



BANKING AND FINANCE

# Public consultation on the operations of the European Supervisory Authorities

Fields marked with \* are mandatory.

## Introduction

---

Since their establishment, the European Supervisory Authorities have carried out remarkable work contributing to the building of the Single Rulebook, to ensure a robust financial framework for the Single Market and to underpin the building of the Banking Union as part of the EMU. However further progress in relation to especially supervisory convergence is needed to promote the Capital Markets Union (CMU) for all EU Member States, integration within the EU's internal market for financial services and to safeguard financial stability. While the ESAs have started to shift attention and resources to analyse risks to consumers and investors and undertake more work to increase supervisory convergence, work in this area must be accelerated. It will be important to also capture the ever growing benefits from technological developments such as FinTech, whilst addressing any possible risks arising in this context. ESAs have an important role to play in this respect.

A reflection is needed on what possible changes to the current legal framework are needed to optimise the rules within which the ESAs operate in order to increase their ability to deliver on their mandates. In particular, it is necessary to examine which changes to ESAs' existing powers and governance system are needed to increase the effectiveness of supervision (giving due consideration to the principle on the delegation of powers) and to design a funding system which would enable the ESAs to deliver fully on their mandates. In addition, a reflection is needed on the supervisory architecture to assess its effectiveness in the light of increasing complexity and interconnectedness of financial markets, and the need to ensure effective micro-prudential oversight to face the future challenges of the EU financial markets.

This consultation is designed to gather evidence on the operations of the ESAs focusing on a number of issues in the following broad areas: (1) tasks and powers; (2) governance; (3) supervisory architecture; and (4) funding. The aim is to identify areas where the effectiveness and efficiency of the ESAs can be strengthened and improved, while respecting the legal limitations imposed by the EU Treaties. The results should provide a basis for concrete and coherent action by way of a legislative initiative, if required.

---

**Please note:** In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact [fisma-esas-consultation@ec.europa.eu](mailto:fisma-esas-consultation@ec.europa.eu).

More information:

- [on this consultation](#)
- [on the protection of personal data regime for this consultation](#) 

## 1. Information about you

---

\*Are you replying as:

- a private individual
- an organisation or a company
- a public authority or an international organisation

\*Name of your organisation:

EIOPA Occupational Pensions Stakeholder Group (OPSG)

Contact email address:

**The information you provide here is for administrative purposes only and will not be published**

koller@insuranceeurope.eu

\*Is your organisation included in the Transparency Register?

(If your organisation is not registered, [we invite you to register here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#))

- Yes
- No

\*Type of organisation:

- Academic institution
- Consultancy, law firm
- Industry association
- Non-governmental organisation
- Trade union
- Company, SME, micro-enterprise, sole trader
- Consumer organisation
- Media
- Think tank
- Other

\*Please specify the type of organisation:

Stakeholder group of the European Insurance and Occupational Pensions Authority (EIOPA)

\*Where are you based and/or where do you carry out your activity?

Germany

\*Field of activity or sector (*if applicable*):

*at least 1 choice(s)*

- Accounting
- Auditing
- Banking
- Credit rating agencies
- Insurance
- Pension provision
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- Listed companies
- Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- Other financial services (e.g. advice, brokerage)
- Trade repositories
- Other
- Not applicable



## Important notice on the publication of responses

---

\*Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?

([see specific privacy statement](#) )

- Yes, I agree to my response being published under the name I indicate (*name of your organisation /company/public authority or your name if your reply as an individual*)
- No, I do not want my response to be published

## 2. Your opinion

---

### I. Tasks and powers of the ESAs

#### A. Optimising existing tasks and powers

##### I. A. 1. Supervisory convergence

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

**Question 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.**

(Full answer to Q1 attached as additional document)

Establishing the ESAs as EU supervisory bodies following the 2008 financial crisis has been a valuable contribution to increase the awareness on the importance of a well-functioning financial industry supporting growth and as a service provider for the benefit of the general public.

Some of the OPSG members note that several EIOPA recent/upcoming initiatives could be deemed to exceed its role.

The OPSG recommends that EIOPA should always have regard to the potential impact of its initiatives on the pension beneficiaries to minimise the negative impact on pension benefits.

