

**MEMO# 30697**

May 10, 2017

# **EU Commission Consultation on the Operation of the European Supervisory Authorities - Draft ICI Global Response**

[30697]

May 10, 2017 TO: ICI Global EU Capital Markets Union Committee  
ICI Global Regulated Funds Committee  
International Operations Advisory Committee  
International Operations Working Group RE: EU Commission Consultation on the Operation of the European Supervisory Authorities - Draft ICI Global Response

On 21 March the European Commission (“Commission”) published a consultation paper (“CP”) on the operation of the European Supervisory Authorities (ESAs).[\[1\]](#) ICI Global intends to respond to certain questions in the CP that are of relevance to regulated funds and asset managers. ICI Global’s draft response is attached. Members should provide comments on the draft response to Giles Swan by close of business on Friday 12 May. Responses are to be submitted via an online questionnaire by 16 May 2017.[\[2\]](#)

## **Consultation Paper**

The CP is split into two sections. The first section provides: (i) an overview of the ESAs;[\[3\]](#) (ii) a summary of past evaluations and recommendations concerning the operation of the ESAs;[\[4\]](#) and (iii) the rationale for launching the CP. The second section contains draft proposals and consultation questions across four broad categories of issues: (i) tasks and powers of the ESAs; (ii) governance; (iii) supervisory architecture; and (iv) funding. Extracts from the second section of the CP that are relevant to regulated funds and asset managers are summarised below.

### **Part I - Tasks and Powers of the ESAs**

The Commission raises questions of relevance to regulated funds and asset managers in the following areas concerning the tasks and powers of the ESAs:

#### ***Optimising existing tasks and powers***

- **Supervisory Convergence (Questions 1-4)** – covering the potential development of the ESA’s supervisory and enforcement tools (e.g. peer reviews and binding mediation); how the ESAs could more effectively assist supervisors in situations involving cross-border services; and to what extent the current governance set-up

may disincentivise the use of existing tools;

- **Non-binding measures: guidelines and recommendations (Question 5)** – covering the formulation of the tasks and powers under which ESAs issue guidelines and recommendations;
- **Consumer and investor protection (Questions 6-7)** – covering the tasks and powers of the ESAs relating to consumer and investor protection (e.g. product intervention and investor warnings);
- **Enforcement powers – breach of EU law investigations (Question 8)** – covering the tasks and powers of ESAs in order to facilitate their actions as regards breach of Union law by individual entities;
- **International aspects of the ESAs' work (Question 9)** – covering the ESA's role in determining, monitoring and implementing third country equivalence assessment;
- **Access to data (Questions 10 and 11)** – covering the powers of ESAs to access and/or require information from national supervisory authorities and market participants;
- **Powers in relation to reporting: Streamlining requirements and improving the framework for reporting requirements (Questions 12-13)** – covering the ESAs' role in the consolidation and streamlining of the reporting and/or other data related requirements in the EU legislation.

### ***Direct supervisory powers in certain segments of capital markets***

The CP discusses the extension of ESMA's direct supervisory powers in market segments where:

- there is a strong need to support more integrated, efficient and well-functioning financial instruments markets;
- common solutions in the application of the EU capital market rules are more efficient (for example due to synergies or to more uniform application of rules leading to less obstacles for market integration and less opportunities for companies to take advantage of loopholes in order to avoid unprofitable regulations or for regulators to compete with one another in order to attract businesses or other actors to operate in their jurisdiction.); or
- high integration or intense cross-border activity entail higher cross-border contagion risks to financial stability or market integrity.

Pan-European investment fund schemes are cited as an example of a market segment in which ESMA could have direct supervisory powers. The CP asked respondents to comment about these proposals, including the advantages and disadvantages of direct ESMA supervision (Questions 19-21).

### **Part II – Governance of the ESAs**

The Commission discusses the effectiveness of the governance structure of the ESAs (Questions 22-25) and the role of ESMA's Stakeholder Groups in contributing to the development of draft technical standards, guidelines and recommendations (Question 26).

### **Part III – Adapting the supervisory architecture to challenges in the market place**

The Commission outlines the current tripartite structure of the ESAs (i.e. banking, insurance/ pensions and securities). In the context of the CMU and Brexit, and against the backdrop of changes to financial markets, the Commission raises questions as to whether the effectiveness and efficiency of the EU supervisory regime could be enhanced through

the adoption of:

- a single seat for the one or more ESAs (Question 27)
- a “twin-peaks” model of supervision, comprising one prudential regulator/supervisor for financial institutions and one market conduct regulator/supervisor for financial markets, dealing with conduct and consumer protection (Question 28);

## **Part IV - Funding of the ESAs**

The Commission raises questions about the future funding model of the ESAs, including shifting to a full or partial industry based funding model and /or potential models for attributing the costs of ESA’s activities on a Member State basis (Questions 29-31).

