## Basic information

| | |
|---|---|
| **2009/0144(COD)**<br><br>COD - Ordinary legislative procedure (ex-codecision procedure)<br>Regulation | Procedure completed |
| European Securities and Markets Authority (ESMA)<br><br>Amending Decision No 716/2009/EC 2009/0001(COD)<br>Amended by 2009/0064(COD)<br>Amended by 2011/0006(COD)<br>Amended by 2016/0365(COD)<br>Amended by 2017/0136(COD)<br>Amended by 2017/0230(COD)<br>Amended by 2021/0240(COD)<br>Amended by 2023/0363(COD)<br>See also 2015/0905(NLE)<br><br>**Subject**<br><br>2.50.03 Securities and financial markets, stock exchange, CIUTS, investments<br>8.40.08 Agencies and bodies of the EU | |

## Key players

### European Parliament

| Committee responsible | Rapporteur | Appointed |
|---|---|---|
| ECON Economic and Monetary Affairs | GIEGOLD Sven (Verts/ALE) | 20/10/2009 |
| | Shadow rapporteur<br><br>GOULARD Sylvie (ALDE) | |

| Committee for opinion | Rapporteur for opinion | Appointed |
|---|---|---|
| BUDG Budgets | HAUG Jutta (S&D) | 21/10/2009 |
| EMPL Employment and Social Affairs | The committee decided not to give an opinion. | |
| JURI Legal Affairs | BALDASSARRE Raffaele (PPE) | 05/10/2009 |
| AFCO Constitutional Affairs | MÉNDEZ DE VIGO Íñigo (PPE) | 24/11/2009 |

### Council of the European Union

| Council configuration | Meetings | Date |
|---|---|---|
| Economic and Financial Affairs ECOFIN | 2981 | 2009-12-02 |

| | | |
|---|---|---|
| Economic and Financial Affairs ECOFIN | 3045 | 2010-11-17 |
| Economic and Financial Affairs ECOFIN | 3027 | 2010-07-13 |
| Economic and Financial Affairs ECOFIN | 3030 | 2010-09-07 |

European Commission

| Commission DG | Commissioner |
|---|---|
| Financial Stability, Financial Services and Capital Markets Union | BARNIER Michel |

## Key events

| Date | Event | Reference | Summary |
|---|---|---|---|
| 23/09/2009 | Legislative proposal published | COM(2009)0503 | Summary |
| 07/10/2009 | Committee referral announced in Parliament, 1st reading | | |
| 02/12/2009 | Debate in Council | | Summary |
| 10/05/2010 | Vote in committee, 1st reading | | Summary |
| 03/06/2010 | Committee report tabled for plenary, 1st reading | A7-0169/2010 | |
| 06/07/2010 | Debate in Parliament | | |
| 07/07/2010 | Decision by Parliament, 1st reading | T7-0270/2010 | Summary |
| 07/07/2010 | Results of vote in Parliament | | |
| 13/07/2010 | Debate in Council | | Summary |
| 22/09/2010 | Decision by Parliament, 1st reading | T7-0339/2010 | Summary |
| 22/09/2010 | Results of vote in Parliament | | |
| 17/11/2010 | Act adopted by Council after Parliament's 1st reading | | |
| 24/11/2010 | Final act signed | | |
| 24/11/2010 | End of procedure in Parliament | | |
| 15/12/2010 | Final act published in Official Journal | | |

## Technical information

| | |
|---|---|
| **Procedure reference** | 2009/0144(COD) |
| **Procedure type** | COD - Ordinary legislative procedure (ex-codecision procedure) |
| **Procedure subtype** | Legislation |
| **Legislative instrument** | Regulation |
| **Amendments and repeals** | Amending Decision No 716/2009/EC 2009/0001(COD)<br>Amended by 2009/0064(COD)<br>Amended by 2011/0006(COD)<br>Amended by 2016/0365(COD)<br>Amended by 2017/0136(COD) |

| | |
|---|---|
| | Amended by 2017/0230(COD)<br>Amended by 2021/0240(COD)<br>Amended by 2023/0363(COD)<br>See also 2015/0905(NLE) |
| **Legal basis** | Treaty on the Functioning of the European Union TFEU 114-p1 |
| **Other legal basis** | Rules of Procedure EP 165 |
| **Stage reached in procedure** | Procedure completed |
| **Committee dossier** | ECON/7/01065 |

**Documentation gateway**

**European Parliament**

| Document type | Committee | Reference | Date | Summary |
|---|---|---|---|---|
| Committee draft report | | PE438.409 | 10/02/2010 | |
| Amendments tabled in committee | | PE439.456 | 24/03/2010 | |
| Amendments tabled in committee | | PE439.919 | 24/03/2010 | |
| Amendments tabled in committee | | PE439.931 | 24/03/2010 | |
| Committee opinion | AFCO | PE439.146 | 09/04/2010 | |
| Committee opinion | BUDG | PE439.452 | 29/04/2010 | |
| Committee opinion | JURI | PE430.969 | 30/04/2010 | |
| Committee report tabled for plenary, 1st reading/single reading | | A7-0169/2010 | 03/06/2010 | |
| Text adopted by Parliament, partial vote at 1st reading /single reading | | T7-0270/2010 | 07/07/2010 | Summary |
| Text adopted by Parliament, 1st reading/single reading | | T7-0339/2010 | 22/09/2010 | Summary |

**Council of the EU**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Draft final act | 00042/2010/LEX | 24/11/2010 | |

**European Commission**

| Document type | Reference | Date | Summary |
|---|---|---|---|
| Legislative proposal | COM(2009)0503 | 23/09/2009 | Summary |
| Document attached to the procedure | SEC(2009)1233 | 23/09/2009 | |
| Document attached to the procedure | SEC(2009)1234 | 23/09/2009 | |
| Document attached to the procedure | SEC(2009)1235 | 23/09/2009 | |
| Commission response to text adopted in plenary | SP(2010)7193 | 13/10/2010 | |

| | | | |
|---|---|---|---|
| Follow-up document | COM(2014)0509 | 08/08/2014 | Summary |
| Follow-up document | SWD(2014)0261 | 08/08/2014 | Summary |

