



PensionsEurope answer to the European Commission consultation on the operations of the European Supervisory Authorities

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About PensionsEurope

PensionsEurope represents national associations of pension funds and similar institutions for workplace pensions. Some members operate purely individual pension schemes. PensionsEurope Members are large institutional investors representing the buy-side on the financial markets.

PensionsEurope has **24 member associations** in 19 EU Member States and 3 other European countries with significant – in size and relevance – workplace pension systems¹.

PensionsEurope member organisations cover different types of workplace pensions for over **110 million people**. Through its Member Associations PensionsEurope represents more than **€ 4 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **25 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

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¹ EU Member States: Austria, Belgium, Croatia, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden, UK. Non-EU Member States: Iceland, Norway, Switzerland.

PensionsEurope answer to the European Commission public consultation on the operations of the European Supervisory Authorities

Introduction and key messages

PensionsEurope stresses that the current powers and tools of the ESAs are more than sufficient related to IORPs. Taking into account the fact that IORPs are built on a foundation of national social, labour and tax law, they should be mainly supervised by national supervisory authorities.

We are not in favour of granting additional powers to EIOPA to require more information from IORPs. New requirements should be introduced only if the expected benefits clearly outweigh additional costs.

IORPs should not be treated as purely financial service providers. Their social function and the triangular relationship between an employee, an employer, and an IORP should be adequately acknowledged and supported by the ESAs.

The ESAs should refrain from impinging upon the right of initiative of the European Commission to come up with new legislative initiatives that go beyond the existing framework of the single rulebook. As an example we would like to draw attention to the efforts of EIOPA towards a pan-European occupational DC framework (in the second pillar).

The ESAs' activities which have general and public nature should be publicly funded from the EU budget. Supervisory budgets also need to be subject to adequate checks and balances, irrespective of how they are financed.

Transparency of the ESAs should be improved and the mandate and tasks of EIOPA better defined in order to improve the control of this authority.

EIOPA should aim to create an environment where national competent authorities and IORPs could learn from each other and from market developments - while respecting national differences. EIOPA can play an important role in knowledge sharing between these stakeholders. The ESAs could also work together on data management for SMEs with the aim of having financial information in order to remove barriers to invest in Europe.

Particularly the cost-efficient delivery of occupational pensions matters to members and beneficiaries. Thus, it would be desirable if EIOPA carefully conducted cost-benefit-analyses before imposing additional requirements on IORPs (e.g. stress tests with inadequate methodologies, reporting and information requirements etc.). This would help IORPs to focus on their key objective: delivering good occupational pensions to their members and beneficiaries.

Finally, we have found that it was a good decision to create two stakeholder groups within EIOPA (Insurance and Reinsurance Stakeholder Group and Occupational Pensions Stakeholder Group - OPSG). The division into two groups enables the OPSG to properly discuss issues relating to occupational pensions.

1. In general, how do you assess the work carried out by the ESAs so far in promoting a common supervisory culture and fostering supervisory convergence, and how could any weaknesses be addressed? Please elaborate on your response and provide examples.

Before answering to this question, we would like to address the premise of the question: it assumes that promoting a common supervisory culture and fostering supervisory convergence is the objective for all the ESAs. Fostering supervisory convergence can be very helpful in the context of products with similar characteristics and spread around Europe. Supervisory convergence in the context of occupational pensions, however, is not the same, as the product as such as well as the environment in which it is offered are very different across Europe.

- IORPs across Europe are imbedded in historical developments in Member States and in social and labour law and they are first and foremost social institutions active on the financial markets. Thus they cannot be directly compared to other financial institutions such as banks and insurers.
- Occupational pensions are built as a supplementary benefit to the first pillar pensions, which are different amongst the Member States.
- Occupational pension design is aiming for adequate pensions where the definition of adequacy is highly dependent on social policies of a Member State (housing, health care, social welfare, etc.)
- National prudential legislation takes these national elements into account.
- A one-size-fits-all approach to the European legislation would be detrimental as it would not take into account the heterogeneity of the different systems. In the context of occupational pension plans the opportunity for supervisory convergence is rather limited.

We see two different perspectives when it comes to supervisory convergence. On the one hand, referring to our role as institutional investors, we participate on financial markets and we fully support further integration of capital markets. We still encounter barriers when investing abroad, due to differences in legal systems or administrative requirements and sometimes due to discrimination of foreign investors. Hereby raising the costs of investments and influencing investment decisions (ex-ante). The step-by-step barriers should be identified and removed. Supervisory convergence can help in this regard.

