



EIOPA-BoS-11/002-Rev3  
24 November 2016

## **The Board of Supervisors of EIOPA,**

Having regard to the Regulation No. 1094/2010 of the European Parliament and of the Council of 24 November 2010 (“The Regulation”) establishing the European Supervisory Authority (European Insurance and Occupational Pensions Authority)<sup>1</sup>,

Having regard to the Agreement on the European Economic Area (the EEA Agreement)<sup>2</sup>, as amended by Decision of the EEA Joint Committee No 200/2016 of 30 September 2016 amending Annex IX (Financial services) to the EEA Agreement (“the EEA JC Decision”) to the effect of incorporating The Regulation into the EEA Agreement,

Has adopted its:

### **Rules of Procedure**

#### ***Article 1 – Composition***

{The Regulation, Article 40, recital 52; and points (i) and (ii) of subparagraph (r) of paragraph 31h of Annex IX to the EEA Agreement}

1. The Board of Supervisors shall be composed of:
  - (a) Voting Members, which shall be the Heads of the national public authorities competent for the supervision of financial institutions in each Member State of the European Union, who shall have a right to vote (Each a “Voting Member”),
  - (b) EEA EFTA Members, which shall be the Heads of the national authorities competent for the supervision of financial institutions in each of the following EEA EFTA States – Iceland, Liechtenstein and

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<sup>1</sup> OJ L 331, 15.12.2010, p.48.

<sup>2</sup> OJ L 1, 3.1.1994, p. 1.

- Norway, who shall however not have a right to vote (Each a "EEA EFTA Member"), and
- (c) Permanent Representatives, as referred to in paragraph 2, Non-Voting Members, as referred to in paragraph 4, and Observers, as referred to in paragraph 5.
2. In the EU Member States and the EEA EFTA States where there are separate supervisory authorities responsible for the insurance and occupational pensions sectors, those authorities shall agree on a Common Representative who shall be the Voting Member, and notify this by writing to EIOPA in due time. The supervisory authority responsible for the other sector shall have the right to participate as Permanent Representative at all levels of EIOPA, with equal rights and obligations, except the right to vote.
  3. Each competent authority shall be responsible for nominating a high-level alternate from its authority, who may replace the Head of its authority, in case this person is prevented from attending. The alternate has the right to vote, in case the alternate replaces a Voting Member.
  4. Non-Voting Members of the Board of Supervisors are:
    - one representative of the European Commission
    - one representative of the European Systemic Risk Board (ESRB)
    - one representative of the European Banking Authority (EBA)
    - one representative of the European Securities and Markets Authority (ESMA)
    - one representative of the European Free Trade Association Surveillance Authority (EFTA SA).
  5. Observers ("The Observers") of the Board of Supervisors are the Heads of the national authorities of acceding countries, competent for the supervision of financial institutions, as agreed by the Board of Supervisors or his/her alternate.
  6. The Board of Supervisors may decide to admit other observers to its meetings according to Article 40(5) of The Regulation.
  7. Observers do not have a voting right.
  8. EIOPA's Chairperson - or his/her Alternate or other replacement in case of absence - shall chair the meetings of the Board of Supervisors without the right to vote. The Alternate or other replacement may, exceptionally, have a right to vote if his/her vote as a Member could not otherwise be exercised.
  9. The Executive Director participates in the meetings of the Board of Supervisors without the right to vote.

## **Article 2 – Tasks**

{The Regulation, Articles 19, 37, 41, 43, 45, 48, 51, 53, 63}

1. The Board of Supervisors shall appoint the Chairperson of EIOPA, according to Article 7 of these Rules of Procedure.
2. The Board of Supervisors shall elect from among its Members the Alternate of the Chairperson according to Article 7 of these Rules of Procedure.
3. The Board of Supervisors shall appoint the Executive Director of EIOPA, according to Article 7 of these Rules of Procedure.
4. The Voting Members of the Board of Supervisors shall elect from among themselves the Members of the Management Board according to Article 7 of these Rules of Procedure.
5. The Board of Supervisors shall appoint the members of the Stakeholder Groups and shall make public the opinions and advice of the Stakeholder Groups and the results of their consultations according to Article 37 of The Regulation.
6. The Board of Supervisors shall give guidance to the work of the Authority and shall be in charge of taking the decisions referred to in Chapter II of The Regulation.
7. The Board of Supervisors shall adopt the opinions, recommendations, and decisions, and issue the advice referred to in Chapter II of The Regulation.
8. The Board of Supervisors shall adopt, on the basis of a proposal by the Management Board, the annual report on the activities of the Authority, including on the performance of the Chairperson's duties, on the basis of the draft report referred to in Article 53(7) of The Regulation. It shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June every year. The report shall be made public.
9. The Board of Supervisors shall adopt, before 30 September each year, on the basis of a proposal by the Management Board, the work programme of the Authority for the coming year, and shall transmit it for information to the European Parliament, the Council and the Commission.