**National parliaments**

| Document type | Parliament /Chamber | Reference | Date | Summary |
|---|---|---|---|---|
| Contribution | NL_CHAMBER | COM(2009)0503 | 13/11/2009 | |
| Contribution | CZ_SENATE | COM(2009)0503 | 07/12/2009 | |
| Contribution | IT_SENATE | COM(2009)0503 | 17/06/2010 | |

**Other institutions and bodies**

| Institution/body | Document type | Reference | Date | Summary |
|---|---|---|---|---|
| ECB | European Central Bank: opinion, guideline, report | CON/2010/0005<br>OJ C 013 20.01.2010, p. 0001 | 08/01/2010 | Summary |

**Additional information**

| Source | Document | Date |
|---|---|---|
| National parliaments | IPEX | |
| European Commission | EUR-Lex | |

**Final act**

Regulation 2010/1095
OJ L 331 15.12.2010, p. 0084 Summary

# European Securities and Markets Authority (ESMA)

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

This staff working document accompanies the Commission 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).

To recall, the ESAs founding Regulations require the Commission to publish a general report by early 2014 on the experience acquired as a result of the operations of the Authorities and procedures laid down in these Regulations. This report shall be forwarded to the European Parliament and to the Council together with any accompanying proposals, as appropriate.

Article 81 of the ESAs Regulations sets out a non-exhaustive list of indicators against which the performance of the ESAs shall be assessed.

The present staff working document contains details to support the assessment in the Commission report on the ESAs. It takes the abovementioned indicators thoroughly into account while extending the analysis to further issues, including:

- the process of delivering draft technical standards,

- the application of the supervisory powers contained the ESAs Regulations,
- the functioning and composition of the Joint Committee,
- the Board of Appeal and the stakeholder groups,
- the financing and budgetary process,
- the direct supervision of Credit Rating Agencies (CRAs) by ESMA,
- the **potential impact of the establishment of Banking Union** on the overall ESFS and the EBA in particular.

# 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.

# European Securities and Markets Authority (ESMA)

2009/0144(COD) - 07/09/2010

The Council endorsed an agreement reached with the European Parliament on 2 September on key elements of a reform of the EU framework for supervision of the financial system.

The reform is aimed at establishing a new basis for supervision in Europe, eliminating deficiencies that were exposed during the financial crisis. It involves the creation both of a European Systemic Risk Board (ESRB), which will provide macro-prudential oversight of the financial system, and three supervisory authorities:

- a European Banking Authority (EBA);
- a European Insurance and Occupational Pensions Authority and;
- a European Securities and Markets Authority.

The agreement with the Parliament, which focuses on draft regulations establishing the ESRB and the EBA, will enable all of these bodies to be operational as planned as from 1 January 2011.

The Parliament is expected to adopt the texts in first reading during its plenary session starting on 20 September. The Council will formally adopt them at a subsequent meeting without further discussion.

# European Securities and Markets Authority (ESMA)

2009/0144(COD) - 02/12/2009

The Council agreed on a **general approach** on draft regulations aimed at establishing three new authorities for the supervision of financial services in the EU, namely:

- a European Banking Authority;
- a European Insurance and Occupational Pensions Authority;
- a European Securities and Markets Authority.

It asked the presidency to start negotiations with the European Parliament with a view to adoption of the texts at first reading.

The draft regulations are part of a package of proposals to reform the EU framework for the supervision of banking, insurance and securities markets in the wake of the global financial crisis.

Negotiations with the Parliament on the macro-financial aspects of the package are already underway. At its meeting on 20 October, the Council reached agreement on a draft regulation aimed at establishing a European Systemic Risk Board (ESRB) to monitor potential threats to the stability of the financial system.

The three European supervisory authorities (ESAs) will be part of a European System of Financial Supervisors, working in tandem with a network of Member State supervisors. Together, they constitute the micro-financial aspects of the reform package.

Entry into force will only be possible once all of the texts have been adopted; the aim is for the new framework to be put into place during the course of 2010.

In June, the European Council supported the creation of both the ESRB and the European System of Financial Supervisors, calling for:

- an upgrading of the quality and consistency of national supervision;
- a strengthening of the oversight of cross-border financial groups through the setting up of supervisory colleges;
- the establishment of a single rule book applicable to all financial institutions in the EU.

The three ESAs are due to replace three existing EU committees of supervisors (CEBS, CEIOPS and CESR) and will have legal personality under EU law. They will comprise high-level representatives of all national supervisory authorities, under a permanent chairmanship. The national authorities will remain responsible for day-to-day supervision of individual firms, and a steering committee will be set up to ensure cooperation and to coordinate the sharing of information between the ESAs and the ESRB.

According to the Council's general approach, the ESAs would be responsible for:

- ensuring that a single set of harmonised rules and consistent supervisory practices is applied by national supervisors;
- ensuring a common supervisory culture and consistent supervisory practices;
- collecting micro-prudential information;
- ensuring consistent application of EU rules, in cases such as the manifest breach of EU law or ESA standards and disagreement between national supervisors or within a college of supervisors.

# 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.

# European Securities and Markets Authority (ESMA)

2009/0144(COD) - 08/01/2010

**OPINION OF THE EUROPEAN CENTRAL BANK on three proposals for regulations of the European Parliament and of the Council establishing a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA) and a European Securities and Markets Authority (ESMA).**

The ECB notes that the observations contained in its opinion must be read in conjunction with ECB Opinion CON/2009/88 of 26 October 2009 on a proposal for a regulation of the European Parliament and of the Council on Community macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (ESRB) and a proposal for a Council decision entrusting the European Central Bank with specific tasks concerning the functioning of the ESRB; these two proposals form part of the legislative package adopted by the Commission on 23 September 2009 in view of the reform of European financial supervision.

