BUSINESSEUROPE

POSITION PAPER

16 May 2017

THE OPERATIONS OF THE EUROPEAN SUPERVISORY AUTHORITIES

Introduction

BusinessEurope supports integrating financial markets while safeguarding financial stability. It supported the development of a Single Rule Book for financial regulation and the creation of the European Supervisory Authorities (ESAs).

Since the outbreak of the crisis, an extensive reform of financial services has made the financial system sounder. Improved financial supervision through the ESAs, which has further been supported by a Single Supervisory Mechanism in the Eurozone, has significantly improved cross-border oversight and contributed to greater financial stability. Improved capital and liquidity measures have built a more resilient banking sector and improved the banking sector's ability to absorb shocks arising from financial and economic stress. Agreed arrangements for early intervention and resolution will also help to curb excessive risk-taking through greater market discipline.

It is now time to take stock of the changes and assess their (combined) impact before making new changes. In order to create growth and jobs, businesses need stability and regulatory certainty. The EU should carefully assess the need for new legislation, to focus on cumulative effects and the bedding-in of the reforms of recent years. A high degree of consistency between regulatory measures is essential to ensure investment and a proper functioning Capital Markets Union (CMU).

Supervisory Convergence

Supervisory convergence is an important aspect of the CMU. In a comprehensive and well-designed CMU, all market participants with the same relevant characteristics should face a single set of rules, have equal access to a set of financial instruments or services, and be treated equally when they are active in the market. Therefore, it has to be clear which areas have to be included in an effective "union" and, on the other hand, which areas need to be simply better harmonised.

Maintain the existing supervisory structure

Stronger cross-border oversight by the ESAs is best achieved by safeguarding sectorial expertise and maintaining the current European financial supervisory architecture. National supervisory structures should thus be left intact. In this context, there should be a clear definition of the operational relationship between the areas of responsibility for oversight by the ESAs and the day-to-day supervision by national supervisory authorities considering that the risk assessment flows directly from the hands-on experience in day-to-day supervision. The responsibility for supervision of individual firms should thus be left with national supervisors. Also in view of the fact that frequently relevant requirements are embedded in a national legal framework, as is the case for occupational retirement provisions which are often embedded in a national legal framework of labour and social law.

AV. DE CORTENBERGH 168
BE-1000 BRUSSELS
BELGIUM
VAT BE 863 418 279

BUSINESSEUROPE a.i.s.b.l.
WWW.BUSINESSEUROPE.EU

TEL +32(0)2 237 65 11
FAX +32(0)2 231 14 45
E-MAIL: MAIN@BUSINESSEUROPE.EU
EU Transparency register 3978240953-79

The added value of the ESAs lies in their sector expertise and the oversight of the national supervisors to improve co-ordination and ensure the convergence of supervisory opinions through peer group review and assistance with developing consistency to technical rule-making across Europe. Rule-making should be improved in a co-ordinated manner, in respect of the principle of minimum harmonisation, eliminating harmful national differences between regulatory regimes and regulatory arbitrage and providing oversight and best practice peer review of national supervisory operations whilst leaving some degree of flexibility at national level with respect to rule-making for conduct of business regulation which needs to be appropriate for the national marketplace. Also, especially smaller companies may need local services near their home authorities, often in their local language. It is important for such companies to receive timely, consistent and clear information and answers to their questions directly from their local authorities. Otherwise it may be harder for those companies to enter capital markets in the first place.

The supervision of financial markets at national level has not led to harmful differences between Member States such as different investor protection standards or significant barriers to cross-border operations that would justify changing supervisory arrangements and its structure at EU level. There is no evidence that another structure would work better or justify the costs, risks, and years of uncertainty and distraction that would accompany any significant structural changes. National supervision as such is not discouraging companies from accessing finance in other Member States. This is an issue that should be addressed by further harmonisation of financial legislation such as foreseen in the context of the CMU project.

Maintain the existing adoption process of accounting standards

Regarding the adoption process of international accounting standards, BusinessEurope would like to stress the importance of the European Financial Reporting Advisory Group (EFRAG). We strongly support the current endorsement system in which EFRAG is the expert body and we see no reason to change the system. EFRAG has proven its ability to deliver endorsement advice of the highest quality, underpinned by its commitment to transparency, inclusiveness and due process. EFRAG seeks the views of all stakeholders and bases its advice on evidence. The reform of EFRAG has received a positive assessment in the review performed by the Commission and EFRAG has been given continued funding by the EU for the years 2017-2020. Again, there is no evidence that the current system has failed in a way that would justify a major change to the existing adoption process.

Respect existing mandates and improve governance and accountability

While BusinessEurope believes that no significant changes to structure, powers or responsibilities are needed, improvements in governance are necessary before considering any next steps. For example, an independent oversight board could support the Parliament's current role in holding the ESAs to account and also help ensure that they operate efficiently, remain within their mandate and provide them with independence from their members.

It is key that the ESAs respect their mandate and that a clear hierarchy is set for the different 'non-legislative' tools such as guidelines, recommendations, Q&As, which should not add to the regulation. The subsidiarity principle should always be respected.

The existing stakeholder groups should be better balanced in order to make them more representative. Members should be allowed to consult their constituencies and the organisations that nominated them.

Regarding due process, evidence-based decision-making and transparency, BusinessEurope would like to emphasise that it is crucial that the ESAs apply the EU's Impact Assessment and Consultation Guidelines. Taking a smart approach to policy-making, boosting competiveness and developing the single market through the use of better regulation tools to cut red tape and devise proportionate legislation should be a mind-set of all policy- and decision-makers, including the ESAs.

Better regulation and improved governance structures will ensure that policy decisions can be made on the basis of evidence-based sound information and result in proportionate legislation. For that reason, impact assessments and consultations should be carried out for all legislative and non-legislative initiatives which affect stakeholders and have potentially significant economic, social and environmental impacts for them. This includes draft technical standards, guidelines, Q&As, and of course delegated and implementing acts. For example, we need better consultation with market participants on the work regarding reporting simplification (define the right format, reporting objectives, review of existing obligations).

All stakeholders affected by this EU action should have the opportunity to participate in consultations during the impact assessment process and to contribute information not only at an early stage when policy concepts are not yet precisely defined, but also later when more detailed provisions are drafted. Transparent and accessible information about impact assessments are key to raising awareness amongst stakeholders, who must be invited to feed into the process, throughout the process. This enhances the chances of receiving and assessing relevant comments from all sectors and businesses concerned. All this is acknowledged in the Commission's better regulation policy. It is very important that the ESAs share these objectives and thoroughly apply the EU's Impact Assessment and Consultation Guidelines, and, given that independent scrutiny is such an important part of the Commission's impact assessment system, this should also be checked.

Maintain the existing funding model

BusinessEurope opposes changing the current ESAs funding model to a system fully funded by the industry. The existing model ensures that the ESAs can be held accountable by the European Parliament which exerts budgetary control over the ESAs.

* * *