

POSITION PAPER

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SUBJECT: Review of the European Supervisory Authorities

Key messages

Dutch IORPs support the European Commission's goal of building a true Capital Markets Union. This will enable us as institutional investors to invest in the long term in order to increase our returns for the benefit of retirees and to allow for lower premia. Diversification and better investment opportunities with a focus on sustainability are of utmost importance for our funded retirement model. At the same time, we keep the costs of our activities as low as possible for the benefit of our members. To this end, we need robust supervision and transparent, well-functioning financial markets in order to be able to operate effectively and efficiently. The following key messages summarise our views on the proposals of the European Commission concerning the review of the European Supervisory Authorities (ESAs):

1. IORPs have two perspectives when it comes to supervision

It is important to note that IORPs have two perspectives when it comes to supervision:

a. IORPs are social institutions

IORPs are subject to national social and labour law and thus national supervision. As social institutions IORPs are organised very differently from Member State to Member State.¹ In this context, from a European perspective, EIOPA is the relevant authority.

b. IORPs are active on financial markets

Pension funds are active on financial markets in order to provide a good retirement income for beneficiaries. In that respect, well-functioning capital markets across the EU are important. We therefore welcome

¹ See Recital 5 IORP II Directive.

- supervisory convergence and the consistent application of the EU Single Rule Book. In this context ESMA is the relevant authority.

2. Form follows function

We agree with the position of the Dutch government that with regard to changes of the governance of the ESAs, form should follow function.² Thus, according to us, changes in the governance structure are only needed, if an ESA gets more competences (which is only the case for ESMA).

3. Proper checks and balances are needed with regard to the powers of the ESAs

National Competent Authorities ('NCAs') should be independent when deciding on supervisory policy for national IORPs based on national labour law and social conventions. The status quo of the powers and mandates of EIOPA concerning IORPs should be kept as described in the IORP II directive. With regard to capital markets, ESAs can and should play a far greater role. Nonetheless, we feel that also in this respect, the added value of NCAs needs to be preserved. A right balance between maintaining the NCAs' current roles on the one hand and enhancing ESMA's role in mainly creating more supervisory convergence on the other hand needs to be struck. For capital markets, we think that combining both the national and European factors would be better than replacing one by the other.

4. Sound, solid and transparent governance

We call for a sound, solid and transparent governance structure of both EIOPA and ESMA. As for EIOPA, NCAs should keep a major role. Board members of ESAs need to have an in-depth knowledge of occupational pensions.

5. Supervising the supervisory authorities

We call for an active role of the European Parliament and the European Commission in order to safeguard sufficient democratic legitimacy and accountability of European supervision.

² See: <https://www.rijksoverheid.nl/documenten/kamerstukken/2017/10/27/fiche-1-bij-kamerbrief-over-informatievoorziening-nieuwe-commissievoorstellen>

- **6. ESAs should not be funded by the sector**

We are against industry funding of the ESAs as it should be commensurate to the respective supervisory tasks at European level. As IORPs are supervised at national level we see no need for additional financing of EIOPA by the pension sector. More in general, we do not think there will be a payment mechanism that could objectively be justified in terms of the right sector participants paying the right amount of (indirect) supervision costs. Large sectors such as the Dutch pension sector, will most likely end up paying a disproportionate amount – costs that ultimately will have to be borne by beneficiaries.

- **7. Publication of individual data from stress tests has little added value**

Comparing stress test results between individual IORPs from different Member States has little added value, since the results should be interpreted within the national supervisory framework differing greatly from country to country.

- **8. Data collection should follow a one stop shop principle**

Reducing and streamlining reporting requirements should be high on the priority list. Simplification should be achieved where possible and an overarching assessment of reporting burden should be made. Data, including those for statistical purposes, should only be collected by NCAs.

- **9. Cost-benefit analysis should be the rule**

We welcome that the ESA Review Package aligns with the Better Regulation Agenda. Implementing and carrying out cost-benefit-analyses should always be the driving force.

- **10. Convergence and proper checks and balances need continuous dialogue with stakeholders**

A continuous dialogue between supervisors and supervised entities should be at the core of efficient and effective supervision. In order to make proper use of the (technical) expertise of market participants, we encourage the ESAs to engage in a continuous dialogue with market participants about the impact of their regulatory work. This can be done through a wider Stakeholder Group participation or on a bilateral basis.

- **11. ESRB: bank bias needs to be avoided**

There should be no bank bias within the ESRB, neither in its approach to other financial sectors nor through its governance structure.

