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BANKING AND FINANCE

Public consultation on the operations of the European Supervisory Authorities

Fields marked with * are mandatory.

Introduction

Since their establishment, the European Supervisory Authorities have carried out remarkable work contributing to the building of the Single Rulebook, to ensure a robust financial framework for the Single Market and to underpin the building of the Banking Union as part of the EMU. However further progress in relation to especially supervisory convergence is needed to promote the Capital Markets Union (CMU) for all EU Member States, integration within the EU's internal market for financial services and to safeguard financial stability. While the ESAs have started to shift attention and resources to analyse risks to consumers and investors and undertake more work to increase supervisory convergence, work in this area must be accelerated. It will be important to also capture the ever growing benefits from technological developments such as FinTech, whilst addressing any possible risks arising in this context. ESAs have an important role to play in this respect.

A reflection is needed on what possible changes to the current legal framework are needed to optimise the rules within which the ESAs operate in order to increase their ability to deliver on their mandates. In particular, it is necessary to examine which changes to ESAs' existing powers and governance system are needed to increase the effectiveness of supervision (giving due consideration to the principle on the delegation of powers) and to design a funding system which would enable the ESAs to deliver fully on their mandates. In addition, a reflection is needed on the supervisory architecture to assess its effectiveness in the light of increasing complexity and interconnectedness of financial markets, and the need to ensure effective micro-prudential oversight to face the future challenges of the EU financial markets.

This consultation is designed to gather evidence on the operations of the ESAs focusing on a number of issues in the following broad areas: (1) tasks and powers; (2) governance; (3) supervisory architecture; and (4) funding. The aim is to identify areas where the effectiveness and efficiency of the ESAs can be strengthened and improved, while respecting the legal limitations imposed by the EU Treaties. The results should provide a basis for concrete and coherent action by way of a legislative initiative, if required.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-esas-consultation@ec.europa.eu.

More information:

- on this consultation
- on the protection of personal data regime for this consultation

1. Information about you

*Are you replying as:

- ○ a private individual
- ◉ an organisation or a company
- ○ a public authority or an international organisation

*Name of your organisation:

BNP Paribas

Contact email address:

The information you provide here is for administrative purposes only and will not be published

javier.jarquin@bnpparibas.com

*Is your organisation included in the Transparency Register?
(If your organisation is not registered, we invite you to register here, although it is not compulsory to be registered to reply to this consultation. Why a transparency register?)

- ◉ Yes
- ○ No

*If so, please indicate your Register ID number:

BNP P891636587

*Type of organisation:

- ○ Academic institution
- ○ Consultancy, law firm
- ○ Industry association
- ○ Non-governmental organisation
- ○ Trade union
- ◉ Company, SME, micro-enterprise, sole trader
- ○ Consumer organisation
- ○ Media
- ○ Think tank
- ○ Other

*Where are you based and/or where do you carry out your activity?

France

*Field of activity or sector (*if applicable*):

at least 1 choice(s)

- [ ] Accounting
- [ ] Auditing
- [x] Banking
- [ ] Credit rating agencies
- [x] Insurance
- [ ] Pension provision
- [ ] Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- [ ] Listed companies
- [ ] Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- [ ] Other financial services (e.g. advice, brokerage)
- [ ] Trade repositories
- [ ] Other
- [ ] Not applicable

Important notice on the publication of responses

*Contributions received are intended for publication on the Commission's website. Do you agree to your contribution being published?

(see specific privacy statement)

- (•) Yes, I agree to my response being published under the name I indicate (*name of your organisation /company/public authority or your name if your reply as an individual*)
- ( ) No, I do not want my response to be published

2. Your opinion

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.

We support the objectives of promoting a common supervisory culture and fostering supervisory convergence in order to achieve harmonisation within the EU for financial and banking services and create a level playing field. Since the creation of the ESAs, the regulatory and supervisory environment has significantly evolved with the entry into force of numerous sectorial legislations and regulations, the SSM and the SRM.

