

The new institutional Framework of European Financial
Markets: A real improvement or small political step
forward?

ESMA's Legal powers

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I. THE NEW EUROPEAN SYSTEM OF FINANCIAL SUPERVISORS – Context

How does a new financial supervisory structure fit in the present context in Europe?

- **Recent financial crisis and new challenges for the stability of the global financial and economic systems** : G20 recommendations to assess Systemic Risk
- **MiFID Regulation**: one of the most important legal reforms applying to Financial Markets of the EU. **MiFID has a direct legal impact in the creation of a fragmented market**, and therefore creates a competitive environment between Market participants
- Need for a centralized **Credit Rating Agencies** mechanism

I. THE NEW EUROPEAN SYSTEM OF FINANCIAL SUPERVISORS (...)

A. Steps that led to the creation of ESMA:

- **October 2008:** EC mandates the *Larosière Group*
- **February 2009:** *Larosière Report* is submitted to the EC. It is the first and most important international integration of Financial Markets in Europe
- **September 2010:** EC approves legislation creating a new *European System of Financial Supervision ("ESFS")*
- **January 1, 2011:** ESMA is established legally as an independent EU Authority and becomes fully operational.

a) Remodeling of the structure

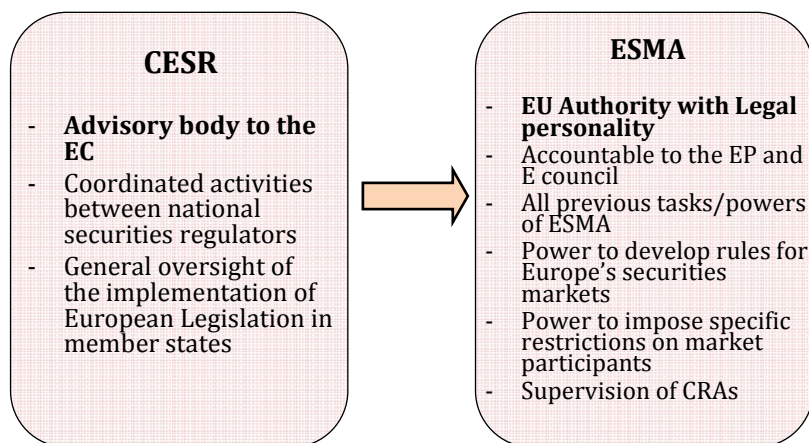


- From Committees to EU Authorities
- **CESR** becomes **ESMA**, **CEBS** becomes **EBA**, **CEIOPS** becomes **EIOPA**
- Role of the **ESRB** - *note that ESRB has no legal personality*
- **MICRO-PRUDENTIAL OVERSIGHT** vs. **MACRO-PRUDENTIAL RISK ASSESMENT**: a collaboration between the bodies : advice/warnings vs. information exchange

b) Regulation establishing ESFS and ESMA

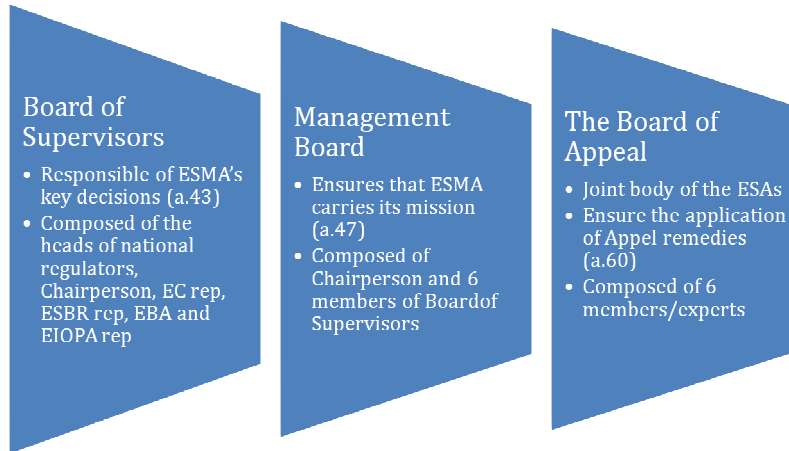
- REGULATION (EU) No 1092/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 24 November 2010 **on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board**
- REGULATION (EU) No 1095/2010 OF THE EUROPEAN PARLIAMENT AND THE COUNCIL of 24 November 2010 **establishing a European Supervisory Authority (European Securities and Markets Authority)**, amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC

