

**European Commission Report on the Operation of the European
Supervisory Authorities and the European System of Financial
Supervision**

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Presentation to the European Financial Markets

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Background to the Report

- In light of the failures of financial supervision exposed by the financial crisis proposals were made in October 2009 to strengthen European supervisory arrangements following the recommendations of a group of high level experts under Jacques de Larosiere.
- The objective was to strengthen European supervisory arrangements and establish a more efficient, integrated and sustainable system of supervision.
- This led to the establishment of three European Supervisory Authorities (“ESAs”) – the European Banking Authority (“EBA”), the European Securities and Markets Authority (“ESMA”) and the European Insurance and Occupational Pensions Authority (“EIOPA”) which started their operations in January 2011.

Background to the Report

- The ESAs founding Regulations (EU No. 1093/2010, 1094/2010 and 1095/2010) require the Commission to publish a report every three years on the operations of the ESAs.
- Amongst other matters such a Report is to cover:
 - **(i) the convergence in supervisory practices reached by competent authorities; and**
 - **(ii) the impartiality, objectivity and autonomy of the ESAs.**
- During 2013 the Commission consulted a number of stakeholders and organised a public hearing in May 2013.
- The Report was published in August 2014.

Conclusions

- The Report concludes that, overall, the ESAs have performed well – “they have successfully built functioning organisations, have started to deliver on their mandates and have developed their own profiles”.
- The scope of the mandates of the ESAs is sufficiently broad, with some room for targeted possible extensions such as consumer and investor protection, shadow banking and IFRS enforcement.
- Their role so far has been mainly regulatory with less focus on the promotion of convergent banking activities. They have not made use of their direct powers (breach of law, emergency situations, binding mediation) but have relied on non-binding powers and moral suasion.

Stakeholder Comments

These included:

- Lack of high-quality cost benefit analysis.
- Uncertainty as to the scope and nature of non-binding guidelines and recommendations issued by ESAs. There was also uncertainty among market participants as to whether it is possible for competent authorities or institutions to challenge or review these. The Report concludes that “to the extent guidelines and recommendations are intended to produce legal effects vis-à-vis third parties, they should be subject to review under Article 263(1) TFEU.

Comments were also made that the increased workloads of the ESAs were not always mirrored by an increase in resources.

Next Steps

- The Report is to be forwarded to the European Parliament and the Council.
- One of the stated priorities for the Commissioner designate for Financial Stability, Financial Services and Capital Markets Union includes a review of the “functioning of the European Supervisory Authorities and the European Systemic Risk Board with a particular focus on making the agencies wholly financed by the sectors that they supervise”.
- Is there a role for the EFMLG in continuing to develop a position on legal uncertainty issues, including those previously identified, in relation to the operations of ESMA and EBA ?