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2009 - 2014

Committee on Legal Affairs

2009/0144(COD)

30.4.2010

OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs on the proposal for a regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority
(COM(2009)0503 – C7-0167/2009 – 2009/0144(COD))

Rapporteur: Raffaele Baldassarre

PA_Legam

SHORT JUSTIFICATION

Background

Building upon the recommendations of the De Larosière report, the Commission issued proposals for a new European financial supervisory architecture. These legislative proposals, published by the Commission on 23 September 2009, aim to create:

- a European System of Financial Supervisors (ESFS) for the supervision of individual financial institutions (“micro-prudential supervision”), consisting of a network of national supervisors working in tandem with new European Supervisory Authorities (ESAs¹), thereby combining an overarching European framework for financial supervision with the expertise of local and micro-prudential supervisory bodies;
- a European Systemic Risk Board (ESRB), to monitor and assess risks to the stability of the financial system as a whole (“macro-prudential supervision”).

The ESAs will be Community bodies with legal personality and their objectives shall be to contribute to: (i) improving the level of regulation and supervision in the internal market, (ii) ensuring the integrity and orderly running/functioning of financial markets, and (iii) safeguarding the stability of the financial system while strengthening the coordination of supervision at European and international levels.

Position of the rapporteur

Your rapporteur supports the main thrust of the proposal and intends the opinion of the Committee on Legal Affairs to constructively feed into the work of the lead committee. He believes that far-reaching reforms to the EU’s financial markets and institutions are needed to increase competition by encouraging a level playing field and to ensure consistency of arrangements and regulation as far as possible. He considers that the proposal, with some fine-tuning and innovations as proposed in this draft opinion, is essential to ensure more effective supervision and rulemaking and to better identify risks in the financial system.

Your rapporteur strongly believes that any decision-making power of the Authority should not operate in a way which may undermine the ability of national supervisory bodies to discharge their regulatory duty or which may promote regulatory uncertainty for individual entities subject to local supervision². Therefore, the possibility for the Authority to adopt individual decisions relating to financial markets participants should be retained to emergency situations as specified in Article 10(3).

As regards day-to day situations, the Committee on Legal Affairs, based on a broadly

¹ These are the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA).

² As established by the ECJ in the case of *Meroni* (*Meroni v High Authority*, C -9/56 and 10/56, 1958 E.C.R. 133 and 157), an institution may not delegate powers that it does not itself possess. If the Authority is given the power to decide whether a competent national authority has complied with Community law, as it is proposed in Articles 9.6 and 11.3, this would involve conferring on the Authority a power which goes beyond defined executive powers involving decisions in matters where the correct application of the law is in dispute.

supported compromise, adopted amendments as regards the powers of the Authorities to address individual decisions to market participants in every day situations (Articles 9(6) and 11(4)) proposing a procedure to be followed between the Authority and the Commission in order to better align the powers of the Authorities with the powers conferred on the Commission under Article 17(1) TEU and Article 258 TFEU.

Binding rules should be drafted exclusively at EU level, either by the EU institutions or by the ESAs, under the supervision of these institutions thus respecting the subsidiarity principle. Nonetheless, your rapporteur considers that it is vital to avoid interpretations which are not proportionate to the objective, are excessively detailed or, at times, inappropriate, as a result of having been drafted urgently, without any real dialogue. Therefore, your rapporteur strongly supports the participation of market participants during the decision-making process.

Cooperation and information-sharing between the micro and the macro levels is essential. However, it is important that any powers of the Authority in this area are consistent with the obligations of professional secrecy as set out in EU law so that confidential information remains unavailable to those bodies and authorities not entitled to it. It is also essential to take account of the fact that in some cases anonymising aggregated data to be disclosed beyond the competent authorities will be difficult¹. Accordingly, your rapporteur considers that confidential data needs to be protected on a consistent basis and in accordance with EU law.

Besides these main issues, your rapporteur strongly believes that the mediating role of the Authority should be better defined and further improved. Moreover, the Authority should enjoy a more international exposure while its agreements should remain non-binding. Additional measures should be promoted to enhance transparency and encourage the use of administrative standards.

Finally, your rapporteur considers that further thought should be given to ensure that consumers and investors protection in financial markets is reflected satisfactorily in the proposal.

