

Public consultation of the European Commission on the operations of the European supervisory authorities

Eumedion's online response

I. Tasks and powers of the ESAs

A. Optimising existing tasks and powers

I. A. 1. Supervisory convergence

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 1: In general, how do you assess the work carried out by the ESAs so far in promoting a common supervisory culture and fostering supervisory convergence, and how could any weaknesses be addressed? Please elaborate on your response and provide examples.

Answer: Currently the quality of supervision and information provision differs per national supervisory authority. We agree with the remark in the consultation document that in order to fully benefit from the Single Rulebook, legal acts must be interpreted and applied in a convergent and consistent manner and compliance must be supervised in a consistent way. Therefore we are in favor of more level playing field in this area. In line with our response to the European Commission's Green Paper 'Building a Capital Markets Union' (2015) and our response to the Call for evidence EU regulatory framework for financial services (2016), Eumedion is of the opinion that supervisory convergence can be further promoted by a) regulations – instead of directives – without Member State options and b) pan-European supervision and enforcement.

Question 2: With respect to each of the following tools and powers at the disposal of the ESAs:

- *peer reviews (Article 30 of the ESA Regulations);*
- *binding mediation and more broadly the settlement of disagreements between competent authorities in cross-border situations or cross-sectorial situations (Articles 19 and 20 of the ESA Regulations);*
- *supervisory colleges (Article 21 of the ESA Regulations);*

To what extent:

a) have these tools and powers been effective for the ESAs to foster supervisory convergence and supervisory cooperation across borders and achieve the objective of having a level playing field in the area of supervision? Please elaborate on questions and, importantly, explain how any weaknesses could be addressed.

Answer: We refer to our answer to question 1.

b) has a potential lack of an EU interest orientation in the decision making process in the Boards of Supervisors impacted on the ESAs use of these tools and powers? Please elaborate on questions and, importantly, explain how any weaknesses could be addressed.

Answer: -

Question 3: To what extent should other tools be available to the ESAs to assess independently supervisory practices with the aim to ensure consistent application of EU law as well as ensuring converging supervisory practices? Please elaborate on your response and provide examples. Please elaborate on your response and provide examples.

Answer: -

Question 4: How do you assess the involvement of the ESAs in cross-border cases? To what extent are the current tools sufficient to deal with these cases? Please elaborate on your response and provide examples.

Answer: -

I. A. 2. Non-binding measures: guidelines and recommendations

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 5: To what extent are the ESAs tasks and powers in relation to guidelines and recommendations sufficiently well formulated to ensure their proper application? If there are weaknesses, how could those be addressed? Please elaborate and provide examples.

Answer: For a proper implementation of legislative packages not only the specifics of the directive or regulation (Level 1) and the specifics of the detailed implementing measures (Level 2) are needed but also the ESA guidelines and recommendations (Level 3). Currently those Level 3 measures are often issued much later. We agree with the remark in the consultation document that this sometimes creates legal uncertainty and leads to unnecessary compliance costs.

I. A. 3. Consumer and investor protection

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 6: What is your assessment of the current tasks and powers relating to consumer and investor protection provided for in the ESA Regulations and the role played by the ESAs and their Joint Committee in the area of consumer and investor protection? If you have identified shortcomings, please specify with concrete examples how they could be addressed.

Answer: -

Question 7: What are the possible fields of activity, not yet dealt with by ESAs, in which the ESA's involvement could be beneficial for consumer protection? If you identify specific areas, please list them and provide examples.

Answer: -

I. A. 4. Enforcement powers – breach of EU law investigations

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 8: Is there a need to adjust the tasks and powers of the ESAs in order to facilitate their actions as regards breach of Union law by individual entities? For example, changes to the governance structure? Please elaborate and provide specific examples.

Answer: -

I. A. 5. International aspects of the ESAs' work

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 9: Should the ESA's role in monitoring and implementation work following an equivalence decision by the Commission be strengthened and if so, how? For example, should the ESAs be empowered to monitor regulatory, supervisory and market developments in third countries and/or to monitor supervisory co-operation involving EU NCAs and third country counterparts? Please elaborate and provide examples.

Answer: -

I. A. 6. Access to data

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 10: To what extent do you think the ESAs powers to access information have enabled them to effectively and efficiently deliver on their mandates? Please elaborate and provide examples.

Answer: -

Question 11: Are there areas where the ESAs should be granted additional powers to require information from market participants? Please elaborate on what areas could usefully benefit from such new powers and explain what would be the advantages and disadvantages.

Answer: -

I. A. 7. 7 Powers in relation to reporting: Streamlining requirements and improving the framework for reporting requirements Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 12: To what extent would entrusting the ESAs with a coordination role on reporting, including periodic reviews of reporting requirements, lead to reducing and streamlining of reporting requirements? Please elaborate your response and provide examples.

