



The Consumer Voice in Europe

Review of the European System of Financial Supervision

BEUC response to the European Commission consultation

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1. The European Supervisory Authorities (ESAs)

1.1. Effectiveness and efficiency of the ESAs in accomplishing their tasks

1.1.a. How do you assess the impact of the creation of the ESAs on the financial system in general and on (i) financial stability, (ii) the functioning of the internal market, (iii) the quality and consistency of supervision, and (iv) consumer and investor protection in particular?

ii) *Functioning of the internal market:* from a consumer perspective, the creation of the ESAs has not had any impact on the functioning of the single market; taking out a financial service in another country for a non-resident remains very difficult mainly because of business and commercial barriers. Furthermore, the ESAs did not work on these issues.

(iv) *Consumer and investor protection:* the impact of the creation of the ESAs has not improved consumer protection in the EU because the ESAs mandate in this area is very limited and because most of the EU-level legislative proposals relating to consumer protection in the financial services area have not yet been finalised (mortgage credit, KID for PRIPs, MIFID, IMD2, Payment accounts, Payment Services, etc.), so that the three ESAs have not yet been requested to work on implementing measures.

1.1.b. Do the ESAs' mandates cover all necessary tasks and powers to contribute to the stability and effectiveness of the financial system? Are there elements which should be added or removed from the mandate? Please explain?

As mentioned below, the ESAs mandate as regards consumer protection is very limited and the limited powers to fulfill this mandate (product intervention, power to investigate potential breaches and reporting on consumer trends) have been little used.

In order to better ensure consumer protection in the financial services area, the best way forward is not only to reinforce the ESAs mandate and provide them more powers to fulfill their mandate, but to move towards a twin peak model of financial supervision both at EU and national level. Reforms in this direction have recently been undertaken in some Member States (UK, FR, BE) following earlier actions in The Netherlands, Portugal and Italy.

Giving priority to financial stability has been clearly reflected in the activities carried out by the 3 ESAs. However, it has been proven in many Member States that financial supervisors who are both in charge of financial stability and supervision of conduct of business neglect the latter, because of potential conflicts of interests between financial stability and the interests of financial services users.

At EU level, one single Financial Consumer Protection Authority (FCPA) should be created and be in charge of all financial services bought by retail users, regardless of who is the provider (banking services, insurance, pensions, investments...).

In addition, each Member State should have its own FCPA¹ in order to ensure that consumer protection legislation is properly enforced everywhere in the EU, which is far from being the case. In 2011, BEUC commissioned a study to assess existing consumer protection through the law and the practice of financial supervision² which clearly shows that in some Member States no authority is really in charge of consumer protection in the financial services area. When such authority exists, many of them are under-staffed, have little on-site inspection capacity, have limited legal powers to make binding decisions and limited powers of sanction. Some of them do not have capacity to deal with consumer complaints.

In countries where consumer protection is not taken on board by any national authority, like in Germany, introducing consumer protection as a legal task for the Financial Service Authority, at the same level as financial market stability, could be an alternative solution, including the obligation to comply with the provisions related to consumer protection in the three ESAs Regulations. This is not yet the case for BaFin (DE)³.

The FCPAs should cooperate under the supervision of the European FCPA in order to ensure a high level of oversight standards as regards consumer protection all over the EU.

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.

As mentioned above, the ESAs have to work with different types of national supervisory authorities, and many national authorities in charge of consumer protection cannot participate in the voting of consumer protection issues and are not even present during the discussions in the ESAs' Boards of Supervisors. This is because in each Member State the protection of consumers is organised differently, i.e. falls under the competence of different bodies. This negatively impacts the decision making process.

In addition, the ESAs do not have sufficient human resources to work on consumer affairs. E.g., the consumer unit at EBA consists of two staff members appointed recently. This is clearly not sufficient even to monitor and assess whether the output of other ESA departments (e.g. on capital requirements, passporting, risk management) could lead to detrimental impacts for consumers. The ESAs should be appropriately staffed and have the resources to effectively discharge their duties.

