

EIOPA-IRSG-18-01  
20 March 2018

**European Commission's Proposal for  
amending the Regulations of the ESAs**

**Response by the EIOPA Insurance and  
Reinsurance Stakeholder Group (updated  
20 March 2018)**

## General comments

The Commission proposals are in line with the direction of the IRSG positions on the structure of the ESAs, notably on the maintenance of an insurance Authority combining both prudential and conduct missions and distinct from the Authorities of the other sectors which were supported by a very large majority of the members of the IRSG. Otherwise our comments are focused on the following areas

**Governance:** There appears to be a risk that the tasks and governance of the Executive Board are such that it may not act in the wider interest of the Union and may not be held accountable for doing so. The Board of Supervisors should remain the main decision-making body in EIOPA and a number of its members should form part of the Executive Board.

**Cross Border Issues:** The IRSG welcomes the Commission proposals with respect to the need to address cross border elements in the resolution of cross border disputes and operation of freedom of services. The IRSG supports a speedy implementation of the EIOPA protocol.

**Additional Powers for EIOPA:** Additional EIOPA powers on internal models would limit the efficiency and effectiveness of supervision where powers for *ongoing* supervision and internal model approval are separated. It is essential that EIOPA opinions would be at the request of and in support of the local supervisor.

**Role of the IRSG:** The IRSG stresses the importance of the independent voice of the stakeholder groups as part of their governance role, in the spirit of overall European Union objectives on healthy debates on key policy issues. Appropriate support for the diverse IRSG members should be maintained to enable it to deliver in this regard.

## 1. Governance of the Authorities

The IRSG noted in its response to the Commission consultation that the governance of EIOPA could be enhanced by introducing more independence in certain areas, separation of responsibilities and transparency.

The Commission proposals go further than the IRSG proposals in fundamentally reviewing the governance framework of the Authorities in terms of independence. However, the proposed changes do not address the concerns raised by the IRSG, but rather exacerbate them in certain areas. EIOPA's governance structure should ensure EIOPA always acts within its mandate, considering the wider impact of its actions and the interests of the European Union and with appropriate transparency and accountability in the delivery of this mandate.

There is IRSG support for adding three suitably senior, experienced and expert additional Executives appointed by Parliament/Council. Nevertheless, an Executive Board with only 4 members and the list of tasks assigned to those members appear to concentrate decision making more than is necessary to achieve the goal of independence for specific areas where there could be conflicts of interest. The Board of Supervisors provides the necessary local sector expertise and should therefore remain the main decision-making body within EIOPA and BoS representatives should remain part of the Board that prepares the decisions. Therefore the following alternative could also be considered:

- The three Executives are added to the current Management Board to form the Executive Board

- On conflict of interest issues (such as breach of Union law, or cross border disputes) the BoS members are excluded and only the Chair and three Executives discuss and decide on such matters
- On all other matters the Chair and Executives together with the existing BoS representatives discuss, prepare and recommend but the full BoS continues to make the final decisions.

This would provide the necessary independence when needed, help ensure balanced discussion and maintain the involvement of the BoS in both preparation and final decision making.

The IRSG also recommends that the ESAs should be more accountable for the delivery of their mandate to contribute to the stability and effectiveness of the financial system for the Union economy, citizens and businesses as described in Article 1.6 of the ESA regulation and as elaborated in recital 12 of the same regulation which requires the ESA to take account of the impact of its activities on competition and innovation with the internal market, global competitiveness, financial inclusion and jobs and growth. The funding changes proposed increase the need for the type of governance improvements proposed by the IRSG.

## 2. Cross Border Issues and Freedom of Services

In its response to the original consultation, the IRSG advocated that the ESA involvement in cross border conflicts in particular can bring necessary clarity not provided by the EU texts. The Commission proposals reflect IRSG points with respect to the need to address cross border elements in that EIOPA is reinforced in the resolution of cross border disputes and operation of freedom of services. This is welcome as some markets are experiencing problems in this regard.

