



**BETTER FINANCE
FOR ALL**

The European Federation of Financial Services Users
Fédération Européenne des Usagers des Services Financiers



EuroFinUse's Response to the European Commission Consultation on the review of the European System of Financial Supervision

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of the European System of Financial Supervision



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Executive Summary

The European Federation of Financial Services Users acknowledges that the new ESFS set up following the financial crisis that began in 2008 is certainly a great improvement from the previous coordination of national supervisors through European committees.

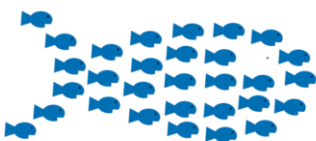
However, retail users (depositors, investors, policyholders, pension fund participants and consumers) are disappointed by the results of the first three years of operation of the new ESFS. This may be at least partly due to insufficient resources allocated to EU supervisory authorities, so they cannot appropriately comply with their broad responsibilities.

Indeed, we believe the new legal provisions of the European Supervisory Authorities (ESAs) and of the European Systemic Risk Board (ESRB) that are most relevant to retail user protection have either been left unused or -even worse – have been violated:

- ✓ The ESAs have not actually made use of their new powers to prohibit or restrict certain financial activities that harm financial users, and to investigate breaches of EU Law.
- ✓ In our view, the ESAs have been violating the provisions requiring them to balance the representation of industry representatives with that of retail users in their “Stakeholder Groups” to the detriment of the latter. We believe they also violated the requirements to adequately compensate the little-resourced not-for-profit retail user and independent academic experts, and failed at least in one case to provide adequate secretarial support.

We believe these serious issues are at least partly a consequence of:

- ✓ the inadequate governance of the ESAs which – unlike the European Central Bank for example- are entirely governed by the very institutions they are supposed to control;
- ✓ the possible conflicts of objectives between the financial stability of provider institutions on the one hand, and customer protection -which ranks only sixth and last in the list of the ESAs legal objectives– on the other hand;
- ✓ and the inappropriate separation of supervision of banking, insurance, pensions, securities and financial markets, which favours the continued inconsistency of user protection levels depending on the legal framework of financial products or services subscribed.



We are concerned that unless these issues are fixed promptly, the representation of retail users' interests in the design of European financial policies will be even further weakened at a time when the ESAs are renewing the membership of their "stakeholder groups", and at a time when financial repression¹ is at work against individual depositors, pension savers and investors. As pointed out by the EC Green Paper on the long term financing of the European economy, let's not forget that households are the primary purveyor of long term financing and therefore of economic growth and jobs in Europe.

¹ The current financial repression against savers and investors is mainly enacted by solvency policies and the central banks, lowering of interest rates sometimes below inflation and funding massive buying of Euro Government debt by financial institutions. EU savers are driven to money losing investments in real terms.



Although EuroFinUse acknowledges that the new ESFS set up following the financial crisis is certainly an improvement from the previous one (merely coordinating national supervisors), we will focus here the areas for necessary and further improvement from the retail user side point of view.

This response is based on the extended experience acquired by EuroFinUse and its Member Organisations by actively participating in the ESAs stakeholder groups since their inception in 2011 (for example, EuroFinUse Managing Director chairs the ESMA Securities & Markets Stakeholder Group: this is the only SG chaired by the user side).

In the following response reference to “the Regulations” means the 2010 EU regulations governing the three European Supervisory Authorities: ESMA, EBA and EIOPA.

1. ESAs powers and responsibilities (questions 1.1.a, 1.1.3, 1.1.6)

The new ESFS Regulations have given new powers to the ESAs, but so far they have not made any use of the following ones:

- **Product intervention** (article 9.5 of the Regulations): so far the ESAs have not used this provision to ban or even temporarily prohibit the distribution of toxic or dangerous financial products. In addition, article 9 – although it is titled “tasks related to consumer protection...”- refers only to financial risks and stability motives² for any product intervention, not to consumer protection motives.

