



**Opening statement by Gerry Cross, Director of Policy and Risk
Central Bank of Ireland**

**At the Oireachtas Committee on Finance, Public Expenditure
and Reform, and Taoiseach**

28 November 2017

Good evening. Thank you for your invitation to appear at the Committee today to discuss the European Commission's proposed package of measures on the European Supervisory Authorities (ESAs) and the European Systemic Risk Board (ESRB). I am joined by my colleagues Gráinne McEvoy, Head of Securities and Market Authorisations, and Martina Kelly, Head of Markets Policy.

The proposed measures, if implemented in full, would bring about significant changes to the regulatory and supervisory architecture in the EU. The three ESAs – the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) – and the ESRB – form part of the European System of Financial Supervision (ESFS). The ESAs were established as independent EU agencies in January 2011 under the 2010 ESA Regulations.

The ESAs are tasked with a range of regulatory and supervisory related responsibilities. The principal decision-making bodies of the ESAs are their respective Boards of Supervisors (BoS) which consist of heads (or alternates) of the national competent authorities (NCAs) and are chaired in each case by a Chairperson, elected by the BoS, for five years and renewable once.

The proposed changes to this supervisory architecture would affect the governance, role and funding of the ESAs and include an enhanced role for ESMA as a direct supervisory authority over certain activities.

The European Commission's proposals are under consideration by the Council of Ministers and the European Parliament. The Department of Finance is representing Ireland at the negotiations in the Council. The Central Bank's role is twofold:

- to provide the Department with technical assistance and analysis in support of their engagement in the negotiations; and



- to examine the proposals from a regulatory and supervisory perspective and communicate appropriately in that regard.

The proposals are broad and consequential, and analysis by the Central Bank is ongoing. Our comments today should be taken in that context.

In carrying out our work in respect of the proposals, the Central Bank will be guided by a number of considerations that, from a regulatory perspective, are important when considering proposed changes to the ESAs.

Firstly, the European supervisory architecture was reformed substantially following the crisis. Since its introduction in 2011, the ESFS framework has in general worked well. The ESAs have delivered well on their objectives¹ based on a good balance between centralised and local responsibilities. Therefore, the base line should be that we are starting from a good position.

Secondly, reforms to the ESAs should be in line with the broad objectives of financial supervision. These are the achievement of financial stability; consumer and investor protection; and orderly, fair, and well-functioning financial markets; all supporting a sustainably growing economy.

Thirdly, whilst increased supervisory convergence is desirable, this is distinct from the centralisation of powers. It is very important that the integrity of supervisory responsibilities and decision-making processes is maintained in order to ensure effectiveness and appropriate accountability of decision makers. The introduction of fragmentation or uncertainty in this regard, that leaves any doubt about the decision-making authority of the relevant supervisor, must be avoided.

Let me then mention some aspects of the proposals that the Central Bank is focusing on:

- On the question of governance, the proposals would entail significant reform to the current functioning of the ESAs. The main proposed change in this regard is the introduction of an Executive Board for each of the ESAs. The Executive Boards would have powers including:

¹ The objective of each ESA is to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses.



- The development of a three year Strategic Supervisory Plan, with which NCAs should comply;
- Preparing decisions of the Board of Supervisors;
- Carrying out binding mediation between NCAs;
- Reviewing the activities of NCAs; and
- Assessing third country delegation and outsourcing arrangements by EU regulated entities.

As we have said, in our response to the European Commission's consultation on ESA reform earlier this year, we consider that the current governance arrangements are working well. We are concerned at the breadth of powers that would be conferred upon the proposed new Executive Board. This would represent a significant shift in responsibilities and risks confusion as to respective roles and competencies.

- The Central Bank welcomes the proposed measures to increase the mandates of the ESAs in the area of consumer protection. The proposals include the obligation to carry out in-depth thematic reviews of market conduct in order to identify potential problems and their impact, as well as developing retail risk indicators for identifying emerging risks of consumer harm.
- The Commission is proposing an enhanced role for the ESAs in respect of third country equivalence processes.² In particular, the ESAs will be required to monitor regulatory and supervisory developments and enforcement practices where equivalence decisions for particular third countries have been adopted. Monitoring ongoing compliance of equivalence decisions would be new and would be welcome.
- The Commission's proposal would give the ESAs a significant role in reviewing delegation and outsourcing arrangements by EU regulated entities to third country entities. This proposal is the focus of considerable scrutiny by stakeholders and raises a

² Around 15 EU Legislative Acts contain "third country provisions" that empower the European Commission, with involvement of other institutions, to decide on the equivalence of foreign rules and supervision for EU regulatory purposes. Currently the ESAs are required to assist in preparing equivalence decisions pertaining to supervisory regimes in third countries.



number of concerns for the Central Bank. These include the risk of introducing artificial barriers to well-functioning products, such as Undertakings for Collective Investment in Transferable Securities (UCITS) and adopting a disproportionate or inconsistent approach in respect of particular aspects or practices related to the authorisation processes of the NCAs.

- It is proposed that the approval of European venture capital funds (EuVECAs), European social entrepreneurship funds (EuSEFs) and European long-term investment funds (ELTIFs) be transferred from national authorities to ESMA. We have concerns about the logic of singling out these types of funds and that the approach could result in a confused allocation of responsibilities between authorities.
- It is proposed that significant prospectus approval powers be moved from national authorities to ESMA. The Central Bank is the second largest approver of prospectuses in the EU. We have developed an approach and a level of experience that is world leading and which serves issuers and investors well. Against this backdrop, we will be assessing closely the technical detail of the proposals to understand their justification, practicality and implications.

Thank you for your attention. We look forward to answering your questions.