The ESAs have significantly contributed to this new post crisis regulatory landscape but we observed some weaknesses in the interpretation and application of the ESAs regulations. It is very important in order to ensure a better implementation of the EU law and the legal certainty to improve the following:

- The timelines for drafting the Technical Standards should be defined in a more realistic way, taking into account the ESAs' pending works and more generally their overall workload; The possibility of issuing deferred implementation letters ("No Action Letters", as is done in some other jurisdictions, should be considered
- The ESAs should be included in a better law and regulation formulation process in order to improve the Technical Standards timelines and more generally the terms and conditions of the mandates stated in the Level 1 legislation;
- The industry should be more closely associated in order to assess the impact and effectiveness of draft technical standards;
- To respect the rules and principles laid down in the Articles 290 and 291 of TFEU, the scope of the Technical Standards to be drafted by the ESAs should be more precisely defined in Level 1 texts, in order to avoid that substantial / essential elements are added in Level 2 or 3 texts, and/or any conflict or contradiction with the Level1 Texts;
- The implementation constraints should be taken into account. The dates of entry into application of the Level 1 texts should be determined by reference to the dates of publication of the Technical Standards when required by the Level 1 texts and should be increased by the relevant inherent implementation delays, enabling the industry and the financial institutions to adapt their process, contracts or IT tools, if necessary.
- In addition, a more effective, transparent and participatory process of ESA public consultations should be implemented. It would also help stabilising the legal and regulatory framework. Notably:
  - The timeframe for consultations should be lengthened in order to give stakeholders more time to carry out a meaningful impact assessment that is necessary to the adoption to a proportionate and focused regulatory action.
  - It would be helpful to have, in addition to the ESAs' working programs, a provisional consultation calendar for stakeholders to anticipate and prepare in advance.
- With regard to issues of non-transposition of regulations / directives in a Member State, it would be useful to study the possibility of

allowing banks to appeal to the EBA, which itself could ask the Commission to intervene.

As a concluding comment, we would add that since the SSM was set up, two major actors (ECB and EBA) have been coexisting in the EU banking supervisory environment. Both of them being granted with similar and significant resources and pursuing the same objective of supervisory convergence, may sometimes undermine the goal of supervisory convergence.

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.

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.

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.

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.

Supervisory colleges are an enabling tool which should contribute efficiently to supervisory convergence by improving communication between supervisory authorities and by enabling host authorities to get a better knowledge of banking groups. In this regard, we would like to note that they have been particularly effective in the insurance sector. In the specific case of banking groups under ECB direct supervision, we would note the importance of having a balanced representation of EU authorities in supervisory colleges.

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.

For a better regulation, a full harmonisation approach on “level 1” texts and the adoption of regulations are the best ways to provide legal certainty.

It is also important to improve and clarify the regime of the guidelines elaborated by the ESAs. The ESA’s approach and mandates should consider and respect more systematically the following points:

- Specific characteristics of different products and sectors.
- Proportionate actions, depending on the level of risks, complexity or national specifities that may be allowed under Level 1 texts.
- Carefully align guidelines (including cross-sector guidelines) with Level 1 texts, without adding to or conflicting with the Level 1.

Guidelines can bring clarification and reinforce the consistency of supervision but they must however be sufficiently adapted to different situations and bring added value, respecting the “level 1 or 2” texts.

Furthermore, in light of the experience observed since the ESAs creation, it appears that the ESAs tasks and powers in relation to guidelines and recommendations as well as the legal regime applicable to their guidelines (or other instruments created by the ESAs such as statements) need to be clarified. The main clarification needs relate to:
- the possibility for the ESAs to issue own-initiative guidelines, when a Level 1 text gives them a restrictive mandate to issue guidelines on limited and specific topics;
- the interactions and distribution of tasks between the EBA and the ECB for guidelines relating to prudential supervision matters.

EBA governance : Use of Guidelines

Without putting in question the EBA’s competence to adopt guidelines with the aim at contributing to the consistent, efficient and effective application of the current legislation and fostering supervisory convergence as it states by Article 16 of Regulation n°1093/2010 establishing EBA “shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to competent authorities or financial institutions,” in some cases EBA used this mandate with far reaching consequences and going beyond its competences.

In particular, to be stressed:
Guidelines eroding benefits granted by level 1 legislation: CVA SREP proposed guidelines offered a good example where EBA proposed guidelines if finally adopted would have altered exemptions granted by level 1. In addition EBA exceeded the mandate of its fostering supervisory convergences as proposing uniform supervisory benchmark triggering automatic measures consisting in additional own funds requirements in case of excessive CVA risk. By doing so, the EBA was clearly exceeding its missions laid down in EU legislation.

