UNI Europa Finance Draft Reply to Public Consultation on the functioning of the ESAs

Tasks and powers of the ESAs

Questions

1. How do you assess the work carried out by the ESAs so far in promoting a common supervisory culture and fostering supervisory convergence, and how could any weaknesses be addressed?

The work carried out by the European Supervisory Authorities has been important for the financial stability of the European financial markets and has started to implement some much needed legislation in a sector that needed thoroughly detailed rules. The multi-faceted stakeholder views that the ESAs allow for is of high importance, to ensure rules that are not squeued toward favoring one group above another. With new initiatives from the European Commission such as the Capital Market Union, Retail Financial Services and possible Fintech legislation – supervisory convergence is a precondition to avoid regulatory arbitrage. UNI Europa Finance (UEF) has on several occasions, such as the Call for Evidence consultation – highlighted the need for proportionality in regulation, seen as the regulatory burden becomes disproportionally heavy for small financial institutions. This is especially a problem in the several European countries where smaller financial institutions, such as local savings banks, make up a significant proportion of the banking services offered. We acknowledge that the Commission seems to be aware of the problem and has expressed its intention to delve deeper into the issue on several occasions, but it still bears mentioning.

5. To what extent are the ESAs tasks and power in relation to guidelines and recommendations sufficiently well formulated to ensure their proper application? If there are weaknesses, how could those be addressed? Please elaborate and provide examples.

UEF is of the opinion, that there is at times a gap between decisions on level 1 and their started implementation on level 2 by the ESAs.

The EBA guidelines on sound remuneration policies from 2015 (CRD-4) published in late December 2015 showed that EU legislators are often not familiar with the Nordic model of collective bargaining. In a consultation done by the EBA earlier the same year, issues were raised in order to secure the continued possible viability of the Nordic model. The right to free collective bargaining is
explicitly mentioned and protected in CRD 4 which is why UEF found it noteworthy that this was not included or at all referred to in EBA’s draft guidelines.

(II) Governance of the ESAs: Assessing the effectiveness of ESAs governance

Question 26: To what extent are the provisions in the ESA Regulations appropriate for stakeholder groups to be effective? How could the current practices and provisions be improved to address any weaknesses? Please elaborate and provide concrete examples

UEF would like to strongly emphasize the importance of the Stakeholder Groups that are a valuable democratic element of the ESAs. Regardless of the future ESA design it is imperative to have SGs as a part of it. The future composition of SGs should, however, be more balanced between the stakeholder constituencies. In the present set-up, there is an overweight of especially industry and consumer representatives, while the employees are underrepresented.

Among the range of issues that have been discussed by the ESAs, several are directly related to the position of employee representatives. This relates for example to training and knowledge requirements (such as the MiFid 2) but also directly to governance issues such as sales incentives, variable remuneration and the composition of boards to mention a few. Employee representatives can contribute with a lot of valuable information and knowledge on these issues and would be able to highlight how the problems in financial institutions often don’t stem from employees acting wrong on their own volition, but is due to a structure that has been created without their consultation and which them must simply follow.

UEF is also of the opinion, that the mandate of the expert stakeholder groups could with benefit be extended up to four years. This would allow for a proportionately less amount of time being spent looking for new candidates and getting them accustomed to their new position, while it would also ensure a certain continuity that would be good to reduce knowledge being lost when experts are replaced.

(III) Supervisory architecture

Question 27: To what extent has the current model of sector supervision and separate seats for each of the ESAs been efficient and effective? Please elaborate and provide examples

Regarding the boundaries of the ESAs’ tasks and powers: It seems to be increasingly necessary to consider a widening of those boundaries, whereby the ESAs are given authority not only in relation to the traditional financial sector, but also in relation to new players that, in many cases, perform very similar financial activities. Thus, the tasks and powers of the ESAs should be more directed towards the actual activities, rather than being limited by how the financial players are organized. However, widening those responsibilities also means a strengthening of the democratic legitimacy and transparency into the European Supervisory Authorities. Something that can be called in to question today. It is more difficult to access these authorities than the EU institutions which is very
problematic as they have so much power when interpreting and developing rules on level 2. The ESAs should show more openness to several types of actors, especially from the civil society and trade unions. Just as one example, trade unions are never invited to take a role at their conferences or consumer protection day even though our members, the finance employees, are the one who are implementing and working with these matters on an everyday basis. This has been requested by Uni Europa Finance at several occasions but has always been ignored. UEF is a very active stakeholder in responding to consultations coming from the ESAs which is why we want to stress the importance of increased transparency within and from the ESA’s and that they should look at stakeholders from trade unions and civil society as an asset to their work.

The mandate for the ESAs to take a leading role in promoting transparency, simplicity and fairness for consumers is important. In the realm of consumer protection where there are many aspects that are clearly related to the employee situation, especially regarding the effects of regulatory requirements on employees. UEF strives for financial sectors where employees have enough time to convey proper advice to consumers in their daily work, and where employees continuously receive sufficient and in-depth training on the advantages and disadvantages of products.

The coordination role of the ESAs is of utmost importance to develop a common supervisory culture. Regulatory convergence must be secured.

**Question 28:** Would there be merit in maximising synergies (both from an efficiency and effectiveness perspective) between the EBA and EIOPA while possibly consolidating certain consumer protection powers within ESMA in addition to the ESMA’s current responsibilities? Or should EBA and EIOPA remain as standalone authorities?

On the question of whether to continue with the current setup of three individual institutions or merging into one large authority UEF can see benefits to both. By keeping the structure as it is, continuity is ensured and that lessons learned over the last years remain valid. However, if the three authorities were to be merged into one, the EU could take Germany as a good example to follow. They have a single regulatory authority and have had good experiences with is so far.

**Question 29:** The current ESAs funding arrangement is based on public contributions. Should they be changed?

Since the budget for all the ESAs was severely cut a few years ago, the authorities have struggled to find new ways of making the money stretch far enough. This is an unfortunate situation, as a limited budget has several drawbacks both in terms of securing adequate staff and manage consultation with all stakeholders. It is UEFs firm opinion that the budget should be increased for all three of the authorities. One way this could be achieved would be by involving the industry and have them cover parts of the costs. Given their currently significant role on stakeholder groups etc. it would be only fair. Again Germany could serve as an example with such a model.
Question 30: In your view, in case the funding would be at least partly shifted to industry contributions, what would be the most efficient system for allocating the costs of the ESA’s activities?

By allocating costs according to option b, with contribution being based on the size/importance of each sector and of the entities operating within each sector, a fair distribution would be ensured. Given fees should be levied from the companies themselves, it would follow that the countries with the biggest concentration of financial industry would pay the most. Gross income from transactions would be the best indicator to be used.