



FK | Finanssialan Keskusliitto  
FC | Finansbranschens Centralförbund  
FFI | Federation of Finnish Financial Services

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Kirvelä Elina

## FFI RESPONSE TO EUROPEAN COMMISSION CONSULTATION ON THE REVIEW OF THE EUROPEAN SYSTEM OF FINANCIAL SUPERVISION

Name of the organisation: Federation of Finnish Financial Services  
Address: Bulevardi 28, 00120 Helsinki, Finland  
Contact: Ms Elina Kirvelä, +358207934208, [elina.kirvela@fkl.fi](mailto:elina.kirvela@fkl.fi)  
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*Federation of Finnish Financial Services represents banks, insurers, finance houses, securities dealers, fund management companies and financial employers operating in Finland. Its membership includes employee pension, motor liability and workers compensation insurers, all three providers of statutory insurance lines that account for much of Finnish social security. The Federation has about 460 members who employ a total of 43,000 people.*

### Key considerations

The Federation of Finnish Financial Services (FFI) welcomes the public consultation on the review of the European System of Financial Supervision (ESFS). FFI is a trade organization that represents a wide variety of financial market participants. Due to this coverage, we have been working with and gathering experiences from all the three European Supervisory Authorities and to some extent, the European Systemic Risk Board. Even though the ESAs have been working for only 2,5 years, they have already been able to show the European financial markets the benefits of their establishment.

However, during the same time it has also become clear that there is some inefficiency that needs to be fixed as soon as possible. These problems may have severe consequences should they not be fixed in this review. Some of these create an unlevel playing field across European market participants whereas some make it more difficult for the European economy to grow and compete with other world economies. The problems and key points of improvement are:

- There is an urgent **need for more transparency**. Transparency will allow time for implementation and ensure preparedness which in turn will increase the competitiveness of the European markets.
- ESAs need to maintain **similar processes and use their powers and instruments in a harmonized way**. While recognizing the different participants and their task in different fields of financial markets, many of them need to deal with guidance and rules drafted by more than one ESA. The content should not follow a “one size fits all” approach but the formats and procedures could be more harmonized.
- **ESAs need more time to conduct proper consultations**. They should in all circumstances have enough time to draft legislations and have dialogue with stakeholders in stakeholder groups and with all market participants via consultations. Proper consultation periods ensure a level playing field between stakeholders. In addition, these add transparency and provide ESAs with input and information on the most important and controversial topics.
- **Implementation periods have to be longer**. In addition, implementing and regulatory technical standards should enter into force at the same time with the regulations and



directives to ensure better preparedness.

- **The legal nature of different ESA rules needs to be clarified and aligned.** For the time being, the guidelines given by the ESAs are to be applied based on the “comply or explain” principle. Different member states interpret these rules differently, others seeing them as binding rules while others treat them as pure recommendations. ESA regulations should provide more guidance on the legal nature of the guidelines.
- **Any own-initiative guidelines have to be avoided.** In the current regulatory tsunami it has become a tradition that the negotiations on EU regulations and directives are very often delayed. Following this, the ESAs have decided to give their own guidelines on matters related to these dossiers while waiting for the final rules. Such interim guidelines should be avoided as much as possible since they create extra burden to the participants and authorities and may unintentionally guide the negotiations to a certain direction.
- **A level playing field between regulators must be ensured.** ESAs’ meeting procedures and any decision making bodies will have to be practically organized in such a way that authorities from smaller member states and with limited resources have the possibility to join and express their views. Any rule drafted by ESAs should take into account the different sizes of the markets and market participants and any actions and rules should take into account the systemic importance of a participant. Such approach would ensure a proper allocation of resources.

## 1. The European Supervisory Authorities (ESAs)

### 1.1. Effectiveness and efficiency of the ESAs in accomplishing their tasks

#### 1.1.a. How do you assess the impact of the creation of the ESAs on the financial system in general and on (i) financial stability, (ii) the functioning of the internal market, (iii) the quality and consistency of supervision, and (iv) consumer and investor protection in particular?

There seems to be a great consensus among European market participants and regulators that the creation of the ESFS and the ESAs was useful. From our point of view one of the main benefits is that they contribute to a stronger European voice vis-à-vis other economic areas, such as the US.

The impact of the ESFS on financial stability is difficult to analyze at this early stage. However, it is has become clear that they have gained an important role in the creation of a single rulebook, thus contributing massively to the functioning of the internal market.

According to our understanding, the drafting of standards and guidelines has been the major time-consumer in th ESAs. Thus the actions with regard to ensuring the quality and consistency of supervision have not been a priority. This is something we would hope to see the ESAs focus on in the future as consistent supervisory practices will ensure a level playing field between European market participants.

Finally, ensuring consumer and investor protection are important features in the mandates of the ESAs. However, they should not take far-reaching actions in this field should there be no reason for it. In case problems are recognized, the ESAs should work on actions that



are not a threat to the financial stability of the markets but address the actual problems in question.

**1.1.b. Do the ESAs' mandates cover all necessary tasks and powers to contribute to the stability and effectiveness of the financial system? Are there elements which should be added or removed from the mandate? Please explain?**

According to our understanding, the resources at the ESAs are limited and currently majority of the resources is used for regulatory purposes. With the current workload in drafting technical standards, it seems that the ESAs cannot contribute to the stability and effectiveness as much as they could be able to do in a different situation. In the long run it has to be ensured that the ESAs can fully contribute to these very important aims. This should be done both within the regulatory agenda and in supervision.

