

Deutsche Börse Group

Response

to the Public Consultation on the Operations of the European Supervisory Authorities

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Introductory remarks

As an integrated provider of financial services, Deutsche Börse Group (DBG) covers the whole range of Financial Markets Infrastructure (FMI) operators: Central Counterparties (CCPs), Central Securities Depositories (CDSs) and a Trade Repository, and furthermore trading venues (Regulated Markets (RMs) and Multilateral Trading Facilities (MTFs)) and Data Reporting Services Providers (DRSPs).

As a lesson learnt from the financial crisis 2007/2008, the European Union aimed at establishing a more efficient, integrated and sustainable European system of financial supervision (ESFS). DBG recognises the progress made in the EU regarding financial markets regulation and supervision in the last decade. With relevant EU-files being in process of implementation and the European capital markets further being harmonised through projects like the Capital Markets Union (CMU), the issue of adequate governance and supervision remains an important priority.

DBG is heavily impacted along its entire value chain by the work of the ESAs – besides EBA especially by ESMA. Given the increased workload of providing details for the implementation of regulations such as MiFID/MiFIR, Benchmarks Regulation or CSD-Regulation for the purpose of regulatory convergence and fostering supervisory convergence, DBG appreciates the continual review of the operations of the ESAs, as supervisory convergence builds on regulatory convergence to avoid further fragmentation of European markets.

Process and set-up for changes to supervisory structures

The current European supervisory set-up following the subsidiarity principle has proven to be efficient, maintaining market stability and integrity in times of market stress. The Brexit vote as a “real-life stress-test” demonstrated quite well that communication channels and coordination between the industry, different national and European supervisors worked efficiently.

Harmonisation per se would help to create a CMU, which is of high importance. However, supervisory structures should be changed gradually, if necessary, and ensure structural stability, given that relevant EU legislation is still in the process of implementation. In order to provide a positive environment to develop business, as much continuity as possible in these challenging times should be provided.

Therefore, a gradual approach for changes to the supervisory structures seems appropriate:

- ***Strengthen the ESAs’ role in monitoring and implementing work once equivalence*** has been granted by the EU COM to ensure consistent supervisory approaches at EU level and that third country provisions are at least as prudent as the European regulation.
- ***Enable ESAs to pursue current tasks for building a deeper and more integrated single market*** given the increased workload of providing details to implementing regulation on Level 2 and providing guidelines on Level 3 for the purpose of regulatory convergence and fostering supervisory convergence to create a level playing field, plus direct supervision for Credit Rating Agencies and Trade Repositories.
- ***Keep improving the coordination between ESAs and NCAs:*** given different areas of expertise at different supervisory levels, currently, NCAs know best the local markets with their particularities (specific products and client base), national legal frameworks and business models of supervised entities.
- ***Improve the coordination between ESAs:*** When discussing and drafting legislation that affects target groups of several ESAs, cross-interaction and coordination of the ESAs might be improved, in order to achieve balanced and evidence-based requirements for market participants.

- ***Avoid double reporting of data to NCAs and ESAs:*** Harmonised data requirements for regulatory reporting to NCAs and / or ESMA are generally sensible in order to efficiently exchange data between NCAs. However, data should not have to be delivered both to NCAs and to ESAs, creating additional regulatory burden for market participants. Instead of approaching market participants directly, ESAs should now cooperate more closely with NCAs as pre-conditions for an effective exchange of data have or are being implemented. Further immediate changes should be avoided for the time being.
- ***Discuss extending direct supervisory powers of ESMA:***
 - With regard to direct supervision of data reporting services, currently, it is rather preferable that NCAs play the key role in data collection due to still existing national regulatory requirements.
 - Supervising post-trading FMI from 27 EU-Member States requires relevant expertise and operational knowledge. Due to the particular status of CCPs and CSDs holding the Securities Settlement Systems (SSS) status and especially if partially operating under a banking licence, supervisory topics related to financial stability and risk management require the involvement of “macro”-prudential authorities as central banks and other European authorities, such as the ECB or SRB.
 - In particular, CCPs already today have established a supervisory college with all relevant European supervisory authorities included. This well-functioning college structure, with well-established relationships and well-experienced NCAs, should be continued and not changed into direct supervision of ESMA.

