I. What is the "European System of Financial Supervision" (ESFS)? – actors and division of labour

European System of Financial Supervision (ESFS)

Macro-Prudential Supervision

macro oversight of the financial system to contribute to the prevention or mitigation of systemic risks to financial stability

ESRB (European Systemic Risik Board)
including members of National Central Banks, ECB, ESAs, European Commission, NSAs

information on micro-prudential developments ↑ ↓ recommendations and /or early risk warnings

Micro-Prudential Supervision

conduct supervision of financial institutions / markets in cooperation between ESAs & NSAs where regular supervision remains

Joint Committee of the ESAs (European Supervisory Authorities)
forum for close and regular cooperation of the ESAs and to ensure cross-sectoral consistency (see Art. 54 ESAs Regulations)

EIOPA – European Insurance and Occupational Pensions Authority ↔ **ESMA** – European Securities and Markets Authority ↔ **EBA** – European Banking Authority

↕

National Supervisory Authorities (NSAs)

➢ **National Supervisory Authorities are in charge of regular ongoing supervision (daily business).**

II. What are EIOPA's objectives, tasks and competences with respect to pensions?

- EIOPA's objectives, tasks and competences are set out in the EIOPA Regulation (EU) 1094/2010 (see text in the box below). Regarding occupational pensions, EIOPA is required to act within the scope of IORP II (2016/2341). IORP II sets minimum standards leaving room for the Member States to take into account their national social and labour law including the role of the social partners.

Objectives (Art. 1.6)	Tasks and Powers (Art. 8)
a) functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision b) integrity, transparency, efficiency and orderly functioning of financial markets c) international supervisory coordination d) preventing regulatory arbitrage and promoting equal conditions of competition e) ensuring the taking of risks related to insurance, reinsurance and occupational pensions activities is appropriately regulated and supervised f) enhancing customer protection.	- establishment of high-quality common regulatory and supervisory standards and practices - developing guidelines, recommendations, draft regulatory technical standards and implementing technical standards - providing opinions to the EU institutions - consistent application of EU acts by contributing to consistent supervision and a common supervisory culture and preventing regulatory arbitrage - mediating and settling disagreements between NCAs and ensuring a coherent functioning of colleges of supervisors - enhance cooperation and division of labour between NCAs and conduct peer reviews of NCAs - cooperate closely with the ESRB - taking actions addressed to institutions in emergency situations - foster and provide a high level of protection of pension scheme members and beneficiaries - assessment and measurement of systemic risk - development and coordination of recovery and resolution plans - collect the necessary information concerning insurers and IORPs - monitor and assess market developments and undertake economic analyses of markets and develop common methodologies for assessing the effect of product characteristics and distribution processes on the institutions and on consumer protection

➢ **EIOPA's objectives are centred around supervisory harmonisation of existing rules and financial system's stability – in doing so it shall act without prejudice to national social and labour law. The national authorities maintain direct supervisory powers.**

III. What are the key issues for occupational pensions regarding EIOPA's activities?

- EIOPA is trying to use Level 3 measures such as technical standards as well as guidelines and recommendations, information requests and "guidance" to broaden its remit and influence, potentially even against the intentions of the EU Directives. A key concern for occupational pensions is that EIOPA is not respecting the character of the IORP II Directive which sets minimum standards rather than aiming for full EU harmonisation (example see below).

- IOPR II recognises the social function of IORPs as well as the triangular relationship between the employee, the employer and the IORP which should be adequately acknowledged and supported. Such institutions should not be treated as purely financial service providers (Recital 32). However, EIOPA has a strong focus on consistency (see e.g. EIOPA Supervisory Convergence Plan, see p. 9 for pensions) and often uses regulation for financial service providers under Solvency II as a blueprint for the "pension sector".

- EIOPA ignores both the role the social partners play and the importance of social and labour law (SLL) for many IORPs. (see e.g. Speech G. Bernardino 14th Nov 2014, p.9 and EIOPA-CP-14/040, p. 113 / 5.138) However, the importance of SLL is the reason for the minimum harmonisation character of the IORP II Directive, giving the Member States (legislators and regulators) adequate leeway to tailor the requirements to fit their national systems, where relevant including arrangements between the social partners.

- **Examples**: EIOPA is currently working towards the indirect introduction of what essentially are Solvency II (SII) -elements for IOPRs without a legal mandate ("SII through the backdoor"):
  1) EIOPA "guidance" on the implementation of IORP II (see p. 44 of EIOPA 2018 BoS/18-019), even though EU full harmonisation is not the objective of the IOPR II Directive (all of the proposed delegated acts (Art. 290 TFEU) were taken out in the legislative process). What is "guidance"(no legal basis in the EIOPA Regulation 1094/2010)? How is this taking into account the minimum harmonisation approach of IORP II?
  2) EIOPA "guidance" on its "Common Framework" for IORPs risk management leading to SII's market valuation and potentially capital requirements – in contradiction to recital 77 IORP II (see EIOPA BoS 16/075, p. 44 of EIOPA 2018 BoS/18-019 and p. 5 of EIOPA OPSG IORP II implementation)
  3) EIOPA's „Pension data" project introduces SII`s reporting requirements without Level 1 basis (see EIOPA BoS/18-114 and p. 47 of EIOPA 2018 BoS/18-019)

- Will EIOPA become more influential over the coming years? The proposal for the ESA review (COM(2017) 536) sets out to expand the independency, tasks, competences and financing of the ESAs – to the detriment of national supervisory authorities who are still more suited for daily supervision.

> ➢ **EIOPA is seeking to broaden its scope and circumventing legislative procedures by introducing Solvency II's inadequate valuation and potentially capital requirements as well as the extensive reporting requirements for IORPs "through the backdoor"!**

IV. What should be done?

- Amend the EIOPA Regulation so that EIOPA is not only required to act without prejudice towards national social and labour law (Art. 1.4) but is required to respect the boundaries it sets. EIOPA should follow the EIOPA Regulation and only request information that is "necessary in relation to the nature of the duty in question". The national legislator and / or the national competent authority should review EIOPA's information requests before implementing them.

- EIOPA should take into account in any supervisory measure the specific circumstances of occupational pensions (especially the role of employers and social partners).The ESA Review should be used to clearly define EIOPA's competencies with respect to occupational pensions and limit the use of harmonisation measures to the level of harmonisation stipulated in the relevant Directive.

- The division of labour between EIOPA and the national competent authorities should respect the principles of subsidiarity and adequacy - national authorities know their national pension systems – including national social and labour law - best. No enhanced power for EIOPA in the ESA review – "Don't fix, what's not broken" (Statement by Felix Hufeld, BaFin). No "Strategic Supervisory Plan" to avoid loss of autonomy of national authorities – no supervision of supervisors. No (partial) direct financing by IOPRs and insurance companies to avoid danger of reduced budget discipline.

> ➢ **Legislators have to follow a democratic process which includes public consultations – only they should legislate. Policy-making should not be carried out by an EU Authority by issuing guidance, information requests etc. which go beyond the relevant Directive.**