

Vice President Valdis Dombrovskis
Commissioner for Financial Stability,
Financial Services and Capital Markets Union
European Commission
Rue de la Loi, 200
1049 Brussels
Belgium

16 May 2017

Dear Vice-President Dombrovskis,

Public consultation on the operation of the European Supervisory Authorities (ESAs)

The International Regulatory Strategy Group (IRSG) welcomed the initial proposal by the European Commission ('the Commission') to launch a public consultation into the operation of the ESAs. The UK and the UK-based financial and related professional services (FPRS) industry have both contributed to the development of, and been subject to, the European System of Financial Supervision (ESFS) since its formation in 2010. The IRSG, a practitioner-led body comprising leading UK-based figures from the FPRS industry, is well placed to contribute to this review.

Whilst the views outlined in this letter are set out more fully in other IRSG responses to the Commission, notably the Call for Evidence into the EU regulatory framework for financial services, the IRSG would like to take the opportunity in this consultation to highlight the following four key areas:

- 1) Improving coordination between the ESAs, the Commission and National Competent Authorities (NCAs) including those of European neighbourhood partners
- 2) Promoting international regulatory coherence and convergence, where it is felt the ESAs play globally leading roles
- 3) Increasing interoperability between legislation to ensure minimisation of gaps, consistency and appropriate scheduling
- 4) Implementation of a streamlined system for data reporting.

1. Improving coordination between the ESAs, the Commission and National Competent Authorities

The IRSG and its members are committed to improving inter- and intra-institutional relations between the ESAs, the Commission and NCAs. Cross-border coordination and convergence of legislative, regulatory and supervisory frameworks, where possible and desired, are key to ensuring that markets operate effectively and with proportionality.

The ESAs should be empowered to cooperate more in order to better fulfil their current mandate while respecting the role of national supervisors and the Commission. They should play their proper role in safeguarding the Single Market by using peer review to identify divergent application and interpretation of rules and enforcing the consistent application of rules through opinions and recommendations as set out in the Single Rulebook. Improvements need to be made to the Guidelines process and more transparency over Q&A is necessary to ensure consistency with EU legislation going forward. This ties into the level 3 issue raised below, as level 3 processes, including Q&As, often cover policy issues that could have significant impacts on financial markets. Accordingly, greater scrutiny and engagement with industry participants at this level is necessary.

Many industry stakeholder have identified a need for some form of regulatory forbearance at EU level. Comparisons have been drawn with the US where use is made of no action letters. The IRSG recognises that the need for a tool by which urgent and critical action can be taken may arise in the following circumstances: legislative timetabling issues; specific situations with individual legislative acts; and issues restricted to local markets. Proposals for how these issues could be addressed are set out in *The cumulative impact of EU financial services regulation: better regulation for jobs and growth* which is available on the IRSG's website.

Multinational standard setting bodies play a crucial role in in this process. Regulatory divergence, especially in those areas where global markets exist, could impede the increasing international nexus of markets, creating barriers to Europe's competitiveness. This divergence can occur at two levels: inter-regionally and intra-regionally.

It is crucial that the ESAs stay at the forefront of regulatory development in order that markets continue to operate effectively. The IRSG believes that this can only be achieved by ensuring that operations at a national level have strong synergy with those at supranational level, such as the work of the Financial Stability Board (FSB). In the European context it is important to maintain or improve the channels for harmonisation and coordination that currently exist as far as possible. Thus should continue working on a trilateral basis. That is between the constituent ESAs, between the ESAs and NCAs in Member States and between the ESAs and NCAs in the rest of the world.

Three specific areas where this engagement could be strengthened is on engagement with the FinTech taskforce, the Level 3 process and increased transparency on how ESAs utilise stakeholders' input. Firstly, the ESAs should have great involvement in consultations, impact assessments and other initiatives relevant to their work, especially where there are overlapping responsibilities or areas of interest. One notable opportunity for greater ESA involvement is the Commission's FinTech taskforce. The recommendations coming out of the taskforce will likely have implications for the ESAs' work programme. This example highlights why earlier engagement with taskforces and similar initiatives will be beneficial for the overall results of cross-cutting European programmes, such as the FinTech taskforce. Secondly, this engagement should include increasing opportunities for involvement for market participants, those ultimately affected by the changes, within the Level 3 process. Finally, the consultation process and opportunities for involvement are not the end in themselves but should be followed by a more attributable process of how ESAs deal with input from stakeholders. Therefore the IRSG would recommend the ESAs use this opportunity to ensure that processes for stakeholder engagement are more transparent.

