

Brussels, 20 June 2016

Feedback statement on the public consultation on the operations of the European Supervisory Authorities having taken place from 21 March to 16 May 2017

This document provides a factual overview of the contributions to the public consultation on the operations of the European Supervisory Authorities having taken place from 21 March to 16 May 2017. The content should not be regarded as reflecting the position of the Commission. It does not prejudice any feedback received in the context of other consultation activities.

INTRODUCTION

On 21 March 2017, Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA) of the European Commission launched a public consultation on the operations of the European Supervisory Authorities (ESAs).

The consultation was designed to gather evidence from all interested parties 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 consultation will feed into the review of the European System of Financial Supervision (ESFS) to strengthen the effectiveness and efficiency of oversight of the financial sector which is foreseen in the Commission's Work Programme for 2017.

DG FISMA received 227 responses to the consultation that ended on 16 May 2017. Contributions came from a wide variety of respondent groups: 59 (26%) public authorities or international organisations, 161 (71%) organisations or companies and seven (3%) private individuals (see Chart 1). These respondents include EU and national authorities (government ministries, central banks, supervisors/regulators), industry associations, companies, trade unions, consumer organisations and think tanks (see Chart 2 for field of activity of private sector respondents). The fields of activities of the respondents are almost equally spread between various activities, from which insurance (24%), banking (23%) and investment management (20%) are the most represented.

Replies originated in 26 EU Member States (all except Latvia and Romania), all EEA/EFTA countries and from globally-present organisations. Most of the respondents are located in Belgium (18%), Germany (18%), the United Kingdom (11%), France (10%) and Italy (6%) (see Chart 3).

An additional number of comments, position papers and contributions were received outside the consultation, including official positions provided by some governments. Even though they are not reflected in the figures of this feedback statement, they have also been taken into account in the analysis of the legal and factual situation, and in the preparation of the steps ahead.

DG FISMA would like to thank the respondents for their contributions.

This feedback statement summarises the answers received for each of the 32 questions in a factual manner.

All responses to this consultation have been published at the same time as this feedback statement.

