Powers of the European Supervisory Authorities


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Outline

Objectives  Tasks  Powers  Organisation  The future
Objectives

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

By contributing to:

- sound, consistent, effective level of regulation
- ensuring the integrity, transparency, efficiency and orderly functioning of financial markets
- strengthening international supervisory coordination
- preventing regulatory arbitrage and promoting equal conditions of competition
- ensuring the taking of credit/investment/insurance and other risks are appropriately regulated and supervised
- enhancing customer protection

Treaty base: Article 114 TFEU – measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market
Tasks

High-quality regulatory/supervisory standards and practices
Peer group analyses and peer reviews
EU-wide risk assessment and stress tests
Contribute to colleges
Depositor/investor protection
Direct supervision (ESMA)
Monitor and analyse market developments
Recovery and resolution planning
Providing information on activities
Single supervisory handbook
Promoting common supervisory culture
Facilitate delegation between competent authorities
Powers of the European Supervisory Authorities

- Technical standards
- Guidelines and recommendations
- Warnings
- Temporary prohibitions and restrictions
- Breach of Union law investigations
- Emergency situations
- Dispute settlement ('binding mediation')
- Opinions to EU institutions / competent authorities
- Peer reviews
- Participation in colleges
- Stress tests and data collection
- Direct supervisory powers
Technical standards (TS)

Regulatory technical standards (RTS) and implementing technical standards (ITS) are forms of Art 290/291 TFEU delegated acts and implementing acts

- mandates set in sectoral acts
- technical, shall not imply strategic decisions or policy choices
- ESAs draft, consult, analyse costs and benefits
- Commission adopts within three months unless incompatible with Union law, disproportionate or run counter to fundamental principles of the internal market for financial services
- implementing technical standards do not follow ‘comitology’ process
- limited to regulations or decisions, no directives
Guidelines and recommendations

Issued with a view to establishing consistent, efficient and effective supervisory practices, and ensuring common, uniform and consistent application of Union law

- issued where sectoral legislation requires, or on own initiative
- addressed to competent authorities and/or financial institutions after consultation and cost-benefit analysis
- addressees must make every effort to comply
- ‘comply or explain’ mechanism for competent authorities and, at the option of ESAs, for financial institutions
- ESA annual report must note competent authorities which have not complied and outline how the ESA intends to ensure future compliance
The single rulebook

Capital Requirements Directive

- RTS on identified staff
- Guidelines on remuneration

RTS & ITS on passporting

Guidelines on supervisory review process

Capital Requirements Regulation

- Delegated act on liquidity coverage ratio
- Implementing acts on macro-prudential measures

- RTS on own funds
- ITS on reporting requirements

Guidelines on Pillar 3 disclosure

POWERS OF THE EUROPEAN SUPERVISORY AUTHORITIES
Breach of Union law investigations (BUL)

Investigate non-application of sectoral legislation by competent authority, or application in a way which appears to be in breach of EU law

- ESA issues recommendation to the competent authority
- Commission can then issue a formal opinion to the competent authority
- If no compliance, ESA can take an individual decision addressed to a financial institution (if it is in breach of a directly applicable EU law)

Board of Appeal case – *SV Capital OÜ v European Banking Authority*
Temporary prohibitions and restrictions

**ESAs can temporarily prohibit or restrict financial activities**

- threat to orderly functioning and integrity of financial markets, or stability of whole or part of EU financial system
- only in areas specified in sectoral legislation (MiFID will be the first), and according to procedures set out in that legislation
- or in Article 18 emergency situations determined by the Council
Emergency powers

Coordinating role in relation to adverse developments

Binding decisions in emergency situations declared by Council

- where ‘coordinated action by national authorities is necessary to respond to adverse developments…’

- decisions can require competent authorities to take the necessary action in accordance with sectoral legislation to address those developments by ensuring that financial institutions and competent authorities satisfy the requirements laid down in that legislation

- non-compliance can lead to binding decisions in relation to individual financial institutions
Binding mediation

Settlement of disagreements between supervisors, resulting in a binding decision in cases specified in sectoral legislation

- ESA acts first as mediator
- if no agreement reached, ESA can take a decision binding on the supervisors requiring them to take or refrain from action to settle the matter, ‘in order to ensure compliance with Union law’
- non-compliance can lead to binding decisions in relation to individual financial institutions
- recital 32 – ‘The power to adopt such decisions should apply only as a last resort and then only to ensure the correct and consistent application of Union law. In cases where the relevant Union legislation confers discretion on ... competent authorities, decisions taken by the Authority cannot replace the exercise in compliance with Union law of that discretion.’
Safeguards

