

Nordic Financial Unions

Olof Palmes gata 17 | 101 34 Stockholm

Contact: Arvid Ahrin | Deputy General Secretary

+46 708 522 443 | aal@nordicfinancialunions.org



Register ID Number: 4129929362-47

NFU Response to the Consultation on the Review of the European System of Financial Supervision

Summary of main points

- The work carried out by the European Supervisory Authorities constitutes a good basis for further actions on financial stability and towards ensuring a level playing field of supervision in the EU.
- The European Union has no right to interfere with collective bargaining systems as set down in article 153.5 of the Treaty on the Functioning of the European Union. Pay and wages is not for any EU institution, authority or body to deal with.
- The mandate of the ESAs needs to be extended to include social concerns as this is a fundamental prerequisite for financial effectiveness and stability. With trade union representatives in the ESA stakeholder groups, the knowledge and competence is there.
- A diverse and balanced representation in the stakeholder groups is a prerequisite for their legitimacy and must be achieved including adequate representation from trade unions.
- Ensuring adequate financing for the ESAs is key to ensuring the consistency of the single rulebook and a level playing field of high-quality supervision in the EU.

Specific remarks

Question 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?

NFU is replying to this consultation based on our general experience as well as the specific information we have received from stakeholder group members representing trade unions in EBA-BSG and EIOPA-IRSG.

The creation of the ESAs was necessary, especially in the light of the amount of new financial regulation that has been proposed since the crisis and which needs to be technically outlined.

However we deem it useful to present the role of the ESAs to the general public in order to explain the benefit for society, so as to not risk having it considered as a burdensome, costly and bureaucratic organisation. Although some assessments (for example the EBA report on the consistency of RWA calculations, the report on remuneration, etc.) are widely commented in the press and give a good insight into the practices of banks.

The following general points should also be noted:

- The work carried out by the ESAs constitutes a good basis for further actions on financial stability.
- By setting standards, the ESAs are contributing to harmonisation of the single market.
- As a European institution, they contribute to the quality and consistency of European supervision.
- Consumer protection is mainly done by the national authorities, especially as the retail market is not as harmonised as the interbank market. However, the sub-prime crisis has shown that mis-selling can have a macro-economic effect: this should be the main angle for the consumer protection work of the ESAs.

Question 1.1.b

Do the ESAs' mandates cover all necessary tasks and powers to contribute to the stability and effectiveness of the financial system? Are there elements which should be added or removed from the mandate? Please explain.

The mandate to take a leading role in promoting transparency, simplicity and fairness for consumers is important and much needed. Within the realm of consumer protection there are many aspects that are clearly related to the employee situation, especially regarding sales and advice. However, there are numerous instances where a specific focus on social/employee issues is beneficial to the stability and effectiveness of the system. We will here show some areas:

- Sales and advice

Sales pressure and unrealistic objectives often renders the advice function of an employee very difficult. The employee has to choose between either following the rules (which may imply a large amount of administrative work) or realise her/his sales

objectives. It needs to be ensured that employees are given the time and resources to give good advice and that accountability for unfair selling practices is not pushed down to the employee – the company has to be accountable for unrealistic objectives. The right balance between sales and advice needs to be ensured.

■ Governance

i) Whistle-blowing can be used for prevention, such as to detect inappropriate or risk sensitive practices and to discover infringement of rules and regulations. It is important to secure internal and external whistle-blowing structures and ensuring anonymity for employees reporting potential or actual breaches.

ii) Employee representatives on boards are important in order to ensure diversity and there should not be any unnecessary obstacles in the way for the employees' choice of board members. It is further important to ensure necessary professional development.

- Remuneration: Incentive structures need further attention while at the same time securing the primacy of collective bargaining. Compliance with Article 153.5 in the Treaty on the Functioning of the European Union (TFEU), stating that pay is not for the EU to deal with, must be ensured at all times.

