



REVIEW OF THE EUROPEAN SUPERVISORY AUTHORITIES

AEIP Position Paper on the Proposal of the European
Commission for a Regulation on the Review of the ESAs

16 May 2018

European Association of Paritarian Institutions - AEIP

AEIP Position Paper on the Proposal of the European Commission for a Regulation on the Review of the ESAs

Brussels, 16 May 2018

The European Association of Paritarian Institutions – AEIP, founded in 1996, is a Brussels-based advocacy organization, representing Social Protection Institutions established and managed by employers and trade unions on a joint basis within the framework of collective agreements.

In the context of social protection, paritarism is a type of self-organization of social relationships which on the basis of equal negotiations, brings about agreements which are equally binding on both employers and employees. This kind of self-organization goes from the paritarism of negotiation to the paritarism of management and results in various types of agreements, from adhesion to a particular form of cover to the creation of a paritarian institution.

The Association has 20 Associate and Affiliate members - all leading large and medium-sized Social Protection Institutions, from 12 European countries, as well as 13 Task Force Members from 3 European countries. All AEIP members are not-for-profit organizations.

In particular, AEIP deals – through dedicated working groups – with EU coordinated pension schemes, pension funds, healthcare, unemployment and provident schemes, paid holiday and health & safety at work schemes. Complementary to their role as non-for-profit social protection providers, AEIP members are also long-term institutional investors.

AEIP represents its members' values and interests at the level of both European and international institutions.

For more information: www.aeip.net

Background information

On 20 September 2017, the European Commission published its initiative [COM (2017)536] making a proposal for a Regulation which would amend the existing Regulations establishing the European Supervisory Authorities (ESAs). After 6 years of ESAs operation, the Commission has identified three aspects in relation to their function, with the aim of addressing them in the near future. According to its rationale, the ESAs need to extend their mandate's scope and re-frame their powers with the objective to enhance the existing supervision of the EU financial and capital markets, in particular with regard to cross-border activities and entities. At the same time, the Commission deemed necessary to review the governance structure of ESAs as a means to ensure that their powers would remain adequate for the effective performance of their function. Finally, the EU's executive branch referred to ESA's funding, as a way to ensure sufficiency of resources and proportionality of costs among the contributing parties.

Key points in AEIP's position

- AEIP's members are paritarian institutions of social protection in the field of pensions and health care insurance and as such are functioning with a defined social purpose. They fall under the provisions of national social and labour law (SLL) and are subject to national supervision. The EC and EIOPA should acknowledge their social function and the triangular relationship between the employee, the employer and the institution (IORPs or provident institutions). We think that the opportunity for supervisory convergence in this specific context is rather limited - convergence of supervisory practices is different in a framework of minimum harmonisation. AEIP underlines that paritarian funds should not be treated as purely financial service providers even though they are active on financial markets.
- AEIP strongly believes that National Competent Authorities (NCAs) are best placed to judge the risks, vulnerabilities, threats and weaknesses of the system given the local labour market, the social and labour legislation as well as the local social environment, and to take any action required. Therefore, we strongly call for a status quo in the tasks and powers of EIOPA being the most relevant supervisory authority for our members. NCAs should stay independent in deciding on the supervisory policy for national paritarian institutions - as pension funds or healthcare insurers - which remain under the national SLL.
- A right balance needs to be struck between maintaining the NCAs' current roles and enhancing ESMA's role in mainly creating more supervisory convergence.
- AEIP considers that a system of checks and balances should be in place. In our opinion, further efforts are needed with regard to cost/benefit analyses, which could show the value added of ESAs' work. We see an important role for the Commission, the Council and the European Parliament in the supervision of the ESAs, in order to check whether their operations align with the set ambitions.

- AEIP believes that shifting (entirely or partly) the funding of the ESAs to the industry is not the right way forward. We would like to stress that supervision is a public task and should in our opinion be kept as such.

Regarding ESA Powers

EC Impact Assessment and the Explanatory Memorandum of the EC Proposal for a Regulation on the Review of the ESAs [COM (2017) 536 final]

- Unclear definition of ESA powers, leading to a risk of supervisory gaps, for example limited access to information when investigating alleged breaches of EU law.
- Limited ESA powers, leading to unbalanced supervisory competences between the national and EU levels, whereas power allocation to national competent authorities is growing through increased cross-border financial services and recent financial services legislation. National authorities lack capacities, or differ widely in administrative practices, to detect, monitor and assess problems in other Member States. This leads to inefficient and insufficient cross-border supervision, for example of cross-border data reporting service providers or cross-border marketing of investment funds.

Impact Assessment, pp. 24-30; Explanatory Memorandum, p. 3, pp. 18-21

Relevant articles in the ESA Regulations which are subject to amendment: 16, 21a, 29a, 30, 31

AEIP strongly believes that NCAs are best placed to judge the risks, vulnerabilities, threats and weaknesses of the system given the local labour market, the social and labour legislation as well as the local social environment, and to take any action required. Therefore, we strongly call for a status quo in the tasks and powers of ESAs.

AEIP's members fall under the provisions of national Social and Labour Law (SLL) and are subject to national supervision. In our opinion, the NCAs should stay independent in deciding on the supervisory policy for national paritarian institutions - as pension funds or healthcare insurers.

