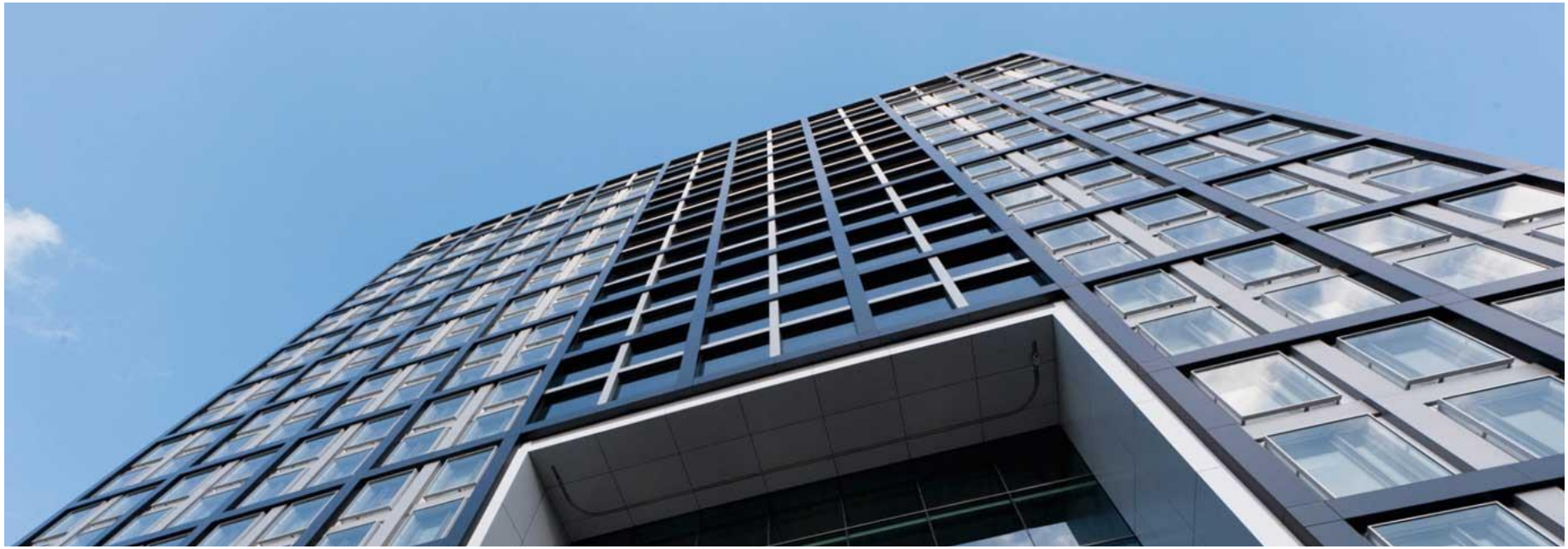


DEUTSCHE BÖRSE GROUP

Review of the European Supervisory Authorities

Deutsche Börse Group response to the EU Commission's public consultation on the operations of the ESAs

May 2017

Objectives and Timeline for the ESAs Review

"Our aim is to identify areas where the effectiveness and efficiency of the ESAs can be strengthened and improved. More coordinated and integrated supervision will be increasingly important in future, notably to develop and integrate EU capital markets through the Capital Markets Union.
The departure of UK from the Single Market reinforces the need for a thorough reflection on how to further improve the supervisory capacities of the EU27 to promote an efficient, competitive and integrated financial system underpinned by financial stability and strong supervision."

- EU Commission launched the public consultation on the operations of and the way forward for the European Supervisory Authorities (ESAs) on 21 March 2017; the consultation was open for responses until 16 May 2017.
- Objectives:
  1. to gather evidence on the operations of the ESAs to evaluate their operations
  2. and to build a clearer overview of areas where going forward the effectiveness and efficiency of the ESAs can be strengthened and improved to
     - Support a Single Rulebook for financial regulation
     - Require strong supervisory convergence
     - Solve cross-border problems
     - Strengthen the Capital Markets Union

  …with regards to the following areas:
  1. Tasks and powers
  2. Governance
  3. Supervisory architecture
  4. Funding
- A general review of the ESAs is foreseen for 2017 by the EU Commission and mandated by their founding regulations to be held every three years.
- The results of the consultation will provide a basis for concrete and coherent action by way of a legislative initiative, if required.

