European Securities and Markets Authority (ESMA)

2009/0144(COD) - 24/11/2010 - Final act

PURPOSE: to establish a European Supervisory Authority (European Securities and Markets Authority) (ESMA) with a view to enhancing the European framework for supervision of the financial system.

LEGISLATIVE ACT: Regulation (EU) No 1095/2010 of the European Parliament and of the Council establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

CONTENT: following an agreement reached with the European Parliament at first reading, the Council adopted a regulation aiming to establish a **European Supervisory Authority (European Securities and Markets Authority) (ESMA)**.

The regulation is part of a package of legal texts underpinning a reform of the EU framework for supervision of the financial system, aimed at eliminating deficiencies that were exposed during the financial crisis. The package consists of the following regulations establishing:

It adopted regulations establishing:

- a European Systemic Risk Board (ESRB), which will provide macro-prudential oversight of the financial system;
- a European Banking Authority (EBA) for the supervision of banking services;
- a European Insurance and Occupational Pensions Authority (EIOPA) for the supervision of insurance services;
- a European Securities and Markets Authority (ESMA) for the supervision of the securities industry.

The three European supervisory authorities (ESAs) will work in tandem with the supervisory authorities of the Member States. They will replace three existing committees of supervisors at EU level (Committee of European Banking Supervisors (CEBS), Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and Committee of European Securities Regulators (CESR) and will have **legal personality under EU law**.

The Council also adopted:

- a regulation entrusting the European Central Bank with specific tasks with regard to the day-to-day running of the ESRB;
- a directive amending directives 98/26/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 conferred on the three European authorities.

The main elements of the Regulation are as follows:

Institution and seat: the Authority shall have its seat in **Paris**. It shall form part of a **European System of Financial Supervision (ESFS)**. The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services.

The ESFS shall comprise the following: (i) the ESRB; (ii) the European Banking Authority (EBA); (iii) the European Supervisory Authority (European Insurance and Occupational Pensions Authority); (iv) the European Supervisory Authority (European Securities and Markets Authority); (v) the Joint Committee of the European Supervisory Authorities (Joint Committee); (vi) the competent or supervisory authorities in the Member States referred to in the EBA, ESMA and EIOPA Regulations.

The ESRB, EBA, EIOPA and the Joint Committee shall be **accountable to the European Parliament and the Council**.

The ESAs will comprise high-level representatives of all of the Member States' supervisory authorities under permanent chairmanships. National authorities will remain responsible for the day-to-day supervision of individual firms, and a joint committee will be set up to ensure cooperation and to coordinate the sharing of information between the ESAs and the ESRB.

Objectives: the objective of the Authority shall be 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 Authority shall contribute to: (i) improving the functioning of the internal market, including, in particular, a sound, effective and consistent level of regulation and supervision; (ii) ensuring the integrity, transparency, efficiency and orderly functioning of financial markets; (iii) strengthening international supervisory coordination; (iv) preventing regulatory arbitrage and promoting equal conditions of competition; (v) ensuring the taking of credit and other risks are appropriately regulated and supervised; and (vi) enhancing customer protection.

In the exercise of the tasks, the Authority shall: (i) pay particular attention to any systemic risk posed by financial institutions, the failure of which may impair the operation of the financial system or the real economy; (ii) act independently and objectively and in the interest of the Union alone.

Tasks: the Authority shall have the following tasks:

- to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, in particular by providing opinions to the Union institutions and by developing guidelines, recommendations, and draft regulatory and implementing technical standards;
- to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture;
- to stimulate and facilitate the delegation of tasks and responsibilities among competent authorities;
- to cooperate closely with the ESRB, in particular by providing the ESRB with the necessary information for the achievement of its tasks and by ensuring a proper follow up to the warnings and recommendations of the ESRB;
- to organise and conduct peer review analyses of competent authorities, including issuing guidelines and recommendations and identifying best practices, in order to strengthen consistency in supervisory outcomes;
- to monitor and assess market developments in the area of its competence, including where appropriate trends in credit, in particular, to households and SMEs;
- to undertake economic analyses of markets to inform the discharge of the Authority’s functions;
- to foster depositor and investor protection;
- to publish on its website, and to update regularly, information relating to its field of activities, in particular, within the area of its competence, on registered financial institutions, in order to ensure information is easily accessible by the public;
- to take over, as appropriate, all existing and ongoing tasks from the Committee of European Banking Supervisors (CEBS).

In addition, the Authority shall contribute to the **consistent and coherent functioning of colleges of supervisors**, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans. The ESAs shall provide a high level of protection to depositors and investors throughout the Union and developing methods for the resolution of failing financial institutions and an assessment of the need for appropriate financing instruments.

Powers: the ESAs will be responsible for ensuring that a single set of harmonised rules and consistent supervisory practices are applied by supervisory authorities of the Member States. They will have the power:

- **to investigate alleged breaches of EU law**. In the event of non-compliance by a national authority, the ESA may, in certain circumstances, take an individual decision addressed to a financial institution, requiring that the necessary action be taken to comply with its obligations under EU law;
- **in emergency situations** where coordinated action by national authorities is needed, to adopt individual decisions requiring the competent authorities to take the necessary measures. It would be for the Council, in consultation with the Commission and the ESRB (and where appropriate the ESAs), to determine the existence of an emergency situation. If the competent authority doesn't comply with the ESA's decision, the ESA may, in certain circumstances, take an individual decision addressed to a financial institution requiring the necessary action to be taken;
- **in the event of disagreements between competent authorities of different Member States**, and where mediation by the ESA has failed, to take binding decisions requiring them to take specific action in order to settle the matter, in order to ensure compliance with EU law. If the competent authority doesn't comply with the ESA's decision, the ESA may, in certain circumstances, take an individual decision addressed to a financial institution requiring the necessary action to be taken.

The Authority may **temporarily prohibit or restrict** certain financial activities 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 in certain cases and under certain conditions or, if so required, in the case of an emergency situation.

Safeguards: the Authority shall ensure that no decision adopted by the ESAs shall impinge in any way on the fiscal responsibilities of Member States.

European system of national Investor Compensation Schemes: the Authority shall contribute to strengthening the European system of national Investor Compensation Schemes (ICS) by acting under the powers conferred to it in this Regulation to ensure the correct application of Directive 97/9/EC with the aim of ensuring that national Investor Compensation Schemes are adequately funded by contributions from the concerned financial market participants, including where appropriate financial market participants headquartered in third-countries, and provide a high level of protection to all investors in a harmonised framework throughout the Union.

Review clause: by 2 January 2014, and every 3 years thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation.

ENTRY INTO FORCE: 16/12/2010.

The Authority shall be established on 01/01/2011.