



Brussels,
Ares(2017)

Opinion

Title: Impact Assessment on The Review of The European Supervisory Authorities (FISMA)

Overall opinion: NEGATIVE

(A) Context

European financial markets were traditionally regulated at the national level. In 2010, as part of its response to the financial crisis, the EU decided to replace committees of supervisors with three new European supervisory authorities (ESAs). The ESAs regulate EU-wide aspects of banking, securities markets and insurance respectively.

European financial markets have continued to evolve. So has financial regulation. When the United Kingdom leaves the EU, European financial markets will change further. Arguably the ESAs will at some point require reforms. The ESA founding regulations require an evaluation in 2014 and every three years thereafter.

The Commission aims to ensure that the ESAs are fit to deliver effective financial supervision also in future circumstances. This report considers the powers, governance and funding framework of the ESAs. It draws on an evaluation and a public consultation.

(B) Main considerations

The Board gives a negative opinion, because the report contains important shortcomings that need to be addressed, particularly with respect to the following key aspects:

- (1) The justification for extending supervisory powers and changing governance does not come out clearly. The report and evaluation do not document evidence for problems that have allegedly been observed for some time. Neither does the report analyse challenges related to future changes, including those that arise from the UK's departure from the EU.**
- (2) The policy options are not sufficiently clear and easy to assess. This makes it difficult to judge how extensive the new mandates of the ESAs would be, the share of the sector shifting to European supervision, and the related resources required for the ESAs to take on such additional tasks. The choice of the final options is not transparent, in particular for governance and funding. The report also fails to consider certain alternative options, e.g. merging agencies or sharing some of their activities.**

- (3) **The report does not assess the size of funding gaps. The identification of the different cost elements relating to these options is insufficient. The report does not clearly distinguish between costs relating to direct supervision and cost relating to indirect supervision and other activities. It does not consider the impact of the package on the overall supervision costs for the sector.**
- (4) **The analysis does not sufficiently consider specific features that distinguish the contexts facing the three ESAs.**

(C) Further considerations and adjustment requirements

(1) **The problem definition section** should distinguish between problems that have actually been observed from problems that are anticipated. The evaluation should transparently present the available evidence for all backward-looking elements. In addition, the report should better set out the general scenario going forward, including the changes in the ESAs activities that stem from Brexit. To better inform policymakers about the additional challenges that the ESAs should be equipped to address, the report should integrate the forward-looking scenario into the baseline. For example, risks of regulatory arbitrage when UK financial sector firms establish operations in the EU27 should be presented more directly. The governance problem needs a firmer evidence base. The report should also address more clearly from the outset (and follow up throughout the report in the options) which challenges and problems the ESAs have in common and which are specific to individual ESAs. Finally, the report should explain the relevant implications of recent EMIR II amendments that the Commission has proposed.

(2) The report should clarify the links between the **evaluation findings** and the impact assessment's problem analysis. It seems that the evidence base of the evaluation relies heavily on reported **stakeholder views** and does it in a selective way. In addition, the analysis on efficiency is particularly weak. Overall, the evaluation does not provide an evidence-based analysis of the functioning of the ESAs and is not sufficient to serve as a basis for the problem description of the impact assessment.

(3) **Stakeholder opinions** should also feature more widely throughout the report and reflect the detail of the views of the different stakeholder groups. It is especially important to indicate the level of support for the options from the national public authorities.

(4) **Policy options and their impacts.** The policy options should be explained more precisely. For instance, the report should specify how far the direct supervision option is going. While three minor sectors are addressed, the option is essentially open-ended, which potentially allows for substantial further transfer of supervisory powers. Will expansion of supervisory powers be based on secondary legislation? It is not clear whether EIOPA's role with regard to group internal models is to be one of direct supervision or some other type of oversight. The report should clarify the requirements for ESAs in terms of their activities and what resources they would need to fulfil additional tasks. The report should strengthen its assessment of the **cost implications of the various options, including by specifying better the type of costs, their magnitude** and who will bear them. In this respect, costs that relate to direct supervision should be clearly distinguished from costs that relate to indirect supervision and other activities. The report should also indicate whether or not the options imply an increase in the overall cost of supervision. The report should make clear the different financing channels. The analysis should also draw on previous experience of supervisory power transfer from Member States to the EU level. The report could also draw broad conclusions from the annex pages 114-120. It should more clearly identify costs relating to the monitoring of third countries' compliance with equivalence decisions. The report should discuss the pros and cons of merging

ESAs, or some of their activities, notably in the areas of economic analysis, statistics, data management, HR and procurement (as envisaged in the Evaluation section), or for the calculation and invoicing of fees to private entities envisaged in the preferred option.

The analysis comparing options should be strengthened to bring out more convincing arguments for the choices made. The report should explain why extending ESAs' supervisory powers would be more efficient, and why the option of mixed financing would be just as efficient (despite the additional costs involved) and more effective (despite the additional risks involved) than a public funding model. When discussing governance options and coherence, the report should take into account experiences from other types of Community agencies.

(5) Presentation: In terms of providing clarity and overview, the report should make better use of overview tables, bullet points, references, etc. The report should include a glossary of acronyms and abbreviations.

Some more technical comments have been transmitted directly to the author DG.

