European Commission Consultation on the Review of the European System of Financial Supervision

ICMA response

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1. The European Supervisory Authorities (ESAs)

1.1. Effectiveness and efficiency of the ESAs in accomplishing their tasks

1.1.a. How do you assess the impact of the creation of the ESAs on the financial system in general and on (i) financial stability, (ii) the functioning of the internal market, (iii) the quality and consistency of supervision, and (iv) consumer and investor protection in particular?

Response submission from the International Capital Market Association (ICMA – Register ID # 0223480577-59).

The ICMA is a pan-European self-regulatory organisation and an influential voice for the global capital market. It has a membership of over 430 firms and represents a broad range of capital market interests including global investment banks and smaller regional banks, as well as asset managers, exchanges and other venues, central banks, law firms and other professional advisers. The ICMA's market conventions and standards have been the pillars of the international debt market for well over 40 years. For more information regarding the ICMA please go to http://www.icmagroup.org/

From the outset the ICMA has been supportive of the establishment of the ESFS, which the ICMA believes to have the potential to support financial stability; enhance the functioning of the EU internal market; and improve the overall quality and consistency of supervision. Given its own focus on the continued development of an efficient and effective international securities' market, the ICMA has a particularly keen interest in supporting the evolution of ESMA and the rules applicable for the securities markets. Accordingly the ICMA's short set of comments in response to this consultation focus on ESMA, albeit that many of the comments are of broader applicability.

At the current time it is apparent that, more than ever, Europe needs a thriving and efficient capital market, able to meet the challenges of funding real economy needs whilst European economies' former dependence on funding through the channel of bank lending continues to diminish. The ICMA is convinced that this is already a major challenge for the capital markets; and is conscious that much work remains to be completed on developing a single, efficient capital market across the EU, with markets and their supporting infrastructure still significantly fractured at Member State level. All engaged in the important process of financial regulatory reform recognise the potential for the emergence of an improved financial services sector and the ICMA is striving to ensure that includes a stronger European capital market capable of performing its desired task of efficiently allocating funds to business needs. Taking account of the ways in which the work of the ESAs can contribute to the establishment and maintenance of an efficient and effective market, the ICMA considers that the ESAs can make an important contribution to the achievement of this highly desirable economic objective.

1.1.c. In your view, do the ESAs face any obstacles in meeting their mandates? If yes, what do you consider to be the main obstacles? Please explain.

The ICMA notes that the ESAs were established with the objectives to contribute to:
(i) improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision,
(ii) protecting depositors, investors, policyholders, consumers and other beneficiaries,
(iii) ensuring the integrity, efficiency and orderly functioning of financial markets,
(iv) safeguarding the stability of the financial system,
(v) strengthening international supervisory coordination.
In order to meet these objectives, each ESA is required to contribute to ensuring the coherent, efficient and effective application of the relevant Union law.

Furthermore, the ICMA notes that the most important elements of the ESAs' mandates include, among others,
- the power to contribute to the development of a single rule book by developing draft technical standards, guidelines and recommendations;
- the power to ensure the consistent application of Union law;
- the power to take action in emergency situations;
- the task to take a leading role in promoting transparency, simplicity and fairness for consumers and investors;
- the power to settle disagreements by binding mediation between national supervisory authorities;
- the ability to participate in colleges of supervisors and receive all relevant information;
- the obligation to play an active role in facilitating a common European supervisory culture and ensuring consistent supervisory practices;
- the task of assessing market developments;
- an international and advisory role;
- the task of collecting information;
- the obligation to closely cooperate with the ESRB; and
- direct supervisory powers for the registration and supervision of credit rating agencies (ESMA).

The establishment of a new organisation required to meet such significant objectives and to fulfil such a broad set of mandates would be a challenge at any time. In the case of the ESAs the challenge is all the greater, given that the very reason for their formation was the incidence of a major financial crisis. Alongside formation of the ESFS, the other major pillar of the official response to the financial crisis is an extensive programme of financial regulatory reform. The upshot of this second pillar is that the ESAs are presented with a huge work programme, as they are charged with developing the detailed standards (level 2) and guidelines (level 3), necessary to support practical implementation of the applicable new EU Directives and Regulations (level 1).