AMENDMENTS

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a regulation

Recital 1

Text proposed by the Commission

Amendment

(1) The financial crisis in 2007/2008 exposed important shortcomings in

(1) The financial crisis in 2007/2008 exposed important shortcomings in

¹ For instance, in some Member States markets are limited to a small number of major players. Therefore, disclosure of any aggregate data would effectively disclose information about individual firms.

financial supervision, both in particular cases and in relation to the financial system as a whole. Nationally-based supervisory models have ***lagged behind*** the integrated and interconnected reality of European financial markets, in which many financial firms operate across borders. The crisis exposed shortcomings in the area of cooperation, coordination, consistent application of Community law and trust between national supervisors.

financial supervision, both in particular cases and in relation to the financial system as a whole. Nationally-based supervisory models have ***proven to be insufficient to cope with*** the integrated and interconnected reality of European financial markets, in which many financial firms operate across borders. The crisis exposed shortcomings in the area of cooperation, coordination, consistent application of Community law and trust between national supervisors.

Amendment 2

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) Ensuring the correct and full application of ***Community*** law is a core prerequisite for the integrity, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial market participants in the ***Community***. A mechanism should therefore be established whereby the Authority addresses instances of ***incorrect or insufficient application*** of ***Community*** law. This mechanism should apply in areas where Community legislation defines clear and unconditional obligations.

Amendment

(17) Ensuring the correct and full application of ***Union*** law is a core prerequisite for the integrity, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial market participants in the ***Union***. A mechanism should therefore be established whereby the Authority addresses instances of ***non-application*** of ***Union*** law. This mechanism should apply in areas where Community legislation defines clear and unconditional obligations.

Amendment 3

Proposal for a regulation Recital 20

Text proposed by the Commission

(20) To overcome exceptional situations of persistent inaction by the competent authority concerned, the Authority should be empowered, as a last resort, to adopt decisions addressed to individual financial institutions. This power should be limited

Amendment

(20) To overcome exceptional situations of persistent inaction by the competent authority concerned, the Authority should be empowered, as a last resort ***and only in urgent situations***, to adopt decisions addressed to individual financial

to exceptional circumstances in which a competent authority does not comply with the decisions addressed to it and in which Community law is directly applicable to financial institutions by virtue of existing³⁰ or future EU Regulations.

institutions. This power should be limited to exceptional circumstances in which a competent authority does not comply with the decisions addressed to it and in which Community law is directly applicable to financial institutions by virtue of existing or future EU Regulations.

Amendment 4

Proposal for a regulation Recital 25

Text proposed by the Commission

(25) The Authority should actively foster supervisory convergence across the **Community** with the aim of establishing a common supervisory culture.

Amendment

(25) The Authority should actively foster supervisory convergence across the **Union** with the aim of establishing a common supervisory culture **whilst fully respecting Member States' fiscal responsibilities**.

Amendment 5

Proposal for a regulation Recital 28

Text proposed by the Commission

(28) In order to safeguard financial stability it is necessary to identify, at an early stage, trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors. The Authority should monitor and assess such developments in the area of its competence and, **where necessary**, inform the European Parliament, the Council, the Commission, the other European Supervisory Authorities and the European Systemic Risk Board **on a regular and, as necessary, ad hoc basis**. The Authority should also coordinate **Community-wide** stress tests to assess the resilience of financial market participants to adverse market developments, ensuring an as

Amendment

(28) In order to safeguard financial stability it is necessary to identify, at an early stage, trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors. The Authority should monitor and assess such developments in the area of its competence and, **on a regular basis**, inform the European Parliament, the Council, the Commission, the other European Supervisory Authorities and the European Systemic Risk Board **as well as the competent national authorities**. The Authority should also coordinate **Union-wide** stress tests to assess the resilience of financial market participants to adverse market developments, ensuring an as

consistent as possible methodology is applied at the national level to such tests.

consistent as possible methodology is applied at the national level to such tests.

Amendment 6

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) Given the globalisation of financial services and the increased importance of international standards, the Authority should foster *the* dialogue and cooperation with supervisors outside the Community. It shall fully respect the existing roles and competences of the European Institutions in relations with authorities outside the **Community** and in international forums.

