

0523

Valdis Dombrovskis
Vice-President
Directorate-General for Financial Stability,
Financial Services and Capital Markets
Union
European Commission
1049 Bruxelles/Brussel
Belgium
Sent by email:
fisma-esas-consultation@ec.europa.eu
CC: nathalie.de-basaldua@ec.europa.eu

Paris, 17 May 2017

Subject: Public consultation on the operations of the European Supervisory Authorities

Dear Mr. Vice-President,

We are pleased to respond on behalf of the Compagnie Nationale des Commissaires aux Comptes (CNCC) and the Conseil Supérieur de l'Ordre des Experts Comptables (CSOEC) to the European Commission's consultation on "The Operations of the European Supervisory Authorities" ("the Consultation").

The Consultation touches upon important matters relating to the role, responsibilities, governance and organisation of the existing structures in Europe and their possible evolution, with respect to regulatory supervision and enforcement, in order to ensure an efficient functioning of the capital markets in the European Union (EU).

In that respect, as institutes representing the accounting and auditing profession in France, we are willing to participate, amongst others, to the debates that lead to the establishment of the relevant laws and regulations on local, EU and international levels. With respect to financial information and also in some cases prudential information, accountants and auditors are also part of the chain aiming at ensuring that market participants ultimately comply with the laws and regulations applicable in the EU. As a result, we interact with the EU National Competent Authorities (NCAs) regularly and also with the European Supervisory Authorities (ESAs) to some extent. Their effectiveness is key to enable us to fulfil our mission.

We have opted not to respond to all the questions of the Consultation but to submit our comments on what we believe are key principles for standard-setting and enforcement activities. In particular, we believe that:

- A separation of powers between activities of standard-setting (endorsement) and enforcement is a key element in favouring independent decision-making;
- While supporting a reinforcement of ESAs' power in fostering convergence in the supervision of NCAs and in some cases in reinforcing their authority in enforcement actions, we believe that the role of NCAs as the market participants' enforcers remains crucial;
- It is important that the ESAs broaden the circle of the stakeholders to include in their consultation processes (for example, but not only, to further involve the accounting and auditing profession) as we believe we can contribute in terms of competent resources and in playing a role in the buy-in process.

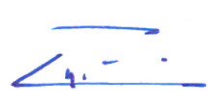
We consequently focused our response on key topics relating to financial reporting and auditing.

We hope that the Commission will find our comments useful.

Yours sincerely



Jean BOUQUOT
President of CNCC



Charles-René TANDE
President of CSOEC

Envoyer obligatoirement toute correspondance aux deux adresses ci-dessous :

COMPAGNIE NATIONALE
DES COMMISSAIRES AUX COMPTES
CNCC - 16, avenue de Messine - 75008 Paris
Tél. : 01 44 77 82 82 - Fax : 01 44 77 82 28
www.cncc.fr

CONSEIL SUPÉRIEUR
DE L'ORDRE DES EXPERTS-COMPTABLES
CSOEC - 19, rue Cognacq-Jay - 75341 Paris cedex 07
Tél. : 01 44 15 60 00 - Fax : 01 44 15 90 05
www.experts-comptables.fr

Achievements of the European Supervisory Authorities (ESAs)

The European Supervisory Authorities (ESAs) have been developing a valuable contribution towards the creation of a true level-playing field at EU level. In particular, ESMA should continue this initiative by fostering consistency in the application of the Single Rule Book by the National Competent Authorities (NCAs). The matter of supervisory convergence is key to ensuring a secure functioning of the market and a level playing.

The role of ESAs is also crucial for monitoring the implementation of the EU legislation for consumer and investor protection and for trying to discourage 'gold plating' of EU legislation at national level, as this can result in regulatory barriers to the single market.

The ESAs also have the potential to perform a crucial role in assessing the impact of financial services regulation in a holistic manner.

European Supervisory Authorities vs National Competent Authorities - Balance of powers (in relation to Questions 10 and 11)

Although there have been important accomplishments and there are still many initiatives to harmonise laws and regulations in the EU, particularly with respect to those applicable to market participants operating in the EU capital markets, there are still many laws and regulations that apply at a local level only.

We believe that the establishment of a truly harmonised framework at EU level is a prerequisite to the transfer of powers to supranational authorities. In the absence of an harmonised EU framework, which might be achieved in the longer term, ESAs should continue to coordinate the implementation and enforcement at EU level in order to ensure that differences in national implementation do not lead to undue barriers to market integration. We are supportive of an effective ESAs' role in supervisory convergence as well as enforcement cooperation and authority over NCAs. We believe that it is key for the proper functioning of the capital markets, and also for enabling the accounting and auditing profession to fulfil its mission. Robust enforcers, which exercise the same level of investigations and authority, and which provide consistent enforcement decisions, within the EU are key to a correct and efficient functioning of the markets and financial activities. In this regard, ESAs should continue to foster consistency of practices among NCAs.

In the field of financial reporting, we recognise the achievements of ESMA over those past years. In particular, the work carried out through its European Enforcers Coordinators Sessions (EECS) as well as some publications (such as the European Common Enforcement Priorities, extracts of EECS database of enforcement, statements or guidelines) have proven beneficial for the homogeneous application of IFRS throughout the European Union.

