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FESE Response to the European Commission Consultation Document
'The Operations of the European Supervisory Authorities'

Introductory remarks

The Federation of European Securities Exchanges (FESE) represents 35 exchanges in equities, bonds, derivatives and commodities through 20 Full Members from 29 countries, as well as 1 Affiliate Member and 1 Observer Member. FESE represents public Regulated Markets (RMs), which provide both institutional and retail investors with transparent and neutral price-formation.

At the end of 2015, FESE members had 9,201 companies listed on their markets, of which 6% are foreign companies contributing towards the European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access the capital markets; 1,299 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers. FESE is registered in the European Union Transparency Register with number 71488206456-23.

FESE supports efficient, fair, orderly and transparent financial markets that meet the needs of well protected and informed investors and provide a source for companies to raise capital and for investors to hedge their portfolios. Through their RM and MTF operations, FESE members are regulated by their NCAs which implement the rules and standards agreed by ESMA.

FESE has primarily worked with ESMA as they are the ESA focused on financial markets issues and are comprised of the National Competent Authorities that supervise exchanges. Overall, our view of the working of ESMA is quite positive, however, given their increased workload and the impending application of new markets regulation such as MiFID II / MiFIR, we consider that this review is timely in order to ensure that ESMA can fulfil its function properly.

Summary FESE response

FESE strongly supports the ESAs objective to promote a common supervisory culture and foster supervisory convergence across the EU given its importance to establishing a level playing field and ensuring that legislation is implemented as intended by the legislator. We believe that ESMA's work on supervisory convergence needs to be strengthened, particularly in respect of diverging supervisory practices across Member States.

At the same time, FESE wishes to underline strongly the need to recognise the importance of supervisors' understanding of practical operation of the exchange deriving from its direct supervision as well as regulatory frameworks and business models which may have developed. Enforcing supervisory convergence should mean ensuring that legislation is implemented as intended by the legislator to establish a level playing field, while identifying and recognising any situations in which there may be more than one way to achieve these objectives.

FESE is not in favour of radical changes to the structure of European supervision in respect of our markets' activity at this point in time. We believe that the ESAs - and ESMA in particular - already have a sufficient range of tools (which can be strengthened) to be able to deliver strengthened supervisory convergence.

FESE would strongly recommend that ESMA always considers the international dimension, such as the work of IOSCO to ensure that EU guidelines do not significantly differ from international standards. We would urge ESMA to advocate that EU wide legislation follows its own previous guidance or international guidance to avoid legal uncertainty and avoid unnecessary compliance costs.

Response to questions

A Optimising Existing Tasks and powers

1. Supervisory Convergence

1. In general, how do you assess the work carried out by the ESAs so far in promoting a common supervisory culture and fostering supervisory convergence, and how could any weaknesses be addressed?

General

FESE strongly supports the ESAs objective to promote a common supervisory culture and foster supervisory convergence across the EU given its importance to establishing a level playing field and ensuring that legislation is implemented as intended by the legislator. FESE has worked closely with ESMA on a number of issues since its creation, such as MiFID II/MiFIR, MAR, and the Benchmarks Regulation. Given that the majority of these measures have not yet been fully implemented it is not possible to comment fully on the role that ESMA has played to ensure supervisory convergence. Notwithstanding this, we would like to stress the following points.

FESE is not in favour of radical changes to the structure of European supervision at this point. On the contrary, we believe ESMA already has a sufficient range of tools at its disposal to be able to deliver strengthened supervisory convergence. The real question, from our perspective, is ensuring that ESMA is in a position to make the most of these tools in delivering the desired outcomes. We make specific recommendations following this principle throughout the rest of this consultation response.

