

BANKING STAKEHOLDER GROUP

CONSULTATION ON THE OPERATIONS OF THE EUROPEAN SUPERVISORY
AUTHORITIES

General Comments and Replies to Questions

BY THE EBA BANKING STAKEHOLDER GROUP

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Foreword

The EBA Banking Stakeholder Group (BSG) welcomes the opportunity to comment on the Public Consultation regarding the operations of the European Supervisory Authorities (ESAs).

The basis for this consultation can be found in the review clauses included in the Regulations establishing the three ESAs: EBA, EIOPA and ESMA¹. The objective is to help the Commission prepare its report on the operations of the ESAs with the view to present it to the European Parliament and to the Council of the EU. Based on its conclusions, the Commission could draft a proposal to amend the mentioned regulations. This consultation is also based, among others, on the Commission's first report of 2014 which identified several areas for improvement and that are similar to the topics covered here: supervisory convergence, consumer/investor protection, internal governance, funding arrangements and structural changes. Although the publication of this consultation was expected earlier on, its timing is critical as the United Kingdom's vote to leave the EU triggers a debate on certain topics including the relocation of the EBA.

This response has been prepared on the basis of comments circulated and shared among the BSG members. This response outlines some general comments by the BSG, as well as our answers to the questions included in the Consultation Paper.

General comments

The role of the ESAs has been and will continue to be crucial. The ESAs were established during the fallout from the worst global financial crisis in recent history and amid an extremely critical time for the European project. Indeed, the ESAs were created to tackle the shortcomings in financial supervision in the EU which were exposed during the crisis. Since their inception in 2011, the ESAs have managed to deliver on material demands with limited resources.

However, considering several important events which have taken place since the birth of the ESAs, such as the establishment of the Banking Union - where the ECB acts as the single supervisor for the significant banks in the Euro area - and the "Brexit" vote, it is time to examine how to improve the supervisory framework in the EU. In this sense, the Commission has taken the lead by publishing this consultation with the objective to seek out the views from different stakeholders (regulators, industry, public authorities, consumers, etc.) on how to improve the effectiveness of the ESAs in the future. Below is a summary of the key themes identified by the BSG. Further explanations can be found in the responses to the questions.

¹ According to article 81 of each of the EBA, EIOPA and ESMA Regulations, by 2 January 2014 and every three years thereafter, the Commission shall publish a general report on the operation of the ESAs.

Next steps in the work of the ESAs. The ESAs work on developing European legislation through the enactment of numerous level 2 and level 3 texts has been crucial. Besides finishing the post-crisis regulatory framework, the ESAs work should take into account the regulatory coherence to ensure that supervisory practices converge towards the most efficient and effective configurations. The ESAs should guarantee the homogeneous application of EU law by, for example, promoting more frequent peer reviews.

More transparency. The process to approve level 3 texts (such as Q&As), which are becoming increasingly important to clarify EU legislations, should be more transparent and some sort of appeal process should be envisaged to accommodate for the large impact some of the Q&As may have for the supervised entities. Consultations with stakeholder groups, like the BSG in the case of the EBA, could be organized before their publication for those that have an important material impact on supervised entities. However, some members of the BSG believe that the industry would have then an advantage with respect to civil society in this case, due to the lack of resources of the latter.

More powers. The ESAs should be granted more powers such as: i) Give them more say during the development of level 1 legislation by, for example, giving them an observer status in the negotiations. The ESAs profound knowledge of certain technical aspects should be taken into account. ii) In the view of some members, ESAs should have “No-action powers” (powers to exempt temporarily the enforcement of regulations) to decide on matters which endanger the financial stability of a Member State or of the Union as a whole and which require prompt decisions. iii) ESMA should extend its supervisory powers to include CCPs, at least the most systemic ones. In any event, the predominant focus of EBA should definitely remain on the fostering of supervisory convergence in the EU. iv) Other members think that ESAs should have a power to ban practices which endanger the financial stability of a Member State, of the Union as a whole or is highly detrimental to consumers and consumer protection, in cases which require prompt decisions.

Governance. Some members of the BSG believe that the ESAs should have greater autonomy from NCAs. One way to achieve this is by providing voting rights to the Chairs. Another way would be to adopt the governance system of the SSM, by including independent and permanent Board Members. Other members are of the opinion, that there is no lack of supranational interest orientation in the decision making process of the board. And others think that, to achieve a clear separation of powers, Boards could be composed of representatives of the finance ministries.

Stakeholders groups. Just as for the ESAs, the stakeholder groups need more resources and adequate secretarial support. Also, the mandate of its members could be extended, in order to be able to reap the benefits of their experience acquired during their term. Some members of the BSG believe that their consultative role to EBA

could be enhanced also by requiring much earlier involvement and input than at present, before the technical standards are published for general consultation, in particular as regards the reporting framework. Additionally, more flexibility should be introduced when selecting their members by, for example, including other categories and seek diversity within existing categories. The stakeholder groups should be given a research budget and the power to commission independent evaluations of the ESAs activities. And finally, more coordination with the stakeholder groups of the other ESAs would be desirable.

For a more detailed point of view on this issue, please see our response at Q26.

Funding. If the ESAs are to assume more powers, then they need more resources. Some members agree that their funding mechanism should include fees derived from the industry as well as more funds from the public sector. But, it is important to note that the industry already contributes to the budget of the ESAs in several countries via financing the NCAs. Other members think that their funding should be provided by the industry as it is done in some Member States and common practice in other sectors of industry (fees or other), and that, given that public funding relies on taxation, slightly increasing taxation of financial industry, in the same proportion as that of a “fee”, could achieve the same result as a private funding mechanism. Other members are of the opinion that ESAs should rely only on appropriate public funding, as regulation is a public good.

Finally, regarding the **restructuring** of the ESAs, the priority in the financial stability area should now be to complete the Banking Union. Therefore, the most pressing task for the time being should be to find new headquarters for the EBA, forced to relocate because of the UK vote to leave the EU.

Some members of this stakeholder group are in favor of setting up a Twin Peaks model in which consumer protection and prudential regulation are carried out by separate supervisory authorities. Other members think that EBA and EIOPA should be merged. Yet other members believe that a more long term goal would be to merge the EBA within the Commission. Another group of members think that the current configuration of the ESAs should be maintained, at least in the short to medium term, considering the practical difficulties of implementing the Twin Peaks models at this stage, and also the fact that this model is for supervision, not for regulation. According to this view, only after the completion of the Banking Union should the European system of financial supervision be rationalized to increase its efficiency while reducing its complexities and duplicities.