Chart 1 – Type of respondent

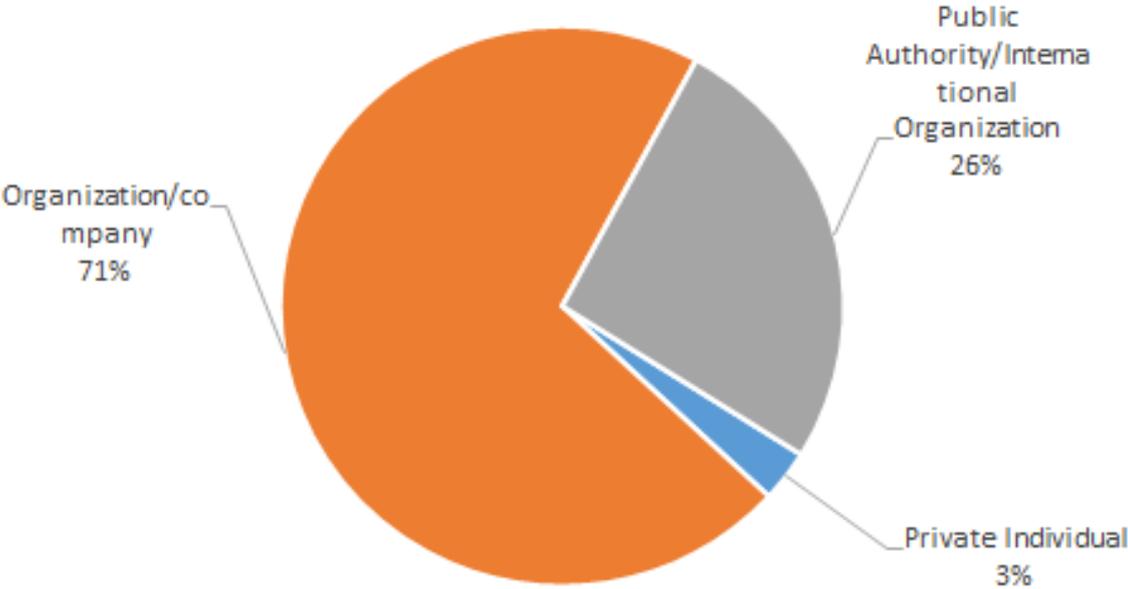


Chart 2 – field of activity of private sector respondents

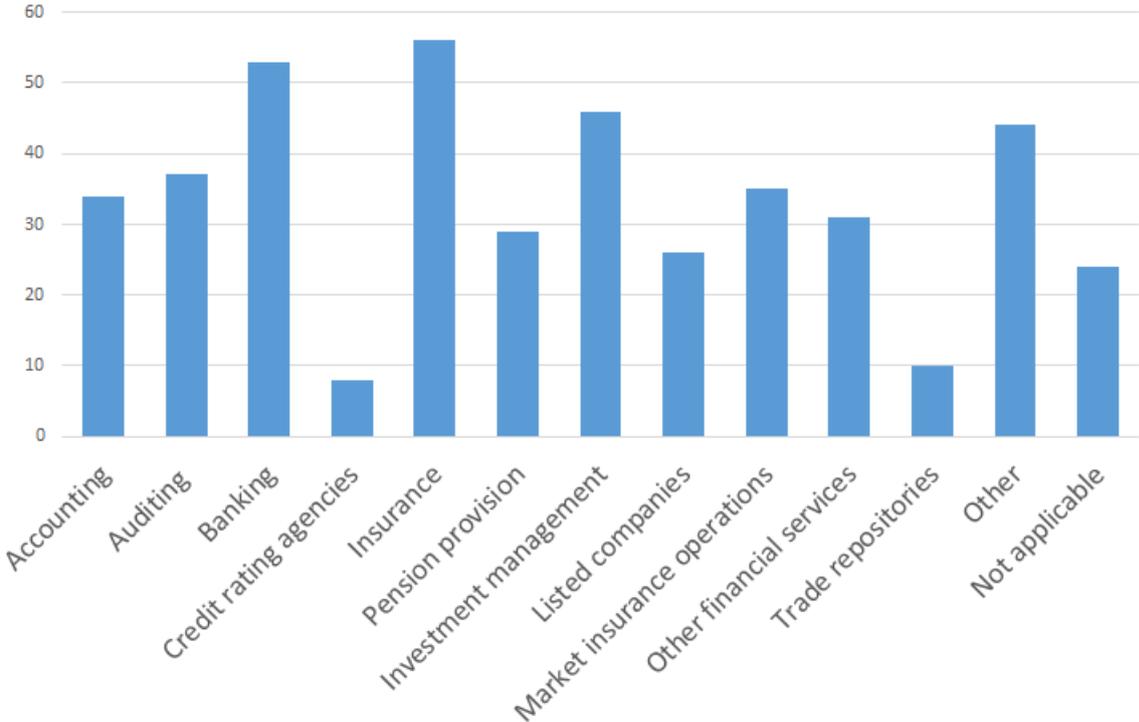
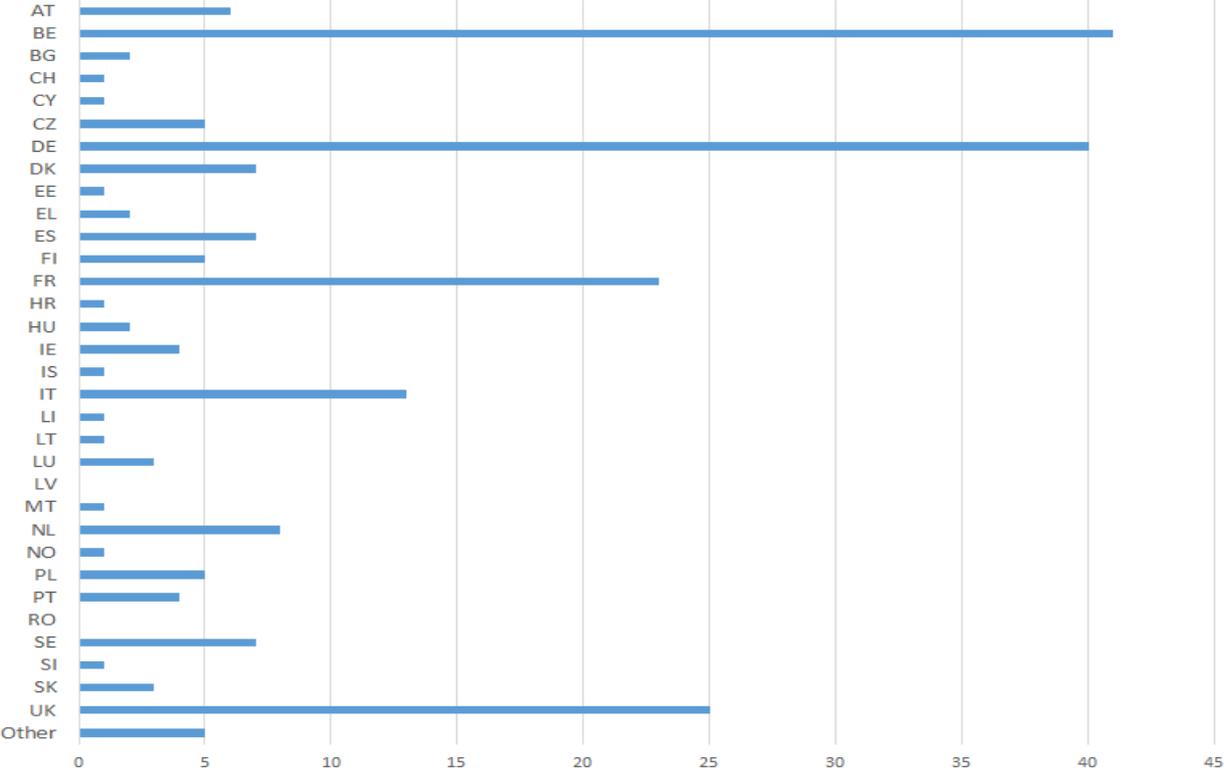


Chart 3 – Location of respondents



RESPONSES TO THE CONSULTATION

I. Tasks and powers

A. Optimising existing tasks and powers

1 Supervisory convergence

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.

The vast majority of the respondents strongly support ESAs' mandate on **supervisory convergence** and positively assess the results while recognising the scarce resources and the short time of the ESAs' existence. However, many industry representatives recall the need for ESAs, especially EIOPA, to respect the limits of their mandate. While many respondents object to significantly increasing ESAs' powers at this stage, some recognise their limitations and would like to see targeted improvements. Most respondents argue the available tools broadly suffice and should be more fully used. ESMA argues convergence measures should be considered in the case of cross-border authorisations to ensure that national decisions are consistent across the EU.

