

Financial supervision: powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

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The Committee on Economic and Monetary Affairs adopted the report drawn up by Antolin SANCHEZ PRESEDO (S&D, ES) on the proposal for a directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the 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:

Technical standards: the committee states that the relevant legislation should define those areas where the ESA are empowered to develop draft technical standards and how should they be adopted. While the relevant legislation should lay down the elements, conditions and specifications as detailed in Article 290 of the Treaty on the Functioning of the European Union in the case of **delegated acts**, the rules and general principles concerning mechanisms for control should be defined in advance in accordance with Article 291 of the Treaty on the Functioning of the European Union in the case of **implementing acts**. With regard to the identification of areas for technical standards, only those areas should be selected where consistent technical rules will contribute significantly and effectively to the achievement of the objectives of the relevant legislation, while ensuring that policy decisions are taken by the European Parliament, the Council and the Commission in accordance with their usual procedures.

The report goes on to state that the technical standards adopted as delegated acts (Level 2 measures) should further develop, specify and determine the conditions for consistent harmonisation and uniform application of the rules included in basic instruments adopted by the European Parliament and the Council, supplementing or amending certain non-essential elements of the legislative act. On the other hand, technical standards adopted as implementing acts should not amend any element of legally binding Union acts. Technical standards should not involve policy choices.

In the case of delegated acts Members state that it is appropriate, for the sake of consistency, to introduce the procedure for adoption of technical standards provided for in Article 7 of the EBA, the ESMA and the EIOPA Regulations. In cases where the technical standards are designed to determine the conditions of application of a Level 2 measure, they will be developed only once the Level 2 measure has been adopted.

Precautionary principle: the report states that in accordance with the precautionary principle on supervision, binding technical standards will not prevent Member States' competent authorities from requiring additional information or imposing additional or more stringent requirements than those specified in the relevant legislative acts which they develop, when they allow for such prudential discretion.

Settlement of disputes between national authorities: the Directive should identify situations where a procedural or a substantive issue of compliance with Union law may need to be resolved and the supervisors may not be able to resolve the matter on their own. Members consider that in such a situation,

one of the supervisors involved should be able to raise the issue with the competent European Supervisory Authority. That European Supervisory Authority should act in accordance with the procedure set out in this Directive. It should be able to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter and to ensure compliance with Union law, with binding effects on the competent authorities concerned.

In cases where the relevant Union legislation confers discretion on Member States, decisions taken by the European Supervisory Authority will not replace the exercise of discretion by the competent authorities in compliance with Union law.

Comitology: the alignment of comitology procedures to the Treaty on the Functioning of the European Union and, in particular, Articles 290 and 291 should be effected step by step. The report adapts to Articles 290 and 291 only to those provisions of the amended directives in so far as the ESA are concerned and in so far as they are related to technical standards. That alignment, as well as further alignments of other comitology provisions contained in the amended directives, should not be limited to those measures previously dealt with under the regulatory procedure with scrutiny, but should cover all appropriate measures of general scope independently of the decision-making procedure of the comitology procedure applicable to them prior to the entry into force of the Treaty on the Functioning of the European Union. In order to ensure consistency, further alignment of other comitology procedures to Articles 290 or 291 contained in the amended directives referred to above must be effected in accordance with the provisions of this Directive.

Confidential information: confidential information transmitted to or exchanged between competent authorities and the European Securities and Markets Authority or the European Systemic Risk Board should be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.