On the other hand, we would like to emphasise the difference between supervision of IORPs and supervision of other financial institutions, such as insurers and banks. The IORP II Directive has the character of a minimum harmonisation. The reason for that is that IORPs across Europe are imbedded in national history and in social and labour law. As the IORP II Directive (in Recital 32) stipulates, *“IORPs are pension institutions with a social purpose that provide financial services. (...) Their social function and the triangular relationship between the employee, employer and the IORP should adequately be acknowledged (...)”* They therefore cannot be compared to other financial institutions such as insurers and banks.

Furthermore, Recital 5 of the IORP II Directive states that *“The way in which IORPs are organized and regulated varies significantly between Member States. (...) It is not appropriate therefore, to adopt a ‘one-size-fits-all’ approach to IORPs. The Commission and the European Supervisory Authority (... EIOPA) (...) should have regard to the various traditions of Member States in their activities and should act without prejudice to national social and labour law in determining the organisation of*

IORPs". The social purpose of and the large diversity in IORPs coupled with the express recognition of this by the EU legislator, therefore puts limits for supervisory convergence with regard to IORPs.

We are critical of some work by EIOPA, including:

- EIOPA's proposal for the mandatory use of the 'common framework balance sheet' as a risk management and transparency tool and the call for regulatory responses by the national competent authorities based on it².
- EIOPA's own initiative work on a pan-European occupational DC framework. We note that some cross-border IORPs already exist and interesting new ones are being developed, sometimes even with the support of the Commission (for example ReSaver). In our view, the Commission should be in the lead to assess whether new policy or legislative initiatives are needed. When necessary, the Commission can and will ask EIOPA for advice on these initiatives. We believe supervisors should exert restraint before embarking on own initiatives, and leaving wider issues to the institutions that are charged for this directly in the Treaties.
- The analysis of second round effects on the sponsor itself in EIOPA IORP Stress Test 2017.

The need for minimum standards rather than harmonization is recognized in the IORP II Directive. Both the original IORP Directive and the IORP II Directive set minimum standards rather than aiming at full harmonization (Recitals 3 and 19). Harmonisation in the area of occupational pensions must always respect the principle of subsidiarity and only be carried through if it can be implemented on the European level in an effective and productive manner.

We have identified a number of weaknesses in the EIOPA framework and the work carried out by EIOPA. The IORP II Directive stresses that IORPs are first and foremost institutions with a social purpose, and they should not be treated as purely financial service providers. It also states that IORPs' social function and the triangular relationship between the employee, the employer and the IORP should be adequately acknowledged and supported as guiding principles of the legislation.

With this description of IORPs in mind, we have identified the following weaknesses:

- The EIOPA Regulation states EIOPA's mandate as follows: "The ESAs' mandate is to contribute to developing the Single Rulebook, solve cross-border problems, and promote supervisory convergence." The Recital quoted above shows that, this mandate does not fit occupational pensions.
 - Example: The Common Framework (first developed under the name of a Holistic Balance Sheet) is very much based on Solvency II and in the spirit of a Single Rule Book. As a result, the Common Framework is a completely inadequate for occupational pensions: a short term market interest rate is used to measure long-term liabilities. This leads to putative financing gaps which, in reality, don't exist and in consequence paint a wrong picture of the security level of IORPs.

We call for a clear mandate of EIOPA that unambiguously defines EIOPA's tasks and powers and sets clear limits and for improvements of EIOPA's governance structure regarding occupational pensions. Any changes should take into account the general direction set by the IORP II Directive, which is the

² See [PensionsEurope Position Paper on EIOPA's IORP Quantitative Assessment 2015 and EIOPA's opinion for Risk Assessment and Transparency for IORPs](#).

setting of minimum standards rather than pursuing full harmonization. These issues are of particular importance because EIOPA was established as an independent EU agency. Pension policy remains a national competence under the EU Treaties, so we strongly encourage EIOPA to limit itself to minimum standards of the IORP II Directive and on the regulatory framework for cross-border schemes, rather than seeking to develop policies that affect single-country pension schemes.

