



aba-response to the

European Commission's Consultation

„European System of Financial Supervision Review“

Deadline: 31.07.2013

The aba - Arbeitsgemeinschaft für betriebliche Altersversorgung e.V. - is the German industry association representing all matters concerning occupational pensions in the private and public sector. The aba has 1,300 members including corporate sponsors of pension schemes, IOPRs, actuaries and consulting firms, employer associations and unions, as well as insurance companies, banks and investment managers. According to our statutes, our mission is to represent existing schemes as well as to expand coverage of occupational pensions independent of vehicle.

I General comments

The aba welcomes the European Commission's consultation on the Review of the European System of Financial Supervision. Below we respond to the questions which are relevant to Institutions for occupational retirement provision (IORPs) and those relating to the European Insurance and Occupational Pensions Authority (EIOPA).

In a speech at a Public Hearing on Financial Supervision in May 2013 as well as in a presentation given at a Conference in June 2013, Gabriel Bernardino called for more funding as well as a strengthening of EIOPA's operational independence.¹ In addition, EIOPA is seeking to broaden its remit to include personal pensions. In this area, the aim is to introduce a 2nd /29th regime on the European level, which would be detached from national legal requirements and in particular from national social and labour law. Regardless of how personal pensions are ultimately defined, the question is whether the future design of IORPs (which are social institutions bound by social and labour law) and the basis for calculating pension obligations should be primarily guided by European regulation. This has to be carefully considered because if supervision mainly took place on the European level or was transferred to a European Authority, it would not be subject to democratic control through either national parliaments or the European Parliament. This general question therefore needs to be discussed in the current process and a decision has to be taken.

We call for a better coordination of projects between EIOPA and its stakeholders, as well as between EIOPA and other European institutions. This includes in particular realistic time frames, for example for consultations. During the IORP-QIS for example, employees of participating IORPs faced time pressures to produce the results as well as the staff at EIOPA who were pressured to publish the technical specifications very quickly. A more generous time frame would have been likely to improve the quality of the QIS and with that the quality of the results. The Commission in its initiator role should be aware what it can ask of EIOPA and should only commission projects within a reasonable time and process frame.

Occupational pensions were only mentioned in the De-Larosière-Report from 2009 in relation to IAS 19; in a recent speech by Jacques De Larosière at the Public Hearing on Financial Supervision in the EU they were not even mentioned. These examples show that occupational pensions do not get the credit they deserve. It is necessary that occupational pensions take a special place within financial supervision. The protection of beneficiaries is an important aspect of occupational pensions, many countries achieve this primarily through social and labour law. In addition, there are no traditional *consumers* in occupational pensions, because the employer chooses the vehicle and framework. European Supervision should recognise these special characteristics. However, this does not necessarily mean more regulation for IORPs. Mechanisms to protect beneficiaries of occupational pension should continue to be a matter for the national level. In this context the aba welcomes the creation of the Occupational Pensions Stakeholder Group (OPSG).

The aba calls for a proper acknowledgment of the second pillar within the European System of Financial Supervision and for a stronger emphasis on macro-regulatory work by EIOPA. In addition, we call for a stronger emphasis on macro-regulatory work by EIOPA. Operational questions are important on the European level, but should stand back behind the more general questions. This macro-regulatory work needs to be based on a system of European financial supervision which is first and foremost preventive and prospective. In addition it needs

¹ For more information, see http://ec.europa.eu/internal_market/finances/conferences/index_en.htm

to consider efficiency as well as further goals, such as set in Europe 2020 (employment, R&D, climate change, education and poverty reduction).

The European Commission has stated in their White Paper on pensions that pillar 2 holds a yet unused potential for further efficiency gains through economies of scale, risk diversification and innovation. These advantages should be used – occupational pensions should be strengthened further in all 28 Member States, thus ultimately preventing old age poverty while at the same time relieving public finances. It cannot be the primary task of regulatory requirements or financial supervisory authorities to create sustainable retirement provision in the Member States. However, authorities should contribute through an adequate design of the regulatory framework so that citizens can build up funded retirement provision efficiently.

There is broad agreement that in none of the 28 Member States pillar 1 alone will be able to finance adequate retirement incomes. It is therefore without doubt, that in all Member States pillar 1 will need to be supplemented through funded retirement provision. The aba confirms that pillar 2 (occupational pensions) offers Europe's citizens the most efficient form of funded retirement provision. Any Member State should encourage and motivate employers, companies and social partners - with the help of incentives - to introduce, maintain and develop efficient occupational pension systems. Already existing systems do not only need to be protected against damage, but EIOPA should do everything in their power to foster them. The European Commission and EIOPA should therefore create a regulatory framework which strengthens systems of occupational retirement provision. This regulatory framework should not one-sidedly protect beneficiaries and members, but has to strike a balance between the interests of the members and beneficiaries on one side and the sponsoring employers on the other. Therefore the European Commission and EIOPA should respect the position of those Member States who have spoken out against a review of the IORP Directive guided by the approach Solvency II takes.