c) From CESR to ESMA: roles and responsibilities



B. THE LEGAL POWERS AND STRUCTURE OF ESMA

a) ESMA's governance structure

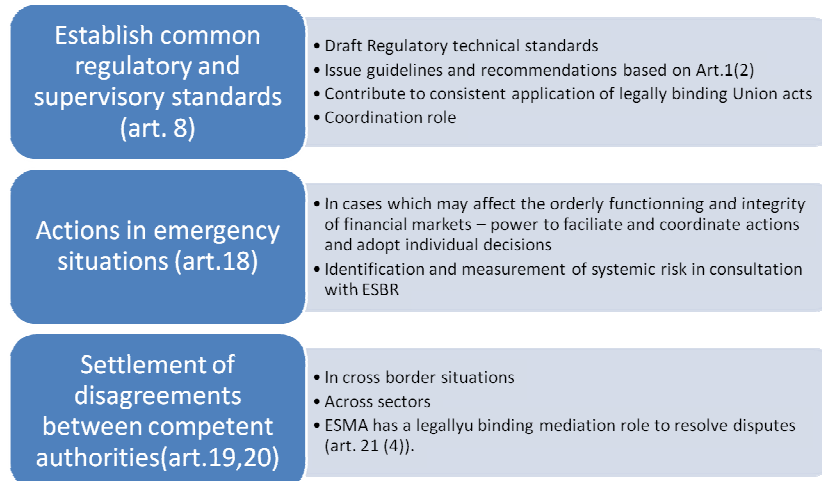


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B. THE LEGAL POWERS AND STRUCTURE OF ESMA (...)

b) Tasks and Powers



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C. SUPERVISION OF CRAs

- **Unique role of Credit Rating Agencies (« CRAs »)**
- **CRAs lack of liability**
- **New Regulation for CRAs:**
REGULATION (EU) No 513/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2011 amending Regulation (EC) No 1060/2009 on credit rating agencies

C. SUPERVISION OF CRAs (...)

Registration and supervision of CRAs

- CRAs have to apply for registration with ESMA, which will then decide on each of them.
- possibility of charging fees

Day-to-day supervision

- monitor that CRAs comply with Regulation.
- ESMA has supervisory powers, such as requesting relevant information, hearing of persons, examining records and conducting on-site inspections.

Taking appropriate supervisory measures if breach

- ranging from the issuance of a public notice to the withdrawal of the registration, depending on the seriousness of the breach.

C. SUPERVISION OF CRAs (...)

ESMA's specific powers towards CRAs:

- **Necessary powers to carry out an effective supervision** over CRAs
- **Require CRAs and all persons involved in rating activities to provide all necessary information**
- **Examine records, data, procedures** (incl. telephone and data)
- **ask for an oral explanation, interview or summon**
- **carry out on-site inspections** at the premises of CRAs
- **Impose a sanction if breach of the CRA Regulation** (ranging from temporary prohibition of issuing ratings, suspension of the use of the credit ratings or withdrawal of registration)
- **Request Commission to impose on a fine** if CRA has intentionally or negligently committed a breach of the Regulation.

D. LEGAL, ECONOMIC AND POLITICAL IMPLICATIONS

a. Potential structural, legal and technological challenges



Market participants:

Regulators
Exchanges/MTFs
Financial Intermediaries

Asymmetry of technology between participants:

- Financial Intermediaries are technologically ahead of many Market participants as Regulators until now only looked at their respective markets.
- Regulators need to increase their supervisory tools in order to follow the Market.

D. LEGAL, ECONOMIC AND POLITICAL IMPLICATIONS (...)

Criticisms , challenges and achievements

- ESMA's Powers
- ESMA's nomination process
- Challenges of the new CRAs Regulation
- ESRB's issues of legal certainty and powers

Thank you - Merci