AFG POSITION PAPER

PROPOSAL FOR A REGULATION Review of the European Supervisory Authorities

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association française de la gestion financière

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AFG position paper
EC proposal in the context of the ESAs review (omnibus regulation)

*The **Association Française de la Gestion financière** (AFG) represents France's asset management industry, all market participants working for individual investors or collective investments schemes. AFG's members are French asset managers: either boutique entrepreneurial houses or subsidiaries of banking, insurance or money management groups. At end of 2016, the French market is represented by 630 asset management companies, together they managed nearly 3,800 billions euros in the field of investment management of which 2,150 billions euros in the form of investments funds, making in particular the French industry a leader in Europe in terms of financial management location for collective investments. When including discretionary mandates, the French asset management industry ranked second on the European market with a 20% market share. AFG is an active member of EFAMA and PensionsEurope.*

AFG's Key messages

- Strong opposition to the extension of ESMA's direct supervisory power in the area of funds.

- Full support to strengthened involvement of ESMA in the assessment and monitoring of third country regulatory and supervisory regimes

- Support to enhancing ESMA's coordination on delegation/outsourcing/risk transfer of substantial activities in third countries subject to important adjustments of the new article 31(a) to the asset management specificities

- Full support to enhanced involvement of ESAs Stakeholders Groups in the decision process and introduction of a simple majority vote in case of excess of competence by ESMA

- Strong call for a clarification of the legal status of the Q&As and increased transparency/interactions with stakeholders

- Urgent need of giving the ESAs the power to adjust implementation of EU rules via no-action letters or comfort letters

- Support to the introduction of an Executive Board

- Strong opposition to direct funding of ESAs from indirectly regulated entities. Call for a fixed floor of 40% on the EU budget contribution

As a preliminary remark, we would like to stress that AFG strongly supports the Commission's objective to enhance regulatory and supervisory convergence across Members States and, in parallel, to strengthen the assessment and monitoring of the equivalence of third countries regimes, which we consider of particular importance in the context of CMU initiatives and Brexit.

We, hence, welcome the proposal of the European Commission to strengthen ESMA's powers in the area of supervisory convergence of practices and outcomes at national level. We do believe that ESMA should play an important role so that an harmonized rulebook is applied consistently across the EU. Moreover, **we strongly support the new ESMA's powers vis à vis third countries and the Commission's approach which keeps the overall structure of the ESAs unchanged**, recognising the need for sector-specific responsibilities and expertise and maintaining EBA, EIOPA and ESMA as stand-alone authorities.

However, we do believe that ESMA's enhanced power should be accompanied by a true transformation, and not only limited adaptations, of its culture of engagement with stakeholders and supervised firms. A continuous dialogue between the supervisor and supervised entities is at the core of effective and efficient supervision. ESMA has often shunned direct conversations with stakeholders about the impact of its regulatory work on markets and institutions. This behavior should change as ESMA's powers increase. Furthermore, we believe that a more specific approach, tailored to each authority, would probably be more appropriate going forward, as the authorities will evolve in their own way and have their own specificities.

Finally, **we have several reservations regarding the legislative proposal in the areas of direct supervision of funds and funding** and we believe that the draft omnibus regulation should be amended in some others aspects.

I) Powers and tools

Direct supervision of EuSEF, EuVECA and ELTIF by ESMA

Strong opposition to the extension of ESMA's direct supervisory power in the area of funds. Providing ESMA with direct supervisory powers for EuSEFs, EuVECAs, ELTIFs and for any other type of investment funds would entail additional complexity due to the interaction with national legislation and duplication of supervisory scrutiny leading to inefficiencies and higher costs for investors.

While AFG welcomes ESMA having authorisation/supervision role for certain core EU services/activities such as CCPs, critical and third country benchmarks, data reporting services providers, **we are firmly opposed to direct supervision of ESMA on EUSEF, EUVECA and ELTIF (and on investment funds in general).** In our view, there is no conclusive evidence in the Commission's Impact Assessment regarding the benefits for investors or providers of such investment products, nor is there evidence of market failure that would justify such a change.