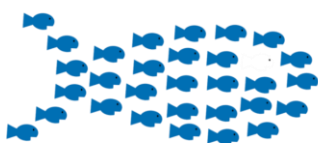
Article 9.5 should be amended to provide the ESAs with real power to ban or put on hold the selling of financial products that are toxic or not suited for retail clients in particular³.

- **Power to investigate potential breaches or cases of non-implementation of EU Law** (article 17 of the Regulations and question 1.1.3).

“Which measures should we take so that their (ESAs) powers of investigation in case of violation or non-application of EU law, as well as their arbitration powers between national authorities no not stay unheeded?”⁴ (Michel Barnier, 24 May 2013)

² “The Authority may temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system”

³ For example, the Belgian supervisor FSMA has suspended the distribution of complex structured products to retail clients since the end of 1992.



There again, so far the ESAs seem not to have made any use of this new power, despite – for example – a request from the Securities & Markets Stakeholder Group to ESMA regarding retail investor protection⁵. One quite obvious reason is the inadequate governance of the ESAs (see below item 2).

- ESAs Stakeholder Groups to work as **an interface with other user groups** in the financial services area established by the Commission (recital 48 of the regulations): they could not achieve this task for example with the Financial Services User Group (FSUG) of the European Commission⁶. This is due in our view to the lack of adequate secretarial support (at least at ESMA) and also due to the rather limited interest demonstrated by the ESAs and by the Commission in this area so far.

At least one of the ESAs should also better fulfil its duty to **report on consumer trends** (Article 9.1.a of the Regulations).

Indeed, so far ESMA has not released any report dedicated to consumer trends. It has recently (February 2013) published its first “Trends on risks and vulnerabilities” report⁷ but:

- ✓ It is not focused on consumer trends: only one page is related to retail investors (p 21) in the whole report.
- ✓ This one page is composed of two tables: one on “portfolio returns” which are actually not retail “packaged” portfolios but composite capital market indices, i.e. excluding manager’s impact and all fees and expenses supported by retail investors, also excluding the impact of taxes and of inflation. This makes a huge difference. Also 5 year reference is not long enough in our view: 10 year and more would be more meaningful for long term and retirement savings.
- ✓ The other table is supposed to reflect retail investor sentiment using “Sentix Sentiment indicators” from Datastream. However, the European Federation of Financial Services Users itself has not heard before about such indicators and does not know any retail

⁴ «*Quelles mesures devrions-nous prendre pour que leurs pouvoirs d’enquête sur des cas de violation ou de non-application du droit de l’Union, mais aussi leurs pouvoirs d’arbitrage entre les autorités nationales ne restent pas lettre morte?*». [Speech at the Public Hearing on Financial Supervision in the EU](#) from the 24th of May, 2013

⁵ See page 1 of the [SMSG advice on UCITS ETFs](#), November 2011: “*ETFs are a low cost and straightforward investment proposition for investors, and as such, ESMA should investigate how to make indexed ETFs more offered to retail investors*”

⁶ There has been some informal interface between members though, as three members of the FSUG are also members of ESAs’ Stakeholder Groups.

⁷ www.esma.europa.eu/system/files/2013-212_trends_risks_vulnerabilities.pdf



investor organisation/ individual who have ever been surveyed for these “Sentiment indicators”. Actually, the definition and methodology of this tool is not mentioned.

As for EIOPA, a Methodology Report was released in November 2012, but the first actual report on consumer trends is scheduled only for November 2013, three years after the establishment of the ESAs. Only EBA has released two consumer trends reports in February 2012 and in March 2013.

2. ESAs governance (Questions 1.1.c, 1.2)

“Actually the weight of national interests in the working of the Authorities Boards remains very heavy and, in some cases, is a source of blockage towards regulatory and supervisory harmonization.” (Jacques de Larosière, 24 May 2013)

We believe one of the reasons for this lack of actual use of new powers by the ESAs and of their too little impact on investor protection (see section 5 below) relates to a significant governance issue: the board of supervisors of the ESAs is uniquely composed of the national Member State supervisors: no wonder it is challenging for the ESAs top management to over-rule their board members by banning a product they failed to ban at national level, or even more so to investigate a potential breach of EU Law by one of their board members!