Most respondents point out that ESAs have primarily focused on rule-making. Most respondents support a greater role for ESAs in **improving supervisory convergence**. Some respondents, especially from industry, specifically link their support to the need to build the Capital Markets Union. Some suggest that ESMA become a fully-fledged capital markets supervisor.

Stakeholders point to some weaknesses *e.g.* little, if any use of binding mediation, breach of union law, emergency procedures and insufficient transparency in ESAs' activities. Several industry, and a few public sector, representatives support changes to ESAs' governance and decision-making process to facilitate greater use of existing tools. Some respondents, mostly from the private sector, cite cases where ESAs had not acted at all, very late, or not communicated actions publicly.

Some stakeholders also reckon that the ESAs have developed a culture of compromise which is not compatible with ESAs' supervisory convergence activities.

Many respondents call for closer collaboration (on cross-sectoral issues) among ESAs through the Joint Committee (with a few suggesting to improve its governance) and of ESAs with NCAs and other relevant EU bodies.

Many private, and a few public (including ESMA), sector representatives call for greater coherence between Level I (where the political issues should be sorted out) and Level II legislation, more time ('buffers') and flexibility for implementation and stronger involvement of stakeholders.

Other respondents, including EBA and ESMA, suggest to more systematically involve the ESAs in the discussions on Level I legislation. The ESAs should notably be allowed to: 1) Advise on the substance of the legislation as it is developed and identify areas where Level I measures are needed for, or might inhibit, supervisory convergence and 2) provide input into the feasibility and appropriateness of Level II mandates.

Many respondents highlight the need to respect the principles of **subsidiarity and proportionality** and NCAs' room for **discretion** in their day-to-day supervision. ESAs should focus on supervisory outcomes, avoid one-size-fits-all approaches and thoroughly understand local financial markets. But some other respondents point to persisting regulatory barriers across the EU and call for greater harmonisation. Many respondents call for greater **transparency** in ESAs' work.

Some respondents suggest a broader assessment of EU-level supervision, including the ECB (SSM, ESRB), and the SRB, the interaction between whom they find not fully satisfactory. Given the possible interplay between the resolution of different types of financial institutions (e.g. between banks and CCPs), the Single Resolution Board calls for an effective coordination mechanism between the relevant ESAs when defining the sectorial resolution rulebooks.

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;

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?

Please elaborate on questions (a) and (b) and, importantly, explain how any weaknesses could be addressed.

Peer reviews

Some stakeholders consider **peer reviews** a useful instrument the Commission should also encourage ESAs to devote more resources to. Some stakeholders see room for improvement by taking into account the views of the industry in the peer review process, conducting more focused peer reviews, and emphasising 'best practices' in terms of supervisory approaches and outcomes over application of EU laws. Some stakeholders also underline that more attention should be paid to the follow-up of peer reviews, in order to guarantee the implementation of recommended measures. EBA suggests adding the possibility of focused reviews on a limited number of competent authorities.

Binding mediation and settlement of disagreements

Only few stakeholders comment on **binding mediation**, as the ESAs have not issued binding mediation so far. Several stakeholders underline that binding mediation should be explicitly mandated in Level I legislation, especially where there is a clear consensus on the need for a high level of regulatory and supervisory harmonisation across the EU.

Supervisory colleges

Many respondents consider **colleges of supervisors** useful instruments of supervision/supervisory convergence which allow for sharing information among regulators. However, several stakeholders argue the high number of representatives in college meetings makes efficient supervision difficult. Therefore, it would be important to clarify the working methods and the role of each participant, as well as the lead supervisor's responsibilities.

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.

In terms of **new tools**, many stakeholders, primarily from industry but also including ESMA, suggest exploring the possibility for ESAs to issue documents similar to no-action letters used by other supervisors (e.g. in the US) to remove or temporarily suspend certain obligations. This, they argue, could provide the necessary flexibility in the process of applying new regulations in certain cases or may be needed to ensure orderly markets and financial stability.

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.

Many respondents find ESAs' involvement in cross-border cases positive. Many private sector respondents feel that ESAs should get involved more frequent and proactively in cross-border cases while a few others, primarily from the public sector, argue ESAs should only be entrusted with new powers in cross-border or systemically relevant cases. EIOPA asks to be given the mandate to act more intrusively when it sees risks of cross-border failures. Some other respondents also recognise that the underlying legislation in this area is not sufficiently solid.

2 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 vast majority of respondents identify weaknesses in the definition and application of ESAs' tasks and powers on **guidelines and recommendations**. Recommendations include the introduction of scrutiny of guidelines and recommendations by legislators, adopting guidelines only when strictly necessary, increased openness and transparency by consulting stakeholders or conducting impact analyses (especially for costs of compliance).

Many respondents, especially from industry, explicitly welcome other tools such as common interpretation of rules, Questions & Answers, supervisory briefings and supervisory handbooks. Some call for them to be made more effective, e.g. by publicly consulting on them, publishing the results or

setting a deadline for ESAs to respond. However, some industry representatives feel guidelines and Questions & Answers are used too extensively by ESAs.

Some feel tools are used too extensively and need consultations / endorsement by EU institutions.

3 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.

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.