Finally, in the view of some members the reintroduction of a clearer separation between the definition of regulation (ESAs, Parliament and Council) and its implementation, i.e. supervision (SSM, NCAs) is necessary. At present, borders are no longer truly respected (e.g. ECB’s DG4) and it seems fundamental that the legislative arm always totally differs from the executive arm.

Replies to Questions

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 role of the ESAs has been decisive to promote a common supervisory culture, to foster supervisory convergence and to clarify and complete EU legislations through the issuance of level 2 and level 3 texts. Regarding the latter, the ESAs have shed light on crucial matters and have achieved harmonized definitions to be applied in all Member States. Without the ESAs specifications, a homogeneous implementation of EU legislation would not have been possible. However, we have identified several weaknesses that should be addressed in the upcoming ESAs revision:
 - The process to draft level 3 texts, such as Q&As, should be more transparent. One way to do this would be, according to some members, to provide for a consultation period and some sort of appeal process, at least for those related to very important matters, so that stakeholders may provide their views, a similar process to that used when drafting level 2 legislation. Another possibility, already used in some cases, and preferred by some members, would be to involve the BSG in this process.
 - Besides the finishing of necessary regulatory work the ESAs work should now address the homogeneous application of European laws and the removal of any national legislation that may unreasonably hamper the goal of European directives or regulations. Regulatory convergence should remain a top priority, although remaining differences in national corporate and civil laws, as well as judicial systems, should be taken into account as far as they last. Regulatory convergence could be achieved by developing frequent peer reviews.
 - According to some members, the ESAs should have a prominent role in harmonizing the supervisory criteria on issues related to practical implementation of the regulations. They should as a rule restraint gold plating of regulation, as the EU rules should be considered sufficient. Currently the Guidelines, Opinions and Q&As have differing degrees of practical effect in the Member States. Their practical effect must be harmonized across Europe, and its nature clarified, as they have become a sort of “soft regulation”.

- However, some BSG members note that corporate and civil laws, as well as accounting standards, are still national. Until they are harmonized, level 3 regulation should take national legislation into account. Harmonization of legislation through level 3 regulation is, according to this view, not appropriate, neither legal.
- Also, ESAs should ensure a consistent time framework guaranteeing that no level 3 measures are prepared or published until level 2 norms have been published and certain doubts or needs for interpretation have been addressed (for example this was the case with guidelines or Q&A regarding MIFID 2 and PRIIPS).
- ESAs should limit the content of level 3 measures to such questions that provide clarity to the market and promote a homogeneous interpretation and application of the law, without creating new obligations or figures or contradicting level 1 or level 2 measures.
- The ESAs should be allowed and enabled to participate more actively (as observers) in the level 1 legislative process as it may enhance the quality of level 2 regulation thanks to their level of expertise. ESAs should be able to provide input to co-legislators when drafting level 1 rules so they can leverage on the ESAs' expertise and closer relationship with NCAs and supervised agents.
- With respect to banking supervision, there needs to be a clear-cut delineation between EBA, ECB/SSM and the other operative supervisory authorities, as well as the ESRB to avoid duplication of tasks and regulatory uncertainty - which leads to a very inefficient use of resources and sometimes even contradicting or diverging regulatory expectations.
- Some BSG members note that the ESAs have never used their powers regarding the breaches or non-implementation cases of EU Law (article 17 of the ESAs Regulations) except in one very specific case (EBA / Bulgaria). Also, they have not used their product intervention powers as defined by article 9.5.
- According to this view, the priority has been given from the start to prudential matters, as recognized by the European Commission in its Consultation Document: "While the ESAs have started to shift attention and resources to analyze risks to consumers and investors ... work in this area must be accelerated".
- The ESAs have always excluded performance and price of retail financial services when executing their task to collect, analyze and

report on consumer trends (article 9.1(a)) and on market developments (article 8.1(f)): in their view, one cannot effectively supervise what one does not even measure.

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;
 - Some BSG members think that these tools have not been very effective. Article 17 and article 9.5 powers would have been much more effective if used. Some other members believe that the work carried out by ESAs to resolve cross-border disputes and disagreements has been very effective and that they should continue playing that role.
 - Nevertheless, peer reviews and supervisory colleges are also appropriate tools for monitoring supervisory practices and for fostering supervisory convergence where needed. Some members believe that in regard of the separation of powers it might be questionable to have the ESAs vested with the power to make binding decisions in cases where there is a disagreement.
- 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?
 - In the view of some BSG members, this is quite obvious that there has been a lack of EU interest orientation, and this is the number one explanatory factor for the supervisory convergence issue: the Boards of Supervisors are exclusively composed of the very institutions that the ESAs are supposed to supervise.
 - According to this view, the EU should introduce independent members in the supervisory board of the ESAs, like it has been done for the ECB. Likewise,

the supervisory board of the ESAs should be more open to national regulators (not only supervisors) to better achieve a single rulebook at EU level.

- Other BSG members believe that even though the Boards of Supervisors are composed of the institutions that the ESAs supervise, the Board of Supervisors sufficiently incorporate broader EU interests in their decision-making processes.

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

- In the view of a group of BSG members, the above mentioned ESAs' tools and powers have contributed to a significantly improved coordination between national supervisory authorities. In particular, peer reviews and supervisory colleges are adequate tools for monitoring supervisory practices and for enhancing supervisory convergence where necessary.
- In their view, a lack of supranational interest orientation in the decision making process of the board is not observed. By contrast, it is of utmost necessity to have persons on the board who have a deep knowledge of their respective markets and can bring in the diverse national aspects. Knowledge of the markets and business models is essential for good regulation. In this respect, they believe that the current setting with members stemming from the national authorities should in principle remain. Their experience must be taken into account in the decision-making processes of ESMA, EBA and EIOPA.
- The ESA's mandate to conclusively settle disagreements is an important tool to foster supervisory convergence for all banking groups and to address home-host issues. As mentioned in the 2016 EBA Report on the functioning of supervisory colleges, there is certainly room for improvement in terms of enhancing the coordination between going-concern supervision and resolution. In addition, the lack of coordination between the various national designated authorities as pertains to macro prudential policy decisions (e.g. institution based buffers) is a concern for cross-border EU banking groups. The role of EBA as an observing participant in supervisory colleges only makes sense in combination with the benchmarking mandate to ensure consistent supervisory practices in the EU.