1. A future orientated regulatory framework for IORPs in the EU – pillar 2 (occupational pensions) as core component of funded pension provision in the 28 Member States

Pillar 2 (occupational pensions) offer Europe's citizens the most efficient form of funded retirement provision. This outstanding efficiency stems at its core from the collective organization as a social benefit. An additional effect results from its optimized cost structure. Stakeholders (employers/companies, social partners) organize funded retirement provision as a social benefit without or with very low cost for the beneficiaries. These advantages of occupational pensions should be more clearly acknowledged in documents produced by the European Commission and EIOPA. It should be emphasized that many sponsoring employers also carry the entire administrative costs. Also, employers/companies and social partners optimize and control all activities of the financial service providers involved. Their profit margin can thus be reduced to a level that is simply not achievable in the individualized structures of pillar 3.

The core advantage of IORPs is that at their highest decision making level strong and influential stakeholders (employers, social partners) help to bring down costs in their own interest.

The more impact of sponsoring employers or social partners on the decision making level of an IORP there is, the more advantageous it is for employees/ members/ beneficiaries. This shall not question the general role of pillar 3. The prudent utilisation of individualized concepts of pillar 3 will in the future still has its place: where the efficient "mainstream" of pillar 2 is not available, for instance because of a missing employer-employee-relationship etc.

2. Necessary consequences from the severe state debt crisis for funded retirement provision

The lessons learnt from the severe sovereign debt crisis show that efficiency - leading to future security and sustainability - will be of utmost importance in all areas, and thus in retirement provision as well.

In many Member States pillar 2 is not existent or only pillar 3 exists as “main stream” of funded retirement provision next to pillar 1. In the interest of Member States and European citizens such structures are no longer acceptable or sustainable in the future. The Member States can no longer afford to spend scarce tax resources and fiscal subsidies in the “mainstream” of expensive and individualized concepts of private retirement provision of pillar 3. Government incentives in Europe should instead be concentrated on further strengthening and expanding the collectively structured and cost-efficient concepts of occupational pension provision.

Consequently a clear obligation of any Member State should be established, to encourage and motivate employers/companies and social partners to introduce efficient systems of occupational pension provision. In this context an EU-Directive on IORPs (developed by the European Commission and supported by EIOPA) needs to foster this objective. Under no circumstances should such a Directive damage existing occupational pension structures.

3. Positive macro-prudential aspects of pillar 2

From the experiences of the financial crisis and the severe sovereign debt crisis macro-prudential effects should be taken into account when considering prudential aspects. IORPs had and have a stabilising effect. The positive effects are also demonstrated, when big IORPs or groups of IORPs in the interest of their beneficiaries work towards „good governance practices“ in entities, enforce compliance aspects etc.

The European insurance industry urges strongly to ensure a supposed level playing field between insurance companies regulated by Solvency II and IORPs under the IORP Directive. Their lobby declares publicly that the European insurance industry would in the future be interested in taking over the activities of IORPs currently run by employers and social partners. It cannot be in the interest of European citizens and Member States, to give up the existing highly efficient occupational pension structures. The formula of a level playing field could give rise to a destruction or lack of strengthening of IORPs in the Members States.

It can already be observed, that in Member States where occupational pensions are provided via IORPs plans to create new IORPs or any further development of IORP structures will be on hold. The uncertainties caused by the destructive discussions around the review of the IORP Directive are given as the main reason. Sponsoring employers are concerned that they would face significant additional costs created by unjustifiable solvency requirements and unnecessary processes. This is obviously neither in the interest of members and beneficiaries nor of the sponsoring companies and also stands against the Member States and the Commission intention to support a sound future development of occupational pensions in the EU. So uncertainties have to be removed as soon as possible and substituted by an environment that strengthens existing IORPs and supports new IORPs of sponsoring employers or social partners as the mainstream aside of pillar 1 in all Member States.

EIOPA always emphasizes the protection of members/beneficiaries and consumers as the objective of supervision. So far EIOPA is only acting on the level of technical detail. We encourage EIOPA to leave this behind. Rooted in a clear and explicit commitment to principals based supervision, EIOPA should dedicate itself to much more important general questions around the protection of members/beneficiaries and consumers on the strategic macro-prudential level (see points 1 to 3 above).