(D) RSB scrutiny process	
The lead DG shall ensure that the report is revised in accordance with the above-mentioned requirements and resubmitted to the Board for its final opinion.	
Full title	Review of the European Supervisory Authorities
Reference number	2016/FISMA/009
Date of RSB meeting	05/07/2017



EUROPEAN COMMISSION
Regulatory Scrutiny Board

Brussels,
Ares(2017)

Opinion

Title: Impact Assessment / Review of the European Supervisory Authorities
Overall 2nd opinion: POSITIVE WITH RESERVATIONS

(A) Context

European financial markets were traditionally regulated at the national level. In 2010, as part of its response to the financial crisis, the EU decided to replace committees of supervisors with three new European supervisory authorities (ESAs). The ESAs regulate EU-wide aspects of banking, securities markets and insurance respectively. European financial markets have continued to evolve. So has financial regulation. When the United Kingdom leaves the EU, European financial markets will change further. Arguably the ESAs will at some point require reforms. The ESA founding regulations require an evaluation in 2014 and every three years thereafter. The Commission aims to ensure that the ESAs are fit to deliver effective financial supervision also in future circumstances. This report considers the powers, governance and funding framework of the ESAs. It draws on an evaluation and a public consultation.

(B) Main considerations

The Board acknowledges the efforts made to improve the report, notably to explain the need to expand supervisory powers, to change the governance, and how this affects the three different agencies. The report also clarified the policy options.

However, the report still contains significant shortcomings that need to be addressed. As a result, the Board expresses reservations and gives a positive opinion only on the understanding that the report shall be adjusted in order to integrate the Board's recommendation on the following key aspects:

- (1) The analysis of challenges for the supervisory systems related to the likely evolution of banking, insurance and securities markets over the next years remains incomplete. It also fails to address sufficiently the various impacts of the UK's withdrawal from the EU on the core activities of the ESAs.**
- (2) As already noted in the first Opinion of the Board, the evaluation does not provide a solid basis for policy development. It appears to be based on selective reporting of stakeholders' views and unreferenced and unsubstantiated desk work.**
- (3) The assessment of costs and funding gaps of ESAs implied by the baseline and the various options remains incomplete.**
- (4) The comparison of options remains unconvincing and the choice of the preferred option is not sufficiently supported by available evidence and analysis.**

(C) Further considerations and adjustment requirements

(1) Clarify the baseline

The baseline should be clear on how robust and flexible the existing system of supervision is. It should discuss whether it can adapt to expected evolutions in the financial sector and sustain external shocks. The baseline still remains too general and does not refer to the anticipated changes in the ESAs' activities and uncertainties regarding future funding. The report should elaborate more on the expected implications of the withdrawal of the UK from the EU in this context, including possible risks for regulatory arbitrage. The evidence base should be improved to back assertions made on the sustainability, efficiency and effectiveness of the existing system.

(2) Increase the objectivity of the evaluation and present its limitations transparently

The evaluation does not meet the requirements of Article 81 of the ESAs Regulations and or the better regulation guidelines. As an evidence-based assessment it should have demonstrated the performance of the ESAs, with clear references to the collected data and information, as well as discussed the uncertainties. This should have been done across the three pillars: effectiveness, efficiency and coherence. The evaluation should have identified possible inefficiencies resulting from the current supervisory architecture; it should not analyse possible alternative options, which should be done in the impact assessment. In the absence of a sufficient evidence base in the evaluation, the impact assessment should present a self-standing problem description.

Furthermore, between the first and the second submission of the impact assessment, the text of the evaluation has been tweaked in places in order to fit with the design of the options and the choice of the preferred option. This confirms the Board's initial view that this evaluation relies heavily on subjective desk work and that it cannot therefore offer a credible basis for informed policy making. The report should remove any unsubstantiated statements that deviate from the previous version of the evaluation, and present transparently any additional considerations in the impact assessment.

(3) Improve the analysis of costs and the funding gap

The cost assessment should be significantly revised, both regarding the current functioning of ESAs and future tasks. The options on funding should provide a clear explanation of the approximate levels of contribution expected from public and private sources, or distribution of costs between them. Potential funding gaps and constraints should be specified, especially those stemming from the UK's withdrawal from the EU, i.e. a smaller EU budget, downsizing of the industry and decrease in the level of national contributions. This should be done to underline the uncertainty of findings and options comparison.

(4) Complete the range of options and better justify the final policy choices

As acknowledged in the original version of the evaluation, there may be a case for sharing some of the activities of the ESAs. This and possibly other options mentioned in the Board's first opinion should therefore be assessed in the impact assessment.

The report should also further substantiate the choice of the preferred options. In particular, it should better explain why extending ESAs' supervisory powers would be more efficient than clarifying and strengthening existing powers, since the potential efficiency gains related to centralisation may be compensated by the related substantial increase of costs, which is disregarded in the report. Similarly, concerning funding options, the report should justify more thoroughly why the option of mixed financing would be just as efficient (despite the additional costs involved) and more effective (despite the additional risks involved) than a public funding model. The conclusions should also reflect uncertainties and risks stemming from the withdrawal of the UK from the EU.

Wherever available evidence is not conclusive and political considerations weigh in, this should be reflected in the report. Alternatively, notably concerning funding, the choice of a preferred option could be left open for the political level.

(5) Better present the stakeholders' views

The report should clarify which stakeholders support the various options and why. Details should be given providing insight into actual opinions and their distribution across different groups of interested parties. This should include the level of support for the options from national public authorities. The report should avoid vague and ambiguous references. _____

(D) RSB scrutiny process

The lead DG shall ensure that the report is adjusted in accordance with the recommendations of the Board prior to launching the interservice consultation.

Full title	Review of the European Supervisory Authorities
Reference number	2016/FISMA/009
Date of RSB meeting	written procedure for the resubmission of 24/07/2017