Our overarching concern is that this move would jeopardise the competitiveness of these funds for investors, by creating a more complex, cumbersome and expensive process, without being of added-value to end-investors. On the contrary, we do not believe that transferring

these powers to ESMA will serve the local needs of investors, for the reasons set out below.

First, from a regulatory standpoint, even if those types of funds are regulated by EU regulations, **some large areas remain regulated by national law** such as taxation, marketing rules and retail investors appeal provisions **and several key legal issues would still have to be addressed at national level**.

Indeed, even though under this Commission's proposals, EUSEF, EUVECA and ELTIF product labels would be authorised and supervised by ESMA, managers of these products would still be supervised to a large extent at Member State level. However, as ESMA would be responsible for supervising an AIFM's compliance with the relevant requirements of AIFMD in respect of the qualifying fund, ESMA would have the competence to intervene in the manager's general organisational set-up e.g. in terms of liquidity and risk management, valuation procedures or delegation, even though these organisational arrangements have been deemed appropriate by the responsible NCA. This would create huge complexity. In the case of ELTIFs where scrutiny of AIFMD compliance would even be part of each fund authorisation, it would inevitably delay the authorisation process when there are conflicting views between ESMA and the NCA in question.

Furthermore, the Regulations governing EUSEFs, EUVECAs and ELTIFs do not contain any provision regarding the possible legal structure of fund vehicles, meaning that **national rules for eligible fund structures apply to EUSEF, EUVECA or ELTIF established in a given Member State**. As the design of these fund vehicles is based on national laws and the drafting of fund documentation such as prospectuses relies on civil/contract law, ESMA would not only have to consider EU regulation for the product / EU label, but also need expertise on 28 national legal frameworks and the ability to manage complex issues in all official EU languages.
An additional layer of supervision of the EU label would put in place a dual regulatory regime and create uncertainty as to which regulatory regime should lead, which, in our view, would result in extra delays, extra costs and ultimately to poorer investor outcomes. Other issues would arise from the specificities of different taxation regimes in 27/28 different Member States, which also impacts the choice of a fund vehicle and its fund rules.

From a practical point of view, the application process being handled by ESMA, rather than by local NCAs, would make access to this market more challenging and complex for both smaller firms as well as EU-wide operators. Currently, authorisation and supervision of EUSEFs, ELTIFs and EUVECAs are conducted in NCAs by staff who also cover other types of fund authorisations under UCITS and AIFMD. Similar synergy and efficiency would not be possible at ESMA level. In addition, the submission of fund documents to ESMA (registration documents, investor information and annual reports) in different languages and any follow-up communication between ESMA and different stakeholders would be particularly challenging. We fear that ESMA would not be given the appropriate resources to cater for such language diversity, and translations into English would drive up costs in the authorisation of these particular funds. The fact that ESMA would be in a position to interpret Member States law and handle translation issues is also highly questionable.

Second, **proximity of local NCAs is key** for better protection of investors as financial literacy, market experience, sensitivity to inflation, volatility, capital protection, amongst others, can vary considerably from one country to another. ESMA already contributes to the **practical alignment of the national approaches by issuing guidelines and opinions**. Under the current

legal framework, this approach appears to be the **best option for achieving an incremental convergence of funds standards.**

Third, separating the authorization process between ESMA and NCAs could only lead to **longer delay and heavy administrative costs for the industry and for ESMA** (recruiting staff to deal with the administrative tasks and dealing in all languages in the EU for instance), which are not in the interest of European supervision. As an illustration, **the average delay for the AMF to approve an ELTIF amounts to 17 days** when a maximum of 90 days is foreseen for ESMA to deliver its authorisation.

