

Banking Stakeholder Group (BSG), EBA
Insurance and Reinsurance Stakeholder Group (IRSG), EIOPA
Occupational Pensions Stakeholder Group (OPSG), EIOPA
Securities and Markets Stakeholder Group (SMSG), ESMA

1 June 2018

To the Honourable Members of the European Parliament

European Commission's legislative proposal following the review of the Operations of the European Supervisory Authorities COM (2017) 536 final

Dear Ms Berès, dear Mr Balz,

The four stakeholder groups (SGs) of the European Supervisory Agencies (ESAs) have each submitted or intend to submit their own response to the Commission's legislative proposal following the review of the operation of the ESAs.

In this joint letter, the SGs provide a number of commonly held views relating to the role of the SGs that arise from this legislative proposal. Please note the joint letter sent to the European Commission in June 2017 also remains relevant.¹

Introduction

SGs are established within the ESAs in order to facilitate consultation with stakeholders in areas relevant to the tasks of each Authority. In particular, SGs provide comments on draft regulatory technical standards and implementing technical standards as well as guidelines and recommendations, to the extent that these do not concern individual financial institutions. Some SGs also cooperate successfully with the ESAs in the Q&As area. SGs also issue reports and submit advice on any issue related to the tasks of the ESAs, including undertaking own initiative work. SGs, therefore, provide stakeholder input on the most relevant issues in the regulatory process.² SGs are composed of expert representatives of different categories of stakeholders: financial market participants operating in the European Union, their employees, pension funds, relevant professional associations, consumers, SMEs, users of financial services and academics. SGs advise the ESAs,

¹ June 2017 EC consultation on the operation of the ESAs: Joint Statement by BSG, IRSG, OPSG and SMSG <https://www.eba.europa.eu/documents/10180/17417/ESAs+review+-+Joint+BSG+IRSG+OPSG+and+SMSG+letter+to+EC.pdf>.

² A description of the contributions produced by the SGs is contained in the reports published on the respective websites (e.g., https://www.esma.europa.eu/sites/default/files/library/2016-smsg-009_smsg_end_of_term_report_2016.pdf for ESMA's SMSG; <http://www.eba.europa.eu/documents/10180/807776/END+OF+TERM+OF+OFFICE+REPORT+-BSG+II.pdf> for EBA's BSG https://eiopa.europa.eu/Publications/Reports/Activity%20Report%20IRSG_2013-2016.pdf for EIOPA's IRSG ; and <https://eiopa.europa.eu/Publications/Reports/EIOPA-OPSG-16-07%20OPSG%20Activity%20Report%202013-2016.pdf> for EIOPA's OPSG).

drawing on the expertise, experience and perspectives of the diverse constituencies represented in their memberships.

The SGs respond to public consultations by the ESAs. The SGs strive to provide general policy advice on important principles where they can respond on behalf of the whole SG. The SGs believe that their advice is most valuable to the ESAs where it reflects a consensus of the different constituencies represented in the SGs. The SGs are also most effective when they are consulted as early as possible in the regulatory process.

Extension of the period of service to 4 years and support to SGs

The European Commission proposes extending the period of service of SG members from 2.5 years to 4 years. It does not alter the ability of SG members to apply for a second term. The SGs generally support this proposed amendment, as it can take a period of time to become familiar with the groups and their operations. This amendment would therefore enhance the effectiveness of the SGs. If the term is lengthened it may be useful to consider staggering the entry and exit from the SGs, as this could enhance continuity of knowledge and experience and help with building institutional memory.

Against the background of extended mandates, it is all the more important that the ESAs provide adequate resources to support the workload to be faced by SGs members. Some members ask for the rules requiring an “adequate” secretarial support, and an “adequate” compensation for members of the stakeholder groups representing non-profit organisations or academics to be better enforced « *in order to allow persons that are neither well-funded nor industry representatives to take part fully in the debate on financial regulation*^{3 4}»

Minority opinions

The European Commission proposes that where members of the SGs cannot reach a common opinion or advice, the members representing one group of stakeholders shall be permitted to issue a separate opinion or separate advice. The SGs recognise the importance of ensuring that minority opinions are heard. However, this is already possible and all SGs already have procedures in place specifically to ensure minority opinions can be voiced. These procedures are seen to work well by SG members. The SGs therefore consider that an amendment to the ESAs Regulations to deal with this issue is unnecessary.

