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Brussels launches a reform of the European supervisory authorities

On 20 September, the European Commission issued a proposal for an omnibus regulation amending several regulations including sectorial ones to strengthen the governance, funding and powers of the European supervisory authorities, including ESMA. For the AMF, this proposal is a major step forward.

With the aim of furthering financial integration and reaching the goal of a full Capital Markets Union, the European Commission published on 20 September a proposal for a regulation amending the regulation establishing the European supervisory authorities (EBA, EIOPA and ESMA) and several sectorial regulations to strengthen the EU's supervisory architecture.

Through these texts, the Commission intends to enhance supervisory convergence within the single market, increase the efficiency of financial markets and address new challenges.

Extension of ESMA's powers

The Commission therefore proposes to extend the scope of ESMA's direct supervisory powers to certain specific sectors, for example:

- Authorisation and supervision of data reporting service providers;

- Authorisation and supervision of critical benchmarks used in the Union and their administrators, as well as all benchmarks used in the Union but administered in third countries.
- Authorisation of certain debt, and asset-backed security (ABS) prospectuses and those drawn up by certain specialist issuers established in the Union as well as prospectuses of third country issuers offered in the Union
- Authorisation and supervision of certain EU label investment funds and their managers (ELTIFs, i.e. long-term investment funds; EuVECAs, i.e. venture capital funds; and EuSEFs, i.e. social entrepreneurship funds).

The proposal also calls for ESMA to play a central role in relations with third-country institutions, as well as in making equivalence decisions pertaining to third-country regimes in support of the European Commission and in monitoring these decisions over time. ESMA could also play a role in coordinating NCAs' actions against market abuse.

Last June, the Commission proposed strengthening ESMA's role in supervising clearing houses.

Lastly, with the aim of building a capital markets union, the Commission proposes measures to strengthen ESMA's convergence powers. This intention is reflected in several areas where ESMA's powers would be strengthened, in particular its authority to coordinate national authorities' actions with respect to delegation and outsourcing by regulated entities to third-country entities; to settle disputes between national authorities; and to conduct proceedings related to non-compliance with EU law.

Improved governance, stronger resources

With regard to governance, the reform under consideration seeks to set conditions under which the supervisory authorities will better take into account the EU general interest.. The Commission has therefore proposed that each authority have an executive board with permanent members, which would also simplify and accelerate the decision-making process in areas related to supervision.

To ensure that the authorities have the resources to carry out their duties, provision is made to increase their staff and it is proposed that the financial sector make a direct contribution to funding these hires.

Moving towards true European supervision

For the AMF, which had participated in the European Commission's consultation on this topic, this proposal is a real step forward. It is a major milestone in promoting the emergence of a true European supervision of the financial markets. It is also a necessary step in addressing the challenges posed by Brexit and the need for Europeans to ensure greater cohesion and combat regulatory arbitrage.

The proposal for a regulation published on 20 September 2017 still needs to be submitted for discussion among the Member States of the European Council, as well as for the approval of the European Parliament. The text is therefore likely to change during the negotiations.

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Legal information:

Head of publications: The Executive Director of AMF Communication Directorate. Contact: Communication Directorate – Autorité des marchés financiers 17 place de la Bourse – 75082 Paris cedex 02