

Regulatory News Alert

EU Commission Draft Regulation on new organization and powers of European Supervisory Authorities

25 September 2017

Introduction and context

On 20 September, the EU Commission released a Draft Regulation to review and enhance the powers of the four EU supervisory Authorities (ESAs): ESMA, EBA, EIOPA and the ESRB (*).

This revision follows the regulatory calendar foreseen back in 2010 with the Regulations creating the ESAs (1093/2010/EU establishing the EBA; 1094/2010/EU establishing the EIOPA; 1095/2010/EU establishing the ESMA).

After several years of consultations with the different stakeholders, the text has come up with a proposal that defines a cross EU supervisory framework to support the enhanced convergence of local authority practices (Single Rule Book) as targeted by the Capital Market Union initiative (CMU).

The proposal marks a significant change in the allocation of prerogatives between National Competent Authorities (NCAs) and the EU supervisory bodies.

One of the main points of focus for the ESAs is on cross border delegation for banks, fund managers, and investment firms. The proposal provides for the enhanced power of ESMA in the monitoring of compliance of these delegation set ups.

For completeness of information, the Draft increases the role of EIOPA and ESRB in the monitoring of systemic risks under Solvency II.

New ESMA prerogatives

Direct supervisory powers

As a result of the proposal, ESMA would become the **direct supervisor over certain sectors** of capital markets across the EU on top of its current direct supervision of Credit Rating Agencies, CCPs and TRs (clearing houses and trade repositories). The new tasks concern:

- **approval of certain Prospectuses** governed by the EU Prospectus Regulation
- **direct authorization and supervision of certain EU labelled investment funds** (European Venture Capital Funds, European Social Entrepreneurship Funds and European Long-Term Investment Funds).
- **authorization and supervision of EU's critical benchmarks** as well as endorse non-EU benchmarks for use in the EU.
- **greater role in coordinating** market abuse investigations, notably through direct intervention or coordination of cross-border investigations.

Cross border delegation arrangements with third countries

Outsourcing or delegation arrangements in place with entities based in third countries will be subject to close review by ESMA. While initial notification and authorization remain with the home country NCA, the latter will then have to notify semi-annually the ESAs (ESMA and EBA) of all outsourcing setups approved by them during the period.

It is worth linking these new prerogatives with the **recent ESMA Opinion to support** in July this year.

ESAs (ESMA and EBA) should also provide consistency, support or training and best practices. ESAs would notably have to check the consistency of the work programs of NCAs with EU priorities and review their implementation.

New activities for ESAs in sustainable finance and FinTech

In a forward-looking perspective, ESAs will also be tasked with promoting **sustainable finance**. ESAs should account for environmental, social, governance-related factors, and risks. Priority should be given to monitoring and supporting **FinTech and cybersecurity developments**.

Next steps and approval process

Now that the proposal is out, the regulatory process will kick in. The EU Parliament and EU Council (MS) will have to define their preferred version of the proposal, which would be followed by a big bargain to reconcile the three versions of the text into a single final and applicable one. In **this process, subject to the usual uncertainties about the attitude** of EU Council and the EU Parliament, the systemic and political implications will for sure overwhelmed any debate. Based on experience , the regulatory process should be finalized before somewhere in 1Q19 with application probably at the end of the year.

Deloitte round table

Deloitte will organize a round table in the coming weeks in order to provide further insights and discuss with its clients the potential impact of the Draft Regulation and the ESMA Opinion on the impact on various actors.

(*) Notes

ESMA: European Securities Market Authority: tasked with the regulation and supervision of securities markets, investments regulations and financial instruments (including funds)

EBA: European Banking Authority: in charge of prudential capital rules for banks and other institutions (MIFID, securitization vehicles)

EIOPA: European Insurer and Occupational Pension Authority: in charge of Insurance related regulations

ESRB: European Systemic Risk Board: in charge of preventing and anticipating potential systemic risks at EU level

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