Consequently, the ICMA observes that the main obstacle faced by the ESAs is the sheer volume of demands being placed upon them. This creates a risk that the ESAs will fail to meet their objectives as effectively as they ought and that they will not be able to fulfil their mandates as thoroughly as is desirable. The ICMA perceives that the ESAs are at the heart of the on-going financial reforms. Consequently, the ICMA believe that it is very important to give the ESAs adequate time and resource to achieve high quality financial reform, underpinning a strong and stable European economy. There is of course interdependency between these elements, with even more resources needing to be allocated if the time allowed is to be constrained.

On the question of allowing time to the ESAs, please also see the ICMA's response to question 1.2.4.b below. Furthermore, to the extent that it may be considered impracticable for the ESAs to complete all of the envisaged mandates to a high quality within a particular timeframe (given available resources) the ICMA suggests that a principle of prioritisation be incorporated in level 1 mandates. If all tasks cannot be achieved over a specific period, a phased approach should be taken. Ideally, the legislators should consider ways in which to confer powers on the European Commission to extend the implementation deadlines in justified instances.

1.2. Governance of the ESAs

1.2.1. General governance issues

1.2.1.a. Are the governance requirements sufficient to ensure impartiality, objectivity and autonomy of the ESAs?

When the ESAs were established it was recognised that legal constraints, particular in relation to the Meroni principle, gave rise to a need for a delicate balance in how the ESAs could operate within the framework of the other existing EU Institutions. In particular the European Commission was assigned a very closely linked role in order to give legal effect to standards drafted by the ESAs. Given the degree of flexibility this compromise affords the European Commission, the ICMA considers that it is very important that full transparency is respected. In particular, in any cases where it differs from recommendations which the ESAs have put forward, the European Commission's position should be very clearly articulated in a transparent way.

1.2.3. Financing and resources

1.2.3.a. How do you assess the arrangements on financing and resources? If you have identified shortcomings, please specify how these could be addressed.

As already observed in response to Question 1.1.c, the ICMA considers that the limited resources of the ESAs are a key point of concern when considered in relation to the level of demands being imposed upon them. Either more resource and/or more time needs to be allowed if this is not to result in suboptimal results with respect to the ESAs delivering against their objectives and fulfilling their mandates.

On the question of allowing time to the ESAs, please also see the ICMA's response to question 1.2.4.b below.

1.2.4. Involvement and role of relevant stakeholders

1.2.4.b. Are you satisfied with the quality and timeliness of consultations carried out by the ESAs?

Dated 11 January 2011, ESMA produced a public statement (available at http://www.esma.europa.eu/system/files/2011_11.pdf) on its consultation practices. This outlines its views on the purpose of consultation and the guiding principles it uses to consult. The ICMA notes that this includes the following statement: "For significant issues, ESMA will generally apply a three month consultation period as a standard, unless an external timetable is imposed or the measure requires urgent action to ensure the smooth functioning of the markets."

The ICMA fully supports ESMA's commitment to supporting best practice for consultation by allowing an appropriate period of time for responses. Nevertheless, for ESMA to be able to give effect to this approach it is necessary that it be provided with sufficient time in which to do so. Hence deadlines imposed on ESMA should be realistically set. The ICMA considers that one practical element in order to support this is that timelines for level 2 implementation, as set out in level 1, should not be defined in absolute date-specific terms, but by specifying a period for ESA drafting, starting from the date when the level 1 measure is adopted (or enters into force). Furthermore, the ICMA believes that the ESAs should be given a period of no less than 12 months post-adoption (or entry into force) during which to draft applicable standards. Additionally, the ICMA believes that EU legislation should allow for realistic implementation timetables. Consideration in this regard needs to start in the formulation of the level 1 legislation. Ideally, implementation dates should also be set in relative rather than absolute terms. In other words they should come into force a specified (realistic) number of months after the final text is published in the Official Journal (OJ), thus avoiding that the window for implementation becomes unduly compressed in consequence of any delays in the legislative process.