EIOPA should focus on developing guidelines where it is mandated to do so while on own initiative guidelines initiatives should be limited and duly justified. Ideally, an appropriate balance should be struck. Please refer to Q5 for further feedback on EIOPA guidelines.

Supervisory convergence should be high on the agenda, but must be weighed against the need for adaptation to national circumstances caused by differences in local legislation, products and markets. Some regulatory issues are universal, like governance principles, transparency etc. Some members also suggested that the ESAs could rely more on the Joint Committee to foster cross-sectoral consistency of rules among products with similar characteristics and spread across Europe. Most of the OPSG members are however of the opinion that supervisory convergence in the context of occupational pensions has proven to be rather limited considering that the way in which IORPs are organised and regulated varies significantly between Member States (i.e. importance of social and labour laws). In line with this argument, a "one-size fits all" at European level is not appropriate. A minority of OPSG members, on the contrary, believe that supervisory convergence at EU level of occupational pensions, like all other financial products, is possible (based on the Treaty of Rome and the concept of single rule book) and a desirable objective to ensure EU pension savers' protection.

All regulation comes at a cost. The cost of regulation of financial products is either covered by allocation of government funds or charges on the supervised institutions - or a combination. This means there is little incentive for regulators to prioritise and limit the use of resources on initiatives and measures that can result in excess complexity. The pricing mechanisms of a supply/demand equilibrium hence do not exist for regulatory issues.

Question 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?

**Please elaborate on questions and, importantly, explain how any weaknesses could be addressed.**

Peer reviews: Peer reviews are a necessary and valuable tool to review the practical implementation of supervisory common practices. The OPSG believes that EIOPA should be equipped with sufficient resources to make use of this tool in practice.

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?

**Please elaborate on questions and, importantly, explain how any weaknesses could be addressed.**

**Question 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? Please elaborate on your response and provide examples.**

**Please elaborate on your response and provide examples.**

International Relations: The OPSG advocates for appropriate occupational pensions expertise to be present in all European engagements in international fora, where relevant issues are being discussed with potential consequences on regulation and supervision in Europe.

EIOPA has further played a crucial role internationally. The expert knowledge EIOPA staff has built up on the European regulatory framework and supervisory practices puts EIOPA in a unique position to represent European interests in global discussions. Views on how this is best achieved vary within the OPSG.

Some stakeholders argue for a clear role in international fora for EIOPA, while others prefer EIOPA's continued use of its expertise and knowledge about the different EU pension systems in international fora without necessitating changes to its existing role. The unique position could therefore be further leaned on to strengthen EIOPA's and therefore Europe's position vis-a-vis global partners, such as for instance the Financial Stability Board (wherever such work may target the pension sector) the OECD or the IOPS. A careful assessment of costs versus the benefits of any solution should determine the eventual solution opted for.

**Question 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?**

**Please elaborate on your response and provide examples.**

The recent IORP II directive introduces several new cross border requirements including the mediating role to be played by EIOPA in case of cross border transfers conflicts. Clarification of some of these provisions would be welcomed to ensure consistent transposition across Member States. The role of the ESAs in cross-border cases should in any case be limited to the role it has been given in the IORPII directive.

#### **I. A. 2. Non-binding measures: guidelines and recommendations**

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

**Question 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?**

**Please elaborate and provide examples.**

Over the last years, the OPSG has witnessed a difference in view over the need for own initiative guidelines between EIOPA and stakeholders. One cause of this appears to be the difference in perception about guidelines' non-binding nature. Both EIOPA and the European Commission have concluded that guidelines are non-binding, while the OPSG's general observation would be that national supervisors comply with the guidelines in practice as they are and, hence, they effectively become part of national requirements. Solutions could include to clarify the empowerment for guidelines and recommendations, and introduce checks and balances for their basis and need. This could also improve discipline in budget prioritisation.

