



# ECB contribution to the European Commission's consultation on the operations of the European Supervisory Authorities

## General remarks

**The European Central Bank (ECB) welcomes the consultation on the operations of the European Supervisory Authorities (ESAs).** The establishment of the ESAs in 2011 was a significant achievement in improving the coordination of financial regulation and supervision in the European Union (EU). Since then, the ECB has collaborated very closely and successfully with these authorities. Now is a good time to review and build on the experience gained thus far.

**The review of the mandate, governance and operations of the ESAs must take into account developments which have taken place over the past six years.**

These include, in particular, the establishment of the banking union and progress made towards building a capital markets union (CMU). The ESAs were reviewed in 2014 prior to the establishment of the Single Supervisory Mechanism (SSM), which warrants due recognition within the ESAs' legislative framework. This review also falls during the period leading up to the withdrawal of the UK from the EU.<sup>1</sup>

**The ECB supports the objective of fostering effective and consistent prudential supervision and regulation across Europe.** The continued integration of financial institutions, markets and infrastructures requires further convergence in order to contribute to the efficient functioning of the Economic and Monetary Union. In this regard, Level 3 instruments, such as guidelines and recommendations issued by the ESAs, have proven to be particularly useful and effective in increasing supervisory convergence. Supervisory colleges also enhance this convergence by promoting consistency and cooperation in the operationalisation of EU legislation by the competent authorities (CAs) at the national level.

**The ECB supports further integration of the supervisory framework at the EU level, both for banking and for the capital markets.** In this context, the aim of the review should be to strengthen the EU dimension of supervision.

**The ECB reiterates that a strong CMU will, in the long run, require the creation of a single capital markets supervisor.**<sup>2</sup> Although the establishment of the

<sup>1</sup> Letter from Prime Minister May to European Council President Tusk triggering Article 50: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/604079/Prime\\_Ministers\\_letter\\_to\\_European\\_Council\\_President\\_Donald\\_Tusk.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604079/Prime_Ministers_letter_to_European_Council_President_Donald_Tusk.pdf).

<sup>2</sup> Building a Capital Markets Union – Eurosystem contribution to the European Commission's Green Paper: [https://www.ecb.europa.eu/pub/pdf/other/150521\\_eurosystem\\_contribution\\_to\\_green\\_paper\\_-\\_building\\_a\\_cmuen.pdf](https://www.ecb.europa.eu/pub/pdf/other/150521_eurosystem_contribution_to_green_paper_-_building_a_cmuen.pdf).

European Securities and Markets Authority (ESMA) was a major step in fostering the convergence of national supervisory practices, the supervision of securities markets still occurs at the national level, fragmenting the application of EU legislation and keeping EU capital markets segmented. Efficient supervision also requires promoting and implementing greater standardisation of the information provided to the authorities and markets, including loan information. This also has the benefit of increasing market transparency in the context of the CMU.

**The ECB supports the Commission's move towards more integrated supervision for certain segments of the capital markets and towards a greater role for the central bank of issue.** A European approach is justified when major financial market infrastructures have systemic implications for the entire EU market. In this matter, the ECB welcomes the call to strengthen the role of the central bank of issue put forward in the recent European Commission proposal<sup>3</sup> for amending the European Market Infrastructure Regulation (EMIR),<sup>4</sup> published on 13 June. The ECB stands ready to cooperate with the Commission within its areas of expertise. Furthermore, an extension of ESMA's powers to pan-European investment fund schemes could pave the way towards further deepening the Single Market in this area. ESMA's powers could also be extended to include market conduct competencies and tools.

**The ECB also reiterates its call for strengthened macroprudential supervision for capital markets and extending the macroprudential toolkit for non-banking activities.**<sup>5</sup> With the establishment of the CMU, and in the light of new emerging systemic risks in the non-banking sector, the EU legislation available to the relevant national and EU authorities should address such instruments. It is particularly important for European entities and activities, such as insurance and securities markets, to ensure homogenous enforcement across the EU. The discussion of financial stability issues in the non-banking sector warrants the involvement of central banks, given their expertise in assessing systemic risk, and requires changes in the competencies and governance of ESMA and the European Insurance and Occupational Pensions Authority (EIOPA).