The work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

10. The Board of Supervisors shall adopt the multi-annual work programme of the Authority and shall transmit it for information to the European Parliament, the Council and the Commission.

The multi-annual work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

11. The Board of Supervisors shall adopt the budget in accordance with Article 63 of The Regulation.
12. The Board of Supervisors shall exercise disciplinary authority over the Chairperson and the Executive Director and may remove them from office in accordance with Article 48(5) or Article 51(5) respectively of the Regulation.
13. The Board of Supervisors shall adopt and make public the rules of procedure for the independent panel referred to in Articles 19 and 41(2) of The Regulation.
14. The Board of Supervisors shall adopt and make public the EIOPA Rules of Procedure covering the Chairperson, the Executive Director, Code of Conduct and Legal instruments of The Authority.

### ***Article 3 - Delegation of tasks***

{The Regulation, Articles 19, 41}

1. The Board of Supervisors may provide for the delegation of certain clearly defined tasks and decisions to Working Groups, to the Management Board or to the Chairperson.
2. The Board of Supervisors may establish and dissolve Working Groups for specific tasks attributed to the Board of Supervisors.
3. For the purposes of Articles 19 and 41 of the Regulation, the Board of Supervisors shall convoke an independent panel to facilitate an impartial settlement of the disagreement ("The Mediation Panel"). The Mediation Panel shall operate according to its own Rules of Procedure, adopted and published by the Board of Supervisors.

## **Article 4 – Voting modalities and Decision making procedures**

{The Regulation, Articles 9, 10-16, 19, 40, 44, 63}

### **Voting modalities**

1. Each Voting Member shall have only one vote.

Unless otherwise stated, decisions of the Board of Supervisors shall be taken by simple majority of its Voting Members. A simple majority shall be achieved where more Voting Members vote in favour of a proposal than vote against it. Abstentions will not be counted as approvals or as objections, and will not be considered when calculating the number of votes cast.

2. Article 4(1) is without prejudice to decisions approving

- draft technical standards (The Regulation, Articles 10 to 15),
- guidelines and recommendations (The Regulation, Article 16),
- decisions to temporarily prohibit or restrict certain financial activities (The Regulation, Art 9(5)), and
- decisions regarding the budget of EIOPA (The Regulation, Article 63(5))

that require a **qualified majority**, as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol No 36 on transitional provisions.

3. With regard to decisions in accordance with Article 19(3) of The Regulation, for decisions taken by the group supervisor, the decision proposed by the Mediation Panel shall be considered as adopted, if approved by a simple majority, unless it is rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.
4. Until 31 October 2014, when a decision is to be adopted by the Board of Supervisors by a qualified majority, it shall be adopted if there are at least 255 votes in favour representing a majority of the Voting Members<sup>3</sup>. If a member of the Board of Supervisors so requests upon the announcement of the result of the vote by the Chairperson, it shall be verified that the EU Member States of the Voting Members constituting the qualified majority represent at least 62% of the total population of the Union. Article 4(4) shall also apply between 1 November 2014 and 31 March 2017 when a member of the Board of

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<sup>3</sup> <http://www.consilium.europa.eu/council>

Supervisors so requests in accordance with Article 3(2) of the Protocol (No 36) on transitional provisions. In votes held by written procedure, the request shall be sent in writing to the Chairperson within the first 24 hours of the launch of the written procedure; for other votes, where advance notice has been given to the Board of Supervisors, this request shall be expressed in writing to the Chairperson no later than 24 hours before the vote is due to take place.