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 order to achieve a level playing field throughout the EU, ESAs should be granted more powers to deal with exceptional circumstances in which a common and prompt response must be taken.
- An example to illustrate this point is the demand from the industry to temporarily waive the exchange of variation margin requirements under EMIR. This requirement was initially set to be binding from 1 March 2017 onwards. However, just before its entry into force the industry communicated to ESMA that they were not able to do so because they did not have enough time to negotiate the corresponding amendments to their derivatives documentations including Credit Support Annexes. ESMA did not have the power to waive the requirement. Accordingly, it communicated to the entities that the decision was to be taken by the corresponding National Competent Authorities, which have applied divergent solutions.
- In order to achieve a level playing field in the EU, ESAs should have the competence to remove or temporarily suspend certain obligations. This kind of mechanism is already present in other jurisdictions, for instance, in the USA where the CFTC can issue no-action and/or exemptive letters not recommending enforcement action for failure to comply with a specific provision of local regulations or a written grant of exemption from a specific provision of local regulations. In fact, these letters may be addressed to a single entity and not necessarily to all market operators so that supervisors are able to tackle general or specific problems.
- Another example can be found in the context of the EBA's RTS on Article 55 of the BRRD. Because of its wide scope, the European banking industry is facing substantial difficulties to comply with the requirement to include a bail-in clause in all contracts of eligible liabilities governed by third country laws. The EBA was not able to provide a common solution to all Member States. As such, divergent national solutions have been implemented with the result of an unlevel playing field in the EU. When such a significant and generalized difficulty is identified, it should be possible for the ESAs to extend the period allowed for compliance. This would avoid creating unnecessary regulatory uncertainty and disrupting effective bank competition.

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.

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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.

- ESAs' tasks and powers should be reformulated in a way to ensure the minimization of room for interpretation for market participants and NCAs to strengthen coherent Union-wide application. Furthermore the ESAs could cooperate and join forces to provide timely legal advice.
- Some members think ESAs should use level 3 instruments less often and without overstepping the clearly defined boundaries. It would be desirable to have level 1 and 2 texts that are more specific, in order to reduce the need for level 3 interpretation. Therefore, these members ask for a restrained application of such "non-legally binding" measures. It is important that level 3 measures do not exceed or even contradict the will of the legislator. The general clause in Art. 16 of the current ESAs Regulations should be less widely empowering and clarify that a guideline should be issued only for interpretation purposes, if absolutely necessary.
- Some members think that the non-binding nature of the recommendations, guidelines and opinions issued by the ESAs with regards to consumer and investor protection seriously undermines their effectiveness. It is important to remember that many national supervisory authorities do not even have a consumer protection objective and mandate and can choose to ignore important standards, guidelines, and recommendations. The guidelines and recommendations are useful because, due to their level of details and accuracy, they limit the risk of divergent interpretations between supervisors on the one hand, and supervised firms on the other hand. As a result, some members of the BSG consider that guidelines and recommendations should take the legal form of binding instruments to ensure convergence of regulatory, supervisory and enforcement practices, so that appropriate measures are taken on the national level to protect the consumer interest.

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.

- In the view of some members, the priority has been given from the start to prudential matters not to customer protection, as recognized by the European Commission in its Consultation Document: "While the ESAs have started to shift attention and resources to analyze risks to consumers and investors ... work in this area must be accelerated". Customer protection comes sixth and last of the ESAs legal objectives.

- In the view of these members, the objective of the authorities is the “short, medium and long term stability and effectiveness of the financial system”, meaning that consumer protection is only a marginal issue. In this light, some BSG members are of the opinion that the ESAs should be given a clear statutory conduct objective. This is stressed further by the huge diversity of the extent to which conduct regulation across the Member States is implemented and supervised. Indeed, not all national competent authorities have a consumer protection objective, which means that consumer protection is not of primary importance for certain national regulators.
- According to this view, the supervision and enforcement of EU rules with regard to fair, clear and not misleading information and on the prevention of conflicts of interests in the distribution of financial products and services has been very poor. The task to collect, analyze and report on consumer trends (article 9.1(a) of the ESAs Regulations), and on market developments (article 8.1(f), has not been entirely fulfilled, particularly regarding the performances and fees of retail financial products. Product intervention powers have not been used against toxic ones, as well as for the ESAs powers regarding cases of non-implementation of EU Law.
- Other BSG members think that consumer protection matters fall within the common responsibility of the EU and Member States. This is why the subsidiarity principle should be followed too. As there is already a great number of competencies in the area of consumer and investor protection, these members do not see a need to further extend those competencies.
- Furthermore, in 2018 ESMA and EBA competences will be increased as they will have temporary intervention powers (see 40, 41 MiFIR). Further changes should only be made in the view of some members, at a later point after an evaluation of the functioning of the new intervention powers.
- Some members think that the power to issue warnings should also be amended so that the ESAs can issue warnings where a financial activity poses a “threat to consumer protection”, removing the word serious from the regulations. It seems as though the current threshold applied by the ESAs for issuing warnings is too high as very few have actually been issued.
- In the view of these members, the public consultations of the ESAs are available only in the English language, are often very long and technical and lack a summary in plain English. Some BSG members think they are tailor-made for industry experts not to reach the end users. This puts retail user organizations at a severe disadvantage compared to those of the financial industries. In addition, when user expert representatives make the effort to reply in detail to an important investor protection consultation (the Joint

Committee of the ESAs consultation on PRIIPS in the summer of 2015), the ESAs sometimes blatantly ignore their input and requests.

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.