Finally, direct supervision would raise cost both at the level of the supervisors and within firms. Indeed, asset management firms would have to suffer dual circuits and procedures depending on whether they are dealing with an EUSEF or a UCITS for example. When being in touch with one supervisor, one may expect to have a single entry point and to develop a knowledge of the organization of the body and the circuits for decisions on the basis of a unique doctrine. The key request for funds is today to smoothen the process for passporting and enhance the reality of a Capital Market Union, not to duplicate contacts, comprehension of organigrams of different bodies, and reporting. As a result asset managers will most likely have to pay consultants and counsels to help them or to expand staff. In both cases it means additional cost. Even an asset manager who would run only EUVECAs or ELTIFs directly supervised by ESMA would nevertheless suffer dual supervision and reporting: the products would be supervised by ESMA and the firm by the NCA according to AIFMD.

The same duplication of cost is to be feared at the global level of supervision. ESMA will have to recruit new teams which undoubtedly will be numerous, be it only because of the different languages and legal frameworks the foreseen funds will be launched and documented under. The cost impact would be immediate and significant. No economy on the NCAs' side could be expected due to the limited importance of those funds in their overall activity and the necessity for them to keep expertise at the national level as well. Conversely, ESMA could rely on the local NCAs to gain expertise, but this would mean delegation and simply add extra delays as well as –more limited- extra cost in the process without any gain.

Lean supervision should be a constant concern for the EU and the proposed impact assessment has not demonstrated any advantage of a direct supervision for funds, but uniform implementation of EU regulation. On the contrary, there are obvious disadvantages and direct supervision is not the appropriate solution to gain a better application of a single rulebook.

Equivalence of third country regimes

Full support to enhanced involvement of ESMA in the assessment and monitoring of third country regulatory and supervisory regimes

AFG fully supports the Commission's proposal to strengthen the involvement of the ESAs in providing the Commission with technical assistance in the assessment and monitoring of the equivalence of third country regulatory and supervisory regimes. However, we would like to highlight here that equivalence decisions should remain in the hands of the EC and any implication of the ESAs should be based on a clear mandate from the EU institutions.

We also are in favour of the coordination of supervisory actions of NCAs on an ongoing basis to promote supervisory convergence.

Delegation of substantial activities in third countries

Support to enhanced coordination of ESMA on delegation/outsourcing/risk transfer of substantial activities in third countries subject to important adjustments of the new article 31 a to the asset management specificities.

As a preliminary remark, we would like to stress that delegation within the EU should be facilitated since the same regulatory framework applies in the single market.

Delegation/outsourcing into third countries should of course remain possible as long as the substance of the activity remains in the EU and a uniform application of the rules is ensured across members states. AFG's members strongly believe that **it is essential to establish clear rules to limit and control the outsourcing and delegation of substantial and substantive activities in third countries,** the regulatory framework being, by nature, different unless it is officially recognized as equivalent. All Member States should have the same strict requirements and procedure before authorizing delegation or outsourcing or risk transfer to third countries so as to **ensure the same level of protection for investors and let no room for letter box entities that delegate outside the EU or for a run to lower standards among Member States.**

From this perspective, we would also suggest when it comes to UCITS funds that the solution found in AIFMD for avoiding letter-box entities should now be replicated in the context of the UCITS Directive – even more as UCITS funds can be passported to EU retail investors while the AIFMD passports only cover non-retail investors: the level of safety for UCITS funds must be higher than for AIFM as it regards EU retail investors.

As a consequence, **AFG welcomes the enhancement of ESMA's coordination on delegation, outsourcing and risk transfer of substantial activities in third countries.**

However, **we urge for a redrafting of the proposed article 31a** taking into consideration the following:

1) **Article 31a should be fine-tuned to the asset management industry**. Indeed, the drafting of this new article is mirrored in the founding regulation of the respective ESAs without taking into account the specificities of each sector and the sectorial regulations that are already in place. The reading of this article is therefore unclear when it comes to the concrete application to the asset management sector (already subject to sectorial regulations in this respect). This leads to diverging interpretations which create legal uncertainty and generate, in our views, unfunded fears that could be swept if some clarifications was brought.

2) For the sake of clarification, **Article 31 paragraph 2 should make clear that it applies to the initial authorization of a management company (and not the funds it may launch) while paragraph 3 applies to subsequent changes in the organization that may be related to one or several products including funds**.