**The ECB supports a review of the governance structure of the ESAs, including a review of the voting rights and membership structure of the Boards, to ensure that the European dimension is fully reflected in their decision-making.** Granting the ECB, in parallel to the other competent authorities (CA), voting member status on the Board of Supervisors of the European Banking Authority (EBA)<sup>6</sup> and

<sup>3</sup> Proposal for a Regulation of the EU Parliament and Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third country CCPs: [http://ec.europa.eu/finance/docs/law/170613-emir-proposal\\_en.pdf](http://ec.europa.eu/finance/docs/law/170613-emir-proposal_en.pdf).

<sup>4</sup> Regulation (EU) No 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories. (OJ L 201, 27.7.2012, p. 1).

<sup>5</sup> ECB contribution to the European Commission's consultation on the review of the EU macroprudential policy framework: <https://www.ecb.europa.eu/pub/pdf/other/revieweumacroprudentialpolicyframework201612.en.pdf>.

<sup>6</sup> A practical solution should be found for decisions to be taken by the Board of Supervisors on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union and Article 3 of Protocol No 36 on transitional provisions.

permanent membership and voting status on the Management Board would complement the national expertise of the national competent authorities (NCAs) and thus strengthen the European perspective in the governance of the EBA. Careful consideration must be given to ensuring that an appropriate balance is maintained between countries that are members of the banking union and those that are not. The ECB should also underpin its observer status on the Board of Supervisors in its capacity as central bank.

**Based on ESMA's current competencies and tasks within the existing institutional framework, the ECB also supports a review of the composition of the ESMA Board of Supervisors, granting the ECB observer status.**

Furthermore, the Management Boards should be given a stronger operational role, increasing the effectiveness of the ESAs and allowing the Boards of Supervisors to focus on strategic issues.

## Specific remarks

### 1 Tasks and powers of the ESAs

#### Supervisory convergence

**Level 3 measures such as guidelines, recommendations or Q&As are particularly useful tools for increasing supervisory convergence across NCAs, where flexibility supports a more efficient and effective supervisory outcome.**

Such tools provide further granularity in areas not already covered by regulatory or implementing standards, a necessary step to foster supervisory convergence. The development of such tools would also reduce uncertainty about the intentions of legislators as well as the objectives to be achieved, but should be fully aligned with Level 1 legislation.

**The overall usefulness of guidance or recommendations compared to other tools available within the legal framework depends on the objective to be achieved.** Where a high degree of standardisation is appropriate, for example the definition of own funds and requirements,<sup>7</sup> binding Level 2 requirements are better suited for this purpose than Level 3 guidance and recommendations. In these situations there is little need for flexibility – what is required is a clear and standardised legal obligation. In other matters, the rigidity of binding legal requirements may be less appropriate to the objectives.

**Supervisory colleges enhance supervisory convergence by promoting consistency and cooperation in how CAs operationalise EU legislation at national level.** All EU authorities participating in colleges should be allowed to provide input to the ESA's development of Level 3 tools (e.g. guidelines,

<sup>7</sup> Commission Delegated Regulation (EU) No 241/2014 with regard to regulatory technical standards for own funds requirements for institutions.

recommendations and opinions) as they may subsequently become binding. As a matter of fact, most of these tools are considered by the recipients to be best practices or authoritative interpretations. This makes them relevant for the functioning of European supervisory colleges.

**In the short term, and notwithstanding any future centralisation of supervisory competencies, the role of colleges under EU legislation should be strengthened by expanding their tasks and improving certain issues linked to their composition.** The ECB strongly supports the supervisory colleges currently established under Capital Requirements Directive IV (CRD IV), for which the role of ECB banking supervision as consolidating supervisor is well established. Regarding the EMIR colleges for central counterparties (CCPs), the ECB welcomes the Commission's intention to strengthen the responsibilities of the central bank of issue at the European level, as stated in its proposal for amending EMIR, published on 13 June.

**The ECB also considers peer reviews to have an important role in increasing transparency.** Peer reviews bring to the fore the strengths and weaknesses of individual CAs in the performance of their supervisory tasks and promote improvements where necessary.

### International aspects of the ESAs' work

**The ECB supports strengthening the ESAs' powers and mandates in the context of a possible review of third-country equivalence regimes in EU financial services legislation.** This relates to the initial equivalence assessments of the regulatory and supervisory frameworks of the relevant third-country jurisdictions and to the required follow-up monitoring and implementation work. While the monitoring should ideally be carried out on a continuous basis, periodic monitoring might be more appropriate in the event of resource constraints. In addition, the ECB, alongside the other CAs and without prejudice to the role of the ESAs, would be well-placed to carry out specific and more technical assessments of key aspects of the regulatory and supervisory framework (in terms of available supervisory powers, effectiveness of rules, guidelines or decisions, etc.) that provides the basis for the exercise of prudential supervision of banks in a third country. Its role could therefore also be enhanced in this regard, while avoiding institutional overlaps and an increased administrative workload.

