same group

Answer We would like to challenge this prescription in the case of Boards belonging to a same group. As underlined in paragraph 58, there are very clear advantages in a member of a Board holding more than one assignment within the group. Allowing a supervisor to determine a maximum number of mandates which can be held by one person within the same group seems like stretching the demands too far and such limitations could have negative effects. The entities within a group can be small, carrying little or no risk. For example, the capital requirement directive CRD IV within the EU limits the number of mandates a member of a Board in a significant bank can have (and smaller institutions are not addressed). However the limitation allows for flexibility and mandates within the same group are not counted as different mandates (Article 91 CRD IV). In fact there could be a point in not overregulating these aspects in order to facilitate keeping a group together. In our opinion the wording at least should include a higher degree of flexibility and proportionality.

Q66 Comment on Paragraph 58

Answer

Q67 Comment on Paragraph 59

Answer

Q68 Comment on Paragraph 60

Answer

Q69 General comments on Section 8: Access to information

Answer

Q70 Comment on Paragraph 61

Answer

Q71 Comment on Paragraph 62

Answer

Q72 Comment on Paragraph 63

Answer

Q73 Comment on Paragraph 64

Answer

Q74 Comment on Paragraph 65

Answer

Q75 Comment on Paragraph 66

Answer

Our members do not agree that the supervisor should intervene in decision-making as it is described here. This refers to our earlier comments of supervisors evaluating the results but not the processes

Q76 Comment on Paragraph 67

Answer

Q77 Comment on Paragraph 68

Answer

Q78 Comment on Paragraph 69

Answer

We think the main purpose of minutes is to ensure the documentation of sound and transparent decision making procedures.

Q79 General comments on Section 9: Behavioural aspects of the Board's functioning

Answer

The behavioural aspects of the functioning of the Board are difficult to objectively and exhaustively evaluate. They are primarily the owners/member-policyholders' concern when electing/nominating the Board members who should be responsible for providing the overall strategy and direction for the insurer and overseeing its proper overall management in the best possible way and in the owners'/member-policyholders interest, in compliance with the governance provisions. Behavioural and human aspects would be best left to the Board's self-assessment of its functioning, for which recommendations provide good questions and examples The role of a supervisor is not to intervene in the specific case of a dominant Board member or to challenge the rationale behind a Board's thinking but to ensure the Board respects its obligations. .

Q80 Comment on Paragraph 70

Answer

Q81 Comment on Paragraph 71

Answer

Q82 Comment on Paragraph 72

Answer

Q83 Comment on Paragraph 73

Answer

Q84 Comment on Paragraph 74

Answer

Q85 Comment on Paragraph 75

Answer

Q86 Comment on Paragraph 76

Answer

Q87 Comment on Paragraph 77

Answer

Q88 Comment on Paragraph 78

Answer

Q89 Comment on Paragraph 79

Answer	
	Q90 Comment on Paragraph 80
Answer	
	Q91 Comment on Paragraph 81
Answer	
	Q92 Comment on Paragraph 82
Answer	<p>The presence of independent directors in Boards is not mandatory in all jurisdictions for all insurance undertakings. On the other hand, there is quite a debate on what it means to be independent. Independence is not only financial; HR specialists speak of independence of mind which can be assessed if a certain number of behavioural skills are active (and the Central Bank of Ireland has established a list of 7 criteria).</p>
	Q93 Comment on Paragraph 83
Answer	
	Q94 Comment on Paragraph 84
Answer	
	Q95 Comment on Paragraph 85
Answer	
	Q96 General comments on Conclusion
Answer	<p>As mentioned at several opportunities throughout the draft Application Paper, we believe a supervisor's main concern should be the formal aspects of a Board's composition and role. Regulation and corporate governance guidance provide them with indirect possibilities to intervene, even with regards to behavioural aspects, for example, through policies mentioned in paragraph 88, visits and reviews. Any additional regulatory requirements regarding the functioning of the Board would not be appropriate and would not benefit policyholders.</p>
	Q97 Comment on Paragraph 86
Answer	
	Q98 Comment on Paragraph 87
Answer	
	Q99 Comment on Paragraph 88
Answer	
	Q100 Comment on Paragraph 89
Answer	
	Q101 Comment on Paragraph 90
Answer	

Q102 Comment on Annex I

Answer

Q103 Comment on Annex II

Answer