- Some members see the widening of the ESA's mandate in the area of consumer and investor protection critical. The amount of information for the consumer has to be adequate and manageable for both, the consumer and the institutions. If the amount of information is too high, there is the risk that the consumer will rather ignore the information at all. The concept of a responsible consumer should be the basis for further decisions in this field.
- The ESAs have the objective to protect the public interest, inter alia, by enhancing customer protection – this task comes last in the lists of the ESAs contributions. A more detailed look at the tasks related to consumer and investor protection (Art 9 of the ESAs Regulations) shows that their consumer protection mandate is very limited, despite the changes introduced by Regulation 1022/2013. In terms of concrete supervisory actions, these members think that the ESAs may, under certain conditions, prohibit dangerous financial products or activities. In the view of some members, for this power to be effective, delegation through sector-specific regulations and directives is required. In that respect, the revised MiFID recently granted ESMA with product intervention powers.
- The ESAs regulatory powers have been substantially extended in the recent years due to the mandates granted by sectoral financial regulations and directives. The ESAs are in charge of drafting and advising the Commission on level 2 implementing rules (Regulatory and Implementing Technical Standards). However, the contribution of these supervisory authorities to enhancing consumer protection in practice has been very limited so far. This is, in the view of these members, a widely-acknowledged shortcoming, as also documented in the Commission's consultation document. The ESAs' representatives have on various occasions stressed their willingness to work more on consumer protection issues, and they welcomed the present consultation as an opportunity to further progress towards supervisory convergence and to enhance consumer protection.
- Today, the bulk of retail finance legislation across Europe originates at the EU level, e.g. the Payment Accounts Directive, Insurance Distribution Directive, Payment Services Directive, Markets in Financial Instruments Directive, Regulation on Packaged Retail and Insurance-Based Investment Products, Mortgage Credit Directive, Consumer Credit Directive, Deposit

Guarantee Schemes Directive, to name just a few. However, Member States have some leeway on how to implement these rules, and full discretion on how to enforce them at national level. Sectoral EU regulations and directives merely ask that Member States designate a competent authority responsible for implementation and oversight, and for it to apply dissuasive sanctions in case of law infringement.

- The reality is that market conduct supervision of consumer issues is fragmented across Member States which are at different levels of development with regard to consumer protection. In some Member States no authority is really in charge of consumer protection in the financial services area. Many national supervisors lack a clear statutory objective to provide consumer protection; many of them are under-staffed, have little on-site inspection capacity, have limited legal powers to make binding decisions and limited powers of sanction; some of them do not have capacity to deal with consumer complaints. All of these problems are quite common across the EU, but they are most prevalent in central, eastern and southern Member States. As a result of this fragmentation, serious shortcomings exist in the enforcement of retail finance legislation in many Member States while consumers are confronted with a vast scale of mis-selling practices. In the view of some members, as a consequence, the low level of trust that consumers have in financial services providers and intermediaries is hardly surprising.
- In the view of these members, effective enforcement and a high level of consumer protection and redress everywhere across Europe are key preconditions for a successful single retail financial market and Capital Markets Union. There is an urgent need to upgrade the quality of supervision and enforcement everywhere in the EU to achieve supervisory convergence.
- As has been successfully implemented in several Member States following the financial crisis (Belgium, UK), not to mention the Netherlands, Consumer organizations are in favor of a Twin Peaks model of supervision (i.e. separating market conduct from prudential supervision) for a long time.
- Some members of the BSG are of the view that supervisory convergence in market conduct supervision would be better achieved by establishing an EU authority for financial consumer protection. While appreciating the work being carried out by the ESAs, they consider that the ESAs deal with both prudential and market conduct supervision, where the main priority and resources are allocated to the prudential oversight and, even worse, where consumer protection may be subordinated to prudential objectives.

- Therefore, some BSG members see the need to set up a separate EU supervisor that would focus on defending consumer interests in financial services. One of the main tasks of the new authority should be to achieve supervisory convergence, ensuring the development, implementation and monitoring of minimum standards of conduct-of-business supervision at Member State level.
- The new EU consumer protection supervisor should be empowered to monitor the quality of the national supervisory practices by, inter alia, running random mystery shopping exercises and publishing their results. The new supervisor should have the sanctioning powers in case the national competent authorities do not implement the measures recommended by the EU supervisor aimed at improving the quality of market conduct supervision.
- The new EU supervisor should also be mandated with monitoring and assessing the way national markets function and any cross-market trends, while trying to prevent risky developments and consumer detriment in order to gain more intelligence and understanding on problematic issues for consumers in the markets, e.g. by measuring detriment and detecting mis-selling behavior. The monitoring should be followed by analysis of the root causes that lead to the detrimental results of markets for consumers. On the basis of this, appropriate and balanced choices of measures for mitigation of the detriment should be formulated.
- While responsibility for day-to-day supervision of financial institutions should essentially remain with national competent authorities (provided that their supervisory practices are harmonized as explained above), the EU consumer protection supervisor should be granted direct supervisory and effective product intervention powers, subject to appropriate safeguards, with regard to cross-border issues, as well as EU-wide negative trends and risky products/practices that are widespread across several Member States. This would help take a pro-active approach to prevent mass consumer detriment caused by toxic financial products and practices. A coordinated EU approach could help prevent massive consumer detriment of the kind that was caused by foreign currency loans in several central, eastern and southern EU countries.
- The EU supervisor should publish a performance report on an annual basis setting out how well relevant financial markets have performed over the year and a forward looking risk outlook setting out the key risks to the relevant consumer and market outcomes.
- Another group of BSG members think that the current configuration of the ESAs should be maintained, at least in the short to medium term,

considering the practical difficulties of implementing the Twin Peaks models at this stage, and also the fact that this model is for supervision, not for regulation. According to this view, only after the completion of the Banking Union should the European system of financial supervision be rationalized to increase its efficiency while reducing its complexities and duplicities.

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.

- Some members argue that there is no need for an extension of the ESA's powers. On the contrary, it should be questioned whether the EBA should have direct intervention rights, after the ECB has been assigned with the responsibility for the European bank supervision. The EBA, as a standard-setter, should not be executing those standards. This would be a violation of the separation of powers.
- Furthermore, these members note that the ESAs are regulatory bodies rather than supervisory authorities. The supervision is in the hands of national and supranational (ECB) authorities, coordinated by the ESAs. A clear separation between the nature of these powers is desirable.
- Other members note that NCAs, EU level I Authorities (Parliament, Council, Commission), Stakeholder Groups – in addition to the ESAs themselves – have the power to request the ESAs to investigate breaches or non-implementations of EU law. These BSG members are not aware of any of the first four having ever made such a request. And only one own initiative has ever been taken by the ESAs (EBA / Bulgaria).
- This severe weakness can only be addressed, in the view of these members, by introducing independent members in the supervisory boards, representing EU level interest and EU citizens' interest, in addition to the NCAs ones.