II Responses to the questions

Question	aba response
<p>1.1.a. How do you assess the impact of the creation of the ESAs on the financial system in general and on (i) financial stability, (ii) the functioning of the internal market, (iii) the quality and consistency of supervision, and (iv) consumer and investor protection in particular?</p>	<p>(i) Thanks to national protection mechanisms such as the legal obligation for employers to ensure the pension promise is met, mandatory insolvency protection through the PSVaG and national prudential regulation, German Institutions for Occupational Retirement Provision (IORPs) have weathered the finance and subsequent economic crisis well. EIOPA recognises the special position of European occupational pensions in its Stability Report: <i>“the impact of the financial turmoil on the European occupational pension system has not been as severe as seen in other financial sectors, as the long-term nature of the liabilities affords some protection in this respect”</i> (p. 33/34).² Due to the narrow remit of EIOPA (mostly supporting the Commission in the preparation of the review of the IORP Directive) EIOPA has not had an impact on the stability of German IORPs.</p> <p>(ii) Standardised European measures and a harmonised prudential law would create a danger of pro-cyclical behaviour of the supervised financial institutions and IORPs if they all followed the respective supervisory models. Particularly the creation of a Single Rule Book threatens to impose an enforced conformity on the different systems while at the same time volatility of the financial and capital markets increases.</p> <p>The volatility is further increased through already implemented measures (Solvency II) as well as discussion (Holistic Balance Sheet - HBS) of risk orientated models. Because of their high risk margin on certain assets, these models push all investors into specific asset classes, which do not require a risk premium, such as government bonds. A counter cyclical asset allocation of an affected IORP therefore would inevitably increase their Solvency Capital Requirements and ultimately make occupational pensions more expensive / lowers the benefits for the beneficiaries. In as far as the rights of the beneficiaries are protected through other systems or mechanisms, such as the legal obligation of employers to ensure the pension promise is met or the insolvency protection on the national level, increases in the cost of financing occupational pensions should be avoided by all means.</p> <p>Nevertheless German sponsoring companies were impacted by COM and EIOPA work around Solvency II/ IORP II. In Germany very considerable volumes of occupational pension schemes are financed via book reserves. With the pension reform of 2001 the legislator created the possibility of transferring pension liabilities/ assets related to such book reserves as well as the corresponding assets into pension funds (a special type of IORP). An increasing number of sponsoring companies have taken advantage of this option by setting up new pension funds or are expected to use this option in the fore-</p>

² EIOPA, Financial Stability Report, First Half Year Report, Spring 2012

seeable future. Around the time of the release of the IORP II Call for Advice in April 2011 any planning in this direction has come to a complete standstill. Different companies have stopped a considerable number of projects of transferring pension liabilities/ assets into pension funds or to set up new pension funds. The reason stated is that the uncertainty created from the discussions around IORP II is unacceptable. Sponsoring companies fear to be burdened by significant new costs caused by unjustified capital requirements and unnecessary processes and procedures.

In addition it is questionable whether there is demand in the area of occupational pensions for a single market or cross-border activities or whether it is to be created through the appropriate regulation. It has to be considered that many IORPs are geared towards their national social and labour law and often are not interested in cross-border activities because they only serve one company or several companies within one sector. This impression was confirmed through the low participation rate in the IORP-QIS. Of the then 27 Member States only 7 participated (Portugal did not publish any results), and only 99 out of approx. 140,000 European IORPs took part. If there was as much demand as the Commission assumes, the participation rate would have looked different. On the other hand, some multinational companies/employers often would prefer to combine national collectives in cross-border institutions. However, there are currently too many practical obstacles to achieve this. Generally it is important for efficient structures that uniform regulations apply to domestic and cross-border member segments of the same IORP.

(iii) There is not consistent EU-wide regulation and supervision of IORPs: one example is the implementation of Article 16 of the IORP Directive (“fully funded at all times”), another one is the implementation of the prudent person principle with an opening clause for detailed quantitative requirements (Article 18 para. 5) to allow the consideration of national characteristics.

(iv) *Consumer* protection is not a relevant topic for German IORPs. IORP *beneficiaries* are mainly protected through social and labour law. The aba therefore strongly supports the following objective for the IORP Directive (as opposed to the Solvency II Directive): the IORP Directive supports the establishment and operation of IORPs, facilitates their efficient management and administration and supports the protection of members and beneficiaries.³

The Solvency II Directive’s main objective (Article 27) is to strengthen consumer protection in the absence of a third party guarantor or lender of last resort. For IORPs, which are sponsored by an employer, whose stakeholders’ interests are aligned and whose beneficiaries are protected by a web of interacting security mechanisms in social and labour law, the