Supervisory convergence

FESE believes that ESMA's work on supervisory convergence needs to be strengthened, particularly in respect of diverging supervisory practices across Member States. The impact of diverging supervisory practices tends to be particularly significant in areas where there is a move towards high-levels of EU regulatory harmonisation, underpinning cross-border business and competition, for example in the area of secondary trading. To give a concrete example, under MiFID I there have been situations in which differences of views across National Competent Authorities (NCAs), combined with a lack of coordination at ESMA level, has led to differences in the approvals of pre-trade transparency waivers across the EU. FESE welcomes the introduction of provisions, under MIFID II, by which ESMA is required to issue non-binding opinions on proposed transparency waivers and play an important role in ensuring that market and supervisory practices are aligned across the EU. Such mechanisms are an important part of delivering supervisory convergence, especially where the goal is high-levels of EU regulatory harmonisation.

At the same time, FESE wishes to underline strongly the need to recognise the importance of supervisors' understanding of practical operation of the exchange deriving from its direct supervision as well as regulatory frameworks and business models which may have developed. Enforcing supervisory convergence should mean ensuring that legislation is implemented as intended by the legislator to establish a level playing field, while identifying and recognising any situations in which there may be more than one way to achieve these objectives. As such, FESE would support a strengthening of ESMA's supervisory powers, particularly via peer reviews (see our response to Q2) as a means of identifying and

validating on a consistent and transparent basis regional or national practices which can still be allowed where these do not contradict the intentions of the legislation and where supervisory convergence should not be taken to mean implementation of 'one size fits all'- solutions. Peer reviews should encourage the ESAs and the NCAs to maintain and increase cooperation with the purpose of understanding the specificities of markets, as part of the work towards increased and appropriate convergence.

ESAs role in defining rules

FESE's experiences of ESMA's work in respect of providing Level 3 clarifications on key elements of the MiFID II regime have been positive, particularly in the context of ESMA providing a form of ex ante approach for supervisory convergence. For example, we welcome the ESMA Q&A on the SI regime that provides clarity ahead of the implementation date. We also welcome the fact that, during the process of finalising the rules and standards for implementation, ESMA is generally open to stakeholder input and, where possible, provides helpful feedback. However, we would warn against supervisory convergence being used as an argument for the ESAs to move into *de facto* policy making.

Nevertheless, FESE considers that the ESAs could be involved earlier on in the Level 1 negotiations. This may facilitate and assist the articulation between the legislative and rule making process, especially at Levels 2 and 3. In addition, Level 1 could benefit from technical experts being involved at an early stage to provide expert advice and present reliable data on which to base assessments. Therefore, we would encourage ESMA to be more vocal in expressing their views on supervisory convergence and to allow for stakeholders to raise issues that need supervisors' attention in this regard. By promoting dialogue at an early stage, situations where local interpretations are implemented only to be overruled by ESMA ex post can be avoided.

2. With respect to each of the following tools and powers at the disposal of the ESAs:

- **peer reviews (Article 30 of the ESA Regulations);**
- **binding mediation and more broadly the settlement of disagreements between competent authorities in cross-border situations or cross-sectorial situations (Articles 19 and 20 of the ESA Regulations);**
- **supervisory colleges (Article 21 of the ESA Regulations);**

To what extent:
a) have these tools and powers been effective for the ESAs to foster supervisory convergence and supervisory cooperation across borders and achieve the objective of having a level playing field in the area of supervision?
b) has a potential lack of an EU interest orientation in the decision making process in the Boards of Supervisors impacted on the ESAs use of these tools and powers?

While **supervisory colleges** do indeed increase supervisory cross-border cooperation and have the potential to ensure appropriate supervisory convergence, there are challenges with the current structure and working methods. There are concerns that supervisory colleges as currently functioning, may not guarantee the achievement of a level playing field. This is due to the inefficiency of the colleges. For example, the number of representatives in a college makes it virtually impossible for it to carry out efficient supervision. Regarding the number of representatives, there are also concerns that discussions in college meetings often do not contribute to bringing issues forward or towards a solution. A suggested way to address the inefficiencies may be to clarify the working methods and the roles of each participant. In particular, it is important that the lead supervisor has a clear role and drives the work in the college.