Guidelines as a front running of rules not yet approved by Level 1: by its December 2016 EBA on the guidelines on disclosure requirements under part eight of regulation (EU) n°575/2013 (CRR1), EBA is expected that G-SIDS would apply on best efforts basis to disclosure requirement as of end of 2016 and by end of 2017 by all banks in basis of a clear legal basis under the current CRR1. In December 2016 EBA guidelines on disclosures and templates go beyond to requirements under the current CRRI but still to be applicable by this year when the appropriate legal basis is still under negotiations (CRR2).

As a general recommendation to improve the implementation of guidelines, we would mention that it is very difficult at times to find all the documents regarding a given regulation (an example is Solvency 2). We have to search for the text in many websites, according to the nature of the document

(directive, guideline, report…) and to the institution that adopted the text (Parliament, Commission or ESAs). We would thus recommend a centralization of texts regardless of their adoption method to make them easily available and to allow an exhaustive vision of the perimeter of the regulations and conducting searches on precise themes.

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.

Except for cross-border situations, we are of the view that consumer protection in financial services is best placed at the level of national competent authorities for reasons of accountability, proximity, transparency, culture and knowledge of national markets. Moreover, extending the current ESAs' powers relating to consumer protection may lead to duplication of regulation.

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.

The current founding regulations already grant to the ESAs the task of fostering depositor and/or investor protection and a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market. In addition, in accordance with their founding regulations, the ESAs have been recently granted specific mandates in various sectorial legislations that encompass already numerous investor protection provisions, embracing most challenges to the investor/ consumer protection (see for example the rules that have been enacted, with regards to the protection of the investor/consumer in MiFID2, IDD, PRIIPS, Payment Services Directive 2, the Credit Mortgage Directive).

In this context, aside from the possibility of studying a reinforced role for the ESAs with regards to shadow banking, which is currently not regulated uniformly in the different Member States, we do not identify specific areas where an additional involvement of the ESAs could be required.
For the improvement of the ESAS regulatory tasks and powers: see also our answers to the questions 1 and 5.

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.

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.

Once an initial equivalence decision has been adopted regarding a third country, it would be useful that the ESAs use their skills, expertise and knowledge to monitor on an ongoing basis, regulatory, supervisory and market developments in third country. The ESAS should also continue to develop their works on co-operation arrangements with third country authorities for supervisory or resolution purposes for instance. Also, given the current new institutional framework due to pending Brexit, it is indeed logical that the ESAs should actually be tasked to monitor relevant developments which might impact upon earlier equivalence decisions. In addition post-Brexit will require more work on supervisory arrangements to manage EU27/UK relationships.
As a practical recommendation, we would suggest that the current Joint Committee could deal with equivalence / monitoring risk of disruptive effects both in regulatory and supervisory practices. This would be of great support to the EU decision makers – including the SSM – to take the most appropriate steps in this field based on a sound technical level. In this regard, it would be advisable to foster cooperation with two major 3rd countries jurisdictions to include in the joint Committee: a representative of the US bodies as well as a representative of the UK bodies according to the sector to be tackled.

The ESAs should also seek to strengthen their action in the international arena, notably their involvement in the International standards setters. As in the recent past years post crisis, European rules have been based on principles based on international standards. By nature and function the ESAs have developed a strong technical competence to very often complete Level 1 provisions by Level 2 rules (ITS, RTS). We would therefore recommend that involvement of the ESAs at all levels within international fora should be more structured and coordinated with other European institutions, in particular with the European Commission. In this regard, it would be advisable to introduce a systematic coordination among all members of the Boards of the ESAs prior to each relevant meeting of the intentional body aiming at shaping a common EU position to be supported by the ESAs' representatives in the international fora. It would be suitable to ensure a public disclosure of the main positions taken by the ESAs in these fora.

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.

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.

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.

BNP Paribas would view favourably an enhanced coordination role for the ESAs in the area of reporting, including the periodic reviews of requirements, which would allow for them to be harmonized and streamlined, avoiding multiple reporting for institutions. This would also facilitate and render more effective benchmarking and disclosure exercises, which would benefit from rules that are as clear as possible (e.g., identical formats for benchmarking across different Member States).

Greater harmonization in the area of reporting requirements is particularly important in view of the often unrealistic calendars proposed for conforming to new regulations (e.g., MIFID…) for which IT developments are complex and take time. One possible solution would be to adopt a practice that regulations and directives enter into force only after a given amount of time after publication of technical guidelines by the ESAs. Here the adoption of a practice similar to the "No Action Letters" (enabling the temporary suspension of the application of level 1 texts) used by the US administration would help the industry adapt to regulatory changes and improve convergence.

