European Commissions public consultation on the operations of the European Supervisory Authorities. June 2017.

On 21 March the European Commission announced a consultation on the future direction of the three *European Supervisory Authorities* (ESAs): the *European Banking Authority*, EBA, the *European Insurance and Occupational Pensions Authority*, EIOPA, and the *European Securities Markets Authority*, ESMA. The consultation forms part of the Commission's mandatory three-year review of the operations of the three ESAs which is written into article 81 of their respective Founding Regulations.

The last review, in 2014, had already identified a number of areas for improvement: a) an increased focus on supervisory convergence; b) revision of dispute resolution powers; c) direct access to data; d) greater focus on investor and consumer protection; e) a possible extension of the ESAs' mandates; f) enhanced internal governance; g) possible structural changes; and h) the use of alternative sources of funding. The European Parliament had also carried out its own review in 2013, which anticipated in many respects the Commission's 2014 report.

The consultation document begins by acknowledging the work done by the ESAs, particularly as regards their contribution to building the Single Rule Book and Banking Union and ensuring a robust financial structure for the Internal Market. But it also identifies areas where further progress is desirable, particularly in the field of supervisory convergence, to promote Capital Markets Union, to enhance integration of the internal market for financial services and to safeguard financial stability.

The Commission identifies several areas where progress can be made: a) improving governance at the ESAs; b) reviewing some of their existing functions; c) granting new powers; d) updating resources to match their responsibilities; and e) revisiting the European financial supervisory architecture.

The stakeholders invited to contribute to the consultation were: a) the ESAs themselves; b) financial institutions; c) market participants; d) national supervisory bodies; e) government ministries; f) non-governmental organizations; g) European institutions; and h) all citizens. Responses had to be submitted by 16 May.

In its public consultation document the Commission highlights the following issues affecting its areas for improvement and asks stakeholders about the best way to proceed.

I. Tasks and powers of the European Supervisory ESAs

A. Improvements to existing tasks and powers.

1. Supervisory convergence. To address the need for greater convergence in supervisory practice, the Commission favours equipping the ESAs with more powerful tools, particularly for dealing with cross-border cases. The Commission's analysis identified some key inefficiencies: a) insufficient use of the toolbox for supervisory convergence; b) possible restrictions on ESAs' use of some tools due to the current governance framework (such as instigating procedures for breaches of EU law); and c) a lack of effective tools (such as tools to follow up shortcomings identified at peer reviews).

2. Guidelines and recommendations. The Commission proposes a reformulation of the article in the Founding Regulations on guidelines and recommendations to ensure their proper application.

3. Protection of consumers and investors. The Commission is proposing giving ESAs' greater powers in this area and asks what these should be.

4. Breach of EU law investigations. The Commission asks if it is necessary to amend ESAs' powers on procedures for investigating breaches of EU law affecting individual entities (regarding governance structures for example).

5. International aspects of the ESAs' work. The Commission is proposing a change to ESAs' Founding Regulations to clarify, first, their role in initial equivalence decisions on third countries' regulatory and supervisory frameworks and, second, their work to monitor and implement regulatory, supervisory and market developments in third countries following a decision of equivalence. It even asks whether ESAs should also monitor supervisory cooperation between national competent authorities (NCAs) and third countries.

6. Access to data. The Commission asks responders to reflect on any circumstances in which ESAs might be empowered to collect data directly from market participants.

7. Powers in relation to reporting: streamlining requirements and improving the framework for reporting requirements. The Commission has picked up industry complaints about the duplication and inconsistencies in regulations governing reporting and proposes as a solution that ESAs should take a coordinating role, including regular review of reporting requirements with the aim of streamlining and reducing the workload associated with these obligations. It also proposes that it should limit its implementing acts on reporting to the main lines leaving ESAs to fill out smaller details with guidelines and recommendations.

8. Financial reporting. The Commission proposes, in the interests of supervisory convergence, giving ESMA a stronger technical advisory role in the enforcement of accounting standards adopted under the IAS Regulation and the supervision of auditors and the audit firms of public interest entities. It also proposes giving ESMA an advisory role in the process of endorsing international accounting standards, and raises the possibility of ESMA absorbing the Committee of European Audit Oversight Bodies (CEAOB) and taking over its similar advisory role in adopting audit standards.

B. New powers over banks and insurers. The Commission suggests giving EIOPA powers to approve and monitor the internal models used by cross-border groups to calculate capital requirements. It also asks whether to extend the EBA's powers to resolve disputes in relation to banks' own funds requirements and proposes making it mandatory for competent authorities to consult the EBA before approving any new capital instruments.

C. Direct supervisory powers in capital markets. The Commission takes the view that the greater integration of capital markets means that ESMA should be given greater powers of direct supervision. Specifically, it proposes direct supervision over three classes of entity: a) *data providers* (approved reporting mechanisms or "ARMs", approved reporting arrangements or "APAs" and consolidated tape providers or "CTPs"); b) *pan-European investment funds*; and c) *post-trading market infrastructures* (central counterparties and central securities depositaries).

II. Governance of European Supervisory Authorities

The Commission identifies a need for more effective decision-making by the ESAs, particularly in the field of supervisory convergence. To do this, it moots two options: transforming the Management Board into a permanent Executive Board with an enhanced remit or adding permanent members to the ESAs' Boards. It also asks about delegating certain powers to the Chairperson. Finally, the document also raises the possibility of a revised role for stakeholder groups in the securities markets sector.

III. Supervisory architecture

The UK's departure from the EU means that the EBA will have to be relocated. This led the Commission to query the current European supervisory architecture and asks about the possibility of merging the EBA with EIOPA while ceding some of its consumer protection powers to ESMA.

IV. Funding

The Commission considers it important to match the budget of the ESAs to the work they actually do. At the moment, ESAs are 60% funded by contributions from the NCAs and 40% from the EU budget. In addition, ESMA receives income from the entities it directly supervises. Now the Commission has put out for consultation a number of alternative funding methods: a) ESAs could be funded directly by the industry. This, it feels, would eliminate any political pressures and the budget could be better tailored to the objectives sought; and b) the industry could finance ESAs' budgets only in part, which might be useful, from their point of view, to mitigate pro-cyclical effects.

Finally, the Commission proposes that the cost allocation of ESAs should depend on the size of the financial sectors in each Member Atate of the EU or the size of each sector and the firms that operate within it. Subsequently, the NCAs would reclaim these expenses from their local industry. It also puts forward the option that a European system might be used to collect the subscriptions.

Links: Public consultation on the operations of the European Supervisory Authorities