- 2. With respect to each of the following tools and powers at the disposal of the ESAs: peer reviews (Article 30 of the ESA Regulations); binding mediation and more broadly the settlement of disagreements between competent authorities in cross-border situations or cross-sectorial situations (Articles 19 and 20 of the ESA Regulations); supervisory colleges (Article 21 of the ESA Regulations);**

To what extent:

- a) have these tools and powers been effective for the ESAs to foster supervisory convergence and supervisory cooperation across borders and achieve the objective of having a level playing field in the area of supervision?**

Current EIOPA tools and powers are more than sufficient for occupational pensions. Due to the role of national labour, social and tax law for occupational pensions and its diversity, IORPs should be particularly supervised by the national supervisory authority. An EU-wide harmonisation of prudential regulation is neither necessary nor reasonable since regulatory arbitrage is not a problem. The most important provisions for occupational pensions are laid down in national social and labour law and company and sector-wide IORPs do not compete with each other.

We are aware that EIOPA has carried out several peer reviews regarding the provisions of the IORP Directive. We are not aware of any use of the tools and powers granted in Articles 19-21 of the EIOPA Regulation.

- b) has a potential lack of an EU interest orientation in the decision making process in the Boards of Supervisors impacted on the ESAs use of these tools and powers?**

Whatever new procedures would be proposed, we believe that EIOPA should ensure that supervisors responsible for IORPs are well and prominently represented in the permanent members of EIOPA's Board of Supervisors. Decision making on supervision of IORPs should be made by members with sufficient competences and experience on IORPs and this should be reflected in the governance and decision-making structures. This could be achieved by establishing an internal committee working on occupational pension issues (see internal committee Art. 41 EIOPA Regulation). Since in many Member States IORPs are not yet well developed, this is an issue. The decision making should be made according to the importance of the IORP sector in Europe.

- 3. To what extent should other tools be available to the ESAs to assess independently supervisory practices with the aim to ensure consistent application of EU law as well as ensuring converging supervisory practices?**

Convergence of supervisory practices is different in a context of maximum harmonization (e.g. Solvency II Directive, UCIT V Directive) than in a context of minimum harmonization (IORP II Directive). Where maximum harmonisation has been achieved at EU level, the question is rather straightforward and should usually be answered positively.

This is however different in a context of minimum harmonisation where the legislator expressly recognizes room for national differences due to national social and labour law, as is the case in the IORP II Directive. We believe EIOPA nevertheless can contribute to supervisory convergence based on the EU minimum standards. EIOPA should create an environment where national competent authorities and IORPs can learn from each other and from market developments, while respecting national differences. EIOPA can play an important role in knowledge sharing between these stakeholders.

In this respect the mapping exercise on pension systems and supervisory approaches in EIOPA, conducted in 2008, could be repeated more frequently in order to show the differences between Member States. Finally, peer reviews can add to a better understanding of different supervisory cultures between Member States.

We would like to stress that the IORP II Directive sets minimum standards. In contrast to Solvency II it is not geared towards full harmonization. There are neither delegated acts nor any other tasks given to EIOPA during the transposition of the IORP II Directive. Recital 20 calls for a close cooperation between the Member States and the social partners to further improve occupational pensions – however, no role is envisaged here for EIOPA.

The EIOPA Regulation needs to be amended in order to fit occupational pensions: The current objective to “ensure consistent application of EU law as well as ensuring converging supervisory practices” does not fit occupational pensions.

From our perspective, EIOPA requires no additional instruments for their work regarding IORPs: the application of European Union law (in this case the IORP II Directive) is achieved by a transposition into national law and supervision through the national competent authorities. It is up to the NCAs to supervise the IORPs as they are best placed to judge the risks, vulnerabilities, threats and weaknesses of the system given the local labour market, social and labour legislation as well as the local social environment.

Any change to the supervisory regime should follow a normal democratic legislative process rather than being achieved through regulation decreed by EU supervisory authorities.

4. How do you assess the involvement of the ESAs in cross-border cases? To what extent are the current tools sufficient to deal with these cases?

The IORP II Directive provides the relevant legal basis for cross-border activities of IORPs. We believe this provides a sufficient toolbox for dealing with cross-border activities. The role of the ESAs in cross-border cases should be limited to the role as given by the IORP II Directive.

5. To what extent are the ESAs tasks and powers in relation to guidelines and recommendations sufficiently well formulated to ensure their proper application? If there are weaknesses, how could those be addressed?