**Similarly, the ECB welcomes the fact that the Commission's recent proposal for amending EMIR, published on 13 June, provides a greater role for the central bank of issue in the EU framework for third-country CCPs.** The ECB stands ready to cooperate with the Commission within its areas of expertise.

**Finally, ESMA's role in the supervision of credit ratings issued in a third country and endorsed by a credit rating agency (CRA) in the EU should be strengthened.** ESMA is already proposing a stricter application of the existing rules

under the CRA III Regulation.<sup>8</sup> However, CRA III includes a number of exceptions for endorsed ratings in the areas of conflicts of interest, sovereign ratings and structured finance instruments.<sup>9</sup> These exceptions could lead to the use of endorsed ratings becoming an impediment to effective supervision, which may be difficult to adequately mitigate in the cooperation arrangements with the CAs for third-country CRAs.

### Access to data

**The ECB considers that the current EBA powers to access information are sufficient to effectively and efficiently deliver its mandate.** The EBA regularly receives timely and quality-assessed implementing technical standards (ITS) information for a sample of banks, which is expected to be extended to the remaining banks in the near future. Current channels (via CAs, national central banks (NCBs), other supervisory authorities or the statistical office of the Member State concerned) allow a sequential channel, aiming to avoid any undue burden on market participants and assessing data consistency across the supervisory authorities. The EBA itself is involved in the data quality assessment process as the end user. For example, the sequential information channel set up by the ECB and NCAs/NCBs to provide ITS supervisory reporting to the EBA helps avoid an undue reporting burden on banks and to deliver good-quality and consistent data on a timely basis.<sup>10</sup>

### Powers relating to reporting: streamlining requirements and improving the framework for reporting requirements

**The ECB supports a stronger role for ESAs in coordinating reporting requirements, including periodic reviews of such requirements.** Without prejudice to ad hoc data collections necessary for supervisory purposes (e.g. to deal with specific types of risks and activities), the ECB agrees with the initiative to streamline the regulatory reporting requirements for financial institutions, keeping it effective for supervisors but less burdensome for the reporting agents. A periodic review by the EBA, in close cooperation with CAs and taking into account the views of industry, may be useful to streamline reporting requirements. The EBA could, for example, consider consolidating all relevant Capital Requirements Regulation (CRR) requirements in a single ITS on supervisory reporting, with additional modules addressing any other supervisory information requested by CAs. There should also be further examination of whether a more efficient approval process could be ensured. The European System of Central Banks (ESCB), with its envisaged

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<sup>8</sup> Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies (OJ L 146, 31.5.2013, p. 1). See also ESMA's public consultation on its proposal to update the endorsement guidelines for 3rd country credit ratings: <https://www.esma.europa.eu/press-news/esma-news/esma-proposes-updates-endorsement-guidelines-3rd-country-credit-ratings>.

<sup>9</sup> See Article 4(3)(b) of the CRA III regulation.

<sup>10</sup> ECB Decision 2014/29 of 2 July, ECB Regulation 2014/17 of 16 April.

European Reporting Framework initiative, could also provide an important contribution to the process of streamlining reporting requirements.

**Reporting requirements should be scaled to the supervised institutions' size and complexity.** This could be achieved by adapting the scope and granularity of the supervisory data requested to the institutions' size and business model. Implementation dates of new reporting requirements could also be staggered, giving smaller institutions more time in which to comply with them.

## Financial reporting

**The ECB supports a harmonised enforcement of accounting and auditing requirements.** This would improve the quality and transparency of financial reporting and would contribute to the consistent implementation of the adopted International Financial Reporting Standards (IFRS) in the EU.

**The ECB sees the merits of EU-level convergence in achieving harmonised enforcement of accounting and auditing standards.** To ensure that this enforcement leads to effective harmonisation, and that enforcers do not draw their own interpretations of accounting requirements, the ECB considers a close collaboration between enforcement bodies and accounting and auditing standard setters to be essential. This collaboration could be better achieved if the enforcement of IFRS were to be designed at the EU level.