Certain Members of the Boards of Supervisors do not even have customer protection as their own mandate at Member State level: how can they be expected to supervise this legal mandate of the ESAs (article 1.5(f) of the Regulations) then? This issue was also raised by the MEP speaker at the ESAs panel of the 24 May 2013 Public Hearing at the European Commission.

This inadequate governance is certainly one of the main obstacles for the ESAs to meet their mandates (question 1.1.c), in particular to investigate alleged breaches of EU Law.

We support the recommendation of the Securities & Markets Stakeholder Group on the ESAs governance⁸, and we ask that the governance of ESAs be reviewed and – following the ECB example – allows for designating independent members in the ESAs board of supervisors in addition to MS supervisors to limit the control of ESAs by the very persons they are supposed to supervise.

⁸ SMSG Response to the EC Public Consultation on the Review of the ESFS, July 2013



3. ESAs competencies and scope: twin peaks (questions 1.1.c, 1.2)

Client protection is number six and last objective of the ESAs.

The track record of ESAs in consumer protection is mitigated (see section 5 below).

As asked by the regulator in article 81.2(b) of the Regulations, we think that a more appropriate solution for the ESAs is to propose a two-peak model (leaving aside antitrust issues) in line also with the de Larosière Report of the High Level Group on Financial Supervision on the EU⁹, according to which the regulatory framework should evolve towards a system which would rely on only two Authorities: The first Authority would be responsible for banking and insurance issues, as well as any other issue which is relevant for financial stability (e.g. systemically important hedge funds, systemically important financial infrastructures). The second Authority would be responsible for conduct of business and market issues, across the three main financial sectors.

We propose to assign macro-stability to the ESRB, based in Frankfurt with the support of ECB, and the other two objectives of prudential regulation and investor/consumer protection to two revamped ESAs: the micro stability for all entities (banks, UCITS, investment firms, insurance firms), based in London and the Client /investor protection based in Paris.

4. "Silo" approach hampers the ESAs effectiveness (questions 1.1, 1.1.5 and 1.1.6 a and c)

"I do not have a magic solution. But I feel that things are getting too complex and therefore slipping into the danger of bureaucratic rituals." (Jacques de Larosière, 24 May 2013)

This is an issue that the Review of the ESFS is legally required to address (article 81.2 (a) of the Regulations): *"whether it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets"*.

The option of continuing with a supervision structured by type of financial provider is not appropriate in our view. This silo approach creates an inconsistent level of consumer protection at the point of sale, depending on the financial product and depending on the type of financial distributor. This separation ignores the reality of retail financial markets in Europe where most investment products are "substitutable" at the point of sale, and the same retail distributor may propose alternatively securities, funds, life insurance, banking products or pension ones. Already

⁹ http://ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf



several national supervisors have faced this reality (UK, Netherlands, Belgium, etc.) and supervise all financial products offered at the retail level.

There is a major issue with the supervision of **pension products, which** are the least protected although they are the ones that need it most as recognized as early as 2007 by the European Commission¹⁰. The protection of pension savers is also the least consistent. Indeed, EIOPA is supposed to supervise long term life insurance products and “occupational” pension ones, but many of these products are “unit-linked”, i.e. mostly invest in investment funds, but these funds are supervised by ESMA following totally different rules. It is also very difficult to know which ESA is in charge of protecting pension savers: In contradiction to the Regulations (Recital 47, see note 13 below), EIOPA only recognizes “beneficiaries” of “occupational” pensions, which is a much too restrictive approach. They are pension “savers” or pension fund “participants” and not only « beneficiaries ». Boundaries between “occupational” products and “Pillar III” (individual) ones are not clear. Pension savers are not helped by these very patchy and inconsistent protection rules, which –in addition– appear most limited in the IORP¹¹ regulations, and also in the Insurance Mediation ones. This is all the more a concern as pensions constitutes a dramatic “time bomb” for EU citizens¹².