The OPSG agrees that EIOPA should have power to issue guidelines, although concerns are raised that the number of guidelines and basis for them could be refined. Relevant factors that should be considered by EIOPA before commencing work on guidelines, include the following:

- If there is an explicit mandate for guidelines in level 1 legislation, these should be prioritised over own initiative guidelines.
- Where EIOPA wishes to issue own initiative guidelines, consideration to relevant parameters should be made, for instance, what has been agreed or purposefully omitted at political level.
- Consideration should be given to how the guidelines being developed fit within the annual workplan and budget to ensure that budget allocation is not made available for own initiative measures at the expense of pre-agreed priorities contained in the annual workplan, and
- The OPSG would welcome some independent oversight over the development of guidelines to ensure that budgets and workplan priorities are being observed and that guidelines do not stray into the area of policy-development which remains the prerogative of the co-legislators.

The ESAs should also have regard to the cost/benefit resulting to stakeholders of measures and initiatives taken by them, including guidelines and recommendations. Such analysis should reflect on the following factors:

- Is the initiative/measure which aims to reduce risk in the financial system still a positive contributor to value creation or is it becoming an initiative /measure which is destroying value in the form of excessive cost?
- Is the initiative/measure of positive value for all stakeholders, or is it becoming an additional regulation which risks turning into a value destroyer and unnecessary bureaucracy?
- Does the initiative/measure amount to detailed regulation of small and medium sized financial institutions that creates value for society or is it becoming at risk of contributing to competition on uneven terms?
- Does the initiative/measure contribute to positive structural changes in the financial industry?
- Is the initiative/measure a sound risk mitigation issue or is it at risk of turning into a political issue?

OPSG members report having encountered practical difficulties with the enforcement of guidelines. For instance, user protection guidelines have sometimes been endorsed very late by the NCAs (up to 3 years instead of the 2 maximum months required), and in some cases, have not been enforced at all by the ESAs.

### I. A. 3. Consumer and investor protection

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

**Question 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.**

The OPSG welcomes the increased focus by EIOPA on consumer protection matters. However, the use of the word “consumer” may be misleading when it comes to financial institutions. Banks and insurances are providing and selling their financial services to their customers, not only to customers which may be understood as the retail part of the financial business.

As acknowledged in the recent IORP II directive, IORPs “are pension institutions with a social purpose that provide financial services” (Recital 32). Due to this specific nature – but also due to their integration in national social and labour laws – occupational pensions do not deal with “consumers” but with “members and beneficiaries”. The concept of “consumer protection” thus has a different meaning in the field of occupational pensions which should be acknowledged. While this is a well-established position within OPSG, a minority of the OPSG members believe that the concept of consumer can be relevant in some specific cases. For instance, when savers are offered the possibility to choose within a range of products/solutions (e. g. to choose between personal, investments or occupational DB/ DC pension products), but also in the context of the Defined Contribution (DC) schemes.

It should, however, be mentioned that consumer/beneficiaries protection matters are often best dealt with at national level where the national supervisory authority has a deep understanding of the specificities of the local market and demands. A careful balance between both levels should be maintained.

**Question 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?**

**If you identify specific areas, please list them and provide examples.**

### I. A. 4. Enforcement powers – breach of EU law investigations

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 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?

**Please elaborate and provide specific examples.**

Please refer to Q 22.

#### **I. A. 5. International aspects of the ESAs' work**

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 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?

**Please elaborate and provide examples.**

Please refer to the answer to Q 3.

#### **I. A. 6. Access to data**

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

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

Please elaborate and provide examples.

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

Please elaborate on what areas could usefully benefit from such new powers and explain what would be the advantages and disadvantages.

No additional powers to require information from market participants are needed as it would ultimately increase the administrative burden and the costs for IORPs.

Nonetheless, it would be helpful if the ESAs were allowed to exchange data of financial institutions rather than doing their own surveys and reporting. The current administrative burden to the IORPs is demanding, both in terms of the ESAs' data requests and the national supervisors' investigations and surveys. Therefore, a keen eye to efficiency in this area would be welcomed.

#### I. A. 7. 7 Powers in relation to reporting: Streamlining requirements and improving the framework for reporting requirements

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 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?

Please elaborate your response and provide examples.

Please refer to Q 11.

Question 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?

Please elaborate and provide concrete examples.

### I. A. 8. Financial reporting

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 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?

Please elaborate.

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

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

Please elaborate.