The ECB makes the following general observations:

**The proposed European Union institutional framework for supervision**: the proposals are part of a comprehensive review of the EU institutional framework for supervision, which includes both the enhancement of micro-prudential supervision through the establishment of the ESAs, (European Supervisory Authorities) and the designation of the ESRB (European Systemic Risk Board). As a new independent body, responsible for safeguarding financial stability by conducting macro-prudential supervision at the European level. The ECB broadly welcomes the proposed institutional framework.

**The ESAs and approximation of laws in the financial sector**: the proposed regulations reflect the need to introduce an effective instrument to establish harmonised technical standards in financial services to ensure, through a single rulebook, a level playing field and an adequate protection of depositors, investors and consumers in Europe. The ECB welcomes this approach in view of its long-standing support for the development of an EU financial services rulebook. Moreover, the ESAs, as bodies with highly specialised expertise, are well placed to assist in the process of harmonisation in the financial sector by contributing to the establishment of high quality common regulatory and supervisory practices, in particular by providing opinions to the EU institutions and by developing guidelines, recommendations, and draft technical standards.

The ECB makes the following specific observations:

**Relation between the ESAs and the ESRB**: the ECB strongly supports efficient institutional arrangements for cooperation between the ESAs and the ESRB. This requires effective information sharing procedures in order to ensure a smooth interaction of supervision at the macro-prudential and micro-prudential levels and the timely access of the ESRB to all relevant information required to perform its duties, including micro-prudential information relevant for macro-prudential analysis. The ECB notes in this respect that one of the main tasks of the ESAs will concern cooperation with the ESRB, in particular by providing the latter with the information necessary for the achievement of its tasks. While the ECB welcomes the fact that the proposed regulations provide for the close involvement of the ESRB within the new micro-prudential institutional framework, it suggests an amendment with a view to ensuring that any obstacles to smooth flows of information between the ESRB and the ESFS are removed. These rules on exchange of confidential information under the regulations will complement the other relevant EU rules on these matters, including the ESRB regulation.

**Relation between the ESAs and the ESCB**: the ECB and the national central banks (NCBs) of the ESCB are closely involved, given their competences and technical expertise, in the current EU financial architecture. The proposed regulations should also ensure an adequate institutional involvement and participation of the ECB and, where appropriate, of the NCBs of the ESCB, as regards the ESAs and newly established committees.

More specifically, the ESCB's involvement in payment, clearing and settlement systems reflects the task assigned to it by the Treaty of promoting the smooth operation of payment systems. Safe and efficient post-trading infrastructures for securities markets are a critical component of the financial system and any malfunctioning of securities clearing and settlement systems can have serious systemic repercussions for the smooth functioning of payments systems, as well as for financial stability. In the light of the central banks' oversight tasks concerning payment, clearing and settlement systems, effective cooperation between central banks in their oversight capacity and supervisory authorities is required Recent events have confirmed that central banks may be extensively involved in the context of a crisis situation as suppliers of liquidity to the banking system. This is particularly the case when a crisis materialises through an event relating to the liquidity conditions in the money markets and/or to the functioning of payment or securities settlement systems. Against this backdrop, central bank access to supervisory information on financial institutions may be relevant to the conduct of macro-prudential monitoring, the oversight of payment, clearing and settlement systems and the safeguarding of financial stability in general. While gateways for information sharing already exist in the context of EU financial sector legislation between competent authorities and central banks, it should be ensured for both substantive and consistency reasons that the proposed regulations provide for equivalent arrangements as regards the exchange of information between the ESAs and the ESCB when conducting their respective tasks.

**ESAs and compliance with the monetary financing prohibition**: when an NCB is a competent authority for the supervision of credit and/or financial institutions under national law, the NCB's performance of this task cannot constitute prohibited monetary financing under Article 123 of the Treaty. Insofar as the financing of each ESA consists, in particular, of obligatory contributions from the national authorities competent for the supervision of credit and/or financial institutions, it is not contrary to the prohibition of monetary financing for an NCB to contribute to the revenues of the ESA which, in such circumstances, would only involve the financing by the NCB of the performance of its own supervisory tasks.

# European Securities and Markets Authority (ESMA)

2009/0144(COD) - 07/07/2010 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted amendments, by 611 votes to 33 with 41 abstentions, at first reading under the ordinary legislative procedure (formerly known as the codecision procedure), to the proposal for a regulation of the European Parliament and of the Council establishing a 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:

**Establishment and scope of action**: Members clarified that the Regulation establishes a European Supervisory Authority (European Securities and Markets Authority, or **ESMA**). 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) preventing regulatory arbitrage and contributing to equal conditions of competition, (ii) ensuring the taking of investment and other risks are appropriately regulated and supervised, and (iii) contribute to enhance customer protection. Its tasks should also include promoting supervisory convergence and providing advice to the EU institutions in the areas of securities and markets regulation and supervision, and related corporate governance and financial reporting issues. The Authority should also be entrusted with a general oversight responsibility for existing and new financial products/types of transactions.

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

**Seat:** the Authority will have its seat in **Frankfurt.** It may have representations in the most important financial centres of the European Union

**The European System of Financial Supervision**: a new clause states that the Authority shall form part of a European System of Financial Supervision (ESFS), whose main objective 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: (a) the ESRB; (b) the European Supervisory Authority (Securities and Markets); (c) the European Supervisory Authority (Insurance and Occupational Pensions) (EIOPA); (d) the European Supervisory Authority (Banking) (EBA); (e) the European Supervisory Authority (Joint Committee) established by Regulations on EBA, ESMA and EIOPA; (f) the authorities in the Member States as specified in the Regulations on EBA and ESMA and EIOPA; (g) the Commission, for the purposes of carrying out the tasks referred to in the Regulation on EBA, ESMA and EIOPA.

The Authorities shall be **accountable to the European Parliament**.

