



EIOPA REGULAR USE

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Opinion
of the European Insurance and Occupational Pensions Authority
on the decision of the European Parliament in the discharge
procedure in respect of the implementation of the budget for the
financial year 2018 (2019/2091(DEC))

The Board of Supervisors of the European Insurance and Occupational Pensions Authority (EIOPA) has adopted the following Opinion.

1. Introduction

The purpose of this Opinion is to provide EIOPA's views on the decision of the European Parliament and on any other observations made by the European Parliament in the discharge procedure in accordance with Article 64(11) of Regulation (EU) No 1094/2010 of the European Parliament and of the Council¹.

In addition, the Opinion provides an overview of the measures taken by EIOPA in the light of observations and comments made by the European Parliament acting as Discharge Authority in respect of the implementation of the budget for the financial year 2018 in accordance with Article 106 of the EIOPA Financial Regulation².

2. Discharge 2018: European Parliament's observations and measures taken by EIOPA

Below the list of observations and measures taken by EIOPA to address any possible deficiency or uncertainty:

¹ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

² Financial Regulation of the European Insurance and Occupational Pensions Authority (2019), available on EIOPA's webpage.

Ref ³	Observation of the Discharge Authority	Response and measures taken by EIOPA
Performance		
6	Notes that the Authority is replacing its current e-human resources management system with Sysper, which is provided by the Commission; notes with concern the delay in the implementation of Sysper 2; calls on the Authority to report to the discharge authority on developments in that regard;	EIOPA is part of a large project coordinated by the European Commission to roll out Sysper to EU Agencies, which requires substantial resources and synchronisation amongst all parties. The project delays linked to the size of the project have been resolved in the meantime. The new timing for the roll-out of Sysper at EIOPA as set by the Commission is 1 September 2020.
7	Notes with satisfaction that the Authority is proactive in identifying opportunities for efficiency and synergies with other agencies, in particular with the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA), through the European Supervisory Authorities' Joint Committee and through joint procurements; welcomes the Authority's priority to develop common guidance in cooperation with EBA and ESMA on how to integrate anti-money laundering and terrorist financing risks in prudential supervision; strongly encourages the Authority to actively seek further and broader cooperation with all Union agencies; moreover calls on the Authority to explore possible ways of merging its non-expert services, such as ICT, with other Union agencies;	EIOPA continues to pro-actively seek partnerships and synergies to gain efficiency. The following examples demonstrate this strong commitment: - EIOPA has embarked on several major joint initiatives in the area of information technology and will continue to do so. Examples include: - o EIOPA decided to mirror the European Securities and Markets Authority's approach for collecting reporting information; - o the European Banking Authority and EIOPA have shared the same data centre supplier for seven years and have jointly moved to the inter-agency cloud service procured by EFSA when the contract expired in 2019; the agencies are currently investigating options to activate a joint security operations centre for 24/7 security monitoring and are planning to move to the Commission's CLOUD II framework together; - o As mentioned above, EIOPA is currently transferring its HR systems to the Commission's Sysper platform and its travel system to MIPS; in addition, EIOPA has used Accrual Based Accounting system successfully since 2011; - o To increase efficiency in the area of recruitment, EIOPA aims to introduce the inter-Agency SYSTAL platform; - o EIOPA has recently begun reviewing its data collection and analysis capabilities and is actively investigating synergies with other European institutions.

³ Ref: this is the reference to the specific observation from the "European Parliament decision of 13 May 2020 on discharge in respect of the implementation of the budget of the European Insurance and Occupational Pensions Authority for the financial year 2018 (2019/2091(DEC))"