In respect of **peer reviews**, we note that the ESA rules provide for ESMA to undertake periodic reviews of the NCAs focused on, *inter alia*, the degree of convergence reached in application of EU law and in supervisory practice. In respect of the activities of FESE Members, we do not believe peer reviews have been used extensively[1] and would strongly support an increase in their use in order to deliver strengthened supervisory convergence and cooperation. However, we believe that such an increase in their use should be accompanied by changes to the peer review methodology itself. While today the primary focus of the peer reviews appears to us to be on the application of EU law, we would welcome a strengthened focus on differences in *supervisory practice* regarding regulated entities *per se*. The recent ESMA prospectus approval peer review provides a positive template for future work. Differences in supervision constitute an important obstacle to supervisory convergence and undermine the existence of a level playing field and Single Market within the EU. In a first instance, we would suggest prioritising those areas which are subject to the highest levels of EU regulatory harmonisation, including those subject to binding mediation, as differences in supervisory practice in these cases have a greater impact. Within this perimeter, we would also recommend examining ways in which the views of industry could be better fed into the process of determining the most relevant areas for such peer reviews.

On **binding mediation**, we note that its use has to be explicitly mandated in the context of Level 1 framework legislation. As a result, its deployment today in respect of regulation relevant to FESE Members is rather limited[2]. However, we believe it is important to maintain the requirement for explicit provision to be made for its use at Level 1 given the nature of the tool. At the same time, we do believe greater consideration by the Level 1 legislator to its deployment could be given, particularly in areas where there is a clear consensus on the need to achieve high levels of regulatory and supervisory harmonisation across the EU.

3. To what extent should other tools be available to the ESAs to assess independently supervisory practices with the aim to ensure consistent application of EU law as well as ensuring converging supervisory practices?

FESE believes that the focus should be on maximising the effectiveness of the tools ESMA currently has at its disposal as opposed to introducing any new ones. This reflects our view that the existing tools, particularly peer reviews, have been under-utilised and have the potential – especially if reformed along the lines we outline – to play a much more significant role in delivering supervisory convergence.

2. Non-binding measures: guidelines and recommendations

4. How do you assess the involvement of the ESAs in cross-border cases? To what extent are the current tools sufficient to deal with these cases?

5. To what extent are the ESAs tasks and powers in relation to guidelines and recommendations sufficiently well formulated to ensure their proper application? If there are weaknesses, how could those be addressed?

FESE has contributed to the work of ESMA on guidelines and recommendations, and in many instances these guidelines provide useful guidance for NCAs to supervise the application of the relevant legislation. We also support the work that ESMA has done providing guidelines ahead of legislative proposals, such as 'Microstructural Issues'. However, we would ask the ESAs to consider the timing between the issue of pre-legislation guidelines and the proposal and application of the fixed rules.

[1] One recent exception to that has been the ESMA peer review of the NCA processes for prospectus approval

[2] NCA cooperation covering supervisory activity and information exchange under MiFID II, critical benchmarks under the Benchmarks Regulation and potentially in respect of Resolution Colleges determination of CCPs' resolution plans under the proposed CCP Recovery and Resolution Regulation.

Moreover, we would strongly recommend that ESMA always considers the international dimension, such as the work of IOSCO to ensure that EU guidelines do not significantly differ from international standards. We would urge regulators and policy makers to take into account existing guidelines or international standards that ESMA may have issued before proposing legislation that may differ significantly from the guidelines that stakeholders have invested in complying with. We would urge ESMA to advocate that EU wide legislation follows its own previous guidance or international guidance to avoid legal uncertainty and avoid unnecessary compliance costs.