³ See [aba Response to 2nd EIOPA Consultation](#) (02.01.2012)

	objective of Solvency II is not relevant.
<p>1.1.b. Do the ESAs' mandates cover all necessary tasks and powers to contribute to the stability and effectiveness of the financial system? Are there elements which should be added or removed from the mandate? Please explain?</p>	<p>According to the EIOPA Regulation (Art. 1 para. 6c and d), it falls to EIOPA to further international coordination of European supervision and prevent supervisory arbitrage as well as fostering a level playing field for similar areas in order to contribute adequately to the stability and efficiency of the financial system. The EIOPA Regulation as well as competencies in the respective statutory provisions allow EIOPA in particular to draft regulatory and technical implementing standards, pass guidance and recommendations, request necessary information and publish opinions for consideration by the Council, the Parliament and the Commission.</p> <p>EIOPA therefore has the necessary instruments to fulfil its tasks adequately. Consequently, the remit of EIOPA should be kept as it is, it should neither be extended nor narrowed down (see above). Currently, EIOPA is only allowed to directly interact with national financial institutions in a small number of defined situations – this rule should be kept as it is.</p> <p>In the area of occupational pensions EIOPA has so far focused on the preparation for the Commission's review of the IORP Directive, which in its current form only sets minimum standards rather than full harmonisation. The current IORP Directive gives EIOPA a number of competencies, for example in Art. 13 para. 2 or Art. 20 para. 11). Based on our experience since the establishment of EIOPA in January 2011, we think that an extension of the remit of EIOPA is not necessary. In addition, because of the diversity of national occupational systems (which the Commission has acknowledged) full harmonisation in this area is not desirable.</p> <p>Nevertheless, the current preparations for the expected proposal for an IORP II Directive in autumn 2013 suggest the EIOPA's remit will be extended. If new competencies are transferred to EIOPA, the principle of subsidiarity should be respected and consequently practicality and proportionality should be considered adequately.</p> <p>A broadening of EIOPA's remit is also not to be pursued because of principal democratic legitimacy reasons. Any change to the supervisory regime should follow a democratic process rather than being achieved through regulation decreed by authorities.</p>
<p>1.1.c. In your view, do the ESAs face any obstacles in meeting their mandates? If yes, what do you consider to be the main obstacles? Please explain.</p>	<p>In its first years of operation EIOPA faced a challenging additional task. Even though EIOPA started fulfilling its mandate straight after its establishment, it still had to set up an infrastructure and recruit professional staff. By now EIOPA should have found its operational procedures as well reached the planned number of staff. Particular obstacles or specific challenges in addition to its original mandate are therefore not obvious.</p>

	See general remarks.
<p>1.1.1.a. Do you consider that the technical standards and guidelines/recommendations developed by the ESAs have contributed to further harmonise a core set of standards in the area of supervision (the single rulebook)? If you have identified shortcomings, please specify how these could be addressed.</p>	<p>As with previous questions the narrow remit of EIOPA regarding IORPs sets the backdrop for this question. EIOPA has mainly worked on technical implementing standards (as laid out in Art. 13 para. 2 of the IORP Directive); no problems arose in this area.</p> <p>So far EIOPA has mostly been active providing opinions and general support to other European institutions. Because of the diversity of national occupational pension systems as well as the differences in the national economic and demographic backdrops the idea of a European Single Rule Book concerning IORPs is inappropriate. It should not be the aim to fully harmonise European supervision and disempower national authority via regulatory technical standards in the area of occupational pensions. This does not make sense and would be counterproductive.⁴</p> <p>The vision for the future of the European supervision in the area of occupational pensions should therefore not be a single rule book, but a separate and appropriate supervisory regime, which is tailor-made for the necessities of IORPs with the prudent person principle at its core. Because of the special character of IORPs as well as their business model which differs considerably from the life insurance industry an imitation of Solvency II is to be rejected.</p> <p>Any attempt at harmonisation in the area of occupational pensions must always obey the principle of subsidiarity and only be carried through if it can be implemented on the European level in an effective and productive manner.</p>
<p>1.1.1.b. What is your assessment of the work undertaken by the ESAs as regards providing opinions (e.g. technical advice) to the EU institutions?</p>	<p>EIOPA is only allowed to act inside its mandate. In the area of occupational pensions the Authority has therefore focused on supporting the European Commission in the preparations for the review of the IORP Directive.</p> <p>EIOPA faced an immense amount of work with the response to the Call for Advice of the European Commission regarding the review of the IORP Directive, the development and definition of the technical specifications for the IORP-QIS as well as the analysis of the responses. The HBS approach is intended make IORPs in the different Member States comparable and this way build a basis for the creation of Single Rule Book and further harmonisation. In this context it needs kept in mind that harmonisation only makes sense if the circumstances are the same, and in particular if a European level regulation has clear advantages over national regulation. Because of the diversity of occupational pensions systems across the EU</p>