- **Introduction**

The Federation of the Dutch Pension Funds takes note of the proposal of the European Commission concerning the review of the ESAs.

IORPs are pension institutions embedded in national social and labour law. At the same time they are active on financial markets, striving for the best outcome of a collective pension scheme and its beneficiaries. A national pension scheme is the result of negotiations between social partners. An optimal pension scheme saves costs for both beneficiaries and companies. In this respect IORPs differ from pure financial institutions. The latter are for profit, active on a competitive market and design financial products. Dutch IORPs do not offer their services cross-border. They seek to supply participants at national level with an adequate retirement income. This is linked to a compulsory participation to industry wide pension funds, company pension funds or pension funds for self-employed.

As large institutional investors, IORPs subscribe to the need for deepening financial integration within the European Union and the importance of the Capital Markets Union. They are front runners in sustainable finance. IORPs profit by transparent and robust financial markets. As a consequence, we see a role for the supervisory authorities to have a good macro-prudential oversight aiming at supervisory convergence and safeguarding financial stability.

We will provide our views on the role of EIOPA and that of ESMA. In particular we will give our views on (1) their powers, (2) their governance and (3) their funding:

- 1. Powers of the ESAs: proper checks and balances needed**

- a. The role of NCAs vs the role of the ESAs**

As mentioned above, EIOPA has limited tasks with regard to the supervision of IORPs. Being a minimum harmonisation directive, the IORP II Directive does neither provide EIOPA with new competences nor does it include delegated acts. A revision of this Directive currently being implemented by the Member States, is envisaged in 2023. Therefore we call for a legislative calm for IORPs in Europe allowing for enough time to properly implement the IORP II Directive. Based on national prudential rules, NCAs have the sole mandate to supervise IORPs. EIOPA's role is more of a technical and advisory nature and

- focusses on financial stability. NCAs have the competence and expertise stemming from day to day pension fund supervision. EIOPA should – within the remit of the powers stipulated in the IORP II Directive–, set up technical guidelines in order to share best practices of supervision within the EU. As a consequence, we are not in favour of a role for EIOPA to review the activities of NCAs. According to us, NCAs are best placed to decide upon their own priorities and policies with a view to their supervisory mandate. Therefore, we call for maintaining the role of NCAs in the Board of Supervisors (BoS) and the Executive Board of EIOPA.

ESMA has an important role in effectuating supervisory convergence and in the consistent application of the EU Single Rule Book across the EU. However, also in this context, the roles and added value of the NCAs should not be diminished.

In respect of the proposed roles of the ESAs in general, we object to the proposal granting to the ESAs coordination powers with regard to NCAs' policy priorities. As already explained, NCAs are in our opinion better suited to decide about their policy priorities. IORPs as part of national pension systems are enshrined in national social and labour law. Thus, only the NCA is really able to oversee the entire national playfield when supervising.

In the light of the Better Regulation agenda of the European Commission, we think that ESAs should perform cost and benefit analyses, before undertaking activities such as own initiative projects.

b. Data collection/(statistical reporting): a one-stop-shop

We are not in favour of ESAs requesting directly information from pension institutions. EIOPA is already increasing its requirements for collecting information from pension funds. The recent consultation on statistical reporting requirements, for example, was aimed at data from individual IORPs to be made available to EIOPA. At least as long as supervision will remain national, in our view data should only be provided to the NCAs. Data collection by EIOPA will have serious drawbacks. It could lead to a significant increase of data requests to IORPs, by both the NCAs and EIOPA, perhaps even without an adequate coordination between them. Next to the extra burden and costs additional reporting requirements will impose on IORPs and their beneficiaries, we think that EIOPA can – and should – enforce its current

- mandate with information aggregated at a national level by NCAs. Requesting data from individual IORPs will give EIOPA all the means to enforce direct oversight, thus interfering with national competences. This is also true for data collection by ESMA. Also in this respect we plead that data should only be collected by NCAs. We thus favour a one-stop-shop solution whereby NCAs collect and aggregate the data and transfer them to the relevant ESA.

We note that IORPs and their dedicated asset managers, have increasingly been subjected to (burdensome and costly) reporting requirements. In addition to the reporting requirements described above, in the context of the financial markets, one can think of AIFMD, MIFID, EMIR, CRR/CRD IV and SFTR reporting. And this list does not include yet 'national' reporting requirements. Information requirements directly imposed by ESAs would only add to this problem. Moreover, it could result in reporting the same (type of) information twice – both to NCAs and (one or more) ESAs. To alleviate unnecessary burden, it would seem sensible to task the ESAs with a regular review of existing reporting requirements, at both national and EU level, in order to assess where simplification might be achieved, thus monitoring the overall scale of reporting burden.

c. Role of ESAs on Sustainable Finance: capacity building needed first

Sustainable Finance is high on the European Commission's agenda. As front runners of sustainable finance, Dutch pension funds value and support the Commission's eagerness to develop sustainable financing of the European economy. First and foremost a common vision of European institutions and supervisory authorities on sustainable finance is necessary.