For this reason, it should be considered whether the ESAs should have a possibility to either influence in or at least phase in the drafting tasks that are entrusted to them in EU legislation. This would ensure that in addition to regulatory tasks more resources could be allocated on other important issues.

**1.1.c. In your view, do the ESAs face any obstacles in meeting their mandates? If yes, what do you consider to be the main obstacles? Please explain.**

It has become obvious that the ESAs have a rather extensive mandate with important tasks. Fulfilling these tasks in a balanced manner requires independency and excellent resources both in terms of number, different backgrounds and expertise. The ESAs have been able to attract capable staff but more resourcing could be needed.

However, this requires a bigger budget that the national authorities cannot contribute to because of their own limited resources which are very much needed in their local supervisory practices. Therefore an own EU budget line could solve this resourcing problem while at the same time ensuring that the ESAs will be able to better ensure consistent practices due to their independency from national supervisors.

**1.1.1. Work towards achieving a single rulebook - regulatory activities**

**1.1.1.a. Do you consider that the technical standards and guidelines/recommendations developed by the ESAs have contributed to further harmonise a core set of standards in the area of supervision (the single rulebook)? If you have identified shortcomings, please specify how these could be addressed.**

Guidelines and recommendations have already contributed well to the single rulebook of supervision. As stated above, the lack of being able to conduct peer reviews etc. has however led to a situation where the guidelines and recommendations, based on the comply or explain –principles are not followed the same way throughout the union. Another shortcoming is that the guidelines should be formulated clearer as to identify the subject of the guideline (NCA or market participant) at first glance.

Both of these shortcomings should be fixed in the review. The subject should be clearly



stated already in the name of the guideline or recommendation or the two types of guidelines could be divided by the name of the instrument already in the underpinning legislation. Peer reviews and harmonized conduct could be better supervised if the ESAs would have budgetary independence from the national authorities.

Further, the legal nature of guidelines is causing uncertainty across Member states and market participants. These are non-binding according to EU law but of a quasi-regulatory nature. A lot of the implementation depends on national authorities and on how the market participants understand these rules. This in turn leads to an unlevel playing field. With this review it is worthwhile to clarify all issues relating to the applicability of rules and recommendations that are given by the ESAs.

Finally, it is of importance that any guideline or recommendation is consistent with the Level 1 or 2 texts. In a case where the Level 1 or 2 texts does not give enough guidance to the ESAs or is unclear, this should be clarified following the same procedure in which it was drafted in the first place. Guidelines should not be used to take a stand on the actual aim of the legislation but to complement it according to the exact delegation. This would ensure a clearer line between technical and political decisions and thus a better division of powers than there is today.

#### **1.1.1.b. What is your assessment of the work undertaken by the ESAs as regards providing opinions (e.g. technical advice) to the EU institutions?**

This work has been of a relatively high standard but often they have been lacking in reasoning. We are of the opinion that most of this is due to the tight timetables which should be extended following this review. Proper consultation periods would also contribute to the quality and applicability of ESAs work.

#### **1.1.2. Common supervisory culture/convergence of supervisory practices**

##### **1.1.2.a. In your view, did the ESAs contribute to promoting a supervisory culture and convergence of supervisory practices? If you have identified shortcomings how could these be addressed?**

According to our understanding, this is something the ESAs have not been doing during these first years. There might be several reasons for this, the most obvious being the massive workload they have faced in the form of drafting standards for delegated regulations. Another reason is in our opinion the current funding and administration structure.

It is worth considering whether an independent budget line will make these tasks and peer reviews easier to complete. It has become clear that there is a need for harmonized implementation and a level playing field between financial market participants which in turn will benefit greatly from convergence of supervisory practices.



### 1.1.3. Consistent application of EU law

#### 1.1.3.a. In your view, do the procedures on breaches of EU law (Article 17 ESAs Regulations) and binding mediation (Article 19 ESAs Regulations) ensure the consistent application of EU law? If you have identified shortcomings how could these be addressed?

We are not aware of any situations where these have been used and therefore it is impossible to assess the practicality of these tools. The procedure on breaches of EU law seems to be a suitable solution.

### 1.1.4. Emergency situations

#### 1.1.4.a. Do you consider the ESAs' role in emergency situations appropriate? Please explain.

In emergency situations, for the time being the main responsibility remains at national level. In most of the cases, the role of ESAs gets important if the emergency poses a risk to the stability of the financial markets. The roles of the national authorities and the ESAs in such situations are not as clear as they should be. Therefore this should be looked at in this review, bearing in mind especially the creation of SSM.

### 1.1.5. Coordination function (Art 31 ESAs Regulations)

#### 1.1.5.a. Do you think that the coordination role of the ESAs is appropriate? If you have identified shortcomings, please specify how these could be addressed.

The coordination role is extremely important and one of the key issues when the success of ESFS is considered.

One concrete example where more coordination is needed is entities that are supervised by one national competent authority but that provide crucial services to other countries (e.g. central counterparties and central securities depositories). ESAs should ensure that all competent authorities in different member states receive the same information quickly and efficiently and have influence on the supervision of this crucial entity.

