

I. Background

In March 2017 the EU Commission issued a consultation on the review of the European Supervisory Authorities. The consultation raises far reaching questions including a potential merger between EIOPA and EBA, the future funding of the ESAs, a potential shifting of responsibilities for conduct supervision and accounting to ESMA and shifting of Internal Model approval to EIOPA.

The consultation closed on 16th of May 2017. On 20th of September 2017 the EU Commission published its final proposal on the topic after considering related stakeholder feedback.

A first assessment of the answers shows a broad agreement of most stakeholders with key fpmi positions.

II. Position fpmi

- **Merger of EBA & EIOPA**

- FPMI welcomes the EU Commissions proposal to keep EIOPA and EBA separated for the following reasons:
 - Overall business perspective: Each ESA has established well-functioning operation as well as sound collaboration across ESAs to discuss and develop joint positions where necessary. However the distinct functions rightfully reflect specific emphases on each line of financial industry and are therefore justified in their existence. (No need to institutionalize collaboration of ESAs via merger).
 - Under consideration of German political interests (EBA&EIOPA in Frankfurt) and BaFin stance, fpmi is receptive to a potential merger under the following preconditions: Prudential and conduct supervisions stay for both, for banking and insurance business, within the new combined unit – under the operational responsibility for supervision remaining with local supervisors (and thereby effectively also Internal Models approval).

- **EIOPA responsibility for Internal Models – opposed by fpmi**

- BaFin strongly oppose the suggestion. Operational supervision and Internal Model (IM) approval cannot be separated for practical reasons and understanding of the details of business model of the respective institute.
- Against this background, fpmi would oppose the move of IM responsibilities to EIOPA. While an EIOPA responsibility could entail some advantages (possibility to get new countries into the IM /easing of some requirements given that BaFin is more conservative than EU average) this would be more than off-set by dis-

advantages regarding lack of experience and knowledge of EIOPA with respect to the insurer's business and products (which can only be gained by actual day-to-day supervision of an entity and which is a pre-requisite for effective model assessment).

- **ESMA responsibility for accounting – opposed by fpmi**

- Fpmi welcomes that the EU Commissions' proposal does not extend ESMA's role regarding accounting and audit standards, as:
 - Fpmi opposes the suggestion of a transfer of accounting authorities to ESMA given that current set-up with EFRAG is working well and against the background of ongoing final negotiations on IFRS 17.
 - In addition, the IFRS endorsement process was only changed in 2014 and we believe that the organization of the European Financial Reporting Advisory Group (EFRAG) is satisfactory and fit for purpose. The option of a more radical reform of the EFRAG has been considered at the time, including the option to integrate EFRAG within or replacing EFRAG by an Agency of the European Union. These options were not adopted for good reasons and we do not see any need to change the existing system.

- **ESMA responsibility for insurance conduct supervision – opposed by fpmi**

- We welcome the EU Commissions' proposal to leave conduct and prudential regulation within EIOPA:
 - We acknowledge that all three ESAs in the past have shown strong engagement in conduct regulation and supervision, each in view of properly reflecting specificities of the relevant sector of financial industry. Discussions in ESA JC in recent major dossiers however revealed the challenges to create a level playing field while preserving the specific nature of the sectors which are designed to provide sustainable solutions to specific needs. We therefore strongly recommend to ensure that specific industry knowledge, also in view of interdependencies of prudential and conduct regulation is maintained by keeping the banking and insurance supervisory functions distinct – and continue collaboration in joint committees where relevant.
 - In addition, BaFin (Hufeld) strongly commented that conduct and prudential supervision needs to remain within one unit (ie. national competent authorities).
 - Against this background, fpmi opposes any shifting of responsibility for conduct supervision of insurers to ESMA.

- **Potential industry funding of ESAs – opposed by fpmi**

- As ESAs are not responsible for day-to-day supervision, fpmi rejects direct funding of the ESAs by the industry. Furthermore, in case of private sector funding the public control on spending and European Parliamentary control rights would be lost.

- Finally, the cost for the financial service industry and ultimately for customers would increase if the industry had to pay national supervisors and the ESAs in addition.
 - Referring to the above mentioned first assessment of the responses to the consultation it is especially worth to mention that most of the respondents –including all industry- also oppose ESAs fully funded by the industry.

- **Governance reform and probably less influence of national supervisors – questioned by fpmi**
 - The legislative proposals presented by the EU Commission in September 2017 include measures to curb the influence of national supervisors in the ESAs. The Commission wants to establish Executive Boards, similar to the boards of the ECB and the SRB. The Executive Boards will prepare decisions of the Board of Supervisors, steer the work of national authorities via „Strategic Supervisory Plans“ and consist of four to six full-time members.
 - The ESA’s current governance structures are well designed and successful. National supervisors are in close touch with supervised institutions. That enables them to design practical regulations that fit the needs of customers and financial institutions. There is no need for governance reform.

- **Einbeziehung der stake holder bei den ESAs verbesserungsfähig**
 - In den eingerichteten stake holder groups finden sich nur wenige, ausgewählte Unternehmensvertreter, die zudem noch einer strikten Schweigepflicht unterliegen.
 - Mehr Transparenz für stake holder außerhalb der stake holder groups wünschenswert.

- **Bestehende Meldeanforderungen sollten vereinheitlicht und reduziert werden**
 - Ein einheitliches Datenmodell soll geschaffen werden
 - Im Gegenzug darf es keine nationalen zusätzlichen Anforderungen mehr geben

- **ESAs sollten angehalten werden Level 3 Maßnahmen zurückhaltender zu nutzen**
 - ESAs neigen dazu in Leitlinien und Empfehlungen über die Vorgaben aus Level 1 und 2 hinauszugehen und zusätzliche Regelungen einzuführen
 - Obwohl Level 3 Maßnahmen rechtlich nicht bindend sind, entfalten sie über den Comply-or-explain Mechanismus faktische Bindungswirkung.
 - Level 3 Maßnahmen unterliegen keiner Kontrolle durch das Parlament oder der Kommission (In der neuen Konsultation erhält die Kommission ein Überprüfungsrecht, wenn 2/3 der Stakeholder Group dies anregen. Ein erster Schritt in die richtige Richtung.).