Amendment

(29) Given the globalisation of financial services and the increased importance of international standards, the Authority should foster dialogue and cooperation with supervisors outside the Community. It shall fully respect the existing roles and competences of the European Institutions in relations with authorities outside the **Union** and in international forums. ***The Authority should also be able to benefit from the cooperation the Commission already enjoys with international forums.***

Amendment 7

Proposal for a regulation

Recital 31

Text proposed by the Commission

(31) In order to effectively carry out its duties, the Authority should have the right to request all necessary information. To avoid duplication of reporting obligations for financial market participants, that information should normally be provided by the national supervisory authorities who are closest to financial markets and market participants. However, the Authority should have the power to request information directly from financial market participants and other parties where a national competent authority does not or cannot provide such information in a timely fashion. Member States' authorities should be obliged to assist the Authority in

Amendment

(31) In order to effectively carry out its duties, the Authority should have the right to request all necessary information. To avoid duplication of reporting obligations for financial market participants, that information should normally be provided by the national supervisory authorities who are closest to financial markets and market participants, ***subject to the requirement that confidential information is not made available to bodies or authorities that are not entitled to it.*** However, the Authority should have the power to request information directly from financial market participants and other parties where a national competent authority does not or cannot provide such information in a

enforcing such direct requests.

timely fashion. Member States' authorities should be obliged to assist the Authority in enforcing such direct requests.

Amendment 8

Proposal for a regulation Recital 32

Text proposed by the Commission

(32) Close cooperation between the Authority and the European Systemic Risk Board is essential to give full effectiveness to the functioning of the European Systemic Risk Board and the follow-up to its warnings and recommendations. The Authority should share any relevant information with the European Systemic Risk Board. Data related to individual undertakings should be provided only upon reasoned request. Upon receipt of warnings or recommendations addressed by the European Systemic Risk Board to the Authority or a national supervisory authority, the Authority should take immediate action and ensure follow-up.

Amendment

(32) Close cooperation between the Authority and the European Systemic Risk Board is essential to give full effectiveness to the functioning of the European Systemic Risk Board and the follow-up to its warnings and recommendations. The Authority should share any relevant information with the European Systemic Risk Board. Data related to individual undertakings should be provided only upon reasoned request ***and should be protected systematically and in accordance with Union law***. Upon receipt of warnings or recommendations addressed by the European Systemic Risk Board to the Authority or a national supervisory authority, the Authority should take immediate action and ensure follow-up.

Amendment 9

Proposal for a regulation Recital 34

Text proposed by the Commission

(34) Member States have a core responsibility in preserving financial stability in crisis ***management***, in particular with regard to stabilising and resolving individual ailing financial ***market participants***. Measures by the Authority in emergency or settlement situations affecting the stability of a financial ***market participant*** should not impinge on the fiscal responsibilities of Member States. A

Amendment

(34) Member States have a core responsibility in preserving financial stability in crisis ***situations***, in particular with regard to stabilising and resolving individual ailing financial ***institutions***. Measures by the Authority in emergency or settlement situations affecting the stability of a financial ***institution*** should not impinge on the fiscal responsibilities of Member States. A mechanism should be

mechanism should be established whereby Member States may *invoke this safeguard and ultimately bring the matter before the Council* for decision. *It is appropriate to confer on the Council a role in this matter given the particular responsibilities of the Member States in this respect.*

established whereby Member States may *request that* the decision of the *Authority* *be reconsidered.*

Amendment 10

Proposal for a regulation Article 1 – paragraph 2

Text proposed by the Commission

2. The Authority shall act within the scope of Directive 97/9/EC, Directive 98/26/EC, Directive 2001/34/EC, Directive 2002/47/EC, Directive 2002/87/EC, Directive 2003/6/EC, Directive 2003/71/EC, **Directive 2004/25/EC**, Directive 2004/39/EC, Directive 2004/109/EC, Directive 2005/60/EC, Directive 2009/65/EC, Directive 2002/65/EC, Directive 2006/49/EC (without prejudice to the competence of the European Banking Authority in terms of prudential supervision), Directive ... [future AIFM Directive], and Regulation ... [future CRA Regulation], including all directives, regulations, and decisions based on these acts, and of any further Community act which confers tasks on the Authority.