⁴ Examples from the insurance industry: EIOPA’s guidelines on complaints-handling by insurance undertakings of 14 June 2012; The guidelines on the preparation for Solvency II of 27 March 2013 covering governance, ORSA, information to NCAs and pre-application of internal models

	<p>which are rooted in different social and labour law this is questionable. Because of the special characteristics of IORPs and their respective different models, IORPs and life insurers can definitely not be compared. Full harmonisation with the aim of creating a Single Rule Book is therefore contrary to general EU principles.</p> <p>In addition EIOPA has created uncertainty in the area of occupational pensions because it developed and tested the HBS approach with a QIS, but has never clarified what the supervisory consequences would be in case of a HBS deficit. Until today questions around the supervisory consequences are met with the explanation that the model is a first step to create comparability between the different IORPs and therefore is only a supervisory model. However, it is unrealistic that if applied these models will have no impact on the balance sheet of IORPs and their sponsoring employers if elements such as sponsor support are quantified. Since the potential deficits could be in the billions, questions around the consequences have to be considered.</p> <p>EIOPA should also recognise that the difficulties with the interpretation of the QIS results suggest that the HBS approach is not suitable and consequently stop all work in this area.</p>
<p>1.1.2.a. In your view, did the ESAs contribute to promoting a supervisory culture and convergence of supervisory practices? If you have identified shortcomings how could these be addressed?</p>	<p>Because of the diversity of national systems of retirement provision as well as the central role of social and labour law a prudential harmonisation in the area of occupational pensions is not desirable.</p> <p>The IORP II Directive should continue to set minimum standards across the EU, which should allow better calibration to national social and labour law. The future IORP II should be set up in a way which does not leave room for national authorities to apply the insurance sector regulation on IORPs. This was or rather is the case in Germany, where certain types of IORPs (Pensionskassen) have to be fully funded at all times (Art. 16 para. 2 of the IORP Directive). Another example is the application of detailed requirements (including quantitative requirements) in the investment regulation, which is based on the life insurer directive (see Art. 18 para. 5 of the IORP Directive).</p>
<p>1.1.3.a. In your view, do the procedures on breaches of EU law and binding mediation ensure the consistent application of EU law? If you have identified shortcomings how could these be addressed?</p>	<p>We are not aware of any problems.</p>
<p>1.1.4.a. Do you consider the ESAs' role in emergency situations appropriate?</p>	<p>Occupational pension schemes did not face any emergencies in Germany, therefore we cannot answer this question in relation to EIOPA. It is unlikely that there will be emergency situations for German IORPs which would hit employees, be-</p>

Please explain.

cause all beneficiaries are protected by the legal obligation of the employer to ensure the pension promise is met, and, beyond that, Pensionsfonds benefits are covered under the German protection mechanism (PSVaG).

A long-term problem for IORPs is the continuing low interest rate environment. EIOPA is not really in a position to help, but should at least refrain from performing stress-tests which are likely to aggravate the situation.

In the context of the low interest rate environment we see the largest risk for occupational pension schemes in the subsidization of the credit sectors by governmental support and a politic of the ECB in supplying cheap money or quantitative easing. The current measures – especially the measure of the ECB to supply cheap money of refinancing – will result in the fact that the permanent dependency on cheap money from central banks will not be able to be terminated. The refinancing of long-term credits and investments is being performed on a large scale by short-term central bank credit and such by extensive term transformations i.e. the use of funds from short-term lending to make long-term loans. Therefore when financing long-term projects the occupational pension schemes are faced with direct competition of cheap and not market-conform central bank credit. This policy will directly lead to a complete decay of returns and to a massive damaging of savings and occupational pensions.

In this connection the central critique of ESA is the fact that the quantitative models within the area of credit do not sufficiently reflect short- and middle-term risks.

- For example for the credit book under Basel III only the necessary liquidity reserve is being calculated without considering the effects of a possible permanent future increase in the costs for refinancing. Even though the principle of market consistency is venerated on any occasion from European institutions, just on the other hand there is in no way any market consistency of the credit book under Basel III. Especially the effect of an interest shock (namely permanent increase of the costs for refinancing) would have to be shown to secure for a sufficient equity basis within broadly practiced term transformations.
- At the same time Basel III allows for the possibility to determine a “risk adjusted market valuation” of the trading book to account for required equity instead of a fixed percentage of total assets. It is known that this will lead to the fact that varying institutes having identical portfolios will have completely different capital adequacies. Especially within extreme scenarios this will lead to the unpleasant consequences already seen in the past.

