



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.

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 Insurance and Reinsurance Stakeholder Group (IRSG)

Contact email address:

The information you provide here is for administrative purposes only and will not be published

bhugonin@scor.com

*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:

Please refer to Article 37 of Regulation (EU) N° 1094/2010 establishing 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.

Since 2011, the ESAs have introduced a significant change in national and European supervisory culture. Via different supervisory tools (for example listed in Article 8 of EIOPA Regulation No 1094/2010), EIOPA is progressively establishing a platform allowing more integrated knowledge and supervisory convergence.

The IRSG appreciates that over recent months and years EIOPA has taken this increasingly active role in understanding supervisory cultures across member states and promoting supervisory convergence. This was closely linked to the application of Solvency II at the beginning of 2016, when EIOPA started to intensify its supervisory activities (as opposed to the policy work that had been the focus of previous years).

The IRSG supports focus by EIOPA on increased alignment in supervisory cultures across member states, as this also supports the idea of applying a convergent regime to the insurance industry. Improving governance and accountability structures in the ESAs to provide for decisions which advance the interests of EU citizens as a whole, rather than ones in which national interests can dominate (see responses on governance) are prerequisite to fully achieve this.

In addition to supporting increased convergence in prudential supervision, EIOPA needs to play a role in a range of cross-border issues, when the boundaries between home/host supervisors are not clear. EIOPA has already taken such actions on the basis of its existing mandate.

At this stage, the IRSG believes that the current framework provides sufficient tools for EIOPA to foster a degree of supervisory convergence. More experience of Solvency II application is needed before reconsidering the existing regulatory provisions.

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.

On peer reviews: peer reviews represent an existing and valuable tool for EIOPA which has been used in the past and led to the identification of best practices. Peer reviews are useful for reviewing how supervisory common practices are implemented in practice. More use should be made of this tool. In order to make this tool more effective, ESAs should be able to also get comments from other parties than the reviewed NCAs and to consult stakeholders when establishing best practices emanating from peer reviews. The current EIOPA governance could further be posing an obstacle for the effective implementation of the peer review process (please refer to further comments on governance below). A lack of EU interest in the decision-making process in the Board of Supervisors is likely to impact the extent to which EIOPA can deliver effective peer reviews and on other tools.

On mediation and settlement of disagreements: EIOPA's role and assistance in the settlement of disagreements between host and home competent authorities in complex and/or urgent cross-border situations (as defined in Article 19 of Regulation No 1094/2010) can be an important tool to bring the necessary clarity for businesses (e.g. references to this particular EIOPA role in articles 5, 8 and 9 of the Insurance Distribution Directive (IDD). This Directive is, however, in the process of implementation).

On supervisory colleges: EIOPA plays a key role in supervisory colleges and should continue its engagement. The parameters of the engagement between EIOPA and the group supervisor should be clear.

A further point is that stakeholders lack access to communications between EIOPA and NCAs, such as the supervisory handbook. This is a tool that is often invoked by EIOPA as key in promoting supervisory convergence, however it is unfortunately not accessible outside the supervisory community.

In conclusion, the IRSG would like to stress that supervisory convergence via the tools and powers granted to EIOPA will only be properly realised with the development of an appropriate governance framework (please refer to responses to questions 22 to 26 on governance).

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.

Please see above response.

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.

The current tools allow the ESAs to effectively ensure and monitor the implementation of EU common rules in order to promote a level playing field. The ESAs should use these tools to avoid gold-plating as much as possible. It would be useful to allow individual undertakings to contact EIOPA directly if they feel that their NCA does not operate in a manner which is in conformity with EU law.

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.

ESAs should get involved earlier in cases of cross border conflicts. The ESAs' involvement in cross-border cases can bring the necessary clarity and legal certainty EU texts fail to bring. EIOPA's engagement should be reinforced. Examples on this include

- Information on the use of general good provisions by Member States
- Revision of EIOPA Luxembourg protocol

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.

There is an increasing trend to issue different level 3 instruments by the ESAs including guidelines, Q&A, best practices and opinions. The legal implications of them for individual undertakings are not very clear. More consultation with interested parties at inception could be of help for a better understanding and application.

