

AMAFI POSITION PAPER

REVIEW OF THE EUROPEAN SUPERVISORY AUTHORITIES

The European Supervisory Authorities (ESAs) and specifically the European Securities and Markets Authority (ESMA) have played a key role in the build-up of the Single Rulebook and the safeguard of financial markets stability since their establishment in 2011.

The prospect of Brexit and the uncertainties around the future EU-UK relationship have strengthened the need for the EU-27 to adapt its regulatory architecture and to further integrate EU financial markets in creating a Capital Markets Union (CMU). In the meantime, the need to reform the governance structure and the lack of powers in key areas have proved critical for the ESAs to fulfill their mandates.

AMAFI has therefore welcomed the European Commission's (EC) initiative to review the existing regulatory framework and the overall approach taken.

Nevertheless, with regard to the reform of ESMA which is a key concern for its members, AMAFI believes the priority should not be to provide the Authority with new powers but rather to ensure it can use as efficiently as possible those it already has. It appears too early to broaden ESMA's mandate as it already experiences difficulties to fulfill the existing one which in the end could impact its credibility. On the contrary, AMAFI is in favour of reinforcing ESMA's existing powers in specific areas.

In particular, AMAFI would like to stress five points which it considers key for the review of ESMA:

1. Supervisory convergence : improve the convergence of national authorities' supervisory practices and the implementation of EU legislations

AMAFI would like to stress it is vital to ensure convergence in the supervisory practices of national authorities and in the implementation of EU legislations in areas where the market in question is truly pan-European. In this respect, AMAFI is supportive of the EC's proposal to enable ESMA to pursue an alleged breach or non-application of Union law, to improve the independence of "peer reviews" and to create an up to date supervisory handbook and a "Strategic Supervisory Plan". Yet, convergence must take place only where there is a genuine pan-European issue of market structure or competition. In the case of markets with no such pan-European reach, what matters above all is the ability of local ecosystems and markets to ensure that companies are well financed and that savings are properly allocated.

In order to facilitate supervisory convergence, **AMAFI would like to emphasize the need for technical standards to be better defined in level 1 texts to avoid critical elements are added in level 2 or 3 texts.** Specifically, AMAFI considers questions & answers (Q&As) as a key supervisory convergence tool and therefore **welcomes the co-rapporteurs' proposition to require ESMA to consult stakeholders group for the elaboration of Q&As.** Additionally, **AMAFI believes that in order to further increase transparency, Q&As should be subject to open public consultations depending on their scope, nature and impact.** This is especially important in the context of Brexit to avoid a race to the bottom that would be detrimental to the EU financial market integrity and competitiveness in the long run.

2. Governance : better reflect national competent authorities' (NCA) interest and expertise in qualified majority votes of the Board of Supervisors

Strategic decisions adopted by the Board of Supervisors (BOS) of ESMA are taken by qualified majority votes and other decisions are taken by simple majority votes. While the split of voting modes appears globally relevant, **AMAFI considers that there is a serious issue in the way abstentions are taken into account for qualified majority votes**. Given the strategic implications of these votes, it is crucial that NCAs' interest and expertise are reflected as much as possible. Therefore, as for simple majority votes, **qualified majority votes abstention should not be considered as a vote in favour when calculating the number of votes cast**.

Besides, **AMAFI is also very supportive of the creation of an Executive Board** – replacing the existing Management Board – which would be responsible for the breach of Union law and play a central role in ensuring supervisory convergence as it would notably be in charge of peer reviews. This would reduce conflicts of interest inherent to the current organization and contribute to the current efforts of convergence. According to AMAFI, it is vital **the composition of the Board reflects the actual situation of domestic financial markets and the Board has broad autonomy to take the initiative and make decisions** on anything relating to questions of convergence and NCA's supervisory practices.

3. Funding : maintain existing financing mechanism

The question of funding is important as it will shape the ability of the ESAs to obtain the human and technical resources needed to discharge their tasks with maximum effectiveness. Therefore, **AMAFI is in favour of maintaining the current financing arrangements** from the EU budget, NCAs and directly supervised entities as they currently stand.

AMAFI also considers it is particularly important the **European institutions maintain an adequate involvement and control over the establishment and approval of the ESAs' budgets**.

4. Equivalence process : strengthen ESMA's role in the capital market equivalence process

AMAFI agrees with the EC on the need to strengthen ESMA's role with regard to the capital market equivalence process. It appears logical given ESMA's expertise of financial markets, regulations and practices that it plays a key role in leading on the equivalence monitoring and in supporting the EC's equivalence decision. AMAFI is rather supportive of the EC's initial proposal suggesting a yearly assessment and considers such assessment should not be limited to the regulation review and has to take into account implemented practices.

5. Outsourcing and delegation : reinforce ESMA's powers vis-à-vis EU regulated firms' outsourcing and delegation in third countries

AMAFI strongly supports the EC's proposal aiming at reinforcing the coordination function of ESMA when it comes to the supervision of firms' outsourcing, delegation and material risk transfer arrangements to entities based in third countries. It very much concurs to supervisory convergence, financial stability, financial integration, market integrity and protection of consumers and investors.

While in the context of Brexit a number of UK entities will relocate to the EU to keep the benefit of passporting rights, AMAFI welcomes this proposal as it would contribute to preventing letterbox entities in the EU. Nevertheless, **AMAFI believes that ESMA should be empowered to avoid potential situations where financial bodies would relocate to the EU and keep their core business and main activities in the UK.**



About AMAFI

***Association française des marchés financiers (AMAFI)** is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI's members operate for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives, including commodities. Nearly one-third of members are subsidiaries or branches of non-French institutions.*