Because of those reasons we recognize that at present ESA does not create a stable environment for capital based old-age pension schemes.

<p>1.1.5.a. Do you think that the coordination role of the ESAs is appropriate? If you have identified shortcomings, please specify how these could be addressed.</p>	<p>EIOPA tried to consider the different national characteristics of IORPs when developing the technical specifications for the IORP-QIS. This led to an extremely long and complex document, making it difficult for IORPs to take part in the QIS. Consequently, very few and mostly larger IORPs participated. In the future a balance needs to be struck between the inclusion of detail and the effort IORPs have to put into responding. Despite our position that the HBS approach should not be followed, we welcome the announcement made at the event which took place on the 10 July 2013 in Frankfurt that the next QIS would at least be “slower and simpler”.</p>
<p>1.1.5.b. In your experience, to what extent have coordination activities carried out by the ESAs contributed to promoting a coordinated EU response to adverse market conditions? Please explain.</p>	<p>As explained in our response to question 1.1.4.a, the current low interest rate environment is a challenge for IORPs. EIOPA should at least refrain from performing stress-tests which are likely to aggravate the situation.</p>
<p>1.1.6.a. How do you assess the role and achievements by the ESAs in the field of consumer protection? Please specify the main achievements by each ESA.</p>	<p>As discussed in our response to question 1.1.a, there are no <i>consumers</i> in German occupational pensions, only <i>members and beneficiaries</i>. They are primarily protected by German social and labour law (the legal obligation of the employer to ensure the pension promise is met, insolvency protection). EIOPA is strongly focused on individual consumer protection; the collective protection already enjoyed by members and beneficiaries of occupational pensions in many countries is often forgotten, even though it is very important for the members and beneficiaries.</p>
<p>1.1.6.b. Are you aware of the warnings that were issued by the ESAs so far? If yes, please specify which ones and whether they have contributed to improve consumer protection or any other objective of the ESAs.</p>	<p>We are not aware of any warnings.</p>
<p>1.1.6.c. What are the main strengths and weaknesses of the current framework on consumer protection and what would you suggest to address any possible shortcomings?</p>	<p>Article 9 (Tasks related to consumer protection and financial activities) of the EIOPA Regulation is not fit for purpose regarding occupational pensions. As shown above, there are no consumers in occupational pensions, only members and beneficiaries, who are mainly protected through social and labour law. Therefore a “leading role” for EIOPA “in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market” is neither necessary nor conforms to the current the system.</p> <p>Furthermore, a more coordinated and consistent approach is needed between EIOPA and the different Directorate-Generals of the European Commission (DG SANCO, DG MARKT and DG EMPL) which are undertaking related initiatives in</p>

	<p>this field. Regarding occupational pensions, the Directorate-General for Employment, Social Affairs and Inclusion (EMPL) should have the leading role.</p>
<p>1.1.7.b. How do you assess ESMA's performance for the registration and supervision of credit rating agencies (CRAs)?</p>	<p>On 20 June 2013 the EU regulation 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies and the Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 changing the Directive 2003/41/EU on the activities and supervision of institutions for occupational retirement provision regarding excessive use of ratings came into effect. In this regulation IORPs are required to conduct their own credit assessments. This is problematic, because particularly smaller IORPs do not have the necessary time and expertise to carry out these checks. Regarding rating agencies it is important to bear in mind what the capacity of IORPs to deliver is. Regarding rating agencies, ESMA and EIOPA should work closer together.</p>
<p>1.1.7.c. Do you consider that further responsibilities of direct supervision should be entrusted on one or more of the ESAs, particularly with regard to institutions or infrastructures of pan-European reach? Please explain.</p>	<p>EIOPA is endowed with the necessary competencies to carry out its tasks on the European level adequately. Direct contact with the national financial institutions should only be possible in the already defined situations. EIOPA should concentrate on its original task as (European) coordinator, while national authorities are much better placed to interact directly with national financial institutions. They have substantial experience and the necessary expertise in their corresponding Member State. In contrast, EIOPA would still have to acquire comparable knowledge of the national legal framework, which due to the design of occupational pensions is particularly important in Germany.</p>
<p>1.2.2.a. Does the current composition of the Board of Supervisors (BoS) ensure that it acts efficiently? If you have identified shortcomings, please specify how these could be addressed.</p>	<p>In respect to IORPs we are not aware of any problems related to the decisions of the Board of Supervisors. However, we are critical of Article 44 of the EIOPA Regulation: in contrast to insurers and banks, IORPs are only present in some Member States. Regarding IORPs we therefore think that only Member States where IORPs play an important role should have the right to vote.</p>
<p>1.2.2.b. Does the composition of the Management Board ensure that the ESAs are run effectively and perform the tasks conferred on them? If you have identified shortcomings, please specify how these could be addressed.</p>	<p>We welcome that Felix Hufeld, the Executive Director for insurance supervision at the German Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin), is now a member of the Management Board.</p>
<p>1.2.2.c. Does the mandate of the Management Board ensure that the ESAs are run effectively and perform the tasks conferred on them? If you</p>	<p>The Management Board decides on EIOPA's main objectives. It should take care to acknowledge the special role as well as the specific characteristics of occupational pensions and act accordingly.</p>