As pointed out by many –including the French Financial Markets Supervisor AMF- the European regulatory initiative on the Key Information Document for investment products (formerly known as the “PRIIPs” proposal) does not lead to satisfactory results for the protection of savers and individual investors up to now, as the proposed Regulation of the European Commission does not cover all retail investment products, especially long term ones such as shares, bonds and occupational pensions.

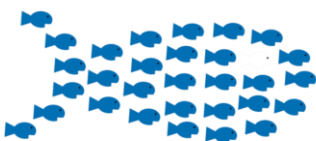
5. Representation and support of retail users (questions 1.1.6, 1.2.4)

We believe the ESAs have been violating several provisions of European Law in this key area:

¹⁰ “Due to the nature of long-term savings and pension plans, particular care is needed to ensure that consumers are being offered products that are really adapted to their needs and marketed appropriately. These are major, once in a lifetime, financial decisions for consumers. Therefore, consumers must be in a position to make their choices in full knowledge of the product, correctly assessing their circumstances and needs.” (European Commission’s Green paper on Retail Financial Services in the Single Market, April 2007)

¹¹ Institutions for occupational retirement provision

¹² See in particular “the real return of private pensions”, EuroFinUse Research Report, June 2013.



- There is **no “balanced representation” of retail users** in the ESAs stakeholder groups as required by article 37.2 of the regulations and recital 48 of the Regulations: *“a Securities and Markets Stakeholder Group should be used for that purpose, and should represent, in balanced proportions, financial market participants, small and medium-sized enterprises (SMEs), academics and consumers and other retail users of financial services”*¹³.

Retail user representatives number 3 or 4 at best in the 30 member stakeholder groups where industry representatives and their providers (auditors, lawyers, etc.) are 15 or more. One reason among others is that ESAs labelled industry service providers (such as accountants, lawyers, etc.) as “users”, thus violating the Regulations (the recitals clearly specify “retail” “users” exclusively – see above). The worst case is the Occupational Pensions Group where we could count only two representatives of retail users, labelled as “beneficiaries”, out of a total of 30 Group members. Pension fund participants and other retirement savers as such do not seem to be considered as stakeholders of occupational pensions despite the requirements of the Regulations (see footnote 13 above). This is all the more of a concern given the extraordinary magnitude of the pensions issue in Europe.

EuroFinUse (and also other retail user organisations) filed detailed complaints to the European Ombudsman about this issue in September 2011. It is quite unfortunate that the Ombudsman has still not responded formally before the renewal of the stakeholder groups and before the ESAs Review Public Consultation. But informal contacts with the plaintiffs would tend to indicate that the Ombudsman finds that our positions have merit, in particular as regards the meaning of “users” in the stakeholder categories.

Indeed, the very recent new calls for expression of interest regarding the setting up of the ESAs Stakeholder Groups mention they have benefited from *“discussions with the European Ombudsman”*. In particular, they have more precisely and better defined the “other users” category (except for the Occupational Pensions one for which, despite the Law, there is still no such stakeholder category, and not even a “consumer” one): *“Users of financial services – includes individuals and/or individuals or associations delivering services and advice to retail users or businesses”*¹⁴ This wording is indeed much more compliant with the Law than the 2011

¹³ Same recital 48 as well for the banking SG, and recital 47 for the insurance and for the pensions SGs: *“For reasons of efficiency, an Insurance and Reinsurance Stakeholder Group and an Occupational Pensions Stakeholder Group should be used for that purpose and should represent, in balanced proportions and respectively, the relevant financial institutions operating in the Union, representing the diverse business models and sizes of financial institutions and businesses; small and medium-sized enterprises (SMEs); trade unions; academics; consumers; other retail users of those financial institutions; and representatives of relevant professional associations.”*

¹⁴ ESMA SMSG 2013 application form.



one: “Users and distributors of financial information: i) auditors ii) accountants iii) information providers iv) rating agencies and v) analysts”¹⁵.

But it is still quite unclear, and the omission of the “retail” distinction before “users” still does not comply with the above-mentioned recitals 47 (EIOPA) and 48 (ESMA and EBA). Also, it does not define “users of financial services” and does not indicate what makes them distinct from the “consumers” category. EuroFinUse is concerned that a lot of potential applicants will be confused as to whether they qualify for this category: the ESAs may get few applications for this category as a consequence.