2. Promoting international regulatory coherence and convergence

The ESAs should encourage and promote continued participation in global standard setting exercises. Work undertaken by the ESAs often follows on from and contributes to global regulatory developments and debates, due to the depths and diversity of markets the ESAs supervise. The ESAs should continue to take this role, especially in cases where they can improve accountability in global standard setting, for example through the prominent EU Funds Transfer Regulation 2015 that comes into force this summer. Where appropriate, greater international regulatory coherence would assist in the integration of specialist markets and emerging markets with the European system. It would also reduce costs associated with inconsistencies and regulatory divergence within and outside the ESAs' areas of supervision. In this vein, the IRSG would like to use this opportunity to highlight the leading work of the FSB on regulatory monitoring, which it believes the ESAs could integrate with on a deeper level. Consideration should also be given to the ESAs playing a greater role in international bodies more broadly based on their relevant expertise and the issues being discussed.

The FSB carries out leading work on post implementation effects and effectiveness of policy reforms. Of particular significance here are its protocols for addressing gaps and material unintended consequences of regulation. The FSB's Coordination Framework for Implementation Monitoring was adopted in October 2011 to this effect. In 2015, the FSB annual reporting on the adoption and outcomes of G20 financial reforms included a dashboard on the status of implementation progress by FSB jurisdiction across priority areas. This fed into and was bolstered last year by the creation of 'Jurisdiction Profiles'. Such an approach could be considered for use across the ESFS as such standardisation has the potential to increase cross-border trade within Europe. Internationally consistent regulatory frameworks have the potential to increase resilience within the financial system in Europe, as well as more widely.

Consistency across the ESAs would allow for more dynamic regulatory alignment. The IRSG encourages the Commission to review divergence in ease of engagement with the constituent ESAs and NCAs as some engage more effectively in certain areas than others. In parts these gaps have occurred because each body has developed at a different rate, facing diverse challenges and complexities in the markets they supervise. The IRSG would like to recognise pockets of best practise, particularly by the EBA, in regards to openness and engagement with industry but also its pioneering role in launching the interactive single rulebook. Notably, the EBA is also the only authority that specifically mentions the importance of proportionality in its priorities for 2017. Though improvements have already been achieved through continuing review and adjustment, firms continue to find engagement with some supervisory bodies difficult and their work insufficiently transparent. There is thus need to improve information sharing mechanisms across the ESFS, as well as between them and market participants. Protocols for engagement with NCAs and firms should be aligned as far as possible, to facilitate greater regulatory cooperation and market intelligence sharing.

3. Increasing interoperability between legislation to ensure minimisation of gaps, consistency and appropriate scheduling

Regulatory gaps or inconsistencies faced by NCAs across Europe could be significantly minimised by a more coordinated approach at an ESA level. Building on the IRSG's response to the Call for Evidence, it was felt certain supervisory issues that were raised in that response should be highlighted in this context.

Firstly, firms, especially those offering complex products, struggle with reporting requirements due to inconsistency in definition of core terminology across EU legislation. For example the Level 1 text of the Central Securities Depositories Regulation does not provide for adequate definitions leading to concerns about the entities affected, the instruments covered and the territorial reach of the Regulation. All of the above issues have led to difficulties for the European Securities and Markets Authority (ESMA) when drafting the Level 2 text. The result is likely to be that settlement participants, who are not direct parties to the transaction, will suffer costs which cannot be passed on to the entities which are actually party to the transaction. Further examples can be found in the IRSG's response to the Call for Evidence, which is available on its website.

A second related issue is that of inconsistencies and overlaps in reporting obligations. The ESAs could produce specific guidelines to determine the explicit format and application of particular reporting fields. The G20's dashboard mentioned above maybe a useful starting point. A lack of clear industry-wide standards results in inconsistent data sets, such as the current dual-sided reporting scheme under European Market Infrastructure Regulation (EMIR) which has led to high levels of mismatches. Guidelines should be developed in conjunction with market participants and should seek to replicate the way that products are traded and recorded within the industry, rather than imposing artificial concepts and divisions. The IRSG further recommends that reporting requirements at both national and international level be more closely aligned in order to assure accuracy and consistency. The FSB have suggested a number of approaches to implement such a system¹.