**Tasks**: Parliament has extended the Authority's tasks and these now include:

- undertaking economic analyses of markets;
- fostering depositor and investor protection;
- help to manage crisis of cross-border institutions that have the potential to pose a systemic risk, leading and executing all early interventions, resolution or insolvency procedures for such institutions through its Resolution Unit;
- supervising those financial institutions that are not subject to the supervision of competent authorities;
- publishing on its website and regularly updating information relating to its field of activities, in particular, within the area of its competence, on registered financial institutions, in order to ensure easily accessible information to the public;
- develop a regulatory standard setting out the minimum information that shall be made available to the Authority about transactions and market participants

**Tasks related to consumer protection and financial activities**: in order to foster policyholders and beneficiary protection the Authority shall take a leading role in promoting transparency, simplicity and fairness in the market for financial products or services across the single market, including by: (i) collecting, analysing and reporting on consumer trends; (ii) reviewing and coordinating financial literacy and education initiatives; (iii) developing training standards for the industry; (iv) contributing to the development of common disclosure rules, and (v) assess, in particular, the accessibility, availability and credit cost for households and enterprises, in particular SMEs.

The Authority shall monitor new and existing financial activities and may adopt guidelines and recommendations with a view to promote the safety and soundness of markets and convergence of regulatory practice. It may also issue warnings in case a financial activity poses a serious threat to its objectives.

It shall establish, as an integral part of the Authority, a Committee on financial innovation, which gathers all relevant competent national supervisory authorities with a view to achieving a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing advice to the European Parliament, the Council and the Commission.

The Authority may also **temporarily prohibit or restrict certain types of 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 the cases specified and under the conditions laid down in the legislative acts or if so required in the case of an emergency situation.

**Regulatory technical standards**: the European Parliament and the Council may delegate powers to the Commission to adopt regulatory technical standards under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts referred to in the text. Those standards shall be technical, not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based. Draft regulatory technical standards shall be developed by the Authority and submitted to the Commission for endorsement.

The Authority shall conduct open public consultations on regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the regulatory technical standards concerned or in relation to the particular urgency of the matter before submitting them to the Commission. The Authority shall also request the opinion or advice of the Securities and Markets Stakeholder Group. The Commission shall upon receipt of a draft regulatory technical standard from the Authority forward it immediately to the European Parliament and the Council. The Commission shall decide within three months of receipt whether to adopt a draft regulatory technical standard. If the Commission does not intend to adopt the standard it shall inform the European Parliament and Council of this and of the reasons for this.

The Commission may be empowered to adopt **implementing technical standards** where uniform conditions for implementing legally binding Union acts are needed in the areas specifically set out in legislative acts. Where the Authority drafts implementing technical standards for submission to the Commission, those standards shall be technical, shall not include policy choices and shall be limited to determining the conditions of application of legally binding Union acts.

**Guidelines and recommendations**: the competent authorities and financial institutions shall make every effort to comply with those guidelines and recommendations. Within two months of the issuance of a guideline or recommendation, each competent authority shall confirm that it intends to comply with that guideline or recommendation. In the event that a competent authority does not intend to comply, it shall inform the Authority, stating reasons. The Authority shall publish those reasons.

**Action in emergency situations**: in the case of adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the EU, the Authority shall actively facilitate and, where deemed necessary, coordinate any actions undertaken by the relevant national competent supervisory authorities.

The Commission may, on its own initiative or at the request of the European Parliament, the Council, the ESRB or the Authority, adopt a decision addressed to the Authority, determining the existence of an emergency situation for the purposes of this Regulation. The Commission shall review that decision at monthly intervals and shall declare the discontinuation of the emergency situation as soon as appropriate. If the Commission determines the existence of an emergency situation, it shall duly inform the European Parliament and the Council without delay.

**Colleges of supervisors**: the Authority shall contribute to promote and monitor the efficient, effective and consistent functioning of the colleges of supervisors and foster the coherence of the application of Union law among them. It shall, at least: (a) collect and share all relevant information in going concern and emergency situations in order to facilitate the work of the colleges of supervisors and establish and manage a central system to make such information accessible to the competent authorities in the colleges of supervisors; (b) initiate and coordinate Union-wide stress tests to assess the resilience of financial institutions to adverse market developments, ensuring an as consistent as possible methodology is applied at the national level to such tests; (c) plan and lead supervisory activities in going concern as well as in emergency situations, including evaluating the risks to which financial institutions are or might be exposed; and (d) oversee the tasks carried out by the competent authorities.

A **legally binding mediation role** should allow the Authority to solve disputes between competent authorities. Where no agreement can be reached within the relevant college of supervisors, the Authority may take supervisory decisions directly applicable to the institution concerned.

**Risk dashboard**: the Authority shall pay special attention to and address risks of disruption in financial services that (i) is caused by an impairment of all or parts of the financial system and (ii) has the potential to have serious negative consequences for internal market and the real economy (systemic risk). In collaboration with the European Systemic Risk Board, it shall develop a common set of quantitative and qualitative indicators (risk dashboard), which will serve as the basis to assign a supervisory rating to cross-border institutions That rating shall be reviewed on a regular basis, to take into account material changes of the risk profile of an institution. The supervisory rating shall be a critical element for the decision to directly supervise or intervene in an ailing institution.

**Resolution Unit:** the Resolution Unit shall preserve financial stability and minimise the contagion effect of distressed institutions to the rest of the system and the economy at large and limit the cost to taxpayers respecting the principle of proportionality, creditors' hierarchy and guaranteeing equal treatment across borders.

Among other actions it could require adjustments in capital or liquidity, adapt the business mix, improve processes, appoint or replace management, recommend guarantees, loans and liquidity assistance, total or partial sales, create a good bank / bad bank or a bridge bank, swap debt into equity (with appropriate haircuts) or take the institution into temporary public ownership.

**European System of Investor Guarantee Schemes**: the Authority shall contribute to strengthening national Investor Compensation Schemes (ICS) by ensuring that they are adequately funded by contributions from financial institutions including from market participant headquartered in third-countries, and provide a high level of protection to all investors in a harmonised framework throughout the Union, which leaves the stabilising safeguard role of mutual guarantee schemes intact, provided they comply with Union standards.

