

AMICE Response to European Commission's public consultation on the operations of the European Supervisory Authorities

I. Tasks and powers of the ESAs

A. Optimising existing tasks and powers

I. A. 1. Supervisory convergence

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.*

AMICE represents mutual and cooperative insurers across Europe. Mutual and cooperative insurers have a market share of more than 30% of the European insurance sector, with more than €420 billion in premiums written and over 410 million policyholders across Europe.

With this in mind, our experience with ESAs is predominantly focused on EIOPA, and the response to this consultation will therefore be limited to our knowledge of and interaction with EIOPA, and that of our members. It is very clear to us that the divergent nature of insurance and banking should be reflected in the maintenance of separate ESAs, with EIOPA remaining as a distinct supervisory body.

Since EIOPA's establishment in 2011, the majority of interaction with it has been in the development of Solvency II, the new European regulatory infrastructure for the insurance industry. Within that context, Solvency II has only been fully operational since the start of 2016 and therefore insurers and reinsurers across Europe are still in the early phase of fully understanding the implications of the new regulatory system and the interaction with EIOPA as a consequence. Nevertheless, we are already seeing areas of divergence emerging from different national regulators resulting in a move away from a common supervisory culture through goldplating measures, despite the stated aims of both Solvency II and the Capital Markets Union. At the same time, we are not seeing the application of the proportionality principle which is embodied in Solvency II. We do not believe, however, that this is a result of EIOPA's powers being weak. Rather, we would encourage EIOPA to fully use and apply its existing powers; only after a sufficient period of time that the full existing powers have been used would it be appropriate to review whether they require enhancements.

We welcome EIOPA's development of a supervisory handbook, although the content of this is not made available to industry, which would assist in providing transparency on best practice and supervisory convergence. EIOPA's role as a coordinator rather than a "second supervisor" is of paramount importance for clarity and consistency.

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.

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.

No comment.

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.*

Please see our earlier comment on using existing powers to their fullest extent. It would be counterproductive to introduce new tools for EIOPA at a point at which it is underutilising the existing kit. It is also worth noting that there currently is a move towards simplification rather than complex enhancement within the CMU programme which would imply that introducing new tools is not a preferred route.

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.*

No comment.

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

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.*

Although EIOPA's ability to issue guidelines when necessary is to be welcomed, the process needs to be improved, for example to ensure that guidelines are not produced before legal texts have been completed, such as with POG guidelines being issued in advance of IDD completion. It is also important that the option of issuing guidelines is neither overly used in terms of volume, nor in terms of the formal decision-making process. In the case of non-binding guidelines, these should be limited to reduce the potential divergence of Member States' regulatory systems and to avoid

encouraging goldplating, nor should they be used in place of technical standards.

Where guidelines are issued, there should be the option for a right of appeal by stakeholders in advance of them being published, and this Ultimately, EIOPA recommendations should be given on the basis of a mandate from the European Commission, and not by delivering opinions to the European Parliament, the Council and the Commission on its own initiative, to emphasise EIOPA's accountability.

I. A. 3. Consumer and investor protection

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.*

EIOPA's current tasks and powers relating to consumer protection are appropriate. EIOPA has engaged in extensive work in the field of consumer protection, including its consumer trends report, work on IDD delegated acts, financial literacy and education, its workstream on big data and automated financial advice.

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.*

EIOPA is already engaging in the area of big data, where there is a need to ensure a level playing field between organisations using big data processes and those not doing so, and between insurers and alternative new entrants using big data processes. It is important to ensure that EU measures are also appropriate for internal market purposes.

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

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.*

EIOPA's powers under Article 17 have not been fully used so it is difficult to assess whether there is a need or not. These should therefore not be amended until the current powers have been properly tested.

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

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.*

No comment.

I. A. 6. Access to data

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.*

Under Solvency II, industry is now providing EIOPA with extensive and detailed information under the reporting requirements, though this is still a new requirement and therefore there is very limited experience of EIOPA's use of the data. A separate exercise to assess the appropriateness of the data already required should be undertaken to streamline and clarify the requirements and processes.

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.*

A full assessment of the Solvency II data should be undertaken before consideration is given to the prospect of additional powers.

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

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.*

An assessment of the outputs from the current reporting requirements should be undertaken to highlight where there are overlaps and duplications. This should also focus on applying proportionality in respect of reporting, to reduce and streamline the requirements where appropriate, and to ensure that there is a harmonised approach across different national regulators.

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.*

Please see earlier comments relating to the concerns about divergence at national level through guidelines and recommendations, and the lack of experience of the Solvency II regime at this point in time.

I. A. 8. Financial reporting

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.

No comment.

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.

The current endorsement process is undertaken by the European Financial Reporting Advisory Group (EFRAG). In the light of the Maystadt Report, there does not appear to be a case for amending the endorsement process or the mandate of EFRAG.

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

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

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.

Group supervisors have the closest contact and exchange with regulated entities and therefore the greatest insights into the appropriateness of internal models. This power therefore should remain at the national regulator level. If there is a need for training for national supervisors to properly execute this requirement, that should be provided by EIOPA.

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

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.

No comment.

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

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.

No comment.

C. Direct supervisory powers in certain segments of capital markets

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.*

No comment.

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.

No comment.

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.*

No comment.

II. Governance of the ESAs

A. Assessing the effectiveness of the ESAs governance

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?*

It is important that the Board of Supervisors focuses on strategic issues rather than on regulatory technical matters, and that decision-making is more transparent.

EIOPA does not have any external oversight of its functions and operations under its current governance arrangements. The accountability and transparency of Board of Supervisors meetings should be increased, and the introduction of an independent oversight board would improve governance and accountability.

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.*

No comment.

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.*

No comment.

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.*

No comment.

B. Stakeholder groups

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.*

Within EIOPA, the Insurance and Reinsurance Stakeholder Group (IRSG) and Occupational Pensions Stakeholder Group (OPSG) are a welcome interaction between external experts and EIOPA. We have concerns that the appointment process lacks transparency, and that the composition of the OPSG does not reflect its remit, which in reality has extended beyond occupational pensions. We would encourage EIOPA to issue its responses to stakeholder group representations and opinions, and demonstrate where stakeholder group proposals have been incorporated into EIOPA's decisions.

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.*

The current model of insurance supervision through EIOPA as a separate ESA is appropriate and should remain. Insurance is significantly different from the banking and fund management sectors, so a separate ESA ensures that there is relevant expertise within the body to fulfil its remit. The experience EIOPA has built up in the development and implementation of Solvency II is being added to by other regulatory developments such as IDD. It is important that there is stability at ESA level as all these areas of change are being introduced, and that the knowledge of the business models within the sector and expertise in regulation of the sector is not jeopardised by unnecessary change.

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?

There would be no merit in changing EIOPA's remit in the way indicated in this question. EIOPA should remain as a standalone authority which understands the business model and consumer protection requirements associated with it.

IV. Funding of the ESAs

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)?

EIOPA does not directly regulate the industry and therefore a fully funded system would be an inappropriate framework which could be deemed to be weakened in terms of accountability.

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)?

The current funding model effectively includes an indirect industry element through local requirements at Member State level for industry to fund the national regulators. Therefore to all intents and purposes this system already exists, albeit indirectly.

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.

No comment.

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.*

No comment.

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.*

No comment.