#### 1.1.5.b. In your experience, to what extent have coordination activities carried out by the ESAs contributed to promoting a coordinated EU response to adverse market conditions? Please explain.

We are not aware of these activities.

### 1.1.6. Tasks related to consumer protection and financial activities

#### 1.1.6.a. How do you assess the role and achievements by the ESAs in the field of consumer protection? Please specify the main achievements by each ESA.

The achievements in the field of consumer protection were already shortly assessed above. According to our knowledge, especially EIOPA has been very active in this field whereas ESMA has had to focus mostly on its regulatory tasks.



In general, we highly value the work in consumer protection. The ESAs should carefully follow the developments in this field and, when deemed needed, provide consumer education etc. However, any actions should be limited and carefully considered as they may threaten the stability and creditability of the European markets. Therefore actions should only be taken if threatening situations are present and a proper impact assessment has been made. Any action should not be made based on pure pressure from outside to take use of all the tools in the ESAs mandate.

**1.1.6.b. Are you aware of the warnings that were issued by the ESAs so far? If yes, please specify which ones and whether they have contributed to improve consumer protection or any other objective of the ESAs.**

One of the most recent warnings was given by ESMA about contracts for difference (CFDs). To the extent we have been able to analyze it, the warning was useful and contributed well to improving consumer protection in Europe.

Warnings are an especially recommended tool to ensure and improve consumer protection for many reasons. Firstly, they provide for less administrative, legal and technical challenges than prohibitions or restrictions. With measures such as prohibitions, consumers and investors will face a period of uncertainty as to their investment when the issues related with payments, existing contracts etc. are solved. Secondly, after a warning has been given, the investor can make an own, informed decision and is aware of the risks related to the certain product.

**1.1.6.c. What are the main strengths and weaknesses of the current framework on consumer protection (Article 9 ESAs Regulations) and what would you suggest to address any possible shortcomings?**

As explained above, warnings are a good tool to strengthen consumer protection. Any prohibitions or bans may in turn end up being against the important aim of ensuring stability at the markets and protecting consumers and investors.

**1.1.7. Direct supervisory powers**

**1.1.7.a. How do you assess ESMA's direct supervisory powers? If you have identified shortcomings, please specify how these could be addressed.**

When it comes to the direct supervision of credit rating agencies, the experiences have been very good.

Another type of entity that will be supervised by ESMA is the trade repositories. In this respect, we have been slightly worried of the fact that the registration process is being postponed. This is due to the fact that all the applications for registration are handled together. This has led to a massive workload under tight timetables and uncertainty as to when the reporting will actually start. In the future, such procedure should be reconsidered to provide for a more efficient registration process. In addition to a more efficient process, a proper implementation period should be set to ensure that starting dates do not need to be



changed several times.

In general we believe that it is rather early to properly assess the use of these powers. This is definitely something that could be subject to a comprehensive analysis during next years.

#### **1.1.7.b. How do you assess ESMA's performance for the registration and supervision of credit rating agencies (CRAs)?**

Please see above.

#### **1.1.7.c. Do you consider that further responsibilities of direct supervision should be entrusted on one or more of the ESAs, particularly with regard to institutions or infrastructures of pan-European reach? Please explain.**

Further responsibilities of direct supervision could be examined when it comes to securities infrastructures with a pan-European or cross-border reach. CCPs play a key role in financial markets by mitigating counterparty credit risk on transactions between market participants and their CCPs' activity will significantly expand as the G20 objective for all standardised OTC derivatives to be centrally cleared comes into effect.

These service providers contribute very often much to the stability of one or more national markets and therefore it might be better to trust the direct supervision with the national authorities. A proper analysis of the benefits and disadvantages of direct supervision versus national supervisions should to be done, regardless of if any further responsibilities are entrusted. Any legal consequences of such powers should also be looked at.

Even if the supervision of such market participants remains at the national level, the ESAs should receive at least a strong coordination role in the supervision, ensuring that national authorities from other relevant countries to the infrastructure receive all possible information and have influence on the service provider in question. Exchange of information and possibilities to influence are especially crucial in this respect, as the activity and the counterparty exposures of CCPs go largely beyond the borders of a specific jurisdiction and are therefore important to the stability and proper functioning of more than one financial market within the EU.

## **1.2. Governance of the ESAs**

### **1.2.1. General governance issues**

#### **1.2.1.a. Are the governance requirements sufficient to ensure impartiality, objectivity and autonomy of the ESAs?**

The current governance requirements are sufficient and ensure the above aims as for example the voting is based on one member, one vote –principle.

#### **1.2.1.b. How do you assess the accountability requirements? If you have identified shortcomings, please specify how these could be addressed.**



As far as we have understood, the accountability could be further improved. This applies especially to accountability towards the European parliament. As a general rule, ESAs need to be independent in their decision making but objectively accountable for all EU institutions.

## 1.2.2. Decision-making bodies and voting modalities

### 1.2.2.a. Does the current composition of the Board of Supervisors (BoS) ensure that it acts efficiently? If you have identified shortcomings, please specify how these could be addressed.

The composition seems good.

When it comes to voting modalities, it is very important that the members of the board of supervisors are entrusted with the one member, one vote –rule in the future, too. This set up ensures impartiality and the ESAs' independency and proper working conditions. Supervision should never be made with weighted majorities.

