

"Review of the European Supervisory Authorities:

ECON Commission – 3rd May 2017

European Parliament, Brussels

It is my pleasure and my honour to give you today my thoughts on the functioning of the three Authorities that were created following the 2009 Report that I chaired at the time.

Since then, 7 years have elapsed and it is timely to assess the efficiency of these entities and their future in the context of the Brexit.

1. Achievements of the ESAs

It is fair to say that the three authorities have done a good job regarding their missions and that they have succeeded through the quality of their staff and the leadership of their management in becoming a major center of competence recognized worldwide.

In particular the three agencies have been instrumental in achieving a single rule book for banks, insurance companies and market activities.

1.1 EBA

Much progress has been achieved in establishing a European Single rulebook in the banking area.

EU banks of all types and sizes are now facing really uniform definitions of key supervisory aggregates, for instance a common definition of non-performing loans and forbearance, common definitions of high quality liquid assets and a single framework for supervisory reporting, to mention only a few of them.

When the EBA was established in 2010, there was no single rulebook for banking legislation in the European Union and only limited cooperation between supervisors within the single market.

The policy landscape has considerably changed in a limited period of time. With the Single Rulebook¹, consisting of a single set of harmonized prudential rules, European banking legislation has reached an unprecedented level of regulatory integration.

EBA has taken the initiative to coordinate within Europe and with non EU jurisdictions in the field of global regulation and notably risk weighted assessments methods. In this respect, it played a major role in assessing and explaining the impact of some regulatory initiatives of the Basel Committee from a European standpoint.

The EBA has also performed on a regular basis a fundamental task which is to assess the risks and challenges of the banking sector in the EU. This is a remarkable achievement that complements the ECB work.

¹ *The CRR-CRD package adopted in 2013, the BRRD and DGSD in 2014, and relevant delegated and implementing acts on the basis of RTS and ITS prepared by the EBA giving technical advice to the Commission.*

1.2 ESMA

ESMA has achieved a significant task in terms of drafting technical standards and opinions concerning EU capital market legislations adopted since the financial crisis (AIFMD, EMIR, MiFID II / MiFIR, CSDR...).

ESMA also has some specific responsibilities. It directly supervises certain activities (Trade Repositories and Credit Rating Agencies)². ESMA also has proactive risk management powers that include the possibility to temporarily prohibit or restrict access to products under MiFID II and to intervene on short selling activities in exceptional circumstances. A third role of ESMA is being in charge of the recognition of third-country CCPs providing services within the Union and participating in the supervisory colleges of cross-border CCPs.

ESMA has shown in this field its commitment and technical expertise which is the basis of the mandate given to ESMA by EU legislators.

1.3 EIOPA

EIOPA played a leading role in the establishment and the implementation of Solvency 2, which is applicable since 1 January 2016. Furthermore EIOPA advised the EU Commission on the Solvency II delegated acts, namely on the calibration for certain long term investments.

² *for which it ensures the registration of new players and checks the appropriate application of EU rules*

2. Challenges and new developments

I see several major issues that need to be addressed if we want to achieve a more efficient financial system.

a) Review the membership of Boards

Detailed regulations should be carried out by regulators and not exclusively by supervisors. Something odd has crept into the functioning of ESAs: only national supervisors sit on the boards of ESAs but not national regulators (finance ministries), which should be the rule when regulation is debated.

Supervisors are not supposed to write rules but to apply them. Furthermore they are not inclined to change their own habits as supervisors. So the current situation is a recipe for inertia.

I therefore suggest that both regulators and supervisors participate in ESAs Boards.

b) Addressing the governance issues of Boards featuring national representatives while seeking an EU objective.

Of course, the present setting gives national representatives the prevailing influence in the governance of ESAs. This is normal. Nonetheless, this should not be an opportunity for National Competent Authorities to adapt unilaterally rules or add local requirements with the objective of protecting their domestic depositors, savers or policy holders without any negotiation at the EU level. This is creating significant fragmentation and weakening the financial single market as well as the Banking Union.

It has been observed that in some circumstances the ESAs have not been able to obtain a consistent implementation of some technical rules.

Providing the ESAs with some effective powers of sanction seems a necessary measure. Indeed, although the ESAs have the possibility to detect and investigate breaches to Union laws, gold plating, or shortcomings in the mitigation of systemic risks, they cannot act upon them effectively at present because they have no power of sanction if the NCAs concerned do not take the necessary correcting measures. And until now peer pressure appears to not have been sufficient and is not the recipe to move forward. Addressing this issue is essential for effectively implementing the Banking Union and the CMU. In this respect, binding mediation and the settlement of disagreements between competent authorities (as they may also be raised by industry players) should be resorted to more actively. In such a context, a sanction power should be delegated by the Commission to the ESAs.

In order to promote the European general interest, it could also be envisaged that the Management Boards of the ESAs be transformed into Executive Boards with independent permanent members not coming from the National Authorities.

