ESA Review – more powers for EIOPA?

In September the European Commission launched a proposal for the review of the European Supervisory Authorities. The main driver is the need to empower ESMA in the context of developing the Capital Markets Union and Brexit. However, the Commission and ESAs also believe that while the structures have worked reasonable well in the regulatory space, the ESAs have not been able to stimulate supervisory convergence. The proposals therefore contain several measures aimed to shift the balance of power away from national supervisors to the ESAs. Here are some key elements from the proposal:

- A more 'European' **Executive Board** will replace the Management Board. EIOPA's Executive Board will consist of three independent members including the Chair, who has a casting vote. The Executive Board will have attributed decision-making powers in a number of areas: dispute settlement, matters relating to breach of Union laws, peer reviews, setting EIOPA's Strategic Supervisory Plan and monitoring delegation.
- A key objective of the review is to achieve more supervisory convergence, through a number of measures:
    - The ESAs would set each year a **Strategic Supervisory Plan.** NCAs should set their annual workplans in line with this guidance. EIOPA can issue recommendations suggesting adjustments to workplans.
    - Peer reviews would now become independent reviews under auspices of the Executive Board.
    - EIOPA would be able to request information directly from pension funds if NCAs are not cooperate. EIOPA would be able to hand out fines in the case of non-compliance.
- The proposal would give more powers to EIOPA on **stress tests,** by allowing the publication of the **results of the individual IORPs**. Moreover, it will be the **Executive Board who will decide** on stress test methodology and approaches to communication on the outcomes of stress tests
- Private sector **fees** will substitute the current funding provided by the Member States. There is the risk that the ESAs can increase their budgets without too much political control. There will be a *de minimis* threshold exempting small institutions.
- **EIOPA's mandate** is extended to work on technological innovation, consumer protection and ESG risks.
- EIOPA's **Stakeholder Groups** would be able to issue an opinion to the European Commission that a particular guideline or recommendation exceeds the competence of the Authority. The Commission will assess whether to require the guideline or recommendation to be withdrawn.

PensionsEurope is working on a position paper that should be finalised in December. Safe to say, we will express our concerns about most of these proposals. We reject that EIOPA should strive for more supervisory convergence in the area of pensions, because the EU clearly decided to adopt only a minimum harmonisation framework with the IORP 2 Directive. Moreover, EIOPA should not be given more tools to push for Solvency-like requirements through the backdoor, as it is already doing with its common framework and the stress tests.