### 1.2.2.b. Does the composition of the Management Board ensure that the ESAs are run effectively and perform the tasks conferred on them? If you have identified shortcomings, please specify how these could be addressed.

Yes it does. It could however be considered whether the Executive Director should have the right to vote.

### 1.2.2.c. Does the mandate of the Management Board ensure that the ESAs are run effectively and perform the tasks conferred on them? If you have identified shortcomings, please specify how these could be addressed.

We are not in a position to provide valuable input on this. Efficiency of the ESAs is of course very crucial to the success of the whole ESFS.

## 1.2.3. Financing and resources

### 1.2.3.a. How do you assess the arrangements on financing and resources? If you have identified shortcomings, please specify how these could be addressed.

Currently, the ESAs do not have their own budget line but receive their funding from the national authorities and from the Union budget. In our opinion, this composition has led to a situation where the ESAs cannot contribute to the single supervisory rulebook and the consistency of supervision the way they are supposed to. In addition, the creation of the ESAs has not been reducing the tasks of the national competent authorities to a great extent. On the opposite, the participation into meetings and the travel costs have increased.

Therefore we support that the ESAs will receive their own budget line in the EU budget. This would give them more independence and ease the burden within the national authorities. Further, we support the direct supervisory fees to the ESAs from those entities that are in their direct and exclusive supervision. In a case where the supervisory tasks are divided between ESA and national competent authority, the entity in question will only have





to pay supervisory fee to one of these authorities.

ESAs will need to be in position to attract excellent staff with a variety of backgrounds. The staff the ESAs currently have seems to be very capable from a market participant perspective.

As far as we have understood, the ESAs are still rather lacking on resources given the massive workload they have been entrusted in the ongoing negotiations for various regulations and directives. Therefore sufficient staffing needs to be ensured in the future too. Further, many of the rules the ESAs will need to draft on require knowledge of complex technical issues. It is worth considering whether ESAs could hire personnel also on a temporary expert contract.

#### 1.2.4. Involvement and role of relevant stakeholders

##### 1.2.4.a. How would you assess the impact of the relevant stakeholder groups within the ESAs on the overall work and achievements of the ESAs?

The stakeholder groups are an important part of the ESAs. They should have their special tasks and role within the rulemaking. Stakeholder groups are well positioned to provide the staff at the ESAs information on which questions may be of importance for the markets as well as be able to spot new developments and issues that the ESAs might consider. Therefore it is important that the stakeholder groups are well informed of the issues ESAs work with. The same applies to the greater public too.

In order to further improve the impact and work of the stakeholder groups, the transparency and secrecy rules should be reviewed. More transparency regarding the work in the stakeholder groups would ensure more workable solutions and in general improve the quality and support of the work.

We strongly recommend that secrecy rules are amended as to allow stakeholder group members to consult and discuss with colleagues for example from their market or industry that are not members of these groups. This would ensure more knowledge especially in complex technical issues and provide ESAs with useful input.

However, any future development that the stakeholder groups focus on should not be automatically subject to ESAs' own initiatives. In general, any interim guidelines and recommendations should be avoided as well as own initiatives considered carefully.

In the regulatory tsunami following the financial crisis, it has become a tradition that the negotiations on EU regulations and directives are very often delayed. Following this, we have seen a trend with ESA guidelines on matters related to these dossiers while waiting for the final rules. These interim guidelines should be avoided as much as possible since they create extra burden to the participants and authorities and may unintentionally guide the negotiations in the ordinary procedure to a certain direction.



#### 1.2.4.b. Are you satisfied with the quality and timeliness of consultations carried out by the ESAs?

The consultation procedures of the ESAs will need to be revisited. We have identified the following shortcomings in the consultations that have been carried out during these years.

- a. The content and the format of the consultation vary between ESAs.
- b. The consultation periods are way too short. In addition, they are often carried out during holiday periods.
- c. Transparency should be enhanced even if a public consultation is not made.

For the first shortcoming, we as a cross-industry association are often participating in consultations carried out by all the ESAs, as well as any joint consultations. From a market participant perspective, a consultation is a good indicator of the future rules and already an important tool when future business decisions are made. The content and scale of these consultations has been different from one ESA to another. This should be aligned to ensure same level of accuracy and explanations throughout the ESFS consultations.

Further, the consultation periods should be lengthened. Recent consultations have been out for a couple of weeks. Such time is not enough to consider the effects of the proposed rules, to consult market participants in turn and to draft good quality responses with proven evidence. A minimum timeframe for consultations need to be set. A proposal could be a minimum consultation period of 60 days for discussion paper consultations and 90 days for the final consultation.

The ESAs have to work under tight timetables set in different regulations and partly thus the consultations have been conducted during holiday periods, especially in the summer. However, a sufficient consultation period as described above leads to a situation where wide public participation is possible regardless of the holiday periods etc.

The ESAs are occasionally drafting binding guidelines, recommendations and regulatory and implementing technical standards without public consultations. Due to time constraints and as all issues are not relevant to the greater public, this is sometimes reasonable. However, as consultations serve an important role when it comes to level playing field, transparency and preparedness, sufficient level of transparency has to be ensured regardless of consultations. This could be done with a public procedure describing the work and the expected timetable for publication of these rules that are drafted within ESAs. Any such information should be accompanied with information of the stakeholder groups and experts or ESA divisions involved in drafting.

