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Ms Věra JOUROVÁ, Commissioner for Justice, Consumers and Gender Equality

25 February 2019

Subject: Joint Trade Association views on the 'Review of the European System of Financial Supervision'

We are writing to you as a group of European Trade Associations representing asset managers, the banking sector, insurers, pension funds, private equity funds and market infrastructures to express our views on the 'Review of the European System of Financial Supervision' in light of the ongoing trilogue negotiations.

All the signatories of this letter support the creation of a harmonised European supervisory framework, with European authorities cooperating closely with national supervisors to ensure a well-functioning supervisory system applied consistently across Europe. We believe that a common supervisory culture can be provided by honing the current European Supervisory Authorities' (ESAs) mandate via **enhanced coordination of national competent authorities (NCAs)** and more effective ESA governance structures and functions.

We urge that any proposed changes to the current supervisory framework and powers should primarily address proven gaps and shortcomings that prevent the NCAs and ESAs from fulfilling their current mandates correctly. It is imperative that the current role of NCAs and the principle of subsidiarity are not compromised by the Review, while due consideration to an enhanced role of the ESAs is given where it may be warranted.

We also believe that the ESAs' governance structures should enable them to provide a forum for open dialogue and exchange of information, and contribute to the current efforts of convergence. Interaction and proper allocation of roles between the ESAs and NCAs are vital elements of the supervisory system, bringing together local expertise, direct contact with market participants and, crucially, local accountability, with a European overview of supervisory standards and convergence practices. We trust the trilogues will deliver an agreement with the necessary checks and balances so



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that the ESAs fulfil their current mandates effectively, while keeping in mind European Union's interest and attractiveness.

We reiterate our support for the measures put forward to **improve the transparency** (including through industry consultation) of the ESAs work at **level 3** (particularly in relation to Questions & Answers and other supervisory convergence measures). We hope the same principle applies to the transparency of **ESRB** work streams by enhancing its interaction with stakeholders through public consultations.

Moreover, we would like to encourage co-legislators to introduce in the final agreement new forbearance tools such as "time-limited **no-action letters**", in line with the European Parliament's proposal. There have been a number of examples of practical difficulties in implementing regulation due, for example, to a lack of clarity, conflicting rules or delays in the level 2 and 3 legislation. There is therefore a need to ensure mechanisms are in place to deal with such issues and merit in giving the ESAs the power, where deemed necessary and appropriate, to temporarily commit not to enforce financial market participants' non-compliance with specific provisions of Union law. Provided they i) have an appropriate scope, ii) are precisely defined and limited to specific situations, and iii) are subject to scrutiny from the Commission and co-legislators, "time-limited no-action letters" would be an efficient means of giving market participants legal certainty in those areas where significant operational challenges with respect to implementation are identified. Such a mechanism could provide comfort to market participants in instances where it is not possible to meet certain application dates for legitimate reasons. It could also offer assurance that they would not be held liable if they are unable to implement particularly problematic provisions despite their best efforts. Although we support such powers being time-limited, we encourage the co-legislators to consider an enhanced mechanism to deal with situations where compliance would threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union for periods longer than one year.

Finally, on the **Anti-Money Laundering** component of the overall package, we concur with the Council that the appropriate technical expertise must be in place, and believe any future work on AML policies at EU level should take full account of the various business models and specificities of the sectors in scope. For this reason, we support the proposal to require the prior involvement and agreement of ESMA and/or EIOPA for any decision affecting financial market participants falling within their respective mandates.

We commend the work done so far and hope that a trilogue agreement will be achieved in the near future, taking into account the considerations set out in this letter.

We remain at your disposal to provide further details on the above views.

We kindly inform you that this letter has been sent to the Council Presidency, the Rapporteurs in the European Parliament and the European Commission.



Kind regards,

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