DBG response to the consultation on the operations of the ESAs regarding…

- Optimising existing tasks and powers of the ESAs
  - Tools and powers to foster regulatory and supervisory convergence
  - Access to data
- International aspects of the ESAs' work
- Direct supervisory powers
  - for Data Reporting Service Providers
  - for Post-Trading Infrastructures
- Funding of the ESAs

- Process and set-up for changes to supervisory structures
- General principles for supervisory framework

Optimising existing tasks and powers of the ESAs

Supervisory convergence builds on regulatory convergence. Before adding to the existing toolbox of the ESAs, the right way forward is to improve the existing structures towards better coordination of supervisory authorities and to enable the ESAs to pursue their current tasks.

Tools and powers to foster regulatory and supervisory convergence

Enable ESAs to pursue current tasks for building a deeper and more integrated single market given the increased workload of providing details to implementing regulation on Level 2 and providing guidelines on Level 3 for the purpose of regulatory convergence and fostering supervisory convergence to create a level playing field, plus direct supervision for Credit Rating Agencies and Trade Repositories.

Keep improving the coordination between ESAs and NCAs given different areas of expertise at different supervisory levels, currently, NCAs know best the local markets with their particularities (specific products and client base), national legal frameworks and business models of supervised entities.

Improve the coordination between ESAs: When discussing and drafting legislation that affects target groups of several ESAs, cross-interaction and coordination of the ESAs might be improved, in order to achieve balanced and evidence-based requirements for market participants.

Access to data: Additional powers for the ESAs to require information from market participants?

Avoid double reporting of data to NCAs and ESAs: Harmonised data requirements for regulatory reporting to NCAs and / or ESMA are generally sensible in order to efficiently exchange data between NCAs. However, data should not have to be delivered both to NCAs and to ESAs, creating additional regulatory burden for market participants. Instead of approaching market participants directly, ESAs should initially cooperate more closely with NCAs as pre-conditions for an effective exchange of data have or are being implemented. Data could be reported to the NCAs, which are able to work with the supervised entities on reported data in case of quality issues. NCAs could then upload reported data to a unified IT platform. Further immediate changes should be avoided for the time being.

International aspects of the ESAs' work

Strengthen the ESAs' role in monitoring and implementing work once equivalence has been granted by the EU COM to ensure consistent supervisory approaches at EU level and on-going fulfilment of relevant equivalence criteria.

ESAs are already involved

- in initial analysis for equivalence assessments of the EU COM for 3rd country regimes;
- in the work following an equivalence decision: recognition of 3rd country CCPs and certification for 3rd country credit rating agencies;
- as well as in cooperation arrangements with 3rd country authorities (for themselves or NCAs).

Empower ESAs to monitor regulatory, supervisory and market developments in third countries or/as well as supervisory co-operations?

- As capital markets are global in nature, coordination of supervision both within the EU and with third countries is important to **ensure a global level playing field and maintain European competitiveness**.
- **Enable European regulators to react on potential changes in third country regulation or supervisory structure** fast enough and based on own intelligence.
- **Diversity of third country provisions under different EU legislative texts and lack of an equivalence regime in some of them**, might require a consistent supervisory approaches at an EU level.
- In order to ensure financial stability and integrity in Europe, ESAs' mandate to support the EU Commission with respect to equivalence decisions needs to be extended **to constant monitoring of third country regulation and supervisory standards**.

- Potential to increase transparency:
  - Transparent process with entailed timeline for the review of equivalence decisions
  - Reasoning by the EU COM for (not) following the ESAs recommendations in specific cases
  - More formal scrutiny process for equivalence decisions (similar to the introduction of delegated acts or regulatory technical standards) to increase transparency

Direct supervisory powers for data reporting service providers

It is currently rather preferable that NCAs play the key role in data collection due to still existing national regulatory requirements.

ESMA could be granted powers to directly supervise Data Reporting Service Providers:

(i) Approved Reporting Mechanisms (ARMs),

(ii) Approved Reporting Arrangements (APAs)

(iii) Consolidated Tape Providers (CTPs).

For CTPs, ESMA could be directly entrusted to constitute and supervise a single CTP for financial instruments transactions traded ETD and OTC in the EU.