Joint opinions of SGs

The European Commission proposes an amendment to the ESAs Regulations to specifically provide that SGs may issue joint opinions and advice on issues related to the work of the ESAs on joint positions and common acts. The SGs support the option to provide joint opinions but this option already exists and has been used on a number of occasions. Examples include this joint opinion and the previously mentioned June 2017 joint letter on the ESAs review involving all SGs, referred to above⁵, the joint opinion on EMIR by the OPSG and IRSG⁶ and the joint advice by the BSG and SMSG

³ EBA and EIOPA Regulations recital 48, and ESMA Regulation recital 49.

⁴ These members currently receive a compensation of 150 € per day of work; for example the ordinary members of the UK FCA Consumer Panel receive a compensation of 400 £ per day.

⁵ Please refer to footnote 1.

⁶ https://eiopa.europa.eu/Publications/Stakeholder%20Opinions/20140715-Formatted-Joint_IRSG_OPSG_Response_on_EMIR.pdf.

on EBA and ESMA Guidelines on the Assessment of the Suitability of Members of the Management Body and Key Function Holders.⁷

In addition, the Chairs of each of the SGs have met occasionally during their mandate to exchange general views, concerns and operating practices. There are a number of practical issues which limit the number of times SGs have worked together such as the length of time available to SGs to comment on particular topics, since coordinating the views of the SGs requires additional time. There are financial constraints since there is currently no budget allocated to support such additional meetings. If there are to be more meetings between representatives of the different SGs in order to consult on and prepare joint responses, such meetings will need to be financed by the ESAs. The SGs consider that an amendment to the ESAs Regulations to deal with this issue is unnecessary but changes to budget allocation to facilitate joint opinions would be welcome.

Commenting on Guidelines and Recommendations exceeding the ESA's competences

The European Commission proposes a new role for SGs in relation to guidelines and recommendations. Where two thirds of the members of a SG are of the opinion that the ESA has exceeded its competence by issuing certain guidelines or recommendations, they may send a reasoned opinion to the Commission. The Commission then has a range of powers including adopting an implementing decision requiring the ESA to withdraw the guidelines or recommendations concerned if it ultimately considers that the ESA has exceeded its competence.

While the members of all SGs are divided on the overall merits of the introduction of this proposed new role for the SGs, the SGs agree that effective checks and balances and increased scrutiny of guidelines and recommendations is important. The SGs therefore support the European Commission's desire to address this issue. However, concerns have been expressed on how entrusting such a significant oversight role solely to SGs would change the advisory function of the SGs.

Whilst the members of the SGs generally agree that SGs should continue to have a prominent role in commenting on guidelines and recommendations – as well as other ESAs initiatives – the Commission should not be dependent on SGs to challenge ESAs. The members' specific expertise does not necessarily put the SGs in a better position to judge whether the ESAs have exceeded their competences or not. Furthermore, it places a significant responsibility on experts sitting in the SGs in their personal capacities.

The impact of governance changes on the SGs

The Commission's proposals envisage a number of significant changes to the ESA's governance structures, not least the deletion of the role of Executive Director, the replacement of the Management Board with an Executive Board, and an enhancement of the role of the Chair. It is envisaged that the Executive Board will be independent, with full time members, and will prepare decisions to be taken by the Board of Supervisors. These changes may have implications for the operation of the SGs.

It would be helpful to clarify the relationship between the SGs and these various committees and individuals for the future. The SGs want to retain their existing relationships with the Chair and Board of Supervisors of their ESAs. Some mechanism for dialogue with the Executive Board would also be valuable, whether that is by way of regular meetings or some other means of effective communication.

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<http://www.eba.europa.eu/documents/10180/807776/SMSG+and+BSG+Joint+Statement+on+ESMA+EBA+Guidelines+on+suitability.pdf>.

The SGs look forward to continuing working constructively with their respective ESAs and to improving the relevance and usefulness of their advice and are committed to improving their efficiency and to working jointly when necessary.

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Chair of the BSG

Mirenchu Del Valle
Chair of the IRSG

Matti Leppälä
Chair of the OPSG

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Chair of the SMSG

CC: MEP Markus Ferber
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MEP Brian Hayes
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