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European Commission

Public consultation on the operations of the European Supervisory Authorities (ESA)

The Swedish Bankers' Association (SBA) appreciates the opportunity to comment on the consultation on the operations of the ESAs.

Initially the SBA wants to highlight the timeframe for submitting responses. Even though the tasks and powers of the ESAs earlier have been subject for discussion with stakeholders the nature of the questions requires careful analysis, particularly in relation to the constitution. The vote of the United Kingdom to leave the EU is also a factor that must be considered in the analysis. A two-month timeframe therefore appears too narrow to allow well prepared and analyzing responses. Further, the impact assessment was not yet available at the Commission's website (checked the website at the 12th April).

A 1. Supervisory convergence

The SBA can see that there is a need for improvements. The question is whether the ESAs have exhausted the possibilities available, or if it is possible to develop or extend the use of existing tools.

As stated in "EBA report on the convergence of supervisory practices" (2016) the publication of the EBA guidelines on common procedures and methodologies for the supervisory review and evaluation process (SREP) have had a positive impact on the common understanding of the SREP and there has been a significant progress among the competent authorities in implementing the new recommendations. The EBA report also states that single supervisory mechanism have had a significant impact on convergence.

As seen in the consultation document the Commission express a concern that the tools, peer reviews and on-site visits, are not used sufficiently which the EBA also notes in its report. Accordingly, as the SBA's sees it, there is room for improvements within current regulation without changing the ESA regulation in this regard. It might,

however, increase the convergence if the results from peer reviews and from supervisory collages could be published to give the competent authorities opportunity to take advantage of the ESAs reviews.

1. Non-binding measures: guidelines and recommendations

The SBA appreciates the ESAs work with guidance and believe they are helpful and provide good advice. However, the SBA has recently noted deficiencies in the needs' analysis and an analysis of the potential costs accompanied to draft guidelines, e.g. the EBA's draft guidelines on internal governance and the EBA's draft guidelines on the assessment of the suitability of members of the management body and key function holders. The ability to regulate must be based on a thorough analysis of the need of and the cost for a new regulation or guidelines.

The timeframe for when the ESAs shall or may issue guidelines related to directives and regulations would benefit from a review. To allow the Member states the possibility to implement or incorporate requirements in directives and regulations in accordance with the constitution in each country, additional requirements, through the ESAs, should not be introduced until the implementation time has elapsed. If a clear order of priority is maintained, where regulations and directives should first be implemented by Member states and subsequently should requirement from the ESAs be issued, would give both the Member states and the ESAs the opportunity to act or react on shortcomings rather than in advance try to reduces the risk of deviations.

Further, there is also a need for more openness and transparency when it comes to the work with guidelines. It has been declared that the competent authorities, when participate in ESAs working groups, are not able to discuss critical issues with the industry during the process before a consultation. This has in many cases led to conflicting requirements between the guidelines and national law or regulations. It is important that the industry has the opportunity, in an early stage, to submit comments on important and costly proposals. Although the draft guidelines will be published for consultation we have noticed that it is very difficult to get acceptance for changes at this stage. Transparency is an important issue that should be reviewed.

2. Consumer and investor protection

The SBA can see a need for a better understanding for national requirements when issuing new guidelines in the consumer and investor protection area. Sweden, for example, has introduced high standards for consumer protection. The community has also a well-developed and well-used solutions for IT-supported products and

services for consumer. In some cases, new guidelines require changes in services and products which will become detriment for the consumers.

3. Enforcement powers – breach of EU law investigations

The SBA sees no reason to change the governance structure regarding the composition of the management board.

4. International aspects of the ESA's work

Equivalence is a very important issue and it is crucial that the Commission's decisions are predictable and forward-looking. Rapid changes, even small ones, can require considerable efforts and expenses for the industry to be compliant with new conditions. Transparency and predictability must be met regardless any changes of roll of the ESAs regarding equivalence.

5. Access to data

To avoid any undue burden on market participants, there must be thorough analysis before granting the ESAs with additional powers. Moreover, in general terms there is room for improvement regarding how data is collected in practice by the ESAs. Issues that merit mention in this context are the timeframe afforded to firms to reply to questionnaires etc., and the need to ensure consistency when it comes to formats and standard forms.

6. Powers in relation to reporting: Streamlining requirements and improving the framework for reporting requirements

It is essential to gather information in a structured manner. Experience states that national specific requirements should be avoided. Complete harmonization provides the best conditions. On the other hand, the rules must consider national specific conditions at an early stage when organizing how to collect the information.

7. Financial reporting

B 1. Approval of internal models under Solvency II

2. Mitigating disagreements regarding own funds requirements for banks

We oppose a mandatory prior consultation of the EBA for all new types of capital instruments. There is no need to change the existing process.

3. General question on prudential tasks and powers in relation to insurers and banks

C. Direct supervisory powers in certain segments of capital markets

II. Governance of the ESAs

The SBA has not identified shortcoming due to the current governance set-up. However, the SBA believes it is extremely important to maintain the separation of powers in the Board of Supervisors between the Member states and the participants from different institutions. It is also important to maintain the division of powers between the Management Board and the Board of Supervisors. The possibility for each Member state to influence the decisions taken in the ESAs cannot be undermined. Due to that the SBA does not see any advantages with extending the power of the Management Board since it may reduce the national influence in the decision making and the possibility to take the relevant facts and circumstances into account when dealing with matters of relevance for a specific Member state or states.

Permanent members of the Boards may increase the supranational orientation and possibly make the decisions regarding individual members less sensitive. On the other hand, permanent members may lead to a distancing in relation to the national competent authority which in turn may reduce the national influence in the decision making.

In summary, it is difficult to change the governance structure within the ESAs without affecting the Member states ability to influence.

Stakeholder groups

The original idea with stakeholder groups may have been good but the lack of transparency and the lack of possibility for business representatives to discuss with the members of the stakeholder groups has reduced the benefits for the industry.

The stakeholder groups should be given more influence and the structure must be more transparent and open to give the members of the stakeholder groups the possibility to invite business representative to take part in the discussion.

III Adapting the supervisory architecture to challenges in the market place

The SBA believes that the timing for radical changes lies in the future. Right now, it is more important to settle the issues regarding supervisory convergence.

IV funding of the ESAs

The SBA agrees that the funding level of the ESAs should be stable but must at the same time be transparent and assure a requisite approval process for proper accountability by the Member states. A change in the division of powers between competent authorities and the ESAs in conjunction with an expanded authority to charge the industry by the ESAs seems to give the national authorities less transparency and the ability to influence the work within the ESAs. Moreover, a dual model where both ESAs and national authorities are funded by industry renders it necessary to clearly distinguish the responsibilities of the various authorities. This is likely to be very difficult to achieve in practice. The SBA is very hesitant about such a development without a thorough analysis of its consequences for the national authorities and the industry.

SWEDISH BANKERS' ASSOCIATION

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