- Direct supervision of data reporting services on a pan-European level may first require besides regulatory adaption of respective regulations (where NCAs are being identified as the relevant supervisors) **harmonisation of fragmented national regulatory frameworks**.
- Currently, from an organizational perspective, it is rather preferable that **NCAs play the key role in data collection**, because they understand the **particular situation of the supervised entities due to still existing national regulatory requirements**.
- This is extremely important, as well for **data quality**, during a time of multiple **changes in the reporting landscape** as experienced just now.
- Before further changing market structure by introducing additional requirements within the regulatory reporting landscape, it deems sensible to go step by step **implementing the actual regulatory requirements and gain experience with new tools** (such as the Financial Instrument Reference Data System (FIRDS)) first.

Direct supervisory powers for post-trading infrastructures

The current European supervisory set-up following the subsidiarity principle have proven to be efficient. Consolidated supervision of post-trading infrastructures would lead to overlapping supervision and complexity.

Currently, ESMA's direct supervisory powers are limited to credit rating agencies and trade repositories.

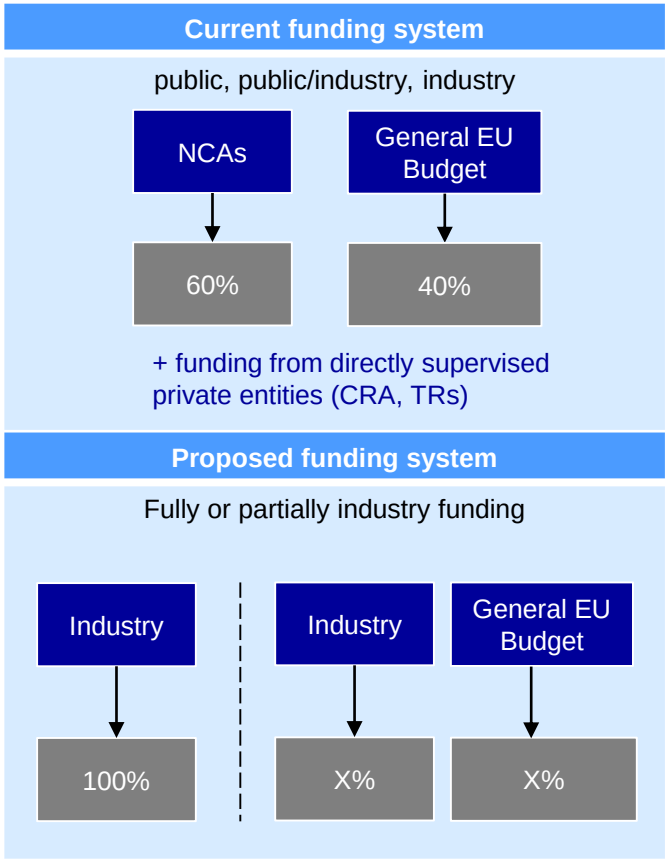
A possible extension of ESMA's powers could be considered in market segments in which there is a strong need to support more integrated, efficient and well-functioning financial instruments markets, in areas where common solutions in the application of the EU capital market rules are more efficient.

Given the cross-border nature of CCPs activities and their systemic importance (and that of some other post trading infrastructures such as international central securities depositories (ICSDs)) consideration could be given on how to strengthen their collective supervision through a transfer of appropriate powers to the pan-European level.

- Currently, the **NCAs know best both the local markets** with their particularities (specific products and client base) as well as any additional legal frameworks the supervised entities might have to adhere to (in addition to European regulation).
- Consolidated supervision of post-trading FMIs from 27 EU-Member States within ESMA **would lead to overlapping supervision and add a layer of complexity to the supervision of such entities**, as some form of local supervision or involvement of national authorities will still be necessary for national implementation of EU legislation.
- Supervising post-trading FMIs from 27 EU-Member States requires relevant expertise and operational knowledge. Due to the **particular status of CSDs** holding the Securities Settlement Systems (SSS) status and especially if operating under a partial banking licence, **supervisory topics related to financial stability and risk management require the involvement of "macro"-prudential authorities** as central banks and other European authorities, such as the ECB or SRB.
- In particular, **CCPs already today have established a supervisory college including all relevant European supervisory authorities**. This well-functioning college structure, with well-established relationships and well-experienced NCAs, should be continued and not changed to direct supervision of ESMA.

Funding of the ESAs

Given the public aspects of supervision, public funding should at least partly remain. For allocating industry contributions, leverage on existing system letting NCAs collect the fees and pass them on to the ESAs, creating only one bill for market participants.