Many public authorities and industry associations found that the scope of ESAs' tasks and powers on **consumer protection** is adequate and should not be extended. Instead, they should use their existing powers more efficiently. However, some other public authorities see room for extending ESAs' powers, e.g. by giving ESAs the right to prohibit or restrict certain products for investor protection purposes and want to see more work in the financial innovation space, including on virtual currencies and innovative uses of consumer data. Some industry organisations want ESAs to do more e.g. on financial education, cross-border protection, big data etc.

All three consumer organisations see significant shortcomings with enforcement, either viewed as inefficient or detached from most detrimental problems at national level. They also see a need for extending the ESA's fields of activity. Some of them advocate a twin peak model of supervision i.e. separating market conduct from prudential supervision. A few organisations found that the ESAs' powers to ban products should be extended to those that are prone to consumer detriment.

A few public authorities argue the Joint Committee (JC) should have a stronger role and cross-sectorial issues should be dealt with by it. EBA calls for clarifications in its founding regulation to keep pace with the range of consumer protection legislation.

4 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.

Only half of the respondents express a view on the need for adjusting the ESAs' tasks and powers on **breach of EU law investigations**. The majority of those, predominately public authorities, do not see the need to adjust the ESAs' tasks and powers in order to facilitate their actions on breach of Union law. Respondents recognise that such powers have not been fully tested yet, and it would therefore be difficult to assess the existing mechanism's full potential.

Other stakeholders believe that the breach of Union law procedure should be modified. Specific suggestions for reform include an obligation for the ESAs to duly motivate and publish any decision

not to launch a breach of Union law investigation, or allow on-site inspections to NCAs in the context of breach of Union law investigations. Others propose that breach of Union law decisions could be taken by a modified executive board with a Commission representative with veto powers. ESMA argues for a clarification in the ESMA Regulation that Article 17(6) powers also relate to provisions of Directives that establish unconditional obligations that are sufficiently clear and precise to be directly effective. ESMA also suggests to add financial reporting, corporate governance and auditing to the scope of breach of Union law procedures.

5 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.

With regards to **the international aspects of the ESAs' work** half of the respondents give a clear answer in relation to extending ESAs tasks in the area of monitoring and implementing equivalence and increasing the role in co-ordinating NCAs' dealings with third country authorities. A clear majority, including all ESAs, support increasing ESAs' responsibilities in ex post monitoring and implementing equivalence decisions. Nearly a third of respondents to this question would also welcome more general changes to the EU equivalence framework (e.g. introducing a more horizontal approach, increasing transparency, predictability, ensuring reciprocal treatment of EU firms and overall increasing robustness and adequacy of the framework in view of the UK's decision to leave the EU).

About a quarter of respondents, including EBA and EIOPA, see room for strengthening the ESAs' role in preparing initial equivalence assessments. A comprehensive equivalence assessment should include the initial equivalence assessment, follow-up to assess the frameworks' implementation, and monitoring upcoming changes. Few suggest that ESAs should have the final say on that matter, while a much greater number of replies supported a continued Commission role in adopting those decisions.

ESMA also argues for the supervisory and enforcement powers at EU level to be conducted by it for third country entities such as: Credit Rating Agencies (CRAs), Trade Repositories (TRs), Central Counterparties (CCPs), benchmarks and data providers.

6 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.

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.

The vast majority of respondents, both public institutions and private entities consider that the current **ESAs' power of access to information** should not be extended further. The industry mainly points to risks of duplication and costs linked to answering more direct requests. Many public authorities highlight the underuse of the information received by the ESAs even now. The majority of the respondents also underline that the “sequential approach” (i.e. collecting data through the NCAs, which check the initial quality and consistency) helps avoid overlaps of requests and excessive burden both on the industry and the ESAs themselves. ESMA suggests that it be directly empowered to develop future large-scale EU-wide databases in future pieces of legislations and to make the data available to NCAs and the public as necessary.

Few stakeholders, mainly industry associations, recognise some deficiencies as regards the handling of data. They point to fragmentation of, and lack of consistency in, data collection in the Union and duplications of data requests. Exactly in these areas they see a role for the ESAs, e.g. to streamline the data collection by identifying overlaps and gaps. A stronger coordination with the NCAs could also bring benefits in that respect. Few stakeholders suggest ESAs establish a central information hub which could overcome many of the shortcomings in this area.

7 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.

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.

Most respondents favour a greater coordinating role for ESAs in the field of **reporting** – while acknowledging the complexity of the task and welcoming ESAs' efforts to date. Some favour ESAs as the only collection point, others a centralised hub (with a few pointing out that existing hubs deliver the desired results). Some public authorities warn about the high costs of such hubs. However, many other respondents, primarily public authorities, feel data should be collected by NCAs. Whether gathered by ESAs or NCAs, many respondents, including ESMA, argue data should be available to both. ESMA also calls for a legal basis so it can use all data collected for all of its objectives (subject to anonymisation).

Many respondents, mostly from the private sector, bemoan duplication or differences in reporting requirements. Most suggest greater coordination between NCAs and ESAs, but also with other

relevant organisations. The vast majority of respondents favour ESAs efforts to streamline (and reduce) reporting requirements.

Many public and private sector respondents support the idea of a simpler adoption process for implementing technical standards on reporting. Some respondents favour ESAs adopting own implementing technical standards with the Commission maintaining the right of scrutiny.