#### 1.2.4.c. Are you satisfied with the appointment procedures for the stakeholder groups?

The appointment procedures seem to be clear and balanced to the extent are open to the public. However, the length of terms should be reconsidered. A term of three years is pretty short, considering that the stakeholder group needs to solve out practicalities and their working traditions at the beginning of the term. Further, many of issues discussed in the stakeholder group may have long term aims.



A possibility worth considering is a term of six years where half of the members in the stakeholder group would be chosen every three years. Thus the ESAs can ensure continuity and renewal in these stakeholder groups.

We also believe that in some cases the mandates of the stakeholder groups are extremely broad and it is worthwhile analyzing whether the ESAs should have the possibility to set up ad hoc-type of stakeholder groups to certain issues.

**1.2.4.d. In your experience, does the composition of stakeholder groups ensure a sufficiently balanced representation of stakeholders in the relevant sectors? If not, which areas appear to be insufficiently/overly represented?**

The basic composition of stakeholder groups is balanced. However, considering the effect the decisions have on the market participants and the different views that for example service providers, trading venues etc. have compared with their users, a balance between these has to be ensured too. Academics deserve their role in these groups but as they are not stakeholders in the meaning of having something at stake in these discussions, in some cases their space could be opened up for more actual stakeholders or even temporary experts in the case of complex technical issues.

The lack of transparency and the tight rules on secrecy are a major problem relating to composition. Due to these members of the stakeholder groups have a major advantage on preparing for future changes compared to non-members. The only way to solve this imbalance and ensure a level playing field is to ensure transparency and openness to all financial market participants and the greater public.

**1.2.4.e. Is the work undertaken by the stakeholder groups sufficiently transparent? Do you see areas where the approach towards transparency needs to be revisited?**

There is a clear lack of transparency in all areas at the ESAs. The rules on professional secrecy are interpreted extremely tightly which leads to a rulemaking procedure that is not transparent at all. This lack of transparency has led to a situation where it is impossible for market participants and even national competent authorities to prepare for the ESA rules in terms of resourcing, IT-system planning and strategic decisions. The lack of transparency is even well pronounced by the traditional European regulators: the Parliament, the Council and the Commission.

Thus transparency within the stakeholders groups needs to be revisited. This should be done with publishing the agenda and the minutes from the stakeholder group meetings in the ESAs' websites as soon as possible. The same should also apply to documents. Exceptions to transparency would be strictly limited in time and in content. When issues reaching far to the future are being planned and discussed in the ESAs and stakeholder groups they should be able to organize both bespoke and public hearings.

**1.2.4.f. In your experience, are the ESAs, and in particular the ESAs stakeholder groups, sufficiently accessible for stakeholders not directly represented in these stakeholder groups?**

Not at all. As explained above, there is a serious lack of transparency and access on all



levels at the ESAs. Any rulemaking should be subject to same transparency requirements as ordinary EU legislative procedure. ESAs should organize more public hearings and inform the public about their ongoing work at an earlier stage and in a more detailed manner.

Transparency during the whole process will lead to a more efficient implementation procedure which in turn will better contribute to the single rulebook, level playing field and financial stability in the European Union. In our opinion, transparency will even strengthen the voice of the Union vis-à-vis other jurisdictions in the discussions around various global financial market topics by increasing the market participants' understanding of outstanding and upcoming issues.

## 1.2.5. Joint bodies of the ESAs

### 1.2.5.a. How do you assess the functioning of the Board of Appeal (BoA)? If you have identified shortcomings, please specify how these could be addressed.

We do not have any experience on this.

### 1.2.5.b. What is your assessment of having one joined BoA for all ESAs as compared to a dedicated BoA for each ESA respectively?

In general, the ESAs working procedures should be more aligned and harmonized with each other. Therefore one joined Board of Appeal is a justified solution, ensuring that any dispute is solved in a consistent and efficient manner. Further, a joint body will better ensure the independency of the BoA from the ESAs.

### 1.2.5.c. How do you assess the functioning of the Joint Committee (JC)? If you have identified shortcomings, please specify how these could be addressed.

As already stated, the lack of transparency also applies to the Joint Committee and their work should be, to the extent possible, published regularly and several times a year. The own work of the JC could also be more far-reaching than it is today and look at issues that may be of importance in the future.

### 1.2.5.d. Does the JC ensure cross-sectoral cooperation and consistent approaches between the three ESAs? If you have identified shortcomings, please specify how these could be addressed.

The FFI represents a wide variety of financial market participants: banks, insurance companies, securities dealers, investment fund managers, employee pension providers etc. Many of our members provide services on two or more sectors. Therefore we have been working a lot with standards, guidelines and recommendations from all the ESAs.

It has become clear that the ESAs are still lacking co-operation and consistency. The regulatory background is basically the same for ESMA, EBA and EIOPA. However, the practice varies from one entity to another. As examples, the style and scope of consultation papers have been very different in the past depending of the authority. Such examples can be found with regard to EMIR, for example.



Most European authorities and market participants are in a position where they need to implement legislation and guidelines from more than one ESA. Therefore the procedures should be aligned as much as possible. This is where the JC should take a more active role in ensuring the consistency and coherence of the rules and procedures within the three ESAs. The coordination role of the JC could be improved with an own secretariat for the JC.