To use an example, none of these issues are spelled out in the recent EBA regulatory technical standards for recovery plans. The only time employees are mentioned is in relation to information sharing. Even this, we have been told by EBA officials, was stretching the mandate of the authority.

We believe that the mandate of the ESAs needs to be extended to include social concerns as this is a fundamental prerequisite for financial effectiveness. With trade union representatives in the ESA stakeholder groups, the knowledge and competence is there.

Question 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 obstacles are of a political, financial and regulatory nature.

The EBA has faced an enormous amount of critique concerning the way it is tackling the crisis, such as the decision to raise the capital ratio to 9%. In addition, the underlying directives (Solvency II, CRD IV) were (or are) not stabilised, which increases the difficulty of delivering binding standards.

Politically: For EBA, the setting up of the SSM at the ECB will make the governance structure of the EBA more complicated because decisions are not made with a qualified majority, but with a

double single one. In addition, there may be a requirement to reach consensus in the voting process. This may even further increase difficulties, because this means that the EBA has to strive for consensus.

Financially: The ESAs have a limited budget and limited number of staff yet a big workload. They are fully accountable for their actions, which is difficult given the limited resources.

Regulatory: The regulation of the ESAs requires them to do work with delegated acts (Level II), which is determined by the level I directives or regulations. Level II standards for implementation or technical specification are not under European Parliamentary control and this raises criticism from civil society regarding the democratic deficiency. On the other hand, the issues are often very technical and detailed, making it difficult for outsiders to provide competent opinions.

To increase the democratic control we would like to see the role of stakeholder groups expanded. They could be part of determining criteria and indicators for assessment of policies.

Question 1.1.1.a

Do you consider that the technical standards and guidelines/recommendations developed by the ESAs have contributed to further harmonise a core set of standards in the area of supervision (the single rulebook)? If you have identified shortcomings, please specify how these could be addressed.

It is early to evaluate this but in general it seems to be the case. By use of consultations, letting stakeholders have a say on the draft guidelines and recommendations, the aim of harmonisation core aspects becomes more likely. It makes the process lengthy but with a more solid outcome.

Question 1.1.1.b

What is your assessment of the work undertaken by the ESAs as regards providing opinions (e.g. technical advice) to the EU institutions?

The opinions by the ESAs to EU institutions include clear statements and sometimes minor positions. The opinions aim to ensure (i) a level playing field and (ii) the applicability of the legislation. It shows that discussions between the different institutions of the EU are possible, which clearly contributes to democracy.

Our representatives in the stakeholder groups report that a great deal of the groups' positions have been taken into account by other EU institutions. For the groups' opinions to have real legitimacy it is important that they are made up by a diverse and balanced representation.

Question 1.1.4.a

Do you consider the ESAs' role in emergency situations appropriate? Please explain.

We perceive the role of the ESAs as fora and tools to lead reflections and monitor harmonisation rather than handling emergency situations. However, they can issue opinions and recommendations, which have to be ratified by the Commission and the Council. In the case of EBA this was done in October 2011 when the 9% capital rule was adopted in order to ease tensions on the financial market. This proved to be an important decision in the context of the sovereign debt crisis.

Question 1.1.5.a

Do you think that the coordination role of the ESAs is appropriate? If you have identified shortcomings, please specify how these could be addressed.

The coordination role is of utmost importance in order to develop a common supervisory culture. It could be envisaged to organise meetings between the stakeholder groups such as on the common subject of sovereign debt for the bank and insurance market.

Question 1.1.6.a

How do you assess the role and achievements by the ESAs in the field of consumer protection? Please specify the main achievements by each ESA.

From a trade union perspective, we welcome the efforts undertaken in the field of consumer protection, in several cases leading to positive benefits for employees. Many of the issues have a direct impact on employees and a potential impact on employment such as:

- The ability of employees to give good advice (as opposed to selling only)
- Fee structures affect working conditions in the sense that extreme fees or fees which are felt to be unjustified by consumers may lead to (mostly verbal) aggressions and thus deteriorate work conditions.
- Technology changes that may have an impact on both working conditions and employment, especially relating to competence requirements.