However, in accordance with the principle of subsidiarity we consider that, at this stage, NCAs still have a significant role to play in the enforcement landscape in the EU. They are better placed to understand the situations in which the market participants operate and it is easier to reach out to them. In our view, it is also important not to bring confusion to issuers and auditors about which body is the enforcer. This confusion could arise if both the ESAs and the NCAs had direct contact with issuers and their auditors.

For instance, regarding the specific case of the approval of internal models under the Solvency II regime by EIOPA for cross-border groups, there are reasons to keep this competence at national level. The approval of internal models should go hand in hand with the respective supervisory powers. This should not be excluded in the long term, but for the moment European Insurance and Occupational Pensions Authority (EIOPA) does not have the resources to directly supervise insurance undertakings; nor is there such a need. A good understanding of the local markets is key, especially in the insurance sector, and therefore NCAs are often better positioned to perform these tasks.

On this very topic of ensuring convergence in implementing Solvency 2 regulation across Europe, one of the ways amongst other measures, to achieve a higher level of harmonization could be found through the proper involvement of auditors in solvency 2 reporting. Indeed, as at today there is a wide range of differences between European countries and we consider that this situation can potentially jeopardize the quality of Solvency 2 reporting where no or very limited audit is required.

Standard-setting vs enforcement - Separation of powers (in relation to Questions 14 and 15)

Proper separation of powers enhances independence in decision-making and mitigates risks of conflicts of interests. Under the “trias politica” principle, the enforcer is not the one setting the standards it enforces.

We note that this principle is the basis of many EU’s institutions. If this principle were to no longer apply, particularly in the fields of accounting and auditing, we would like to further understand the reasons why a change is needed.

In our opinion, endorsement and enforcement are very separate matters – If it were not so anymore, a conflict of interest could arise as those responsible for endorsement could be tempted to influence the standards for the purpose of enforceability, thereby distracting the standard from its initial purpose to serve the market demand of the primary users.

We have noted that the Consultation casts a doubt with respect to the future of some existing structures that have recently been put in place following the Maystadt report and after thorough analyses and debates. We believe that the European Financial Reporting Advisory Group (EFRAG) and the Committee of European Auditing Oversight Bodies (CEAOB) should be given appropriate time to show that they function adequately before making new legislative changes. At this stage, we are not aware of analyses demonstrating that these structures are no longer appropriate and what is to be gained from the proposed change.

We consider, on the contrary, that EFRAG’s key role in the IFRS endorsement process and as technical advisor of the EC is part of a successfully tried and tested approach:

- The EC’s comprehensive review of the functioning of the IAS Regulation in 2014 did not show major discontent on the structure put in place. The recent feedback on how EFRAG carries out its duties and meets its objectives is good
- EFRAG’s mixed public-private sector partnership model with the ESAs as observers and its robust, inclusive and transparent due processes as well as its openness to listen to a variety of stakeholders allow EFRAG to be representative of all public and private stakeholders with an interest in financial reporting (national standard setters, preparers, users, private (audit firms) and public (ESAs) enforcers...)

In fact, as mentioned above, in the current organisations ESMA already has an informal role by being observer in EFRAG and CEAOB, which, for EFRAG at least (it is too early to say for the CEAOB), has proven efficient so far.

Care should be taken that granting ESMA a greater role in the endorsement of standards could hamper its independence in fact and in appearance as the enforcer of accounting standards.

Concerning auditing, especially the audit oversight system, we note that the CEAOB was only established in June 2016, following the audit reform in the European Union, and is still in its start-up phase. The set-up of the CEAOB was the choice of the European legislators as the step forward in terms of cooperation between NCAs, highlighting the role of Member States in this area.

As the audit reform implementation is still in progress in some Member States, it is more than premature to draw any conclusions on the functioning of the new oversight framework in the EU. We consider that the local oversight bodies have a key role to play, particularly as the requirements for conducting audits are not fully harmonised in the EU (e.g., there is no harmonised requirement for international auditing standards to be applied for the audit of companies operating on EU capital markets and the audit directive and regulation offered EU Member States some implementation options, resulting in diversity in some audit requirements across the EU and making them specific to some Member States).

The European Commission now points to enhancement of supervisory convergence as a reason for this proposal:

In our opinion, it remains to be truly demonstrated how supervisory convergence and harmonization would be better achieved by simply integrating CEAOB in ESMA. Transferring competences from NCAs to the EU level does not automatically ensure convergence and harmonization in supervisory practices, as NCAs will still be the local interlocutors.

Appropriate involvement of, and dialogue with, stakeholders (in relation to Question 26)

In standard-setting, appropriate and effective representation and involvement of stakeholders in structures and processes enables ensuring relevance of decision-making, legitimacy, protection of public interest, link to market reality, and buy-in. It is also a mean to bring competences and resources to organisations. The stakeholders' involvement can take various forms, which may need to be adapted to each organisation or even to each subject being considered.

Thorough and transparent due processes involving an open dialogue with constituents is fundamental to provide a basis for the decisions expressed by the ESAs. It is also fundamental to ensure the legitimacy of the decisions as it facilitates enforcement subsequently.

With respect to the ESAs' relationships with stakeholders' groups, our experience is that there is room for improvement considering the principles enunciated above.