3) The **term "*material part*" of activities** is not defined and does not correspond to any existing term in the sectorial regulations applicable to fund managers (i.e UCITS directive and AIFM Directive). **We would therefore strongly suggest to replace – in the case of EU investment funds, i.e. UCITS and AIFs - this unclear and untested criterion of "*material*" by the existing approach of AIFMD**[1], which was already positively tested in practice and was specifically introduced to avoid letter-box entities, similarly to the objective of this ESA's Review provision

4) **Article 31a §4 should be deleted since ESAs have the necessary tools to liaise and use influence with NCAs** without introducing an alarming (in terms of legal certainty and operations) prospect of a withdrawal of an authorization formally granted by the NCA acting as the official supervisor. AFG would suggest a notification process whereby NCAs communicate their delegation decisions to ESMA. This would have the advantage of building on the convergence of legislation and practices among supervisors, and of introducing transparency regarding NCAs' authorisations and registrations while at the same time avoiding a costly, time consuming and eventual double layer of authorisation/registration.

Stakeholders groups, guidelines and recommendations

Stakeholders Groups should be able to adopt a reasoned opinion for excess of competence of the ESAs by a simple majority of votes.
The Introduction of a 'right of action' that could be entrusted to NCAs and individual market participants in case the latter were directly affected by the relevant guidelines should also be considered.

AFG very much welcomes the proposal for systematic ex ante consultation (save exceptional circumstances) **on Guidelines and recommendations.**

AFG is also supportive of the changes introduced whereby when **Stakeholders Group** are of the opinion that ESMA has exceeded its competence, they may send a reasoned option to the European Commission. Indeed, the regulatory experience so far demonstrates that there is a clear need for a formal control and review mechanism in relation to the supervisory Guidelines.

However, we believe that the legislative proposal should go further and that the following additional improvements should still be brought:

- The possibility for the **Stakeholders Groups** to challenge ESA texts or decisions that arguably exceed its competence **should be activated on a single majority decision and not a two thirds majority**. Moreover, the ability to challenge the legality of ESAs texts or decisions should **not be of the exclusive competence of the Stakeholders Group**. Hence, the proposal should be clarified on that point.

[1] article 20 of Directive 2001/61/EU and Section 8 of the Commission Delegated Regulation 231/2013.

- **Further enhancement of the composition and role of Stakeholders Groups and other committees** where professional experts are invited to participate **should be considered**: the appointment of members of these groups should be more transparent and competence should be the key criterion with diversity coming as an ancillary consideration even though we believe that representatives of all the types of directly regulated entities should participate. We are also of the view that ESA Stakeholders Group should have more frequent meetings. In a more general fashion, the ESAs should be encouraged to develop a culture of dialogue with the Stakeholders Groups and the industry in general.

- **Introduction of a 'right of action' against supervisory guidelines issued under Article 16 of the ESAs Regulations**: **the entitlement to such right of action could be entrusted to national authorities and also to individual market participants and their representatives in case the latter were directly affected by the relevant guidelines.** The claim should be founded upon breach of EU law or disregard of the ESAs' competences in relation to the guideline-setting.

- **Encourage the review, amendments and adjustments of Guidelines as a standard and timely process.**

Questions and Answers

Strong call for a clarification of the legal status of the Q&As
Clear need for increased transparency and better interactions with stakeholders

We regret that the proposal does not clarify the legal status of the Questions and Answers (Q&As) since they are being used extensively by the ESAs.

Indeed, the Q&As are not mentioned in article 8(2) of the founding Regulations as a regulatory power given to ESAs. There is a possibility open under article 29 (2) to "develop new practical instruments and convergence tools to promote common supervisory approaches and practices" but Q&As are not specifically defined or even mentioned in the ESAs Regulations. As a consequence, **legally speaking, Q&As are not legal instruments and as such cannot be considered as binding measures**. However, **some regulators, like the AMF, systematically apply Q&As, hence making them de facto binding without possibility of introducing any flexibility, even where justified, while other regulators consider them (rightly) as non-binding instruments**. This is detrimental to Member States whose national regulator has a very prescriptive approach compared to others and lead to distortion of competition in the single market.