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		- EIOPA is an active member of ICTAC⁴, whose objectives include the introduction of additional shared digital services, digital workplace projects, joint work on artificial intelligence and other emerging technologies, and better IT governance and security; - EIOPA adopted a new IT Strategy in 2019 which underlines the ambition to promote collaboration and interoperability with both EU institutions and member states. The reuse of existing solutions is one of EIOPA's key ICT principles to ensure cost-effectiveness and business continuity; - To achieve substantial efficiency gains and cost savings in the implementation of the budget, EIOPA requested an official derogation from its Financial Regulation to use the European Central bank (ECB) and Eurosystem Procurement Coordination Office (EPCO) procurement procedures. This derogation was granted to all three ESAs, allowing for even deeper cooperation in the area of procurement; - EIOPA is also an active member of the current Network of Agencies Taskforce to explore shared services amongst agencies.
8	Emphasises that the Authority's role in promoting a common supervisory regime across the European financial system is essential in order to ensure financial stability, a better integrated, more efficient and safer financial market, as well as a high degree of consumer protection in the Union by promoting fairness and transparency on the product and financial services market;	EIOPA has developed an Annual Supervisory Convergence Plan addressing not only Solvency II, but also conduct of business supervision and pensions related issues. This has been implemented as an annual exercise, where EIOPA and NCAs evaluate and decide the supervisory convergence priorities, and implement them during the year through several projects. The outcome of the work is reflected in an Annual Report on Supervisory Activities. In the area of Consumer Protection, EIOPA has put increased resources into its work on conduct supervision and conduct oversight, as a specific part of its overall work on supervisory convergence. This includes, amongst other things: a programme of conduct country visits to national competent authorities to promote greater supervisory convergence; the development of conduct-related chapters within the supervisory handbook (the first of which was completed in 2020); a continued programme of thematic reviews, with a current one targeting issues in relation to bancassurance distribution of mortgage life and other insurance contracts; reporting on consumer trends, market costs and conduct risks, including through so-called retail risk indicators, on an annual basis; work in relation

⁴ ICT Advisory Committee of the EU Agencies operating under the auspices of the EU Agencies Network

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		to its powers of product interventions; and work in the context of cooperation platforms to address concrete issues arising in cross-border business.
10	Emphasises the need for closer supervision in certain Member States with a view to addressing vulnerabilities in the insurance markets of those Member States and protecting consumers from unfair practices of multinational insurance companies;	To address vulnerabilities in certain Member States from a consumer perspective, including from cross-border business, EIOPA has expanded its bilateral country visits to specifically focus on conduct issues, to engage with specific national competent authorities to support them and support greater convergence in the identification, assessment and mitigation of conduct risks from a preventative perspective. EIOPA has also developed the cooperation platforms focussed on cross-border business, where prudential and conduct aspects are mitigated, including via the use of product intervention powers in a specific case. Finally, EIOPA has worked with the Structural Reform Support Program to support two NCAs under two separate programs.
11	Stresses that, while making sure that all assignments are carried out in full and within deadline, the Authority should adhere to and make full use of the tasks and the mandate assigned to it by Parliament and the Council, and that the Authority must never attempt to go beyond its mandate; points out that focussing on the mandate assigned by Parliament and the Council will lead to a more effective and efficient use of resources;	EIOPA has put in place internal governance frameworks to ensure sound project management for planning and for achieving timely deliverables both internally and towards its NCA members, but also to meet deadlines with external stakeholders and the European Institutions. If EIOPA assessed that a requested deadline set by an EU Institution, for example, could hardly be met, these delays were communicated in advance to create awareness of a possible delay and to find and agree on an alternative delivery date. EIOPA carefully assesses each legal empowerment in order not to overstep its mandate. In cases where there might be room for interpretation, EIOPA makes sure its legal interpretation is respecting the Level 1 boundaries and shares it with the Commission services.
12	Shares the Court's concern that, through peer reviews, national supervisors have a decisive say in the Authority's main governing body, which means that they are in a position to decide the scope of the Authority's action to review their own effectiveness;	Already in 2018 EIOPA undertook some steps in the governance of peer reviews: - EIOPA took a seat in the Review Panel, the body established directly under the Board of Supervisors with the responsibility to design, steer and lead the peer reviews; - Within the individual review teams, EIOPA was represented either as a member or as a team leader; - Finally, the technical (methodological) work was coordinated by a dedicated team of EIOPA staff.

