

Response to the European Commission's consultation on the operations of the European Supervisory Authorities

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After 2008, the establishment of a post-crisis regulatory framework was necessary to preserve financial stability and prevent systemic risk. AFTE has always been in favor of such a mechanism, but has often stressed that several elements of the system have had undesirable effects on industrial and commercial companies. During the call for evidence launched at the end of 2015 by the European Commission on the regulatory framework applicable to financial services in the European Union, AFTE has already highlighted improvements needed to the regulatory process.

AFTE shares EACT's response to the consultation and reiterates in its response the fields of improvement already reported in the recent years:

- **greater involvement, upstream, of all relevant market participants**, especially industrial and commercial companies;
- **systematic assessment** of the impacts of any regulatory project on stakeholders;
- **better convergence** of the texts between Union law texts and with comparable foreign legislation;
- **appropriated implementation times**, taking into account the complexity of the obligations and the possible need to adapt information systems;
- **periodic obligation** imposed to regulators to provide to stakeholders the consolidated reporting data

Aware of the major challenges associated with the regulation of financial activities, AFTE will remain particularly vigilant on the consequences of regulation on the European Commission's growth and employment objective.

AFTE decided to focus its answer on **questions 5, 6, 10, 12 and 26**

Contact :

Valérie Voisin - Head of technical committees

+33 1 42 81 98 41

valerie.voisin@afte.com

Responses to specific questions

Category I: Tasks and powers of the ESAs

Section A: Optimising existing tasks and powers

Part 1: Supervisory convergence

Part 2: Non-binding measures: guidelines and recommendations

Q5 To what extent are the ESAs tasks and powers 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.

Guidelines and recommendations are essential to facilitate consistent and effective practices on the implementation of Union law, but some improvements are expected:

- They should not be a substitute to directives, regulations and technical standards, but only as a complement to facilitate the application of technical standards and ensure convergence
- Their number should be limited in order to avoid adding an additional level to a complex regulation, which is already perceived as 1 stack of level 1 and level 2 texts
- The consultation of the market participants on these documents should be mandatory
- Approval by the European Commission, Parliament and Council would be necessary before adoption in order to ensure consistency with level 1 and level 2 texts and alignment with the mandate given to the issuing supervisory authority.

AFTE considers that the introduction of these requirement would have avoided the most illustrative case where the European Banking Authority exceeded its mandate. In its proposal for a "treatment of credit value adjustment risk under the supervisory review and evaluation process (SREP)", the EBA proposed to eliminate the exemption granted to non-financial counterparties on level 1 for uncollateralized hedging transactions in the calculation of the CVA by financial counterparties – exemption granted by Parliament in section 382 (4) of the CRR (Capital Requirements Regulation). No text provided a mandate to EBA to challenge this exemption. To date, the guideline has not been adopted but this process has created uncertainty for non-financial companies.

Part 3: Consumer and investor protection

Q6. What is your assessment of the current tasks and powers relating to consumer and investor protection provided for in the ESA Regulations and the role played by the ESAs and their Joint Committee in the area of consumer and investor protection? If you have identified shortcomings, please specify with concrete examples how they could be addressed.

AFTE is aware of the need to protect consumers and to defend investors, however a balance must be found. The too strong emphasis placed on this subject in the Prospectus Directive has led to the limitation of the size of the summary, the limitation of risk factors and their hierarchy. The balance between too much information and too standardized information should be found.

Part 4: Enforcement powers – breach of EU law investigations

Part 5: International aspects of the ESAs' work

Part 6: Access to data

Q10. To what extent do you think the ESAs powers to access information have enabled them to effectively and efficiently deliver on their mandates? Please elaborate and provide examples.

The AFTE does not have a full overview on access conditions of the supervisory authorities to the different data. Due to the amount of data reported by companies, AFTE questions the use of information that can be made by supervisory authorities.

The preparation of reporting under the EMIR and MIFID regulations represents an administrative burden for non-financial companies and has required significant financial and IT development investments to adapt information systems. AFTE and non-financial counterparties ask the supervisory authorities to give periodical feedback to market participants on reported data. For example, for EMIR reporting, with the exception of a report issued by Esma in August 2015, our members did not have any sound return on the number of matched transactions or volumes par asset classes....

The supervisory authorities should encourage transparency and provide for periodical feedback on data to the market participants, producers of information and thus prove the usefulness of data analyzes to prevent systemic risks.

Part 7: Powers in relation to reporting: Streamlining requirements and improving the framework for reporting requirements

Q12 To what extent would entrusting the ESAs with a coordination role on reporting, including periodic reviews of reporting requirements, lead to reducing and streamlining of reporting requirements?

The burden and redundancy of reporting obligations is a concern for non-financial enterprises. Even if AFTE ask to abandon the dual EMIR reporting, AFTE strongly encourages the supervisory authorities to involve all stakeholders involved in the production of information very early in the regulatory process.

Supervisory authorities should identify reporting that is not useful for the achievement of its mandate and propose their elimination.

Part 8: Financial reporting

Section B: New powers for specific prudential tasks in relation to insurers and banks

Part 1: Approval of internal models under Solvency II

Part 2: Mitigating disagreements regarding own funds requirements for banks

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

Section C: Direct supervisory powers in certain segments of capital markets

Category II. Governance of the ESAs

Stakeholder groups

Q26 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.

In order to identify at an earliest stage the difficulties in implementing the regulations, AFTE encourages the supervisory authorities to involve all relevant market participants upstream of the regulations, ensuring also a balanced representation of stakeholders. In addition to SME's explicitly included in a stakeholder category, it is especially important to include non-financial companies, representing end users of banking services and hedging products to mitigate their risks, without having dedicated specialists, IT systems or IT specialists as financial counterparties. Non -financial counterparties are parties to financial regulations and should be represented the ESMA's working groups.

The functioning of the ESMA working groups should also be improved. The agenda is exclusively dictated by the ESMA and no general discussion scheduled. It is therefore impossible for the participants to express their general opinion on the regulation in progress or on the difficulties encountered.

Category III: Adapting the supervisory architecture to challenges in the market place

Category IV: Funding of the ESAs

General question (additional comments)