**European System of resolution and funding arrangements**: a European Stability Fund for Securities and Markets shall be established in order to strengthen the internalisation of the costs of the financial system and to assist in crisis resolution for failing cross border financial market participants. Financial market participants operating in only one Member State shall have the option to join the fund. The European Stability Fund for Securities and Markets shall adopt appropriate measures to avoid that the availability of aid generates a moral hazard.

**Safeguards:** the text now states that where a Member State considers that a decision taken under Article 10(2) (emergency measures) or Article 11 (disagreements between national authorities) impinges directly and in a significant manner on its fiscal responsibilities, it shall notify the Authority, the

European Parliament and the Commission within ten working days after notification of the Authority's decision to the competent authority. In its notification, the Member State shall justify why and provide an impact assessment on how much the decision impinges on its fiscal responsibilities. Where the Authority maintains or amends its decision, the Council shall take a decision whether the Authority's decision is maintained or revoked. The decision to maintain the Authority's decision shall be taken by simple majority of members. The decision to revoke the Authority's decision shall be taken by a qualified majority of its members. In neither of these cases the vote of the Members concerned shall be taken into account.

**Board of supervisors**: Members introduced amendments on provisions regarding the organisation and composition of the board of supervisors. When carrying out the tasks conferred upon it by this Regulation, the Chairperson and the voting members of the Board of Supervisors shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from a Government of a Member State or from any other public or private body.

**Joint committee**: Parliament introduces a joint committee, which shall serve as a forum in which the Authority cooperates regularly and closely and ensure cross-sectoral consistency with the other ESAs, in particular regarding (i) financial conglomerates; (ii) accounting and auditing; (iii) micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability; (iv) retail investment products; (v) anti-money laundering measures; and (vi) information exchange with the ESRB and developing the relationship between the ESRB and the European Supervisory Authorities .

**Review clause:** six months after entry into force of the Regulation, the Commission shall submit to the European Parliament and the Council the necessary proposals to strengthen supervision of institutions that may pose a systemic risk and the establishment of a new framework for financial crisis management including funding arrangements.

Three years after the date of application of the regulation, and every three 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. That report shall evaluate, inter alia: (a) the convergence in supervisory practices reached by competent authorities; (b) the functioning of the colleges of supervisors; (c) progress achieved towards convergence in the fields of crisis prevention, management and resolution, including European funding mechanisms; (d) whether, in particular in light of the progress achieved with regard to the issues referred to in point (c), the role of the Authority in the supervision of financial institutions posing a potential systemic risk should be strengthened and whether it should exercise enhanced supervisory powers over those institutions; (e) the application of the safeguard clause.

The report shall also examine whether:

- it is appropriate to move the Authorities to a single seat to enhance a better coordination between them;
- it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets;
- it is appropriate to supervise prudential supervision and the conduct of business separately or by the same supervisor;
- it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;
- the evolution of the ESFS is consistent with that of the global evolution;
- there is sufficient diversity and excellence within the ESFS;
- accountability and transparency in relation to publication requirements are adequate;
- the appropriateness of the seat of the Authority;
- to establish a Stability Fund for Securities and Markets at EU level as the best defence against competitive distortion and most efficient way to deal with the failure of a cross-border institution.

# European Securities and Markets Authority (ESMA)

2009/0144(COD) - 23/09/2009 - Legislative proposal

PURPOSE: to establish a European Securities and Markets Authority.

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

BACKGROUND: experience of the financial crisis has exposed important failures in financial supervision, both in particular cases and in relation to the financial system as a whole. Building on the recommendations presented in February 2009 of a group of high level experts, chaired by Mr Jacques de Larosière, the Commission set out proposals for a new European financial supervisory architecture in its Communication to the Spring European Council of March 2009 (COM(2009)0114). The Commission presented its ideas in more detail in its Communication of May 2009 (COM(2009)0252) which proposed the establishment of:

- a **European System of Financial Supervisors (ESFS)**, consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities (ESAs), created by transforming the existing European supervisory committees into a **European Banking Authority (EBA)**, a **European Insurance and Occupational Pensions Authority (EIOPA)**, and **a European Securities and Markets Authority (ESMA)**, thereby combining the advantages of an overarching European framework for financial supervision with the expertise of local micro-prudential supervisory bodies that are closest to the institutions operating in their jurisdictions; and

- a **European Systemic Risk Board (ESRB)**, to monitor potential threats to financial stability that arise from macro-economic developments and from developments within the financial system as a whole. To this end, the ESRB would provide an early warning of system-wide risks that may be building up and, where necessary, issue recommendations for action to deal with these risks.

On 27 May 2009, the Commission published a Communication on Financial Supervision in the EU, describing in detail how these recommendations could be put into effect, focusing in particular on the establishment of the proposed ESFS and ESRB.

It should be noted that this proposal is closely linked to proposals on:

- a European Banking Authority (EBA),
- a European Insurance and Occupational Pensions Authority (EIOPA),
- a European Systemic Risk Board (ESRB).

IMPACT ASSESSMENT: the May Commission Communication on Financial Supervision in Europe was accompanied by an impact assessment analysing the main policy options for establishing the ESFS and ESRB. A second impact assessment accompanies these proposals, examining the options in more detail (see SEC(2009)1234.)

CONTENT: in order to take account of sectoral specificities, three separate Regulations are needed to establish the Authorities for banking, insurance and occupational pensions, and securities. The broad thrust of these proposals is, however, identical. The proposal discusses the common elements and briefly touches upon the differences between the three Regulations.