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.

BNP Paribas welcomes efforts to improve the transparency and quality of financial information and risk disclosures, which will lead to improved oversight and confidence and ultimately to improved functioning of markets. We would like to note that reporting should primarily serve as a tool for enhancing the management of financial institutions. As an example, where improvements can be accomplished we suggest that the COREP framework which applies to the banking sector under CRD IV with its numerous reporting obligations and validations could be more streamlined and would be a good candidate for limiting implementing acts to main lines and dealing with the detail via guidelines/recommendations

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.

We would favor the promotion of better coordination between the different ESAs to enhance enforcement and supervision in the financial reporting area to avoid multiplication of texts, guidelines, recommendations and overlap of texts.

However we do not support an enhanced role granted to ESAs which would overlap with other stakeholders' responsibilities. Thus, ESMA's responsibilities, namely the enforcement of securities and market rules and the contribution to safeguarding the stability of the European Union's financial system by enhancing the protection of investors and promoting stable and orderly financial markets, should continue to be separated from involvement in the financial reporting standard setting process.

These ESMA responsibilities imply ensuring a consistent enforcement of standards in the financial reporting area to warrant comparability and transparency, to protect markets. These responsibilities should not be extended to interpretation or endorsement or standard setting for example. However, this does not prevent ESMA in its role of supervision of enforcement of IFRS standards and comparability to actively submit to IFRS Interpretation Committee (IFRIC) any issues which are considered by ESMA as problematic in terms of enforcement, or issuing Public Statements on common enforcement priorities for year-end financial statements, or report on extract of Enforcement from the EEC's Database of Enforcement, as done so far.

We do not see how synergies between the enforcement of accounting and audit standards could be strengthened. Accounting and audit standards cover specific perimeters and fall under specific expertise.

The role of a statutory audit is to give an opinion on the accuracy of companies' accounts by certifying the accounts and thus to provide comfort to stakeholders such as shareholders and investors on the accounts. The supervision of statutory auditors and audit firm is a national responsibility and a different responsibility from supervision. If the role of ESMA in terms of supervision and enforcement in the financial reporting area was increased to enable synergies between accounting and audit standards, we think it could interfere with auditors' responsibilities on the accounts and their prerogatives in their audit missions, and could question their independence.

Furthermore, the reform of audit applies from mid-2016 and is now being implemented which requires all the attention of supervisors. Therefore it seems premature to consider reflections on the matter yet.

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

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.

We reiterate our comments in the previous question. In order to keep a adequate balance of responsibilities, it seems fundamental to separate the endorsement / standard setting process and the supervision of enforcement of standards. We are therefore not in favor of a transfer of the responsibilities of EFRAG to ESMA for the reasons outlined in the Maystadt report and notably as:

- ESMA could consider accounting standards only from the perspective of informing and protecting investors, without taking into consideration macro-economic impacts, prudential aspects and concerns of "preparers";
- The development of standards and their enforcement should not be merged;
- ESMA is mainly competent in enforcement coordination;
- The IFRS standards are based on principles; therefore the supervisors' influence should remain moderate in order to maintain this characteristic and to avoid IFRS becoming more rules-based.

We consider it is too premature to question or reconsider the endorsement process and the role of EFRAG following its reform resulting from the Maystadt report, as this reform has been effective since 31 October 2014 only. The current endorsement process works effectively and efficiency even if there is always room for improvements and as EFRAG functioning is continuously assessed and improved.

The criteria of European Public good should be clarified (impact of a new standard on European growth, on financial stability, on level playing field with major jurisdictions applying different standards...) and the means of EFRAG to assess these criteria should be strengthened. This could encompass the possibility for EFRAG to interact with the ESAs within the endorsement process or at an earlier stage of the endorsement process. This would contribute to improving coordination between the accounting and regulatory frameworks (incidentally, IFRS9 and IFRS16 are two examples of lack of coordination in this regard).

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.

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.

Under the current bank capital requirements framework, the characteristics of Common Equity Tier 1 instruments are precisely defined by the CRR, especially the article 28 Common Equity Tier 1 instruments. The EBA has provided answers to several questions related to this article (Q&As).
The question raised in the consultation is related to the disagreement which might occur with regards to the approval by competent authorities of new types of Common Equity Tier 1 instruments i.e., we understand, if the EBA and the competent authority disagree about the eligibility of such instrument.