## B. New powers for specific prudential tasks in relation to insurers and banks

### I. B. 1. Approval of internal models under Solvency II

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

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

Please elaborate on your views, with evidence if possible.

### **I. B. 2. Mitigating disagreements regarding own funds requirements for banks**

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 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?

Please elaborate and provide examples.

### **I. B. 3. General question on prudential tasks and powers in relation to insurers and banks**

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 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?

Please elaborate and provide examples.

## C. Direct supervisory powers in certain segments of capital markets

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

Question 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?

Please elaborate on your responses providing specific examples.

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

Please elaborate on your responses providing specific examples.

Question 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?

Please elaborate on your responses to questions 19 to 21 providing specific examples

## II. Governance of the ESAs

### A. Assessing the effectiveness of the ESAs governance

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

**Question 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 OPSG would support a review of the governance structure within EIOPA. Inspiration could be taken from good governance practices within the EU. Several differences to the current EIOPA structure can be identified, for instance the absence within the EIOPA structure of non-executives, which is common throughout the EU, and the dual role of the Chairperson in chairing both the Board of Supervisors and the Management Board. It is generally accepted that holding the pen for agendas and being the Chair - despite holding no voting powers - affords the Chair significant power over the topics discussed and the depth of discussion permitted to Board members. The OPSG would welcome a reappraisal of this set-up.

Given the high heterogeneity characterising the occupational pension markets across Europe, some OPSG members note that decisions are sometimes taken by all member states represented in EIOPA's Board of Supervisors although the topic - in practice - only affects a few of them. One such example is in the context of EIOPA's proposal on a common framework for risk assessment and transparency of IORPs which concerns only 5 countries (BE, DE, IR, NL and UK), yet all members had a vote.

While some OPSG members are of the opinion that only those 5 concerned countries should have had a right to vote, other OPSG members consider that all countries should vote, as already 19 countries are falling under the scope of the 2017 IORPs stress test and that this number is expected to grow in the future considering ongoing markets developments.

By way of example, the problems with governance could explain EIOPA's reluctance to rely on article 9.5 (product intervention) and 17 (breach or non-implementation of EU Law).

**Question 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?**

**Please elaborate.**

Please refer to the response to Q22.

**Question 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?**

**Please elaborate.**

The majority of the OPSG would welcome a larger involvement of stakeholders in the decision-making within EIOPA. Ideas to achieve this are included in response to Q 26. A minority view in the OPSG holds that the interest of stakeholders should be sufficiently protected by an independent board.

The presence of permanent members (besides the NCAs). could be one solution, although their independence from EIOPA and the terms of their mandates would be crucial to determining whether they add value in terms of input, constructive criticism and fresh-thinking.

**Question 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?**

**Please elaborate.**

The OPSG would caution against expanding the role of the Chairperson further or to entrust the role with greater empowerments without an adequate system to oversee the decision-making. This concern is partly linked to the unfinished position vis-à-vis funding - i.e. will new empowerments result in a commitment of limited resources to initiatives and measures that should not be prioritised. This would inevitably result in increased funding needs by EIOPA. The general concerns over the decision-making process are also the reason that may have led to own initiative guidelines in the past which have not always been properly justified as being called for within EIOPA's mandate. Please refer to Qs 1 and 5 above and Q 26 below.

## **B. Stakeholder groups**

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

**Question 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?**

**Please elaborate and provide concrete examples.**

The OPSG welcomes the EC's attention on the role of the stakeholder groups. In light of the valuable engagement with EIOPA over recent years, the OPSG would propose the following improvements to give more prominence to the

stakeholder groups and more weight to the opinions of the stakeholder groups:

- The OPSG agrees its preference for - and the importance of - maintaining a separate stakeholder group to convey the impact of proposals and other measures on the occupational pension's market, based on the expertise and knowledge of its members, as well as for the broader pension debate such as on PEPP.

- To maximise the benefit to EIOPA's work of the OPSG's input, there should be increased and compulsory transparency on how/if at all the input of the OPSG informs and is reflected in the development of EIOPA's positions:

- o While a range of opportunities for early comments on and contributions to the EIOPA work-streams are offered to the OPSG, it is unclear whether EIOPA presents this input to its members and whether it is thoroughly discussed in EIOPA's working groups. The OPSG's input to EIOPA should be reported on by EIOPA to its members, and where it is not taken on board by EIOPA, constructive and informative feedback should be provided to the OPSG members.