## **ICI Global’s Draft Response**

We make the following key points in our draft response:

- ESMA should make more use of its existing tools to remove or otherwise resolve cross-border cases such as barriers to the cross-border distribution of regulated funds in the EU, including:
  - the development of a single central notification hub and repository for the automatic submission of cross-border marketing notifications and updates to key investor information; and
  - the use of ESMA’s supervisory convergence tools to harmonise the authorisation and notification process for UCITS;
- All draft and proposed guidelines, recommendations and Q&A from the ESAs (*i.e.* Level 3) should be subject to consultation, for public comment, accompanied by:[\[5\]](#)
  - supporting policy rationales as well as detailed impact analysis of policy options, including extraterritorial effects; and
  - justification of how proposed policy options align with adopted legislation (*i.e.* Level 1) and implementing measures (*i.e.* Level 2) and are justified by cost/benefit analysis;
- ESMA can enhance the role it plays as a central repository for consumer and investor information, including by working with Member State authorities to identify and develop a system for a wider distribution of relevant alerts and other information for EU investors. For example, some national authorities may have information that would benefit investors in other Member States;
- The ESAs should continue to develop and support investor education and financial literacy across the EU, including examining work done at international level by IOSCO and the OECD, and by other financial regulators and governments to identify and benchmark how the ESAs can support Member State initiatives in this area;
- ESMA’s finite resources should be appropriately allocated to ensure sufficient focus on its core EU competencies within the European System of Financial Supervision (ESFS), rather than on the assessment and monitoring of third country regulations which is more appropriately informed by existing international assessments (*e.g.* the International Monetary Fund’s Financial Sector Assessment Program) and the work of global standard setting bodies such as IOSCO;
- The ESAs can contribute to the removal of regulatory reporting obligations on regulated funds and their managers that are duplicative or without clear added value, by promoting more harmonisation and consistency, including at international level, and considering, on a holistic basis, the data collected for supervisory purposes, including the potential for the content, timing and frequency and submission of reports to be streamlined;

- Any changes made to the ESFS should not dilute or limit the expert role played by regulators overseeing capital markets; and
- The ESAs have an important role to play, alongside national regulators, to strive for a “robust” financial system that offers and promotes diversity, encourages innovation and experimentation, and is adaptable.

## Next Steps

The Commission plans to assess the evidence obtained through this consultation against the ESAs objectives to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The Commission considers the CP to complement the public consultation it carried out in late 2016 to review the EU's macro-prudential framework including the European Systemic Risk Board ("ESRB")<sup>[6]</sup>, to which ICI Global responded.<sup>[7]</sup> The Commission has indicated that the follow-up to the CP on the micro-prudential part of the ESFS will be closely coordinated and considered in parallel to work carried out as a follow-up to the public consultation on the EU's macro-prudential framework.

Giles Swan  
Director of Global Funds Policy, ICI Global

## [Attachment](#)

### endnotes

[1] [https://ec.europa.eu/info/sites/info/files/2017-esas-operations-consultation-document\\_en.pdf](https://ec.europa.eu/info/sites/info/files/2017-esas-operations-consultation-document_en.pdf)

[2] <https://ec.europa.eu/eusurvey/runner/esas-operations-2017>

[3] The three ESAs considered in the consultation are the European Banking Authority (EBA), European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA).

[4] The European Commission and European Parliament have previously reported on the operation of the ESAs and the European System of Financial Supervision (ESFS) in 2014 and 2013 respectively.

[5] See *also* ICI Global's response to the EU Commission's Call for Evidence on the EU Regulatory Framework for Financial Services for a discussion of the elements that ICI Global recommends make up the legislative process, *available from* <https://www.ici.org/pdf/29677.pdf>

[6] Consultation Document, Review of the EU Macro-Prudential Policy Framework, *available from* [http://ec.europa.eu/finance/consultations/2016/macprudential-framework/docs/consultation-document\\_en.pdf](http://ec.europa.eu/finance/consultations/2016/macprudential-framework/docs/consultation-document_en.pdf)

[7] <https://www.iciglobal.org/pdf/30376a.pdf>

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