General principles for the supervisory framework that should be taken into account

- ***Effective supervision with clear responsibilities, rules for decision-making and procedures*** are desirable, in order to avoid redundancies and allow for efficient processes with regard to market participants, as time matters when it comes to financial stability.
- ***Avoid overlapping supervision:*** It is important to ensure the principle of subsidiarity to avoid redundancies. Consistency of supervisory and policy approaches between NCAs and ESAs needs to be ensured, to guarantee legal certainty and operational functionality of FMIs.
- ***Build-up capabilities:*** It is of upmost importance that the supervisors at the European as well as national level have the necessary operational capabilities (resources and experienced staff) to perform their duties.
- ***Partly industry funding only:*** Given the public aspects of supervision, public funding should at least partly remain. For allocating industry contributions, leverage on existing system letting NCAs collect the fees and pass them on to the ESAs, creating only one bill for market participants.

Questionnaire

I. Tasks and powers of the ESAs

A. Optimising existing tasks and powers

I. A. 1. Supervisory convergence

Question 1: In general, 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?

Please elaborate on your response and provide examples.

DBG supports regulatory efforts to improve the orderly functioning of markets and to promote growth as well as fair competition on a level playing field. As such, DBG supports the ESAs' work with respect to establishing a harmonised and common supervisory culture in order to apply a European single rulebook and acknowledges the importance of the ESAs' work in this regard, shifting from rulemaking towards the implementation of rules and the convergence of supervisory practice. It is an important task to ensure that EU legislation is applied in a similar manner across different Member States.

Different European regulations affect DBG's value chain from trading, clearing and settlement and provide the opportunity to evaluate the progress of the current supervisory set-up, in particular the interplay between the National Competent Authorities (NCAs) and the ESAs. A good example for the good progress of current work of ESAs and the cooperation with NCAs has been proven by the Brexit vote as a "real-life stress-test". It demonstrated quite well that communication channels and coordination between the industry, different national and European supervisors worked smoothly and efficiently. The right way forward is to further improve the existing supervisory structures towards better coordination and cooperation of NCAs and ESAs as well as amongst the ESAs on a best practice basis. This ensures the important build-up of relevant expertise, capabilities and market knowledge at the national and European level in the long run.

This would strengthen the fundamental role of the ESAs in achieving the aim of a deeper and more integrated single market. Given ESAs' current tasks and powers to primarily develop the single market in the context of Level 2 measures in the different regulatory files already today, the right way forward is to enable the ESAs to pursue their current tasks to provide details to the various dossiers that need to be completed for the purpose of regulatory convergence. As such, supervisory convergence builds on regulatory convergence to avoid further fragmentation of European markets, and includes that the ESAs establish an effective and consistent supervision, which is essential to ensure investor protection and to safeguard financial stability. As a tool for further convergence, thought could be spent to use regulations instead of further directives, as proven for example by the EMIR Review.

In the area of CCP clearing, ESMA already achieved good progress in ensuring regulatory convergence across the EU. For example, by publishing the ESMA Opinion regarding the implementation on portfolio margining requirements for CCPs under EMIR. The opinion provided much needed clarification on how the crucial portfolio margining technology applied by CCPs can be performed. DBG would like to encourage ESMA to tackle the identified issues

from the report on improvements in EU CCP supervisory convergence, e.g. coordination of the focus of NCAs' supervisory activities or on the review of CCP collateral policies together with the respective NCA.

Question 2: With respect to each of the following tools and powers at the disposal of the ESAs:

- peer reviews (Article 30 of the ESA Regulations);
- binding mediation and more broadly the settlement of disagreements between competent authorities in cross-border situations or cross-sectorial situations (Articles 19 and 20 of the ESA Regulations)
- supervisory colleges (Article 21 of the ESA Regulations);

To what extent:

- a. have these tools and powers been effective for the ESAs to foster supervisory convergence and supervisory cooperation across borders and achieve the objective of having a level playing field in the area of supervision;

Please elaborate on questions and, importantly, explain how any weaknesses could be addressed.

DBG feels not entitled to comment on other supervisory authorities measures such as peer reviews and mediation of disagreements between competent authorities. However, as outlined in the answer to question 1, the work of the ESAs affects DBG's entire value chain, most prominently so far the Central Counterparty Eurex Clearing as well as the Central Counterparty European Commodity Clearing (ECC) through the established supervisory college structures.