Amendment

2. The Authority shall act within the scope of Directive 97/9/EC, Directive 98/26/EC, Directive 2001/34/EC, Directive 2002/47/EC, Directive 2002/87/EC, Directive 2003/6/EC, Directive 2003/71/EC, Directive 2004/39/EC, Directive 2004/109/EC, Directive 2005/60/EC, Directive 2009/65/EC, Directive 2002/65/EC, Directive 2006/49/EC (without prejudice to the competence of the European Banking Authority in terms of prudential supervision), Directive ... [future AIFM Directive], and Regulation ... [future CRA Regulation], including all directives, regulations, and decisions based on these acts, and of any further Community act which confers tasks on the Authority.

Amendment 11

Proposal for a regulation Article 1 – paragraph 4

Text proposed by the Commission

4. The objective of the Authority shall be

Amendment

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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 protect investors, (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. For this purpose, the Authority shall contribute to ensuring the consistent, efficient and effective application of the Community law referred to in Article 1(2) above, fostering supervisory convergence and providing opinions to the European Parliament, the Council, and the Commission.

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 protect investors, (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 ***while taking into account the need to enhance competition and innovation within the internal market and to ensure global competitiveness***. For this purpose, the Authority shall contribute to ensuring the consistent, efficient and effective application of the Community law referred to in Article 1(2) above, fostering supervisory convergence and providing opinions to the European Parliament, the Council, and the Commission.

Amendment 12

Proposal for a regulation

Article 6 – paragraph 2 – point b

Text proposed by the Commission

(b) issue guidelines and recommendations, as laid down in Article 8;

Amendment

(b) issue ***non-binding*** guidelines and recommendations, as laid down in Article 8;

Amendment 13

Proposal for a regulation

Article 7 – title

Text proposed by the Commission

Technical standards

Amendment

Technical standards – ***delegated acts***

Amendment 14

Proposal for a regulation

Article 7 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Before submitting them to the Commission, the Authority shall, where appropriate, conduct open public consultations on technical standards **and** analyse the potential related costs and benefits.

Amendment

Before submitting them to the Commission, the Authority shall, where appropriate, conduct open public consultations on technical standards, ***involving financial market participants in the drafting of any rules to be imposed on them, in order to ensure that such rules are proportionate to their objective and are not excessive and*** to analyse the potential related costs and benefits.

Amendment 15

Proposal for a regulation

Article 7 – paragraph 2

Text proposed by the Commission

2. The standards shall be adopted by the Commission by means of *Regulations* or *Decisions* **and published** in the ***Official Journal*** of the European Union.

Amendment

2. The standards shall be adopted by the Commission by means of *regulations* or *decisions as delegated acts* ***in accordance with Article 290 of the Treaty on the Functioning*** of the European Union.

Amendment 16

Proposal for a regulation

Article 8

Text proposed by the Commission

The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Community legislation, issue guidelines and recommendations addressed to competent authorities or financial market

Amendment

The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices with the ESFS, and to ensuring the common, uniform and consistent application of Community legislation, issue guidelines and recommendations addressed to competent authorities or financial market

participants.

The competent authorities shall make every effort to comply with those guidelines and recommendations.

Where *the* competent authority does not apply those guidelines or recommendations it shall inform the Authority of its reasons.

Amendment 17

Proposal for a regulation Article 9

Text proposed by the Commission

Consistent application of Community rules

1. Where a competent authority has not ***correctly*** applied the legislation referred to in Article 1(2), in particular by failing to ensure that a financial market participant satisfies the requirements laid down in that legislation, the Authority shall have the powers set out in paragraphs 2, 3 and 6 of this Article.

2. Upon request from one or more competent authorities, from the Commission or on its own initiative and after having informed the competent authority concerned, the Authority may investigate the alleged ***incorrect application*** of ***Community*** law.

Without prejudice to the powers laid down in Article 20, the competent authority shall provide the Authority with all information which the Authority considers necessary

participants. ***The Authority shall conduct open public consultations on guidelines and recommendations and shall analyse the potential related costs and benefits. The guidelines shall be published on the Authority's website.***

The competent authorities shall make every effort to comply with those guidelines and recommendations.

Where *a* competent authority does not apply those guidelines or recommendations it shall inform the Authority of its reasons.

The Authority shall publish those reasons, giving the competent authority due notice of its intention to do so.