As far as we are aware there are no guidelines (e.g. as for Solvency II) for IORPs. There are recommendations at the end of peer reviews conducted by EIOPA as well the Opinions EIOPA provides:

Up to today it is not clear to us, which tasks a supervisory authority with the objective of harmonisation and convergence has in relation to occupational pensions, which are characterised first and foremost through national social and labour law. In addition, we would like to point out:

- Occupational pensions were not the focus when establishing the European System of Financial Supervision in the aftermath of the financial crisis. They were not considered financial institutions which contributed to the crisis by their actions, rather, they were seen as stabilising factors because of their long-term horizons and the resulting asset allocation strategy.
- When establishing the ESAs, it was not well defined which competencies an EU body should have in the area of occupational pensions – or which role it can play given the important role of national social and labour law.

The current review of the ESAs should address the key questions for occupational pensions. National social and labour law needs to remain firmly in the hands of the Member States and should be supported rather than undermined by EU prudential regulation. The prudential regulation should therefore only be principle-based, taking into account (rather than ignoring) national social and labour law.

- 6. What is your assessment of the current tasks and powers relating to consumer and investor protection provided for in the ESA Regulations and the role played by the ESAs and their Joint Committee in the area of consumer and investor protection? If you have identified shortcomings, please specify with concrete examples how they could be addressed.**

IORPs should not be treated as purely financial service providers. Their social function and the triangular relationship between an employee, an employer and an IORP should be adequately acknowledged and supported. In some Member States, IORPs are not-for-profit institutions often managed by social partners, their members and beneficiaries are protected by social and labour law, which is much stronger than consumer protection. The Article 9 (Tasks related to consumer protection and financial activities) of the EIOPA Regulation is not fit for purpose regarding occupational pensions. There are no consumers in occupational pensions, only members and beneficiaries, who are mainly protected through social and labour law. Therefore, a “leading role” for EIOPA “in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market” is neither necessary nor conforms to the current the system.

Furthermore, a more coordinated and consistent approach is needed between Member States, EIOPA and the different Directorate-Generals of the European Commission (DG MARKT and DG EMPL and DG TAXUD) which are undertaking related initiatives in pensions.

- 7. What are the possible fields of activity, not yet dealt with by ESAs, in which the ESA’s involvement could be beneficial for consumer protection?**

See answer question 6: No need for any further involvement of the ESAs.

What matters for members and beneficiaries of occupational pensions is the cost efficient delivery of occupational pensions. It would therefore be desirable if EIOPA carefully conducted cost-benefit-

analyses before imposing additional requirements on IORPs (e.g. stress tests with inadequate methodologies, reporting, information requirements etc.). This would help IORPs to focus on their key objective: delivering good occupational pensions to their members and beneficiaries.

8. Is there a need to adjust the tasks and powers of the ESAs in order to facilitate their actions as regards breach of Union law by individual entities? For example, changes to the governance structure?

No, NCAs are best placed to take action as they better understand the local environment and as such the need of action.

9. Should the ESA's role in monitoring and implementation work following an equivalence decision by the Commission be strengthened and if so, how? For example, should the ESAs be empowered to monitor regulatory, supervisory and market developments in third countries and/or to monitor supervisory co-operation involving EU NCAs and third country counterparts?

10. To what extent do you think the ESAs powers to access information have enabled them to effectively and efficiently deliver on their mandates?

Overall, EIOPA's current powers to access information seem sufficient to us (also see our answer to question 11).

EIOPA already has access to the aggregated data gathered by NSAs. It is thus able to efficiently and effectively use those data to deliver within its mandate as European supervisory authority.

Supervision is mainly done at national level. Each Member State has a different supervision and different rules with regard to data collection on occupational pensions. In the IORP world there is no harmonized data collection so far, also because different NCAs have different information needs related to the different national IORP arrangements/rules. That is why we would strongly call for data collection from one single source, the national supervisory authority.

11. Are there areas where the ESAs should be granted additional powers to require information from market participants?

We recognise the importance of reporting for supervisory purposes. However, we would like to stress that before the introduction of new requirements a cost-benefit-analysis should be carried out and adequately taken into account. Unsurprisingly, additional data requirements always mean additional costs for IOPRs – even if the questions or categories vary only slightly from already existing requirements. New requirements should therefore only be introduced if the expected benefits clearly outweigh these additional costs.

In many Member States there are already extensive reporting requirements at the national level, to which in the future the information requirements set by the expected ECB Regulation will be added. In addition, EIOPA is working on their own [Pension data project](#). Currently there are also data requirements being carried out by the national authorities on behalf of EIOPA – without the national

authorities knowing what the background and objective of the exercise is. In particular if that is unclear, IORPs are not prepared to spend much time and effort completing the forms.