**Objectives of the ESAs**: these shall be to contribute to: (i) improving the functioning of the internal market, including in particular a high, effective and consistent level of regulation and supervision, (ii) protecting depositors, investors, policyholders and other beneficiaries, (iii) ensuring the integrity, efficiency and orderly functioning of financial markets, (iv) safeguarding the stability of the financial system, and (v) strengthening international supervisory coordination. The ESAs will be Community bodies with a legal personality and a key element of the proposed ESFS. The main decision-making body of each ESA will be its Board of Supervisors, consisting of the heads of the relevant national supervisors as well as the Chairperson of the respective Authority. The Chairperson will preside over meetings of the Board of Supervisors and the Management Board. The day-to-day management of each Authority will be in the hands of an Executive Director.

**Tasks and powers:** the ESAs will take on all the tasks of the existing European supervisory committees, but also have significantly increased responsibilities, defined legal powers and greater authority.

**Develop technical standards**: a single EU rule book should be established, applicable to all financial institutions in the Single Market. To this end, differences in the national transposition of Community law stemming from exceptions, derogations, additions or ambiguities must be removed, so that one harmonised core set of standards can be defined and applied. To contribute to this, the Authorities will develop draft technical standards. These standards constitute an effective instrument to strengthen Level 3 of the Lamfalussy structure, which currently is limited to the adoption of non-binding guidelines.

**Powers to ensure the consistent application of Community rules**: a mechanism will be put in place to address behaviour by national supervisory authorities who are considered to be diverging from the existing Community legislation (including technical standards). The proposal describes the steps of the mechanism.

**Action in emergency situations**: whilst ESAs will have a coordination role between national supervisory authorities, in some emergency situations coordination may not be sufficient, notably when national supervisors alone lack the tools to respond rapidly to an emerging cross-border crisis. The ESAs should thereforehave the power to require national supervisors to take specific action jointly. The determination of a cross-border emergency situation will be left to the Commission. This is subject to the safeguard clause.

**Settlement of disagreements between national supervisory authorities**: a mechanism is proposed to ensure that relevant national supervisory authorities take due account of the interests of other Member States, including within colleges of supervisors. This mechanism consists of three possible steps which are set out in the text.

**Colleges of supervisors**: the latter are central to the EU supervisory system and play an important role in ensuring a balanced flow of information between home and host authorities. The ESAs will contribute to promoting the efficient and consistent functioning of colleges of supervisors and may participate as observers in colleges of supervisors and receive all relevant information shared between the members of the college.

**Common supervisory culture:** the ESAs shall play an active role in building a common European supervisory culture and ensuring uniform procedures and consistent supervisory practices throughout the Community. The common supervisory culture may increasingly create opportunities for supervisors to delegate certain tasks to one another. The ESAs shall periodically conduct peer review analysis of national supervisory authorities.

**Assessment of market developments**: although the proposed ESRB will be responsible for macro-prudential analysis of the EU financial sector, the ESAs should continue the work of the existing European supervisory committees in this area as: (i) the focus of their analysis is different, i.e., micro-prudential analysis provides a bottom-up analysis, rather than macro-prudential analysis which is top-down, and (ii) their analysis may serve as helpful input into the work carried-out by the ESRB.

**International role**: through these proposals the Commission is responding to the weaknesses identified during the crisis as well as to the G20 call to take action to build a stronger, more globally consistent, regulatory and supervisory system for financial services. The ESAs could serve as helpful contact points for supervisory authorities from third countries. They may enter into administrative arrangements with administrations of third countries and may also assist in preparing equivalence decisions pertaining to supervisory regimes in third countries. They may provide advice to the European Parliament, the Council and the Commission or publish opinions, including with respect to the prudential assessments of cross-border mergers and acquisitions.

**Collection of information**: at the request of the Authority, supervisory authorities and other public authorities of the Member States shall provide the Authority with all the necessary information to carry out the duties assigned to it by this Regulation. In principle, all information should be transferred to the ESAs by the national supervisory authorities.

**Relationship with the ESRB:** the framework for EU supervision can only work if the ESRB and ESFS cooperate closely. In fulfilling its role as macro-prudential supervisor, the ESRB would need a timely flow of micro-prudential information, while micro-prudential supervision by national authorities would benefit from the ESRB's insights on the macro-prudential environment. The Regulations also specify the procedures to be followed by the ESAs

to act upon recommendations by the ESRB and how the ESAs should use their powers to ensure timely follow-up to recommendations addressed to one or more national supervisory authorities.

**Safeguard:** in view of the fact that decisions by the ESAs should not impinge on the fiscal responsibilities of the Member States, a safeguard clause is introduced which ensures that, where a Member State considers that a decision taken under provisions concerning emergency decisions or settlement of disagreements of these Regulations impinges on its fiscal responsibility, it may notify the Authority and the Commission that the national supervisory authority does not intend to implement the Authority's decision, clearly demonstrating how the decision by the Authority impinges on its fiscal responsibilities.

**Joint Committee of European Supervisory Authorities**: a Joint Committee of European Supervisory Authorities will ensure mutual understanding, cooperation and consistent supervisory approaches between the three new ESAs.

**Board of Appeal**: an appeal system will ensure that any person, including national supervisory authorities, may in first instance appeal to a Board of Appeal against a decision by the ESAs to ensure the coherent application of Community rules, action in emergency situations, and the settlement of disagreements. The Board of Appeal shall be a joint body of three ESAs, i.e., it will deal with issues related to banking, insurance and securities.

**Key differences between the three Regulations**: the main differences between the three proposed Regulations concern the objectives of the Authorities, the scope of action, and the definitions, which are adapted to the specificities of the relevant sector and existing Community legislation. Moreover, the European Council concluded that the ESAs should also have supervisory powers for credit rating agencies. ESMA would be responsible to register credit rating agencies. ESMA would also be empowered to take supervisory measures such as withdrawing the registration or suspending the use for regulatory purposes of credit ratings. Supervisory powers could include the power to request information and to conduct investigations or on-site inspections. The responsibilities and powers of ESMA with regard to credit rating agencies will be defined in an amendment to the Regulation on Credit Rating Agencies.