In respect of the Level 3 tools, overall we believe that they constitute a useful mechanism to provide clarity on the way NCAs will interpret and implement, on a consistent basis, the Level 1/2 provisions. At the same time, we note the differences in approach in respect of the drafting of guidelines and recommendations on the one hand – requiring a formal process of consultation – and Q&As on the other, which do not. While we appreciate the need for flexibility in respect of the drafting of Q&A, specifically in order to address issues as they arise, we believe the process by which industry and stakeholders can provide input to the process could be strengthened. FESE suggests that the process for developing Guidance becomes more transparent. For the Level 2 rulemaking, the ESAs are obliged to, and indeed do, conduct consultations as well as hearings. But for softer rules such as Guidance, the process is more opaque, but may still have important consequences for both the industry and the supervisors. Especially as Guidance is sometimes used in areas where full harmonisation is not sought, and where on the contrary the Guidance is intended to facilitate implementation of rules where there is indeed room for flexibility and adaptation to local habits and business models, input from industry across the whole of EU may be no less useful than when it comes to rules where harmonisation and convergence is the main goal.

3. Consumer and investor protection

6. What is your assessment of the current tasks and powers relating to consumer and investor protection provided for in the ESA Regulations and the role played by the ESAs and their Joint Committee in the area of consumer and investor protection?

7. What are the possible fields of activity, not yet dealt with by ESAs, in which the ESA's involvement could be beneficial for consumer protection?

4. Enforcement powers – breach of EU law investigations

8. Is there a need to adjust the tasks and powers of the ESAs in order to facilitate their actions as regards breach of Union law by individual entities? For example, changes to the governance structure?

5. International aspects of the ESAs' work

9. Should the ESA's role in monitoring and implementation work following an equivalence decision by the Commission be strengthened and if so, how? For example, should the ESAs be empowered to monitor regulatory, supervisory and market developments in third countries and/or to monitor supervisory co-operation involving EU NCAs and third country counterparts?

6. Access to data

10. To what extent do you think the ESAs powers to access information have enabled them to effectively and efficiently deliver on their mandates?

Regarding the application of MiFID II/MiFIR, FESE considers that the final data submissions from industry and NCAs should give ESMA a definitive data set from which they can draw objective conclusions on the functioning and impact of the legislation. However, we will not see this overall impact until after the final application of the rules. Therefore, we would urge ESMA to be practical in their collection of this data so that the industry has every opportunity to provide the most relevant and complete data sets.

Without good quality data it would be impossible for ESAs or NCAs to perform any meaningful supervision. While it is critical that the ESAs can access any necessary information, it is important that any changes do not generate further undue burdens on market participants. Enabling data requests either directly from ESMA or via the NCAs has the potential to result in any multiplication of requests. We believe a further reflection is needed to justify any proposal to grant the ESAs additional powers through detailed impact assessments and the identification of cases where the ESAs are, today, unable to access information which NCAs should be able to provide to them. This reflection should determine the need for the ESAs and NCAs to have the same powers.

It is also crucial that the data received – be it 'pulled' or 'pushed' – is correct and useful. There is a need to do more in order to improve the quality of data provided to supervisors. This applies to the completeness, accuracy and comparability of data. We encourage a more dedicated focus on this issue going forward.

11. Are there areas where the ESAs should be granted additional powers to require information from market participants?

7. Powers In relation to reporting: Streamlining requirements and improving the framework for reporting requirements

12. To what extent would entrusting the ESAs with a coordination role on reporting, including periodic reviews of reporting requirements, lead to reducing and streamlining of reporting requirements?

FESE understand that the European Commission will undertake a review of the overall reporting requirements contain in the various EU rules. We would welcome ESMA's involvement in this review, within a perspective of giving ESMA a coordination role in terms of developing more consistent and streamlined reporting requirements. In particular, we would welcome a greater focus on delivering convergence in terms of the technical specifications for reporting and data formats. We note that the existing examples of common data and reporting hubs in the EU cited by the Commission – ostensibly in respect of the banking and insurance sectors – deliver exactly such outcomes.

13. In which particular areas of reporting, benchmarking and disclosure, would there be useful scope for limiting implementing acts to main lines and to cover smaller details by guidelines and recommendations?

