

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

2009/0161(COD) - 07/07/2010 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted amendments, at first reading under the ordinary legislative procedure (formerly known as the codecision procedure), to 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

The **vote on the legislative resolution was postponed** to a future plenary session. The main amendments to the Commission's proposal were as follows:

Objectives: the objectives of the directive should include the viability of the financial system, the protection of the real economy and the safeguard of public finances.

Technical standards: the text recalls that the Regulations establishing the ESFS provide that, in the areas specifically set out in the relevant legislation, the ESA may develop draft technical standards, to be submitted to the Commission for adoption in accordance with Articles 290 and 291 of the TFEU by means of delegated or implementing acts. This Directive identifies a first set of such areas and should be without prejudice to inclusion of other areas in the future. The relevant legislation should define those areas where the ESA are empowered to develop draft technical standards and how they should be adopted. While the relevant legislation should lay down the elements, conditions and specifications as detailed in Article 290 TFEU in the case of delegated acts, the rules and general principles concerning mechanisms for control of implementing acts should be based on Decision 1999/468/EC (comitology) until the Regulation provided for in Article 291 TFEU is adopted. The identification of areas for technical standards should strike an appropriate balance between building a single set of harmonised rules and avoiding unduly complicated regulation and enforcement. The only areas selected should be those in which 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.

Members state that matters subject to technical standards should be genuinely technical, where their development requires the expertise of supervisory experts. The technical standards adopted **as delegated acts** should further develop, specify and determine the conditions for consistent harmonisation 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 set conditions for the uniform application of legally binding EU acts. Technical standards should not give rise to policy choices.

Best practice : Parliament stresses that the ESA should not at this stage develop draft technical standards on the existing requirements that the persons who effectively direct the business of investment firms, credit institutions, UCITS and their management companies be of sufficiently good repute and sufficiently experienced as to ensure their sound and prudent management. However, given the importance of these

requirements, the ESA should give priority to identify the best practices in guidelines and to ensure the convergence of supervisory and prudential practices towards these best practices. They should do the same with respect to prudential requirements relative to the head office of these institutions.

Precautionary principle : to the extent that certain requirements in EU legislative acts are not fully harmonised, and in accordance with the precautionary principle on supervision, binding technical standards developing, specifying or determining the conditions of application for those requirements should not prevent Member States from requiring additional information or imposing more stringent requirements. Technical standards should therefore allow Member States to do so in specific areas, when these legislative acts provide for such prudential discretion.

Settlement of disagreements: Members recall that the binding procedure for the settlement of disagreements is designed to solve situations where competent supervisors cannot resolve among themselves procedural or substantive issues relating to compliance with Union law. This Directive should therefore 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. In such a situation, one of the supervisors involved should be able to raise the issue with the competent European Supervisory Authority. That ESA should act in accordance with the procedure set out in its establishing Regulation and 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 ESA should not replace the exercise of discretion by the competent authorities in compliance with Union law.

Comitology: Members consider that the alignment of comitology procedures to the TFEU and, in particular, Articles 290 and 291, should be effected case by case and be fully completed within three years. In order to take account of the technical developments in the financial markets and to specify the requirements laid down in the amended directives, the Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU.

Confidentiality: 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.