## 2. ESRB

### 2.1. ESRB's mandate and experience

#### 2.1.1. Risk identification and prioritization

##### 2.1.1.a. What are your views on the ESRB mandate? If you think it should be amended please specify how.

The ESRB mandate is in our opinion somewhat unclear and the lack of transparency doesn't make the evaluation any easier. One could ask whether it is possible to efficiently work with systemic risks only from a European perspective. Further, the creation of the banking union calls for a review of the ESRB and its mandate.

##### 2.1.1.b. What are your views on the definition of systemic risk, as provided by the ESRB Regulation? If you think it should be amended, please specify how.

The definition of systemic risk is appropriate. However in some cases the focus on systemic risk and on the statement on all financial market participants has been too strong. In practice this has meant that regulations have had too wide scope which in turn has made it difficult for smaller entities to survive. Therefore one should be more careful with the interpretation of this definition to ensure that resources are used where there is a real threat or an actor is significantly important from systemic risk perspective.

##### 2.1.1.c. Do you think that the ESRB has developed a sufficiently preventive and forward-looking approach? Please comment on the successes and shortcomings and how they could be, respectively strengthened or addressed.

The ESRB has not been able to convince the market participants, regulators or the academics of their approach. This is vastly due to the fact that its findings and work are not publicly available. At least the aspect of publicity in the ESRB work needs to be changed in this review, together with evaluation of the whole mandate and need for a systemic risk board.

More transparency and publicity to the work of the ESRB would in our opinion contribute to the stability of the European financial markets. Transparency could be improved for example with frequent reports on trends (not only risks but also positive trends) and public events.



#### **2.1.1.d. What aspects of EU financial stability should be addressed by the ESRB as a priority?**

This is a difficult question as we do not know what the ESRB has already looked at. The consequences of the clearing obligation for derivatives in the market for clearing houses is something that is worth keeping in mind but where the ESRB should be very careful to take any actions as the whole set-up is new.

#### **2.1.1.e. What is your assessment of the ESRB's coordination with other economic or financial policy areas or economic governance procedures, for example on macroeconomic imbalances?**

We have not been able to gather any experiences to assess this.

#### **2.1.1.f. Please outline and comment on the areas in which the ESRB has been most effective.**

Unfortunately we have not seen or heard of any success stories on this field.

#### **2.1.1.g. Should the ESRB specific mandate be adapted in light of the Single Supervisory Mechanism? If yes, how?**

It is clear that the mandate must be adapted to the SSM framework. At the same time, there is a good opportunity to clarify the mandate of the ESRB. In order to provide for efficient supervision of entities on a micro level, the SSM will need to have access to macro level data and also have at least some powers on macro level, too.

### **2.1.2. Timeliness and appropriateness of warnings and recommendations**

#### **2.1.2.a. What are your views on the powers conferred to the ESRB by the ESRB Regulation (i.e. the power to issue warnings and recommendations)? Are they sufficient? Please explain. What are your views on the use the ESRB has made of these powers in practice?**

The use of these powers has been sufficient. It needs to be remembered that the fact that no warnings have been given is positive sign to the world. The same applies to recommendations where ESRB needs to be very careful and limited, too. The amount of recommendations has been absolutely sufficient.

#### **2.1.2.b. What is your assessment of the ESRB's public recommendations in terms of content and timeliness? What is their impact on the direct addressees, and indirectly on the relevant market/market participants? If you identify any potential improvements, please specify how these could be delivered.**

Please see above.

#### **2.1.2.c. Did the recommendations adequately address the relevant policy makers in alerting them to, and advising them on, the necessary measures for risk mitigation?**

We do not have enough experience on this.



**2.1.2.d. Were the recommendations specific enough and did they address the main specific risks that could be identified in the period under review? If not, where would you identify the shortcomings and how could these be improved?**

Please see above. High level of specificity is crucial to ensure that recommendations do not cause danger to the stability of the markets.

**2.1.3. Implementation of warnings and recommendations**

**2.1.3.a. How do you assess the non-binding character of warnings and recommendations? Could such tools be strengthened? If yes, please specify how.**

Taking into account the mandate of the ESRB and the ways it has been using it, a non-binding character is justified and will at the end lead to a better, more pragmatic effect than any binding warning or recommendation.

**2.1.3.b. What is your assessment of the 'act or explain' mechanism chosen by the Regulation? If you identify any room for improvement please specify how this could be addressed.**

The use of such mechanism requires that the justifications for inaction must pass a certain test of acceptability. In this respect, the ESRB must conduct peer reviews and be able to require the subject of the warning or recommendation to act on it should the justification not be acceptable.

**2.1.3.c. What impact did public recommendations have on the market or public in general? Please outline your experience.**

These may have a negative impact on the attractiveness of European markets and economy from an outside perspective. Therefore they should be carefully considered.

**2.2. Institutional framework and governance of ESRB**

**2.2.1. General governance issues**

**2.2.1.1. Key principles for good governance**

**2.2.1.1.a. Do the regulations provide ESRB with the right structures to follow the good governance model in terms of openness, participation, accountability, effectiveness and coherence and to promote a common supervisory culture? Please explain your answer.**

The ESRB is lacking openness, participation and accountability to the extent that is not justifiable by systemic risk grounds. This has led to a situation where the whole existence of the ESRB is being questioned around Europe. Therefore the governance model should be reviewed, especially in terms of openness and accountability. Further, the ESRB's role to promoting a common supervisory culture is somewhat blurred.