According to this vision ESAs should take care for facilitating a level playing field while harmonizing definitions and policies. This should encourage NCAs to fully play their role with regard to sustainable finance. A starting point could be sharing good practice examples of NCAs.

d. Stress testing: value added for members and beneficiaries?

As stipulated in the EIOPA regulation, EIOPA has a competence for stress testing IORPs. The European Commission proposes to publish the stress test reports of individual IORPs. This is according to us in contradiction with EIOPA's role as NCAs perform day-to-day supervision. Therefore we call for continuing with an aggregated publication of stress test results at European

- level. The publication of individual results has no value added according to us. These results need to be interpreted within the context of the national supervisory framework of Member States of the participating IORPs. What is more, we have several additional remarks with regard to the methodology used in the stress test:

The approach EIOPA is using for stress testing IORPs deviates substantially from national practices and current supervisory practice according to the IORP II Directive. This could lead to different, possibly even incorrect conclusions leading to wrong insights, while interfering with national supervision. Given the social purpose of IORPs (see introduction), there is no ground for further harmonisation according to us.

The Federation is ready to cooperate with EIOPA on a possible alternative to the methodology used in European stress tests so far. This would, according to us, make the stress test more relevant and lower the burden for participating IORPs.

We call for a prudent communication about stress tests as NCAs fulfil that role. Differences between European and national results of stress tests based on a different methodology could lead to misinterpretations by members, beneficiaries and other stakeholders such as sponsoring companies.

2. Governance: forms follows function

a. Form follows function

The Commission proposes a new governance structure for the ESAs. This embraces the nomination of a chairperson and full-time board members in an executive board. We wonder how the relation with the board of supervisors will be. Therefore, we call for safeguarding the role of the NCAs. They have an added value through their expertise in national prudential frameworks. If an executive board is to be implemented, we call for the new board members to have sufficient knowledge and experience in the field of occupational pensions in order to make sure that the national specificities of occupational pensions are recognized and respected. This also concerns new allocation of personnel.

- We ask for proper accountability of the ESAs' to the European Parliament and to the Commission. We suggest that national supervisors keep a decisive role in the BoS.

b. ESRB

We underline that it is important that the ESRB should avoid having a bank bias in its approach to other financial sectors. The Commission proposal stating that the ECB president should be permanently chairing the ESRB would shy away from the objective of ESRB being an independent body. At the same time this would mean a continuous bank biased approach to other financial sectors such as IORPs.

c. Role of Stakeholders: real advisors for technical expertise

As for EIOPA, we subscribe to the advisory role of the OPSG and separate stakeholder groups for occupational pensions and insurance undertakings (i.e. IRSG). Based on developments in the pension sector, OPSG members could in close dialogue with the EIOPA management provide some stimulus for EIOPA's work programme. We suggest to prolong the OPSG members' mandate. This would contribute guaranteeing both continuity and quality of the work of the OPSG.

Concerning the ESMA Stakeholder Group, we think that IORPs and their dedicated service providers are not adequately represented and we ask for taking into account their role as important actors on financial markets.

We furthermore observe that the time offered to stakeholders for responding to consultations is often very short. Giving more time would enable stakeholders to provide adequate reactions to consultations.

In general, technical expertise of market participants needs to be considered more. This could also be achieved by being more open to bilateral conversations with stakeholders.

3. Funding of the ESAs: no additional costs for the pension sector

As mentioned above, IORPs and/or their dedicated asset managers are not and under the new framework will continue not to be directly supervised by ESAs. There is and will continue to be a major role for NCAs. We do not subscribe to the reasoning why industry funding would be necessary. Therefore, we reject industry funding. A system of industry funding will mean

- that costs for pension provision would increase. This ultimately has to be borne by members and beneficiaries. What is more, after Brexit, the Netherlands will represent about 60% of the Assets under Management (AUM) of occupational pensions in Europe. Therefore, we question the proportionality of industry funding in the field of occupational pensions. In any case, there is a need for transparent allocation of ESAs' budgets. Funding and the budget of the ESAs should be closely supervised by the European Parliament and the European Commission within the EU budgetary procedure.