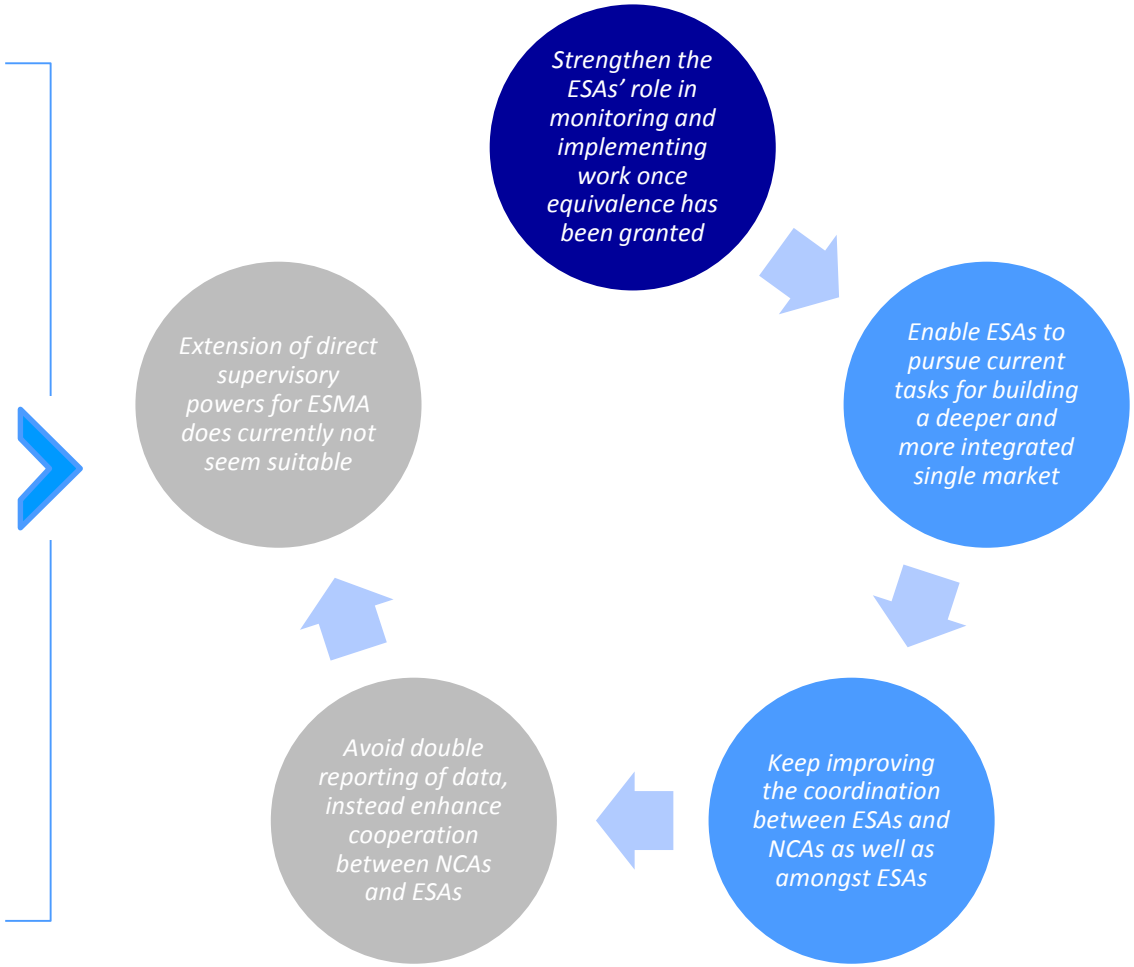


- **Public aspects of supervision call for at least partly funding of the ESAs**:
  1. enabling a proper financial prudential supervision is in the public interest.
  2. public authorities and their use of funding requests controlling powers of the European Parliament, which is important to uphold democratic legitimacy and accountability of the ESAs.
  3. especially ESMA fulfils sovereign tasks in investor and consumer protection.
- **If competencies are shifted from NCAs to the ESAs this needs to be reflected in the funding system**: contributions should be structured on a task-specific basis, according to supervisory costs that arise from industry-related versus sovereign tasks.
- An efficient set up would be to leverage on the existing system and to **let NCAs collect the fees and pass them on to the ESAs, creating only one bill for market participants**, in order to keep administrative and costs burdens at the lowest possible level.