It is key that guidelines and recommendations reflect and respect the level 1 legislation. The IRSG believes that in a number of occasions, (draft or 'preparatory') guidelines and other instruments have gone beyond level 1 or were not in line with the spirit and philosophy of the level 1 text. For example, the guidelines on public and supervisory reporting go beyond the requirements in the level 2 text.

Guidelines and other instruments are intended not to be legally binding. However, the level of detail of a number of guidelines and instruments and the fact that most national competent authorities do comply with the guidelines, means that in practice they often become binding.

While one may consider that companies could have direct access to EIOPA through triggering the Q&A process, the process should not create or be perceived to create additional requirements on companies.

The IRSG recognises the need for EIOPA to have the ability to issue guidelines on their initiative but believes that further clarifications and specifications in the current powers are needed, to avoid situations where ESAs propose excessive and unnecessary guidelines. This would prevent guidelines that are: 1) not mandated by sectorial law and/or 2) not supporting clarifications needed for existing recitals and/or 3) going beyond existing legal provisions and/or 4) effectively creating new regulations in member states and/or 5) pre-empting EU law and implementation of it whenever "preparatory" guidelines are put forward and/or 6) do not meet the necessary cumulative requirements set in article 16 ("a common uniform and consistent application of Union law" AND "consistent, efficient, effective supervisory practices")

Where guidelines are required (taking into account the multitude of guidelines that have been published and the level of detail they provide) it should not be optional to consult on their drafting and to prepare an impact assessment, but it should be standard procedure. (see art 16.2 The Authority shall, where appropriate, conduct open public consultations regarding the guidelines and recommendations and analyse the related potential costs and benefits.).

Even though the guidelines should not be binding, it is important that the impact of guidelines / recommendations is well assessed and accompanied by a cost-benefit analysis in order to avoid unintended outcomes or side effects. All costs should be considered: cost for supervisors, costs for the enforcement, costs for the industry, for the economy in general and ultimately for the consumer or citizen. Measures should always and specially take into consideration that smaller (SME and micro size) entities may be subject to the rules.

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.

[This is a joint response to Q6 and Q7]

The ESAs have the objective to contribute to, inter alia, enhancing customer protection – this task is listed in the lists of the ESAs priorities . A more detailed look at the tasks related to consumer and investor protection (Art 9 of the ESAs Regulations) shows that their consumer protection mandate is very limited. In terms of concrete supervisory actions the ESAs may, under certain conditions, prohibit dangerous financial products or activities. For this power to be effective, delegation through sector-specific regulations and directives is required, such as the product intervention tools granted by MiFID II / PRIIPS.

The ESAs regulatory powers have been substantially extended in recent years thanks to the mandates granted by financial regulations and directives. However, the contribution of these supervisory authorities to enhancing consumer protection in practice has been very limited so far.

Today, the bulk of retail finance legislation across Europe originates from EU level. However, Member States have almost full discretion in how to implement these rules and enforce them at national level. Sectoral EU regulations and directives merely ask that Member States designate a competent authority responsible for implementation and oversight, and for it to apply dissuasive sanctions in case of law infringement.

The reality is that market conduct supervision is fragmented across Member States which are at different levels of development regarding consumer protection.

Effective enforcement and equally high level of consumer protection and redress across Europe are key preconditions for a successful single retail financial market and Capital Markets Union. Each Member State should have an adequate supervision to ensure that consumer protection legislation is properly enforced everywhere in the EU.

There is an urgent need to upgrade the quality of supervision and enforcement in the EU to achieve supervisory convergence. Developing a common European supervisory culture and EU level convergence on conduct-of-business supervision are therefore crucial.

Generally, consumer protection matters may be better dealt with at national level where the national supervisory authority has a deep understanding of the specificities of the local market and consequently the local customer demands and needs. A balanced way between both national and European level should be maintained.

Different views have been expressed by members on how to achieve a common

European supervisory culture and EU level convergence on conduct-of-business supervision. A very large majority of members believe that EIOPA has sufficient tools and powers on consumer protection and that EIOPA should be given the time to implement these tools before forming a judgement that changes are required.

A small minority of members believe that EIOPA needs additional tools to ensure the development, implementation and monitoring of minimum standards of conduct-of-business supervision at Member State level.

