Response Ministry of Finance from the Netherlands on the European Commission consultation on the Review of the European System of Financial Supervision

I. ESAs (Effectiveness and efficiency of the ESAs, Governance)

- **Impact of the ESAs on the quality and consistency of supervision.**

Fostering supervisory convergence. The ESA founding regulations and sector legislation contain a number of intervention powers, allowing the ESAs to intervene indirectly or directly in supervisory matters. They are important tools to enhance supervisory convergence and oversight work. At this stage there seems no need to amend the existing regulations. Hence, the ESAs could benefit from various instruments at their disposal to enhance supervisory convergence and oversight work. There are several important instruments at hand in this context: peer reviews of National Competent Authorities, breach of union law, guidelines and recommendations, and the settlement of disagreements between National Competent Authorities in cross-border situations. It appears that the ESAs have not yet fully explored the various possibilities to use these instruments.

The existence of a robust peer review mechanism is in our view one of the most important tools for promoting supervisory convergence having noticeable effects on discipline. However, experiences with peer reviews differ among the ESA's and the contribution of the peer review mechanism to the quality of EU wide supervision seems sometimes limited. Peer reviews should in principle not only focus on compliance of the procedural aspects of supervision because National Competent Authorities would in that case have an incentive to identify good practices with limited ambition in order to be able to achieve procedural (rule based) compliance. Leading to the possibility that peer reviews evolve in a "ticking the box" exercise.

A way to address this issue is to encourage the use of peer reviews as part of a learning experience for National Competent Authorities. The quality of EU-wide supervision (especially in cross-border situations) might benefit significantly from mutual understanding of each others' legal systems and supervisory modus operandi, taking into account an environment characterised by diverging market profiles, a variety of supervisory cultures, different national priorities, and potential tensions between National Competent Authorities.

The development of a Single Supervisory Handbook is necessary to develop a level playing field. The Banking Union urges the need for EBA to develop a single rule book and unify supervisory methodologies in the banking sector. However, the handbook should not be 'rule based' as this would undermine an effective 'risk based approach' of supervision in the banking sector.

- **Direct supervisory powers**

In the field of ESMA's responsibilities there are some supervisory areas that can benefit from enhanced cooperation on a European level. The areas we envisage are: market abuse, financial reporting, audit oversight and trading infrastructure. This would apply in those situations where activities are not linked to particular member states, are highly interconnected and have a pan-European reach.

- **Functioning of the Joint Committee**

Cross-sectoral integration of regulation requires further attention. The establishment of the Joint Committee has been an important step in fostering cross-sectoral consistency. Still we believe there is room for further improvement, especially in the area of consumer and investor protection. We encounter evidence that silo-based regulation is struggling to secure the interconnected and complex nature of the risks consumers and investors are exposed to. The fact that financial institutions are operating across bank/insurance/pension lines, and offering increasingly complex financial products that have blurred the conventional credit/insurance/securities boundaries (e.g. credit swaps and investment/linked insurance policies) underlines the relevance of a cross-sectoral approach and also the need for a strong role of the Joint Committee.

The governance of the Joint Committee could be improved by streamlining decision making procedures and decision making powers for the Joint Committee level dedicated to specific cross-sectoral areas. The Joint Committee could take up more cross-sectoral issues within its remit like consumer protection (and maybe contributing to the first stage of a Twin Peak model in the future).

II. European Systemic Risk Board (ESRB)

The governance and the role of the ESRB needs to be revisited to enhance its effectiveness. Macro-prudential analysis needs to be well integrated in the supervisory approach of the ECB. To achieve this, the ESRB should be able to address its warnings and recommendations also to the ECB, concerning the supervisory and macro-prudential tasks conferred to it by the SSM regulation. In the light of this, the combined position of the Chair needs to be reconsidered.

To establish itself as the European authority on systemic risk, the ESRB needs a better prioritization of risks, and more efficient decision-making. A larger portion of the available capacity should be dedicated directly to the ESRB secretariat instead of the ECB. In addition, a clear risk based prioritization of the various inputs would enable a more focused discussion in the General Board. Finally, decision making processes can be improved to enable effective and swift decision-making, for example by more frequent use of the majority rule. This is especially important given the ESRB's advisory role in the use of macro-prudential instruments of CRR/CRD IV.

III. <u>Cooperation and interaction between the ESAs (micro level) and ESRB (macro level)</u>

No comments.

IV. <u>Structure of the ESFS</u>

Assessment of the structure of the ESFS. One point we would like mention is the question whether it is still appropriate to continue separate supervision of banking, insurance occupational pensions, securities and financial markets. We still believe that the twin peaks model is preferable and we are encouraged by statements supporting this model during the high-level conference on Financial Supervision in the EU of last May.

Clarity in the division of tasks between the ECB and the EBA and between the ECB and ESRB is necessary. The creation of the Single Supervisory Mechanism (SSM) will enhance the need to clearly define the roles and responsibilities in European supervision. The main focus of EBA regards the creation of a Single Rulebook (via technical standards) and a Single Supervisory Handbook establishing a level playing field within the EU with respect to regulatory and supervisory standards. Ideally, the EBA would foster convergence of supervisory practices between the ECB as supervisor within the SSM-area and non-SSM supervisory authorities. Possible overlap or inconsistencies between the Single Supervisory Handbook of the EBA and the supervisory manual of the ECB should be avoided. The EBA Handbook should contain non-binding high level supervisory best practices for all EU supervisory authorities including the ECB whereas the ECB manual concerns detailed working methods for supervision within the SSM.

Clearness in the (intervention) powers of the ESAs. It is essential that the ESAs have more legal certainty about their mandate and activities in order to reduce operational inefficiencies. Although the ESA regulations seem to delegate specific discretionary powers and references to the ESAs, some of the legal provisions and definitions are open to multiple interpretations. With the Meroni-doctrine in mind, we believe there should be no ambiguity about the scope of the intervention powers of the ESAs. This ambiguity is found in governing terms which are used throughout all three ESA regulations. Examples are found in the provisions on 'emergency situations', ‘European system of resolution and funding arrangements’, ‘coordination function’, and the prohibition or restrictions of certain financial activities.