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.

- To the extent needed to fulfill their tasks, yes, the role of the ESAs as regards equivalence should be strengthened. This is especially the case where "equivalence" is a crucial variable for the application of guidelines as well as technical standards and the scope of these exceed the scope of the Commission's equivalence decisions. The goal should be a comprehensive,

single point of information bundled at one European authority and not piecework of different assessments by different competent authorities. Preferably only one competent authority per industry, legislative text and/or field of law should be entitled for a certain task, e.g. to perform third country assessments in terms of supervisory and regulatory levels as proposed in the actual paper. This would mean that anytime a third country assessment is required, e.g. as a result of a new/adapted regulatory requirement (issued by any authority), the responsibility shall only be directed to this only competent authority. We acknowledge that for certain cases it could be difficult to identify which institution should make an assessment due to overlaps of different industries. But for these cases the principle that only one competent authority should issue an assessment needs to be safeguarded.

- Because of their level of expertise, the ESAs should have a stronger role in the equivalence process, provided the criteria mentioned above are fulfilled. The objective would be to reduce the time it takes the ESAs to come up with an equivalence decision (as of today decisions are slow because of a lack of resources). This is especially the case for those jurisdictions that were deemed equivalent by the NCAs. To achieve that goal, the ESAs should be granted more resources. Also, the functions of the ESAs regarding equivalence decisions should be clarified and distinguished from those of the Commission.
- We believe it is important to monitor equivalence decisions. As is, the decisions are not reviewed and a third country institution could profit from a once granted equivalence decision that might not be up to date. The review process should not only focus on the equivalence of the regulatory framework, but also on the question if it is appropriately applied.
- Also, the methodology currently used to assess equivalence is too rigid. For example, equivalence is frequently determined on an almost article by article scrutiny. Equivalence decisions should be based on compliance of international standards and peer reviews by standard setting bodies, favouring regulatory dialogue and international supervisory cooperation.

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.

- In general ESAs existing powers to access information enable them to effectively and efficiently deliver on their mandates. Even more so in light of the upcoming extension of ESMA's access to information which will come into force on the 3 January 2018 (Art. 26 MiFIR). Some members are

reluctant to an extension of those powers. Streamlining of reporting to supervisory authorities is important for the financial institutions to do this efficiently. Close coordination by the ESAs with the supervisory authorities should avoid redundancy. In this context empowering ESAs to obtain information directly from market participants should be limited to specific cases and avoided without first having to exhaust every other means of getting information.

- Consequently, we believe that the current status quo is sufficient and that there is no need to guarantee the ESAs additional powers to access to information. Access by ESMA to data even to the existing wide extent may in no event lead to the double-querying of data that were already collected by other authorities. In particular, ESAs have often sufficient access to information via NCAs. It should be the clear objective that duplication of data collection is avoided and that any mandate builds mainly on existing data.
- This would mean unnecessary costs for the institutions too. Close coordination between the supervisory and standard setter/supervisors should obviate superfluous efforts. Finally, conclusions drawn from obtained data should be shared with institutions.

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.

- As mentioned above, it is important to avoid a duplication of data collection. Existing data need to be tapped first and shared among relevant national and EU authorities. We do not see an urgent need to grant additional powers.
- In this context we don't support the consideration of the EC to reflect on whether the ESAs should be empowered to obtain information directly from market participants in specific cases and without first having to exhaust every other means of getting information. We therefore disagree with the approach to generally empower the ESAs and enable a direct data access at institutional level. The EU principle of subsidiarity needs to be remembered and safeguarded in all legislative initiatives.
- In general we oppose the ESAs' directly accessing data from market players. Costs for market players should not unnecessarily rise because of direct access, if the information is already available, e.g. to national authorities. Currently, market participants have to answer a wide range of requests from NCAs or the ECB. To further extend the number of requests through direct data access may run counter to the principle of proportionality. To the extent that data are already available, there is no need for a direct access for

the ESAs. Furthermore, existing requests should be more consistent. It would help if different authorities would use the same definitions and tools.

- A bundling of pan-European trading data in a shared data bank with the ESAs (“financial instruments reference data system” or “FIRDS”) could be a good idea. European market players could use such a data bank as an important source for the monitoring of their regulatory obligations.

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.

- Such a power could help to reduce overlaps and ensure the use of the existing, comprehensive data set for different purposes by all authorities involved. Streamlining reporting requirements would be a great step and fit into the existing mandate of the ESAs.
- Earlier involvement and ex-ante consultation of the BSG could be required if the ESAs, and EBA in particular, was to play a greater role in the reporting framework.
- To sum up, we would welcome a reduction and streamlining of reporting requirements. There are too many parties, defining reporting requirements. Therefore having one authority that would streamline reporting requirements is to be welcomed. Having a centralised collection of data, would reduce duplicity. We would especially welcome the creation of a standard data model. This cannot work, without dropping additional national data requests. A creation of a standard data model must not lead to an “inflated” set of requested data.

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.

- Any such measures could in general be appropriate to streamline the adoption procedure with regard to FINREP. If EBA would be given the authority to issue technical reporting specifications, this could speed up the implementation. Nevertheless, the European Commission should still be involved as an oversight mechanism. The Commission should be able to intervene within a certain period (e.g. 3 month). Without intervention, the technical reporting specifications will become effective after the intervention period has expired.

- Implementation periods for banks need to be adequate, so that it is possible for banks to appropriately implement new requirements. Furthermore, consultation periods should be long enough for banks to provide a comprehensive response.
- Furthermore see response to question 1.

14. What improvements to the current organization 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 believe that the EECS is a good platform, where national enforcers can exchange ideas.
- We believe a more harmonised European enforcement process could help to harmonise the application of IFRS. This could be achieved by applying the basic principle of the SSM to enforcement. The national enforcement agencies should continue their work, guided by the standards set by ESMA. Especially when it comes to nGAAP financial statements, national enforcement will be necessary.
- The harmonisation of financial reporting within the EU is very important for EU citizens, in particular individual investors. Some BSG members ask that the recommendations of the Maystadt report endorsed by the European Commission be enforced as far as the governance of EFRAG (European Financial Reporting Advisory Group). EFRAG remains one of the very few EU funded financial advisory groups not to include any representatives of the end users (individual investors in this case) in its supervisory body.
- The EU should also further study the effectiveness of having the ESAs, the ECB and EFRAG involved at the same time on the design, the proposition and the enforcement of financial reporting standards.