BUDGETARY IMPLICATIONS: For the transformation of the existing European supervisory committees into effective ESAs, enhanced resources are needed - both personnel and budgetary. For the ESMA, the total operational expenditure from the Community budget in commitment and payment appropriations for the years 2011-2013 is **EUR 21.158 million**. In addition, Member States (national supervisory authorities or ministries of finance) will contribute EUR 31.737 million over the three year period. This gives a **total of EUR 52.895 million from 2011 to 2013**.

# European Securities and Markets Authority (ESMA)

2009/0144(COD) - 22/09/2010 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted a resolution under the ordinary legislative procedure (formerly the co decision procedure).amending the proposal for a regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority (ESMA). The amendments are the result of a compromise agreement between Parliament and Council. The main points are as follows:

**Establishment and scope of action**: Members stipulate that the Regulation establishes a European Supervisory Authority (European Securities and Markets Authority). 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: (a) 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 investment and other risks are appropriately regulated and supervised, and (vi) enhancing customer protection.

In the exercise of the tasks conferred upon it, the Authority shall (i) pay particular attention to any systemic risk posed by financial institutions, 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.

**Seat:** the Authority shall have its seat in Paris.

**The European System of Financial Supervision**: a new clause states that the Authority shall form part of a European System of Financial Supervision (ESFS), whose main objective 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 compromise text states that the ESFS shall comprise: (a) the ESRB; (b) the European Supervisory Authority (Securities and Markets) (ESMA); (c) the European Supervisory Authority (Insurance and Occupational Pensions) (EIOPA); (d) the EBA (e) the Joint Committee of the European Supervisory Authorities (f) the competent or supervisory authorities in the Member States specified in the Regulations on EBA and ESMA and EIOPA.

The ESRB, ESMA, EBA and EIOPA shall be accountable to the European Parliament and the Council.

**Tasks**: the text extends the Authority's tasks and these now include:

- undertaking economic analyses of markets to inform the discharge of the Authority's functions;
- fostering investor protection;
- contributing to the consistent and coherent functioning of supervisory colleges, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans, providing a high level of protection for investors throughout the Union and developing methods for the resolution of failing financial market participants and an assessment of the need for appropriate financing instruments;
- publishing on its website and regularly updating 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;

- taking over, as appropriate, all existing and ongoing tasks from the Committee of European Securities Regulators (CESR).

**Tasks related to consumer protection and financial activities**: the Authority shall take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the single market, including by: (i) collecting, analysing and reporting on consumer trends; (ii) reviewing and coordinating financial literacy and education initiatives by the competent authorities; (iii) developing training standards for the industry; (iv) contributing to the development of common disclosure rules.

The Authority shall **monitor new and existing financial activities and may adopt guidelines and recommendations** with a view to promote the safety and soundness of markets and convergence of regulatory practice. It may also issue warnings in case a financial activity poses a serious threat to its objectives.

It shall establish, as an integral part of the Authority, a **Committee on financial innovation**, which gathers all relevant competent national supervisory authorities with a view to achieving a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing advice to the European Parliament, the Council and the Commission.

The Authority may also **temporarily prohibit or restrict certain types of 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 the cases specified and under the conditions laid down in the legislative acts or if so required in the case of an emergency situation..

**Regulatory technical standards**: where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards by means of delegated acts under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts, the Authority may develop draft regulatory technical standards and submit its draft standards to the Commission for endorsement. Regulatory technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be delimited by the acts on which they are based.

Where the Authority submits a draft regulatory technical standard, the Commission shall immediately forward it to the European Parliament and the Council. The Commission shall decide within three months of receipt whether to adopt a draft regulatory technical standard.

The Authority may develop **implementing technical standards**, by means of implementing acts under Article 291 TFEU, in the areas specifically set out in the legislative acts These standards shall be technical, not imply strategic decisions or policy choices and their content shall be to determine the conditions of application of that legislation. The Authority shall submit its draft standards to the Commission for endorsement.

**Guidelines and recommendations**: the competent authorities and financial institutions shall make every effort to comply with those guidelines and recommendations. Within two months of the issuance of a guideline or recommendation, **each competent authority shall confirm whether it complies or intends to comply with that guideline or recommendation.** In the event that a competent authority does not comply or intend to comply, it shall inform the Authority, stating its reasons. The Authority shall publish the fact that a competent authority does not comply or intend to comply with that guideline or recommendation. It may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority for not complying with that guideline or recommendation. The competent authority shall receive advanced notice about such a publication

**Action in emergency situations**: the Council, in consultation with the Commission and the ESRB and, where appropriate, the European Supervisory Authorities , may adopt a decision addressed to the Authority, determining the existence of an emergency situation for the purposes of this Regulation, following a request by the Authority, the Commission or the ESRB. The Council shall review this decision at appropriate intervals and at least once a month. If the decision is not renewed after one month, it shall automatically expire. The Council may declare the discontinuation of the emergency situation at any time.

Where the ESRB or the ESAs deem that an emergency situation may arise, they shall issue a confidential recommendation addressed to the Council and provide it with an assessment of the situation. The Council shall then assess the convenience of convening a meeting. In that process, due care of confidentiality shall be guaranteed. If the Council determines the existence of an emergency situation, it shall duly inform the European Parliament and the Commission without delay.

Where the Council has adopted a decision, and in exceptional circumstances where co-ordinated action by national authorities is necessary to respond to adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union, the **Authority may adopt individual decisions requiring competent authorities to take the necessary action**.

**Settlement of disagreements between competent authorities in cross-border situations**: the compromise text states that where on the basis of objective criteria, disagreement between competent authorities from different Member States can be determined, the Authority may, **on its own initiative**, assist the authorities in reaching an agreement. If, at the end of the conciliation phase, the competent authorities concerned have failed to reach an agreement, the Authority may, in accordance with the procedure set out in the text take a decision requiring them to take specific action or to refrain from action in order to settle the matter, **with binding effects for the competent authorities concerned**, in order to ensure compliance with Union law. Decisions adopted by the Authority shall **prevail over any previous decision adopted by the competent authorities on the same matter**.

