

EU-høring – revisjon av finanstilsynssystemet

I Tasks and powers of the ESAs

A Optimising existing tasks and powers

Supervisory Convergence		
1.	<p>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.</p>	<p>The ESAs play an important role in fostering supervisory convergence and in coordinating necessary issues between NCAs. This added value from the work in the supervisory authorities at the EU-level should continue, with a clear division of labour and powers between the national level and the supranational level.</p> <p>In addition, we have the following more general comments regarding supervisory convergence:</p> <ul style="list-style-type: none">- Supervisory convergence, by striving for a best practice, is generally valuable. Too detailed regulations and guidelines may, on the other hand, hinder application of good supervisory judgement in individual cases. The flexibility of supervisory tools and measures will be reduced, and loopholes may be created. If one should attempt full harmonization, there is a risk that already established good supervisory practices may suffer through reduction of standards to a "European average supervisory level". This may be the case for example when it comes to capital requirements, frequency of reporting, deadlines for submission of market data, etc.- The supranational layer of supervisory support and coordination could, therefore, to a larger extent be used to inspire the sharing of experience and of best practices, through workshops, seminars, case-studies, etc.- Two examples regarding capital requirements for banks where weak enforcement and supervision practices could be improved rather than full harmonization are:

		<ul style="list-style-type: none"> ○ different practices and levels of severity in national authorities (NCAs) regarding approval of internal models for calculating RWA and capital coverage ○ different practices regarding determination of level of different elements of the overall buffer requirement in Pillar 1.
2.	<p>With respect to each of the following tools and powers at the disposal of the ESAs:</p> <ul style="list-style-type: none"> - 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); <p>To what extent:</p> <p>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;</p> <p>b) to what extent 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?</p> <p>Please elaborate on questions (a) and (b) and, importantly, explain how any weaknesses could be addressed.</p>	<p><u>Peer reviews</u></p> <p>a) Peer reviews are detailed and resource demanding, including questionnaires to all member states, follow-ups with telecoms, on-site visits, etc. A peer review takes typically 1-2 years to complete, from the initiative in the Board of Supervisors, to the publication of a final report from the review. One should consider more efficient use of resources, limiting scope and participation in reviews.</p> <p>b) We do not see evidence of lack of EU interest orientation in the decision making process in the Board of Supervisors. Rather, the peer review processes have ensured good discussions on results of reviews, including necessary follow-ups.</p> <p><u>Supervisory colleges</u></p> <p>a) It is our impression that the ESAs have in general contributed to good cooperation and decision-making processes in supervisory colleges, including the preparation of guidelines, drafting of technical standards, participation in colleges and the preparation of yearly reviews and evaluations of college work. The value added of the ESAs may further improve if offering more expertise and analysis based on their access to European level analysis and access to other colleges.</p> <p>The ESAs have an important role of coordination, mediation and settlement of disagreements between NCAs. This role should not be disturbed by giving ESAs a vote in the colleges.</p>

		<p>Technical standards and the guidelines regarding college work are detailed. A principle based approach might better serve the purpose of supervision, allowing flexibility for the colleges.</p> <p>b) We do not see evidence of lack of EU interest orientation in the decision making process in the Board of Supervisors regarding supervisory colleges.</p>
3.	<p>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.</p>	<p>Discretion when making supervisory decisions should be maintained, allowing supervisory authorities to spend their resources wisely, depending on expertise, experience and knowledge of the local markets. Supervisory convergence should first and foremost be sought through the sharing of best practice and of experience.</p> <p>Full harmonization of the use of supervisory tools should be rejected. Supervisory convergence should not imply that any NCA should have to compromise on an already good supervisory standard, which in most cases has been developed and specifically tailored to market conditions and the economic environment</p> <p>The EU supervisory authorities have today sufficient tools to facilitate supervisory convergence. Using these tools, the ESAs should focus on supporting/encouraging/instructing national supervisory authorities to reach an acceptable level of supervision.</p> <p>The ESAs should be encouraged to improve expertise and the understanding and analysis of risks in the financial sector, thereby contributing with relevant and value-adding information and competence in colleges, stress-tests, EU-wide risk analysis, etc.</p>
4.	<p>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.</p>	<p>When used well, ESAs' participation in colleges may be valuable, contributing with knowledge and competence between different colleges and to the EEA-market as a whole.</p>

Non-binding measures: guidelines and recommendations		
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.	The tasks and powers in relations to guidelines and recommendations are sufficiently well formulated in the founding regulations. In practice, guidelines have proven to be very detailed. We would support that the ESAs have more principle based guidelines that might better serve the purpose of supervision, allowing flexibility in tools to be used, and reducing the risk of loopholes.
Consumer and investor protection		
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.	Consumer protection, and consumer trust in financial markets, is important. The ESAs' focus should be on the well-informed consumer, rather than detailing and harmonizing products and services. Today's detailed mappings and surveys by the ESAs are considered burdensome and with limited value. Principles for consumer protection should be agreed, and the scope of the work should be better defined.
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.	It would benefit the consumers, and support a well-functioning internal market, if host supervisors, with the support of the ESAs, could have better tools for addressing cross-border issues.
Enforcement powers – breach of EU law investigations		
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.	The Commission consultation document states that only one recommendation has been issued by the ESAs under the breach of law powers. One should be careful measuring the success of the Board by the number of decisions that are taken under the breach of law powers. A strength of the ESAs is rather the gathering of national supervisors to discuss and analyze risks and to coordinate measures. The ESAs coordinating role is adding value to European financial supervision. This role is difficult to combine with a role of controlling and overriding NCAs' decisions. The current powers vested with the ESAs are to be used in very