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

- In our opinion, the endorsement process is sufficiently effective and efficient. Furthermore, we are pleased with the concept of EFRAG giving advice to the European Commission. Therefore, we see no need for a change of the endorsement process.
- We believe that enforcement and standard-setting should not be combined in one authority, as this might lead to a conflict of interest.

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.

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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.

- A mandatory prior consultation with the ESAs for new capital instruments is neither necessary nor useful. It is not necessary because the competent authorities do apply the existing laws at the time the instrument is issued. If ex-post it is discovered, that the decision was wrong, the competent authority has the power to revoke the decision. If the competent authority does not follow the indications from the EBA, the EBA has several instruments to enforce compliance with EU law.
- Currently, it takes several months until a decision is made, even though time is of the essence as market participants will have to react to the market situation in time. Mandatory involvement of another agency would only slow down a well-functioning process.
- We oppose, therefore, to an extension of EBA's mandate in operative supervision. Consulting the EBA for new types of capital instruments would create a doubling of efforts since competent authorities already fulfil this task. Furthermore, we believe that it would unnecessarily extend the approval process and hence extend the already long duration of supervisory procedures and would add additional complexity.

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.

- Some BSG members see no further tasks and powers of the ESAs in the areas of banking which must be complemented.
- According to some members of the BSG, the EBA should be given supervisory functions of payment systems. In the current environment of digital transformation of the financial system, payment services are one of the areas with growing competition. The EBA included payments as an activity in its 2016 work programme. Specifically, the EBA intends to ensure secure, easy, and efficient payment services across the EU.

- However, other members point out that there is already a coordination problem in the payments field between ECB and National Central Banks, and therefore it is not the case for increasing complexity. Furthermore, according to Article 127(2) of the Treaty on the Functioning of the European Union and Articles 3 and 22 of the Statute of the European System of Central Banks and of the European Central Bank *"The Eurosystem has the statutory task of promoting the smooth operation of payment and settlement systems."*

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?

- The existing system of securities supervision by both ESMA and national competent authorities (NCAs) should be retained because it is the best way of accommodating differing market structures across member states. The NCAs supervise securities regulation and investor protection issues. They have good knowledge of the specificities of their national financial market and so have the necessary supervisory expertise. ESMA, by contrast, has no practical experience of supervising banks.
- ESMA should hold direct supervisory powers over EU Central Counterparties (CCPs). ESMA already supervises Credit Rating Agencies and trading repositories and its supervisory powers should be extended to CCPs, especially now with the development of a recovery and resolution framework for these entities in the EU. The UK's large share of the EU clearing market reinforces this point. A common EU supervision of CCPs led by ESMA is necessary, including the clearing market that is currently in the UK and that will fall outside of the scope of the ESMA because of the British vote to leave the EU. ESMA could also be granted supervisory authority in respect of critical benchmarks.

20. For each of the areas referred to in response to the previous question, what are the possible advantages and disadvantages?

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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?

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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.

- Some members see no shortcomings in the decision-making processes of the Board where supranational interests are involved. They also see a need for Board members who can provide in-depth input concerning their national markets. Knowledge of national markets and business models is essential to good regulation. With this in mind, they believe the existing set-up including Board members from NCAs should be retained.
- These members do not support the consultation paper's criticism that "the Board of Supervisors focuses too much on technical regulatory matters and too little on strategy and supervisory matters". Preparing RTSs is one of the ESAs' key tasks (cf. Article 8 (1)(a) of the ESA Regulation). Strategy issues, by contrast, are the task of lawmakers.
- Other members have some concerns that national interests might dominate EU interests in the decision-making process of the ESAs. This is due to the exclusive role of the National Competent Authorities (NCAs) in the Board of Supervisors (BoS), while the Chairperson does not have voting rights.
- According to this view, the Board of Supervisors of the ESAs is solely composed of national Member State supervisors (in fact much more supervisors than regulators). Thus, it is politically very difficult for the ESAs to increase the effectiveness of their supervisory activities since the institutions that they have to supervise are their supervisors themselves. A crucial example of this is the investigation of potential breaches of EU Law or of non-implementation of EU Law (article 17 of the ESAs Regulations) by one or several of their board members. This has never happened as far as investor and consumer protection is concerned.
- This could be addressed by enhancing the role and influence of ESAs staff and Chairperson (for example through providing the Chair with a voting right).
- Another members believe that the current composition of the ESAs BoS, where not all national authorities that are in charge of consumer protection in financial services are represented, makes it difficult for consumer protection issues to get as much attention as other issues that directly come under the responsibility of all members of the BoS.
- The decision making process of the EBA should be revisited if the EBA wishes to keep its European footprint. The system of double majorities approved for

the EBA² is unnecessary. Member States should be represented having in mind the single market and not the Eurozone. There is no need to require specific majorities from a group of countries. Furthermore, this system introduces unnecessary complexity and lacks efficiency for taking swift decisions. It may lead to a paralysis of EBA's decision making process.

- The ESAs governance should follow the model of the SSM and be based on national best practices in order to ensure a consistent implementation of the single rulebook and a sole supervisory criterion. The conduct of peer reviews might be a useful tool for the identification of best practices and therefore should be promoted. In addition, best practices can and should be shared between the three ESAs by means of the Joint Committee.
- In order to ensure that the ESAs governance is based on best practices, the ESAs should maintain a fluent dialogue with the public and the industry. Public consultations, public hearings and workshops/seminars are very useful instruments.
- Some members believe the future governance of the ESAs could be based on that of the SSM by including independent and permanent Board Members.
- Also, delegating more responsibilities from the Supervisory Board to the Management Boards should be considered.
- Finally, other members think that to achieve a clear separation of powers, Boards could be composed of representatives of the finance ministries.

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.

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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

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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

² Following the establishment of the SSM the decision-making process of the EBA was amended to introduce a system of double majority voting.

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.

