

Banking Stakeholder Group (BSG), EBA  
Insurance and Reinsurance Stakeholder Group (IRSG), EIOPA  
Occupational Pensions Stakeholder Group (OPSG), EIOPA  
Securities and Markets Stakeholder Group (SMSG), ESMA

June 2017

Dear Vice-President Dombrovskis,

**EC consultation on the operation of the ESAs: Joint Statement by BSG, IRSG, OPSG and SMSG**

The four stakeholder groups (SGs) of the European Supervisory Authorities (ESAs) have each submitted their full response to the Commission's recent consultation on the operation of the ESAs. Please find the links as endnotes<sup>1</sup>.

The SGs all consider it appropriate to reinforce certain messages that are agreed on across the financial sectors in relation to the role of the SGs and convergence tools.

***Value of the stakeholder groups – strengthening their role – further improving interaction between the ESAs and their stakeholder groups***

The value of the SGs stems from their contributions to their respective ESAs, ranging from input on consultations to own initiative work as well as direct interaction with ESAs staff, in particular during the SGs meetings. The capacity to act in a pro-active way is an effective tool to provide value added to the work of the ESAs. The commitment of the members of the SGs is evidenced by the significant number of submissions they all achieve during their terms.

However, the effectiveness of the SGs work for the ESAs can be improved through (i) a more systematic feedback on all SG positions (including on own initiative works) and (ii) a clearer link with the BoS, including the possibility that the SG Chairs/Vice Chairs present the input of the SGs work at the BoS before a decision is reached on selected issues.

The work and role of the SGs should be strengthened, aiming at improving the efficiency, accountability and credibility of the ESAs. Adequate interaction of the SGs with the BoS should be ensured through regular meetings with the BoS. For instance, both EBA and ESMA BoS currently hold two annual meetings with their respective SG, which we consider a good practice. The SGs appreciate regular exchanges between the Chair/Vice Chairs of the SG and the management of the ESAs as a further example of good practice. The representation of different stakeholders within each SG is an important issue which requires careful consideration, as set out in Article 37 of the ESAs Regulations.

Adequate compensation and adequate secretarial support for SG members enables the SGs to perform effectively. Some improvements could be made in this regard. In particular, increased ESAs support ahead of meetings of the SGs would be welcomed; for instance, by circulating summary papers which explain an issue in more detail, timely submission of background notes ahead of meetings and early interaction of ESAs staff with SGs Working Groups dealing with particularly relevant topics sufficiently ahead of the production of consultation papers.

### ***Enhancing cooperation between the SGs and their funding***

The ESAs had different remits when they were established and have developed differently over the years (e.g. EBA was particularly affected by the establishment of the Single Supervisory Mechanism). Similarly, it is likely that they will also develop differently moving forward (e.g. Capital Markets Union might lead to additional functions for ESMA). The SGs are aligned with the remit of their respective ESA. Cooperation across the SGs has so far been limited, but its effectiveness has been shown on targeted issues<sup>1 2</sup>.

The SGs would welcome a framework that enables such joint high-level work also in the future, in particular as regards joint consultations by the ESAs Joint Committee.

Additional financial resources should also be awarded to the SGs to ease their work, improve their impact and enable them to have more regular contact throughout the year, including at the level of their Working Groups. Additional financial resources could also be used towards increasing the interactions between all SGs and thus increase the volume of joint activities.

### ***Clarifications on the ESAs' convergence tools are necessary***

The ESAs' ability to use various convergence tools is welcomed. Such tools can give flexibility to the European supervisory framework, by aiding the interpretation of level 1 and 2 texts and thereby achieving convergence. The first six years of operation however reveal that clarifications of these powers are necessary. Clarifications should strengthen coherent Union-wide application of convergence tools and minimise room for misinterpretation by NCAs.

The role of the ESAs as regards Level 1, 2 and 3 legislations should be clarified:

- More transparency should be introduced to the process when the ESAs provide advice on level 2 legislation as a mechanism to ensure accountability of the ESAs towards the co-legislators.
- More transparency is needed in the development of level 3 texts. In this regard, the preference for certain convergence tools differ between the ESAs. For instance, EBA appears to have a preference for issuing Q&As, best practices and opinions, while EIOPA has favoured the use of guidelines.

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<sup>1</sup> the Joint Advice provided by the BSG and the SMSG on EBA and ESMA Guidelines on the Assessment of the Suitability of Members of the Management Body and Key Function Holders

<http://www.eba.europa.eu/documents/10180/807776/SMSG+and+BSG+Joint+Statement+on+ESMA+EBA+Guidelines+on+suitability.pdf>

<sup>2</sup> Combined IRSG/OPSG Response on draft regulatory technical standards on risk-mitigation techniques for OTC derivative contracts not cleared by a CCP under Article 11(15) of EMIR Regulation (EU) No 648/2012

[https://eiopa.europa.eu/Publications/Stakeholder%20Opinions/20140715-Formatted-Joint\\_IRSG\\_OPSG\\_Response\\_on\\_EMIR.pdf](https://eiopa.europa.eu/Publications/Stakeholder%20Opinions/20140715-Formatted-Joint_IRSG_OPSG_Response_on_EMIR.pdf)

Since the legal basis for Q&As, best practices and opinions and their legal implications for supervised entities are unclear, such instruments would benefit from increased scrutiny. Likewise, the clarification on guidelines would be welcomed to remove the risk of the ESAs issuing these ahead of Level 2 legislation. No draft or preparatory Level 3 measures should be issued before Level 2 is finalised.

The SGs look forward to continuing working constructively with their respective ESAs and to improving the relevance and usefulness of their advice, and are committed to improving their efficiency and to working jointly when necessary.

Santiago Fernández de Lis  
Chair of the BSG

María Aránzazu del Valle Schaan  
Chair of the IRSG

Matti Leppälä  
Chair of the OPSG

Rüdiger Veil  
Chair of the SMSG

CC: Tatyana Panova, member of cabinet to Vice-President Dombrovskis  
Olivier Guersent, director-general, DG FISMA

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<sup>i</sup> Links to SGs responses to EC consultation on the operation of the ESAs:

- BSG: <http://www.eba.europa.eu/about-us/organisation/banking-stakeholder-group/publications>
- SMSG: [https://www.esma.europa.eu/sites/default/files/library/esma22-106-210\\_smsg\\_advice\\_response\\_to\\_public\\_consultation\\_on\\_the\\_esas.pdf](https://www.esma.europa.eu/sites/default/files/library/esma22-106-210_smsg_advice_response_to_public_consultation_on_the_esas.pdf)
- OPSG: [https://eiopa.europa.eu/Publications/Stakeholder%20Opinions/EIOPA-OPSG-17-11\\_Response\\_Operations\\_ESAs.pdf](https://eiopa.europa.eu/Publications/Stakeholder%20Opinions/EIOPA-OPSG-17-11_Response_Operations_ESAs.pdf)
- IRSG: [https://eiopa.europa.eu/Publications/Stakeholder%20Opinions/EIOPA-IRSG-17-10\\_Response\\_Operations\\_of\\_the\\_ESAs.pdf](https://eiopa.europa.eu/Publications/Stakeholder%20Opinions/EIOPA-IRSG-17-10_Response_Operations_of_the_ESAs.pdf)