**2.2.1.1.b. Has ESRB contributed to establishing a common macro-prudential policy framework and convergence of macro-prudential supervisory practices within EU? Please explain your answer.**

Due to the lack of transparency it is impossible to assess this. This aim is however very important and should be on the agenda of an EU body.

**2.2.1.1.c. Has the ESRB acted as an impartial body in the interests of EU as a whole? Please explain your answer.**

Please see our comments above.

**2.2.1.2. Accountability and transparency**

**2.2.1.2.a. Are the ESRB's accountability and reporting obligations, (including the frequency), to the European Parliament and the Council sufficient and transparent enough? If not, please explain how they should be improved.**

According to our understanding these could be more frequent and would increase the trust on ESRB's work and participation in general.

**2.2.1.2.b. What is your assessment of the nature of these public hearings?**

We are not in a position to assess this.

**2.2.2. Decision-making bodies and voting arrangements**

**2.2.2.1. Voting arrangements for the designation or election of the Chair of the ESRB**

**2.2.2.1.a. What are your views on the fact that the President of the ECB is by rule the Chair of the ESRB? If you think this rule should be amended, please specify how the ESRB Chair should be appointed. For example, should it be defined in the Regulation or should she/he be appointed by an EU institution or the ESRB itself? If by an EU institution, by which one and how?**

The current set-up seems quite natural.

**2.2.2.1.b. Do the governance arrangements ensure that the Chair carries out his tasks with sufficient independence? If not, please specify where there is room for improvement and how this could be addressed.**

These seem to be sufficient.





## 2.2.2.2. Composition, mandate and functioning of the General Board

### 2.2.2.2.a. What is your assessment of the composition, size and mandate of the General Board? If you identify any shortcomings please specify how these could be addressed.

The composition of the General Board is justified but the size is rather large. We have understood that meeting practicalities with so many members present do not ensure an efficient and smooth decision making procedure. A rotating system similar to what is in place for non-voting members according to ESRB regulation article 6.3 for participation in minor, rather technical or country-specific could be considered. However, even if a rotating system is use, it still has to be ensured that all the participants not being member at the time receive all the same information, have access to data and will be able to attend meetings if they so wish.

### 2.2.2.2.b. What is your assessment of the relative representation of central banks on the General Board?

This is very important to ensure variation and input from different markets that do vary in terms of size, composition etc. Please see above for practical problems.

### 2.2.2.2.c. What is your assessment of the participation of the European Supervisory Authorities (EBA, EIOPA, ESMA)?

The participation of the chairmen of the ESAs is justified and very important to ensure sharing of information.

### 2.2.2.2.d. What is your assessment of the presence of non-voting members at General Board meetings?

The participation of the non-voting members is well understood but does add to the practical problems faced in the meetings of the General Board.

## 2.2.2.3. Internal organization

### 2.2.2.3.a. What is your assessment of the supporting activities of the ECB to the ESRB, according to the relevant regulation (Council Regulation 1096/2010)? What are the key advantages and disadvantages of this set-up? If you identify any room for improvement, please specify how this could be addressed.

The supporting activities ease the administrative burden within the ESRB. On the other hand, this set-up does mean that the ESRB is lacking some of its own organizational features that would strengthen its identity.



## 2.3. Access to data

### 2.3.a. In your view, has the ESRB had adequate access to relevant data and financial information for the fulfilment of its mandate?

Access to data needs to be ensured better in the future. This applies not only to the ESRB but also to the ESAs. When access is granted, due consideration has to be put on ensuring that data can be collected without adding administrative burden.

### 2.3.b. For the analysis of systemic risk, what is the balance needed between, on the one hand, data in summary or aggregate form and, on the other hand, firm-specific data?

Aggregated data should in most cases be enough for the analysis of systemic risk. However, this should continue to be accompanied with right to more detailed data on request (as in the current regulation). For the firms it is of very crucial that they shall provide data to only one authority. Following this, authorities should then be able to exchange relevant data. Smooth procedures for sharing of information between authorities should be supported also in this review.

### 2.3.c. How do you assess the data access procedures foreseen in the ESRB Regulation? If you identify any room for improvement, please specify how this could be addressed.

Please see our response above where we propose that these procedures between authorities and the ESRB could be smoothed by for example taking advantage of the latest technology.

## 2.4. ESRB external relations and communication

### 2.4.1. Positioning of ESRB as an authoritative policy institution focused on monitoring and preventing systemic risks

#### 2.4.1.a. What is your assessment of ESRB communications?

As we have already stated above, ESRB need to increase its visibility and here communications have in an important role. The current system has proven not to be sufficient in ensuring the authoritative role of the ESRB.

#### 2.4.1.b. What is your assessment of the ESRB's reputation as the body responsible for identifying and helping to mitigate systemic risk?

ESRB's reputation is somewhat questionable and blurred as already explained above. ESRB should both be strengthened and made more authoritative and transparent, or the whole mandate and composition of ESRB should be reviewed.