The IRSG supports this and a speedy implementation of the EIOPA protocol, particularly regarding

- Exchange of information at authorisation stage where the applicant will operate on a Freedom of Services basis
- Information to be exchanged between home and host supervisors when an insurer starts operating on Freedom of Services
- Supervision of these operations and the exchange of quantitative data between supervisors

## 3. Additional Powers for EIOPA

The Commission proposes additional powers for EIOPA to achieve supervisory convergence. This goes further than the IRSG response to the original consultation that EIOPA has sufficient tools and powers to achieve a degree of supervisory convergence. It is essential that supervisory convergence should not lead to over-regulation by adoption of the most regulated regime. Refinements to existing regulation to ensure EIOPA has access to information that is a) already available to local supervisors and b) needed for EIOPA to carry out their existing powers can be supported can be supported by the IRSG. This includes internal model approval submissions by companies and immediate notification from home supervisors of any companies selling cross-border under Freedom of Services (FOS) that has breached its SCR.

However, under the proposals EIOPA would for example be able to issue own-initiative opinions in relation to individual and group *internal models*. Where this is at the request of the NCA or firm this could be beneficial because it involves EIOPA where needed. Otherwise, if EIOPA were to act without a request this would risk duplication of activity, additional cost and undermining the role of the NCA. The original IRSG response noted that additional EIOPA powers on internal models would limit the efficiency and effectiveness of supervision where powers for *ongoing* supervision and internal model approval are separated. Having regard to this, it is essential that EIOPA opinions would be at the request of and in support of the local supervisor. Consistent with this, EIOPA should not be able to recommend that an NCA withdraws a decision already taken on internal models as this would undermine the role of the NCA and jeopardise legal certainty for companies.

The IRSG response to the original consultation noted that a small minority of members believe that EIOPA needs additional tools for conduct-of-business supervision at Member State level. In this context such members believe there is a lack of ambition to strengthen consumer protection in light of new requirements, a lack of consumer protection enforcement, increased on-line distribution, big data and Insur-tech developments.

#### **4. Role of the IRSG**

The IRSG welcomes the Commission support for the IRSG through the proposal to increase IRSG powers in respect of guidelines and recommendations and extend the term of the mandate.

Given the increasing trend of ESAs to issue Q&As, Best Practices and Opinions, the legal nature and implications of which are unclear, consultation with interested parties through SGs on all such instruments (and not only guidelines) at the drafting stage would help to facilitate a better understanding and application of them. However, the proposal to grant the IRSG the power to challenge these instruments before the European Commission reshapes the fundamental role of the IRSG as an advisory group. This needs to be further considered by the IRSG along with how effective the IRSG can be at independently assessing if EIOPA has exceeded its competence.

In any case, as had been suggested in the joint BSG-IRSG-OPSG-SMSG position, additional financial resources should also be awarded to the SGs to ease their work, improve their impact and enable them to have more regular contact throughout the year, including at the level of their Working Groups. Additional financial resources could also be used towards increasing the interactions between all SGs and thus supporting joint activities.

Furthermore, proposals regarding increasing the effectiveness of IRSG work by facilitating more systematic feedback on IRSG positions and clearer links with the Board of Supervisors should also be maintained.

*Additional Text Added 20/3*

Different views were expressed about whether the IRSG should take on the power to more formally provide an opinion to the European Commission on EIOPA guidelines or opinions (proposal to amend Art.16 of ESAs Regulation).

A significant majority of members are not in favour of the EC proposal considering that the IRSG acts as an advisory group to EIOPA, with no role to intervene in regulatory affairs. This new power would change IRSG's role into something more supervisory and may create unrealistic expectations of the ability of the IRSG to perform this role. The IRSG does not scrutinise and provides views on all consultations at present. Should the IRSG be asked to apply its scrutiny as to whether the ESA has indeed exceeded its competence, it is not clear that the IRSG would be well placed to form that view. The IRSG would be exposed to external influence on its appropriate exercise of this power, as interests groups seek to encourage IRSG to use this power in relation to specific provisions.

A minority of members support the EC proposal, noting the importance of the stakeholder groups as providers of an independent view and as a useful forum for a healthy discussion of key policy issues. There should be more transparency on how the Board of Supervisors accesses the work and views of stakeholders' groups as it currently remains unclear if stakeholders group proposals reach the Board of Supervisors and how they are addressed. The new powers would give the IRSG an effective way to deliver these outcomes by providing weight to the IRSG view which could then be accepted or rejected by the European Commission. Such powers would be used only in exceptional circumstances as an emergency measure relating to specific actions of EIOPA. Overall, this would help ensuring that EIOPA is delivering on its objective to promote the wider EU interest.