

JOINT POSITION PAPER ON THE ESA REVIEW

Banking Stakeholder Group (BSG), EBA

Insurance and Reinsurance Stakeholder Group (ISRG), EIOPA

Occupational Pensions Stakeholder Group (OPSG), EIOPA

Securities and Markets Stakeholder Group (SMSG), ESPA

I. Executive summary

1. In this Joint Position Paper, the Banking Stakeholder Group, the Insurance and Reinsurance Stakeholder Group, the Occupational Pension Schemes Stakeholder Group and the Securities and Markets Stakeholder Group want to share their opinion on the upcoming change of the composition of the stakeholder groups (SGs).

2. The four stakeholder groups:

- Regret the reduction of the number of academics, from at least 5 to exactly 4.
- Stress the need for a balanced representation of the industry-side and users-side in all four stakeholder groups.
- Regret the fact that such important changes have been decided upon without prior consultation - even though not legally required - of the stakeholder groups.
- Regret the lack of a transition period to implement the new Regulation, which should enter into force on 1st January 2020.

II. Background

3. *Commission Proposal – ESA Review.* On 20 September 2017 the European Commission launched its proposal (the ‘Commission Proposal’) for a review of the Regulations establishing the European Supervisory Authorities¹ (the ‘ESA Review’). Before launching this proposal, the European Commission had consulted on the proposed changes from 22 March to 19 April 2017. The stakeholder groups advising the different ESAs have carefully reviewed the proposed changes, and shared their views on the proposed changes with the European Commission, both in a joint letter, and separately.²

4. *Changes relating to the Stakeholder Groups in the Commission Proposal.* The Commission Proposal included a number of changes relating to the Stakeholder Groups: (i) it extended the period for which members of the stakeholder groups could serve, from 2,5 to 4 years; (ii) it introduced the possibility to issue separate opinions or advice in case a common position could not be reached; and (iii) it introduced the possibility for the stakeholder groups to issue joint opinions and advice.³

The Commission Proposal held no changes to the composition of the stakeholder group. Even so, the SMSG advice to the European Commission explicitly referred to the composition of that stakeholder group:

‘The SMSG makes the following additional issues in respect of the SMSG composition. First, inputs from academics as member of the SMSG are highly appreciated. While being happy with the current and previous compositions of the SMSG, the importance of academics in these consultative groups being clearly independent of industry is stressed by the SMSG. Second, a weighted representation of the stakeholders involved in the SMSG is important, particularly in respect of consumers, investors and users of financial services. This will become even more relevant if ESMA assumes additional consumer protection functions. The SMSG acknowledges that this is already

¹ Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL Amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 345/2013 on European venture capital funds; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2015/760 on European long-term investment funds; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; and Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (COM(2017) 536 final).

² See Joint Letter of the BSG, IRSG, OPSG and SMSG to Vice-President Dombrovskis of 17 June 2017 on the EC consultation on the operation of the ESAs, <https://eiopa.europa.eu/Publications/Stakeholder%20Opinions/ESAs%20review%20-%20Joint%20BSG%20IRSG%20OPSG%20and%20SMSG%20letter%20to%20EC%20web%20version.pdf>; SMSG Advice to the European Commission, ‘Response to the Public Consultation on the Operations of the European Supervisory Authorities’ (ESMA22-106-210, 10 May 2017), https://www.esma.europa.eu/sites/default/files/library/esma22-106-210_smsg_advice_response_to_public_consultation_on_the_esas.pdf, OPSG ‘Response to the Public Consultation on the Operations of the European Supervisory Authorities’ https://eiopa.europa.eu/Publications/Stakeholder%20Opinions/EIOPA-OPSG-17-11_Response_Operations_ESAs.pdf

³ See art. 1 (22) proposing to change art. 37 (4) and (5) of Regulation (EU) n° 1093/2010; art. 2 (25) proposing to change art. 37 (5) and (6) of Regulation (EU) n° 1094/2010; and art. 3 (23) proposing to change art. 37 (4) and (5) of Regulation (EU) n° 1095/2010.

required by Article 37 ESMA Regulation and supports the view that this principle should always be taken into account when determining SMSG composition'.⁴

5. *Later amendments – Composition of the Stakeholder Groups.* After this consultation, and without the stakeholder groups having had any say on this, an amendment of the European Parliament led to a change in the articles concerning the composition of the stakeholder groups.

The old articles provided the following.

Article 37 EBA Regulation:

'The Banking Stakeholder Group shall be composed of 30 members, representing in balanced proportions credit and investment institutions operating in the Union, their employees' representatives as well as consumers, users of banking services and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial institutions, three of whom shall represent cooperative and savings banks.'

Art. 37 ESMA Regulation:

'The Securities and Markets Stakeholder Group shall be composed of 30 members, representing in balanced proportions financial market participants operating in the Union, their employees' representatives as well as consumers, users of financial services and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial market participants.'

Art. 37 EIOPA Regulation:

"The Insurance and Reinsurance Stakeholder Group shall be composed of 30 members, representing in balanced proportions insurance and reinsurance undertakings and insurance intermediaries operating in the Union, and their employees' representatives, as well as consumers, users of insurance and reinsurance services, representatives of SMEs and representatives of relevant professional associations. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent insurance undertakings, reinsurance undertakings or insurance intermediaries, three of whom shall represent cooperative and mutual insurers or reinsurers."

"The Occupational Pensions Stakeholder Group shall be composed of 30 members, representing in balanced proportions institutions for occupational retirement provision operating in the Union, representatives of employees, representatives of beneficiaries, representatives of SMEs and representatives of relevant professional associations. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent institutions for occupational retirement provision."