The issuance of new types of CET1 instruments should not occur very often. Indeed, for most institutions, CET 1 eligible instruments merely consist in ordinary share capital, and the deviations from this standard should not be very common.
Cases of disagreement should hence remain very rare given the clear and detailed eligibility criteria defined by the CRR and as the creation of new types of instruments which might be eligible as CET1 instruments is not very probable.

As a consequence, a systematic and mandatory consultation of the EBA by the competent authority for a new type of Common Equity Tier 1 instrument does not seem to be a necessary change to the role of EBA.

As far as Additional Tier 1 and Tier 2 instruments are concerned, beyond the CRR, which, as for CET 1 instruments, is very precise, the EBA has produced Regulatory Technical Standards (RTS own funds) which provide additional details about specific characteristics.

The creation of new types of Additional Tier 1 and Tier 2 instruments is more probable. Indeed, some specific characteristics may enable some financial institutions to broaden their investor base (or gain access to a specific investor base) while maintaining the cost of these instruments at a reasonable level.
These specific characteristics would obviously be framed by the existing regulations with hence limited room for deviations from vanilla products. Although only minor deviations may differentiate the new types of Additional Tier 1 and Tier 2 instruments from the existing ones, the competent authorities could on a case-by-case basis have recourse to the EBA for opinion about the eligibility of these instruments.
Given the necessity for financial institutions to meet investor demand with sufficient reactivity and to manage their issuance programme based on market conditions, the validation process of new types of capital instruments should remain - within the limits of the existing regulatory framework and of adequate supervision of course - sufficiently flexible and manageable from a timing perspective.
As a consequence, discretion should be given to competent authorities to determine whether the consultation of the EBA would be necessary for them to assess the eligibility of the instrument.

In addition, the interaction between the competent authorities and the EBA about the eligibility of capital instruments seems consistent with the objective of the current framework. In other words, no risk related to a too lenient assessment of new types of instruments by a competent authority comes to mind, which leads to conclude, consistently with a proportionate approach to supervision, that a new layer of validation of the new types of capital instruments is not required.

This being said, the ability of competent authorities to seek advice from the EBA on a case-by-case basis is positive and this should be maintained.

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 were 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

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.

In our view, ESMA's scope of action, as currently defined is very wide and extensive, with a broad range of tasks and significant powers in different areas. In this respect, and in view of our previous comments on the current functioning, we consider that ESMA should primarily focus on its current mandate and ensure that existing powers of supervision are properly exercised to reap the full benefits of a CMU. As a result, it is felt premature at this stage to envisage the extension of ESMA direct supervision powers to other areas of financial services.

In the future, it could be envisaged that the ESMA's direct supervisory powers be extended to Data Reporting Services and CCPs. For Data Reporting services, this extension would be consistent with the re-definition of ESMA's role in the area of reporting. Direct supervision of consolidated tape providers (CTPs) and of approved publication arrangements (ARPs) would be totally in phase with central collection and consolidation of data at ESMA level. Regarding extension of ESMA's direct supervisory powers to market infrastructures, this approach would require a specific review and in-depth analysis of how supervision at EU level could be exercised (i.e. in liaison with central banks as liquidity providers to CCPs). In addition we are of the view that this direct supervision power should be limited to CCPs and not be extended to their users.

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.

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

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?

Referring to the two common main tasks assigned to the ESAs by the legislator, the overall judgment cannot be entirely positive. Regarding the contribution to the creation of the Single Rule Book, one can regret a frequent gold-plating of level-1 measures as if the Supervisory Board of Supervisors wanted to wipe the adaptations to the European specificities that the co-legislators (Council and EP) had adopted (specific examples in answer 5). Regarding the promotion of convergence of supervisory practices everybody complains that the ESAs are too focused on complying with Basel Committee rules, and as a result almost no progress has been delivered in this area, despite particularly high expectations from the industry as it could have really improved the functioning of the European single market for financial services.