This Executive Board could have its own decision process in certain areas such as binding mediation, on site inspectors. Its members could have a seat in the Board of Supervisors. Overall these changes would render the decision making process more efficient and in particular more European.

c) Further possible improvements

Other changes, possibly more ambitious, have been proposed by some stakeholders. These include centralizing at the EU level certain supervisory

functions that concern cross-border entities or activities: e.g. the registration of cross-border products, reporting processes.

Another option would be to extend the scope of direct or shared supervision performed by ESMA and EIOPA in some specific areas. EIOPA, for instance, could be tasked with a centralised oversight role in the on-going monitoring of internal models provided a competent staff be in place.

More delegation of technical details to the Authorities seems also required. Indeed a large amount of the technical details of the new banking rules for instance are in the primary legislation. The ESAs have proved their ability to interact with the Parliament, with the Council, with the Commission on these issues. I think we can go further in delegating rulemaking to the Authorities.

Less ambitious but practically important would be to allow the ESAs to dialogue with financial institutions and access directly to information if needed. This could only improve notably the stress test work.

Increasing the role and mandate of the Chairperson and the Management Board could also be envisaged. From my experience of multilateral Boards (IMF), it would be a good idea to give the chairman of the board of ESAS a decisive vote in cases where there is a split vote.

d) A revision of the existing funding model of the ESAs should be envisaged

Many consider the current funding arrangements not commensurate to their increasing tasks and responsibilities. Given EU and national budgetary constraints, the Commission should consider a revision of the existing

funding model so that the ESAs can fulfill their mandate while taking into account budgetary constraints. A partly industry funded model might be appropriate taking into account the respective size of each member state financial industry if and when ESAs are involved in direct supervision and provided the contributors have a say on the way their money is used.

Regarding the proposal to unify EBA and EIOPA in one single body, I must say that I am rather skeptical ; twin peaks have sometimes been successful but sometimes not. More than institutional refinements, the most important issue is to strengthen these entities.

3. The Brexit challenge

Brexit is a challenge but also an additional opportunity to review the functioning of the ESAs.

The UK is indeed the main financial market in Europe concentrating a significant part of EU capital market activities. With Brexit, the EU27 jurisdictions need to further strengthen their capital markets. This involves in particular curtailing the current fragmentation of EU capital markets which reduce economies of scale and network effects within the EU27 region. The EU27 might also need to beef up its supervisory capacities to a certain extent if the transfers of financial activities that are expected from the UK (about 20 to 30%) materialize.

A first step could be to provide the USAs with the right to oppose the granting of licences or authorisations by NCAs if they think that European standards are not met.

I will now focus on ESMA given the importance of delivering the CMU and the significance of the City of London.

ESMA has managed through the quality of its staff and the leadership of its management to become a major center of competence recognized worldwide. We used to hear sometimes comments about the non-existence of a EU capital markets regulator : « In terms of capital markets regulation, EU does not exist. It is the SEC that is the only worldwide Institution ». Today such a remark would be irrelevant. The SEC knows very well which is the Institution in Europe and I can tell you they are taking it seriously.

In my view, the Brexit does not change the fundamental relevance of ESMA. On the contrary Europe needs such an authority especially for delivering the CMU and protecting investors. This requires a significant increase of its powers and governance as mentioned above.

Concerning the EBA, the upcoming immediate changes are of a different nature. Brexit has a direct impact on the EBA with a legal requirement to relocate the Authority in another country of the EU 27 and also the need to adapt the decision making rules, amended in 2013 following a request by the UK, leading to a system of majority of votes between participating and non-participating members to the Banking Union which is too complex.

Independently from the Brexit, EU absolutely needs an authority able to write the technical standards, to help supervisors converge, to define and implement stress tests and to mediate between countries on issues of implementation divergences.

In this regard, the existence of the SSM does not change the importance of this task nor does the Brexit. On the contrary. The relevance of EBA for regulatory tasks and also fostering supervisory convergence within the single market and hopefully third countries is essential. We should indeed

recognize the importance of non EU Authorities in post Brexit Cooperation. ESAs are the natural way to achieve that.

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For the future, negotiations with the UK will determine what sort of relationship will be appropriate with the United Kingdom. My guess is that, given the importance of the London financial markets, it will be in the interest of all to use ESMA as a platform of future cooperation. In my view, the UK market regulator should eventually be associated to the EU decision making in the framework of the ESAs. An observership status could be envisaged in this regard. This would give both the EU and the UK the opportunity to work together in a coordinated way on these important issues. If we want to achieve a truly relevant worldwide market authority in Europe (the equivalent of an equivalent EU SEC), we should not miss this opportunity. Of course, reciprocity should be the name of the game (ESMA and other ESAS would also sit on the UK Boards), the priority being to strengthen the functioning of the ESAs in EU27.

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All the above is about institutional nature and should not lead us to forget the most important issue which is that without confidence and mutual trust it will be difficult to force Member States to apply common rules. In this perspective economic convergence is the foundation of such confidence.

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