Based on Eurex Clearing's and ECC's experience, the supervisory college structures function well. The supervisory college structures are also best suited as a tool to exchange information and to align, if necessary, participating NCAs on best practice in other colleges. This established practice should not be abandoned by way of introducing tools to influence or discipline NCAs.

It has also to be taken into account that CSDR (in context of banking-type ancillary services) and EMIR already foresee that ESMA may exercise its powers under Art. 17 ESMA regulation if any NCA has not or not orderly applied such regulation.

- b. to what extent has a potential lack of an EU interest orientation in the decision making process in the Boards of Supervisors impacted on the ESAs use of these tools and powers?

Please elaborate on questions and, importantly, explain how any weaknesses could be addressed.

No DBG comment.

Question 3: To what extent should other tools be available to the ESAs to assess independently supervisory practices with the aim to ensure consistent application of EU law as well as ensuring converging supervisory practices?

Please elaborate on your response and provide examples.

The ESAs have a wide range of possible measures at hand as of today (peer reviews, binding mediations, settlement of cross-border disagreements and supervisory colleges). DBG's experiences is limited to supervisory colleges as outlined in the answer to question 2. The tools of the ESAs need to be applied in a harmonised approach based on identified best practices first. In this regard, the tools should be constantly evaluated, before adding to the current toolbox. As a starting point for evaluation, shortfalls in the current assessment of supervisory practices to ensure supervisory convergence should be identified and discussed.

Question 4: How do you assess the involvement of the ESAs in cross-border cases? To what extent are the current tools sufficient to deal with these cases?

Please elaborate on your response and provide examples.

No DBG comment.

I. A. 2. Non-binding measures: guidelines and recommendations

Question 5: 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.

The EU Commission outlines in the consultation document that guidelines and recommendations are legally non-binding. As ESAs use them as tools to enforce and to achieve supervisory convergences they have a de facto binding character. If guidelines and recommendations are used in that sense then the process in drafting, verifying and approval of guidelines and recommendation should follow an orderly regulatory process before they enter into force.

In order to ensure more transparency, greater stakeholder involvement in drafting guidelines and recommendations, e.g. public consultation procedures for guidelines and recommendations, would be welcomed, which should be open for a sufficiently long period allowing for market participants to comment on guidelines that play a decisive role in the overall impact of the legislation (e.g. ESMA guidelines on MiFID II). Moreover, it is recommended that Consultative Working Groups meet on a regular basis.

Moreover, a timely publication of guidelines and recommendations well ahead of the application date of the respective regulation is necessary so that market participants have sufficient time for implementation. It is important that existing guidelines and recommendations are taken into account before issuing new legislation on the same subject whereby the new regulation may differ from existing guidelines and recommendations market participants took a lot of time and effort to comply with.

I. A. 3. Consumer and investor protection

Question 6: 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.

No DBG comment.

Question 7: What are the possible fields of activity, not yet dealt with by ESAs, in which the ESA's involvement could be beneficial for consumer protection?

If you identify specific areas, please list them and provide examples.

Create a market friendly environment: Given the increasing competition of non-European market participants with European market participants, the role of European supervisory authorities should enable a safe and stable environment but also act in a market friendly way. In light of the European jobs and growth agenda, the overall aim should be to establish an attractive environment for companies and investors while ensuring the integrity and stability of the financial markets.

I. A. 4. Enforcement powers – breach of EU law investigations

Question 8: Is there a need to adjust the tasks and powers of the ESAs in order to facilitate their actions as regards breach of Union law by individual entities? For example, changes to the governance structure?

Please elaborate and provide specific examples.

The ESAs have a wide range of possible measures at hand as of today and these should constantly be evaluated, before considering adjustments of tasks and powers.

DBG appreciates that the ESAs provide for supervisory convergence, including supervisory measures and sanctions to be applied in case of breach of Union law by individual entities, while it is the NCAs' task to take care of the proper application of EU legislation and enforcement towards market participants. This division of tasks has proven to be efficient and should be kept, in order to avoid redundancies and unclear responsibilities creating additional burden for market participants and because a "one size fits it all" approach cannot adequately reflect local well-established best practices based on national particularities and legal frameworks.