These members believe the following tools are instrumental in doing so:

- EIOPA needs the mandate to monitor the quality of the national supervisory practices by, inter alia, running random mystery shopping exercises and publishing their results.
- EIOPA should have firm sanctioning powers in case the national competent authorities do not implement the measures recommended by the EU supervisor aimed at improving the quality of market conduct supervision.

These members further believe that while responsibility for day-to-day supervision of financial institutions should essentially remain with national competent authorities which should have its own financial conduct authority (provided that their supervisory practices are harmonized as explained above), EIOPA should be granted direct supervisory and effective product intervention powers with regard to cross-border issues, as well as EU-wide negative trends and risky products/practices that are widespread across several Member States.

From a consumer protection point of view, it would be good to extend the powers of EIOPA to cover also motor insurance. This can be done by including a reference to the motor insurance directives in the scope of the EIOPA Regulation (Article 1).

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.

Please see the response to Q6 which covers this question.

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.

The IRSG agrees that the governance and accountability set-up of the ESA's may impact the incentives of the ESAs to use their tools. In this context, it would not be appropriate to adjust the tasks and powers of ESAs. The IRSG believes that an investigation of existing powers and regulatory provisions should be instigated, together with the extent to which use is made of these powers. Nevertheless, the most effective way to address barriers to EIOPA making full use of its powers is to change its governance and accountability (please refer to Q22 to 26 for responses on governance). Only when an appropriate governance and accountability framework is in place would it be possible to consider whether it would be appropriate to give EIOPA or any other European authority further tools and powers.

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.

The technical role of EIOPA in equivalence assessments is key and should be preserved. The existing regulations already give EIOPA the responsibility, subject to a Commission request, of in-depth assessments on equivalence issues.

A too broad requirement of monitoring regulatory developments in third countries could in practice be too onerous in terms of resources needed. In fact, European companies active in third countries will spot adverse developments and raise them with relevant European authorities. This would in practice be a more efficient trigger of EIOPA additional work.

Nevertheless, it may be valuable for the ESAs' advisory role to be strengthened. EIOPA could provide expertise in finding solutions for the financial sectors, in cooperation with the industry in specific areas, particularly Brexit (as stated on p. 2 of the consultation paper), which will bring new challenges to financial integration.

With respect to the ESA's participation and contributions in international organisations such as the IAIS, more transparency should be ensured on EIOPA's engagement mandates. EIOPA needs to develop its mandate consistent with a clear strategic direction from the European Commission and Parliament. In addition, EIOPA's role in coordinating the European participation should be strengthened. EIOPA needs to liaise and co-ordinate with the NCAs and, where appropriate, in consultation with stakeholders on its engagement in international organisations.

Only speaking with one voice at international fora the interest of EU insurance could be well defended. This is the case as regards the international capital standards (ICS) being developed at IAIS. Sometimes the split of opinions showed at IAIS working level has weakened the European position. Based on a clear mandate, EIOPA should represent the unified and leading voice at international fora, particularly at the IAIS.

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.

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.

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.

The IRSG believes that EIOPA's existing powers already allow it to play an important role in the discussions on internal models in the context of supervisory colleges. Also, given the only recent implementation of Solvency II, it is too early for EIOPA to be granted direct powers regarding the internal models approval and monitoring process.

In addition, EIOPA's role on fostering supervisory convergence also helps in the area of internal models. Efficient and effective supervision needs to encompass both, ongoing day to day supervision and internal model approval. This is crucial given, firstly, the importance of understanding the cross-border group and its risk profile in depth when approving its internal model and, secondly, that the approval and monitoring of internal models involves an assessment of a group's system of governance. Here one can note that local regulators are essential to the understanding of the specific local characteristics of the business and its risk profile. Before considering any increase in internal model powers for a European supervisory body, an appropriate overall supervisory framework would need to be established. Please refer to our responses on governance (Q22 to Q25) which describe in more detail the practical limitations EIOPA faces regarding use of more direct supervisory powers and proposed measures to address this.

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 IRSG believes that changes to the current governance set-up are warranted which would both support EIOPA in making appropriate use of its existing tools but also ensure it acts always within its mandate and in the interests of the European Union..