As mentioned in the replies to other questions, NCAs' understanding of local markets is valuable. One area where we believe local conditions are especially important, is anything related to small and medium size enterprises (SMEs), including their disclosure obligations. EU legislation touching SMEs is for instance found in MiFID II regarding the SME Growth Markets, in the new Prospectus Regulation and in the Market Abuse legislation.

FESE's members operating MTFs targeted at relatively smaller issuers experience that the success of such markets depends on the regulatory environment being adapted to the local ecosystem, including the local habits, culture, historical solutions. What may objectively seem as a good regulatory environment for investor protection and stable and efficient capital markets in one country, may not hit the right balance in another country. Especially for SMEs, we see that both issuers and investors normally stay local at least during an earlier phase, and start reaching out across boarders gradually. If capital markets are to successfully support SMEs in providing access to finance, to grow and to create jobs, the regulatory environment needs to allow for sufficient local adaptation.

One example where such a model is already in place is the requirements for the SME Growth Market according to MiFID. Legislation includes a basic set of rules that the market operator needs to comply with and to include in its own rules and regulations for the issuers listing their shares on the SME Growth Market. The market operator then applies these rules, and the NCA on its side supervises the market operator in doing so.

The same model should be applied in the new Prospectus Regulation, with the opportunity for local regimes under national exemptions. For capital raising of a smaller scale, depending on the characteristics of the local ecosystem, NCAs will have the opportunity to tailor prospectus rules to the needs of issuers and investors in their market. We would support an increased role for the market operator in this process, for instance more details could be developed/added by the market operator on the basis of minimum requirements and ongoing supervision by the local NCA.

8. Financial reporting

14. What improvements to the current organisation and operation of the various bodies do you see would contribute to enhance enforcement and supervisory convergence in the financial reporting area? How can synergies between the enforcement of accounting and audit standards be strengthened? Please elaborate

15. How can the current endorsement process be made more effective and efficient? To what extent should ESMA's role be strengthened?

B New powers for specific prudential tasks in relation to insurers and banks

1. **Approval of internal models under Solvency II**

16. What would be the advantages and disadvantages of granting EIOPA powers to approve and monitor internal models of cross-border groups? Please elaborate on your views, with evidence if possible.

2. **Mitigating disagreements regarding own funds requirements for banks**

17. To what extent could the EBA's powers be extended to address problems that come up in cases of disagreement? Should prior consultation of the EBA be mandatory for all new types of capital instruments? Should competent authorities be required to take the EBA's concerns into account? What would be the advantages and disadvantages? Please elaborate and provide examples.

3. **General question on prudential tasks and powers in relation to insurers and banks**

18. Are there any further areas where you would see merits in complementing the current tasks and powers of the ESAs in the areas of banking or insurance? Please elaborate and provide examples.

C Direct supervisory powers in certain segments of capital markets

19. In what areas of financial services should an extension of ESMA's direct supervisory powers be considered in order to reap the full benefits of a CMU?

FESE is not in favour of radical changes to the structure of European supervision in respect of our markets' activity at this point in time. We believe that the ESAs - and ESMA in particular - already have a sufficient range of tools (which can be strengthened) to be able to deliver strengthened supervisory convergence. The aim should be to ensure that the ESAs are in a position to make the most of these tools in delivering the desired outcomes, as opposed to embarking on a radical extension of direct European supervisory oversight. As a general principle, we believe any proposal for an extension of direct supervision by ESMA should be accompanied by an in-depth impact assessment cost/benefit analysis.

20. For each of the areas referred to in response to the previous question, what are the possible advantages and disadvantages?

21. For each of the areas referred to in question 19, to what extent would you suggest an extension to all entities or instruments in a sector or only to certain types or categories?