The MEP speaking at the ESAs panel of the Public Hearing on Financial Supervision organised by the European Commission on 24 May 2013 also branded this striking imbalance of representation as “illegal”.

EuroFinUse asks for an actual implementation of the Law and to ensure that retail user representatives are no longer outnumbered about one to five by industry representatives and their providers. But this would imply that the ESAs eventually also provide adequate compensation and support to retail user representatives.

- There is **no “adequate compensation”** as required by article 37.4 and recital 49¹⁶ of the Regulations: “Members of the [Securities and Markets] Stakeholder Group representing non-profit organisations or academics should receive adequate compensation in order to allow persons that are neither well-funded nor industry representatives to take part fully in the debate on financial regulation.”

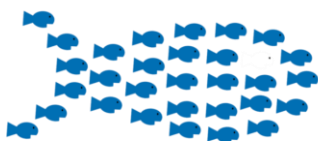
Indeed, despite complaints, this compensation set by the ESAs is € 18.75 gross per hour: 70 to 85 % less than the compensation received by financial user experts selected by the European Commission¹⁷ – although:

- ✓ those (FSUG members) deal with much less technical “level one” issues,
- ✓ and in a less challenging mode (EC expert group does not mix user and industry experts – who have much more secretarial and expertise support - together).

¹⁵ ESMA SMSG 2011 application form

¹⁶ Recital 48 for the EIOPA stakeholder groups.

¹⁷ The European Commission’s user side experts of the FSUG (Financial Services User Group) receive a fee of € 10,000 per year (plus reimbursement of travel expenses). If one counts only meetings, compensation of not for profit members of the more technical ESA SGs is 84 % lower. If one adds the time to take preparatory work into account (maximum 8 hours as allowed by the ESAs), ESA SGs not for profit members are still paid 70 % less than FSUG members.



This compensation is also even much lower than the one received by the commercial consultants hired by the European Authorities.

Not only this is showing little regard to user-side experts, but it is actually a major obstacle preventing user-side experts to get more involved in financial policy design, because of their very limited resources, as publicly recognized by the European Authorities¹⁸ since the 2008 financial crisis. This is all the more disappointing as – at the same time – ESAs executives often stress how challenging it is to find user-side experts!

This inadequate compensation is also pointed out by all other members of the Securities & Markets Stakeholder Group in its public position paper¹⁹.

The ESAs policies in this respect are also most unfortunately confusing and mixing “compensation” on the one hand with reimbursements of travel and lodging costs on the other hand²⁰.

This lack of adequate compensation to not for profit non industry experts is also pointed out by the ESMA Stakeholder Group in its own response to the Consultation.

- There is **no “adequate secretarial support”** as required by article 37.4 of the Regulations, at least at ESMA: the chair of the SMSG (belonging to a little-resourced retail user

¹⁸ For example:

- *“the Commission will ... ensure that the **voice of European investors** is much more strongly heard on all financial issues. The Commission therefore proposes to provide direct funding to facilitate the capacity-building of investor stakeholders to represent their interests in financial services policies at EU level, through training, research and information.”* (Communication For The Spring European Council: Driving European recovery, 4 March 2009)

- *“a major obstacle remains that hinders adequate end users and non-industry stakeholders’ participation in Union policy making particularly in the area of financial services, namely the scarcity of resources and specialised expertise. Consumer bodies as well as civil society organisations do not have adequate resources to properly cover a wide range of often highly technical topics and develop the expertise to take a more proactive role in Union financial services policy making.”* (Pilot Project – Capacity building of end-users and non-industry stakeholders in Union policy making in the area of financial services, European Commission, 16 November 2011)