We are against any direct involvement of EIOPA with IORPs - from our perspective all data should be submitted to the national authorities. Existing legislation should be taken into account and it should be ensured that data requirements are restricted to the supervised entities. If not explicitly necessary otherwise, national authorities should pass the data in an aggregated format to EIOPA. As the IORP II Directive stipulates, trade secrets should be respected (Chapter 2 „Professional secrecy and exchange of information“; Article 52ff. IORP II Directive). For IORPs this means that no data is collected on the sponsoring employer.

12. To what extent would entrusting the ESAs with a coordination role on reporting, including periodic reviews of reporting requirements, lead to reducing and streamlining of reporting requirements?

As occupational pension systems and their environment are very heterogenic across Europe (see answer to Q1), reporting needs are very different and they should be based on national circumstances and there is no need for EU level harmonization. A role for ESA would introduce a one size fits all approach which will be in most cases very extensive to cover all kind of situations across Europe. This is very inefficient and costly/time consuming for local IORPs.

A stronger role of the ESAs would lead to an increase in red tape. This does not fit into the better regulation agenda of the EC. In addition it would only make sense, if there is not harmonized data set.

13. In which particular areas of reporting, benchmarking and disclosure, would there be useful scope for limiting implementing acts to main lines and to cover smaller details by guidelines and recommendations?

A stronger role of the ESAs would lead to an increase in red tape. This does not fit into the better regulation agenda of the Commission.

As stated in several previous answers, we would again like to point out the importance of national social, labour and tax law. We also wonder what the legal basis for an EU-wide benchmarking of occupational pensions / IORPs would be, and who would choose the criteria for the benchmarking.

14. What improvements to the current organisation and operation of the various bodies do you see would contribute to enhance enforcement and supervisory convergence in the financial reporting area? How can synergies between the enforcement of accounting and audit standards be strengthened?

The ESAs could also work together on data management and accounting standards for SMEs, with the aim of having financial information to remove barriers for investors to invest in Europe as part of the Capital Markets Union project. In this regard we would also advocate for harmonizing SME insolvency legislation and for the digitalisation of the accounting and audit process.

15. How can the current endorsement process be made more effective and efficient? To what extent should ESMA's role be strengthened?

We think that there should be more time for stakeholders to be consulted and we don't see a need for further strengthening of ESMA's role.

16. What would be the advantages and disadvantages of granting EIOPA powers to approve and monitor internal models of cross-border groups?

Not relevant for IORPs.

17. To what extent could the EBA's powers be extended to address problems that come up in cases of disagreement? Should prior consultation of the EBA be mandatory for all new types of capital instruments? Should competent authorities be required to take the EBA's concerns into account? What would be the advantages and disadvantages?

Not relevant for IORPs.

18. Are there any further areas where you would see merits in complementing the current tasks and powers of the ESAs in the areas of banking or insurance

Not relevant for IORPs.

19. In what areas of financial services should an extension of ESMA's direct supervisory powers be considered in order to reap the full benefits of a CMU?

EIOPA is endowed with the necessary competencies to carry out its tasks on the European level adequately. Direct contact with the national financial institutions should only be possible in the already defined situations. EIOPA should concentrate on its original task as (European) coordinator, while national authorities are much better placed to interact directly with national financial institutions. They have substantial experience and the necessary expertise in their corresponding Member State. In contrast, EIOPA would still have to acquire comparable knowledge of the national legal framework.

20. For each of the areas referred to in response to the previous question, what are the possible advantages and disadvantages?

See above

21. For each of the areas referred to in response to question 19, to what extent would you suggest an extension to all entities or instruments in a sector or only to certain types or categories?

See above

22. To what extent do you consider that the current governance set-up in terms of composition of the Board of Supervisors and the Management Board, and the role of the Chairperson have allowed the ESAs to effectively fulfil their mandates? If you have identified shortcomings in specific areas please elaborate and specify how these could be mitigated?

The text of the public consultation (p. 18-19) states 'Experience has shown that, depending on the circumstances, this configuration may lead to conflicts of interests and may fail to deliver solutions

and decisions in the best interest of the EU as a whole.’ The ESAs, together with the European Commission can do more to show what possible shortcomings are and provide evidence of these shortcomings.