Moreover, we are very concerned about the **increasing examples of ESMA exceeding its mandates and sometimes going against the spirit of the EU co-legislators**. Q&As cannot be used to edict new rules that were not covered in level 1 or 2 texts (e.g PRIIPs Q&A) or which are contradictory to them (e.g. AIFMD Q&A) We hence urge for ESMA not using Q&A as a one-way communication with stakeholders, creating new obligations **without clear mandate from the co-legislators**, but as a mean of introducing a "common supervisory culture", as stated in its founding Regulation (article 29.2).

Consequently, **we urge for a clarification of the legal status of the Q&As. Indeed, the non-**

binding nature of the Q&As should be officially recognized (based on the article 29 of the founding regulations) and imposed to NCAs in the view of having an harmonized approach at the European level.

We also suggest that ESAs (or at least NCAs) could consult before and after the Q&As. **The strict minimum would be for ESAs (or NCAs) to communicate in advance on the questions they intend to address at the European level.**

Indeed, there is a clear need of dialogue with stakeholders since we currently cannot predict the Answers, and are not even aware of the Questions. From a practical standpoint, we believe there is an **urgent need for increased transparency, particularly in cases when a large series of Questions needs to be answered**. For example, in the case of the forthcoming PRIIPs Q&As, the list of Questions has not been made available in advance. This is extremely regrettable given that this series of Q&As will be crucial for implementation of PRIIPs by market players.

A solution to avoid binding rules to appear outside the standard process that includes proper public consultation could be to limit them at indicative safe harbour rules. They would give legal certainty to those actors who will take the recommended course of action in identical situations and bring some comfort to those who will infer a similar but adapted behaviour in a similar but not identical situation. They should in no way impose requirements on market participants.

Lastly, even though they are not provided for in the Commissions' proposal, **AFG would like to reiterate its call for realistic timelines to be established for setting technical standards and revising adopted legislation**. Preparing proportionate and appropriate responses to often highly complex questions, including consultation with financial services stakeholders, rightly takes time. In addition, measures must be given time to take effect before assessing their impact with a view to a potential revision. In particular, **the application of level 1 legislation – Regulations and Directives – should only be possible if the level 2 acts – required delegated and implementing acts – have been adopted and are readily applicable. Moreover, level 2 provisions should provide for a certain transition period (i.e at least 18 months) if they require market participants to proceed with significant organisational or technical changes**.

<u>Mechanisms equivalent to "no actions letters" in the EU legal framework</u>

Urgent need of giving the ESAs the power to adjust implementation of EU rules

For flexibility purposes and as recently shown in the context of the implementation of variation margins under EMIR, there would be merit in considering the possibility of giving the European Supervisory Authorities the power to adjust the implementation of a rule through mechanisms such as "comfort letter" or "no-action letters". These **new tools should be made available to ESAs to develop a flexible and proportionate implementation of EU legislation since they would largely improve the fine tuning of regulation**. The advantage of such rules is that they allow for an easy evolution of ESAs' doctrine though preserving the initial indicative guidelines. In early 2017, the first example of ESAs having been able to provide for a "comfort letter" to NCAs in the context of postponing the enforcement of the EMIR provision regarding the collateral of OTC uncleared derivatives should pave the way for a more formal power for ESAs to deliver such comfort letters to NCAs in exceptional circumstances, in duly

justified cases and on a best effort basis for market participants, regarding the postponement of the enforcement of some provisions.

Sanctions

Concerns with the lack of separation between regulatory and sanctioning functions. Call for further analysis and/or adjustments of the articles 35b to 35h to Regulation 1095/2010

We are concerned with the proposal to have **ESMA collect information from market participants, investigate and organise onsite visits, and impose fines or penalty payments**, as laid out in the amendments in Article 35b to Article 35h to Regulation 1095/2010. We consider these proposals imbalanced and disproportionate.