Amendment

Non-application of Union law

1. Where a competent authority has not applied the legislation referred to in Article 1(2), in particular by failing to ensure that a financial market participant satisfies the requirements laid down in that legislation, the Authority shall have the powers set out in paragraphs 2, 3 and 6 of this Article.

2. Upon request from one or more competent authorities, from ***the European Parliament, the Council or the*** Commission, or on its own initiative and after having informed the competent authority concerned, the Authority may investigate the alleged ***non-application*** of ***Union*** law.

Without prejudice to the powers laid down in Article 20, the competent authority shall provide the Authority with all information which the Authority considers necessary

for its investigation without delay.

3. The Authority may, at the latest within two months from initiating its investigation, address to the competent authority concerned a recommendation setting out the action necessary to comply with **Community** law.

The competent authority shall, within ten working days of the receipt of the recommendation, inform the Authority of the steps it has taken or intends to take to ensure compliance with **Community** law.

4. Where the competent authority has not complied with **Community** law within one month from receipt of the Authority's recommendation, the Commission may, after having been informed by the Authority or on its own initiative, take a decision requiring the competent authority to take the action necessary to comply with **Community** law.

The Commission shall take such a decision no later than three months from the adoption of the recommendation. The Commission may extend this period by one month.

The Commission shall ensure that the right to be heard of the addressees of the decision is respected.

The Authority and the competent authorities shall provide the Commission with all necessary information.

5. The competent authority shall, within ten working days of receipt of the decision referred to in paragraph 4, inform the Commission and the Authority of the steps it has taken or intends to take to implement the Commission's decision.

6. Without prejudice to the powers of the Commission under **Article 226** of the Treaty, where a competent authority does not comply with the decision referred to in paragraph 4 of this Article within the period of time specified therein, and where it is necessary to remedy in a timely

for its investigation without delay.

3 The Authority may, at the latest within two months from initiating its investigation, address to the competent authority concerned a recommendation setting out the action necessary to comply with **Union** law.

The competent authority shall, within ten working days of the receipt of the recommendation, inform the Authority of the steps it has taken or intends to take to ensure compliance with **Union** law.

4. Where the competent authority has not complied with **Union** law within one month from receipt of the Authority's recommendation, the Commission may, after having been informed by the Authority or on its own initiative, take a decision requiring the competent authority to take the action necessary to comply with **Union** law.

The Commission shall take such a decision no later than three months from the adoption of the recommendation. The Commission may extend this period by one month.

The Commission shall ensure that the right to be heard of the addressees of the decision is respected.

The Authority and the competent authorities shall provide the Commission with all necessary information.

5. The competent authority shall, within ten working days of receipt of the decision referred to in paragraph 4, inform the Commission and the Authority of the steps it has taken or intends to take to implement the Commission's decision.

6. Without prejudice to the powers of the Commission under **Article 258** of the Treaty **on the Functioning of the European Union**, where a competent authority does not comply with the decision referred to in paragraph 4 of this Article within the period of time specified

manner the *non compliance* by the competent authority in order to maintain or restore neutral conditions of competition in the market or ensure the orderly functioning and integrity of the financial system, the Authority may, where the relevant requirements of the legislation referred to in Article 1(2) are directly applicable to financial market participants, adopt an individual decision addressed to a financial market participant requiring the necessary action to comply with its obligations under **Community** law including the cessation of any practice.

therein, and where it is necessary to remedy in a timely manner the *non-compliance* by the competent authority in order to maintain or restore neutral conditions of competition in the **internal** market or ensure the orderly functioning and integrity of the financial system **in cross-border activities**, the Authority may, where the relevant requirements of the legislation referred to in Article 1(2) are directly applicable to financial market participants, adopt an individual decision addressed to a financial market participant requiring the necessary action to comply with its obligations under **Union** law including the cessation of any practice. ***Before adopting an individual decision, the Authority shall inform the Commission thereof.***

The Commission shall ensure that the right to be heard of the addressees of the decision is respected.

The Authority and the competent authorities shall provide the Commission with all necessary information.

Within two weeks of receipt of the draft decision of the Authority, the Commission shall decide whether to endorse the draft decision. The Commission may not extend that period. The Commission may endorse the draft decision only in part or with amendments where the Union interest so requires.

Where the Commission does not endorse the draft decision or endorses it in part or with amendments, it shall inform the Authority without delay in the form of a formal opinion.