**The ECB considers that public (rather than private) authorities should be ultimately responsible for the final endorsement advice to the European Commission on IFRS.** This is consistent with the ECB's response to the Maystadt report.<sup>11</sup> The ECB is generally content with the governance of the European Financial Reporting Advisory Group and with the transparency of its decision-making process.<sup>12</sup> At the same time, the ECB generally considers that enhancing the role of public authorities in the endorsement process would be conducive to adequately taking into account financial stability and public interest considerations as well as both macroprudential and microprudential supervisory concerns.

## New powers for ESAs: mitigating disagreements regarding own funds requirements for banks

**The ECB supports the introduction of mandatory prior consultation of the EBA for new types of CET1 instruments only.** This will enhance the harmonisation/standardisation of CET1 instruments and the integration of the Single Market. The ECB stresses the importance of this consultation process being carried

<sup>11</sup> Letter from Vítor Constâncio to Michael Barnier in response to the report entitled *Should IFRS standards be more European?* dated 24 January 2014.

<sup>12</sup> Since January 2015, following the Maystadt reform, the ECB has contributed to the adoption of IFRS standards in the EU ("endorsement") as an official observer in the EFRAG Board. As such, the ECB has been in a position to comment on draft EFRAG advice to the European Commission, particularly regarding the possible impact of new accounting standards on financial stability.

out at an early stage (so as not to delay the CET1 classification of the instrument) and in close cooperation with the CAs.

**The ECB has concerns with the application of the same procedure to Additional Tier 1 (AT1) and Tier 2 (T2) instruments.** While the issuance of new types of CET1 instruments is not very common, AT1 and T2 issuances are issued much more frequently and their terms and conditions differ. As a result, it is difficult to identify “types” of instruments. The number of issuances that the EBA would need to review could be quite substantial. The mandatory EBA consultation may thus delay the approval process and, as a result, affect institutions’ capital planning. This would likely outweigh the possible positive effects of an ex ante consultation. In the event of limited resources, the EBA should instead continue its ex post monitoring role and conduct further work on the standardisation of AT1 instruments. The EBA should also expand its scope to cover liabilities eligible under the minimum requirement for own funds and eligible liabilities (MREL) (including internal issuances), in particular to monitor their quality in terms of loss absorbency and the interaction of MREL eligibility criteria with the own funds eligibility conditions.

#### **New powers for ESAs: direct supervisory powers in certain segments of capital markets**

**The ECB supports European supervisory powers for certain segments of capital markets.** A European approach is justified when major financial market infrastructures (FMIs) have systemic implications for the EU market.

**For CCPs, the ECB welcomes the intention to strengthen the role of the central bank of issue,** put forward in the recent European Commission proposal for amending EMIR.

**For international central securities depositories (ICSDs), EU-wide supervision would be premature.** The supervisory framework established under the Central Securities Depositories Regulation<sup>13</sup> is currently being implemented. The ECB recommends waiting until more experience has been gained before proposing far-reaching changes. Also, the central securities depository (CSD) landscape is currently undergoing market and technological transformations. Further experience is advisable before proposing changes to the regulatory architecture. The current framework, in which central banks play a strong role in accordance with their mandates as overseers and central banks of issue, adequately mitigates the risks stemming from CSDs at the EU level. Furthermore, overseers and supervisors relevant for both ICSDs already cooperate to ensure consistency in the implementation of oversight requirements.

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<sup>13</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (OJ L 257, 28.8.2014, p. 1).

**In the light of the Eurosystem's statutory responsibilities, any transfer of supervisory powers to the European level must take into consideration an appropriate involvement on its part.** Post-trading infrastructures are of crucial importance for central banks. Therefore, the Eurosystem must be adequately involved in the supervisory framework for CCPs and ICSDs. This is particularly important in relation to the fulfilment of the Eurosystem mandate as the central bank of issue for the euro as put forward in relation to CCPs in the recent Commission proposals for amending EMIR.