<p>have identified shortcomings, please specify how these could be addressed.</p>	
<p>1.2.3.a. How do you assess the arrangements on financing and resources? If you have identified shortcomings, please specify how these could be addressed.</p>	<p>The funding of the insurance and the IORP departments within EIOPA should be fair according to the tasks. Solvency II should solely be funded through insurance companies and the EU budget. Generally we see less need for supervision of IORPs, where the social partners play an important role and the beneficiaries take part in decision processes of the IORP.</p>
<p>1.2.4.a. How would you assess the impact of the relevant stakeholder groups within the ESAs on the overall work and achievements of the ESAs?</p>	<p>The creation of the two interest groups is to be welcomed, because they give EIOPA and the European Commission access to experience and substantial expertise of the supervised insurers and IORPs. This way, consequences of proposed rules can be better judged and proposals modified accordingly.</p> <p>From our perspective it was a good decision to create two interest groups (Insurance and Reinsurance Stakeholder Group and Occupational Pensions Stakeholder Group - OPSG). The division into two groups means that the OPSG can properly discuss issues around occupational pensions. In the CEIOPS Consultative Panel, which preceded the two stakeholder groups, discussions around occupational pensions did often not take place due to a lack of interest and expertise.</p> <p>The experience of the first OPSG shows that in the future membership should be limited to individuals who are closely involved with occupational pensions and therefore have an interest in active cooperation. The OPSG has given its members a chance to get to know the different occupational systems across the EU, their complexities and their characteristics and therefore led to a better understanding of the different positions and interests between its members. As a result, there was a constant bilateral dialogue between the members regarding the review of the IORP Directive. We hope that this collaboration will continue in the future.</p> <p>Rather than examining drafts for regulatory and implementing technical standards as described in Art. 37 para. 1 of the EIOPA Regulation, under their first mandate the OPSG has focused on position papers and commentary in relation to a variety of issues. The emphasis was on the work done by the European Commission and EIOPA. In the future it would be desirable if the OPSG was even closer involved to make the most of the expertise of this group. This way, abstract legislative work – in particular in the area of occupational pensions – could already in their drafting stage be adjusted to the real world practicability as well as the different systems across the EU, and potentially be modified. Position papers and other statements the OPSG produces should be considered in more depth than currently is the case. In this area there is ample room for improvement. A good opportunity to change this is the proposal for IORP II, which will focus amongst other things on governance and reporting requirements. In this area, the OPSG has made an immense effort to produce a report</p>

	<p>about the ideal governance structure of an IORP, which was sent to both EIOPA and the Commission.⁵</p> <p>To increase the continuity and consistency of the work the OPSG carries out, longer mandates should be considered. Because of the complexity of the issues at hand as well as the time consuming European decision making processes, mandates of only two and a half years seems too short.</p> <p>See response to question 1.2.4.d.</p>
<p>1.2.4.b. Are you satisfied with the quality and timeliness of consultations carried out by the ESAs?</p>	<p>The aba is neither satisfied with the quality nor the time frame of the consultations conducted so far. For the future it would be desirable if there was more time for responding to the EIOPA's public consultations. This is even more important considering the length of the consultation documents EIOPA publishes (several hundred pages) and the complexities of the topics covered. The Consultation "Response to Call for Advice on the review of Directive 2003/41/EC: second consultation" for example covered 500 pages, the deadline for responses was within two months ending just after Christmas on 2 January 2012. The adequate analysis of such texts requires time and effort. In the future this should be taken into account by offering longer consultation periods.</p> <p>We are aware that EIOPA itself acts under significant time pressure because of deadlines set by the Commission. The Commission should grant EIOPA more time for doing their work, which would also benefit the Commission. A case in point is the IORP-QIS, which EIOPA conducted on request of the Commission. If there had been less pressure, EIOPA could have published more detailed technical specifications before the study was conducted. This could have prevented a number of ambiguities and uncertainties, and, together with a longer consultation period, is likely to have led to more meaningful and reliable results. It is also likely that a longer consultation process together with more detailed technical specifications earlier on would have led to more IORPs actually participating in the QIS (but who, as it were, were overwhelmed by the questions they faced). A larger number of IORPs participating would have meant that the basis of the evaluation would have been much broader and therefore the results more reliable. EIOPA should consider that it does not help its reputation if time frames are unrealistically short and technical specifications are so insufficient that they have to be recalibrated several times during the consultation process.</p> <p>In the future the Commission and EIOPA should consider these aspects when they draft time frames for consultations. It</p>