I. A. 5. International aspects of the ESAs' work

Question 9: Should the ESA's role in monitoring and implementation work following an equivalence decision by the Commission be strengthened and if so, how? For example, should the

ESAs be empowered to monitor regulatory, supervisory and market developments in third countries and/or to monitor supervisory co-operation involving EU NCAs and third country counterparts?

Please elaborate and provide specific examples.

DBG is mainly affected by equivalence decisions for CCPs. Here, ESMA supports the European Commission in the equivalence assessments of third country regimes, and is involved in the work following an equivalence decision (recognition of third country CCPs and certification of third country CRAs) as well as in cooperation agreements with third country authorities.

DBG believes, when recognising the diversity of third country provisions under different EU legislative texts and the lack of an equivalence regime in some of them, there might be the need to ensure consistent supervisory approaches at an EU level.

Equivalence decisions include close cooperation between ESMA and third country supervisory authorities. In order to ensure financial stability and integrity in Europe, it is of utmost importance that ESMA's mandate to support the EU Commission with respect to equivalence decisions is extended to constant monitoring of third country regulation and supervisory standards. This would enable European regulators to react on potential changes in third country regulation or supervisory structure fast enough and based on own intelligence.

As capital markets are global in nature, coordination of supervision both within the EU and with third countries is important to ensure a global level playing field and maintain European competitiveness.

Establishing a transparent process for the review of equivalence decisions would add value to the established process by establishing the equivalence followed by the recognition e.g. of third-country CCPs. This additional monitoring process might also entail dedicated timelines when the different equivalence decisions will be reviewed.

It would be beneficial if the process foresees that the EU Commission gives reasoning for (not) following the ESAs recommendations in specific cases. Another way to improve the process could be that before the EU Commission decides on an equivalence decision a more formal scrutiny process (similar to the introduction of delegated acts or regulatory technical standards) is applied to increase transparency.

I. A. 6. Access to data

Question 10: 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.

Obtaining information: After the financial crisis, reporting obligations for market participants have increased significantly in a very short time frame. This has impacted not only investment firms who need to derive this data from various in-house legacy systems or build new systems, but as well service providers which have and still are significantly investing into new technologies and services in order to support investment firms in their reporting duties. Last but not least as well supervisors which are being "flooded" with data and which may have invested into new systems as well.

Considering the broad array of reporting obligations by financial market participants introduced by various recent financial market regulations, such as EMIR, MiFID II, SFTR, etc. the ESAs need to ensure consistency in reporting and data quality.

In order to enable an efficient exchange of reporting data between all NCAs as well as ESMA, harmonised data requirements for regulatory reporting to NCAs and / or ESMA are generally sensible and have been included so far in various regulations (e.g. MiFID II, SFTR). Those requirements, however, should in no way conflict / overlap with market driven requirements (e.g. efficient real-time digital feeds for the avoidance of stale data in trading vs. ISO 20022 text format for regulatory reports submitted to supervisors directly) under various regulations such as MiFID II and / or SFTR.

Using information: While NCAs and ESMA now have access to big data sets, and continue to do so on an ongoing basis, it is currently not transparent if they have obtained as well the necessary technical means to use those data in an efficient way. ESAs need to be able to extract all relevant information from the data received. Big data analytic tools (smart algorithms) would be the right way to extract the necessary information out of big volumes of data. Before further changing market structure by introducing additional requirements within the regulatory reporting landscape, it deems sensible to go step by step implementing the actual regulatory requirements and gain experience with new tools (such as the Financial Instrument Reference Data System (FIRDS)) first.

Avoid double reporting: With regard to additional powers for ESMA on access to data, clearly double reporting needs to be avoided for the sake of market efficiency, i.e. avoidance of data delivery to both NCAs and ESMA, which would create additional regulatory burden for market participants. It deems sensible that data should initially continue to be reported to the NCAs, which are able to work with the supervised entities on respective data in case of quality issues. NCAs could then upload reported data to a unified IT platform. Currently, from an organisational perspective, it is rather preferable that NCAs play the key role in data collection, because they understand the particular situation of the supervised entities due to still existing national regulatory requirements. This is extremely important, as well for data quality, during a time of multiple changes in the reporting landscape as experienced just now.

Question 11: Are there areas where the ESAs should be granted additional powers to require information from market participants?

Please elaborate on what areas could usefully benefit from such new powers and explain what would be the advantages and disadvantages.