Within one week of receipt of that formal opinion, the Authority shall review and adapt its decision to the Commission's formal opinion and transmit it without delay to the Commission.

Within one week of receipt of the amended decision of the Authority, the Commission shall decide whether to

The decision of the Authority shall be in conformity with the decision adopted by the Commission pursuant to paragraph 4.

7. Decisions adopted under paragraph 6 shall prevail over any previous decision adopted by the competent authorities on the same matter.

Any action by the competent authorities in relation to facts which are subject to a decision pursuant to paragraph 4 or 6 shall be compatible with those decisions.

endorse it or reject it.

If the amended decision is rejected by the Commission, the decision shall be deemed not to have been adopted

The decision of the Authority shall be in conformity with the decision adopted by the Commission pursuant to paragraph 4.

7. Any action by the competent authorities in relation to facts which are subject to a decision pursuant to paragraph 4 or 6 shall be compatible with those decisions.

Amendment 18

Proposal for a regulation

Article 11 – Title

Text proposed by the Commission

Settlement of disagreements between competent authorities

Amendment

Settlement of disagreements between competent authorities ***in cross-border situations***

Amendment 19

Proposal for a regulation

Article 11 – paragraph 1

Text proposed by the Commission

1. Without prejudice to the powers laid down in Article 9, where a competent authority disagrees on the procedure or content of an action or inaction by another competent authority in areas ***where*** the legislation referred to in Article 1(2) ***requires cooperation, coordination or joint decision making by competent authorities from more than one Member State***, the Authority, at the request of one

Amendment

1. Without prejudice to the powers laid down in Article 9, where a competent authority disagrees on the procedure or content of an action or inaction by another competent authority in areas ***concerning*** the legislation referred to in Article 1(2), the Authority, at the request of one or more of the competent authorities concerned, may assist the authorities in reaching an agreement in accordance with the

or more of the competent authorities concerned, may assist the authorities in reaching an agreement in accordance with the procedure set out in paragraph 2.

procedure set out in paragraph 2.

Amendment 20

Proposal for a regulation

Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In order to be able to perform its facilitating and coordinating role, the Authority shall be fully informed of any relevant developments concerning the situation referred to in paragraph 1, and shall be invited to participate as an observer in any gathering by the relevant national competent supervisory authorities.

Amendment 21

Proposal for a regulation

Article 11 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Decisions taken under paragraph 3 shall prevail over any previous decision adopted by a competent authority on the same matter. When taking action in relation to issues which are subject to a decision adopted pursuant to paragraph 3, competent authorities shall comply with that decision.

Amendment 22

Proposal for a regulation

Article 11 – paragraph 4

Text proposed by the Commission

Amendment

4. Without prejudice to the powers of the

4. Without prejudice to the powers of the

Commission under **Article 226** of the Treaty, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial market participant complies with requirements directly applicable to it by virtue of the legislation referred to in Article 1(2), the Authority may adopt an individual decision addressed to a financial market participant requiring the necessary action to comply with its obligations under **Community** law, including the cessation of any practice.

Commission under **Article 258** of the Treaty **on the Functioning of the European Union**, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial market participant complies with requirements directly applicable to it by virtue of the legislation referred to in Article 1(2), the Authority may adopt an individual decision, **in accordance with the procedure laid down in Article 9(6)**, addressed to a financial market participant requiring the necessary action to comply with its obligations under **Union** law, including the cessation of any practice.

Amendment 23

Proposal for a regulation

Article 16 – paragraph 2 – point 3

Text proposed by the Commission

(3) without prejudice to Article 11, **acting as mediator on** the request of competent authorities **or on its own initiative**;

Amendment

(3) without prejudice to Article 11, **carrying out non-binding mediation at** the request of competent authorities;

Amendment 24

Proposal for a regulation

Article 18 – paragraph 1

Text proposed by the Commission

Without prejudice to the competences of the **Community Institutions**, the Authority may develop contacts with supervisory authorities from third countries. It may enter into administrative arrangements with international organisations and the administrations of third countries.

Amendment

Without prejudice to the competences of the **EU institutions**, the Authority may develop contacts with supervisory authorities from third countries. It may enter into administrative arrangements with international organisations and the administrations of third countries. **Such arrangements shall not create legal obligations on the part of the Union and its Member States.**

Amendment 25

Proposal for a regulation

Article 20 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. At the request of the Authority, competent 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.