Some public authorities point out that in parallel the ECB also has its own reporting requirements. Some of them call for a clear delineation between ESAs, the SSM, the SRB and NCAs.

8 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.

An overwhelming majority of respondents argue there is no need to strengthen enforcement and supervisory convergence in the field of **financial reporting**. Enforcement should remain a national responsibility. Some of the respondents acknowledge that there is room for further convergence. Some banks, banking associations and securities markets regulators are of the view that ESMA should be able to launch a breach of EU law process concerning substantive financial reporting requirements. Most investors' associations are of the view that supervisory convergence should be improved in both financial and non-financial reporting by strengthening ESMA's role.

Regarding possible synergies between enforcement of accounting and auditing standards, a vast majority of stakeholders express doubts. Some stakeholders see benefits in strengthening cooperation and sharing information between securities markets and audit regulators.

Regarding the supervisory framework in the field of auditing almost all respondents consider that the current configuration should not be changed. In particular, they oppose integrating the CEAOB into ESMA. The overwhelming majority of industry associations, companies and public authorities were in favour of specialised bodies and did not see evidence for benefits resulting from a strengthened role of ESMA in the field of audit oversight. Many stakeholders were in favour of keeping enforcement powers at the national level and highlighted the importance of the independence of standard setters. ESMA raised the possibility to add auditing to Article 1(2) of the ESMA Regulation to enable it to use breach of Union law procedures as an instrument to enhance supervisory convergence in this area.

All public authorities in charge of audit oversight were strongly against giving ESMA a greater role in audit oversight. Instead they favoured giving the CEAOB more time for consolidating since it has only been established one year ago.

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

The vast majority of respondents are of the view that there is no reason to change the current endorsement process or the role of EFRAG. EFRAG has been operating successfully under the new governance structure since November 2014 following the implementation of the Maystadt

recommendations. These stakeholders believe that strengthening the role of ESMA could be counterproductive as ESMA would consider the standards only from the perspective of investors. A clear separation of powers between standard setting and enforcement should be maintained to avoid conflict of interest.

EBA suggests to streamline the endorsement process of a number of reporting, disclosure and benchmarking requirements by giving it the powers to make its own decisions of general application. ESMA propose to increase its role in the endorsement process for IFRS by imposing a formal requirement for it to give the Commission advice on the European public good and financial stability.

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

1. 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.

The consultation set out remaining inconsistencies requirements for **internal models**, leading to a lack of supervisory convergence. Some respondents acknowledge that the approval of internal models poses issues, e.g. inconsistencies in terms of what NCAs require and approve, the evidence they accept, their approach to expert judgment and the time they take to decide on the application.

A few stakeholders, including some ministries of finance, were of the view that granting EIOPA powers to approve and monitor internal models of cross-border groups could lead to a more consistent supervisory approach and decisions, would make the decision process more effective, reduce administrative burden and avoid supervisory arbitrage. By knowing industry-wide good practices, EIOPA could also effectively challenge the modelling techniques and develop an early warning system to indicate potential threats to the appropriateness of the internal model.

The majority of respondents to this consultation are not in favour of granting EIOPA powers to approve and monitor internal models of cross-border groups. Respondents, mostly representing supervisory authorities and the insurance industry, emphasise that for the approval of an internal model, knowledge of the specificities of the insurer and the group, the risk factors and profile, as well as the local market, are required and that national supervisor are best placed in that respect. The vast majority of insurance organisations argued that the division between NSAs and EIOPA should remain as it is, with a focus on supervisory convergence. Stakeholders were broadly supportive of EIOPA continuing to exercise its role within the current framework of its Founding Regulation.

Some argue that greater supervisory convergence in this area could be achieved through a number of alternative measures from EIOPA's side aiming to develop a common supervisory culture and an EU wide approach approval, for example improving EIOPA's participation in colleges of supervisors' internal model work, benchmark studies or peer reviews on internal model approval processes.

2. 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 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.

Only few stakeholders express a position on ESAs' powers on **mitigating disagreement regarding own funds requirements for banks** and most of them, mainly supervisors/central banks support the status quo due to the need of specific knowledge of local market or national legislative framework. On the other hand, EBA calls for clarifying, and providing explicit grounds, for its role in ensuring the consistency of own funds instruments across the EU with the Capital Requirements Regulation.

3. 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.

Few respondents suggest **new powers or tasks in or related to banking**, i.e. EBA to have powers to suspend the application of regulatory requirements to firms (the so-called 'no-action' letters); a power to review ESAs' own level II measures; supervisory powers on shadow banking entities; powers in the area of payments supervision.

As regards **possible new powers for EIOPA**, very few respondents suggest EIOPA could develop an internal database for exchange of supervisory information, according to standards already in place for banking. Others propose that, in light of the large diversity of national guarantee schemes, EIOPA could develop a network of national insurance guarantee schemes in order to, for instance, assess their adequate funding.

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?

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?

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

With regards to a possible extension of ESMA's direct supervisory powers in the context of the Capital Markets Union (CMU), the vast majority of the respondents (of whom the majority are private sector stakeholders) support direct ESMA supervision of **CCPs** and centralising ESMA's powers (via supervisory colleges) to overcome the current fragmentation and inefficiency. The main reasons for this position are the increased cross-border activity, systemic importance of CCPs and access to liquidity in the Euro area. The decision of the UK to leave the EU is also given as a reason by some

respondents for direct ESMA supervision, considering that the large share of the EU clearing market is currently based in the UK. The following advantages of granting ESMA direct supervisory powers over CCPs have been outlined: uniform application of regulation throughout the EU, avoiding regulatory arbitrage, and avoiding complexities in the event of a CCP resolution when several NCAs with conflicting priorities might be involved.