The ESAs need democratic legitimacy and accountability. This question is not only relevant for the question what the ESAs achieve, but also how they operate and at what costs. The ESAs could do more with regard to costs/benefits analyses in order to show value added of their work. A system of checks and balances should therefore be in place. We see an important role for the Commission, the Council and the European Parliament in the supervision of the ESAs, in order to check whether their operations align with the ambitions set by them. This control will also help in balancing the ambitions of the ESAs with the costs of their operations. Funding of the ESAs by Member States or institutions will lower the political checks and balances whether the ambitions and goals of the ESAs are in line with the policy of the EU.

Given the heterogenic market for occupational pension plans we notice that decisions are taken by all Member States, although some topics touches only a few of them. This results in suboptimal discussions and decision making. However, we are critical of Article 44 of the EIOPA Regulation: in contrast to insurers and banks, IORPs are only present in some Member States. Adequate representation of occupational pensions is crucial.

EIOPA plays a role in the supervision of insurance companies and IORPs. We welcome that EIOPA has two stakeholder groups, one on the insurance sector and one on occupational pensions and we would like to continue this approach. Looking at the Board of Supervisors though, we see that most members have an insurance-only background, whereas they are also involved in decision making with respect to IORPs, which differ substantially from insurance companies (and banks).

After Brexit, this lack of hands-on experience and expertise with IORPs may get worse. Without implying anything on potential benefits of a “Twin Peak” structure for the ESAs, we nevertheless would like to stress that the specific nature of IORPs has to be duly recognised and taken into account.

We refer again to our answer on question 1, urging for restraint on own initiative reports on wider policy issues. EIOPA should only be involved in supervisory questions.

23. To what extent do you think the current tasks and powers of the Management Board are appropriate and sufficient? What improvements could be made to ensure that the ESAs operate more effectively?

The Management Board proposes annual and multi-annual work programmes which have to be adopted by the Supervisory Board. It should take care to acknowledge the special role as well as the specific characteristics of occupational pensions and act accordingly. The ESAs can be more transparent on the costs and benefits of their work, both ex ante before they start up new projects and ex post after finishing their tasks. Before carrying out projects, a cost-benefit analysis including the perspectives of the beneficiaries, sponsor and IORP should be conducted. This could become standard practice for the ESAs, as it would help in improving the efficiency of the ESAs.

Beyond that, the current tasks and powers are appropriate, but might be clarified in areas where the drawing line between policy making and supervision is vague.

24. To what extent would the introduction of permanent members to the ESAs' Boards further improve the work of the Boards? What would be the advantages or disadvantages of introducing such a change to the current governance set-up?

Especially in the case of EIOPA, supervising both insurance companies and IORPs, EIOPA should make sure that supervisors responsible for IORPs are well and prominently represented among the permanent members of EIOPA's board. Decision making on the supervision of IORPs should be made by members with sufficient competences on IORPs. Since in many EU countries IORPs are not yet well developed (there are only several real IORP countries) this is an issue.

If it is felt that a small executive board of permanent members would make the governance of EIOPA better, at the same time, it will be of the utmost importance to task supervision of IORPs with a member having extensive expertise and experience with supervision of IORPs.

25. To what extent do you think would there be merit in strengthening the role and mandate of the Chairperson? Please explain in what areas and how the role of the Chairperson would have to evolve to enable them to work more effectively? For example, should the Chairperson be delegated powers to make certain decisions without having them subsequently approved by the Board of Supervisors in the context of work carried out in the ESAs Joint Committee? Or should the nomination procedure change? What would be the advantages or disadvantages?

We are not in favour of formally delegating more powers to the chairperson and have him / her making decisions without the approval of the board. A chairperson has to be neutral and be accountable by and through the board. We wonder whether the respective BoS could not already strive for providing their respective chairpersons with better mandates to operate in the ESAs Joint Committee. We also could imagine that any step towards an executive board with a limited amount of members, could be helpful in this respect as well.

In addition, a well-functioning system of checks and balances with the other European institutions should be in place. We see an important role for the Commission, the Council and the European Parliament in the supervision of the ESAs, also to check whether their operations align with the ambitions set by them. The nomination procedure of a chairperson should be designed commensurate to his or her tasks.

26. To what extent are the provisions in the ESA Regulations appropriate for stakeholder groups to be effective? How could the current practices and provisions be improved to address any weaknesses?