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		In 2020, the ESA review introduced new provisions in the EIOPA founding regulation regarding the governance system of peer reviews: - The EIOPA Management Board proposes a two-year peer review work plan to select the most relevant topic to be reviewed; - The EIOPA Chair proposes mandate and composition of the ad-hoc Peer Review Committees responsible for conducting the reviews and preparing follow-up reports for decision by the Board of Supervisors; - The ad-hoc Peer Review Committees in charge of conducting the reviews are always led by an EIOPA staff member, and is composed of staff from the Authority and members of the competent authorities.
Staff policy		
14	Regrets the unbalanced participation of men (six members) and women (one member) in the management board; notes that the Authority has reported a relatively good gender balance for 2018 with regard to senior managers (five men and three women);	EIOPA continues to strive for gender balance throughout the Authority. The Management Board has improved its gender balance and is currently composed of three female members and four male members.
15	Notes that the Court considers that the Authority has not yet accomplished the shift from regulatory tasks to supervisory tasks and that the Authority should strengthen human resources assigned to supervisory tasks;	Since 2016 and the application of the Solvency II Directive, EIOPA has reduced the number of staff allocated to producing regulation, and increased the numbers overseeing its consistent application. EIOPA's core oversight work includes active participation in colleges of supervisors, the establishment of cooperation platforms, bilateral engagement with NCAs, and support on the implementation of internal models, which accounted for 31.75 FTEs in 2018. In 2021, EIOPA plans to allocate 59.75 of its available FTEs to these tasks. In addition, 11.75 FTEs will be allocated to identifying emerging conduct risks, helping NCAs build the capability to tackle them, and if necessary, issuing warnings and prohibitions. A further 21 FTEs will strengthen the common supervisory culture and consistency of practices, and ensure the availability of up-to-date supervisory information. EIOPA's contribution to

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		supervisory convergence will account for over 43% of its available human resources in 2021. With major reviews of relevant regulation on the horizon (the Solvency II Directive, the IORP II Directive and the Insurance Distribution Directive), and emerging areas such as digitalisation and sustainable finance, it would not be prudent to cut further resources allocated to regulatory work. Unless additional resources are allocated to the Authority, EIOPA cannot increase further the proportion of its staff dedicated to supervisory convergence.
<i>Procurement</i>		
16	Notes with concern that the Authority applied award criteria that consisted of noncompetitive price elements for one procurement procedure;	EIOPA always tries to use fair and reasonable award criteria that support the selection of most economically advantageous tender and allow fair completion. In EIOPA's opinion, the award criteria used was giving equal opportunities to all tenderers and reflected the real situation. Furthermore, the elements used for the award criteria in the specific procedure in question consisted of the hourly rate paid to the interim staff member by the staff agency plus the staff agency's fee. While EIOPA believes that both criteria cover competitive elements, also understands the EP concern. In future, EIOPA will consider more carefully the impact of all price elements and will use the key competitive price elements for financial evaluation purposes, like the agency's fee/coefficient that is applied on top of the interim staff salaries.
<i>Prevention and management of conflicts of interest and transparency</i>		
18	Underlines the importance of an open, efficient and independent administration for all Union agencies and the Union as a whole; recalls the problem of conflict of interest arising from 'revolving door' situations and stresses the need for a unified legal framework to address such issues;	EIOPA's Ethics Rules confirm the importance of applying high ethical standards for staff members, in terms of transparency and independence. This includes the application by analogy of the Commission Decision of 29 June 2018 on outside activities and assignments and on occupational activities after leaving the Service. An analysis took place in cooperation with the other agencies in the financial sector on the recent recommendation of the European Ombudsman in case 2168/2019/KR. EIOPA's Ethics Rules were revised and are currently undergoing the approval process of the European Commission.

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<i>Internal Control</i>		
20	Notes that in 2018, the Authority used 29 interim workers through contracts with temporary work agencies; recalls that, according to Directive 2008/104/EC1, those workers should work under the same working conditions as workers employed directly by the Authority; notes with concern that the contracts did not require the temporary work agencies to respect those working conditions, causing litigation and reputational risks; calls on the Authority to analyse the working conditions of its interim workers and ensure they are in line with Union and national labour law.	EIOPA agrees with the importance of the principle of equal treatment and would like to stress its full commitment to honour this key principle at all times. The obligation to comply with the German law implementing Directive 2008/104/EC (i.e. the Arbeitnehmerüberlassungsgesetz, AÜG) is included in EIOPA's framework contracts for interim services. In addition, the interim staff members' integration into EIOPA's work environment respected equal treatment (e.g. same rights to use shared facilities and services, same working hours, rest periods, public holidays, etc). Moreover, and following the Court's recommendation, EIOPA has updated its "Manual on child-minding for staff members' dependent children prior to attending the European School". Interim workers also receive access to the amenities and collective facilities in accordance with Article 13(b) of Arbeitnehmerüberlassungsgesetz.

Done at Frankfurt am Main, on 26 August 2020



For the Board of Supervisors
Gabriel BERNARDINO
Chairperson