Achievements to be mentioned include for EIOPA-insurance: consumer dimensions for PRIPS and IMD directives, financial innovation and comparisons of websites. For EBA: the consumer trends report.

Question 1.1.6.c

What are the main strengths and weaknesses of the current framework on consumer protection (Article 9 ESAs Regulations) and what would you suggest to address any possible shortcomings?

NFU would like to see it extended or complemented by social affairs to include the employee dimension as outlined under questions 1.1.b and 1.1.6.a.

Question 1.2.1.a

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

The governance situation is difficult as the ESAs are supervised by the authorities whom they are supposed to provide coordination and regulation to.

From our perspective, we would like to highlight the composition of stakeholders groups as an important dimension to ensure good governance.

Question 1.2.4.a

How would you assess the impact of the relevant stakeholder groups within the ESAs on the overall work and achievements of the ESAs?

Based on information from our trade union representatives, the discussions and papers provided by the stakeholder groups are taken into account in the broader work of the ESAs.

Question 1.2.4.c

Are you satisfied with the appointment procedures for the stakeholder groups?

No. We understand the need to ensure adequate competence as well as geographical and gender balance but when it is clearly stated that members should be selected in balanced proportion also in relation to the category they represent we do not accept the final selection. In the EBA-BSG we were given only one seat and in the ESMA-SMSG none. Due to this we filed two complaints with the European Ombudsman. We truly hope that this mis-representation will not be repeated in the on-going/up-coming selection process.

Question 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?

On paper, yes. However in reality there was a strong over-representation of industry representatives and a question whether selected members' affiliation could be ensured at European level. This since the personal mandate may not be related to a European level umbrella organisation. If this is not the case, the European dimension and feedback to the relevant European level stakeholder is lost.

This is a concern that we believe we share across industry, consumers and trade unions. NFU and its sister organization on European level UNI Europa Finance are the European-level trade union bodies for the finance sector, representing 100 unions with 1.5 million workers in the banking and insurance industries. Ensuring that the workers' representative is a member of one of our affiliates is a way to ensure representativeness at all levels. In this respect it should be more clearly defined if workers' representatives are the same as trade union representatives to avoid confusion.

Question 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?

No. Considering the ESMA SMSG where trade unions were denied a representative it has not been sufficiently accessible. After the trade unions' complaint to the Ombudsman regarding the EBA stakeholder group selection, bilateral meetings were set up which have provided us with an entry point and an opportunity to share and discuss employee perspectives.

Furthermore, the role, functioning and work of the stakeholder groups should be made more public in order to increase legitimacy.

Question 4.a

What is your assessment of the structure of the ESFS?

With the creation of the SSM, the ESAs, or at least the EBA may have overlapping activity with the ECB. It could therefore be envisaged to integrate it within the ECB. However, this would most likely have political implications, as the three European financial centres (London, Frankfurt and Paris) probably require the seat of at least one agency. Further, having no financial agency in the UK, which represents alone around 1/4 of all European financial activity, would be detrimental to the European integration of the UK. If the ESFS is remodelled, stakeholder representation should be reviewed as well in order to ensure a continuity of the



different stakeholder groups. It would need to be made sure that the ECB also has an adequate stakeholder representation, which is not the case at present.

About NFU

Nordic Financial Unions (NFU) is the voice of the employees in the Nordic financial sectors. We are an organisation for co-operation between trade unions in the banking, finance and insurance sectors of the Nordic countries. Through our seven affiliated unions in Denmark, Sweden, Norway, Finland and Iceland we represent 150 000 members – a vast majority of the employees in the Nordic financial sectors.

Yours faithfully,

NORDIC FINANCIAL UNIONS (NFU)

Michael Budolfson

President

Christina J. Colclough

General Secretary