The proposal foresees to add in each of the 9 legislations it intends to modify a series of new articles or amendments in order to entrust ESAs, and in many cases ESMA, with powers to collect information, to investigate and organize onsite-visits, to impose fines or periodic penalty payments that may be publicized and to grant appropriate rights to the defense including a call for review by the CJEU. When considering the amendments to Regulation 1095/2010 establishing ESMA the proposed changes are far from minor. They do make from ESMA a repressive body instead of a regulatory and supervisory one. The balance is distressfully tipped towards repression.

First, from a general point of view it is not sufficient to claim (article 35 g-1) that fines are of an administrative nature to make it happen so. Let us recall the example of AMF in France which was censured for having the same body supervising on one hand and sentencing on the other hand. They were uniquely administrative sanctions like withdrawal of an authorization, fines of interdiction to exercise a regulated profession, but they had nevertheless to be pronounced by a body different from the regulator. This analysis stems from the respect of the fundamental **rights of the defense** and in the current proposal the Commission is not at the level of the basic standards in this field.

Second and looking more in details of the text, the following articles are troublesome:

- **Article 31 b**: ESMA could recommend investigation by NCAs on the basis of "reasonable grounds to suspect… (activities)… threaten the orderly functioning and integrity of financial markets or the financial stability of the Union…" NCAs should notify ESMA in case of similar suspicion. A delegated act is necessary to **make sure that "reasonable grounds to suspect" is not discretionary and has to be documented ex ante**. The NCA should be enabled to require evidence in that respect.

- **Article 32 2a**: **transversal stress tests** as part as a "Union wide assessment" do not appear to be significant in the asset management industry; this article should foresee the possibility to conduct assessment on a limited basis based on business models and risk levels.

- **Article 35 1**: the new wording deletes the obligation "that the request for information is necessary in relation to the nature of the duty in question " (duty has been replaced by task in the proposal). It suppresses a reasonable condition to access information on the part of ESMA and, hence, creates an unlimited access that is not justified and dangerous: **NCAs are**

not to be put under the orders of ESAs and should be entitled to ask justification before communicating information. The deleted part must be maintained.

➢ **Article 35 b**: the same applies in this article where the last sentence of the previous 35-6 should be maintained: "the reasoned request shall explain why the information concerning the respective individual financial market participants is necessary". It is a minimal requirement to ensure some protection to market participants against a potentially unfair attitude of an ESA.
Further below in 35b-4 it should be clarified that it applies only to information *required* by decision since for information *requested* under §2 there is no obligation to provide it.

➢ **Article 35 c:** the **procedure for imposing fines is inquisitorial, totally unbalanced and opaque** to the "to be" investigated or prosecuted persons who will only have limited time slots to receive information and have a chance to argue. It basically comes short to proper respect of the rights of the defense: it starts on such a thin basis as "possible… infringements", carries on with full investigation powers without control as defined in the preceding article, allows for one unique opportunity to be informed of the findings of the investigation and present remarks (no indication of a contradictory procedure in this phase) before being notified and getting a limited access to the file (since confidentiality may be opposed to the defense). It looks more like a criminal prosecution than administrative sanction and in any case is not respectful of the rights of the defense despite assertion in §6 to the contrary.

➢ **Article 35 d**: the tariff as it is described in this article is unsatisfactory. The idea of a tariff in itself is poor; **when it comes to sanction exact appraisal of circumstances must be paramount**. It is relevant to introduce proportionality. The first distinction should be in that case between intentional and negligent breach. §4a (v) provides for a double fine in case of intentional breach but they are two different types of breaches and intention should not be taken care of by a simple coefficient. In §3 the proportionality to the size of the turnover and the proposed thresholds are not justified; furthermore the rationale for a similar level for all firms in the same bucket is difficult to find. It would be more appropriate to leave proportionality to the hand of the decision maker and in view of the circumstances and not only the size. Considering as an aggravating factor with a coefficient of 1.5 the non-cooperation of management raises the ethical question of cooperation. It is not a clear concept but something subjective in the hands of the Authority. Cooperation does amount to a partial or global renouncement to use all the rights of the defense and can be considered in this respect as unfair. Offering a rebate on the fine in exchange is also very much arguable in terms of fairness of investigation/prosecution. There are strong arguments against taking "cooperation" as a commendable conduct. It should not be encouraged and **ESAs should refrain from importing cooperation** in the EU legal framework, a concept that is conflictual with fair justice.