Governance could be improved, for example, by introducing one or more of the following changes:

- 1) An oversight Board whose role would be to ensure EIOPA is able to act with sufficient independence from its members but also does not exceed its mandate and considers wider impact of its actions. The oversight Board would be different from the existing BoS in terms of purpose, mandate and composition
- 2) the BoS having a Chair and vice-Chair selected from its membership, on a rotation basis;
- 3) more transparency on BoS agendas and decisions being enabled;
- 4) the stakeholder groups receiving a permanent seat in the BoS, as observers (please also refer to the response to Q24).
- 5) Qualified majority voting (ie weighted) at BoS

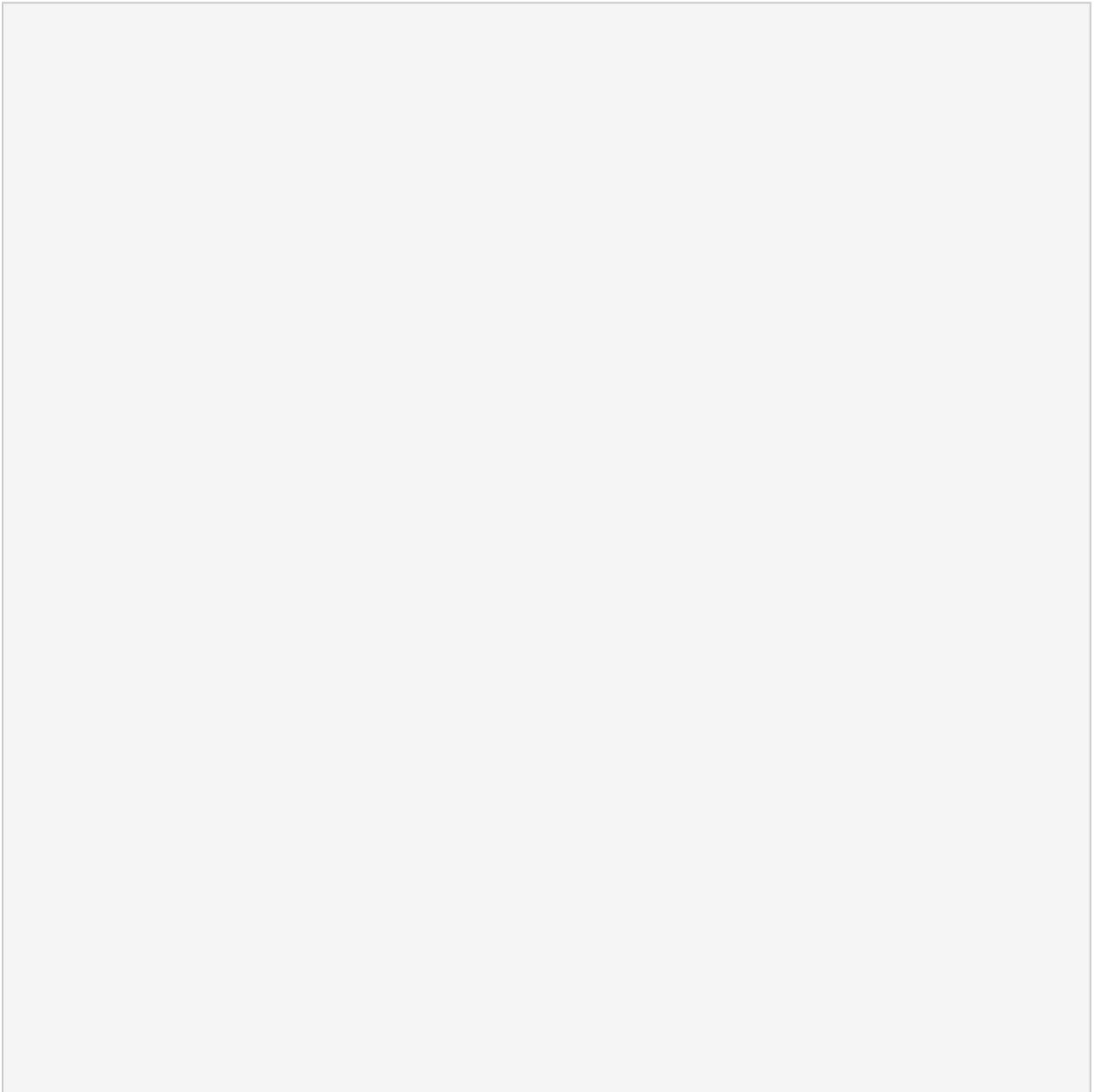
Question 23: To what extent do you think the current tasks and powers of the Management Board are appropriate and sufficient? What improvements could be made to ensure that the ESAs operate more effectively?

