

Questions and proposed answers

A. Optimising existing tasks and powers

Supervisory convergence

1. In general, how do you assess the work carried out by the ESAs so far in promoting a common supervisory culture and fostering supervisory convergence, and how could any weaknesses be addressed? Please elaborate on your response and provide examples.

The AAE has significant interaction with EIOPA, including bi-annual meetings of the AAE Board with EIOPA Management as well as meetings at operational level e.g. regarding IORP Stress Test specifications. AAE currently has 2 nominees amongst the membership of both EIOPA Stakeholder Groups. The AAE responses to this consultation relate to EIOPA only.

AAE considers that the work done to date by EIOPA in relation to the development and implementation of Solvency II is driving convergence in the approach to supervision of (re)insurance undertakings in the EU. There is less convergence in the supervision of pensions, due to the significant differences in pension vehicles and cultures in Member States and the fact that the IORP Directive adopted a minimum harmonization approach. The recent amendments to the Directive, particularly in relation to governance and risk assessment, which must be transposed into national legislation by January 2019 should lead to some convergence in supervisory culture in relation to pensions.

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;
- b) to what extent 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 (a) and (b) and, importantly, explain how any weaknesses could be addressed.

[I can't say much on this – I am aware peer reviews are undertaken on pensions supervisors e.g. recent one on statements of investment policy principles but I don't think they have had a huge impact on convergence?](#)

[Cross border mediation and colleges are insurance related – any comments?](#)

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.

[Nothing comes to mind](#)

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.

[Insurance issue? The new IORP Directive provides that EIOPA could have a mediation role in cross border IORPs but not yet in place.](#)

Non-binding measures: guidelines and recommendations

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.

[Can we comment?](#)

Consumer and investor protection

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.

[Article 9 of the EIOPA Regulations requires EIOPA to take a leading role in consumer protection including](#)
[\(a\) collecting, analysing and reporting on consumer trends;](#)
[\(b\) reviewing and coordinating financial literacy and education initiatives by the competent authorities;](#)

[\(c\) developing training standards for the industry; and](#)

[\(d\) contributing to the development of common disclosure rules.](#)

[Do we think they are achieving this?](#)

[EIOPA also have powers to issue warnings and to prohibit or restrict certain activities – do they use these powers enough or at all?](#)

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.

[Do we have any comments here?](#)

Enforcement powers – breach of EU law investigations

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.

[I doubt if we can comment here](#)

International aspects of the ESAs' work

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.

[Comments?](#)

Access to data

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.

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.

[Any comments on powers to obtain data from undertakings/IORPs \(directly or via NCAs?\)](#)

Powers in relation to reporting: Streamlining requirements and improving the framework for reporting requirements

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.

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.

[Comments?](#)

Financial reporting

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.

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

[I doubt if we can comment here](#)

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

Approval of internal models under Solvency II

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.

[Insurance Committee/S II project team](#)

~~Mitigating disagreements regarding own funds requirements for banks~~

~~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.~~

General question on prudential tasks and powers in relation to insurers and banks

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.

[Note there is no reference to pensions. Any comments re insurance?](#)

C. Direct supervisory powers in certain segments of capital markets

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?

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

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.

Governance of the ESAs

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.

[We are not in a position to comment](#)

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.

[We are not in a position to comment](#)

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.

[Although we do not know if, or to what extent, problems have arisen under the current structure where the BoS, which is formed of representatives of the NCAs, were unable to agree a position due to differing national perspectives \(notwithstanding the provisions of Article 42\), we consider that there would be merit in having independent, permanent voting members of EIOPA's Board as this might aid the development of agreed positions and would also conform with good governance generally. \[An extension of the inclusion of an independent member to the Management Board would also seem desirable. – not sure about this, given that the tasks of the Management Board are primarily internal operations.\]](#)

25. To what extent do you think would there be merit in strengthening the role and mandate of the Chairperson? Please explain in what areas and how the role of the Chairperson would have to evolve to enable them to work more effectively? For example, should the Chairperson be delegated powers to make certain decisions without having them subsequently approved by the Board of Supervisors in the context of work carried out in the ESAs Joint Committee? Or should the nomination procedure change? What would be the advantages or disadvantages? Please elaborate.

[The Regulations \(48 to 50\) do not provide much detail in relation to the duties of the Chairperson, other than preparing the work of the BoS and chairing the meetings of the Board and the Management Board.](#)

[We consider that it would be appropriate to delegate powers to the Chairperson where this would aid the efficiency of EIOPA.](#)

[We do not see any need to change the way in which the Chairperson is appointed.](#)

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.

Given the requirements set out in Regulation 37 in relation to the membership of the Stakeholder Groups (SGs), it is to be expected that the opinions and advice submitted to EIOPA may not contain an agreed position, leading to the perception that the SGs do not make a significant impact. However, it is difficult to see what changes can reasonably be made to the regulations in relation to the composition of the SGs without weakening the diversity which is an essential element. The second SGs whose mandate concluded in 2016 made a number of suggestions in relation to the operation of the SGs [\[link\]](#) which the AAE would support.

Adapting the supervisory architecture to challenges in the market place

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.

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?

[AAE accepts that it is appropriate and desirable for the ESAs to exploit synergies in their operation, and this can be achieved through the Joint Committee. The extent of the co-operation between EIOPA and EBA could be expanded if thought appropriate but AAE is of the view that it is essential to have separate Authorities to oversee banking activities and insurance and pensions, as the requirements are fundamentally different.](#)

Funding of the ESAs

29. The current ESAs funding arrangement is based on public contributions: a) should they be changed to a system fully funded by the industry; b) should they be changed to a system partly funded by industry? Please elaborate on each of (a) and (b) and indicate the advantages and disadvantages of each option.

[Personal view – should switch to \(a\)](#)

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"); or 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.

[Not sure – but market share by sector seems reasonable. I would think it fair to charge more to entities which sell complex products than those who sell plain vanilla but not sure how easy this would be.](#)

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.

[Seems to be the logical approach.](#)

General 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.

[Comments?](#)