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Review of the European System of Financial Supervision

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Opening Statement

Dear Chairman, dear honourable Members of the European Parliament,

Thank you for inviting me along to the Panel today to talk about the ESA Review. Let me begin by acknowledging that the creation of ESAs has been a milestone in European financial markets law and a great positive achievement in the past.

The European Commission is now proposing a reform of the European supervisory architecture. While I do agree that Brexit, technological advancements, consumer protection and the universal goals of sustainability pose new regulatory challenges and now is an appropriate time to address some shortcomings of the ESAs governance, I do believe that some of the proposed reforms go too far:

1. Direct supervision

I will start with the suggestion to extend ESMA's direct regulatory oversight to new areas. The Commission sets out several supporting arguments, including (i) the economic importance of critical benchmarks, (ii) supervisory arbitrage, in particular in cross-border situations, and (iii) the need for a more consistent application of EU law to European funds (EuVECA, EuSEF and ELTIF).

While these arguments have some merit, they are not entirely persuasive. The mere fact that uniform European law covers funds does not justify a European supervision. There is also no need to centralise the approval process of certain types of prospectuses. It is questionable whether a European agency is better suited than the NCAs to assess prospectuses because the drawing-up of a prospectus is closely related to national law. Any risks stemming from supervisory arbitrage are best addressed using instruments of convergence rather than direct supervision by ESMA.

On the other hand, I support the proposal to extend ESMA's supervision to critical benchmarks. It is also convincing to establish ESMA as the sole authorisation and supervisory body for data reporting services. These services are an EU wide business with an inherent cross-border element.

2. Supervisory convergence

This brings me to my next point, which is supervisory convergence. In future, promoting supervisory convergence will be a key task for the ESAs. Looking at peer reviews carried out by ESMA it is obvious just how important and challenging this task is. National practices often differ to a great extent, and follow-up reports by ESMA point to remaining shortcomings and non-compliance issues. The Commission therefore rightly aims at improving instruments of supervisory convergence.

Its new strategic supervisory plan is both valuable and ambitious. But a key flaw is that the instrument is designed as a type of "procruste's bed" that will undesirably affect the freedom of NCAs to develop their own priorities. Furthermore, it is unclear why the committee in charge of reviews shall be exclusively composed of ESA staff. The proposed change from peer review to independent review does not take into account that NCAs do have greater expertise in market practices, which is essential for conducting reviews.

3. Governance

Let me now turn to the third and final point of my address today – the governance of the ESAs. The Commission seeks to make the governance more effective by shifting from national to European decision taking in the area of supervisory convergence.

But the Commission does not provide any evidence that NCA representatives have pursued their own interests to the detriment of the Union in the past. Also, assigning the tasks of rulemaking and supervisory convergence to two separate boards, independent of each other does not appear to be desirable.

What, then, is the best way forward? I strongly support strengthening the role of the ESA Chairperson, increasing accountability in the level 3 rule-making process and allowing supervisory and sanctioning powers to be delegated to the Executive Board. Another essential goal will be to improve stakeholder participation. Most importantly, we should facilitate the joint work of the Stakeholder Groups (SHGs) on cross-sectorial issues. It will also be key to ensure an earlier involvement of the SHGs in the rulemaking process on level 2 and 3.

4. Conclusion

Finally, I would like to conclude by highlighting that the Commission's proposal would mean a fundamental shift from coordination between NCAs under the auspices of a European agency to supervision of NCAs by a European agency. Taking such a huge step towards a European Securities Commission is far too early in my view. I favour an evolutionary approach toward expanding ESA's powers; ideally, this should be an approach that is based on well-designed, cogent and well-thought out regulatory strategies.