

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) - 24/11/2010 - Final act

PURPOSE: to make amendments to existing legal acts of the Union in the field of operation of the three ESA in order for the European System of Financial Supervisors (ESFS) to work effectively.

LEGISLATIVE ACT: Directive 2010/78/EU of the European Parliament and of the Council 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 of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

CONTENT: following an agreement reached with the European Parliament at first reading, the Council adopted a directive amending existing legislation in respect of the powers conferred on the three supervisory bodies (European Banking Authority, European Insurance and Occupational Pensions Authority and European Securities and Markets).

The Directive 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:

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- 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 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.

In order for the ESFS to work effectively, changes to legal acts of the Union in the field of operation of the three ESA are necessary. Such changes concern the definition of the scope of certain powers of the ESA, the integration of certain powers established in legal acts of the Union, and amendments to ensure a smooth and effective functioning of the ESA in the context of the ESFS.

This directive amends sectoral directives concerning: capital requirements; financial conglomerates; institutions for occupational retirement provisions; market abuse; markets in financial instruments; prospectuses; settlement finality, transparency, anti-money laundering and undertakings for collective investments in transferable securities (UCITS).

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The areas concerned by the proposed amendments may be found in the following categories:

Technical standards: 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 Treaty on the Functioning of the European Union (TFEU) by means of delegated or implementing acts. This Directive should identify a first set of such areas and should be without prejudice to adding further areas in the future.

The technical standards adopted as implementing acts should set conditions for the uniform application of legally binding Union acts. Technical standards should not involve policy choices.

Binding technical standards contribute to a single rulebook for financial services legislation. To the extent that certain requirements in Union 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.

Before submitting the technical standards to the Commission, the ESA should, where appropriate, conduct open public consultations relating thereto and analyse the potential related costs and benefits.

It should be possible for technical standards to provide for transitional measures subject to adequate deadlines, if the costs of immediate implementation would be excessive compared to the benefits involved.

Settlement disagreements: the regulations establishing the ESA require that the cases where the mechanism to settle disagreements between national competent authorities may be applied are to be specified in the sectoral legislation. This Directive should identify a first set of such cases and should be without prejudice to adding further cases in the future.

This Directive should therefore identify situations in which a procedural or a substantive issue of compliance with Union law needs to be resolved and the national competent authorities are not able to resolve the matter on their own. In such a situation, one of the national competent authorities concerned should be able to raise the issue with the European Supervisory Authority concerned. That European Supervisory Authority should act in accordance with its establishing regulation and with this Directive. The European Supervisory Authority concerned 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.

Comitology: the alignment of committee procedures to the TFEU and, in particular, to Articles 290 and 291 thereof, should be effected on a case-by-case basis. In order to take account of the technical developments in the financial markets and to specify the requirements laid down in the directives amended by this Directive, the Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU.

Confidentiality: information transmitted to or exchanged between competent authorities and the ESA or the ESRB 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.

Report: the Commission shall, by 1 January 2014, submit to the European Parliament and to the Council a report specifying whether the ESA have submitted the draft regulatory technical standards provided for in this Directive, with any appropriate proposals.

ENTRY INTO FORCE: 04/01/2011.

TRANSPOSITION: 31/12/2011.