- o Members of the OPSG are selected based on a range of criteria, including their specific expertise and representation. Such criteria are precisely aimed at making the input of the OPSG of value to the EIOPA work. Therefore, OPSG membership should be commensurate with the topics it is discussing. It should in any case be granted to representatives of industry or trade associations representing pension providers as well as individuals closely involved with occupational and personal pensions. It should be acknowledged that the scope of the OPSG's works under the current and the previous mandates and has been broader than occupational pension provision as the OPSG was active in developing positions on PEPP and will continue to do so.

- o In addition, OPSG members often put significant time and effort into providing input to the EIOPA work. It is therefore important for the OPSG members to receive feedback on their contributions to the EIOPA work. Introducing a binding obligation on EIOPA to give reasoned responses to the input from the stakeholder groups should be considered.

- A longer mandate than 2,5 years for SG members would also facilitate building a better knowledge base and deeper understanding of relatively complex issues.

- The OPSG Chair/vice-chair should be offered regular opportunities, for instance once per year, to speak directly to and share the key views of the OPSG with EIOPA's management and/or the EIOPA Board of Supervisors. This would contribute to a transparent exchange with EIOPA members, who are ultimately in charge of making decisions on policy issues.

- The OPSG also notes that the role of the Chairperson at times could be mistaken for that of an executive. This raises issues such as the risk of a conflict of interest in terms of EIOPA's role on convergence between the members of the Board of Supervisors and the Chairperson. The OPSG would welcome further consideration of this issue.

- Concerning the appointment of the members of the Stakeholder Groups, a “European category” should be available for candidates working for European trade bodies as those individuals are not presumed to represent some national interests.
  
- The OPSG acknowledges that maintaining the stakeholder groups adds costs to the ESAs. The OPSG nonetheless underlines the value of maintaining the stakeholder groups in particular owing to the independence, expertise and representation of its membership. A closer and well organized cooperation between the stakeholder groups could improve exploitation of the competences represented.
  
- A lot could be achieved by allocating a budget for the work performed in working groups between plenary meetings of the stakeholder groups:
  - o The members of the stakeholder groups meet at regular intervals in their respective formal plenary meetings and have no separate budget for arranging physical workshops or meetings in their defined working groups. Exchanges of views are therefore made by e-mail or telephone conferences.
  - o Better organised workshops and meetings in the workgroups would give the working group members a higher understanding of colleagues’ different views, could speed up the working process and productivity, and could contribute to reaching consensus faster.

### III. Adapting the supervisory architecture to challenges in the market place

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

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

**Please elaborate and provide examples.**

It is imperative that the European insurance and occupational pensions supervisor has deep sector expertise. A significant majority of the OPSG concludes that this is achieved more effectively by maintaining EIOPA as a stand-alone supervisor. Significant improvements in EIOPA's understanding of the specificities of the European insurance and occupational pensions market have been witnessed over the term of its existence. Significant structural changes to the European system of supervision so soon after the introduction of the current supervisory structure would likely lead to high costs, major distraction away from the supervisor(s)' tasks, and would introduce a period of (legal) uncertainty for the market.

A minority of OPSG members conclude that the current architecture is not the best or most cost efficient way to manage the total risk related to financial markets. According to this minority view, the real question is how the organisational structure of the regulatory and supervisory bodies should be designed.

**Question 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 OPSG would generally welcome increased efficiencies and synergies to keep costs - and consequently the funding of the ESAs - as low as possible whilst maintaining an effective system of supervision.

When considering efficiencies however, care must be taken to not look only at the paper-value costs (eg savings in rents, staff costs etc) but also the less tangible costs to both the supervisor and the supervised industry. For instance, giving prominence to banking regulation and solutions and assuming these can easily be replicated in other sectors is a mistake. Instead of paper-value savings, such an approach would increase costs to the other industries, for instance by encouraging inappropriate business behaviour (eg encouraging or limiting types of investments when this is not necessary to cover certain types of risks).