II) Governance

Support to the introduction of an Executive Board.
However, the Executive board should not have the power to adopt supervisory plan for the NCAs without proper involvement of the relevant Board of Supervisors.
The voting rights should be determined according to the respective weight of each Member State in the financial sector or subsector.

We support the introduction of an Executive Board (EB) whose members will be selected in a totally transparent way and appointed by legitimate EU institutions, Council on the basis of a short list approved by the European Parliament. The transfer of some powers from the Board of supervisors to the EB will greatly improve the resolution of Union Law breaches and settlement of disagreements for example and henceforth facilitate convergence.

However, **we are concerned regarding the role a new Executive Board would play in relation to a "strategic supervisory plan" (SSP).** We believe this could limit the discretion of NCAs to focus their attention and resources on risks most relevant to their local market. We consider it crucial that NCAs retain this national discretion. Its validation should result from a vote by the Board of Supervisors (BoS). The SSP is an interesting tool to establish converging priorities in the regulatory and supervisory agenda. It will undoubtedly impact NCAs to a great extent. It may conflict with national and other priorities defined by other authorities at international, European, sectorial level. ESAs will not have a full overview of the context and the BoS is a better place to provide it. The SPP should be properly discussed in the BoS before a final vote. Moreover, in voting supervisors representing NCAs will feel committed to act according to the SSP and we can expect more support in its implementation.

Moreover, we believe that **the voting rights should be determined according to the respective weight of each MS in the financial sector or subsector.** That would link with the percentage of contribution paid by each State and on behalf of its supervised entities. The one man / one vote rule should only apply in a limited number of cases with institutional relevance.

Lastly, **as regards the governance of the ESRB, we consider it should not be bank centric in its approach to other sectors and should, hence, be reviewed to ensure a fair balance between Central Banks/banking supervisors, insurance supervisors and securities regulators since the ESAs are currently underrepresented in the current governance set up of the ESRB**.

III) **Funding**

In the absence of direct supervision from the ESAs, there is no justification to change the funding arrangement to a direct contribution from indirectly supervised entities.
The current 40/60 split between EU budget and other sources is the only guarantee for a strict budget control of the ESAs. Hence, we advocate for a fixed floor of 40% on the EU budget contribution.

AFG strongly opposes direct funding from indirectly regulated entities

In the absence of direct supervision from the ESAs, the AFG sees no reason to change the funding arrangement to a direct contribution from the industry. Indeed, the legal basis for direct contributions paid by market participants to an authority which has only indirect supervision powers on them is questionable. Even if NCAs collect those contributions the amount will be determined by ESMA according to the need to balance its budget.

Furthermore, we are concerned with the suppression of the strict control on ESAs expenses that a fixed percentage of their budget coming from the EU budget granted. If the percentage of 40% of the total budget of each ESA coming from the Union budget is a cap and not a floor, that means that the ESAs expenses may increase far more rapidly and without limit. Rules for funding should not result in a blank cheque for expansion.

The ESAs should continue to rely for a significant degree on the Union budget. This would ensure more political control over their activities, to ensure that they do not expand into areas out of their remit.

Hence, **AFG favours a fixed floor of 40% on the EU budget contribution, rather than a balancing maximum of 40%. The current 40/60 split between EU budget and other sources is the only guarantee for a strict budget control of the ESAs.**

Given that the work performed by NCAs will not be reduced, fees charged by NCAs and indirect fees to ESMA will add up. This would mean an additional and substantial cost for financial institutions and ultimately for all investors in UCITS and AIFs. We therefore do not support direct funding by indirectly regulated entities.

Reallocation of powers between NCAs and ESAs should come with a proportional reallocation of funding, which should not imply a cost increase for the industry. Industry contributions to the ESAs should be deducted from their contributions to NCAs budgets when this is the case. In other words, changes to the funding model of the ESAs should not lead to an overall increase of the industry contribution to the financing of EU and national supervisory authorities.