

Consultation on the Review of the European System of Financial Supervision

The European Supervisory Authorities (ESAs)

Effectiveness and efficiency of the ESAs in accomplishing their tasks

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?

-open reply-(optional)

This is the response of the Financial Services Consumer Panel. Contact details: Email: enquiries@fs-cp.org.uk. Address: Financial Services Consumer Panel, Financial Conduct Authority, 25 The North Colonnade, Canary Wharf, London E14 5HS, UK. Main activity of organisation: Statutory Panel advising the Financial Conduct Authority on consumer issues. Registration ID in the Transparency register: 65422627962-44 iv) In response to the question on consumer and investor protection in particular, it is very early to say to what extent the ESAs have had an effect. Promising developments include the issuing of research, such as the consumer trends reports, the work on good practice, such as EIOPA's work on financial education, and the provision of guidelines such as the ESMA rules on remuneration. The functioning of the groups which provide input to the ESAs will continue to be key to their consumer protection remit in future. This includes not only the stakeholder groups, but also the standing committees and their consultative working groups. Further comments on the work of these groups are given in more detail in answer to questions 1.1.6 and 1.2.4. One of the most visible consumer protection outcomes by the ESAs is the organisation of their Consumer and Investor Protection days, firstly as individual days and jointly in 2013. There is scope to build on these in future to develop concrete outcomes from these events as well as using them as a forum to share ideas, chart emerging risks and raise issues.

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?

-open reply-(optional)

No comment

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. -open reply-(optional)

No comment

Work towards achieving a single rulebook - regulatory activities

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.

-open reply-(optional)

No comment

What is your assessment of the work undertaken by the ESAs as regards providing opinions (e.g. technical advice) to the EU institutions? -open reply-(optional)

No comment

Common supervisory culture/convergence of supervisory practices

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? -open reply-(optional)

No comment

Consistent application of EU law

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? -open reply-(optional)

No comment

Emergency situations

Do you consider the ESAs' role in emergency situations appropriate? Please explain. -open reply-(optional)

No comment

Coordination function (Art 31 ESAs Regulations)

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

-open reply-(optional)

No comment

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. -open reply-(optional)

No comment

Tasks related to consumer protection and financial activities

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.

-open reply-(optional)

Until now, the administrative rule-making process has been dictated mainly by the financial stability process. The Panel looks forward to the ESAs engaging strongly with the retail interest as the rule-making process for projects such as PRIIPs and the revisions of MiFID and IMD develop. Looking at their article 9 remit, although not an exhaustive list, the Panel would point out specifically: (a) collecting, analysing and reporting on consumer trends; EIOPA has carried out work here (Methodology Report for Collecting, Analysing and Reporting on Consumer Trends, EIOPA, Nov 2012) into the methodology of collecting data on consumer trends, but as there has not yet been any public output from the project, it is too soon to comment on how useful this resource will be. However, the Panel notes the difficulties that have been identified in standardising quantitative data, and the efforts that have been made to produce meaningful results in such a diverse area. The Panel notes the Consumer Trends report published by the EBA (EBA consumer trends report, March 2013), and in particular the efforts that have been made to prioritise key consumer issues and identify good practice, particularly in responsible lending. We also note that ESMA's report on Trends, Risks and Vulnerabilities (Trends, Risk and Vulnerabilities No. 1, ESMA, February 2013) includes a section relating to risk for retail investors. However, the ESMA Risk Dashboard does not contain any explicit reference to risk for retail investors, and the Panel would encourage ESMA to develop a specific metric to take this into account, and encourage joint work by the ESAs to develop a risk outlook process similar to the Financial Conduct Authority's in the UK. Having undertaken research, it is critical that the urgent next steps are then addressed and promoted. Undertaking qualitative research is not an end in itself and all the ESAs need to have appropriate resources to deliver measurable outcomes from these studies. (b) reviewing and coordinating financial literacy and education initiatives by the competent authorities; EIOPA's 2011 report on financial literacy and education was a useful reference point for identifying best practice in this area, as was the work in the EBA's Consumer Trends report. However, the Panel believes that the specificities of national markets meant that the development of financial literacy initiatives is better done at member state level, within the context of the best practice identified in such reports. (c) developing training standards for the industry; The Panel notes EIOPA's mapping report on training standards in 2012 (Report on a mapping exercise on Industry Training Standards applied by national competent authorities, EIOPA, September 2012) , which will be an important reference point for the development of the revised Insurance Mediation Directive. It is crucial that any pan-European training standards maintain the protections which already exist in specific countries, and that there is not a race to a 'lowest common denominator'. The work by ESMA on remuneration standards is also a significant input into this area. (d) contributing to the development of common disclosure rules. As the main initiatives concerning common disclosure rules, including the Mortgages, PRIIPs and banking work, are still being finalised, the role of the ESAs in this area is still relatively limited until they are called upon to develop implementing measures. However, the Panel would emphasise that