**Furthermore, Trade Repositories have continuously grown in importance in recent years and they are also becoming increasingly important for other FMIs. The Eurosystem therefore has an interest in their smooth functioning.** The Eurosystem looks forward to being part of the relevant cooperative oversight arrangements in accordance with the Responsibility E on "Cooperation with other authorities" established under the 2012 CPMI-IOSCO Principles for Financial Market Infrastructures.<sup>1415</sup>

**Strengthening ESMA's role in the supervision of pan-European investment fund schemes (undertakings for collective investment in transferable securities (UCITS), alternative investment funds (AIF), European long-term investment funds (ELTIF), European venture capital funds (EUVECA) and European social entrepreneurship funds (EUSEF)) could pave the way for a further deepening of the Single Market for investment funds.** A key objective of the CMU is to remove the remaining barriers to cross-border fund distribution. This is essential in order to provide a larger and more diversified choice of investment and saving opportunities for European citizens, encourage further innovation and reduce costs and fees. For example, the duplication of registration fees and processes imposed by different Member States for the marketing of a fund is a remaining barrier to cross-border distribution. In this context, it is not the existence or the level of regulatory fees imposed by NCAs, but rather the significant variation both in their scale and in how they are calculated in different Member States which creates national barriers.

## 2 Governance of the ESAs: assessing the effectiveness of the ESAs' governance

**The ECB supports a review of the governance structure of the ESAs, which should ensure that the European dimension is fully reflected in their decision-making.** The review should cover the voting arrangements, the membership structure of the ESA Boards and the relationship between the Boards of Supervisors and their respective Management Boards.

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<sup>14</sup> CPSS-IOSCO, *Principles for financial market infrastructures*, April 2012.: <http://www.bis.org/cpmi/publ/d101a.pdf>.

<sup>15</sup> <https://www.ecb.europa.eu/pub/pdf/other/eurosystemoversightpolicyframework201607.en.pdf>.



**Voting rights should be reviewed to ensure that the ECB has a voice in the decision-making process of the EBA.** The perspective of the ECB, as the CA within the SSM, is an essential complement to the national expertise of the NCAs. Granting the ECB permanent membership and voting rights on the Management Board, and voting member status on the Board of Supervisors of the EBA<sup>16</sup>, in parallel to the other CAs, would strengthen the European perspective in its governance. Careful consideration must be given to ensure that an appropriate balance is maintained between countries that are members of the banking union and those that are not. The ECB should also maintain its observer status on the Boards of Supervisors, in its capacity as central bank.

**Based on an assumption of no changes to the competencies and tasks of ESMA within the current institutional setting, the ECB also supports a review of the composition of the ESMA Board of Supervisors, providing the ECB under both mandates with an observer status.** This status would reflect the Eurosystem's strong interest in being involved in the discussion of CCP regulatory issues in its role as central bank of issue (which is fully recognised under EMIR). In fact, ECB representation would help ensure that the decisions taken by the ESMA Board of Supervisors consider the central banking perspective, which is an important factor given central banks' role as potential liquidity providers. Representation would not conflict with the ECB's ability to fulfil its statutory duties.

**The ECB supports a review of the structure and interaction between the Board of Supervisors and the Management Board.** The Management Board should be given a stronger operational role which would increase the effectiveness of the ESAs and allow the Board of Supervisors to focus on strategic issues.

### 3 Adapting the supervision architecture to challenges in the market place

**The case for integrated supervision and an enhanced toolkit at the European level is strong for those segments of the capital markets in which integration is very advanced and the emergence of cross-border risks is likely.** Given the systemic implications of financial integration and cross-border risk transfers, the revision of the supervisory architecture for ESAs should be considered in the context of the ongoing review of the EU macroprudential policy framework. The ECB is of the view that the principles on microprudential and macroprudential supervision set out in its contribution to the Commission consultation on the macroprudential review should also apply in the context of the ESAs.<sup>17</sup>

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<sup>16</sup> A practical solution should be found for decisions to be taken by the Board of Supervisors on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union ('TEU') and Article 3 of the Protocol No 36 on transitional provisions.

<sup>17</sup> ECB contribution to the European Commission's consultation on the review of the EU macroprudential policy framework:  
<https://www.ecb.europa.eu/pub/pdf/other/revieweu macroprudentialpolicyframework201612.en.pdf>.

**The ECB reiterates the need for an improved separation of the microprudential and macroprudential functions of EU institutions.** This can be achieved by, for example, clearly allocating EU-level macroprudential functions, such as notifications of and opinions on national macroprudential measures, exclusively to the European Systemic Risk Board (ESRB). The establishment of the banking union and the related changes in the institutional macroprudential policy framework should be duly recognised and the overlaps in systemic stability assessments and macroprudential policymaking for the banking sector in participating Member States should be eliminated.

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Postal address 60640 Frankfurt am Main, Germany  
Telephone +49 69 1344 0  
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