Consequently as the Single Rule Book is close to an end, it would be wise to strengthen the ESAs link to the European Commission in particular regarding the design of Level 2 rules to ensure that they rigorously comply with the level 1 rules. The main tasks of the ESAs are defined in level-1 rules with the main aim to complete Level 1 provisions in order to establish the European Single Rulebook. Therefore ESAs per se have no regulatory powers: indeed all ESAs' acts are empowered by the EC. In this regard the EC has the power to disregard the ESAs' proposal if justified. The EC is the only institution empowered by the EU legislator via a delegated competence to adopt Level 2 acts in the current EU institutional framework. This is particularly important, as it is up to national (US or European) legislators to transpose international standards taking into consideration their national specificities (an economy overwhelmingly intermediated cannot apply identically rules which fit for a disintermediated economy). We recommend consequently that the Commission be more vigilant and propose a control system that would allow consistency between the Level 1 (rules voted by the co-legislators) and the Level 2 (implementation rules under delegation to the Commission by the co-legislators). Regarding ESMA's supervisory function, it would make sense in the framework of the development of the Capital Markets Union in the EU27 to consider a European capital market supervisor in in a further stage, provided that ESMA's current tasks and powers are properly exercised (please see our response to Q.19).

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.

We restate here our earlier suggestion to give the ESAs the power to issue deferred enforcement letters (No Action Letters) to temporarily suspend the application of regulations that require significant industry adaptation and investments.

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.

In our view, the current governance set-up has a number of disadvantages which translate into observed biases of the Supervisory Board:

- Participation by members in both international (BCBS) and European fora (SSM, EBA, for example) can generate an ex-ante adherence to international rules
- There is a tendency by supervisors gold-plating, which can be the result of the accumulation of national rules that does not sufficiently take into account the European interest
- There are overlaps between supervisors and regulators, with reporting requirements being a clear example. The individual requirements of each Member State are sometimes aggregated to which are added those of the European supervisor, which depending on circumstances can generate ad-hoc reporting demands (Anacredit for the ECB and the SEBC for statistical purposes)..

In order to ensure consistency between the spirit of level 1 measures and level 2 ones, we would encourage the establishment of an Advisory Board / Wise-men Committee to be appointed for 2 ½ year mandate, renewable once. This Advisory Board / Wise Men Committee could be composed of a limited number of national high level representatives (i.e., 6 representatives) in addition to a high level representative of the EC.

Members of the Advisory Board could be selected as follows:

- Eurozone Member States having a significant market / assets share in their respective domestic market for the specific sector (i.e. banking, insurance or capital market activities);
- A Eurozone Host Member State;
- A representative of non-Euro zone Member State.

The representatives would be proposed by the Board of Supervisors (or

by the Chairperson and appointed by the EC and the EP exclusively on the basis of their competences and professional experiences. A right balance between public entities representatives and private sector experts would be appropriate.
- The Advisory Board should support both the Board of Supervisors (the decision maker) and the Chairperson with technical advice for regulatory acts, in full consistence with L2 decisions and Level 1 provisions and spirit. Equally, it should provide advice in fostering supervisory convergence.
- Advice / recommendations by the Advisory Board by simple majority shall be made public when dealing with regulatory decisions.
- The Advisory Board's advice / recommendations shall not be binding. However if the Board of Supervisors disregards it in its final decision, the Board shall provide a reasoning for not having taken into consideration the advice of the Advisory Board.
- The Advisory Board would be complementary to the current Management Board according to Article 45, EBA Regulation.

We would also recommend making changes to the current voting system as described below:
- The Board of Supervisors takes its decisions by simple majority as a general rule (each member has a vote). However :
o Regulatory / Supervisory issues: to adopt RTS, ITS Guidelines, Recommendations or requests of MS to temporarily restrict or prohibit certain financial activities, rules of qualified majority apply. Qualified majority is attained with 55% of the voting members, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union votes and a blocking minority (comprising at least four voting members).
o Breach of Law and binding mediation: double simple majority (simple majority of participating Member States and non-participating Member States).
We would recommend that all decisions to be voted by the Board should be taken by qualified majority according to the Treaty rules. This approach aims at offering an appropriate symmetry with Level 1 decisions.

As a closing point, we would note that ideally the boards should confirm to the Commission that Level-2 texts are conforming to the mandate that has been given to the ESAs.

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.

We are of the view that the role and mandate of the Chairperson should be a strong one. He or she has important function in particular in ensuring transparency and communicating with interested parties. The Chairperson should be the guarantor of the respect of the spirit of the law in the undertaking of level 2 work and as such should have greater interaction with the political process (observer status during political negotiations for example). In addition, the role of the Commission itself should be strengthened to be able to remind at each step of the process the spirit of the law so that it is respected. A less bureaucratic approach by the Commission services in this regard would facilitate the task.