- *“One of the reasons for the financial crisis was inadequate and ineffective regulation and supervision of the financial markets. One of the difficulties in financial regulation is how to ensure that differing and contradictory positions are given a balanced hearing. There is no effective counterweight to the legitimate representation of the financial sector’s interests. Political debate primarily plays out between the legislator on one side and the financial sector concerned on the other... It may in certain cases be appropriate to provide civil society organisations with financial support from EU funds in order to rectify deficiencies in the representation of key interests.”* (ECO/298 OPINION of the European Economic and Social Committee - 22 February 2012)

¹⁹ SMSG response to the EC Public Consultation on the ESAs Review, July 2013

²⁰ For example, the ESAs “policy” set an overall cap of € 10,000 per annum on compensation and travel expenses together, making no distinction between the two : so there could be situations where the compensation of non-industry representatives could get even lower than € 18 per hour, if they have to incur high travel expenses!



organisation with absolutely no secretarial support to assign to the SMSG work) has to dedicate more than 20 % of his total working time to the management of the SMSG, reviewing low quality draft minutes provided several weeks after the meetings, correcting the inaccurate attendance lists, etc. and has to rely significantly upon the vice chairs' own organisations' secretariats.

Plain English documents or presentations on the more technical issues (like MiFIR for example) are usually not provided by the ESAs despite requests, making it very difficult for the retail user representatives who do not have expert resources at hand to effectively participate and influence such working groups (plus they are much too few as mentioned above).

This lack of adequate support is also stressed by the other SG members as a key problem to fix, as the Response of the Securities & Markets Stakeholder Group²¹ to this Public Consultation shows.

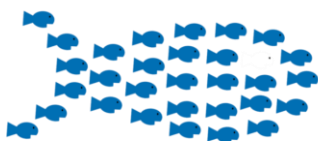
- The pension savings area – of critical importance to all financial services users and more generally to all EU citizens is not properly addressed in our view by the ESFS.

- It was also unfortunate that the European Commission Public Hearing on the Review of the ESFS of 24 May 2013 included several bankers and/or insurers as speakers but not any retail user representative²².

With such inadequate and –in our view as explained above- illegal compensation and support levels, the largely outnumbered retail user experts in the Stakeholder Groups are struggling. EuroFinUse is concerned that it is even unlikely for the ESFS to keep a stakeholder group chair coming from the user side in the future if the ESAs still do not comply with the above-mentioned provisions of article 37 of the Regulations. Likewise and for the same reasons, the ESAs may well be facing a shortage of quality user-side expert applications for the ongoing calls for renewal of the stakeholder group membership. They would then bear the main responsibility for the acute imbalance of influence between the industry representatives and those of retail users; that same imbalance that was rightly identified by the European Commission as one of the causes for Regulators and Supervisors' failure to prevent the 2008 financial crisis. ESAs must “walk the talk” when they say they want to reach out to consumers.

²¹ SMSG response to the EC Consultation on the ESAs Review, July 2013

²² See ec.europa.eu/internal_market/conferences/2013/0524-financial-supervision/docs/programme_en.pdf (one panel speaker was a member of the FSUG, but he is an academic, not a retail user' representative, and all four speakers presented as Stakeholder Group members were from the financial industry)



6. Investor/consumer protection (questions 1.1.a.iv, 1.1.6)

EuroFinUse recognizes and appreciates genuine efforts from the ESAs to reach out to retail users. In particular, EBA has organized two informal meetings with the main European user organizations, and EIOPA has also organized meetings with user organisations, and has at times provided “plain English” information and analysis of more technical issues to the user-side representatives of its Stakeholder Groups. The 2013 ESAs Consumer Protection Day, which took place in Paris on 25 June 2013, was certainly a very good and successful common initiative.

Also, in some instances, the ESAs have effectively used their regulatory powers to improve the protection of retail users. In particular, ESMA has courageously banned all “hidden revenue” for indexed ETFs (exchange-traded funds) unless it is returned to the fund itself, actually implicitly targeting securities lending revenues²³. However this will remain a moot point as long as ESMA will continue to allow misleading information and biased advice regarding index funds sold to retail clients: as a result indexed ETFs are still very rarely sold to retail investors anyway (see note 5 above). Also, it remains to be seen whether the returning of these securities lending revenues to the funds will actually result in reducing their expense ratios. Finally and more importantly, individual financial services users fail to benefit at all from equivalent rules for other savings and investment products such as life insurance policies in particular (typically quite loaded with “hidden revenue” for providers and distributors, not for the clients) due to the very detrimental inconsistency of supervision of retail investment products (see section 4 above on the “silo” approach to financial supervision).