DBG currently does not see any areas where ESAs needs to be granted additional powers to require further information from market participants.

Clearly double reporting needs to be avoided for the sake of market efficiency, i.e. avoidance of data delivery to both NCAs and ESMA, which would create additional regulatory burden for market participants. It deems sensible that data should initially continue to be reported to the NCAs, which are able to work with the supervised entities on respective data in case of quality issues. NCAs could then upload reported data to a unified IT platform.

Currently, from an organizational perspective, it is rather preferable that NCAs play the key role in data collection, because they understand the particular situation of the supervised entities

due to still existing national regulatory requirements. This is extremely important, as well for data quality, during a time of multiple changes in the reporting landscape as experienced just now.

Before further changing market structure by introducing additional requirements within the regulatory reporting landscape, it deems sensible to go step by step implementing the actual regulatory requirements and gain experience with new tools (such as the Financial Instrument Reference Data System (FIRDS)) first.

I. A. 7. Powers in relation to reporting: Streamlining requirements and improving the framework for reporting requirements

Question 12: 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?

Please elaborate your response and provide examples.

Please see also answers to questions 10 and 11.

DBG supports the idea of having periodic reviews of reporting requirements.

It is clear, that a high quantity of data via regulatory reporting was created, where a substantial consolidation and reduction would be helpful: e.g. Anacredit, marco prudential reporting, central bank reporting, financial stability reporting, statistical and prudential reporting. A clear harmonisation and reduction would lead to more proportionality, stability over time and increase the quality / interpretability of the data obtained.

Additionally, while some NCAs are quick and ready for a timely application of MiFID provisions, it seems that selected NCAs might even not be ready at the beginning of 2018 leaving the question as how reporting would work in this Member State. A coordination role in this respect by ESMA would be highly welcome, and could make the application process of new regulations within the EU more efficient.

DBG realizes further that there are still national differences as regards reporting requirements, be it as regards data fields to be submitted to various Member States under the transaction reporting requirements of MiFID II (Art. 26 MiFIR) which go over those data fields being defined within the regulation, or be it the different delay regimes applied on a national level by different Member States which make real-time transparency data under the new MiFID regime less useful for the public.

Language may also be a problem, as some NCAs usually require communication in their national language, as well as regards technical specifications. Here, a harmonised approach would be strongly welcome.

Question 13: In which particular areas of reporting, benchmarking and disclosure, would there be useful scope for limiting implementing acts to main lines and to cover smaller details by guidelines and recommendations?

Please elaborate and provide concrete examples.

There is a high level of detail on accounting and regulatory disclosure requirements with regard to Pillar III. A reduction of requirements and a clarification of the level of detail in this area would be welcomed, to ensure a sound possibility to read and interpret data and to ensure its quality.

I. A. 8. Financial reporting

Question 14: What improvements to the current organisation and operation of the various bodies do you see would contribute to enhance enforcement and supervisory convergence in the financial reporting area? How can synergies between the enforcement of accounting and audit standards be strengthened?

Please elaborate.

No DBG comments.

Question 15: How can the current endorsement process be made more effective and efficient? To what extent should ESMA's role be strengthened?

Please elaborate.

No DBG comments.

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

I. B. 1. Approval of internal models under Solvency II

Question 16: What would be the advantages and disadvantages of granting EIOPA powers to approve and monitor internal models of cross-border groups?

Please elaborate on your views, with evidence if possible.

No DBG comments.

I. B. 2. Mitigating disagreements regarding own funds requirements for banks

Question 17: To what extent could the EBA's powers be extended to address problems that come up in cases of disagreement? Should prior consultation of the EBA be mandatory for all new types of capital instruments? Should competent authorities be required to take the EBA's concerns into account? What would be the advantages and disadvantages?

Please elaborate and provide examples.

DBG is very supportive to have a common rulebook and to strengthen the role of the ESAs in having a common interpretation of the rules. However, there will always be a need to cover national specificities. This covers national law, e.g. in a tax, insolvency or corporate governance context. Equity components are a clear example where there should be a national competence to decide. The treatment of profit and loss pooling agreements is a good example where proper understanding of differences between Member States and the dedicated backgrounds of the contractual relations is needed.

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

Question 18: Are there any further areas where you would see merits in complementing the current tasks and powers of the ESAs in the areas of banking or insurance?