although clear and meaningful disclosure is an important aspect of consumer protection, it must be considered in the wider context of good product development, governance, and sales practices, and is not in itself a means of avoiding conflicts of interest. (e) use of the guidelines tool There has been good use of the guidelines tool in the work on MiFID suitability and MiFID remuneration, and we hope to see more of this in future. However, we would like ESMA to emphasise enforcement more as an outcome of failure.

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.

-open reply-(optional)

The warnings issued by the ESAs are easily accessible to people and organisations which monitor European regulatory issues. However, there is little evidence that they are widely publicised outwith these groups. For example, the February 2103 joint warning by ESMA and the EBA on contracts for difference, specifically intended to warn inexperienced retail investors against investing in complex financial products, was mentioned by none of the mass circulation personal finance press in the UK, and only briefly in the trade press. More work can and should be done to make sure these important messages are reaching their target markets, and the Panel would recommend the use of specialised media expertise to improve this aspect of the ESAs' work.

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? -open reply-(optional)

Consumer protection itself should be one of the first priorities of the ESAs. They need to do more to articulate what is meant by the Article 9 provisions 'transparency, simplicity and fairness' in practice. This requires specifying a set of good consumer outcomes, using further research if necessary, and specifying how these will be achieved. The Joint Committee on Consumer Protection is a starting point for a coherent and joined-up approach to consumer protection by the ESAs, but there is more work that can be done on prioritising this as part of a continuing and coherent consumer protection agenda. The peer review tool is an important element in embedding good practices, and retail market issues should be prioritised when peer reviews are being identified. A weakness at the moment is the need for greater interaction at more levels with consumer representatives. One means of addressing this, at least in part, has been the use of consumer and investor protection days to raise awareness of consumer issues and allow for discussion between interested parties who may not be directly involved in the regulatory system. Originally instigated by EIOPA, with individual protection days for each of the ESAs in 2012, these were amalgamated into a joint day for 2013. There are advantages and disadvantages to both structures. Individual protection days allow for a more in-depth discussion on specific topics, and are more likely to attract subject matter experts. However, it is more expensive and time consuming to attend three events. A single protection day has the advantage of allowing discussion of cross-cutting issues, and if the agenda is well-managed is more efficient in terms of resource. A key issue for any consumer day is to ensure the attendance of a wide range of stakeholders. The Panel understands that whereas these events are generally over-subscribed by industry and regulatory delegates, it is always difficult to attract consumer representatives. Efforts have been made to pay expenses for consumer groups, but these are limited, in terms of travel and accommodation, and do not take into account the situation, for example, of consumer representatives who may be self-employed, and who will effectively be donating their own time in order to attend. More effort could be made to extract consumer representative input. Some consideration should be given to providing alternative means of participation than physically attending (for all interested parties, including but not limited to consumer groups). This might include pre-filmed video presentations, written papers to be circulated before or during the conference, attendance or presentation by video or conference call or live streaming.

Direct supervisory powers

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

-open reply-(optional)

No comment

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

-open reply-(optional)

No comment

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.

-open reply-(optional)

No comment

Governance of the ESAs

General governance issues

Are the governance requirements sufficient to ensure impartiality, objectivity and autonomy of the ESAs?