		<p>specific circumstances, for example in case of crisis, where national measures are not sufficient. These limited decision making powers have worked satisfactorily.</p> <p>Expanding the powers of the ESAs could easily undermine the existing good collaboration within colleges. Risk analysis requires sharing of relevant and confidential information, and mutual trust is essential for the good supervision of e.g. cross-border financial groups.</p>
International aspects of the ESAs work		
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.	
Access to data		
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.	<p>The ESAs powers to access information have been adequate for them to deliver on their mandates. The ESAs receive much information through mandatory pass-on of regulatory information from the NCAs.</p> <p>For example, NCAs report quarterly Solvency II-data for all insurance companies and CRD IV-data for the three largest banks, the latter to be extended to comprise all banks in a couple of years. The ESAs also initiates and performs stress-tests and other ad hoc surveys, which implies extensive reporting from banks, insurance companies and IORPS.</p>
11.	Are there areas where the ESAs should be granted additional powers to require information from market participants? Please elaborate on what areas	One should keep clear lines of responsibilities between NCAs and ESAs. We support the current mandate of the ESAs regarding reporting, and the ESAs should not be granted powers to require information directly from market participants. The

	could usefully benefit from such new powers and explain what would be the advantages and disadvantages.	powers the ESAs have today to access information are not of hindrance to them in delivering on their mandates. Any advantages in the form of easier access to information for the ESAs would be outweighed by disadvantages to both NCAs and market participants, with additional reporting burdens, possible misunderstandings due to language barriers or lack of local knowledge and potentially impaired data quality. Furthermore, the lines of responsibility between the NCAs and the ESAs might be disturbed.
Powers in relation to reporting: Streamlining requirements and improving the framework for reporting requirements		
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.	Reporting and analysis of data are important tools when supervising markets and market participants. The assessments of adequate reporting should therefore lie with the NCAs responsible for supervision. National leeway in decision making on reporting requirements must be maintained, because of data's importance to the analysis of risks and the assessment of capital and liquidity.
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.	We support limiting implementing acts on technical issues regarding reporting etc., giving the ESAs the power to specify technical details through guidelines. This will provide swifter necessary changes, corrections and clarifications and will be beneficial to market participants, NCAs and the ESAs. We consider guidelines to be sufficient tools for the ESAs for this purpose (no binding powers necessary), as long as the legal frame is given in the technical standards.
Financial reporting		
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.	Supervision of financial reporting and of auditors is first and foremost a responsibility at a national level, where the firms have their licenses. EU should, and does, facilitate cooperation and coordination between NCAs. As regards enforcement of accounting issues, ESMA successfully facilitates discussions and clarifications between NCAs within its Corporate Reporting Standing Committee / European Enforcement Coordination Session. Any additional resources to improve the coordination or supervisory convergence in this field should be directed at supporting the weaker countries achieving a more acceptable level of enforcement. This may be done with tools already available to ESMA.

15.	How can the current endorsement process be made more effective and efficient? To what extent should ESMA's role be strengthened? Please elaborate.	<p>The current endorsement of accounting standards should be more effective and efficient and we support a strengthening of ESMA's role in this area.</p> <p>ESMA must first and foremost have the capacity and dedicate resources to facilitate cooperation and coordination within the existing regulatory framework. They may presently not have the necessary capacity to follow-up on already adopted legislation. This is illustrated for example in the decision to concentrate resources only to the work of the ESEF (European Single Electronic Format) for 2017 and not progressing on the implementation of the EEAP (European Electronic Access Point).</p>
B New powers for specific prudential tasks in relation to insurance and banks		
Approval of internal models under Solvency II		
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.	<p>Concerning internal model approvals, we recognize both the need for consistency and EIOPA's expertise. EIOPA contributes to a wide range of activities to increase consistency and share knowledge among supervisors, e.g. benchmark studies, supervisory review handbooks, expert networks and indicators for model appropriateness. For cross-border groups, the colleges, where EIOPA also participates, have an important role, recognizing both the home supervisor's main responsibility as well as the host authorities' concerns for the group's activities in their jurisdiction. As Institutions often justify the need for an internal model by specific risk factors or a profile that deviates from the assumptions underlying the standard formula, approval should lie with the NCAs, who are best positioned to assess these factors. If EIOPA were granted the powers to approve internal models, the division of responsibility for supervision of a group would be unclear.</p> <p>To conclude, we trust EIOPA's resources are best spent continuing its current active participation in colleges and other activities to facilitate supervisory cooperation and convergence.</p>
Mitigating disagreements regarding own funds requirements for banks		
17.	To what extent could the EBA's powers be extended to address problems that come up in cases of	Regarding approval of own funds instruments, the current regulation and practice is satisfactory. The need for consistency is ensured through the optional consultation