1.2.4.d. In your experience, does the composition of stakeholder groups ensure a sufficiently balanced representation of stakeholders in the relevant sectors? If not, which areas appear to be insufficiently/overly represented?

The ICMA believes that there is scope to improve on the composition of stakeholder groups. The need for a spread of representation is an important consideration, which goes deeper than simply having a certain number of industry representatives alongside those of other stakeholder groups. For example, when looking at ESMA's Securities and Markets Stakeholder Group the ICMA is concerned that there is a lack of representation with respect to fixed income markets as compared to equity markets, with the consequent risk that important distinctions between markets are likely to be inadequately recognised in the decision making process. The ICMA recognises that, with a limited number of places available, ensuring the right balance is not an easy task, also considering that it is important to find representatives with the requisite practical knowledge and experience to allow them to make appropriately valuable contributions to the stakeholder groups' work. As well as calling for great care in composing these important groups, the ICMA considers that there needs to be appropriate recognition of the limitations with respect to what can be expected of an individual stakeholder group. This means it is important to also make full use of other formally organised standing committees and working groups, which equally need to be carefully and suitably composed, as well as other more informal means of connecting with stakeholders – including through the channel of trade associations such as the ICMA.

1.2.4.e. Is the work undertaken by the stakeholder groups sufficiently transparent? Do you see areas where the approach towards transparency needs to be revisited?

The ICMA would welcome the fullest possible transparency, in as timely a manner as possible, regarding the work undertaken by the stakeholder groups.

1.2.4.f. In your experience, are the ESAs, and in particular the ESAs stakeholder groups, sufficiently accessible for stakeholders not directly represented in these stakeholder groups?

Please see the response to question 1.2.4.d above.

3. Cooperation and interaction between the ESAs (micro level) and ESRB (macro level)

3.2. Aspects of macro-micro interaction

3.2.a. What is your assessment of the cooperation between ESRB and the ESAs?
In which areas has cooperation been successful? If you identify room for improvement, please specify how this could be addressed.

The ICMA notes that on 14 February 2013 ESMA published its first report on trends, risks and vulnerabilities in EU securities markets and a risk dashboard for the 4th Quarter 2012. The report looks at the performance of securities markets in 2012, assessing both trends and risks in order to develop a comprehensive picture of systemic and macro-prudential risks in the EU that can serve both national and EU bodies in their risk assessments. As part of its on-going market surveillance, ESMA will now be updating its report semi-annually, complemented by its quarterly risk dashboard. By regularly looking into cross-border and cross-sector trends and risks both at the wholesale and retail level, ESMA's report is intended to contribute to promoting financial stability and enhancing consumer protection.

The ICMA's mission is to promote resilient and well-functioning international debt capital markets, given that such markets are necessary for economic growth, and benefit market participants and their clients alike. Given this, the ICMA considers that this aspect of ESMA's work, examining and monitoring the financial stability of markets, is a very pertinent aspect of the new financial regulatory regime. The ICMA sees that this markets' stability oriented work, under the auspices of the ESFS, is an area in which it can usefully contribute over time; and looks forward to being able to continue to interact appropriately with those involved, both at ESMA and the ESRB.

5. Miscellanea

5.a. Do you have any other comment on the effectiveness and efficiency of the ESAs and ESRB within ESFS and on ESFS in general? Please indicate whether the Commission may contact you for further details on the information submitted, if required.

The ICMA appreciates the valuable contribution made by the European Commission through this public consultation process and would like to thank the European Commission for its careful consideration of the points made in this response, which the ICMA would be happy to review in a meeting with the European Commission team should they consider such to be helpful. The ICMA remains at your disposal to discuss any of the above points, or any further questions which may be relevant to the assessment of international capital market impacts as work progresses.