One solution to reduce the strain on costs could be to place a higher focus on the principle of proportionality, including excess complexity in regulations. Concerns about a perceived lack of high-quality cost/benefit analysis has been raised on specific issues in the ESAs annual work programmes as well as the cost implication of individual and/or the cumulative effect of regulations issued. An improved cost/benefit prioritising of the use of available resources could contribute to ease the strain on budgets.

Additionally, care must be taken when considering how topic areas are best supervised. For instance, a significant majority of OPSG members would caution against separating supervision of prudential and conduct of business matters because these areas are very interlinked within EIOPA's current supervisory scope. This may not be the case for other sectors. Further, the business models differ between the various financial sectors. Therefore, the three ESAs add value because of their separate focus and approach.

## **IV. Funding of the ESAs**

Please [refer to the corresponding section of the consultation document](#)  to read some contextual information before answering the questions.

**Question 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 option.**

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

- Yes
- No
- Don't know / no opinion / not relevant

What are the advantages and disadvantages of option a)?

The OPSG is of the opinion that moving towards a fully industry funded system would undermine the oversight role played by the co-legislators.

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

- Yes
- No
- Don't know / no opinion / not relevant

What are the advantages and disadvantages of option b)?

Most OPSG members agree that there should be no change to the existing funding mechanism with the continued partial funding of the ESAs by industry. There are clear advantages to continuing using the channels already established in most member states, where industry funding is done via the national supervisors. Moreover, considering that many IORPs are not-for-profit organisations, adding an extra layer of costs with a new fee collection system would eventually result in lowering pension benefits.

Question 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?

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

Please elaborate on (a) and (b) and specify the advantages and disadvantages involved with each option, indicating also what would be the relevant parameters under each option (e.g., total market capitalisation, market share in a given sector, total assets, gross income from transactions etc.) to establish the importance/size of the contribution.

Question 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 the advantages and disadvantages of doing so?

**Please elaborate.**

The OPSG is not persuaded by the viability of collecting fees in the insurance and occupational pension sector. If done, it would likely only be possible for a small part of EIOPA's budget needs, with the remaining coming from a hybrid system based on market size, sector size etc.

## General question

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

**Please include examples and evidence where possible.**

At the moment, prudential regulation of Insurance firms is partly done by EIOPA, whereas most regulation of pension funds is national due to the differing social and labour law. By implication, EIOPA sets the UFR for the insurance sector, whereas the NSAs set it for pension funds sector. As a result, the playing field is not level. UFRs for insurers and pension funds differ too much, without an economic justification, as both refer to the same forward rates.

## 3. Additional information

---

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

**cca69d9b-f58e-4e9c-853e-086b4caf191f/EIOPA-OPSG-17-11\_Response\_Operations\_ESAs\_Q1.docx**

#### Useful links

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

[Consultation details \(http://ec.europa.eu/info/finance-consultations-2017-esas-operations\\_en\)](http://ec.europa.eu/info/finance-consultations-2017-esas-operations_en)

[Specific privacy statement \(https://ec.europa.eu/info/sites/info/files/2017-esas-operations-privacy-statement\\_en.p\)](https://ec.europa.eu/info/sites/info/files/2017-esas-operations-privacy-statement_en.p)

---

#### Contact

fisma-esas-consultation@ec.europa.eu

---

**OPSG Response to European Commission's  
public consultation on the  
Operations of the European Supervisory  
Authorities**

## Response

### A. Optimising existing tasks and powers

#### 1 Supervisory convergence

**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.**

Establishing the ESAs as EU supervisory bodies following the 2008 financial crisis has been a valuable contribution to increase the awareness on the importance of a well-functioning financial industry supporting growth and as a service provider for the benefit of the general public. The ESAs raised several critical issues and contributed to increase the focus on regulatory issues both at EU level and in the different Members States through the NCAs.