- Delegating powers, provided that the purpose and scope of the delegation are clearly defined, could help speed up certain procedures. There would nevertheless be a risk of creating imbalances in the power structure of the ESAs, thus undermining their effectiveness. Strengthening the authority of the Chair would not, in itself, do anything to expedite the ESAs' sometimes lengthy decision-making processes, especially since because hold-ups frequently occur in the Commission's sphere of influence. It is more important for the NCAs to be adequately represented in the ESAs and for their opinions to be taken on board.
- Also, see response to question 22, in particular the suggestion to give the chairperson voting rights in the BoS.

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.

- In addition to the trend of legislative initiatives at European level, the publication of Q&A documents, statements and guidelines issued by European authorities with the purpose of interpreting or clarifying certain aspects of the regulation is becoming more frequent. *The BSG could play an important role in the elaboration of Q&As, an instrument that is increasingly relevant in the regulatory process, and where stakeholders' participation is particularly suitable*³. Some members believe that that could be achieved by establishing a period of consultation prior to the publication of the most relevant Q&As and/or via some sort of appeal process. To determine the level of importance of these texts, a prior quantitative impact study could be carried out. This proposal has been implemented in the past occasionally, but the lack of a procedure for determining which Q&As are material and for involving the BSG in the process prevented it from being used more widely.
- *Just as with the EBA itself, there is an important issue of BSG resourcing as many members do not have access to particular expertise from within their organization. If maximum benefit is to be derived from the unique*

³ See BSG End of Term of Office Report (ETOR).
<https://www.eba.europa.eu/documents/10180/807776/END+OF+TERM+OF+OFFICE+REPORT+-BSG+II.pdf>

combination of expertise and perspectives of the balance of constituencies, dedicated resources could be made available to BSG⁴.

- *Consideration should be given to enhancing the resources devoted to the BSG and its Technical Working Groups. Some members are very constrained in the extent to which they are able to receive financial and other support: this is most especially the case when non-scheduled BSG meetings or meetings of the working groups would greatly enhance the effectiveness of the working groups. The BSG contains an unrivalled combination of expertise and perspectives and yet its full potential is not being realized due in part to the lack of dedicated resources⁵.*
- Regarding the composition of BSG (art. 37.2 of EBA Regulation), it may not always be easy to fulfil the somewhat rigid requirements of the balance of BSG membership as between different constituencies, nationality, gender etc. We believe that the issue of effectiveness of BSG (and recognizing the sometimes limited number of applications to fill each of the six constituencies) is equally, if not more, important. Some members believe that civil society would need to also have a greater number of representatives/categories in the Stakeholder group. Other members are of the opposite view, thinking that the BSG composition should predominantly rely on technical expertise.
- In the view of some members, a balanced representation also implies an “adequate” compensation for the not-for-profit user side members - as mandated by the ESAs Regulations article 37 - and “adequate” secretarial support for them, since they are not even remotely as well-resourced as the industry members and have to deal with very specific and technical issues, especially when they take additional responsibilities and tasks such as chairing or vice-chairing the Stakeholder Groups. *“Members of the stakeholder groups representing non-profit organisations or academics should receive adequate compensation in order to allow persons that are neither well-funded nor industry representatives to take part fully in the debate on financial regulation.»* (recital 47 of the ESAs EBA Regulation).
- Currently not for profit user side expert members are compensated € 18,75 gross per hour, with the number of hours capped. User-side not for profit vice chairs and chairs do not get any more compensated for their important extra work and responsibilities. This is not adequate by any standard and much lower than the rates paid to commercial consultants by the EU

⁴ Ibid.

⁵ Ibid.

institutions. By contrast, members of the UK FCA consumer panel are paid at a minimum £ 40 per hour (£ 12,000 per year) and more hours for the chair.

- In the view of these members, special attention should also be given by the ESAs to publish papers with executive summaries in plain English and in the major languages of the Union. Otherwise it is very difficult for retail user expert members to collect the feedback of their constituencies on the ESAs consultations.
- Even properly balanced Stakeholder Groups will likely not be able to use their full legal powers due to conflicting interests between members. In particular, it is very unlikely they will ever be able to use their power of requesting the ESAs to investigate breaches of EU Law or cases of non-implementation of UE Law (article 17 of the ESAs Regulations, see reply to question).
- Other BSG members are of the view that the BSG composition lacks sufficient technical profiles to deal with the often very technical consultation and that, if there is an imbalance between the representation of the industry and consumers, it is in favour of the latter. According to this view, *the BSG advisory role towards EBA would greatly benefit from the participation of experts from auditing, rating or consultancy companies, whose technical expertise would be highly beneficial to improve our advisory role. Representatives of such firms have a particular expertise, experience, and perspective that are not always found to the same degree in other groups. They are able to challenge the Industry approach and provide useful and relevant points of view on markets together with financial and accounting matters that may be intertwined with regulatory issues. The presence of a rating agency official would also provide a useful link with the perspective of institutional investors and a focus on public disclosure issues*⁶.
- Some members of the BSG think that the representatives of the Unions should be raised because of the possibility to widen the representation of staff both in professional and regional.
- *The setup of the BSG and its general features are set out in Article 37 of the EBA Regulation. This states that members shall serve on the BSG for a period of two and a half years, with the possibility of renewal for one further term of office. We believe that, due to the steep learning curve for members, the mandate of each BSG should be extended to four years*⁷.

⁶ Ibid.

⁷ Ibid.

- *The BSG would welcome more explicit feedback from the EBA on the opinions published by the Group, so as to encourage a broader interaction and sharing of views. Whilst we acknowledge progress made in this regard, we would also wish to explore ways of providing more structured feedback (for instance, the reasons why a recommendation might not have been accepted) on BSG submissions⁸.*
- To increase the effectiveness and efficiency of BSG advice, consideration should be given to the Group providing input in the early stages of EBA's regulatory work. Some members believe that, whenever possible, there could be advantage in BSG members on an ad hoc basis being informally involved with the regulatory process as early as possible. Other members believe instead that this would provide the industry with an unfair advantage to influence the regulatory process upstream.
- The BSG could usefully explore the scope for collaboration between other ESA stakeholder groups. Joint submissions with other ESA stakeholder groups should be considered especially in cases of consultations proposed by the ESAs' Joint Committee.
- The stakeholder groups should also be given a greater role in formally evaluating the impact of the ESAs policy and technical standards. This could be accomplished by giving the stakeholder groups a specific research budget which they could use to commission independent evaluations of the impact of the ESAs activities.

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.