¹ "Protecting Consumer Interests in the Retail Financial Services Area: Need for Independent and Efficient National Supervisors everywhere in the EU", BEUC Requests, November 2011: <http://docshare.beuc.org/Common/GetFile.asp?ID=42033&mfd=off&LogonName=Guesten>

² « Financial Supervision in the EU – A Consumer Perspective », BEUC study, May 2011: <http://www.beuc.org/Content/Default.asp?PageID=2143>

³ In 2012 a reform of the German Financial Supervisory Authority failed to provide such legal options: according to Art. 1 section 2f of Regulations 1093/2010, 1094/2010 and 1095/2010 consumer protection is an essential part of the European System of Financial Supervision (ESFS). All national FSAs are according to Art. 2 section 2f of those Regulations part of that ESFS network. Yet, concerning the detailed list of activities of Art 9 of the respective Regulations, the legal options for BaFin are missing to enact such tasks themselves or in cooperation with an ESA. The current national legal provisions on the Financial Supervisory Authority BaFin in Germany are not in line with the legal tasks and duties already set by EU law and Germany failed to address this with the recent reform of law last year.

1.1.1. Work towards achieving a single rulebook - regulatory activities

1.1.1.a. Do you consider that the technical standards and guidelines/recommendations developed by the ESAs have contributed to further harmonise a core set of standards in the area of supervision (the single rulebook)? If you have identified shortcomings, please specify how these could be addressed.

The recommendations, guidelines and opinions on consumer protection issued by the ESAs have no binding power, and national supervisory authorities can ignore those documents. This is a major shortcoming in the context of a goal of achieving a single market for retail financial services.

1.1.2. Common supervisory culture/convergence of supervisory practices

1.1.2.a. In your view, did the ESAs contribute to promoting a supervisory culture and convergence of supervisory practices? If you have identified shortcomings how could these be addressed?

ESAs have not yet contributed to the promotion of such a culture in the consumer protection area.

1.1.3. Consistent application of EU law

1.1.3.a. In your view, do the procedures on breaches of EU law (Article 17 ESAs Regulations) and binding mediation (Article 19 ESAs Regulations) ensure the consistent application of EU law? If you have identified shortcomings how could these be addressed?

The ESAs seem not to have made much use of this power.

1.1.5. Coordination function (Art 31 ESAs Regulations)

1.1.5.a. Do you think that the coordination role of the ESAs is appropriate? If you have identified shortcomings, please specify how these could be addressed.

In 2013, the 3 ESAs organised a Joint Consumer Day which was very welcomed, as consumer issues are similar irrespective of who (bank, insurance company, etc.) provides the financial service.

Indeed, because consumer problems in the field of financial services often fall into the competence of more than one ESA, a considerable number of relevant issues are to be handled by joint committees of the three ESAs (e.g. the emerging product of peer-to-peer lending is an investment, savings and credit issues which fall between ESMA and EBA). It is important to ensure that consumer stakeholders are consulted in relation to the work of these committees. This can be ensured by a regular exchange of opinions and request for feedback of these committees directly to the consumer NGOs and/or by ensuring that stakeholder groups at all three ESAs are consulted on relevant initiatives and that means are provided for cooperation of the Stakeholder Groups (SG) on these issues. At the moment, no structures or mechanisms exist for empowering the SG to do so.

1.1.6. Tasks related to consumer protection and financial activities

1.1.6.a. How do you assess the role and achievements by the ESAs in the field of consumer protection? Please specify the main achievements by each ESA.

As mentioned above, the role and achievements by ESAs in this area are very limited for various reasons (mandate, powers, resources, priorities given to financial stability, etc.).

1.1.6.b. Are you aware of the warnings that were issued by the ESAs so far? If yes, please specify which ones and whether they have contributed to improve consumer protection or any other objective of the ESAs.

We are aware of the (few) warnings issued by the ESAs, but because consumers are not aware of them, their impact to protect consumers is more than limited. The way the ESAs communicate with the general public should be improved.

Warnings are also not enough. For example, consumers will not stop buying structured products just because an ESA has issued a warning on this. ESAs should work on measures that would ensure that marketing, information and selling methods applied are not to the detriment of consumers.

1.2.2. Decision-making bodies and voting modalities

1.2.2.a. Does the current composition of the Board of Supervisors (BoS) ensure that it acts efficiently? If you have identified shortcomings, please specify how these could be addressed.

The current composition of the BoS results in a situation where the authorities that are in charge of consumer protection in financial services are not represented on the Board of Supervisors (BoS) which makes it difficult for consumer protection issues to get as much attention as other issues that directly come under the responsibility of all members of the BoS.