A few of the respondents, predominantly public authorities, that generally approved the extension of the supervision powers of ESMA argue that the current regime of the colleges of supervisors is working well and should be maintained as the principal way of supervising CCPs. Their arguments include a lack of resources ESMA might need in cases of failing CCPs, that CCPs are posing a systemic risk within their home country (so their supervision should remain national), increased costs and over-complicated procedures for smaller CCPs that only operate at national or regionally.

Few stakeholders, mostly from industry, responded specifically to the question on **data providers**. Of those, a majority, including ESMA, fully supported the idea of ESMA directly supervising data providers – while many other respondents gave qualified support to the idea. Some respondents only support direct supervision of CTPs and argue ARMs and APAs should only be directly supervised by ESMA if they provide cross-border services. However, some respondents, including market infrastructure companies, argue that with MiFID II only application as from 2018 and in the absence of an extensive impact assessment it would be premature to give ESMA direct supervisory powers of data providers.

The majority of the limited number of stakeholders replying on direct supervision of the **asset management industry** see this as not desirable, with most arguing local NCAs' are better placed to address national markets' needs. However, a significant minority – particularly elements of the industry which are active across borders – recognise potential merits in ESMA's direct supervision of EU regulated investment funds or those which conduct cross-border activities. They highlight the usefulness of creating a knowledge hub at ESMA level and potential direct responsibility for passporting tasks.

A few stakeholders, including ESMA, also favour direct supervision of **critical benchmarks** by ESMA.

ESMA also calls for the power to impose higher fines on the existing supervised entities (CRAs and TRs), in order to support the credibility of its enforcement work.

II. Governance of the ESAs

Assessing the effectiveness of the ESAs governance

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.

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.

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.

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.

Only half of the participants to the public consultation assess the current governance set-up of the ESAs. Views on the ESAs governance structure diverge: about a third of respondents provided a broadly favourable opinion of the ESAs' governance structure. These respondents were mainly public authorities, notably central banks and supervisors, as well as some industry associations. For them the current allocation of decision-making to NCAs was appropriate and efficient given their acquaintance with national markets and their competence. EBA believes that the current governance structure has performed well. However, if changes are introduced EBA favours limiting such adjustments to areas in which the decision making process could turn out to be excessively complex or insufficiently independent, such as mediation or breach of Union law.

Many other stakeholders took a more critical view of the ESAs governance. The arguments put forward varied and related to issues such as composition and structure of the decision-making bodies, voting powers or ESAs' ability to use their powers.

Regarding the possibility of introducing independent members to the ESAs' Boards, an overwhelming majority of public sector respondents (governments and regulators/supervisors) either do not respond to the question (about half of them) or oppose the idea – while a few are in favour. The key arguments against include the perception that the current governance structure has allowed the ESAs to fulfil their mandate, as well as implied costs and the risk of a disconnect between the ESAs and the NCAs, who are ultimately responsible for implementing the rules, going against the reliance on national expertise and preventing the buy-in from these authorities.

There is no one industry-wide preference. Those supporting the change highlight enhanced stability and continuity within the Boards, efficiency of decision-making as independent members would be better able to take decisions with an EU perspective. It is argued that this should help contribute to the consistent application of legally binding acts and prevent regulatory arbitrage, in line with the tasks and powers of the ESAs.

Several stakeholders point to conflicts of interest inherent to the current governance structure, citing national biases (preventing binding mediation and breach of EU law procedure). Few comment on the allocation of tasks between the two Boards, but many of those suggest shifting enforcement powers to a Management Board (or Executive Board), for instance breach of union law, binding mediation procedures, peer reviews, as those tools are considered to have been underused.

Some respondents also suggested adjusting NCAs' voting share to the size of their sector. A few others argued that such an approach needs to ensure all competent authorities have a say on rules and regulations. Many respondents commented on EBA's double-majority decision-making. Respondents from Banking Union countries argue for its removal, given the UK's decision to leave the EU, while respondents from non-Banking Union countries favour its maintenance. EBA suggests reconsidering these arrangements and also the status of the SSM and SRB on its board, as the current situation generated an artificial disconnect between regulatory and supervisory functions.

Some industry associations call for the reintroduction of political control, by adding finance ministries to the Board of Supervisors.

A few stakeholders argue QMV should be extended to all significant Management Board decisions.

With regards to the Management Board almost all respondents from the public sector (notably supervisory authorities sitting on ESAs' Boards) support the current role and composition of the Management Board. They consider the governance structure appropriate and sufficient in order for the ESAs to deliver on their mandate.

Two representatives of national public authorities, however support enhancing the Management Board by granting direct powers and tasks to it and by creating permanent members, which would strengthen the EU perspective in decision-making. The large majority of respondents from the industry and academia share this view.

Furthermore, some respondents also suggest that binding mediation, breach of union law procedures and peer reviews could be delegated to the Management Board so as to achieve a more efficient decision-making processes.