⁵ https://eiopa.europa.eu/fileadmin/tx_dam/files/abouteiopa/Organisation/Stakeholder_Groups/opinions_feedback/EIOPA-OPSG-13-02_Discussion_Paper_occ_pension_scheme_Governance.pdf

	<p>should in particular be considered that some associations, such as the aba for example, are based on work carried out by volunteers, and therefore need more time than associations who employ a large number of staff and do most of their work in house (as is often the case in the banking and insurance sector).</p> <p>In addition, transparency should be ensured: every consultation response which influences EIOPA’s work should be made public. The option to make a confidential response should be abolished.</p>
<p>1.2.4.d. In your experience, does the composition of stakeholder groups ensure a sufficiently balanced representation of stakeholders in the relevant sectors? If not, which areas appear to be insufficiently/overly represented?</p>	<p>It should be ensured that there is an adequate balance between expert knowledge and representing the different interests. In addition, OPSG membership should in the future be confined to individuals who are closely involved with occupational pensions and therefore have an interest in active cooperation.</p> <p>From our perspective the composition of the OPSG – as stated in Article 37 - is not adequate for occupational pensions: because of the central role in occupational pensions, employers (not only from small and medium sized enterprises) should be mentioned directly in the article of the EIOPA Regulation. Overall it is too little that only a third of the group is supposed to come from IORPs (which is the main topic discussed) – this should be increased. We suggest to combine those representing beneficiaries and employees and to reduce the number of academics.</p> <p>Article 37 of the EIOPA Regulation calls for an adequate geographic representation. Interpreting this as a call for participants from as many Member States as possible is sensible for banking and insurance. However, this does not make sense for occupational pensions, because they only exist in comparatively few Member States. OPSG member should represent Member States which actually have IORPs. Others can offer no practical experience and do little to further the development of IORPs. Particularly for any further work on the HBS approach it should be a matter of course that the potentially concerned Member States are adequately represented and integrated in the relevant advisory group.</p>
<p>1.2.4.e. Is the work undertaken by the stakeholder groups sufficiently transparent? Do you see areas where the approach towards transparency needs to be revisited?</p>	<p>EIOPA always campaigns for transparency on the European level. They should also obey this principle in relation to their stakeholder groups and improve the information they publish on their website.⁶ In the future, all information about the meetings and related documents, as well position papers etc. should be published sooner.</p>

⁶ Current information on the OPSG: <https://eiopa.europa.eu/about-eiopa/organisation/stakeholder-groups/occupational-pensions-stakeholder-group/meetings/index.html>

1.2.5.b. What is your assessment of having one joined BoA for all ESAs as compared to a dedicated BoA for each ESA respectively?	So far we have had no negative experiences with the Board. However, as a basic principle we think that occupational pensions are specific to a degree where it would be better to have a dedicated board of appeal. In this area a division of the two topics could lead to more quality.
1.2.5.d. Does the JC ensure cross-sectoral cooperation and consistent approaches between the three ESAs? If you have identified shortcomings, please specify how these could be addressed.	EIOPA should consider that a consistent approach to regulation (regularly understood as “based on Solvency II”) of insurance companies and IORPs is - because of the central role of labour law - neither justifiable nor desirable.
4.a. What is your assessment of the structure of the ESFS?	In regard to the structure of EIOPA it should be ensured that insurances and occupational pensions are treated as separate topics and treated appropriately according to their characteristics.
4.e. From your experience, do you think that the ESAs and ESRB attract a sufficient number of diverse and excellent staff? If not, why not? If you identify room for improvement, please specify how this could be addressed.	<p>The EIOPA staff working on occupational pensions seems dedicated and competent to us.</p> <p>As explained in the answer to question 1.2.3.a, we think that the funding of the insurance and occupational pensions department within EIOPA should be fair according to the tasks. Solvency II should solely be funded through insurance companies and the EU budget. Generally we see less need for supervision of IORPs, where the social partners play an important role and the beneficiaries take part in decisions regarding the IORP.</p>

Berlin, 31 July 2013

For further information, please contact:

Klaus Stiefermann (Secretary General/CEO)
Tel.: +49 30 33 858 11-10
klaus.stiefermann@aba-online.de