5. From 1 November 2014, when a decision is to be adopted by the Board of Supervisors by a qualified majority, it shall be adopted if there are at least 55% of the Voting Members in favour, comprising at least fifteen of them and coming from competent authorities from EU Member States comprising at least 65% of the population of the Union. A blocking minority shall be achieved as defined in Article 16(4) of the Treaty of European Union.
6. For the purpose of paragraphs 4 and 5, population figures shall be calculated using the population figures adopted by the Council of the European Union from time to time for the purpose of adopting its own decisions by a qualified majority.
7. Voting takes place through the show of hands. Upon the request of at least one tenth (1/10) of those present voting shall be done by secret ballot.
8. Without prejudice to the previous paragraph voting in election procedures, as defined in Article 7, shall be done by secret ballot.

### **Decision making procedures**

9. Decisions shall be taken preferably during the meetings of the Board of Supervisors.
10. Where appropriate, decisions may be taken by written procedure according to the following articles of these Rules.

### **Written procedure**

11. On a proposal of the Chairperson, decisions may be taken by written procedure. In principle, all Voting Members should express in writing whether they are in favour (I agree) or against the proposed decision (I disagree) or whether they abstain from voting (I abstain). An abstention does not count as a yes or a no but reduces the total votes accordingly.
12. A proposal from the Chairperson will be circulated to the Board of Supervisors:

- Stating the time and date by which comments to the proposal made be expressed (which as a rule of principle should not be less than 5 working days);
  - Stating the time and date by which votes must be cast (which as a rule of principle should not be less than 5 working days);
  - Stating whether a failure to vote in accordance with the principles detailed under 14 will be considered a vote for the proposal, and whether a minimum number of votes is required;
  - Describing the key issues and whether the decision proposed is consensual or controversial;
  - Justifying the use of written procedure where it is used in relation to the adoption of acts according to Article 44 (1) second and third paragraphs of The Regulation; and
  - Providing any other material considered necessary for making the decision that has not previously been forwarded to the Board of Supervisors.
13. Shorter or longer deadlines are allowed in exceptional circumstances, but must remain reasonable and be explained.
14. Where the Chairperson has informed the Board of Supervisors that a failure to vote will be considered a vote for a proposal, if within 48 hours of the proposed vote, three or more Voting Members so request in writing to the Chair:
- A failure to vote shall be considered not as a vote for the proposal but as an abstention.
  - Two-thirds of the Voting Members shall be required to express objection, approval or abstention;
  - The time and date by which votes must be cast shall if necessary be extended to ensure a minimum of 24 hours for Voting Members to vote on the revised basis; and
  - The Chairperson shall notify the Board of Supervisors accordingly.
15. Votes on decisions being taken by written procedure shall be in written form.
16. The Chairperson shall inform in writing the Board of Supervisors on the voting results and on the final adopted document (including the feedback on the comments received) within 5 working days of the

deadline for adoption. The voting results shall also be included in the deliberations of the next Board of Supervisors' meeting.

### **Quorum**

17. A quorum at a meeting will be reached when at least two-thirds of the Voting Members are present. If the quorum is not met, the decisions will be taken provisionally and ratified afterwards by written procedure.

### ***Article 5 - Meetings***

{The Regulation, Articles 36(4), 40, 44, sub-paragraph (a) of paragraph 31h, as well as indents (ii) and (iii) of sub-paragraph (t) of paragraph 31h of Annex IX to the EEA Agreement}

### **Dates/ Location**

1. The Board of Supervisors shall meet at least three times a year and on the premises of EIOPA, unless otherwise agreed. The dates of the meetings will be presented before the start of each calendar year, if possible.

### **Invitation**

2. Any meeting of the Board of Supervisors shall be called by the Chairperson or his/her Alternate in case of his/her absence, observing a notice period of at least four (4) weeks. This notice period shall commence upon the day of posting the invitation to the last known email address of the Voting Members, EEA EFTA Members, Permanent Representatives, Non-Voting Members and Observers. The invitation is deemed to have been received if it is sent to the last email address known to EIOPA.
3. The Chairperson shall convene a meeting of the Board of Supervisors if a request is submitted by at least one third of its Members or on receipt of a warning or recommendation from the ESRB.

### **Agenda**

4. The provisional agenda shall be sent by the Chairperson to the Voting Members, EEA EFTA Members, Permanent Representatives, Non-Voting Members and Observers at least 4 weeks before the relevant meeting. At the beginning of each meeting, Voting Members shall decide with simple majority on the agenda including applications to supplement the agenda during the meeting.



5. The agenda shall indicate the aim of each item (information, discussion, decision) and, in case of a decision, its voting modalities (simple majority/qualified majority).