1.2.3. Financing and resources

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.

The ESAs are generally very short-staffed which means that they are limited as to how much research they can carry out themselves. They are therefore reliant on stakeholders to provide them with analysis and information which in turn provides an advantage for industry which is in a much better position to provide this input. The staffing shortage also means that the ESAs struggle to assess how their own output might affect consumer protection.

1.2.4. Involvement and role of relevant stakeholders

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?

The SGs have had little contact with the BoS as regards consumer protection issues. It would appear there has been lack of interest in the subject and not a strong motivation to engage with the SGs in respect to these issues.

Concerning the overall impact of consumer representatives on the work of the ESAs, there was some influence on the development of the annual action plans / agendas for EIOPA.

1.2.4.b. Are you satisfied with the quality and timeliness of consultations carried out by the ESAs?

Access to consultations is not a problem (available on the ESAs websites as well as via mailing list) and we do not question their quality and timeliness. However, we responded to few consultations in so far as the impact of these consultations is limited (in comparison with the consultations launched by the European Commission).

It would be helpful if the ESAs made direct contact with stakeholders if they consider that their input is of particular value and interest. Consumer groups have limited resources and it can be very helpful if they can provide input in the consultation process in a less formal and resource-intensive way or if they are made aware in what specific way their input is required rather than having to focus on the whole consultation.

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

In September 2011, BEUC submitted a complaint to the EU Ombudsman as regards the composition of EBA and EIOPA Stakeholder Groups established by Art 37 of the respective Regulations. We complained about the selection procedure and unbalanced representation of stakeholders within the Groups. In particular, consumer advocates are under-represented:

- Only 4 out of 30 on the EIOPA and 3 out of 30 on the EBA.
- The consumer representatives in the EBA stakeholder group were chosen from small organisations, despite applications from larger and better resourced consumer organisations. This raises major concerns as to their capacity to assert themselves against the heavyweight banking groups who take the clear numerical lead in this body.
- "Users of banking services" are represented by organisations such as rating agencies (Standard & Poor's) or auditors (e.g. PwC). Categorising these professional banking industry service providers as "users" is misleading and inappropriate.

Even if the EU Ombudsman has not yet made his final decision as regards BEUC complaints, BEUC has observed some improvements with regard to the selection criteria for the next (ongoing) call with the view of renewing the composition of the SGs, in particular on the definition of different stakeholder categories. The selection process itself still needs to be monitored in order to check whether the ESAs fully comply with Art 37 for the second call of expression of interest.

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?

See above.

The nonprofit stakeholders face a considerable problem of resources in the stakeholder groups. While the limited resources can already be hindering their input and initiatives in the specific field of consumer protection, it is impossible for them to participate in other fields of work the stakeholder groups engage in. It might make sense to enable the stakeholder group members to specialise more on particular issues by allowing for subgroup meetings.

It would also help if more resources were made available to pay reasonable expenses to SG members from consumer and academic organisations so that they may be able to participate more fully in the SG and contribute to consumer protection issues within the ESAs.

The ESAs should also consider making a research budget available to the SGs, especially on issues related to consumer protection. Additionally, consumer representatives would benefit from technical support when it comes to the discussion of the more technical files. The ESAs should also look at ways of increasing the amount of time the SGs can commit to consumer protection issues for example by allowing the SG to split into sub-groups during part of the meeting to discuss different issues.

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?

The SGs rules of procedure do not allow SGs members to share documents with their constituencies. Only the minutes of the SGs meetings are available online.

This is quite an important issue for consumer representatives where a wider sharing of information could allow them to tap into additional resources from fellow consumer organisations.

Because ESAs often deal with EU-wide developments, it would be beneficial for the quality and geographic coverage of stakeholder input if broader constituencies could participate in the sharing.

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?

ESAs contact with consumers' representatives is limited to the few consumers' representatives who are members of the SGs (see our reservations on the composition of the SGs under questions 1.2.4). Except for EBA who has taken the initiative to organise an annual meeting with BEUC and EuroFinUse, EIOPA and ESMA have never organised any meeting the European organisations representing consumers and retail investors, neither the members of the Financial Services User Group. It would be a major improvement in terms of governance if those ESAs would engage more proactively and concretely with all their stakeholders.

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