-open reply-(optional)

No comment

How do you assess the accountability requirements? If you have identified shortcomings, please specify how these could be addressed. -open reply-(optional)

No comment

Decision-making bodies and voting modalities

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.

-open reply-(optional)

No comment

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.

-open reply-(optional)

No comment

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. -open reply-(optional)

No comment

Financing and resources

How do you assess the arrangements on financing and resources? If you have identified shortcomings, please specify how these could be addressed. -open reply-(optional)

No comment

Involvement and role of relevant stakeholders

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

-open reply-(optional)

The stakeholder groups were designed to provide a range of inputs to the ESAs' work and as such are now growing into their remit. They required some time to develop their structure and working practices within the new structure, but the individual members are now working together, despite their range of backgrounds and experience. An example of feedback which was incorporated into EIOPA's work was the input from the Insurance and Reinsurance Stakeholder Group into Good Practices for Disclosure and Selling of Variable Annuities. However, the Panel believes that there is a question of whether the stakeholder groups have adequate input into the supervisory system from consumer groups. Although the stakeholder groups may have numerically equal representation from different sectors, there is a wide variation in expertise. In particular, smaller consumer groups may lack specific financial services expertise and technical ability. This may prevent them from intervening and participating effectively. The Panel believes that the best way to address this problem is not to assume that the industry paradigm is necessarily the best way to deal with consumer stakeholders, or to assume that consumer groups are either able or willing to make appropriate input to the supervisory process. It recommends that the ESAs, and also the other European institutions, consider different ways of sharing views. For example, ESA representatives could spend more time visiting consumer groups in their own countries. The Panel would also recommend more use of secondments, both from the ESAs to consumer groups, and vice versa, in order to increase expertise and create better understanding between the two groups. One issue which holds back the work of the stakeholder groups is the lack of support resource within the ESAs. Although there are staff who work to support the stakeholder groups, they do not have dedicated secretariat resource. If this were to be made available within each ESA, including policy

as well as administrative resources, the groups would be able to provide better quality input. If there were more policy resource to provide briefings and background in good time, as well as coordinating their outputs, this would help the groups achieve more impact. The establishment of intended good consumer outcomes from the Article 9 provisions would be helpful in guiding the work of the consumer groups.

Are you satisfied with the quality and timeliness of consultations carried out by the ESAs?

-open reply-(optional)

The Panel encourages the ESAs to adhere to their Public Statements of Consultation Practices, and in particular their stated target to allow three months for public consultation, wherever possible.

Are you satisfied with the appointment procedures for the stakeholder groups?

-open reply-(optional)

The Panel understands that the recruitment process for the stakeholder groups involves a complex matrix of representation to ensure that there is fair coverage of sectors, countries, and interest groups, and that suitably qualified and expert candidates are not always available in every sector. Consumer representatives from smaller countries and smaller organisations, for example, may have little in the way of specific financial services expertise and may be impeded from effective engagement. The Panel believes the ESAs should take a more active role in seeking input from consumer groups and in raising their levels of expertise (see also the Panel's response to 1.2.4.a above). The Panel believes that two and a half years is too short a period for the term of office for SH group members, and that this should be at least 3 years, with a second term based on some sort of appraisal process. It also believes that dissolving the entire group simultaneously and appointing a new group is counter-productive, in that it means that experience and organisational memory is lost. Therefore members' terms should expire on a staggered basis, with, for example, a third of members being replaced each year, rather than all members at once. It also has concerns that expenses and remuneration processes for members of stakeholder groups should be reviewed. Whereas members who are employed by large organisations may draw on their resources to pay for transport and accommodation, this is not always the case for representatives of small organisations. Although allowances are currently available, these do not always cover reasonable costs, and the payment process can be protracted and inefficient. There is also the question of remuneration for members who may be self-employed, who are effectively donating their time (including travel and preparation time) for free. A fair revised remuneration process would be more attractive to a wider range of candidates.

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?

-open reply-(optional)

As outlined in the answers to 1.2.4.a and 1.2.4.c above, the important question is not that representation is balanced in terms of numbers, but in terms of expertise, seniority, experience and ability to engage.

