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30 March 2016

# EBF Response to the EBA Consultation Paper

# on Draft ITS amending EU Regulation 680/2014

The agreement on Better law-making which was reached between the EU Council, the European Parliament and the EU Commission very recently has explicitly confirmed that public and stakeholder consultation is integral to well-informed decision-making and to improving the quality of law making. An effective and structured consultation process which includes a genuine invitation for comments from stakeholders is a crucial component of and contributor to a transparent regulatory system.

One key aspect of a proper consultation process is the importance of allocating sufficient time for stakeholders to respond. It is critical that regulators allow adequate time for the consultation process so that stakeholders have the ability to adequately evaluate the full consequences of the proposed regulations.

The present EBA Consultation was launched on 4 March 2016, specifying that it runs until 30 March. This means that the consultation period is less than one month. This is not in accordance with EBA’s “Public Statement on Consultation Practices” of 25 September 2012 which states that EBA will allow those consulted adequate time to respond, according to the complexity of the issue and the time available. “The EBA will generally aim at allowing a three-month consultation period for public consultation, unless reasons exist to the contrary, for example an external timetable is imposed or the measure requires urgent action. “

The Consultation does not make any mention of reasons which would require the consultation period to be restricted to less than three months.

It is a basic principle of European Administrative Law that administrative agencies need to comply with the rules that they have set for themselves (“*Patere legem quam ipse fecisti*.”).

We conclude that due process requirements have not been met and that, as a consequence, the transparency of the legislative process has not been observed.

We, therefore, urge the EBA to consult its stakeholders for a second time in application of Article 5.4.of its Public Statement on Consultation Practices.

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