Please elaborate.

Due to the mirror membership between the BoS and the MB, interests between the two are fully aligned, which is not reflective of appropriate governance mechanisms. Within the current system, the Management Boards could focus more on policy content which could give greater focus to both boards (please also refer to the response to Q24).

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 overall governance of the ESAs should be reformed, rather than just making limited changes within the current system.

The ESAs should be enabled to operate on a more European basis however the effectiveness of introducing independent members on the Boards of Supervisors would depend on their numbers relative to the existing board, their background and voting powers. This would address both the need for independence and other governance issues such as the need for EIOPA to use its powers appropriate, for example in relation to guidelines, only if such a structure were implemented with the appropriate balance.

However, permanent members per se would not necessarily improve the work of the Boards. The effectiveness of permanent representatives on the ESAs' Boards in addressing governance gaps depends more on their independence, mandate, term of office, parallel positions and appointment procedure, than the mere fact they are permanent. In this context, the permanent representatives should be genuinely independent of national interests. This would address many of the issues raised in the questions posed in other sections of this consultation, in particular the effectiveness of the ESAs in achieving supervisory convergence and the willingness of the ESAs to use their enforcement powers.

Only an appropriately governed and accountable EU institution could be in a position to take on, at the EU level, additional supervisory powers where gaps have been identified.

Major changes to the current structure of the ESAs would face significant practical limitations at this stage, including;

- No substantial issue has been identified so far within the structure of the existing framework. The existing framework is still relatively new and consequently it is too early to form a judgement on its effectiveness (for example on the use of mediation powers).
- In particular, it would be unnecessarily disruptive to change the existing framework at this early stage and the upheaval could be expected to undermine the effectiveness of insurance supervision in the short term.
- In the current populist environment, where EU institutions are viewed with scepticism in some quarters, it could be politically difficult to strengthen them.
- The heterogeneity of insurance products and frameworks across national borders makes it more difficult to supervise other sectors than banking at EU level. Insurance supervision requires significant resources and national insight and expertise.

If these issues were addressed it is possible that an EU authority could - where this proves to be necessary after a longer review period - take on additional powers in an effective manner in the medium to long term, while continuing to co-ordinate extensively with local supervisors. Appropriate additional supervisory powers within a suitably governed and accountable EU authority would ensure genuine supervisory convergence across the EU and ensure promotion of the EU interest. While the SSM introduced a true cross-border banking supervisor, any changes on the insurance side would need to be carried out separately from banking prudential supervision, not least because of the inherent conflicts of interests (for example Article 127 of the Lisbon Treaty expressly forbids ECB supervision of insurance for this very reason). Please also refer to answers provided to Q27 and 28.

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.

Under the existing governance and accountability framework, the involvement of the EP and the current procedure for appointment of Chairpersons are satisfactory.

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.

EIOPA IRSG strongly supports the continued existence of the four ESA stakeholder groups (ESMA, EBA, EIOPA IRSG and EIOPA OPSG). These senior level groups, which do not have any special legal status but do serve as a structured and regular dialogue between senior ESA staff and boards and a diverse group of stakeholders, are useful mediums for dialogue. The deliberate diversity of the groups, which are comprised of a mix of consumer, academic, industry, market infrastructure, and others is recognised as both a strength and a weakness. Memberships of the groups are as individuals, not as representatives of one or other bodies, be they consumer, academic, industry or others. Since many of the participants are individuals with no institutional backing, they inevitably will not have the data research resources frequently possessed by trade groups. Since many stakeholder group views on technical consultations require specialist knowledge, in some cases this means that individuals without technical knowledge are asked to provide views where they do not have expertise. However, the independence of these individuals is a valued institutional balance from a governance standpoint as they can ensure a broad representation of perspectives with the group. From a transparency perspective, agendas and minutes of all of the stakeholder meetings are readily available on each of the four websites.

IRSG also recommends that participants in the stakeholder groups strive to be as visible as possible on issues where they disagree with positions of ESA management. The independent voice of the stakeholder groups is an important part of their governance role, in the spirit of overall European Union objectives on healthy debates on key policy issues.