Please elaborate and provide examples.

No DBG comment.

C. Direct supervisory powers in certain segments of capital markets

Question 19: In what areas of financial services should an extension of ESMA's direct supervisory powers be considered in order to reap the full benefits of a CMU?

Please elaborate on your responses providing specific examples.

The current European supervisory set-up following the subsidiarity principle and the CCP college structures have proven to be efficient, maintaining market stability and integrity in times of market stress. The exchange of information between authorities is established.

The right way forward is to keep improving the existing supervisory structures towards better coordination and cooperation of NCAs and ESAs as well as better coordination amongst the ESAs, to enable the ESAs to pursue their current tasks for achieving the aim of a deeper and more integrated single market, given their current workload (please also see answer to question 1).

Additionally, the NCAs know best both the local markets with their particularities (specific products and client base) as well as any additional legal frameworks the supervised entities might have to adhere to (in addition to European regulation). Hence, there are distinguished areas of expertise at different supervisory levels.

Overall, DBG does not see the need for an extension of direct supervisory powers of ESMA:

Direct supervision of data reporting services on a pan-European level may first require besides regulatory adaptation of respective regulations (where NCAs are being identified as the relevant supervisors) harmonisation of fragmented national regulatory frameworks. Currently, from an organisational perspective, it is therefore rather preferable that NCAs play the key role in data collection, because they understand the particular situation of the supervised entities due to still existing national regulatory requirements. This is extremely important, as well for data quality, during a time of multiple changes in the reporting landscape as experienced just now. Before

further changing market structure by introducing additional requirements within the regulatory reporting landscape, it deems sensible to go step by step implementing the actual regulatory requirements and gain experience with new tools (such as the Financial Instrument Reference Data System (FIRDS)) first.

Supervising post-trading FMIs from 27 EU-Member States requires relevant expertise and operational knowledge. Due to the particular status of CSDs holding the Securities Settlement Systems (SSS) status and especially if operating under a partial banking licence, supervisory topics related to financial stability and risk management require the involvement of “macro”-prudential authorities as central banks and other European authorities, such as the ECB or SRB.

In particular, CCPs already today have established a supervisory college including all relevant European supervisory authorities. This well-functioning college structure, with well-established relationships and well-experienced NCAs, should be continued and not changed to direct supervision of ESMA (please also see answer to question 2).

Strong political commitment on both EU and Member State level for enhanced convergence and harmonisation of supervision can be observed. Harmonisation per se would help to create a CMU, which is of high importance. However, consideration should be given to change supervisory structures gradually, if necessary, given that relevant EU legislation is still in the process of implementation. In order to provide a positive environment to develop business, as much continuity as possible should be provided in these challenging times.

DBG supports the proposition to strengthen the ESAs’ role in monitoring and implementing work towards third countries, once equivalence has been granted by the EU Commission. As outlined in the answer to question 9, ESMA is tasked to harmonise the application of European law throughout Europe and its role should be strengthened with respect to equivalence decisions with third countries to ensure that third country provisions are at least as prudent as the European regulations.

Independently of the final range of an ESAs review, DBG is of the opinion that with regard to supervisory structures, the following principles should be taken into account:

Strong and effective supervision needs to be ensured: Clear responsibilities, rules for decision-making and procedures are needed and redundancies should be avoided, in order to allow for efficient processes with regard to market participants, as time matters when it comes to financial stability.

Build-up capabilities: It is of utmost importance that the supervisors at the European as well as national level have the necessary operational capabilities (resources and experienced staff) to perform their duties.

Overlapping supervision should be avoided: It is important to ensure the principle of subsidiarity to avoid redundancies; otherwise, complexity to decision processes is added. Also, consistency of supervisory and policy approaches between NCAs and ESAs needs to be guaranteed, in order to ensure legal certainty and operational functionality of FMIs.

In case of any changes to the supervisory structures, please be aware that as long as there are no single rulebook and fragmented national legal frameworks with regard to e.g. taxation, insolvency law, securities law, etc., a lot needs to stay in discretion of NCAs and them having to carry supervisory responsibility.

Question 20: For each of the areas referred to in response to the previous question, what are the possible advantages and disadvantages?

Please elaborate on your responses providing specific examples.