Over the past years, EIOPA and other ESAs have been very active in its efforts to ensure supervisory convergence by documenting best practices and setting harmonised standards. In the area of occupational pensions – falling under EIOPA's remit – this activity is generally positive, as preventive tools should always be the primary source of harmonisation and powers to intervene in potential disagreements or direct involvement in supervisory decisions should be, however necessary they are, secondary measures only. However, as a general rule, EIOPA should focus on developing guidelines where it is mandated to do so while on own initiative guidelines initiatives should be limited and duly justified. Ideally, an appropriate balance should be struck. Please refer to Q5 for further feedback on EIOPA guidelines.

The OPSG recommends that EIOPA should always have regard to the potential impact of its initiatives on the pension beneficiaries to minimise the negative impact on pension benefits.

Some of the OPSG members note that several EIOPA recent/upcoming initiatives could be deemed to exceed its role:

- Despite the absence of EU provisions foreseeing such a role within the IORP II directive, EIOPA considers in its single programming document for 2017-2019, that "EIOPA will play a crucial role in the implementation of the Institutions for Occupational Retirement Provision II Directive, particularly in relation to risk management, governance, information to members and beneficiaries as well as cross-border activities".
- Despite the framework of the IORPs 2017 stress test, EIOPA has extended its assessment on the macro-financial risks and vulnerabilities (i.e. second round effect) to also stress-testing the sponsor undertakings. EIOPA supervision should not go beyond the IORP by looking at the liabilities of the sponsor and evaluating the financial strength of the sponsor.
- EIOPA has recently started working on a Pan-European occupational DC framework. Even though it is yet unclear how EIOPA will engage concretely, the OPSG would caution that occupational pension plan design should always be dealt with in the context of the employment relationship and should always be ruled by social and labour law of the competent member state.

Supervisory convergence should be high on the agenda, but must be weighed against the need for adaptation to national circumstances caused by differences in local legislation, products and markets. Some regulatory issues are universal, like governance principles, transparency etc. Some members also suggested that the ESAs could rely more on the Joint Committee to foster cross-sectoral consistency of rules among products with similar characteristics and spread across Europe. Most of the OPSG members are however of the opinion that supervisory convergence in the context of occupational pensions has proven to be rather limited considering that the way in which IORPs are organised and regulated varies significantly between Member States (i.e. importance of social and labour laws). In line with this argument, a "one-size fits all" at European level is not appropriate. A minority of OPSG members, on the contrary, believe that supervisory convergence at EU level of occupational pensions, like all other financial products, is possible (based on the Treaty of Rome and the concept of single rule book) and a desirable objective to ensure EU pension savers' protection..

RESPONSE OF THE OCCUPATIONAL PENSIONS STAKEHOLDER GROUP (OPSG) TO THE EUROPEAN COMMISSION'S  
PUBLIC CONSULTATION ON THE OPERATIONS OF THE EUROPEAN SUPERVISORY AUTHORITIES

---

Concerning the work carried out by the ESAs to foster supervisory convergence, the ESAs could rely more on the Joint Committee to ensure cross-sectoral consistency of positions, in particular in the area of investor protection in the context of products with similar characteristics and spread across Europe.

All regulation comes at a cost. The cost of regulation of financial products is either covered by allocation of government funds or charges on the supervised institutions – or a combination. This means there is little incentive for regulators to prioritise and limit the use of resources on initiatives and measures that can result in excess complexity. The pricing mechanisms of a supply/demand equilibrium hence do not exist for regulatory issues.

The regulated financial institutions are spending more and more management time, system resources and consultants to interpret the rules, implementing them and performing the required reporting obligations. The overall complexity in laws and directives related to regulation may force smaller institutions to hire expensive consultants rather than relying on in-house expertise, making smaller institutions less competitive due to the cost and distraction away from core business, and risks making management less competent in regulatory issues by simple virtue of its complexity and volume. Whether such development is of benefit to customers, employees and the society should be carefully considered.

An additional observation on costs of regulation is that Regulation and supervision is done for a purpose. The cost of regulation is not always fully visible, and benefits may be difficult to trace or quantify. However, it is a common objective for all stakeholders that new regulations should create relevant benefits but once the point is reached where the cost of regulation starts to exceed the achieved benefits, the justification for the regulation becomes difficult to see. This applies to stakeholders like shareholders, customers, management of financial institutions and for authorities attempting to stabilise the economy.