In practice, we note that the IRSG has been heavily involved in responding to EIOPA consultations and advice, often in advance of public consultations. Furthermore, the IRSG mandate is broader than responding to consultations as set out in Article 37(6) of the EIOPA regulation which states that the IRSG may submit opinions and advice to EIOPA on any issues related to its tasks. However, it remains unclear if their proposals reach the BoS and how they are addressed. More transparency on how the BoS accesses to the work and views of the stakeholder groups is needed. In particular, there should be more opportunities for contributions from market participants in the Level 3 drafting process, improving transparency of how the ESAs deal with input from stakeholders, and strengthening the role of the stakeholder groups and the weight of its input.

One way to address this in the current structure would be by offering the stakeholder groups a permanent seat in the BoS, as observers, with explicit opportunities to make comments and share views.

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.

[Please note that we have provide a single response to questions 27 and 28 as the questions are closely related, but in order not to breach the limit on characters provided for each question, we have split the single response over the 2 questions]

There are two elements to these questions which we have responded to
1) separate authorities for insurance and banking prudential supervision and
2) a separate dedicated conduct supervisor.
These elements are considered separately below.

INSURANCE AND BANKING SUPERVISION

The current system of supervision has overall worked well over recent years, not least due to the presence of distinct supervisory authorities with very specialised expertise. Looking ahead, it is key that the ESAs preserve appropriate sectorial expertise, in particular on prudential matters. A very large majority of members are of the view that it is crucial that the European supervisor in charge of prudential insurance and occupational pensions' issues has deep knowledge, understanding and expertise of the insurance industry and that this can only be achieved by maintaining EIOPA as a stand-alone supervisor.

Such members believe that EBA and EIOPA should remain as standalone authorities. Seeking to achieve maximum synergies between the EBA and EIOPA may lead to too much prominence of banking considerations which tend to dominate when insurance and banking supervision is combined. Furthermore, given the limited cross-over between banking and insurance, those synergies will be limited in practice, and can be better addressed via dedicated Joint Committees. Prudential banking regulation cannot be replicated in the insurance regulation.

These members are of the view that the differences between banking and insurance are significant with regards to many areas including time horizon, management culture, purpose, usage of balance sheet, leverage, financing and ability to withstand short-term disturbances among others. Banks and insurance companies, despite not operating in silos, have significant differences arising from their business models. Their basic business models and as a consequence their risk culture and risk taking behaviour are sufficiently different. Banks are asset driven investors whereas insurance undertakings are liability driven investors with the consequence that also their individual investment, planning and operating horizons are different. Even an identical investment is changing the risk profile of a bank in a different manner to how it is changing the risk profile of an insurance

undertaking. This very important difference is key for prudential supervision and needs to be perfectly understood by supervisors of the individual entities.

Thus, the regulatory oversight must be based on the systems they are meant to supervise, not simplifications such as a similarity in product offerings. There are two levels of regulations; one that deals with the product and consumer dimensions, and one that is concerned with the industry and its entities. While the former (products and consumers) will most likely benefit from the same regulatory regime, the latter must be industry sector specific. Such members point out that an argument used in favour of combined insurance and banking prudential supervision is that many financial conglomerates have insurance and banking arms. However, we note that this is not the dominant business model in the insurance industry and it would be wrong to apply an unsuitable supervisory model for the wider insurance industry in order to address the needs to one element of the sector. Furthermore, separate banking and insurance supervisors could still co-operate effectively on such institutions.

Such members further note that it is quite possible that systemic risk is increased by strongly aligning banking and insurance supervision, despite both having distinctive and materially different business models. Such alignment would come on top of already existing, other "convergences" such as IFRS accounting.

A small minority of members believe that EBA and EIOPA should be combined into a single authority. Such members are of the view that it is perfectly possible to merge the authorities and to keep separate divisions dealing with the particularities of banks and insurance undertakings (and pension funds) and note that financial institutions do not operate in silo's. This view is that there are many issues which are similar in both sectors and there is no obvious reason why these issues should then be treated by separate authorities with the risk of further complication. This would reflect a tendency at EU level to reflect developments at member state level. Such members stress the need for a supervisory regime whereby attention is paid to the difference between the banking and insurance business models which can best be organized by having separate divisions within the merged authority dealing with insurance and banking specificities.