From our perspective it was a good decision to create two interest groups (Insurance and Reinsurance Stakeholder Group and Occupational Pensions Stakeholder Group - OPSG). The division into two groups means that the OPSG can properly discuss issues around occupational pensions. We would like to highlight that the OPSG should be maintained as an independent advisory body beside the insurance stakeholder group. Occupational pensions and insurance products have got fundamental structural differences that deserve a different treatment and hence different stakeholder groups.

The experience of the previous OPSGs shows that in the future membership should be limited to individuals who are closely involved with occupational pensions and therefore have an interest in active cooperation.

From our perspective the composition of the OPSG – as stated in Article 37 - is not adequate for occupational pensions: because of the central role in occupational pensions, employers (not only from small and medium sized enterprises) should be mentioned directly in the article of the EIOPA Regulation. Overall it is too little that only a third of the group is supposed to come from IORPs (which is the main topic discussed) – this should be increased. We suggest to combine those representing beneficiaries and employees and to reduce the number of academics.

Article 37 of the EIOPA Regulation calls for an adequate geographic representation. Interpreting this as a call for participants from as many Member States as possible is sensible for banking and insurance. However, this does not make sense for occupational pensions, because they only exist in comparatively few Member States. OPSG members should represent Member States which actually have IORPs. Others can offer no practical experience and do little to further the development of IORPs.

Overall, we call for a stronger role for the stakeholder groups: EIOPA should respond to their opinions and consultation responses, potentially explaining why certain issues were not taken on board.

As IORPs are important actors on financial markets, the financial market regulation affects their investment policy. It is therefore also important for us to be represented in the stakeholder group of ESMA in order to provide our expertise and explain the impact of level 2 and 3 standards on our investment activities. We therefore call for the ESMA to take this into account in future compositions of the ESMA stakeholder group.

27. To what extent has the current model of sector supervision and separate seats for each of the ESAs been efficient and effective?

The current model of sector supervision and separate seats for each of the ESAs seems to be good according to us. As deliberated in our answer to question 22 we call for better checks and balances with regard to the supervision of the supervisory authorities and see a clear role for the Council, the Commission and the European Parliament in this respect. Furthermore as mentioned in our response to question 1, we call for respecting the differences of institutions. This also needs to be reflected in supervisory decision making process.

There should be an adequate representation of pensions in EIOPA.

28. Would there be merit in maximising synergies (both from an efficiency and effectiveness perspective) between the EBA and EIOPA while possibly consolidating certain consumer protection powers within ESMA in addition to the ESMA's current responsibilities? Or should EBA and EIOPA remain as standalone authorities?

The cost reduction and efficiency benefits could be a desired result of such synergies.

At the same time we note that the development of EU supervision is unequal over the different sectors. For banks in the Eurozone a much deeper integration has been achieved with the banking union. Solvency II achieves maximum harmonization for the insurance sector, but does not yet

foresee direct supervision at the European level. It is doubtful whether a legal base for this would be available under the existing treaties. As stated above, the IORP II Directive only provides for minimum harmonization and national differences are very big. To us the most important consideration is a clear separation between the different sectors and that existing differences of this kind have to be reflected in the work that ESAs do, but this does not have to preclude a different set-up from the present one.

As stressed before, the concept of consumer protection is not a topic for occupational pensions. Members and beneficiaries are mainly protected by national social and labour law - which often offers much stronger protection than consumer protection. Occupational pensions therefore do not need any consumer protection supervision at the EU level. The national competent authorities are best placed to supervise IORPs while taking into account national social, labour and co-determination law.

29. The current ESAs funding arrangement is based on public contributions. Please elaborate on each of the following possible answers (a) and (b) and indicate the advantages and disadvantages of each opinion.

The point of departure for supervision of IORPs in Europe is as mentioned above that supervision is mainly in the hands of national supervisory authorities. We consider good and independent external supervision to be important. This requires that the supervisory authorities have enough means to fulfil their task. In this respect it is also important to take into account the triangle between regulators (in this case the European Commission and national governments), the supervisory authorities and the institutions that are being supervised.

Supervisory budgets need to be subject to adequate checks and balances, irrespective of how they are financed. The present EU budgetary procedure provides for ample checks and balances. Supervision is a public task and should according to us be kept as such. For these reasons, we are not in favour of industry funding.

In addition we note that within the institutional framework of the EU, the ESAs depend on the Commission, and their budget is part of the budget of the Commission, within the EU budget. According to the Treaty the EU budget is financed by own resources. Adding new own resources would require a change of the own resources regulation by the procedure foreseen in the Treaty for this. To our understanding only very limited exceptions exist to this.