FESE does not consider that ESMA should be given powers for direct supervision of data providers, investment funds or CCPs. **Data publication** is only one part of data providers' business that needs to be considered holistically in terms of supervision. Market operators will under MiFID II/MiFIR continue to be supervised by their respective NCA and it is only natural that these NCAs also supervise the provision of data considering that this is an integral part of the operators' business model that should not be supervised in isolation. Moreover, such proposals are premature at this point. MIFID II provides the regulatory framework for the emergence of APAs, ARMs and CTPs within the EU. With the framework only due for market application in 2018, we believe it is premature to be considering such radical changes to supervision now. In addition, we are not aware of any extensive impact assessment nor

cost/benefit analysis having been performed in this area. At this stage, we believe it would be more prudent to allow the emergence of APAs, ARMs and CTPs to bed down within the framework of existing regulatory and supervisory provisions in the interests of providing all participants with a degree of stability going forward. It is also worth noting that final MiFID II rules will put in place the provisions for an industry led solution for a consolidated tape provider. Only after a fixed review period will the European Commission be able to determine whether this solution has worked and if not they must then explore first a public tender before considering a public utility option. Therefore, we consider that there is no immediate need for ESMA to have a formal supervisory role in data publication.

In respect of investment funds, we consider that a closer alignment of approaches by NCAs is a more appropriate and proportionate measure, rather than the provision of direct supervisory powers to ESMA. In our view, this would be a more streamlined and efficient means of achieving a unified approach to the supervision of funds by NCAs and the operation of the passport regime. The expert knowledge that resides with NCAs for particular types of specialist investment funds is also a relevant consideration.

As regards **CCPs**, it would be unsuitable to delegate supervisory power to an entity, such as ESMA, that lacks both the means to access financial resources and political authority to act in case of default of a systematically important financial institution. This possibility remains remote but is crucial to consider in the context of direct supervision.

Instead of considering a radical shake-up of existing supervisory structures, we believe ESMA should focus on strengthening supervisory convergence within its current structures. Such an approach will strengthen the EU's Single Market, while not marginalising NCAs' knowledge in terms of local rules, practices and business models.

II. Governance of the ESAs

22. To what extent do you consider that the current governance set-up in terms of composition of the Board of Supervisors and the Management Board, and the role of the Chairperson have allowed the ESAs to effectively fulfil their mandates? If you have identified shortcomings in specific areas please elaborate and specify how these could be mitigated.

Assessing the effectiveness of the ESAs governance

23. To what extent do you think the current tasks and powers of the Management Board are appropriate and sufficient? What improvements could be made to ensure that the ESAs operate more effectively?

FESE would welcome more transparency on the internal working structure of ESMA Working Groups, as well as periodic feedback from the decision taken by the various ESMA departments before the decision is taken by the ESMA Board of Supervisors.

FESE would also ask the ESAs to consider adopting better procedures for instances when deadlines included in Level 1 cannot be fully met. In recent years, many pieces of legislation have been subject to delay and/or Level 2 and 3 have not been finalised in time to allow industry to prepare for correct, timely implementation. A new procedure could allow regulated entities to ask a supervisor for clarity regarding conflicts with implementation timelines. FESE considers that legal clarity should be provided as early as possible to promote efficiency and correct implementation.

24. To what extent would the introduction of permanent members to the ESAs' Boards further improve the work of the Boards? What would be the advantages or disadvantages of introducing such a change to the current governance set-up? Please elaborate.

Please see response to Question 22.

25. To what extent do you think would there be merit in strengthening the role and mandate of the Chairperson? Please explain in what areas and how the role of the Chairperson would have to evolve to enable them to work more effectively? For example, should the Chairperson be delegated powers to make certain decisions without having them subsequently approved by the Board of Supervisors in the context of work carried out in the ESAs Joint Committee? Or should the nomination procedure change? What would be the advantages or disadvantages? Please elaborate.

Stakeholder groups

26. To what extent are the provisions in the ESA Regulations appropriate for stakeholder groups to be effective? How could the current practices and provisions be improved to address any weaknesses?

FESE would welcome a more prominent and consulting role for the ESMA SMSG. We would also support further clarity on the differing roles between the SMSG and the various Consultative Working Groups.

