



17 January 2012

Commissioner Michel
Barnier,
European Commission,
Rue de la Loi 200,
B-1049 Brussels,
Belgium

Minister Bjarne Corydon,
Ministry of Finance,
Christiansborg Slotsplads 1,
Denmark

Chairman Sharon Bowles,
Economic and Monetary
Affairs Committee (ECON),
The European Parliament,
Rue Wiertz,
B-1047 Brussels,
Belgium

European Supervisory Authorities (ESAs)

Dear Commissioner Barnier,

Dear Minister Corydon,

Dear Chairman Bowles,

The undersigned Associations (“the Associations”) are writing to you in the context of your leading role in the adoption of financial services legislation in each of the three main EU institutions. The associations welcome the considerable progress that has been made in the EU financial regulatory reform agenda. Major regulatory reform, combined with improved industry practices and governance, strengthened supervision, and better functioning markets are necessary to achieve financial stability as a foundation for strong, sustainable growth.

The effective realisation of these goals inevitably presents a number of challenges in practice. In particular, the reform programme is moving into a phase of drafting detailed implementing and technical rules. In the current circumstances, the challenges associated with this phase are acute. Not only will an enormous number of technical and implementing measures have to be drafted in

this period (collectively representing an unprecedented re-making of financial markets in Europe), but this will be done at a time of great economic difficulty. We believe that well-made regulation, contributing to efficient and stable financial markets, can play an important role in economic and business recovery.

These technical and implementing measures are to be prepared by the recently established ESAs, which are still in the process of building staffing levels to full strength. This letter addresses our concerns at the cumulative workload confronting the ESAs - whose resources are currently limited – and suggests solutions therein.

The Associations support the ESAs as a further step towards the deepening of the EU single market in financial services; higher regulatory and supervisory standards in the EU; and improved coordination between supervisory authorities.

From every perspective, it is essential that, as they approach critical rule-making mandates over the coming months and years, the ESAs are provided with the time and opportunity to succeed. This is important for the quality of regulation and for the international credibility of the ESAs themselves.

We fear that the ESAs' ability to address their responsibilities for drafting these standards, as well as properly assessing their impact, may be undermined by current circumstances. Legislation such as the European Market Infrastructure Regulation (EMIR) and the Regulation on CDS and Short Selling requires ESMA to adopt implementing and technical measures within very short timeframes. Such demands jeopardise the goal of drafting high quality and credible regulation.

At the time of writing, the 'level 1' EMIR Regulation has not been agreed, but the date by which ESMA must finalise technical standards remains unchanged in the text - 30 June 2012. Even an extension, mooted by some, for a further three months to 30 September 2012 would seem insufficient, given that there are over fifty technical implementing and regulatory implementing standards that would be required to be drafted by ESMA by then. We do not believe that rigid adherence to such a timetable (even in the name of EU compliance with G-20 regulatory reform objectives) should be the priority if it comes at the expense of robust, efficient regulation.

In the case of the CDS and Short Selling Regulation, formal consultation by ESMA is expected to begin in January 2012, with allowance for a consultation period of only one month (possibly less), before ESMA reports to the European Commission on its recommendations for technical standards by 31 March 2012. In contrast to this three month drafting period - which we believe falls far short of the Commission's better regulation standards for the ESAs - it appears that there will then be a seven month period before the standards are finalised by the Commission.

The time over-run of these and other projects during the European Parliament and Council phase (when compared with the timetable originally envisaged by the European Commission) simply reflects the complexity of the task at hand. These delays should be reflected in changes to target dates for ESAs for finalization of drafting of standards.

Reconsideration of the approach being taken to the ESAs' regulatory mandates is important not only for legislation that is close to adoption at 'level 1', but also for other key legislation at an earlier stage in development. The CRD/R IV and MiFID/MiFIR proposals, amongst others, are of vital

significance both to European financial markets and the European economy. Regulatory momentum must be maintained, but in a considered manner. We note CRD/R IV Rapporteur Othmar Karas, in his recent draft report, calls for many of the draft technical standards which EBA is asked to submit to be delayed by a year.

To address this concern, the Associations recommend that timelines for level 2 implementation, as set out in level 1, should not be defined in absolute date-specific terms, but by specifying a period for ESA drafting, starting from the date when the level 1 measure is adopted (or enters into force). We believe it is critical that the ESAs be given a period of no less than 12 months post-adoption (or entry into force) to draft standards.¹

Furthermore, to the extent that it may be considered impracticable for the ESAs to complete all of the envisaged mandates to a high quality within a particular timeframe (given available resources) we would suggest that a principle of prioritisation be incorporated in the level 1 mandates. If all tasks cannot be achieved over a specific period, a phased approach should be taken. Ideally, the legislators should consider conferring powers on the European Commission to extend the implementation deadlines in justified instances.

The ESAs are at the heart of the ongoing financial reforms and are the foundation on which all other reforms are based. We believe that it is very important to give them adequate time and resource to achieve high quality financial reform, underpinning a strong and stable European economy.

We are at your disposal if you would like to discuss these issues further.

Yours sincerely,



Simon Lewis, Chief Executive, Association for Financial Markets in Europe (AFME)



Andrew Baker, CEO, Alternative Investment Management Association (AIMA)



Rory Cunningham, Chairman, European Association of CCP Clearing Houses (EACH)



Guido Ravoet, Chief Executive, European Banking Federation (EBF)



Anthony Belchambers, CEO, Futures and Options Association (FOA)



Martin Scheck, CEO, International Capital Market Association (ICMA)



George Handjinicolaou, Deputy CEO and Head of Europe, Middle East and Africa, International Swaps and Derivatives Association (ISDA)

cc:

Commissioner Olli Rehn, Vice-President of the European Commission, Commissioner for Economic and Monetary Affairs

Jonathan Faull, Director General, DG MARKT

Marco Buti, Director General, DG ECFIN

Steven Maijoor, Chair of ESMA

Verena Ross, Executive Director, ESMA

Andrea Enria, Chair of EBA

Adam Farkas, Executive Director, EBA

Gabriel Bernardino, Chair of EIOPA

Carlos Montalvo Executive Director, EIOPA

¹ We further believe that EU legislation should allow for realistic implementation timetables. Consideration in this regard needs to start in the formulation of the level 1 legislation. Ideally, implementation dates should also be set in relative rather than absolute terms. In other words they should come into force a specified (realistic) number of months after the final text is published in the Official Journal (OJ), thus avoiding that the window for implementation becomes unduly compressed in consequence of any delays in the legislative process.