ESAs to ensure no emergency or binding mediation decision impinges on fiscal responsibilities of Member States

- Decision suspended upon notification to ESA and Commission within 2 weeks/3 working days
- (binding mediation) ESA reviews decision within 1 month of notification
- (binding mediation) Council decides (SMV) within 2 months whether decision is maintained – decision revoked unless positive vote to maintain
- (emergency) Council decides (SMV) within 10 working days whether decision is revoked – decision suspension terminated unless positive vote to revoke

Procedural safeguards

- Named addressees informed of intention to adopt decisions or BUL recommendations, invite views, inform of legal remedies
- Decisions to be made public unless business secrets or financial stability threatened
Colleges

ESAs have a role to promote and monitor efficient, effective and consistent functioning of colleges

- treated as competent authority but do not chair and don’t take supervisory decisions
- can convene meetings and require further deliberations on matters
- can participate in on-site visits carried out by two or more supervisors
- collect and share information and manage a central system to make such information accessible
- initiate and co-ordinate stress tests
Peer review

**ESAs to organise and conduct peer review analyses to strengthen consistency of supervisory outcomes**

- peer reviews shall include an assessment of, but are not limited to
  - adequacy of resources and governance arrangements
  - degree of convergence in application of EU law
  - best practices
  - effectiveness and convergence of enforcement provisions, including administrative measures and sanctions
- best practices identified must be made publicly available
- all other results may be disclosed publicly, but subject to agreement of the relevant competent authority
- may lead to guidelines or recommendations
Information gathering

General power to collect information from competent authorities

- only if required by ESA to fulfil its role
- if competent authorities, finance ministries, central banks and statistical offices can’t provide it, can go direct to financial institutions
- can also go directly to financial institutions for the purposes of stress tests
- subject to a reasoned request, ESAs may provide information about individual institutions to the ESRB
Direct supervision

Direct supervision is limited to credit rating agencies and trade repositories

- ESMA supervises directly
- based on Commission competition powers and procedures
  - information-gathering and on-site inspections
  - fines and public statements
  - independent investigating officer role
### Organisation

**Chair**
- Full-time staff member
- Chairs BoS (non-voting) and MB
- Represents the ESA in Joint Committee

**Executive Director**
- Full-time staff member
- Manages the ESA
- Implements work programme

**Board of Supervisors**
- Guides work of the ESA
- Adopts guidelines, draft TS, opinions, recommendations and decisions
- Heads of national supervisors (voting), ESA, ESRB, [ECB] and EC reps

**Management Board**
- Ensures ESA’s mission is carried out, and work programme implemented
- 6 members of BoS plus EC rep (only votes on budget)

**Staff**
- EBA at end 2013 – 93 temporary agents, 15 contract agents, 17 secondees
## Voting

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<th>pre-SSM</th>
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<tr>
<td>develop draft RTS</td>
<td>QMV</td>
<td>QMV+Double SMV</td>
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<td>develop draft ITS</td>
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<td>guidelines and recommendations</td>
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<td>breach of Union law</td>
<td>SMV</td>
<td>Panel proposes</td>
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<td>recommendations</td>
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<td>SMV+Double SMV</td>
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<td>emergency decisions</td>
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<td>binding mediation decisions</td>
<td>Panel proposes</td>
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<td>Certain decisions adopted unless rejected by blocking minority</td>
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<td>opinions</td>
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<td>temporary prohibition and</td>
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<td>QMV if requested to reconsider</td>
<td>QMV+Double SMV if requested to reconsider</td>
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<td>appointment of mediation panel</td>
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<td>¾ majority</td>
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<td>any other decision</td>
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Accountability

Annual report
European Parliament
Court of Auditors
Board of Appeal
Court of Justice
European Ombudsman
OLAF
European Data Protection Supervisor
The future

Court challenges

C-270-12 – UK challenge to ESMA powers in Short-Selling Regulation
C-507-13 – UK challenge to EBA powers in Capital Requirements Directive

Banking Union

Single Supervisory Mechanism
Single Resolution Mechanism

ESAs review

Structure, governance, resources, location
Effectiveness, convergence, use of powers