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?

[Note this is a continuation of the response to Q27]

SEPARATE CONDUCT AND PRUDENTIAL SUPERVISION (“Twin Peaks”)

Different members of the IRSG have expressed different views on this topic, with a very large majority of members supporting EIOPA’s responsibilities of prudential supervision and consumer protection remaining under one hat, in order to ensure the sectorial expertise is preserved appropriately.

Members supporting this view believe that both insurance supervision and consumer protection require strong insurance expertise and understanding and would therefore advocate for a continuation of these two approaches under a single insurance arm, with strong expertise.

Members supporting this view note that consumer protection regulation should be designed with appropriate insurance expertise and input and a “one size fits all” solution for insurance, asset management and banking should be avoided as it is at the detriment of policyholders and consumers generally.

This view is further supported by the argument that the big structural changes required for a separation of powers between new or existing entities would bind significant numbers of resources and expertise for administrative tasks and delay progress on supervisory convergence further. Members fear that the change would come prematurely and at a time where other technical areas that will require EIOPA’s attention may suffer as a result of it.

The small minority view within the IRSG is that supervisory convergence in conduct-of-business supervision would be better achieved by establishing an EU authority for financial consumer protection. While these members appreciate the work being carried out by the ESAs and actively contribute to their work, their view is that as the ESAs deal with both prudential and conduct-of-business supervision, the main priority and resources are allocated to the prudential oversight.

Therefore, these members see the need to set up a separate EU supervisor that would focus on defending consumer interests in financial services. In their view one of the main tasks of the new authority should be to achieve supervisory convergence and include: ensuring the development, implementation and monitoring of minimum standards of conduct-of-business supervision at Member State level.

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)?

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)?

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.

A large, empty rectangular box with a thin grey border, intended for the respondent to provide their answer to the question above.

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.

A large, empty rectangular box with a thin grey border, intended for the respondent to provide their answer to Question 31.

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.

The IRSG would like to make the following general comments

- EIOPA has been successful in increasing supervisory knowledge and convergence across the EU and the IRSG supports the ongoing EIOPA work on aligning supervisory cultures across member states. The extent to which EIOPA can achieve true supervisory convergence is limited by its current governance structure.
- A very large majority of members believe that it is essential that the ESAs preserve the appropriate sectoral expertise in respect of insurance and banking supervision, which can only be achieved by maintaining a separate supervisor. A small minority of members believe that insurance and banking supervision could be combined.
- The IRSG has different views regarding EIOPA's responsibilities in respect of both prudential supervision and consumer protection with a very large majority of members believing the combined conduct and prudential framework should continue and a small minority advocating for a dedicated conduct supervisor.
- The governance of EIOPA could be enhanced by introducing more independence, separation of responsibilities and transparency into the current framework. In the short to medium term there are significant practical challenges to EIOPA assuming more powers. In particular, permanent members of the EIOPA Boards would need to be genuinely independent of national interests in order to improve the work of the Boards and deliver these outcomes. More powers should be assumed in the medium to long term only after limitations to the existing framework have been addressed.
- There is an increasing trend for EIOPA to issue instruments, which although non-binding can have legal implications which are unclear. The development of excessive and unnecessary instruments should be avoided.
- EIOPA has sufficient tools and powers to achieve a degree of supervisory convergence. True supervisory convergence will only be achieved if a genuine European authority is in place with improved governance and accountability which delivers supervisory outcomes in the EU interest as a whole. It would limit the efficiency and effectiveness of supervision to separate powers for ongoing supervision and internal model approval monitoring and it is not practical at this stage. There is a small minority view within the group that EIOPA should assume more powers in respect of consumer protection.
- EIOPA's role in equivalence assessments should be preserved. EIOPA should not have a broad requirement in monitoring or advising regulatory developments in third countries in general. However, its advisory role here could be strengthened in specific cases in a targeted manner (e.g. Brexit) EIOPA should be a strong voice in representing Europe in international developments and it should be given strategic direction from the European Commission and Parliament in developing the European position.
- The EIOPA IRSG strongly supports the continued existence of the ESA stakeholder groups. The IRSG's balanced composition, independent membership and transparent approach provides an important part of the governance of the ESAs in the spirit of the overall European Union objectives.

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:

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)

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