



The European Association of Corporate Treasurers

Interest Representative Register ID: 9160958318-89

Responses on the Consultation on the Review of the European System of Financial Supervision

SUBMITTED VIA THE ONLINE QUESTIONNAIRE ON THE COMMISSION WEBSITE

(<http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form=ESFSPUBLIC&lang=en>)

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.

We consider that serious understaffing of the organisation is a primary obstacle for ESMA in fulfilling its mandate. As a comparison, ESMA has about 160 staff members¹ whereas the UK Financial Conduct Authority (FCA) has an estimated 4000 staff members². We believe that the funding and resourcing of ESMA (and indeed other ESAs) should be considerably strengthened.

1.2.3.a. How do you assess the arrangements on financing and resources? If you have identified shortcomings, please specify how these could be addressed.

See response to question 1.1.c

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?

As we have not been offered representation on the ESMA Securities and Markets Stakeholder Group (SMSG) it is frankly difficult to assess the impact it has had on ESMA's work.

We would underline the importance of the SMSG having an active role in the drafting of ESMA standards and we would expect ESMA to systematically seek the SMSG's opinion and input on the standards / guidelines being drafted.

¹ http://www.esma.europa.eu/system/files/2012-631_0.pdf

² <http://www.ifaonline.co.uk/ifaonline/news/2251800/new-regulator-to-boast-4-000-staff>

1.2.4.c. Are you satisfied with the appointment procedures for the stakeholder groups?

In EACT's view, the appointment procedures for the ESMA stakeholder groups are highly unsatisfactory. Our reasons are as follows:

- 1 – there is a complete absence of transparency and accountability on ESMA's part**
- 2 – appointments appear to be driven by what can best be described as political and academic correctness, as opposed to seeking to identifying the best and most relevant people in terms of skills, experience and real rather than nominal stakeholder representation**
- 3 – given the views expressed above we are particularly disappointed by ESMA's repeated failure to appoint corporate treasury representatives to the stakeholder groups**
- 4 – we suspect that the financial sector background of ESMA staff reinforces the organisation's difficulty in making appropriate and balanced end-user appointments to its stakeholder groups**

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?

In our view the representation of the ESMA SMSG is unbalanced as it does not include any recognised representatives from the users of financial markets within non-financial companies. These companies are a key segment of end-users of financial services; they have been and will continue to be heavily impacted by financial services legislation.

We challenge the credibility of many of the financial market participants, consumers and academics chosen by ESMA for the SMSG, while corporate treasurers - who are daily using the financial instruments being regulated by ESMA and need to manage the new regulatory requirements as part of their daily conduct of business – are not granted representation. In the continuing development of the financial regulatory and legislative programme non-financial companies have regularly and with great naivety been deemed to be the same as financial companies. This disadvantages the real economy and poses undue burden to businesses. Non-financial companies need and use financial markets (banks and other financial institutions) to support their business activities, for the wider benefit of the economy, growth and employment (through for instance price stability and reduced volatility in company performance and reduced incidence/effect of financial distress). This should be taken into account at all levels of the legislative process, including in the drafting of Level 2 requirements. The stakeholder groups within ESMA have a vital role to play in this but must have relevant representation.

In general we advocate that the EU process in relation to financial services legislation is improved to include a more structured dialogue with non-financial companies and therefore the real economy. One of the routes to achieving this is by including non-financial company representatives in the SMSG. In our view, this would help to ensure that Level 2 requirements are in line with Level 1 text and to avoid situations where the standards drafted by ESMA would be contestable from the real economy's perspective and consequently also contested by any of the co-legislators. You will recall that in February 2013 the European Parliament almost rejected the first Regulatory Technical Standards (RTSs) arising from the European Market Infrastructure Regulation (EMIR), as they contained certain provisions which were considered incompatible with the Level 1 text and detrimental to the real economy by the Parliamentarians. Only a last minute agreement between the Parliament and the Commission could in this case avoid the delay in the adoption of the RTSs.

1.2.4.e. Is the work undertaken by the stakeholder groups sufficiently transparent? Do you see areas where the approach towards transparency needs to be revisited?

We feel under-informed by ESMA about the work of the stakeholder groups. This taken together with poor quality of the appointment process leads us to the conclusion that the work is by definition insufficiently transparent.

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?

Our experience with ESMA's stakeholder groups – and noting our response to 1.2.4.e above – is that there is no evidence of accessibility. The management of ESMA itself has shown a willingness to be accessible (which we have appreciated) but through that access we have achieved no progress in addressing the fundamental issues of representation that we raise in this consultation response.

5.a. Do you have any other comment on the effectiveness and efficiency of the ESAs and ESRB within ESFS and on ESFS in general? Please indicate whether the Commission may contact you for further details on the information submitted, if required.

We have concentrated in our comments above on ESMA in order to avoid duplication, but, importantly, the principles involved apply to the other two ESAs.

The Commission may contact us for further details on the information submitted. Our contact details are as follows:

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