Amendment

1. At the request of the Authority, ***the*** competent 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, ***fully respecting the applicable confidentiality and data protection provisions laid down in the relevant Union law.***

Amendment 26

Proposal for a regulation

Article 20 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The Authority may also request information to be provided at recurring intervals.

Amendment

The Authority may also request information to be provided at recurring intervals. ***Any such request shall, where applicable, use a common reporting format.***

Amendment 27

Proposal for a regulation

Article 22 – Title

Text proposed by the Commission

Securities and Markets Stakeholder Group

Amendment

Establishment of a Securities and Markets Stakeholder Group

Amendment 28

Proposal for a regulation

Article 22 – paragraph 1

Text proposed by the Commission

1. For the purpose of consultation with stakeholders in areas relevant to the tasks of the Authority, ***a Securities and Markets Stakeholder Group shall be established.***

Amendment

1. ***The Authority shall establish a Securities and Markets Stakeholder Group*** for the purpose of consultation with stakeholders in areas relevant to the tasks of the Authority.

Amendment 29

Proposal for a regulation

Article 22 – paragraph 3 – subparagraph 2

Text proposed by the Commission

In making its decision, the Board of Supervisors shall, ***to the extent possible,*** ensure an appropriate geographical balance and representation of stakeholders across the Community.

Amendment

In making its decision, the Board of Supervisors shall ensure an appropriate geographical balance and representation of stakeholders across the Community.

Amendment 30

Proposal for a regulation

Article 23 – paragraph 1

Text proposed by the Commission

1. The Authority shall ensure that no decision adopted under ***Articles*** 10 or 11 impinges ***in any way*** on the fiscal responsibilities of Member States.

Amendment

1. The Authority shall ensure that no decision adopted under ***Article*** 10 or 11 impinges ***directly*** on the fiscal responsibilities of Member States.

Amendment 31

Proposal for a regulation

Article 23 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Where a Member State considers that a decision taken under Article 11 impinges on its fiscal responsibilities, it may notify the Authority and the Commission within **one month** after notification of the Authority's decision to ***the competent authority that the decision will not be implemented by the competent authority.***

Amendment

2. Where a Member State considers that a decision taken under Article 11 impinges on its fiscal responsibilities, it may notify the Authority, ***the Council*** and the Commission within ***three working days*** after notification of the Authority's decision to the competent authority.

Amendment 32

Proposal for a regulation

Article 23 – paragraph 2 – subparagraph 4

Text proposed by the Commission

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.

Amendment

Within a period of **one week** 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.***

Amendment 33

Proposal for a regulation

Article 23 – paragraph 2 – subparagraph 5

Text proposed by the Commission

Where the Authority maintains its decision, the Council, acting by qualified majority as defined in **Article 205** of the Treaty, shall, within **two months**, decide whether the Authority's decision is maintained or revoked.

Amendment

Where the Authority maintains its decision, the Council, acting by qualified majority as defined in **Article 238** of the Treaty ***on the Functioning of the European Union***, shall, within **one month**, decide whether the Authority's decision is maintained or revoked.

PROCEDURE

Title	European Securities and Markets Authority						
References	COM(2009)0503 – C7-0167/2009 – 2009/0144(COD)						
Committee responsible	ECON						
Opinion by Date announced in plenary	JURI 7.10.2009						
Rapporteur Date appointed	Raffaele Baldassarre 5.10.2009						
Discussed in committee	28.1.2010						
Date adopted	28.4.2010						
Result of final vote	<table> <tr> <td>+: </td><td>23</td></tr> <tr> <td>–: </td><td>0</td></tr> <tr> <td>0: </td><td>0</td></tr> </table>	+:	23	–:	0	0:	0
+:	23						
–:	0						
0:	0						
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Lidia Joanna Geringer de Oedenberg, Daniel Hannan, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Alexandra Thein, Diana Wallis, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka						
Substitute(s) present for the final vote	Piotr Borys, Sergio Gaetano Cofferati, Kurt Lechner, Eva Lichtenberger, József Szájer						
Substitute(s) under Rule 187(2) present for the final vote	Kay Swinburne						