Consolidated supervision of post-trading FMIs from 27 EU-Member States within ESMA would lead to overlapping supervision and add a layer of complexity to the supervision of such entities, as some form of local supervision or involvement of national authorities will still be necessary for national implementation of EU legislation.

For supervising CCPs, EMIR provides the structure of supervisory colleges, including ESMA as a member by definition and working efficiently in its current set-up, as described in answer to question 2.

When thinking of centralised supervision of ICSDs, there explicitly is no definition to differentiate between International CSDs and CSDs. Moreover, it needs to be considered that due to the particular status of CSDs holding the Securities Settlement Systems (SSS) status and especially if operating under a partial banking licence, supervisory topics related to financial stability and risk management require the involvement of “macro”-prudential authorities as central banks and other European authorities, such as the ECB or SRB. It definitely needs to be ensured that supervised entities with interlinked operations, as for ICSDs and CSDs, should be subject to a consistent set of rules and supervision.

With regard to additional powers for ESMA concerning access to data, double reporting should be avoided, i.e. that data has to be delivered both to NCAs and to ESMA, creating additional regulatory burden for market participants. Harmonised data requirements for regulatory reporting to NCAs and / or ESMA are generally sensible in order to efficiently exchange data between NCAs. However, instead of approaching market participants directly, ESMA should initially cooperate more closely with the NCAs. Data should be reported to the NCAs, which are able to work with the supervised entities on reported data in case of quality issues. NCAs could then upload reported data to a unified IT platform. (Please also see answers to questions 10 and 11.)

The same applies to direct supervision of data reporting services on a pan-European level as this would require besides regulatory adaption of respective regulations (where NCAs are being identified as the relevant supervisors) harmonisation of fragmented national regulatory frameworks beforehand. Currently, from an organizational perspective, it is therefore rather preferable that NCAs play the key role in data collection, because they understand the particular situation of the supervised entities due to still existing national regulatory requirements. This is extremely important, as well for data quality, during a time of multiple changes in the reporting landscape as experienced just now (please also see answer to question 19.)

Question 21: For each of the areas referred to in response to question 19, to what extent would you suggest an extension to all entities or instruments in a sector or only to certain types or categories?

Please elaborate on your responses to questions 19 to 21 providing specific examples.

Please see answers to questions 19 and 20.

II. Governance of the ESAs

A. Assessing the effectiveness of the ESAs governance

Question 22: To what extent do you consider that the current governance set-up in terms of composition of the Board of Supervisors and the Management Board, and the role of the Chairperson have allowed the ESAs to effectively fulfil their mandates? If you have identified shortcomings in specific areas, please elaborate and specify how these could be mitigated?

No DBG comment.

Question 23: To what extent do you think the current tasks and powers of the Management Board are appropriate and sufficient? What improvements could be made to ensure that the ESAs operate more effectively?

Please elaborate.

No DBG comment.

Question 24: To what extent would the introduction of permanent members to the ESAs' Boards further improve the work of the Boards? What would be the advantages or disadvantages of introducing such a change to the current governance set-up?

Please elaborate.

No DBG comment.

Question 25: To what extent do you think would there be merit in strengthening the role and mandate of the Chairperson? Please explain in what areas and how the role of the Chairperson would have to evolve to enable them to work more effectively? For example, should the Chairperson be delegated powers to make certain decisions without having them subsequently approved by the Board of Supervisors in the context of work carried out in the ESAs Joint Committee? Or should the nomination procedure change? What would be the advantages or disadvantages?

Please elaborate.

No DBG comment.

B. Stakeholder groups

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.

For market participants it is important that supervisors are accessible, if questions need to be clarified, independent from whether they are on a federal, national or on a centralised level. It should be guaranteed that there is an open communication.

Thus, DBG welcomes the excellent culture of establishing the different ESAs' stakeholder groups with the opportunity to provide experiences / feedback of market participants, discuss relevant topics, and agree on the way forward. DBG and its entities participate actively in ESMA stakeholder groups or are involved indirectly by their respective association representatives. Taking the increasing importance of prudential supervisory tasks by EBA on FMIs, the representation of FMIs in the stakeholder groups at EBA needs to be assured.

It is important to allow stakeholders to raise the issues that need the attention of ESAs, as decisions on Level 2 / Level 3 should be based on the broadest possible input.