- Some members believe merging the EBA and EIOPA could help to save administrative costs. We are not, however, in favor of combining all three agencies.
- Another member suggests, as a long term goal, to merge the EBA within the Commission.
- In the view of some members, continuing with a supervision that is fragmented by type of financial provider is not appropriate. This "silo approach" – typical of the EU institutions – creates an inconsistent level of consumer protection at the point of sale, depending on the financial product and depending on the types of financial provider and distributor. This separation ignores the reality of retail financial markets in Europe where

⁸ Ibid.

most investment products are “substitutable” at the point of sale, and the same retail distributor may propose alternatively securities, funds, life insurance, banking products or pension ones, sometimes insurance-based, sometimes not. The saver can also often compare these options with those offered by his employer, like corporate DC pension products.

- For example, unit-linked insurance contracts are supervised by EIOPA as far as the raper contract is concerned. However the contents – which are typically “units” representing investment funds – are supervised by ESMA. This is not effective. Already several national supervisors have faced this reality (UK, Netherlands, Belgium, etc.) and supervise all financial products offered at the retail level.
- In other words, some members see no compelling rationale for not having a single public conduct of business supervisor for all financial products sold to EU citizens.
- Other members think that the current configuration of the ESAs should be maintained, at least in the short to medium term, considering the practical difficulties of implementing the Twin Peaks models at this stage, and also the fact that this model is for supervision, not for regulation. According to this view, only after the completion of the Banking Union should the European system of financial supervision be rationalized to increase its efficiency while reducing its complexities and duplicities
- As regards separate seats, this seems to be more a political issue between Member States. In the view of some members, efficiency and effectiveness of taxpayers’ money would advocate for a single and same seat.

28. Would there be merit in maximizing 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?

- Any structural change of the type proposed in the consultation would be deeper than was the creation of the ESAs in 2010, as it would imply not only changes at the European level, but also on a national basis given that currently, national supervisory schemes are very heterogeneous.
- However, one of the most immediate tasks is to find a new headquarters for the EBA. Some BSG members are of the view that the current configuration of the ESAs should be maintained, for now and that more time is needed to analyze other more profound structural changes such as the mergers between ESAs and/or other institutions, the creation of a “Twin Peaks model”, or another option: to merge all the supervision into one single

central supervisor. Other BSG members are in favor of setting up a Twin Peaks model in which consumer protection and prudential regulation are carried out by separate supervisory authorities (see responses to questions 6&7). The rationale behind the Commission's proposal to consolidate certain consumer protection powers within ESMA is unclear, knowing that ESMA is competent only for financial markets and investment issues, and not for other retail finance files (retail banking, payments, savings, credit and non-life insurance). The Commission should justify any future changes to the supervisory architecture and demonstrate how the proposals are expected to enhance effective financial consumer protection across Europe.

- Some members believe a merger between the EBA and EIOPA would make good sense in terms of achieving synergies. This merged entity should be located in a financial center to make it easier to recruit staff with the necessary level of expertise.
- In the view of some members, the priority should now be to complete the Banking Union in the financial stability area. Only after its completion could the European system of financial supervision be rationalized in order to increase its efficiency while reducing its complexities and duplicities, including the possibility of an implementation of a Twin Peaks model.
- Also, in the future, careful attention should be paid to the duplicities between EBA and the SSM, as this causes additional and unnecessary costs.

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

- a) should they be changed to a system fully funded by the industry;
- b) should they be changed to a system partly funded by industry?

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

- The ESAs play a major role in the current European supervisory scheme. Contrary to the former structure of consultative committees (CEBS, CERS and CEIOPS), the ESAs have the legal capacity to issue binding regulatory standards. In a very short time since their creation, these authorities have carried out a great amount of technical work. This makes it necessary to ensure that these authorities count with the necessary resources to develop their functions.
- The ESAs are facing budgetary constraints. The current financing agreement (40% European Commission and 60% National Competent Authorities)

extends the budgetary restrictions of both the European Union and Member States to the ESAs.

- The budget of the ESAs should be reviewed and be increased to the extent necessary to fulfil all their tasks. Some members agree that their funding should be provided by the industry as it is done in some Member States and common practice in other sectors of industry (fees or other). I. Other members do not support industry's contribution, as regulation is a public good.
- It should be borne in mind that NCAs in many Member States are funded by the industry. As a result, industry already contributes to the ESAs' budget.
- The ESAs' responsibilities are primarily regulatory in nature. If the ESAs did not exist, these responsibilities would essentially have to be carried out by the European Commission and monitored by the European Parliament and the Council. Some BSG members consider that the contribution of the industry should be limited and corresponding monitoring and auditing procedures set in place. In their view, the banking industry is already facing new fees as a result of new regulations including the setup of the Banking Union (SSM, SRM, Resolution Funds), Deposit Guarantee Funds and National Supervisors fees which, taken together, represent a non-negligible share of their annual profits.
- Some members believe that the adaption of a funding model based on fees by market participants for regulators, different from supervisors, is in stark contrast to the general practice in regulation and supervision. Also, most EU agencies are fully or mostly funded by the EU budget, for instance the European Food Safety Authority (EFSA), the European Railway Agency (ERA) and the European Global Navigation Satellite Systems Agency (GNSS). In addition, there is a logic that the body that decides on the budget, is paying for it to a large extent as well in order to keep balance between costs and output.

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 level'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 capitalization, market share in a given sector, total assets, gross income from transactions etc.) to establish the importance/size of the contribution.

- A general concern relates to the funding of the EBA itself. At a time when the demands made upon it have increased and more areas of responsibility are being added, it is anomalous that the EBA's budget has been cut significantly. Of course, we recognize that, as with all institutions, the EBA is required to be efficient in the way its limited resources are used. But equally, it needs to operate with maximum effectiveness and this has important resource implications in terms of both personnel and finance.

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.

- See response to question 29.

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.

- EBA and EU are making huge progress in defining and implementing a common rulebook for bank regulation in the EU area. However, implementation of these rules by national regulatory bodies are timed differently from country to country and with various exceptions granted. A survey of the status of implementation of the different regulations should be made transparent by ESAs.
- In the interests of proportionality, BSG would welcome more detailed and structured cost benefit analyses to be included in ESAs' regulatory papers.
- To accomplish this task ESAs should set up an impact assessment department.
- ESAs should be enriched with a research department with the aim to explore recent theoretical and factual developments in regulation.