EIOPA does not supervise individual IORPs, and rightly so, because this task is carried out more effectively by the national competent authorities. EIOPA supports the Commission with its Opinions and Reports (e.g. the IORP II Directive, PEPP etc.), which is very closely related to the legislative process which is a public task. Carrying out a public task, EIOPA should be funded accordingly, that is from a public budget rather than through fees collected from individual entities.

It should also be considered that IORPs are social institutions and that any additional costs are likely to be borne by their members and beneficiaries in the form of lower benefits. If, on the other hand, costs would have to be borne by the sponsor, this could harm occupational pension provision in countries where it is a voluntary benefit.

Currently the budget acts as a lid to EIOPA's own initiative work – there is a limited amount of work which realistically can be carried out under the current budget. Under the proposed system, would there be a similar mechanism? (Parliament and Council are envisaged to act as the budgetary authority).

a) should they be changed to a system fully funded by the industry?

No. EIOPA does not supervise individual IORPs, and rightly so, because this task is carried out more effectively by the national competent authorities. EIOPA supports the Commission with its Opinions and Reports (e.g. IORP II, PEPP etc.), which is very closely related to the legislative process which is a public task. Carrying out a public task, EIOPA should be funded accordingly, that is from a public budget rather than through fees collected from individual entities.

b) should they be changed to a system partly funded by industry?

Particularly the ESAs' activities which have general and public nature should be publicly funded from the EU budget.

30. In your view, in case the funding would be at least partly shifted to industry contributions, what would be the most efficient system for allocating the costs of the ESA's activities?

We are aware that limited exceptions exist to full public funding of the EU agencies from the EU budget. (For instance EMA in London.) We stipulate however that these exceptions do not go, and also should not go beyond retributions in which individual institutions or companies are charged a retribution commensurate to tasks and costs that can be attributed to individualized benefits (for instance the granting of a license) they get from such an agency. The level of such retributions should be proportionate to the (incremental) costs made by an agency.

We stress that ESAs' activities which have general and public nature should be publicly funded from the EU budget. Costs for controlling things, costs for advice to the Commission, own initiative reports etcetera, all of those will have to be funded through the EU budget.

At a practical level we note that financing of general activities will lead to the necessity of finding a key or keys for distributing the costs over different financial institutions for which it will be very hard to find objective grounds.

a) a contribution which reflects the size of each Member State's financial industry (i.e., a "Member State key")

IORPs are not financial institutions.

b) a contribution that is based on the size/importance of each sector and of the entities operating within each sector (i.e., an "entity-based key")

This pre-supposes that there it is sensible to fund (even in part) the ESAs activities by industry contributions. This is not appropriate in any circumstance.

Many IORPs are small entities, and a contribution which reflects the size of the sector in many countries would not be feasible and would make IORPs most ineffective. An entity-based key based on total assets would seem more appropriate. Nevertheless we are convinced that sponsoring by the industry is not a good way forward. Compared to banks and insurance companies, IORPs which are

not for profit organisations often managed by social partners need a totally different supervision than commercial players.

31. Currently, many NCAs already collect fees from financial institutions and market participants; to what extent could a European system lever on that structure? What would be advantages and disadvantages of doing so?

See answer to question 30. Furthermore it should be noted that the EU can only act upon attributed competences, while Member States have, in principle, full sovereignty.

The fee structure as currently applied by NCAs recognises the local situation and importance of the different players. Leveraging on this system would be the best option, although we are convinced that for instance Belgian IORPs which are not-for-profit organisations often managed by social partners have no need for a central European supervision and as such should not contribute.

We are against an even more important role of IORPs in the financing structure of EIOPA, in particular if EIOPA's mandate is unclear in relation to occupational pensions. In the interest of member and beneficiaries it should be avoided that EIOPA pursues its "own initiative" work without any funding limits.

32. You are invited to make additional comments on the ESAs Regulation if you consider that some areas have not been covered above.

The ESAs and the Commission should publish detailed and specific examples of where there are current shortcomings. This goes beyond non-specific anecdotal accounts gathered from the 'call for evidence' process to date. Policy-making should be evidence-based and that evidence needs to be objective, specific and publicly disclosed.

It is important to seek a good balance between prudential regulation and supervision and the capacity of IORPs to invest on a long term basis in the European economy while providing protection for beneficiaries of IORPs. Enough room has to be given to national supervisors in order to strike this balance.