

European Securities and Markets Authority (ESMA)

2009/0144(COD) - 08/08/2014

The Commission presented a report on the **operation of the three European Supervisory Authorities (ESAs)** – the European Banking Authority ([EBA](#)), the European Insurance and Occupational Pensions Authority ([EIOPA](#)), and the European Securities and Markets Authority (**ESMA**) and the European System of Financial Supervision (ESFS).

The ESAs were established in 2008 following the financial crisis with the aim of strengthening European supervisory arrangements. They started their operations in January 2011. The Commission has assessed in detail the functioning of the ESAs covering the period from their inception to December 2013. Due account was taken of the self-assessment provided by the ESAs, of the [European Parliament Resolution on the ESFS review](#) of March 2014 as well as the studies undertaken by the IMF4 and the European Parliament.

The review showed that in spite of the short reporting period, overall the ESAs have performed well. They have successfully built functioning organisations, have started to deliver on their mandates and have developed their own profiles.

(1) Assessment of the ESAs' work : the main achievements concern the following:

- the **scope of the mandate** of the ESAs is considered sufficiently broad with some room for targeted possible extensions;
- the work undertaken by the ESAs on the development of the single rulebook has contributed significantly towards enhanced regulatory harmonisation and coherence and has improved mutual understanding between supervisors;
- more than **150 technical standards** were submitted in form of draft technical standards to the Commission during the review period. ESMA submitted 92 draft technical standards. During the period under review the Commission has approved more than 45 technical standards in total of which only three were sent back to the ESAs for further amendments;
- in the field of supervisions, the ESAs have started conducting **peer reviews**. Greater use will be made of this tool, including not only thematic peer reviews but also country peer reviews and more systematic follow-up, once work on the regulatory framework has been advanced;
- EBA and EIOPA, and with the establishment of Central Counterparties (CCP) since September 2013 also ESMA, have been actively involved in all aspects of the **work of colleges of supervisors** and have
- improved their functioning through the provision of guidance and the oversight of agendas and annual action plans. The ESAs contributed to enhance supervisory reporting and disclosure;
- the ESAs have not issued recommendations, or indeed binding decisions (e.g. on breach of law, emergency situations, binding mediation), but have made use of their **non-binding mediation powers** and moral suasion;
- the ESAs' activities as regards **international matters** are framed by their underlying mandates;
- the ESAs have actively contributed to **monitoring developments in financial markets** and to test the resilience of financial institutions as well as of the EU financial system as a whole. The ESAs have taken various measures to promote coordinated action and to facilitate exchange of information. The report mentioned in particular the ESMA coordination of measures adopted by competent authorities on short selling;

- the ESAs have established internal structures on **consumer protection** issues within their organisations;
- while the shift away from a decision-making process based on consensus to actual voting is a step forward, the predominant role of the representatives of NCAs in the decision making process has given rise to some criticism, the **Management Boards** of the ESAs are considered to work satisfactorily;
- the two joint bodies of the ESAs, namely the Board of Appeal and the Joint Committee, have proven to be useful mechanisms to ensure consistent views and cross-sectorial cooperation;
- as regards **financing**, the ESAs' budgets are based on 60% contribution from the NCAs and 40% contribution from the EU budget and are fully subject to applicable financial transparency rules in particular towards the budgetary authorities;
- the **overall structure of the ESAs** appears appropriate as it takes into account all elements of the financial services sector and facilitates close cooperation between the micro- (ESAs) and the macro-prudential (ESRB) dimension.

(2) Areas for improvement: the review revealed some areas where further improvements are required in the short- and medium term in order to allow the ESAs to fully exploit their mandates.

Areas for improvement in the short term: some of the improvements can be implemented in the short term by the ESAs and the Commission and would not require any change to the legislative framework. This is the case as concerns:

- improving **supervisory convergence** in order to ensure the consistent implementation and application of EU law, in particular more and better use of peer reviews could be made and more systematic follow-up needs to be ensured where deficiencies have been detected;
- enhancing the **transparency of the process for preparing draft technical standards** or advising the Commission and ensure, where needed, high quality cost-benefit analysis, including an analysis of impacts on stakeholders and Fundamental Rights, where relevant;
- giving **consumer/investor protection** tasks a higher priority and make full use of available powers;
- enhancing **internal governance**: (i) transparency of the work of the stakeholder groups could be strengthened; (ii) the role and influence of ESA staff within preparatory bodies could be reinforced; (iii) the role and visibility of the Joint Committee should be enhanced, e.g. by a dedicated website and systematic publication of its work; (iv) reinforce the authority of the Chairperson and more use could be made of the delegation of specific tasks to the Chairperson.

In the short term, the Commission will take action in the following areas:

- make sure that empowerments for technical standards in future legislative proposals have deadlines relative to the entry into force of the basic legal act;
- pay particular attention to the appropriateness of timelines and to the scope of empowerments for technical standards in draft legislative proposals and during discussions taking place within the legislative process.

Medium term improvements: most of the issues stressed by stakeholders that warrant further attention would imply **legislative action** to amend the ESA founding Regulations.

Work to assess the possible options should examine the following:

- improve **governance** of the ESAs to further enhance the capacity of the Board of Supervisors to take swift decisions in the interest of the EU as a whole and strengthen the authority and role of the Chairperson and to amend the composition and mandate of the Management Board in order to confer more permanent and executive functions on it;

- improve the **funding** arrangements of the ESAs, including the use of alternative sources of funding, ideally abolishing EU and national contributions;
- enable the ESAs to have **direct access to data** where necessary for the performance of their tasks and in line with the applicable legislation;
- possible **extensions of the current mandates** should be thoroughly assessed in the light of the subsidiarity principle and against costs and benefits. Potential areas for further tasks to be assigned to the ESAs concerned could include the area of IFRS enforcement, a stronger oversight role on internal model validation, shadow banking, and direct supervision of highly integrated market infrastructure, such as CCPs;
- enhance the **mandate in the area of consumer/investor protection** in order to better define the respective roles and priorities of the ESAs with a pivotal role assigned to the Joint Committee;
- strengthen the ESAs dispute settlement powers;
- increase the **duration of mandates** for Stakeholder Groups members;
- assess the possible need for **structural changes**, including a single seat and extending direct supervision powers to integrated market infrastructures.