We would like to see ESMA interact more efficiently with the SMSG and/or dedicated working groups in specific issues (as set forth in the regulation establishing ESMA), following-up on different subjects and stages of policy and regulatory processes. The dialogue with SMSG/working groups should be not only reactive (i.e. discuss and analyse a specific issue or problem already set forth under a specific legislation) but also proactive (thinking ahead strategically).

Stakeholder group Members have a significant contribution to make to the discussions with a view to providing relevant input to the ESAs. However, often there is no introduction of who is present in the meetings and it is difficult to identify the individuals participating from the ESA secretariats and NCAs. Clearly, more structured transparency in the meetings should enable the sharing of relevant experiences and contribute to a useful discussion. Moreover, improvements on the structuring of the meetings, in terms of providing regulatory/institutional context would be useful for those individuals appointed as a result of their practical industry experience, and who may lack an understanding of the exact mechanics of the regulatory process. Such an approach should spur more activity and create better value.

III. Adapting the supervisory architecture to challenges in the market place

27. To what extent have the current model of sector supervision and separate seats for each of the ESAs been efficient and effective? Please elaborate and provide examples.

FESE would like to highlight issues that we have encountered when discussing pieces of legislation that cut across two ESAs. In particular, we experienced difficulties when discussing the Level 2 Regulatory Technical Standards on the PRIIPs regulation. As the RTS were predominantly drafted and discussed by EIOPA we were concerned that there should have been more input from ESMA as they would be considered the prominent financial markets authority of the three ESAs. We would propose that, going forward, where issues cut across two or more ESAs, there is a formal joint working group between these ESAs to ensure that the relevant ESA is involved for both the discussions and final decisions. There should also be a joint stakeholder group/working groups with different markets' representatives to ensure that issues are discussed and views taken into account.

28. Would there be merit in maximising synergies (both from an efficiency and effectiveness perspective) between the EBA and EIOPA while possibly consolidating certain consumer protection powers within ESMA in addition to the ESMA's current responsibilities? Or should EBA and EIOPA remain as standalone authorities?

IV. Funding of the ESAs

29. The current ESAs funding arrangement is based on public contributions:
a) should they be changed to a system fully funded by the industry?
b) should they be changed to a system partly funded by the industry?
Please elaborate on (a) and (b) and indicate the advantages and disadvantages of each option

Currently the vast majority of NCAs in the area of financial services are funded through industry contributions. FESE therefore understands the need for further industry involvement in the funding of the ESAs. In introducing industry financing, our Members believe that the framework should impose an explicit requirement on NCAs to demonstrate that domestic supervisory fees no longer cover any indirect funding requirement from industry for the ESAs. Turning to the question of full or partial industry funding, as the Commission notes in the consultation, one of the arguments in favour of a partial approach is the fact that it can help mitigate procyclical effects in times of a crisis when an increase in the burden on supervisors will likely be matched by a weakening of industry's capacity to pay fees. We agree with this assessment and therefore support Option B.

30. In your view, in case the funding would be at least partly shifted to industry contributions, what would be the most efficient system for allocating the costs of the ESA's activities?
a) a contribution which reflects the size of each Member State's financial industry (i.e., a "Member State Key")
b) a contribution that is based on the size/importance of each sector and of the entities operating within each sector (i.e., an "entity-based key")
Please elaborate on (a) and (b) and indicate the advantages and disadvantages involved with each option, indicating also what would be the relevant parameters under each option (e.g. total market capitalisation, market share in a given sector, total assets, gross income from transactions etc.0 to establish the importance/size of the contribution.

There are multiple ways of designing the exact methodology to calculate contributions and this needs to be further discussed and analysed.

31. Currently, many NCAs already collect fees from financial institutions and market participants; to what extent could a European system lever on that structure? What would be the advantages and disadvantages of doing so? Please elaborate.

FESE believes existing national structures should be used to collect the fees, within a common methodological framework.

General question

32. You are invited to make additional comments on the ESAs Regulation if you consider that some areas have not been covered above.