



IAIS

INTERNATIONAL ASSOCIATION OF
INSURANCE SUPERVISORS

Public

Compiled Members' Comments on *Consultation on ICP 3* with resolutions

Organisation	Jurisdiction	Confidential	Answer	Resolution of comments
1 - Q1 General Comment on ICP 3				
1. Office of the Superintendent of Financial Institutions (OSFI)	Canada - OSFI	No	Please note that we have no specific concerns or comments in respect of the revised ICP 3 and IPC 25 nor do we have concerns/comments re the ComFrame elements added therein.	Noted.
2. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	EIOPA welcomes this opportunity to provide comments.	Noted.
3. Bank Negara Malaysia	Malaysia	No	No comments	Noted.
4. Financial Supervisory Authority	Romania	No	The new architecture of ICP 3 will allow a better and smooth application of the standards. The clarifications/definitions for legitimate interest and valid supervisory purposes were needed. The aggregation of the standards referring to assessing the request case-by-case in a timely and comprehensive manner in only one standard is an appropriate approach. The elimination of the references to reciprocity from the standards is also welcomed.	Noted.
5. Swiss Financial Market Supervisory Authority (FINMA)	Switzerland	No	ICP 3 sets out the standards for "information sharing and confidentiality requirements". The term "information", however, is used in different ways, for instance "supervisory information", "confidential information" or solely "information". What is the reason behind this distinction? FINMA suggests reviewing the document to use the term "information" in a consistent manner. Where different terms are used, we believe that the reasons for the differentiation should be clear to a reader who is unfamiliar with the subject.	The term "supervisory" has been deleted in ICP 3.1 and ICP 3.1.1 (which has been further reworded). The reference in ICP 3.1 is now to information generally because there is less reason to constrain the requesting of information. At the stage of responding to the request (ICP 3.2), it is within the requested supervisor's authority to share as it sees fit. Moreover, the requested supervisor's ability to deny a request should not be confined to any particular type of requested information. The remaining protections in ICP 3 may be extended to non-confidential information in practice, but as

			3.1.2 defines relevant supervisors and authorities. However, it is not clear to us who in this list are the "supervisors" and who are the "authorities". Does the term "supervisors" for instance only include insurance supervisors or also other financial market supervisors (such as e.g. supervisors responsible for banks and other credit institutions)? A clear definition of those terms seems important to us as sometimes only the term "supervisors" is used and sometimes "supervisors and authorities". It may be useful to consider other ICPs where those terms are used for consistency reasons. Moreover and once the definitions are clear, we believe that the whole document regarding ICP 3 should be reviewed to ensure a consistent use of the terms. See also FINMA's comment to 3.2.5 in this context.	standards, do not need to encompass more than confidential information. ICP 3.1.2 covers this issue sufficiently outlining examples of what is meant by supervisors and authorities. A clearer definition may be too limiting. The term "authority" has been added in different parts of ICP 3 for consistency.
2 - Q2 Comment on Standard ICP 3.1				
6. Swiss Financial Market Supervisory Authority (FINMA)	Switzerland	No	ICP 3 states "the supervisor obtains information from and shares information with relevant supervisors and authorities subject to confidentiality, purpose and use requirements". 3.1 further sets out that "the supervisor requests supervisory information [...]". FINMA believes that it is not clear how to interpret "requests" in the context of ICP 3. As we assume that "requests" covers the first part of ICP 3 ("obtain"), we suggest to either - replace "requests" by "obtains" for consistency reasons; or	Not agreed. Making a request is part of the process of obtaining information. The next standards address handling the request by the requested supervisor.

			- add "has the legal power to request" for more clarity.	
3 - Q3 Comment on Guidance ICP 3.1.1				
7. Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany - BAFIN	No	7th bullet point: please revise: on any failures (more than one) second last bullet point not clear.	Agreed. Change made. Language related to customer transactional information has been deleted.
8. Komisja Nadzoru Finansowego - KNF (Polish Financial Supervision Authority)	Poland	No	Suggested changes: information concerning non-regulated entities related to the insurance group such as service companies or holding companies (if the supervisor is in the possession of such information); reporting information within groups to meet group supervisory requirements, including subsidiaries and non-regulated holding companies (if the supervisor is in the possession of such information);	Not agreed. See ICP 3.4.4.
4 - Q4 Comment on Guidance ICP 3.1.2				
5 - Q5 Comment on Standard ICP 3.2				
9. Financial Supervisory Authority	Romania	No	We support the new text, the explicit reference to non-public information was indeed needed.	Noted.
6 - Q6 Comment on Guidance ICP 3.2.1				
10. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	Suggest changing "is not a prerequisite" to "may not be a prerequisite" as in many cases, a written agreement may be required (for example, in the U.S., a written agreement is required in the Insurance Holding Company System Regulatory Act).	Agreed. Change made.
7 - Q7 Comment on Guidance ICP 3.2.2				