However, stakeholder groups and consultative Working Groups could be improved with regard to transparency on the internal working structure of ESAs' Working Groups, as well as with regard to period feedback from the decision taken by the various ESAs departments before a decision is taken by the Board of Supervisors.

III. Adapting the supervisory architecture to challenges in the market place

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.

For establishing the ESFS after the recent financial crisis, it proved to be the most efficient approach to install three supervisory authorities, each for every sector of the financial industry, and a board to monitor risks.

As regulation has reached a high degree of granularity and complexity the level of cross-sector interdependencies has increased and thereby effecting the area of supervision for all three ESAs. Therefore, to foster coordination between ESAs might increase effectiveness of regulation: When discussing and drafting legislation that affects target groups of several ESAs, cross-interaction and coordination of the ESAs could be improved, in order to achieve balanced and evidence-based requirements for market participants. Thought could be spent on using joint working groups of the ESAs for discussing and deciding on issues that cut across the ESAs. For example, difficulties were experienced when drafting Level 2 Technical Standards on the PRIIPS regulation: EIOPA took the lead, while ESMA could have provided more input, because as a result the Level 2 Technical Standards show predominance of the fund industry perspective, lacking the perspective of the financial market infrastructure.

Furthermore, cooperation between ESAs and other European agencies (e.g. energy, digitalisation) would be recommended, too. For overlapping reporting requirements, such as those in MiFID II and REMIT, as well as in MAR and REMIT, better cooperation could lead to less overlap and a more efficient implementation of the requirements.

ESAs should also engage more at an international level to ensure regulatory convergence. International standard setters such as the FSB, IOSCO and BCBS would benefit from the expertise of the ESAs and also appreciate their experience in setting harmonised rules between many different sovereign states.

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?

No DBG comment.

IV. Funding of the ESAs

Question 29: The current ESAs funding arrangement is based on public contributions. Please elaborate on each of the following possible answers (a) and (b) and indicate the advantages and disadvantages of each option.

a) should they be changed to a system fully funded by the industry?

- Yes
- No
- Don't know / no opinion / not relevant

What are the advantages and disadvantages of option a)?

Industry financing needs to be avoided. Firstly, enabling a proper financial prudential supervision is in the public interest. Secondly, public authorities and their use of funding requests controlling powers of the European Parliament, which is important to uphold democratic legitimacy and accountability of the ESAs. Thirdly, especially ESMA fulfils sovereign tasks in investor and consumer protection.

b) should they be changed to a system partly funded by industry?

- Yes
- No
- Don't know / no opinion / not relevant

What are the advantages and disadvantages of option b)?

If industry funding is unavoidable, especially ESMA should not be paid by the industry alone. If

competencies are shifted from NCAs to the ESAs this needs to be reflected in the funding system: contributions should be structured on a task-specific basis, according to supervisory costs that arise from industry-related versus sovereign tasks, with ESMA holding a special role in investor and consumer protection.

Also, more transparency about the costs arising from ESAs' activities and the allocation of costs should be ensured – particularly as there are national legal requirements for the legitimacy of a levy on the industry, stating that only companies may be charged that are causing supervisory activities or are main beneficiaries of the same.

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?

- A) a contribution which reflects the size of each Member State's financial industry (i.e., a "Member State key")
- B) a contribution that is based on the size/importance of each sector and of the entities operating within each sector (i.e., an "entity-based key")

Please elaborate on (a) and (b) and specify the advantages and disadvantages involved with each option, indicating also what would be the relevant parameters under each option (e.g., total market capitalisation, market share in a given sector, total assets, gross income from transactions etc.) to establish the importance/size of the contribution.

No DBG comment.

Question 31: Currently, many NCAs already collect fees from financial institutions and market participants; to what extent could a European system lever on that structure? What would be the advantages and disadvantages of doing so?

Please elaborate.

A double burden for European FMIs needs to be avoided, in a situation where they could be directly contributing both to NCAs' funding and to ESAs' funding.

An efficient set up would be to leverage on the existing system and to let NCAs collect the fees and pass them on to the ESAs, creating only one bill for market participants, in order to keep administrative and costs burdens at the lowest possible level.

General question

Question 32: You are invited to make additional comments on the ESAs Regulation if you consider that some areas have not been covered above.

Please include examples and evidence where possible.