## 2.4.2. Interaction with other international bodies (e.g. G20/FSB)

**2.4.2. a. What is your assessment of the ESRB interactions with the International Monetary Fund (IMF); the Financial Stability Board (FSB); the G20 Group; macro-prudential authorities in any other relevant non-EU countries? If you identify any room for improvement, please specify how this could be addressed.**

We have understood that the ESRB is rather invisible to international bodies. It is of utmost importance that the parties to the EFSF are visible to their co-actors on a global level or within other jurisdictions. This role should be further strengthened and may need some structural changes as well as more transparency to strengthen the voice of the ESAs and the ESRB in comparison to these international bodies.

## 3. Cooperation and interaction between the ESAs (micro level) and ESRB (macro level)

### 3.1. Assessment of market developments

**3.1. a. What is your assessment of the past stress test exercises that were initiated and coordinated by EIOPA and EBA? If you have identified any shortcomings, please specify how these could be addressed.**

The stress tests were conducted rather quickly and did not succeed in bringing stability to the market but rather the opposite. Any future stress testing should be thoroughly analyzed against the current market situation and one should in most cases refrain from these.

**3.1.b. Did the stress tests and EBA's recapitalization exercise contribute to increase confidence in the stability of the financial system and increase the resilience of financial institutions? Please explain.**

No, cf. above.

### 3.2. Aspects of macro-micro interaction

**3.2.a. What is your assessment of the cooperation between ESRB and the ESAs? In which areas has cooperation been successful? If you identify room for improvement, please specify how this could be addressed.**

Due to lack of transparency it is impossible for us to assess this. It is clear that cooperation should be very close and regular.

**3.2.b. What is your assessment of the ESAs' follow-up actions on the ESRB recommendations? Please explain.**

According to our knowledge, there has not been too much action in this respect. However, these should not be mandatory if the market seems to have taken the recommendations into account already.



### **3.2.c. Has ESRB contributed to the work of the ESAs by bringing a macro-prudential perspective into micro-prudential activities? If so, please comment on key successes and/or shortcomings.**

We have not seen the ESRB contributing publicly to the micro-prudential activities. It would be justified for ESRB to for example play a role in impact assessments of the ESA standards. In many cases, the standards and guidelines have joint effects that should be analyzed and taken into account. This is something the ESRB could contribute to.

## **4. Structure of the ESFS**

### **4.a. What is your assessment of the structure of the ESFS?**

The structure of the ESFS is justified in the current situation and taking into account the current financial situation in Europe and the working period of the new ESFS.

Many of the shortcomings can be addressed with more transparency, access to data and more co-operation between different participants to the ESFS. Further, the coordination role of Joint Committee and ESRB need to be strengthened. Coordination and regular dialogue within the ESFS ensures more consistent rules and a level playing field among participants from different countries in Europe. In addition, it has practical consequences that are of benefit to all. Coordination ensures that there is no overlap or duplication of tasks. This in turn will save the resources within the different parties to the ESFS and in the participant level.

### **4.b. Does the structure of the ESFS facilitate the identification, monitoring and mitigation of systemic risk in the EU financial sector? Please explain.**

The facilitation is difficult to assess in the circumstances, events and changes Europe has faced during these first operation years. Despite this, we are positive to the achievements of the ESFS in general.

### **4.c. Do you consider that the ESFS can be further simplified in order to tangibly enhance coherence between the ESAs and the ESRB? Please explain and add concrete suggestions, where possible.**

As explained above, there is lack of coherence that is causing implementation problems across Europe and across sectors. These problems could be solved with a simplified structure of the ESFS. One possibility that sometimes comes up is moving into a so called twin peak –model. This is something we think is worth considering.

However, as the current system has only recently been able to start working actively and as the financial crisis is still on in Europe, this may not be the right time for a complete restructuring of the system. The possibility for a twin peak-model should still be kept in mind and analyzed in the future. In the case of a twin peak, these two entities will however need to be rather equal for the system to work properly.



**4.d. Do you consider that the structure of the ESFS, in particular the roles of EBA and ESRB, will need to be revisited in light of the establishment of the Single Supervisory Mechanism (SSM) and the new role of the ECB within the ESFS? Please explain and add concrete suggestions, where possible. How should synergies in terms of supervision within ESFS including ECB be exploited? Please explain.**

It is unavoidable that the role of EBA in supervision will have to be changed and the mandate of the ESRB reconsidered. Whatever these changes will be, it has to be ensured that consistency and co-operation between different entities and other sectors is improved from the level it is today.

**4.e. From your experience, do you think that the ESAs and ESRB attract a sufficient number of diverse and excellent staff? If not, why not? If you identify room for improvement, please specify how this could be addressed.**

When ESAs first started at the beginning of 2011, the markets were often discussing whether the ESAs will have enough resources to cope with their heavy agenda. However, it quickly became clear that they are able to attract professional staff.

When the discussions come to a highly technical level or when there are country-specificities, the resources could be further strengthened. This might be best done with special and bespoke outsourcing arrangements from national supervisory authorities or the industry. A process for these should be analyzed and possibly drafted further in this review.

## **5. Miscellanea**

**5.a. Do you have any other comment on the effectiveness and efficiency of the ESAs and ESRB within ESFS and on ESFS in general? Please indicate whether the Commission may contact you for further details on the information submitted, if required.**

Please see response to Q 1.1.a for key considerations of the ESFS in general. For any further question or clarification, please contact Ms Elina Kirvelä (+3587934208 or [elina.kirvela@gmail.com](mailto:elina.kirvela@gmail.com)).