Answer: Although we understand the background of this question, we believe that the problem of diverging reporting requirements should first and foremost be tackled at the source. As already mentioned in our response to the Call for evidence EU regulatory framework for financial services (2016), we are of the opinion that the European Commission, when drafting legislation, should assess whether there are overlapping, duplicating or inconsistent requirements. For example both EMIR and MiFIR contain transaction reporting requirements. Although the subject is the same, the requirements themselves are not aligned. As a consequence parties who have to comply with both reporting requirements, for example asset managers, have to spend significant amounts of effort to meet both transaction reporting requirements.

Furthermore we would like to note that we concur with the remark in the consultation document that the specification of reporting, disclosure and benchmarking requirements in implementing acts contributes to significant delay between formal submission by the ESAs and the final publication of the standards in the Official Journal of the EU. For a proper implementation of legislative packages the specifics of both the directive or regulation (Level 1), the specifics of the detailed implementing measures (Level 2) and the ESA guidelines and recommendations (Level 3) are needed. Those Level 2 and Level 3 measures are often adopted much later and as a consequence the transposition deadlines for many legislative packages are too short.

Question 13: In which particular areas of reporting, benchmarking and disclosure, would there be useful scope for limiting implementing acts to main lines and to cover smaller details by guidelines and recommendations? Please elaborate and provide concrete examples.

Answer: -

I. A. 8. Financial reporting

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 14: What improvements to the current organisation and operation of the various bodies do you see would contribute to enhance enforcement and supervisory convergence in the financial reporting area? How can synergies between the enforcement of accounting and audit standards be strengthened? Please elaborate.

Answer: It follows from the consultation document that EU level convergence in the field of financial reporting (accounting and auditing) remains limited. Eumedion concurs with that and believes that ESMA should be given a stronger role in a) the enforcement of international financial reporting standards (IFRS) and b) the supervision on the largest ('Big 4') audit firms. We will elaborate on our position in more detail below.

As already mentioned in our response to the Call for evidence EU regulatory framework for financial services (2016) it is important for investors to have consistent and comparable reporting by all listed entities, irrespective of their size and the location of their listing. In this respect it is important that investors can rely on a pan-European enforcement regime. Currently this is not the case due to the fact that the enforcement of accounting standards is a national task. In practice we see diverged enforcement practices of the IFRS among Member States. We believe that the enforcement of the IFRS could be better safeguarded by pan-European enforcement, instead of European coordination. Therefore we are of the opinion that this responsibility (as a next step) should be transferred from the national supervisory authorities to a pan-European authority, e.g. ESMA. The same applies to the supervision of statutory auditors and audit firms. Currently this is also a national responsibility. As already mentioned in our response to the European Commission's Green Paper 'Building a Capital Markets Union' (2015), we are in favor of pan-European, harmonised supervision on the largest ('Big 4') audit firms.

Question 15: How can the current endorsement process be made more effective and efficient? To what extent should ESMA's role be strengthened? Please elaborate.

Answer: The consultation document notes that there may be scope to streamline the adoption process of international accounting standards. We agree with that. As already mentioned in our response to the Call for evidence EU regulatory framework for financial services (2016), Eumedion believes that new and/or amendments to existing IFRS should be fully endorsed – without carve-outs – at European Union level. In

line with the Maystadt report Eumedion is of the view that full endorsement is the only way to achieve the full benefits of IFRS.

The consultation document raises the topic of a special advisory role for ESMA in the endorsement process. The consultation document suggests the inclusion of additional endorsement criteria with the aim to ensure that international accounting standards do not undermine financial stability, and macro- and micro-prudential supervision. In line with our response to the Maystadt report (2014), we would like to reiterate our view that we strongly disagree with expanding the endorsement criteria to include prudential purposes. We do attach great value to ESMA's contributions to the standard setting and endorsement processes as ESMA provides important input from the enforcement perspective.

We agree with the suggestion in the consultation document that if the Commission were to decide to harmonise audit standards at EU level, there is room for an advisory role for ESMA in the adoption of audit standards.

B. New powers for specific prudential tasks in relation to insurers and banks

I. B. 1. Approval of internal models under Solvency II

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 16: What would be the advantages and disadvantages of granting EIOPA powers to approve and monitor internal models of cross-border groups? Please elaborate on your views, with evidence if possible.

Answer: -

I. B. 2. Mitigating disagreements regarding own funds requirements for banks

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 17: To what extent could the EBA's powers be extended to address problems that come up in cases of disagreement? Should prior consultation of the EBA be mandatory for all new types of capital instruments? Should competent authorities be required to take the EBA's concerns into account? What would be the advantages and disadvantages? Please elaborate and provide examples.

Answer: -

I. B. 3. General question on prudential tasks and powers in relation to insurers and banks

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 18: Are there any further areas where you would see merits in complementing the current tasks and powers of the ESAs in the areas of banking or insurance? Please elaborate and provide examples.