### **Meeting Documents**

6. As a general rule, the meeting documents shall be communicated, if possible, at least 10 working days before the relevant meeting, to the Voting Members, EEA EFTA Members, Permanent Representatives, Non-Voting Members and Observers, taking the rules of confidentiality into consideration.
7. Material shall be provided as soon as practicable in urgent cases.

### **Chair**

8. Meetings of the Board of Supervisors shall be chaired by the Chairperson or if he/she is unavailable by his/her Alternate. Should the latter also be unavailable, then the present Board of Supervisors shall decide on a replacement.

### **Participation**

9. The Head of the national public authorities competent for the supervision of insurance and occupational pensions in each EU Member State and in each EEA EFTA State shall attend the meetings in person at least twice a year, be it as Voting Member, EEA EFTA Member or as Permanent Representative as agreed on national level.
10. Permanent Representatives shall have the right to participate in all meetings of EIOPA's Board of Supervisors.
11. The Non-Voting Members and Observers, with the exception of the Chairperson and the Executive Director as well as the representative of the EFTA SA, shall not attend any discussions within the Board of Supervisors relating to individual financial institutions, unless otherwise provided for in The Regulation or in the acts referred to in Article 1(2) of The Regulation. EEA EFTA Members shall be entitled to attend discussions within the Board of Supervisors relating to individual financial institutions.

## Minutes

12. Minutes of a meeting of the Board of Supervisors, including the decisions adopted therein shall be prepared by the Chairperson of the Board of Supervisors.
13. The minutes shall contain:
  - Time and place of the meeting;
  - Name of the person chairing the meeting;
  - The Voting Members, EEA EFTA Members, Permanent Representatives, Non-Voting Members and Observers present;
  - Ascertainment that the meeting has been duly called;
  - Notification if a quorum to take decisions is reached;
  - The agenda;
  - Applications made, voting results, manner of voting;
  - Decisions adopted and/or conclusions reached, actions to take.
  - If a decision is adopted by qualified majority in accordance with Article 4 above, the minutes shall identify and report the opinions of the individual Voting Members and give proper account of the minority positions expressed;
  - The statement whether a decision by written procedure shall take place.
14. The draft minutes of each meeting of the Board of Supervisors shall be sent to the Voting Members, EEA EFTA Members, Permanent Representatives, Non-Voting Members and Observers within fourteen working days after the meeting, for adoption by written procedure. Participants shall send their written comments within five working days following the receipt of the draft minutes. Where necessary, the Chairperson (or his/her alternate) shall decide whether to submit revised minutes for adoption.
15. After their approval, the minutes shall be signed by the Chairperson and be made available to the Voting Members, EEA EFTA Members, Permanent Representatives, Non-Voting Members and Observers of the Board of Supervisors.
16. The conclusions reached and decisions adopted, reflected in the approved minutes, shall be made public.
17. The timelines may be shortened depending on the urgency of the matter.

## **Meetings with Stakeholder Groups**

18. The Board of Supervisors shall meet at least twice per year with the Stakeholder Groups.

### ***Article 6 - Confidentiality of Board of Supervisors proceedings***

{Points (ii) and (iii) of sub-paragraph (t) of paragraph 31h of Annex IX to the EEA Agreement}

All proceedings of the Board of Supervisors shall be confidential. The Voting Members, EEA EFTA members, Permanent Representatives, Non-Voting Members and Observers of the Board of Supervisors as well as all other persons attending meetings of the Board of Supervisors shall respect EIOPA's Rules on professional secrecy and confidentiality to be adopted by the Management Board.

### ***Article 6a – Rights and obligations of the EEA EFTA Members and of the EFTA SA***

{Sub-paragraph (a) of paragraph 31h of Annex IX to the EEA Agreement}

The EEA EFTA Members and the EFTA SA shall, but for the right to vote, have the same rights and obligations as the Voting Members in EIOPA's working structures.

A Multilateral Memorandum of Understanding on cooperation, information exchange and consultation concluded between the EBA, EIOPA, ESMA and the EFTA SA shall further clarify practical arrangements of the cooperation between these authorities in order to give effect to Union law as implemented into the EEA Agreement.

## ***Article 7 – Election Procedures***

{The Regulation, Articles 45, 48, 51}

### **The Chairperson**

1. The Chairperson shall be appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation, following an open selection procedure according to Article 48 of The Regulation.