8 - Q8 Comment on Guidance ICP 3.2.3				
9 - Q9 Comment on Guidance ICP 3.2.4				
11. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	Second sentence, suggest changing "mutual trust and confidence between supervisors" to "mutual trust and confidence among supervisors".	Agreed. Change made.
10 - Q10 Comment on Guidance ICP 3.2.5				
12. Swiss Financial Market Supervisory Authority (FINMA)	Switzerland	No	FINMA is wondering whether the term "supervisors" at the beginning of the paragraph should be extended to "supervisors and authorities". This depends on how the terms "supervisors" and "authorities" are defined (see our general comment to ICP 3 at the beginning of the document). If the term "supervisors" only included insurance supervisors, for instance, we believe that an extension to "supervisors and authorities" would be appropriate in this context, because other "authorities" such as supervisors of banks (conglomerate) may also participate in a supervisory college.	Agreed to introducing "and authorities". The sentence with the new wording moved to ICP 3.2.1.
11 - Q11 Comment on Guidance ICP 3.2.6				
13. Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany - BAFIN	No	Please revise as follows: "Where cConfidential information exchanged within a supervisory college can isonly be communicated to relevant supervisors or authorities who are not involved in the college with the prior consent of the authority having provided such information. For all other permanent ways , supervisors should have a formal mechanism in place between the group-wide supervisor and the other supervisors or authorities to ensure the protection of the confidential information. Such mechanisms for information sharing shouldcould be included in the relevant information sharing	Agreed to split out concepts into having a formal mechanism to protect confidential information and require prior consent of the supervisor having provided the information. Change made in ICP 3.2.6.

			agreements of the college." Either such authorities are included within the information exchange of the college or not. Forwarding information to third parties can only happen with the PRIOR CONSENT of the authority providing the original information.	
12 - Q12 Comment on Standard ICP 3.3				
13 - Q13 Comment on Guidance ICP 3.3.1				
14 - Q14 Comment on Guidance ICP 3.3.2				
15 - Q15 Comment on Guidance ICP 3.3.3				
14. Financial Supervisory Authority	Romania	No	The requirements for exchanging confidential information should not be limited to procedures and policies, it should also take into account the legislation, both primary and secondary. (eg: In our jurisdiction, there are explicit provisions in the primary legislation providing the conditions for exchanging confidential information.)	Agreed but no need for change. This is covered by ICP 2.
15. Swiss Financial Market Supervisory Authority (FINMA)	Switzerland	No	What are the reasons for requiring specific policies and procedures for making requests? If policies and procedures are considered necessary in this context, it seems more useful setting them up in a broader way, i.e. regarding the general process of exchange of information. In particular, in addition to the requirements for making a request, the following policies and procedures could also be included: - policies and procedures on how a request for information should be executed by the requested authority; and - policies and procedures on how the information	The guidance has been deleted.

			obtained should be treated by the requesting authority. To sum up, FINMA suggests setting up this paragraph in a more general way, in line with the policies and procedures required where a supervisor wants to become a signatory to the IAIS MMoU.	
16. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	Suggest adding a reference to policies and procedures for internal handling of information received (this is a topic considered during validation of IAIS MMoU applications).	The guidance has been deleted.
16 - Q16 Comment on Standard ICP 3.4				
17. Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin)	Germany - BAFIN	No	The standard 3.4 should reflect in any case the possibility to have a systematic information exchange within colleges which is based on written coordination arrangements. This will ease the heavy burden of case by case decisions for day to day supervisory information especially in larger colleges. We propose the following change: Please add "which is not covered by a coordination Arrangement" so it reads: "3.4 "The supervisor that has received a request for confidential information (the requested supervisor) which is not covered by a coordination arrangement: o assesses each request for information on a case-by-case basis; and o responds to requests in a timely and comprehensive manner."	Not agreed. Even in case when there is a coordination arrangement in place, there is a need to assess the request, for example as regards the legitimate interest and valid supervisory purpose. Also, ICP 3.4.2 indicates that the existence of a coordination agreement should be taken into account when considering a request.
18. Financial Supervisory Authority	Romania	No	The new text is more appropriate, including in the same standard the requirements for assessing a requests in a comprehensive and timely manner and the requirements for the information that should	Noted.