The IORP Directive only provides for a minimum harmonization of the activities and supervision of IORPs and this feature has been maintained in the recent revision of the Directive. The EU legislator considered that IORPs are imbedded in SLL and in the labour markets of the competent MSs, which are different across the EU. Therefore, we believe that IORPs cannot be compared to financial institutions and that their social purpose and large diversity puts limits to supervisory convergence. In the same way, the supervision of group health insurance is also imbedded in the national SLLs as this insurance market is strongly heterogeneous and needs a national approach.

We stress that convergence of supervisory practices is different in a framework of minimum harmonisation. We support a common supervisory culture in a sense of coordination and share of best practices, but not a supervisory convergence that leads to "a one-size-fits-all" supervisory approach.

AEIP notes a small number of cross-border issues and believes that the current tools available to EIOPA are appropriate. We agree that these tools can be useful to come to best practices and guidance, but we want to underline that any guidelines and recommendations should remain non-binding measures.

For cross border issues we believe the IORP II Directive provides an adequate framework and sufficient rules. In our opinion, EIOPA can play an important role in knowledge-sharing between stakeholders.

With regard to capital markets, we consider that the ESAs can and should play a greater role in achieving stable and transparent financial markets. Paritarian institutions such as pension funds use financial markets to achieve a good return on investment for better pensions for their beneficiaries. A right balance needs to be struck between maintaining the NCAs' current roles and enhancing ESMA's role in mainly creating more supervisory convergence. For capital markets, we think that there is strength in combining both the national and European factors, rather than replacing the one by the other.

Regarding ESA governance

EC Impact Assessment and the Explanatory Memorandum of the EC Proposal for a Regulation on the Review of the ESAs [COM (2017) 536 final]

- Lack of an EU/common perspective in decision-making, as decisions are taken exclusively by the national competent authorities (on the Board of Supervisors), who appoint the chairperson and maintain all formal powers. According to the IA and the Explanatory Memorandum, the lack of powers (and voting rights) of the Management Board and the chairperson leads to an inability to promote supervisory convergence effectively.

Impact Assessment, pp. 44-51; Explanatory Memorandum, pp. 22-24

Relevant articles in the ESA Regulations which are subject to amendment: 40, 43, 45, 47

AEIP fully agrees with an approach aimed at further strengthening the ESAs democratic legitimacy and accountability. This question is not only relevant for the achievement of their objectives, but also for evaluating how they operate and at what costs. AEIP believes that further efforts are needed with regard to cost/benefit analyses, which could show the value added of their work. A system of checks and balances should therefore be in place.

In this regard, we see an important role for the Commission, the Council and the European Parliament in the supervision of the ESAs, in order to check whether their operations align with the set ambitions. This control will also help in balancing the ambitions of the ESAs with the costs of their operations.

The governance structure of EIOPA needs to ensure sufficient knowledge and expertise about specificities of occupational plans or social protection insurance plans (healthcare, death or disability).

Finally, AEIP urges for caution in the process of developing EIOPA's own initiative reports on wider policy issues. We believe a clarification is needed in areas where the drawing line between policy-making and supervision is vague.

Regarding the funding of the ESAs

EC Impact Assessment and the Explanatory Memorandum of the EC Proposal for a Regulation on the Review of the ESAs [COM (2017) 536 final]

- The current budget is insufficient to meet the tasks and objectives of the ESAs.
- The contributions of national competent authorities are unrelated to the size of their local financial sector so that some national authorities are paying for financial sectors in other countries.

Impact Assessment, pp. 66-77; Explanatory Memorandum, pp. 24- 25

Relevant articles in the ESA Regulations which are subject to amendment: 62

AEIP believes that shifting (entirely or partly) the funding of the ESAs to the industry is not the right way forward. Supervisory budgets need to be subject to adequate checks and balances, irrespective of how they are financed. We consider that the present EU budgetary procedure provides for ample checks and balances in this respect.

In addition, we note that within the institutional framework of the EU, the ESAs depend on the Commission, and their budget is part of the budget of the Commission, within the EU budget. According to the Treaty the EU budget is financed by own resources. Adding new own resources would require a change of the own resources regulation by the procedure foreseen in the Treaty for this. In our understanding only very limited exceptions exist.

If any exception has to be provided, this should not go beyond those retributions for which individual institutions or companies are charged in a measure commensurate to tasks and costs that can be attributed to individualized benefits (for instance the granting of a license) they get from such an agency. The level of such retributions should be proportionate to the (incremental) costs made by an agency. However, costs for checking, costs for advice to the Commission, costs for own initiative reports etc. have to be funded through the EU budget.

Even on a more practical level, AEIP notes that the hypothetical financing of general activities would require objective grounds for distributing the costs over different financial institutions, which will be a complicated issue to solve.

Previous AEIP input

AEIP Response to the Consultation on the Review of the European System of Financial Supervision (from 25th July 2013, available [here](#))

AEIP answer to the Public consultation on the operations of the European Supervisory Authorities (from March, 2017, available [here](#))

AEIP input to the feedback request of the European Commission (from January 2018, available [here](#))