### **The Alternate of the Chairperson**

2. The Board of Supervisors shall elect from among its Voting Members an Alternate who shall carry out the functions of the Chairperson in his/her absence. That Alternate shall not be elected from amongst the Members of the Management Board.
3. The election of the Alternate shall take place at the meeting of the Board of Supervisors scheduled to precede the expiry date of the term in office of the departing Alternate.
4. Indications of interest for this position shall be notified to the Chairperson one month before that meeting of the Board of Supervisors.
5. The formal applications for the election shall be disclosed to the Board of Supervisors at least 10 working days before the election date.
6. The election of the Alternate requires a simple majority.
7. The Alternate shall be elected by secret ballot. A vote shall be held even if there is only one candidate. If there is more than one candidate, a first secret ballot shall be held in order to select the two candidates who obtain the highest number of votes. Additional ballots shall be held until one candidate obtains a simple majority of the votes.
8. The voting procedure shall be supervised by a staff member of EIOPA.

### **Members of the Management Board**

9. The Board of Supervisors shall elect from among its Voting Members six Members of the Management Board.
10. The election of a Member of the Management Board shall take place at the meeting of the Board of Supervisors scheduled to precede the expiry date of the term in office of the departing Member of the Management Board.
11. In due time before the end of the departing Member of the Management Board's term of office, the Chairperson shall notify Members of the Board of Supervisors of a forthcoming election and shall call for indications of interest from Voting Members.
12. Indications of interest shall be notified to the Chairperson not later than four weeks before the meeting of the Board of Supervisors as specified in Article 7(10) above.

13. The formal applications shall be disclosed to the Board of Supervisors at least ten (10) working days before the election date.
14. The Member of the Management Board shall be elected by secret ballot. A vote shall be held even if there is only one candidate.
15. An election of a Member of the Management Board requires a simple majority.
16. If there is only one candidate and a simple majority is not reached, a new election procedure shall be launched for a vote during the course of the next meeting of the Board of Supervisors. The Chairperson shall notify the Board of Supervisors of the deadline for indications of interest and the date on which applications will be disclosed to the Board of Supervisors.
17. If there are two candidates and there is a tie, further ballots shall be held until the votes for one of the two candidates reach the simple majority.
18. If there are more than two candidates and a simple majority is not reached, the election round shall be repeated between the two candidates that received most of the votes in the first round. In the event of a tie between these two candidates, Article 7(17) above shall apply.
19. The voting procedure shall be supervised by a staff member of EIOPA.

### **Executive Director**

20. The Executive Director shall be appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation and managerial experience, following an open procedure according to Article 51 of The Regulation.

### ***Article 8 - Code of conduct***

When carrying out the tasks conferred upon it by The Regulation and these Rules of Procedure, the Board of Supervisors shall act in accordance to the EIOPA Code of Good Administrative Behaviour<sup>4</sup>, as well as the Rules on anti-fraud measures<sup>5</sup>, Professional Secrecy and Confidentiality<sup>6</sup> and internal language arrangements<sup>7</sup> adopted by EIOPA's Management Board.

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[https://eiopa.europa.eu/fileadmin/tx\\_dam/files/Legal\\_Framework/MB\\_Decision\\_Code\\_Good\\_Adm\\_Behavior.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/Legal_Framework/MB_Decision_Code_Good_Adm_Behavior.pdf)

<sup>5</sup> [https://eiopa.europa.eu/fileadmin/tx\\_dam/files/Legal\\_Framework/MB\\_Decision\\_Anti-fraud\\_Measures.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/Legal_Framework/MB_Decision_Anti-fraud_Measures.pdf)

## **Article 9 – Final Provisions**

1. These Rules of Procedure shall enter into force immediately after their approval.
  2. The Board of Supervisors may amend these Rules of Procedure.
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Done at Frankfurt am Main, on 10 January 2011

Amended at Frankfurt am Main, on 28 January 2015

Amended at Frankfurt am Main, on 24 November 2016

[signed]

Gabriel Bernardino

EIOPA Chairperson

For the Board of Supervisors

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<sup>6</sup> [https://eiopa.europa.eu/fileadmin/tx\\_dam/files/Legal\\_Framework/Management-Board-Decision-Professional-Secrecy.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/Legal_Framework/Management-Board-Decision-Professional-Secrecy.pdf)

<sup>7</sup> [https://eiopa.europa.eu/fileadmin/tx\\_dam/files/Legal\\_Framework/Management-Board-Decision-Internal-Language.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/Legal_Framework/Management-Board-Decision-Internal-Language.pdf)