A majority of respondents, mainly regulatory authorities, supervisory authorities and central banks do not support extending the role and mandate of the **Chairperson** as they consider the current system to be efficient. However, the majority of industry associations agree that the mandate of the Chairperson needs improvement, for instance by giving them a casting vote in the executive board or by foreseeing formally delegating more powers to them and allowing them to take decisions without the approval of the Board.

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.

Most respondents agree that it is difficult to ensure a proper balance in the **stakeholder groups** together with the geographical balance. Representatives of consumers and users complain that they are outnumbered by the representatives of financial institutions and thus the opinions of stakeholder groups are not balanced. Financial institutions complain that representatives of consumers do not have sufficient technical knowledge and that their input is sometimes general and off-target.

In general, many respondents from the industry advocate greater involvement of stakeholders, e.g. by way of hearings in Board of Supervisors meetings. The Stakeholder Groups themselves call for more systematic feedback from ESAs on the positions they submit to ESAs. Several non-governmental organisations call for more balanced representation on Stakeholder Groups.

The majority of respondents call for more transparent selection and membership. The majority call for better representation of their stakeholders. Some welcome EIOPA's practice to organise meetings with a broader range of experts than the 30-member Stakeholder Groups.

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?

Almost half of the respondents do not reply to the questions while a few of them explain there is no optimal architecture of financial supervision and it is difficult to choose a model in abstract terms.

The vast majority of the given replies (which includes EBA and EIOPA) find the current sectoral supervision functions well and satisfactorily and do not support the twin peaks model. The current sectoral supervision allowed developing sector specific expertise which is needed in view of the increasing complexity of the legal framework. Representatives of the insurance sector are particularly opposed to a change. Moreover, the current model allowed consistency between prudential supervision and conduct of business supervision leading to the needed legal certainty. A few stakeholders also express concerns that a merged banking/insurance authority would be dominated by banking regulatory approaches. Many stakeholders question the real synergies coming from the possible merger of EBA and EIOPA since the hierarchy for the two sectors should be separate. Furthermore, they argue that two different boards of supervisors, one for banking and one for insurance, would be needed to ensure that there is sufficient competence to take decision on very complex issues.

Some stakeholders argue that it is too early to reform the ESFS because it has not had the time to demonstrate its full potential, in particular in the area of supervisory convergence.

Some stakeholders, mainly industry representatives and academia, are critical of the sectoral supervision model for various reasons. Many of them highlight that the model is outdated and ignores the reality of the retail financial markets in Europe. Moreover, an integrated supervisory model would avoid duplications and inconsistencies. Thus, operating costs should be adjusted to ensure synergies and economies of scale. Some consumer organisations advocate a twin peak model of supervision by separating market conduct from prudential supervision.

Some stakeholders favour fostering the role of the Joint Committee in order to ensure better coordination between the ESAs. EBA favours streamlining its governance processes, for instance by delegating the adoption of a regulatory product on behalf of the Joint Committee to the three Chairpersons or the Board of Supervisors of a leading ESA, while other Boards would retain a veto, subject to a specific quorum. Very few stakeholders call for better checks and balances and a clearer role for the EU institutions (European Parliament, Commission and Council) in that respect.

IV. Funding of the ESAs

While a majority of the respondents answer whether the ESAs should be fully or partly funded by the industry, less than a sixth replied on what would be the most efficient system for allocating the costs of ESAs' activities. Less than a quarter answered the question on fee collection.

29. The current ESAs funding arrangement is based on public contributions:

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

45% of respondents to the consultation do not reply to this question. The majority of those that do (46%), including almost all industry, oppose ESAs **fully funded by the industry**. This includes almost all industry respondents. They argued such a shift risks ESAs' accountability towards the Parliament. Others justify EU/public funding with the argument that the whole economy and society benefit from effective supervision. Very few respondents (2%) support a system fully funded by the industry.

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

Please elaborate on each of (a) and (b) and indicate the advantages and disadvantages of each option.

51% of respondents to the consultation do not reply to this question. The majority of those that do (32%), including industry association and public authorities, also oppose a system **partly funded by the industry**. Many of them put forward the same arguments as on the question of a fully industry-funded system.

A few stakeholders (7.5%, including few industry associations, some companies and a few public authorities, favour a system partly funded by the industry.

EBA would strongly welcome a change to its funding.

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"); or

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.

Views are fairly balanced on the question of the funding allocation methodology. The majority of respondents favour a contribution to the cost of ESAs' activities based on the size/importance of each sector and of the entities operating within each sector (the so-called "**entity-based key**"). On the other hand, a significant minority support a contribution which reflects the size/importance of each Member State's financial industry (the so-called "**Member State key**").

Many respondents, in particular public authorities and trade unions, believe that a funding allocation methodology based on the size and importance of each sector serviced by ESAs would result in a fairer cost distribution. Some public authorities add that in a single market there is no rationale to adopt allocation methodology based on Qualified Majority Voting rules for contributions from financial institutions to the European supervisors. There was also concern (that a funding allocation methodology based on the size and importance of each sector serviced by ESAs lacks legal basis where there is no direct ESA supervision. A few think tanks point out that such funding methodology is the only possible way to take into account market specificities of each country.

The main arguments in favour of a funding allocation methodology based on Qualified Majority Voting rules were efficiency, legal simplicity, predictability and stability of fee collection. A few argue a funding allocation methodology based on the size and importance of each sector serviced by ESAs would ultimately result in a kind of financial activities tax.

