European Supervisory Authorities: powers, governance and funding

2017/0230(COD) - 20/09/2017 - Legislative proposal

PURPOSE: to upgrade the European Supervisory Agencies (ESAs) framework to ensure they can assume an enhanced responsibility for financial market supervision.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: as a reminder, the three ESAs established following the financial crisis are the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA). They contribute to developing a unified set of rules for EU financial markets (the Single Rulebook). They also help to foster supervisory convergence among competent authorities and to enhance consumer and investor protection.

EU action is needed to **address identified problems in the area of powers** available to the ESAs, their governance framework and their funding framework.

IMPACT ASSESSMENT: the scope of the impact assessment covered the areas of: (i) powers; (ii) governance; and (iii) funding of the ESAs, to meet the identified shortcomings and new challenges, such as regulatory and supervisory convergence.

Following this analysis,

- the preferred option as regards **governance** includes **independent members with voting powers alongside the national competent authorities** in the decision-making process; introduces a new appointment process and role for the Chairperson and replaces the Management Board by an independent Executive Board composed of full time members that are externally appointed.
- the preferred option as regards **powers** clarifies some powers, such as giving a **formal role to the ESAs** in the ongoing monitoring of the equivalence process, improving the ability for the ESAs to ensure the correct application of Union law, and transfers supervisory powers to the ESAs in targeted areas with predominantly third country or cross-border relevance;
- the preferred option as regards **funding** keeps the current annual EU contribution to ESAs' budget, but replaces the residual funding with private sector funding.

The preferred options identified were those that best ensured that the ESAs would be able to cope with the growing workload and anticipate the changes to the supervisory framework coming from sectoral legislation. In addition, the preferred options were mostly focusing on targeted changes to the current regime, rather than a complete overhaul. This was in line with the conclusion in the evaluation that **the ESAs' framework has been working relatively well** in relation to the significant challenges that they had to face and the available means to meet their mandates.

CONTENT: the objective of the present proposal is to **adjust and upgrade the ESAs framework** to ensure they can assume an enhanced responsibility for financial market supervision. The ESAs must be adequately equipped in terms of powers, governance and funding.

The proposal addresses these issues as follows:

1) Powers: while harmonised regulation through the Single Rulebook is important for the Single Market, it is not sufficient. Having a coherent approach to the interpretation and application of EU legislation is equally important in order to improve the functioning of the single market and reduce risks of supervisory arbitrage and competition. For this purpose, the ESAs need to be equipped to promote the proper application of EU law and effective common supervisory standards across the EU via supervisory convergence measures and direct supervision in certain areas. This is particularly the case for ESMA within the context of the CMU. This proposal seeks to **grant new powers** to enhance market integration (for ESMA) and strengthen or clarify existing powers set out in the ESA Regulations. Similarly, the ESAs should be more involved in the authorisation and supervision of entities from non-EU countries that are active in the Union.

2) Governance: this proposal envisages a more effective governance structure for the ESAs by introducing an independent Executive Board with full-time members, replacing the current Management Board and to adjust the composition of the Board of Supervisor. This proposal clarifies the respective competences of these two boards. In addition, the **standing and powers of the Chairperson will be enhanced**.

The newly proposed **Executive Board's** main function will be to prepare decisions to be taken by the Board of Supervisors. This should ensure that the decision making within the Board of Supervisors is quicker and more streamlined.

The Executive Board will consist of the Chairperson and a number of full-time members. The number will differ between ESMA on the one hand and EBA and EIOPA on the other hand as the proposal is entrusting ESMA with a significant number of additional tasks in different areas compared to the other two ESAs.

The Executive Board will retain the role of the Management Board in relation to the preparation of the ESAs work programmes and budget. It shall be attributed decision making powers in a number of areas. For example, dispute settlements, breach of Union law matters and independent reviews.

The amendments also replace the reference to the Management Board with the Executive Board.

3) New funding system: the proposal revises the current funding system. Currently there is a fixed distribution of funding between national authorities (60%) and the EU budget (40%). This rigid funding structure has been deemed insufficient and has often meant in practice that the ESAs have not been able to find the resources needed to cope with increased workloads and have had to abstain from doing certain other tasks.

This proposal shall change the funding structure of the ESAs. It is proposed that the ESAs budget shall now rely on three different sources of financing:

- **annual contributions paid by financial institutions** that are indirectly supervised by the ESAs. The proposal also provides for a delegated act that will establish how the total amount of annual contributions are shared among the different categories of financial institutions, based on the activity required by each category of them. It shall also establish *de minimis* thresholds under which small financial institutions do not pay financial contributions or it will set minimum contributions;
- **supervisory fees paid by entities** that are directly supervised by the ESAs;
- a **balancing contribution from the EU** that would not exceed 40% of the overall revenues of each agency. The amount of this balancing contribution will be set in advance in the Multiannual Financial Framework (MFF).

During the transitional period (i.e., until the adoption of the delegated act determining some parameters of the annual contributions), the current funding structure relying on contributions from the EU (40%) and from the national competent authorities (60%) shall be maintained. This shall have an impact on the EU budget as well as on the budget of the various national competent authorities.

BUDGETARY IMPLICATIONS: the proposed changes to the governance structure, the indirect supervisory powers, the funding system and the direct supervisory powers of the ESAs shall require new resources. EBA, EIOPA and ESMA will respectively require 29, 35 and 156 additional full-time employees when the different provisions of the proposal will enter into application. The ESAs will also incur additional IT costs (estimated at EUR 10.2 million for the period 2019-2020) and translation costs (estimated at EUR 1.8 million for the period 2019-2020). The total appropriations for the period 2019-2012 is estimated at EUR 64.166 million.