	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.	process. Our experience is that the national competent authorities have the knowledge and expertise to interpret the eligibility criteria in the capital requirements regulation in a sound manner, and that they optionally seek advice through EBA should there be any doubt about the eligibility. Further, it may be less burdensome for the national competent authorities to discuss the compliance of the instrument's terms with the concerned market participants in the respective member states.
General question on prudential tasks and powers in relation to insurers and banks		
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.	
C Direct supervisory powers in certain segments of capital markets		
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?	Supervisory powers should first and foremost lie with the National Competent Authorities. ESMA has already today several tools to ensure supervisory convergence and should use these tools wisely to develop integrated capital markets.
20.	For each of the areas referred to in response to the previous question, what are the possible advantages and disadvantages?	
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?	
II Governance of the ESAs		
Assessing the effectiveness of the ESAs governance		

22.	<p>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.</p>	<p>One of the strengths of the ESAs is the gathering of national supervisors to discuss risks and coordinate measures. The frequent meetings of Heads of NCAs in the Boards have contributed to supervisory convergence, the shared understanding of risks and a common platform for taking decision/measures.</p> <p>The EU supervisory authorities have powers to make decisions in exceptional circumstances, for example in order to avoid financial crisis. The fact that such decisions are not yet made, are not to be considered a weakness in the governance of the ESAs. Rather, it indicates that the most important mechanisms, based on cooperation between NCAs, common analysis at EU level of risks, and supervisory convergence, are functioning well. These mechanisms should not be disturbed by moving powers to higher levels, which also would be contrary to the subsidiarity principle.</p> <p>Due to extensive regulatory work following the financial crisis, the work of the ESAs and their Boards have been dominated by regulatory work. All three ESAs have now communicated that there will be a shift of focus from regulation to supervision. The current structure facilitates and will encourage the further sharing of challenges, risk analysis and mutual trust between NCAs – which is essential in order to handle any crisis in the future.</p>
23.	<p>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.</p>	
24.	<p>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.</p>	<p>The current structure facilitates the trustful sharing of information, risk analysis and coordination of measures between NCAs.</p>
25.	<p>To what extent do you think would there be merit in strengthening the role and mandate of the</p>	

	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.	
Stakeholder groups		
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.	

III Adapting the supervisory architecture to challenges in the market place

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.	
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?	

IV Funding of the ESAs

29	<p>The current ESAs funding arrangement is based on public contributions:</p> <ul style="list-style-type: none">a) should they be changed to a system fully funded by the industry;b) should they be changed to a system partly funded by industry? <p>Please elaborate on each of (a) and (b) and indicate the advantages and disadvantages of each option.</p>	
30.	<p>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:</p> <ul style="list-style-type: none">a) a contribution which reflects the size of each Member State's financial industry (i.e., a "Member State key"); orb) 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")? <p>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.</p>	
31.	<p>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.</p>	

General question

<p>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.</p>	<ul style="list-style-type: none">- The EU supervisory authorities and the NCAs operate in a system where clear mandates and clear division of responsibilities are necessary, sharing the goal of financial stability, efficient markets and consumer protection. The ESAs supplement the NCAs at a supranational level. The supervision of financial institutions lies first and foremost with national competent authorities (NCAs), whilst the ESAs are valuable contributors to the coordination between NCAs, to the analysis of Europe-wide risks, and to supervisory convergence. The division of responsibilities and the ESAs' role should not be disturbed by decision making powers that could imply conflict of interests within the ESAs, and possibly challenge the necessary mutual trust between national and EU-level supervisors.- We believe that the ESAs' powers and relation to the NCAs currently are well balanced. There is in general no need for additional powers to the ESAs. Supervisory powers should first and foremost lie with the National Competent Authorities.- Supervision at the national level in Europe is important. NCAs have long traditions of financial supervision, having developed staff with different expertise, experience and tools. Furthermore, the NCAs have knowledge of the local market.- Regulation and guidelines should be principle based, giving a clear frame. Within this frame, discretion should be left for the responsible supervisory authority/authorities to use tools or take measures, allowing them to duly consider the individual cases in question.- The work leading up to the inclusion of the EU Regulations establishing the European System of Financial Supervision in the EEA Agreement with the necessary EEA adaptations was complicated, and required extensive efforts both in the EU and on the EFTA side. If the regulations establishing the
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		<p>three ESAs are to be amended, it is important that the EEA dimension is duly taken into account, in order to be able to maintain strong coordinated financial supervision in the single market for financial services, based on a balanced solution that takes into account the structure and objectives of the EEA Agreement and the legal and political constraints of the EU and the EEA EFTA States.</p>
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