We also understand that the ESAs may have too limited resources to properly staff their client protection units.

But all the serious issues raised in sections one to five above (no actual use of new customer protection powers, governance, conflicts of objectives (lack of a twin peak approach), “silo” approach fragmenting supervision of conduct of business rules at the point of sale, lack of balanced representation of the retail users’ interests, lack of adequate compensation of- and support to retail user representatives) explain to a large extent the lack of significant progress overall in investor protection at the European level in our view:

²³ “28. The UCITS should disclose in the prospectus the policy regarding direct and indirect operational costs/fees arising from efficient portfolio management techniques that may be deducted from the revenue delivered to the UCITS. These costs and fees should not include hidden revenue. The UCITS should disclose the identity of the entity(ies) to which the direct and indirect costs and fees are paid and indicate if these are related parties to the UCITS management company or the depository.

29. All the revenues arising from efficient portfolio management techniques, net of direct and indirect operational costs, should be returned to the UCITS.” (ESMA Guidelines on ETFs and other UCITS issues, 18 December 2012)



- ✓ no significant progress in the detection and sanctioning of large market abuses²⁴ in the equity and bond markets;
- ✓ no significant progress in limiting cases of misselling (misleading information, conflicts of interests in the distribution, etc.). In particular, article 27 (fair, clear and not misleading information) and 26 (prevention of “inducements”) of the MiFID implementation Directive are not properly enforced²⁵.

“Protecting depositors, investors, policyholders, consumers and other beneficiaries” is mentioned as the second objective out of five assigned to the ESAs by the Consultation Document (page 1). But it is unfortunately only number six and last in the 2010 Regulations (article 1.5). If the European regulators eventually decide not to move forward towards a “twin peak” model, we then ask at least that this objective be repositioned as the first one, to give a strong signal to supervisors that customer protection does matter.

7. Financial stability and cost of bank resolution (question 3.1)

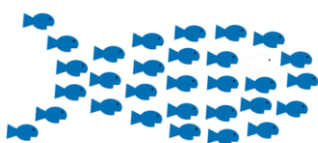
The EBA and ESRB were set up to avoid repeating the bank crises of 2008-2009, but there is still room for improvement. In particular, the 15 July 2011 EBA stress tests were not effective:

- ✓ Dexia was ranked number 9 European bank out of a total of 92 banks by EBA about one month before collapsing: non-insider shareholders in Dexia have been severely misled in this case and lost almost all their investment.
- ✓ The two biggest Cyprus banks (BoC and Laiki) passed the test: EBA concluded that they required no additional capital one and a half year before the EU is having to provide more than € 11 billion and is deciding to confiscate funds from bank depositors who however bear no responsibility in this very badly handled case of bank supervision.

No excuses were even made to the non-insider shareholders of Dexia who got misled by the EBA stress tests communication. The same applies to the depositors of the two main Cyprus banks. In both cases, the persons responsible for the mismanagement and for the misleading informations

²⁴ This is courageously acknowledged by at least one national financial supervisor in its new strategic plan (AMF Strategy 2013-2016, pages 15 and 48).

²⁵ For example, the French Supervisor AMF released survey results last year where (page 11) two thirds of intermediaries surveyed disclosed they were in breach of article 26 (provision on «inducements») of MiFID.



were not sanctioned, and no redress was provided to the victims. This is exactly the wrong approach to restore investors' confidence in European equity markets and in European banks. Badly needed capital can only be discouraged to stay in - or enter into the European economy with such policies that hurt the victims and spare the persons responsible for such economic and social disasters. We understand EBA was performing these stress tests in a very challenging environment. But, in our view, the efficacy of EBA and ESRB has to be closely monitored, and thoroughly raised in the prudential area.