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

-open reply-(optional)

We believe the work is sufficiently transparent. However, it would also be useful if, when papers are presented to the stakeholder groups, it was automatically considered whether they are necessarily confidential. Papers which are not confidential could then be made available via the relevant website. A presumption in favour of publication would be helpful.

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

-open reply-(optional)

We believe that the Consumer and Investor Protection days are a key element for access to the ESAs and the members of the stakeholder groups, and we have made some recommendations in our answer to question 1.1.6.c which would increase access to those who are unable to attend in person. These events could also be more widely advertised outside the normal European legislative and regulatory channels. The work of the standing committees and their consultative working groups is less transparent than the stakeholder groups, and this could be improved. We also believe improvement to the ESAs' performance is linked to the effectiveness of their supervisory toolkit and the ability in practice to deliver enhanced consumer protection. This requires an evaluation of their current legal powers and an acknowledgement of the need for appropriate skills, expertise and resourcing.

Joint bodies of the ESAs

How do you assess the functioning of the Board of Appeal (BoA)?

If you have identified shortcomings, please specify how these could be addressed.

-open reply-(optional)

No comment

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

-open reply-(optional)

No comment

How do you assess the functioning of the Joint Committee (JC)?

If you have identified shortcomings, please specify how these could be addressed.

-open reply-(optional)

No comment

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.

-open reply-(optional)

No comment

ESRB

ESRB's mandate and experience

Risk identification and prioritisation

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

-open reply-(optional)

No comment

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.

-open reply-(optional)

No comment

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.

-open reply-(optional)

No comment

What aspects of EU financial stability should be addressed by the ESRB as a priority?

-open reply-(optional)

No comment

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?

-open reply-(optional)

No comment

Please outline and comment on the areas in which the ESRB has been most effective.

-open reply-(optional)

No comment

Should the ESRB specific mandate be adapted in light of the Single Supervisory Mechanism? If yes, how?

-open reply-(optional)

No comment

Timeliness and appropriateness of warnings and recommendations

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?

-open reply-(optional)

No comment

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.

-open reply-(optional)

No comment

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

-open reply-(optional)

No comment

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?

-open reply-(optional)

No comment

Implementation of warnings and recommendations

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

-open reply-(optional)

No comment

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. -open reply-(optional)

No comment

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

-open reply-(optional)

No comment

Institutional framework and governance of ESRB

General governance issues

Key principles for good governance

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.

-open reply-(optional)

No comment

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

-open reply-(optional)

No comment

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

-open reply-(optional)

No comment

Accountability and transparency

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.

-open reply-(optional)

No comment

What is your assessment of the nature of these public hearings? -open reply-(optional)

No comment

Decision-making bodies and voting arrangements

Voting arrangements for the designation or election of the Chair of the ESRB

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?

-open reply-(optional)

No comment

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.

-open reply-(optional)

No comment

Composition, mandate and functioning of the General Board

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.

-open reply-(optional)

No comment

What is your assessment of the relative representation of central banks on the General Board?

-open reply-(optional)

No comment

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

-open reply-(optional)

No comment

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

-open reply-(optional)

No comment

Internal organisation

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.

-open reply-(optional)

No comment

Access to data

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

-open reply-(optional)

No comment

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?

-open reply-(optional)

No comment

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.

-open reply-(optional)

No comment

ESRB external relations and communication

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

What is your assessment of ESRB communications?

-open reply-(optional)

No comment

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

-open reply-(optional)

No comment

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

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.

-open reply-(optional)

No comment

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

Assessment of market developments

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.

-open reply-(optional)

No comment

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.

-open reply-(optional)

No comment

Aspects of macro-micro interaction

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.

-open reply-(optional)

No comment

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

-open reply-(optional)

No comment

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.

-open reply-(optional)

No comment

Structure of the ESFS

What is your assessment of the structure of the ESFS?

-open reply-(optional)

No comment

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

-open reply-(optional)

No comment

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.

-open reply-(optional)

No comment

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.

-open reply-(optional)

No comment

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.

-open reply-(optional)

No comment

Miscellanea

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.

-open reply-(optional)

No comment