The IRSG further recommends that the scheduling of new legislation needs to be greater aligned to the abilities of firms to comply. Various implementation deadlines have been set in recent EU Level 1 legislation (such as the Market in Financial Instruments Directive 2 or the Bank Recovery and Resolution Directive) which have been widely perceived in the market and by others as being difficult, if not impossible to meet. The IRSG recommends that the ESAs set relative timetables rather than fixed implementation timelines at Level 1. For example, national transposition must occur x months after the relevant Level 2 is adopted and the whole package comes into force xx months after national transposition. The aim of timelines should be to minimise the regulatory burden on firms and reduce the need for repeated communication of changes to consumers.

¹ Most notably the aggregate approach and the granular approach. It should also be noted that in his letter to the G20 Finance Ministers and Central Bank Governors, 10 March 2017, Mark Carney, the FSB Chair stated that: *"To embed this approach, the FSB is now developing a structured framework for these evaluations. The framework, which will be delivered to the G20 Summit in Hamburg, will support more comprehensive impact analysis and will help inform future decisions on any possible adjustments to the reforms."*

Finally, the IRSG encourages the Commission to consider reviewing conflict of law issues. The ESAs should conduct greater legislative scrutiny and review. Such activities would assess conflict of law issues in relation to ESFS reporting requirements as well as local laws governing client confidentiality and privacy, to ensure that by fulfilling reporting obligations under a European Directive, e.g. MiFID, firms are not in breach of privacy obligations in non-Member States.

The ESAs consultation presents a significant opportunity to re-calibrate the EU supervisory process and to harmonise legislation. The IRSG believes that this occasion ought to be used to make the decision making process more expedient. A core part of this is minimising gaps, inconsistencies and introduce more appropriate scheduling.

4. Implementation of a streamlined system for data reporting

The final pillar of the ESAs' operations that the IRSG would like to raise is on more effective data usage. Article 26(10) of the Markets in Financial Instruments Directive (MiFIR) requires ESMA to undertake a review of the interaction of MiFIR reporting with reporting under EMIR Article 9 and propose changes by 3 January 2019. The Article specifically envisages that a solution may be reporting within a single system. The IRSG suggests that this review is accelerated in order to streamline and align the reporting obligations as far as possible and gain the resultant efficiencies anticipated by the co-legislators as soon as possible. The IRSG further suggests that such a review be broadened to include the Securities Financing Transaction Regulation and, if possible, the records of wholesale energy market transactions reporting system. The IRSG recommends that such a review could:

- specifically consider the extent to which EU reporting rules are aligned to relevant international guidelines (e.g. IOSCO/FSB) and that changes are proposed to align with global standards
- deliver a reporting regime that allows for a single report to satisfy obligations across multiple regulations and to do this through a single coordinated migration across regulations rather than multiple iterative partial changes, in line with other jurisdictions such as the US, Singapore and Australia
- establish a clear hierarchy of reporting parties.

Extending the aims listed above regarding minimising duality and duplication in reporting can be more efficiently addressed through single framework legislation for reporting. The ESAs could play a role in the implementation of such a system which would bring operational benefits. The IRSG encourages, as appropriate, the ESAs to engage in international efforts to harmonise data reporting requirements. For example, building on the consultations by the International Organization of Securities Commissions on the UTI and other key data elements would assist in advancing this goal. The benefits of global data harmonisation extend not only to firms, for whom it reduces the systems and processes required for multiple reporting obligations, but also for regulators, for whom access to more standardised globally aggregated data would be extremely valuable. At the European level this should help to create a level playing field, based on international standards. It would also allow

the ESAs to interact more fully with stakeholders and improve their cooperation with NCAs in the formulation of the Single Rule Book.

The IRSG fully supports this consultation into the operation of the ESAs. The IRSG feels that the four key themes set out in this letter are clear outcomes from its engagement on this issue and offers them to the Commission for its review. The IRSG would welcome the opportunity to discuss any of these themes in greater detail or provide further information in writing.

Yours sincerely



Mark Hoban

Chair, IRSG Council

The International Regulatory Strategy Group

The International Regulatory Strategy Group (IRSG) is a practitioner-led body comprising leading UK-based figures from the financial and related professional services industry. It is one of the leading cross-sectoral groups in Europe for the financial and related professional services industry to discuss and act upon regulatory developments.

Within an overall goal of sustainable economic growth, it seeks to identify opportunities for engagement with governments, regulators and European and international institutions to promote an international framework that will facilitate open and competitive capital markets globally. Its role includes identifying strategic level issues where a cross-sectoral position can add value to existing industry views.

TheCityUK and the City of London Corporation co-sponsor the IRSG.