European Securities and Markets Authority (ESMA)

2009/0144(COD) - 10/05/2010

The Committee on Economic and Monetary Affairs adopted the report drawn up by Sven GIEGOLD (Greens/EFA, DE) on the proposal for a regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority. It recommended that the European Parliament’ s position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) should be to amend the Commission proposal as follows:

Title and scope: the Regulation establishes the European Supervisory Authority (Securities and Markets) ("the Authority"), rather than the European Securities and Markets, as proposed by the Commission. The committee states that the Authority should act with a view to preventing regulatory arbitrage and guaranteeing a level playing field. It will also develop common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of institutions and on customer protection. The Authority will have its seat in Frankfurt rather than Paris.

Tasks: the report states that the Authority must act as the competent body to manage crisis of cross border institutions that has the potential to pose a systemic risk, leading and executing all early interventions, resolution or insolvency procedures for such institutions through its Resolution Unit as set out in this report. Additional tasks include: (i) supervising those financial institutions that are not subject to the supervision of competent authorities; (ii) providing a database of registered financial institutions in the area of its competence; (iii) developing draft implementing standards in specific cases; (iv) temporarily prohibiting certain types of transactions that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union; and (v) developing a regulatory standard setting out the minimum information to be made available to the Authority about transactions and financial institutions, how the coordination of collection is to be carried out and how existing national databases are to be linked in order to ensure that the Authority is always able to access the relevant and necessary information concerning transactions and market participants within its competence.

The committee added a new clause stating that competent authorities that are and members of the Authority shall have powers to adopt preventative and correcting supervisory measures. These powers are set out in the text and include the power to split or segregate retail banking activities from trading and other non-utility activities in case of relevant risk assessed following common criteria; and extend financial liability to managers and directors.

Regulatory standards: the Commission will be able to endorse draft regulatory standards in order to give them binding legal effect.Before adopting draft regulatory standards, guidelines and recommendations the Authority should carry out an impact study.

Implementing Standards: in addition, the Authority may develop draft standards to implement legally binding EUacts in the areas specifically set out in the regulation, and submit them to the Commission for endorsement.

Action in emergency situations: in the case of adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union, the ESRB, upon its own initiative or following a request by the Authority, the Council, the European Parliament or the Commission, may issue a **warning declaring the existence of an**

emergency situation in order to enable the Authority without further requirements to adopt individual decisions. Where a warning has been issued, the Authority shall actively facilitate and, where deemed necessary, coordinate any actions by the relevant competent authorities. Where the addressee of the decision refuses to comply with Union law or a specific decision taken by the Authority, the Authority may issue proceedings in the national courts, including applications for interim relief.

Settlement of disagreements between competent authorities: the Authority's decision will have binding effects on the competent authorities concerned.

College of supervisors: the report states that the colleges of supervisors should have the power to define supervisory rules to foster the coherent application of Union law. The Authority should have full participation rights in colleges of supervisors with a view to streamlining the functioning of the information-exchange process and to foster convergence and consistency across colleges in the application of Union law. It should act as leader in supervising cross-border financial institutions operating in the Union. It should also have a binding mediation role to solve conflicts between national supervisors. Members expanded the tasks and powers of the Authority, and in particular, they stipulate that the Authority shall (i) collect and share all relevant information; (ii) initiate and coordinate **Union-wide stress tests** to assess the resilience of financial institutions, in particular of those identified as potentially posing a systemic risk, to adverse market developments; (iii) plan and lead supervisory activities in going concern as well as in emergency situations, including evaluating the risks to which financial institutions are or might be exposed; and (iv) oversee the tasks carried out by the competent authorities. In collaboration with the ESRB, the Authority will develop a common set of quantitative and qualitative indicators (risk dashboard) which will serve as the basis to assign a "Supervisory rating" to cross border institutions identified as potentially posing a systemic risk. The supervisory rating shall be a critical element for the decision to directly supervise or intervene in an ailing institution. The Authority shall exert supervision of cross border institutions that may pose a systemic risk and in those cases, it will act through the competent authorities. It will establish a **Resolution Unit** with a mandate to put in practice the clearly defined governance and modus operandi of crisis management from early intervention to resolution and insolvency and lead such procedures. The report adds that all financial institutions identified as posing a risk must take part in the **European Stability Fund** as established by this report. Financial institutions operating in a single Member State shall have the option to join the Stability Fund, and the contributions made to the European Fund shall replace those made to national funds of a similar nature.

The report inserts a clause setting out the criteria for **identification of systemic institutions that potentially could pose a systemic risk.**

Other tasks: on the basis of Joint Guidelines, the Authority may conduct the change of control procedure under Directive 2007/44/EC.

Safeguards: Members made these **provisions more stringent**, specifying that where a Member State considers that a decision taken under provisions on emergency situations or on settlements of disagreements between competent authorities, impinges directly and in a significant manner on its fiscal responsibilities, it shall notify the Authority, the Commission and the European Parliament within ten working days after notification of the Authority's decision to the competent authority. The Member State shall justify why and provide an impact assessment on how much the decision impinges on its fiscal responsibilities.

The report also amended provisions on the majority required in Council to maintain or revoke the Authority's decision.

It went on to make several changes to the clauses of **composition of the Authority**, and stressed the latter's independence. The report **increased Parliament's powers** regarding the appointment of a Chairperson, as well as the responsibility of the latter to appear before Parliament and submit relevant reports.

Joint Committee: the Committee will have its headquarters in Frankfurt. Members specify a number of fields for cooperation with other ESAs, such as anti-money laundering measures.

They also made some amendments to the provisions on the Board of Appeal.

Budget: under the Commission's proposals, the ESAs' budget would be part of the Commission budget. To enhance the independence of the ESAs the committee wants a separate budget line for the ESAs in the overall EU Budget. Therefore it is proposed to provide for an independent budget line as has been done for the Data Protection Supervisor.

Report: the Commission's report must evaluate (a) the convergence in supervisory standard practices reached by competent authorities; (b) the functioning of the colleges of supervisors; (c) the role of the Authority on the supervision of systemic institutions; and (d) the application of the safeguard clause.

Evaluation: the Commission must also evaluate whether:

- it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets, or whether they should be brought under a single supervisor;
- prudential supervision and supervision of the conduct of business should be combined or separated;
  t is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;
- it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;
- it is appropriate to increase the regulatory powers of the ESAs;
- the evolution of the ESFS is consistent with that of the global evolution;
- there is sufficient diversity and excellence within the ESFS;
- accountability and transparency in relation to publication requirements are adequate.

Chairperson: he or she will be appointed by the European Parliament following an open selection procedure managed by the Board of Supervisors.