Those articles have been amended as follows⁵:

⁴ See para 35 of the SMSG Advice to the European Commission, 'Response to the Public Consultation on the Operations of the European Supervisory Authorities' (ESMA22-106-210, 10 May 2017).

⁵ See the agreed version of the text (not yet published in the OJ): http://www.europarl.europa.eu/doceo/document/TA-8-2019-0374_EN.pdf?redirect

IRSG (art. 37 EIOPA Regulation):

*The Insurance and Reinsurance Stakeholder Group shall be composed of 30 members, **13** members representing in balanced proportions insurance and reinsurance undertakings and insurance intermediaries operating in the Union, three of whom shall represent cooperative and mutual insurers or reinsurers, **13** members representing their employees' representatives, as well as consumers, users of insurance and reinsurance services, representatives of SMEs and representatives of **relevant professional associations** and **four** of its members shall be independent top-ranking academics.*

OPSG (art. 37 EIOPA Regulation):

*The Occupational Pensions Stakeholder Group shall be composed of 30 members, **13** members representing in balanced proportions institutions for occupational retirement provision operating in the Union, **13** members representing representatives of employees, representatives of beneficiaries, representatives of SMEs and representatives of **relevant professional associations** and **four** of its members shall be independent top-ranking academics.*

SMSG (art. 37 ESMA Regulation):

*The Securities and Markets Stakeholder Group shall be composed of 30 members, **13** members representing in balanced proportions financial market participants operating in the Union, **13** members representing their employees' representatives, consumers, users of financial services and representatives of SMEs and **four** of its members shall be independent top-ranking academics.*

BSG (art. 37 EBA Regulation):

*The Banking Stakeholder Group shall be composed of 30 members, **13** members representing in balanced proportions credit and investment institutions operating in the Union, three of whom shall represent cooperative and savings banks, **13** members representing their employees' representatives, consumers, users of banking services and representatives of SMEs and **four** of its members shall be independent top-ranking academics.*

The result of those amendments is:

- a. that the number of academics has decreased from 'at least 5' to exactly '4'.
- b. that the number of industry side representatives of the SGs has been increased to 13, and also the number of other stakeholder representatives is fixed at 13 in all SGs.;

III. Opinion of the four Stakeholder Groups

6. The four stakeholder groups are not happy with those changes. Even though these may look like small changes, the impact on the composition of the stakeholder groups could be strong.

7. *Important role of academics.* The stakeholder groups stress that the role of academics is very important for different reasons. First, they are able to provide expertise and background on the exact scope and content of the quickly changing regulatory framework, in a neutral and forward-looking way. Second, and probably even more important, the academics in the Stakeholder Groups typically take up the role of mediators. Their expertise and skills in drafting nuanced texts indeed facilitates the redaction of common positions. It should be noted that both the Banking Stakeholder Group and the Securities and Markets Stakeholder Group currently operate with a higher number of academics than the minimum required by the Regulations. While the Securities and Markets Stakeholder Group counts 6 academics among its members, the current Banking Stakeholder Group currently operates with 9 top ranking academics among its members. This clearly shows how highly valued the role and input of academics is in the Stakeholder Groups.

8. *Industry-users balance.* The way the numbers of representatives of the different stakeholders in the SGs have been fixed, could in the IRSG and the OPSG result in an imbalance in industry representatives on the one hand, and user representatives on the other hand. The reason is that the number of IORPs (in the OPSG) and of insurance and reinsurance undertakings and insurance intermediaries (in the IRSG) has been increased to 13, while ‘professional associations’ are in the provisions relating to the IRSG and the OPSG explicitly mentioned as part of the 13 non-industry representatives. It should be noted that in the provisions relating to the other stakeholder groups (BSG and SMSG) ‘professional associations’ are not explicitly mentioned, but are typically considered part of the industry-side representatives and have indeed in all Stakeholder Groups enriched the debates with their specific expertise. While the old texts – which fixed the number of IORPs (in the OPSG) and of insurance and reinsurance undertakings and insurance intermediaries (in the IRSG) at 10, still left sufficient flexibility to EIOPA to allow a balanced representation in these two stakeholder groups, the new texts make this much more difficult. An imbalanced representation of industry and users representatives in the stakeholder groups would go against the goal of providing the ESAs with a strengthened consumer protection mandate. Therefore, the four SG regret the strict fixation of numbers of representatives in the revised provisions on the composition of the stakeholder groups, because it will give insufficient flexibility to EIOPA to provide for a balanced representation of industry representatives (through IORPs and professional associations) and non-industry representatives.

9. *Need for consultation.* The Stakeholder Groups gave individual as well as joint input on the Commission’s consultation, including input expressly stressing the importance of academics in the functioning of the Stakeholder Groups. The Stakeholder Groups regret that their composition has been changed in a later stage of the legislative process without the Stakeholder Groups having been consulted.

10. *Lack of transitional measures.* Finally, the change of composition of the Stakeholder Groups (SG) before their usual term is highly disruptive. The Stakeholder Groups regret that the ESA

Review has not foreseen transitional measures to allow that the new composition of the SGs be reached through the gradual replacement of the current members as their mandates come to term.

Adopted by the BSG 10 December 2019	Adopted by the IRSG 16 December 2019	Adopted by the OPSG 16 December 2019	Adopted by the SMSG 4 December 2019
[signed]	[signed]	[signed]	[signed]
Rym Ayadi Chair of the BSG	Greg Van Elsen Chair of the IRSG	Bernard Delbecque Chair of the OPSG	Veerle Colaert Chair of the SMSG