The Joint Committee will settle cross sectoral disagreements that may arise between one or more competent authorities.

**Colleges of supervisors**: Parliament expanded on the tasks of the colleges, entrusting them with, inter alia, initiating and coordinating Union-wide stress tests to assess the resilience of financial institutions to adverse market developments, and overseeing the tasks carried out by the competent authorities.

**A legally binding mediation role** should allow the Authority to solve disputes between competent authorities in accordance with the procedure set out in the text.

**Systemic risk:** the Authority shall duly consider systemic risk as defined by the ESRB Regulation meaning a risk of disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy and address risks of disruption in financial services that: is caused by an impairment of all or parts of the financial system; and has the potential to have serious negative consequences for the internal market and the real economy. The Authority, in collaboration with the ESRB**,** shall develop a common approach to the identification and measurement of systemic importance, including quantitative and qualitative indicators as appropriate. It will also develop an adequate stress testing regime to help identifying those institutions that may pose systemic risk. These institutions shall be subject to strengthened supervision, and where necessary, to the recovery and resolution procedures referred to in the text.

The compromise text contains provisions on the identification and measurement of systemic risk, and on recovery and resolution procedures.

**European System of national Investor Compensation Schemes**: the Authority shall contribute to strengthening the European system of national Investor Compensation Schemes (ICS) 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 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.

**European System of resolution and funding arrangements**: the Authority shall contribute to developing methods for the resolution of failing key market participants in ways which avoid contagion, allow them to be wound down in an orderly and timely manner, and, where applicable, including coherent and credible funding mechanisms as appropriate.

The review of the Regulation shall in particular examine the possible enhancement of the role of the ESMA in a framework of crisis prevention, management and resolution.

**Safeguards**: the provisions in the text are now closer to the Commission's original proposal. The Authority shall ensure that no decision adopted under Articles 10 (Action in emergency situations) or 11 (settlement of disagreements) impinges in any way on the fiscal responsibilities of Member States. **Where a Member State considers that a decision taken under the latter article impinges on its fiscal responsibilities,** it may notify the Authority and the Commission within two weeks after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority. In its notification, the Member State shall clearly and specifically explain why and how the decision impinges on its fiscal responsibilities. In that case, the **decision of the Authority shall be suspended.** Within a period of one month from the notification by the Member State, the Authority shall inform the Member State as to whether it maintains its decision or whether it amends or revokes it. If the decision is maintained or amended, the Authority shall state that fiscal responsibilities are not affected.

The compromise text sets out the **powers of the Council** in the alternatives that the Authority maintains or evokes its decision.

It states that any **abuse of this Article**, in particular in relation to a decision by the Authority which does not have a significant or material fiscal impact, shall be prohibited as incompatible with the internal market.

**Board of supervisors**: Members introduced amendments on provisions regarding the organisation and composition of the board of supervisors, and the management board. They also expand the issues in which the Joint Committee will be concerned and make some changes to provisions on the composition and operation of the board of appeal. Parliament will be able to veto the appointment of ESA chairpersons.

**Review clause**: three years after the date of application of the regulation, and every three 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. That report shall evaluate, inter alia: the convergence in supervisory practices reached by competent authorities; the convergence in functional independence of the competent authorities and in standards equivalent to corporate governance; t he impartiality, objectivity and autonomy of the Authority; the functioning of the colleges of supervisors; progress achieved towards convergence in the fields of crisis prevention , management and resolution, including European funding mechanisms, the role of the Authority as regards systemic risk; the application of the safeguard clause; and the application of the binding mediation role.

The report shall also examine whether:

- it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets;
- it is appropriate to supervise prudential supervision and the conduct of business separately or by the same supervisor;
- it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the European Supervisory Authorities;
- the evolution of the ESFS is consistent with that of the global evolution;
- there is sufficient diversity and excellence within the ESFS;
- accountability and transparency in relation to publication requirements are adequate;
- the resources of the Authority are adequate to carry out its responsibilities;
- the appropriateness of the seat of the Authority and whether it is appropriate to move the Authorities to a single seat to enhance better coordination between them.

Concerning the issue of direct supervision of institutions or infrastructures of pan-European reach and taking account of market developments, the Commission shall draw up an annual report on the appropriateness of entrusting the Authority with further supervisory responsibilities in this area.

# European Securities and Markets Authority (ESMA)

2009/0144(COD) - 13/07/2010

The Council adopted a political guideline with a view to continuing negotiations with the European Parliament on a package of measures which are intended to reform the European framework for supervision of the financial system, in the wake of the global financial crisis.

The proposals, presented by the Commission in the autumn of 2009, are:

- draft Regulations on Community macro prudential oversight of the financial system and establishing a European Systemic Risk Board (ESRB), and entrusting the European Central Bank (ECB) with specific tasks concerning the functioning of that Board;
- draft Regulations establishing a European Banking Authority (EBA) a European Insurance and Occupational Pensions Authority (EIOPA) and a **European Securities and Markets Authority (ESMA);**
- a draft Directive intended to amend existing legislation in respect of the powers of these three new authorities.

Most of these texts are subject to the ordinary legislative procedure (formerly co decision) between the Parliament and the Council. The negotiations with Parliament are intended to allow them to be adopted at first reading, so that the European Systemic Risk Board and the three new supervisory authorities can be operational from 1 January 2011.

There is now a large degree of convergence between the two institutions, thanks to the negotiations which have already taken place, but it has not proven possible to find an overall agreement in time to enable Parliament to hold its first reading on 8 July, as originally intended. Parliament has therefore decided to postpone the vote to a subsequent plenary session.

On the basis of the general approaches already defined, the Council has agreed on the compromise proposals submitted by the Presidency with a view to facilitating continuing negotiations. It has thus strengthened the negotiating mandate given to the Presidency, while allowing it the necessary degree of flexibility.