			be taking into consideration when deciding the extent to fulfill a certain request.	
19. Swiss Financial Market Supervisory Authority (FINMA)	Switzerland	No	FINMA suggests adding "from another relevant supervisor or authority" (in line with 3.3) for clarity: "The supervisor that has received a request for confidential information from another relevant supervisor or authority (the requested supervisor)"	Agreed.
17 - Q17 Comment on Guidance ICP 3.4.1				
20. Swiss Financial Market Supervisory Authority (FINMA)	Switzerland	No	FINMA believes that "or authority" should be added for consistency reasons: "In principle, the requested supervisor is expected to share information with a requesting supervisor or authority [...]"	Not agreed. The guidance focuses more on expectation to share information with supervisors in case it has a legitimate interest and valid supervisory purpose. Valid supervisory purpose is relevant only in case of supervisors.
18 - Q18 Comment on Guidance ICP 3.4.2				
21. National Association of Insurance Commissioners (NAIC)	USA, NAIC	No	Suggest swapping the order of the third and fifth bullets (or delete the bullet on coordination agreements). A coordination agreement may provide appropriate structures for sharing information within a supervisory college, but having the appropriate confidentiality agreements in place is a more important issue for exchange of confidential information.	Agreed.
19 - Q19 Comment on Guidance ICP 3.4.3				
20 - Q20 Comment on Guidance ICP 3.4.4				
22. Swiss Financial Market Supervisory Authority (FINMA)	Switzerland	No	What is meant by "insurer information"? We believe that the term should be specified as it has never be used before. Maybe the term "supervisory information" could be used instead.	Changed for "information" ("insurer" deleted).

			See also our general comment at the beginning of the document regarding "supervisory information", "information" etc.	
21 - Q21 Comment on Guidance ICP 3.4.5				
22 - Q22 Comment on Guidance ICP 3.4.6				
23 - Q23 Comment on Standard ICP 3.5				
23. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	EIOPA's comments on Standard 3.5 are included in the comment section of guidance 3.5.2 (Q25).	Noted.
24. Financial Supervisory Authority	Romania	No	We suggest adding the following text: " Supervisors should ensure that appropriate confidentiality requirements are in place. Sharing the confidential information with another relevant authority should respect the principle of legitimate interest and valid supervisory purposes."	Not agreed. The present wording aims at highlighting that assessment of the valid supervisory purpose is relevant only in case of supervisors, whereas a legitimate interest is adequate also for other authorities.
24 - Q24 Comment on Guidance ICP 3.5.1				
25 - Q25 Comment on Guidance ICP 3.5.2				
25. European Insurance and Occupational Pensions Authority (EIOPA)	EIOPA	No	The last sentence of 3.5.2 used to be a standard however now it is presented in the guidance part. We consider this change not compliant with the three requirements (legitimate interest, valid supervisory purpose and appropriate degree of confidentiality). We propose the following wording of the standard 3.5: STANDARD 3.5 The requesting supervisor uses confidential information received from the requested supervisor only for the purposes specified when the information was requested. Unless otherwise agreed, before using the information for another purpose or passing	The standard requires the requesting supervisor to obtain agreement of the requested supervisor or authority. ICP 3.3 applies to the latter in any case, therefore it is sufficient to mention a legitimate interest and valid supervisory purpose in guidance in ICP 3.5. The requirement to verify confidentiality requirements is covered by ICP 3.4.

			it on to other relevant supervisors or authorities, the requesting supervisor obtains agreement of the requested supervisor. Supervisors should ensure that appropriate confidentiality requirements are in place and the information is only passed on to another relevant supervisor or authority with a legitimate interest and – in case of a supervisory authority – for valid supervisory purposes Alternatively but less preferred, we propose to add to the standard as a minimum the requirement to ensure that an appropriate degree of confidentiality is put in place: STANDARD 3.5 The requesting supervisor uses confidential information received from the requested supervisor only for the purposes specified when the information was requested. Unless otherwise agreed, before using the information for another purpose or passing it on to other relevant supervisors or authorities, the requesting supervisor obtains agreement of the requested supervisor. Supervisors should ensure that appropriate confidentiality requirements are in place.	
26. Swiss Financial Market Supervisory Authority (FINMA)	Switzerland	No	Regarding the third sentence, FINMA suggests adding "requesting" for the sake of clarity: "Requesting supervisors should ensure that appropriate confidentiality requirements are in place and the information is only passed on to another relevant supervisor or authority [...]"	Agreed.
26 - Q26 Comment on Guidance ICP 3.5.3				
27 - Q27 Comment on Guidance ICP 3.5.4				
27. Swiss Financial Market Supervisory Authority (FINMA)	Switzerland	No	FINMA suggests replacing "for its own valid supervisory purposes" by "as set out in the original request".	Not agreed. It is not necessary to provide such a limitation.

			"[...] from being able to use the information as set out in the original request."	
28 - Q28 Comment on Standard ICP 3.6				
29 - Q29 Comment on Guidance ICP 3.6.1				