A few respondents pointed to the need of adapting the number of Member States votes in ESAs Boards of Supervisors in case the ESAs funding allocation methodology was changed. Others argue Member States contributions should be proportionate to their voting weights.

A few respondents called for further analysis on possible partial contributions from the industry, possibly following the conclusion of the UK's withdrawal negotiation.

Views are divided as to the exact metrics to be used in determining Member States' contributions. Bank representatives favour using total assets under the scope of the ESAs, combined with some kind of risk measurement, as a proxy of the market share. Audit and accounting representatives support the use of risk-related indicators only. Market infrastructure representatives favour a revenue-based or a total assets approach.

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.

Most industry stakeholders argue that the respective NCA should collect the contribution on behalf of the ESAs in order to use existing funding models and avoid a new direct collecting relationship of ESAs with industry. Some recall that almost all NCAs have appropriate mechanisms in place to pass on this cost to the industry. Many stakeholders warn that a double charge for the industry should be avoided. Several public and private sector stakeholders underline the need to respect the proportionality principle. Several stakeholders underline the particular case of IORPs which are not-for-profit organisations, which is why they should not contribute or contribute to less.

The degree of harmonisation of the **collection methodology** is considered potentially problematic due to differences between existing national structures or because harmonised fee collection would exacerbate distortions of competition. Several industry representatives call for a thorough coordination with the industry. Non-governmental organisations argue that the sources and channels of funding must not influence the ESAs' independence and supranational orientation.

General 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.

Some respondents thought **Brexit** and its implications needed to be considered more fully, arguing substantial changes should wait until after the UK's departure from the EU.

Some respondents from a wide variety of backgrounds call for **sustainability** to become more integrated in ESAs' work, with several of them highlighting the work of the High-Level Expert Group on sustainable finance. While many aspects could be done within the ESAs' current (partly direct) supervisory powers, ESAs should be given a role to promote supervisory convergence on sustainability issues. Other new powers may be needed by way of sectoral legislation.

Some private sector respondents think greater emphasis should be placed on the **cost-benefit analysis** of rules.

Some respondents called for ESAs to be more involved in **international standard-setting bodies** (such as Basel Committee or ISOCO) to coordinate a binding European position.

A few private sector respondents call for **clearer Commission explanations** when ESAs' advice has not been taken up or their technical standards amended.

A few private sector respondents call for an **appeal process**, e.g. for to binding technical standards.

Some respondents from the **pension** industry highlight the importance of a balance between prudential regulation and supervision of IORPs, feeling the latter should remain with NCAs.

A few respondents call for greater capacity for impact assessments and research within ESAs.

STATISTICAL ANNEX

Are you replying as:

	AnswersRatio	
a private individual	7	3.08 %
an organisation or a company	161	70.93 %
a public authority or an international organisation	59	25.99 %
No Answer	0	0.00 %

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?)

	AnswersRatio	
Yes	123	54.19 %
No	38	16.74 %
No Answer	66	29.07 %

Type of organisation:

	AnswersRatio	
Academic institution	1	0.44 %
Company, SME, micro-enterprise, sole trader	25	11.01 %
Consultancy, law firm	4	1.76 %
Consumer organisation	4	1.76 %
Industry association	84	37.00 %
Media	0	0.00 %
Non-governmental organisation	8	3.52 %
Think tank	4	1.76 %
Trade union	3	1.32 %
Other	28	12.33 %
No Answer	66	29.07 %

Type of public authority

	AnswersRatio	
International or European organisation	4	1.76 %
Regional or local authority	0	0.00 %
Government or Ministry	13	5.73 %
Regulatory authority, Supervisory authority or Central bank	40	17.62 %
Other public authority	2	0.88 %
No Answer	168	74.01 %

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

	Answers	Ratio
Austria	6	2.64 %
Belgium	41	18.06 %
Bulgaria	2	0.88 %
Croatia	1	0.44 %
Cyprus	1	0.44 %
Czech Republic	5	2.20 %
Denmark	7	3.08 %
Estonia	1	0.44 %
Finland	5	2.20 %
France	23	10.13 %
Germany	40	17.62 %
Greece	2	0.88 %
Hungary	2	0.88 %
Iceland	1	0.44 %
Ireland	4	1.76 %
Italy	13	5.73 %
Latvia	0	0.00 %
Liechtenstein	1	0.44 %
Lithuania	1	0.44 %
Luxembourg	3	1.32 %
Malta	1	0.44 %
Norway	1	0.44 %
Poland	5	2.20 %
Portugal	4	1.76 %
Romania	0	0.00 %
Slovakia	3	1.32 %
Slovenia	1	0.44 %
Spain	7	3.08 %
Sweden	7	3.08 %
Switzerland	1	0.44 %
The Netherlands	8	3.52 %
United Kingdom	25	11.01 %
Other country	5	2.20 %
No Answer	0	0.00 %

Field of activity or sector (if applicable):

	AnswersRatio	
Accounting	34	14.98 %
Auditing	37	16.30 %
Banking	53	23.35 %
Credit rating agencies	8	3.52 %
Insurance	56	24.67 %
Pension provision	29	12.78 %
Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)	46	20.26 %
Listed companies	26	11.45 %
Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)	35	15.42 %
Other financial services (e.g. advice, brokerage)	31	13.66 %
Trade repositories	10	4.41 %
Other	44	19.38 %
Not applicable	24	10.57 %
No Answer	0	0.00 %