



# **Report from the European Commission to the European Parliament and the Council on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision. November 2014.**

The European Commission has published on 8 August 2014 its report to the European Parliament and the Council on the operation of the European Supervisory Authorities (hereinafter ESAs) and the European System of Financial Supervision (hereinafter ESFS).

Articles 81 of ESMA, EBA and EIOIPA founding Regulations require the European Commission to publish a general report, early in 2014 and thereafter every three years, based on the experience acquired as a result of the operations of the Authorities and the procedures laid down in those Regulations. This first report assess in detail the functioning of the ESAs covering the period from their inception (January 2011) to December 2013 and its publication has been accompanied by: i) an Annex on the exercise of delegation of power to the Commission to adopt regulatory technical standards, and ii) two Commission staff working documents, the first on the operations of the ESAs and the ESFS and, the second, on the mission and organization of the European Systemic Risk Board (hereinafter ESRB).

ESMA sent, on the 30th October 2013, a letter to the former European Internal Market Commissioner Michel Barnier with its view on the operation of the ESFS and its proposal for improvement for the European Commission to take those proposals into account in the final report. ESMA proposals referred to: improvement of funding mechanisms of ESMA, consultations during the negotiations on the regulation of level 1 relevant to ESMA, the participation of retail investors in the advisory group, improvements in the system of data access, and a power to possibly suspend temporarily the application of the EU law in specific situations.

In the preparatory work of this document, the European Commission has taken into account, the resolution of the European Parliament (11 March 2014) with recommendations for the review of the ESFS, the IMF Financial Sector Assessment Program (FSAP) for Europe (June 2013), and the Joint Committee of the ESAs self-assessment (non-public) report (December 2012). The EC has conducted a public hearing (May 2013) and a public consultation (April-July 2013) to involve a broad range of stakeholders in the final version.

The report of the European Commission concludes that the ESAs are widely perceived as having performed well and to have contribute to re-establish confidence in the financial system. The ESAs are seen as having played a particularly important role in preparing draft technical standards and in contributing to foster supervisory convergence.

The Economic and Financial Affairs Council (ECOFIN), at its meeting on November 7, welcomes EC reports on 8 August 2014. The ECOFIN agrees with the EC that, in general, the ESAs and the ESRB have performed well and that there is no need for a major overhaul of the ESFS.

The report of the European Commission describes the areas in which there is room for improvement: it does not contain legislative proposals but identifies scope for action in the short term, and the need for further assessment in relation to possible improvements over the medium/long term.

**1. Areas for improvement and measures to be taken in the short term.** Implementation of these measures would not require legislative change.

a) Supervision:

- Increase the focus and work on improving the convergence of supervisory practices to ensure the

implementation and uniform application of European Union law because so far the ESAs have been focused on their regulatory work.

- More and better use of peer reviews and more systematic follow-up to ensure the deficiencies are detected.

b) Regulation:

- Enhance the transparency of the process for preparing the draft technical standards by setting and adequate time frame for responding to public consultations and providing more detailed feedback on the input received. (The EC will also pay particular attention to the appropriateness of timelines and to the scope of empowerments for technical standards in draft legislative proposals and during discussions taking place within the legislative process).
- Be involved, as the ESAs have repeatedly called for, during the preparation and discussion of level 1 legislation.
- Ensure the quality of the draft technical standards and cost-benefit analysis.

c) Consumer protection:

- Give a higher profile to consumer/investor protection related issues including increased visibility.
- Make full use of the intervention powers conferred by law.

d) Government, internal organization, the Joint Committee and Board of Appeal and Stakeholder Group:

- Reinforce the authority of the chairperson and the smartness of its decision making by a better use of the delegation of specific tasks such as requests for information (Article 41.1 of the Regulations).
- Strengthen the role and influence of the ESA staff within working groups and standing committees.
- Enhance the role, visibility and transparency of the Joint Committee and foster its role on cross-sectorial cooperation.
- Compose the stakeholder group in a balanced way and strengthen transparency of its work.

**2. Areas for improvement and measures to be taken in the long/medium term.** Many of the issues raised in the review would imply legislative action to amend the ESAs founding Regulations.

a) Supervision:

- Extend the scope of supervision to cover other areas such as consumer/investor protection, International Financial Reporting Standards (IFRS) or shadow banking.
- Strengthen oversight role on internal valuation models especially in the insurance sector.
- Supervise directly a new market infrastructure: the Central Counterparties (CCPs).
- Expand the scope of the ESAs binding mediation powers for resolving disputes related supervisory practices between national competent authorities.
- Strengthen, if necessary, the ESAs' right of direct access to entities data for the performance of their tasks. The role of the Chair and/or the Management Board could possibly be reinforced in this respect.

b) Consumer protection:

- Convert the power's scope of temporarily prohibit or restrict certain financial activities (Article 9.5 of the founding Regulations) into a self-standing empowerment when its use is required by the investor protection.
- Improve and clarify the mandate and priorities of the ESAS on consumer/investor protection investor with a central role given to the Joint Committee.

c) Governance, internal organization, the Joint Committee and Stakeholder Group:

- Improve the ESAs governance by increasing the capacity of the Board of Supervisors to take swift decision in the interest of the EU as a whole. It is proposed to strengthen the authority and role of the Chairperson and to amend the composition and mandate of the Management in order to confer more permanent and executive functions on it.
- Improve funding arrangements of the ESAS taking into account budgetary constraints, and consider the use of alternative sources of funding (from increasing the contribution of the European Commission to ideally eliminate contributions from both the EU and the national regulators).
- Strengthen, if possible, the ESAS dispute settlement powers.
- Increase the duration of mandates for Stakeholder Groups members and consideration should be given to limiting Stakeholder Groups to one per ESA.
- Consider possible structural changes including a change to a unique single supervisor or the extension of the direct supervision powers to integrated market infrastructures.

The **Economic and Financial Affairs Council (ECOFIN)**, welcomes all the EC's suggestions for short-term improvements to the ESAS but stresses the need for further reflection with regard to medium to long-term changes to the ESAS taking into account the impact of the new institutional framework created with the Single Supervisory Mechanism (SSM) and Single Resolution Mechanism (SRM). Among other considerations on long-term changes, the ECOFIN considers that the existing mandates of the ESAS should be fully exploited, stresses the importance of the role of regulatory technical standards to supplement the level 1 legislation, considers that data flows can be optimised to avoid additional burdens on supervised entities, recognizes the value of existing provisions on binding mediation as an incentive for proper cooperation, and recognises the fact that funding arrangements are possibly a more pressing issue than other medium term matter and may necessitate further reflection, with a view to ensure a stable, sustainable and sufficient funding of the ESAS.

If you want to read the Economic and Social Council (ECOFIN) (7 November 2014) on the ESAs review, please, click on: <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2014681%202014%20INIT>

If you want to read the report from the European Commission to the European Parliament and the Council on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS). (8 August 2014), please, click on: [http://ec.europa.eu/internal\\_market/finances/docs/committees/140808-esfs-review\\_en.pdf](http://ec.europa.eu/internal_market/finances/docs/committees/140808-esfs-review_en.pdf)

If you want to read the annex to the report from the European Commission to the European Parliament and the Council on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS) (8 August 2014), please, click on: [http://ec.europa.eu/internal\\_market/finances/docs/committees/140808-esfs-review-annex\\_en.pdf](http://ec.europa.eu/internal_market/finances/docs/committees/140808-esfs-review-annex_en.pdf)

If you want to read the Commission staff working document accompanying the report from the European Commission to the European Parliament and the Council on the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS), please, click on: [http://ec.europa.eu/internal\\_market/finances/docs/committees/140808-esfs-swd\\_en.pdf](http://ec.europa.eu/internal_market/finances/docs/committees/140808-esfs-swd_en.pdf)

If you want to read the Commission staff working document accompanying the report from the European Commission to the European Parliament and the Council on the mission and organization of the European Systemic Risk Board (ESRB) (8 August 2014), please, click on: [http://ec.europa.eu/economy\\_finance/articles/governance/pdf/2014-08-08\\_esrb\\_review\\_swd\\_en.pdf](http://ec.europa.eu/economy_finance/articles/governance/pdf/2014-08-08_esrb_review_swd_en.pdf)

If you want to read the European Parliament resolution with recommendations to the European Commission on the ESFS (11 March 2014), English version, please, click on: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0202+0+DOC+XML+V0//EN&language=EN#top>

If you want to read the European Parliament resolution with recommendations to the European Commission on the ESFS (11 March 2014), Spanish version, please, click on: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0202+0+DOC+XML+V0//ES>

If you want to read ESMA's letter to the commissioner Michel Barnier on the review of the ESFS (October 2013), please, click on: [https://eiopa.europa.eu/fileadmin/tx\\_dam/files/publications/opinions/ESAs\\_opinion\\_on\\_the\\_ESRB\\_review.pdf](https://eiopa.europa.eu/fileadmin/tx_dam/files/publications/opinions/ESAs_opinion_on_the_ESRB_review.pdf)

If you want to read the Joint Committee opinion on the review of the functioning on the ESRB (December 2013), please, click on: [http://www.esma.europa.eu/system/files/2013-1561\\_letter\\_to\\_michel\\_barnier\\_re\\_esfs\\_review\\_0.pdf](http://www.esma.europa.eu/system/files/2013-1561_letter_to_michel_barnier_re_esfs_review_0.pdf)

If you want to read the IMF Financial Sector Assessment Programme (FSAP) for Europe (March 2013), please, click on: <http://www.imf.org/external/pubs/ft/scr/2013/cr1375.pdf>