Answer: -

C. Direct supervisory powers in certain segments of capital markets

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 19: In what areas of financial services should an extension of ESMA's direct supervisory powers be considered in order to reap the full benefits of a CMU? Please elaborate on your responses providing specific examples.

Answer: Eumedion is a proponent of European supervision and enforcement. As already mentioned in our answer on question 14, Eumedion believes that ESMA should be given a stronger role in a) the enforcement of IFRS and b) the supervision on the largest audit firms.

Question 20: For each of the areas referred to in response to the previous question, what are the possible advantages and disadvantages? Please elaborate on your responses providing specific examples.

Answer: Giving ESMA a stronger role in a) the enforcement of IFRS and b) the supervision on the largest audit firms will promote greater supervisory convergence in those areas. This will enhance consistent and comparable reporting by all listed entities, irrespective of their size and the location of their listing.

Question 21: For each of the areas referred to in response to question 19, to what extent would you suggest an extension to all entities or instruments in a sector or only to certain types or categories?

Please elaborate on your responses to questions 19 to 21 providing specific examples

Answer: From the perspective of an investor it is important to have a common application of the IFRS by listed companies. The consistent application of IFRS is only safeguarded if the enforcement of the IFRS by all the aforementioned companies is transferred to ESMA. With respect to the supervision on audit firms, we believe that only the supervision on the largest audit firms ('Big 4') should be transferred to ESMA.

II. Governance of the ESAs

A. Assessing the effectiveness of the ESAs governance

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 22: To what extent do you consider that the current governance set-up in terms of composition of the Board of Supervisors and the Management Board, and the role of the Chairperson have allowed the ESAs to effectively fulfil their mandates? If you have identified shortcomings in specific areas please elaborate and specify how these could be mitigated?

Answer: -

Question 23: To what extent do you think the current tasks and powers of the Management Board are appropriate and sufficient? What improvements could be made to ensure that the ESAs operate more effectively? Please elaborate.

Answer: -

Question 24: To what extent would the introduction of permanent members to the ESAs' Boards further improve the work of the Boards? What would be the advantages or disadvantages of introducing such a change to the current governance set-up? Please elaborate.

Answer: -

Question 25: To what extent do you think would there be merit in strengthening the role and mandate of the Chairperson? Please explain in what areas and how the role of the Chairperson would have to evolve to enable them to work more effectively? For example, should the Chairperson be delegated powers to make certain decisions without having them subsequently approved by the Board of Supervisors in the context of work carried out in the ESAs Joint Committee? Or should the nomination procedure change? What would be the advantages or disadvantages? Please elaborate.

Answer: -

B. Stakeholder groups

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 26: To what extent are the provisions in the ESA Regulations appropriate for stakeholder groups to be effective? How could the current practices and provisions be improved to address any weaknesses? Please elaborate and provide concrete examples.

Answer: -

III. Adapting the supervisory architecture to challenges in the market place

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 27: To what extent has the current model of sector supervision and separate seats for each of the ESAs been efficient and effective? Please elaborate and provide examples.

Answer: -

Question 28: Would there be merit in maximising synergies (both from an efficiency and effectiveness perspective) between the EBA and EIOPA while possibly consolidating certain consumer protection powers within ESMA in addition to the ESMA's current responsibilities? Or should EBA and EIOPA remain as standalone authorities?

Answer: -

IV. Funding of the ESAs

Please refer to the corresponding section of the consultation document to read some contextual information before answering the questions.

Question 29: The current ESAs funding arrangement is based on public contributions. Please elaborate on each of the following possible answers (a) and (b) and indicate the advantages and disadvantages of each option.

a) should they be changed to a system fully funded by the industry?

- Yes
- No
- Don't know / no opinion / not relevant

What are the advantages and disadvantages of option a)?

Answer: Don't know / no opinion / not relevant

b) should they be changed to a system partly funded by industry?

- Yes
- No
- Don't know / no opinion / not relevant

What are the advantages and disadvantages of option b)?

Answer: Don't know / no opinion / not relevant

Question 30: In your view, in case the funding would be at least partly shifted to industry contributions, what would be the most efficient system for allocating the costs of the ESA's activities?

a) a contribution which reflects the size of each Member State's financial industry (i.e., a "Member State key")

b) a contribution that is based on the size/importance of each sector and of the entities operating within each sector (i.e., an "entity-based key")

Please elaborate on (a) and (b) and specify the advantages and disadvantages involved with each option, indicating also what would be the relevant parameters under each option (e.g., total market capitalisation, market share in a given sector, total assets, gross income from transactions etc.) to establish the importance/size of the contribution.

Answer: -

Question 31: Currently, many NCAs already collect fees from financial institutions and market participants; to what extent could a European system lever on that structure? What would be the advantages and disadvantages of doing so? Please elaborate.

Answer: -

General question

Question 32: You are invited to make additional comments on the ESAs Regulation if you consider that some areas have not been covered above. Please include examples and evidence where possible.

Answer: -