Process and set-up for changes to supervisory structures

Gradual approach for changes to supervisory structures seems most appropriate.

- The current European supervisory set-up following the subsidiarity principle has proven to be efficient, maintaining market stability and integrity in times of market stress.
- The Brexit vote as a “real-life stress-test” demonstrated quite well that communication channels and coordination between the industry, different national and European supervisors worked efficiently.
- Harmonisation per se would help to create a CMU, which is of high importance.
- However, supervisory structures should be changed gradually, if necessary, and ensure structural stability, given that relevant EU legislation is still in the process of implementation.
- In order to provide a positive environment to develop business, as much continuity as possible in these challenging times should be provided.



General principles for supervisory framework to be taken into account

Clear responsibilities and rules for decision making

Effective supervision with **clear responsibilities, rules for decision-making and procedures** are needed, in order to avoid redundancies and allow for efficient processes with regard to market participants, as time matters when it comes to financial stability.

Build up expertise and capabilities

It is of upmost importance that the supervisors at the European as well as national level have the **necessary operational capabilities (resources and experienced staff)** to perform their duties.

Partly industry funding only

Given the public aspects of supervision, **public funding should at least partly remain**. For allocating industry contributions, leverage on existing system letting **NCAs collect the fees and pass them on to the ESAs, creating only one bill** for market participants.

Avoid overlapping supervision

It is important to ensure the **principle of subsidiarity** to avoid redundancies. **Consistency of supervisory and policy approaches between NCAs and ESAs** needs to be ensured, to guarantee legal certainty and operational functionality of FMIs.

Back Up

The ESAs within the European supervision structure

European System of Financial Supervision (ESFS)
Harmonized financial supervision in the EU via proper application of EU regulations to maintain financial stability, orderly functioning of the financial system and customer protection

Micro-Prudential Supervision
Conduct general supervision of institutions and markets in close cooperation with national authorities, where regular ongoing supervision remains

Joint Committee of European Supervisory Authorities (**ESAs**)

European Banking Authority (**EBA**)	European Insurance and Occupational Pensions Authority (**EIOPA**)	European Securities and Markets Authority (**ESMA**)

National Supervisory Authorities (illustrative):

France: Banque de France, Autorité de contrôle prudentiel, AMF, MINEFE, ACAM
Germany: BaFin, Bundesbank
UK: Bank of England, FSA, The Pensions Regulator

Micro-prudential information →
← Macro-prudential information as well as risk warnings and recommendations

Macro-Prudential Supervision
Monitor macro-economic developments to identify, assess and prevent systemic risks to financial stability (Regulation (EU) No 1092/2010)

European Systemic Risk Board (**ESRB**):
ECB: provide analytical, statistical, logistical and administrative (Council Regulation (EU) No 1096/2010)

Warnings and recommendations to national governments ↓

Source:
http://www.ecb.europa.eu/euro/intro/html/map.de.html
Center of Excellence „Sustainable Architecture for Finance in Europe“ (SAFE)

ESAs – Mandates and areas of activity

Task of ESAs is to promote the enduring stability and effectiveness of the EU financial system by…

contributing by regulatory means	Develop regulatory and implementing technical standards (RTS / ITS) which are to be adopted by the Commission either as delegated or implementing acts (⇨binding regulation or decisions)
creating a single rulebook	Issue guidelines and recommendations to financial institutions, market participants and national supervisory authorities in order to create effective supervisory structures and ensure consistent application of EU law, covering areas in which ESAs are not permitted to adopt RTS / ITS (⇨ de facto binding; “comply-or-explain” mechanism)
fostering supervisory convergence	Can adopt decisions, which aim directly at and are legally binding upon financial institutions, market participants and national supervisory authorities ▪ in event of a crisis ▪ persistent breaches of EU law by national authorities ▪ differences of opinion between competent national authorities
fostering consumer protection policy	▪ Can issue warnings, temporarily prohibit or restrict financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the EU financial system in the above mentioned cases ▪ Pass RTS, ITS and guidelines on consumer protection ▪ Develop training standards for the industry and develop common disclosure rules to enhance transparency and fairness for consumer products
direct supervisory powers	▪ For Credit Rating Agencies (ESMA) ▪ For Trade Repositories (ESMA)

Introduction of the ESAs envisaged future review and restructuring