With regard to transparency, we welcome the high level of transparency offered by the ESAs, in particular aiming at keeping market participants fully aware of work progress and steps to be taken by the Authorities (consultation, hearing, workshop, research etc.). However, due to the high volume of regulatory Level 2 measures adopted in the past over 5 years by EBA having a significant impact on choices to be operated by the banking system, an even higher level of transparency should be encouraged.

Thus we would make the following two recommendations:

- In order to be fully symmetric with the high degree of transparency offered by the EU legislators – both the EP and Council of Ministers – we do support a full disclosure for all Regulatory decisions (RTS, ITS, Guidelines, Recommendations). Therefore, Agendas of Supervisory Board meetings on regulatory decisions should be made public. Board of Supervisors Sessions should be made available by web-streaming as is the case for EP Committees sessions and ECOFIN sessions. The final decision of the Board of Supervisor should be published with the result of vote.

- In order to be fully transparent, as the ESAs are tasked to carry out tasks based on a Level 1 legal basis, all mandates received by the EC to carry out tasks established by Level 1 including specific quantitative impact analysis to be pursued for final regulatory choice should be made publicly available
- Given the importance of supervisory convergence, we also suggest giving the Chairs the power to request NCAs to provide the ESAs with timely information on supervisory convergence issues.

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.

Stakeholder groups can be very useful and indeed essential in the rule-making process and for ensuring transparency. This said, we think it is necessary to ensure that Stakeholder groups are in fact representative of the industry that is regulated, which is not always the case at present. Often communication sessions with the Stakeholders Group have a high level of participation by consumer associations which little place for the industry and makes discussion of technical matters ineffective. Also and perhaps naturally, public hearings have a heavy local geographical representation bias, which does not always allow for the presence of industry representatives from other Member States. The foregoing leads to a reliance on written communication between supervisors and the industry which strongly limits the effective exchange of views.

If their composition is too diverse and includes groups that are not sufficiently knowledgeable of technical matters, it leads to stakeholder groups becoming ineffective and to a lack of real discussion with the industry on technical aspects. Of course, this is not to say that consumers should not be involved, but they should be consulted differently and in appropriate fora. One way to do this could be to specialise consultations with specific groups depending on the topic at hand, including consumers, of course.

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.

We do not think that the current model with separate seats for each ESA should be modified at this time. We think the real evolutions needed at present are in the governance and operations of the ESAs as suggested in our answers above.

One area where we think there can be an evolution in the model is in the way CCPs are supervised, which today is done by supervisory colleges. In our view this is quite inefficient and slow.

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?

We do not think there would be merit in consolidating EBA and EIOPA as banking and insurance involve very specific and different and wide-ranging activities, requiring approaches and expertise unique to each sector. Moreover, the separation of conduct-of-business and prudential would lead to a double supervision, rendering it even more complex, and by extension, more fragile, without any likelihood of increased benefits to society in terms of consumer protection or financial stability. EBA and EIOPA should remain separate and stand alone.

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)?

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)?

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.

The question of funding of the ESAs and notably of the appropriateness of additional contributions by the industry would need to be a consequence of the powers and of the governance rules that are adopted. All other things being equal, BNP Paribas is of the view that the current financing system the ESAs, whereby 60% of their budget is ensured by national authorities and 40 % by the EU, is adequate and should not be changed. The ESAs contribute to the fundamental objectives of the European Union and their financing is rightly included in the EU's budget. The ESAs' role of advice to the Commission (on regulatory and supervision matters) is part of the functioning of the EU's institutions and banks should not be asked to contribute.

We would also emphasize that funding by the industry brings the risk of higher inefficiency and deviation from the core missions of the ESAs. In addition, it should be noted that changing the financing arrangements to either a Member State key or an Entity-based key would necessarily necessitate deep changes in the governance setup of the ESAs.

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.

As noted in the consultation in many cases banks already contribute, either fully or partially to the budget of NCAs, something which the implementation of the SSM has not reduced. Neither of the proposed ways of allocating costs would alleviate this.

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.

3. Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

Useful links

More on the Transparency register (http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Consultation details (http://ec.europa.eu/info/finance-consultations-2017-esas-operations_en)

Specific privacy statement (https://ec.europa.eu/info/sites/info/files/2017-esas-operations-privacy-statement_en.p

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