“The European System of Financial Supervision
(European Banking Authority,
European Securities and Markets Authority,
European Insurance and Occupational Pensions Authority)"

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I hereby declare that the work submitted is mine and that where I have made use of another’s work, I have attributed the source(s) according to the Regulations set in the Student’s Handbook.

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Abstract

This dissertation was written as part of the LL.M. in Transnational and European Commercial Law, Banking Law, Arbitration/Mediation at the International Hellenic University.

The economic crisis of 2008 has led to global adversities of the international economic system. Consequently, adopting the economic crisis challenges, the European Commission introduced a new financial framework of supervision: the European System of Financial Supervision (ESFS) in 2010. At the start of 2011, it has initiated three new supervisory authorities devoted to controlling the systemic risk and to securing more coordinated supervisory competences. This dissertation is related to both the supervision role, which is mirrored in the application of the European Supervisory Authorities (ESAs) and the European Systemic Risk Board (ESRB). Furthermore, the dissertation describes and evaluates the implications and peculiarities of these new institutional parties within the European Union by granting a crucial approach of their competences in opposite with the frame of the Member States competences, while pointing out basic outcomes that apply in various sectors. More specifically, it justifies that the ESAs have been initiated effectively, but an enhanced foundation is necessary, particularly stronger governance in the decision-making in the supervisory stability throughout the European Union. This new regime constitutes obvious progress for the European Capital Markets, even though some political legal and practical shortcomings remain, in most of the case as a consequence of compromise among the Member States. Basic aftermath is that the profits of legislative harmonization, achieved by Single Rulebook, will be eliminated without any orderly establishment and application. It is important these matters to be expressed via the continuous procedure of European Union. Lastly, the dissertation includes suggestions for improvements in ESAs’ efficiency. Undoubtedly, it will be a contest to find the common language between ESAs’ competences and these of national authorities.

Keywords: ESFS, Financial supervision, Regulation, EBA, ESMA, EIOPA, ESRB.

Maria Strongyli
26/01/2020
Preface

This dissertation functioned as a final assessment to accomplish my LL.M. program in Transnational and European Commercial Law, Banking Law, Arbitration/Mediation. The successful completion of this research could not have been achievable without the support of some people.

First of all, I would like to thank my parents for supporting me all this year and providing me the opportunity to proceed in this LL.M. program. Furthermore, I would like to express my thankfulness to my supervisor Pr. Thomas Papadopoulos, who gave me all the appropriate knowledge and provided me his valuable guidance throughout the months of preparation of the dissertation.
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<td>Alternative Investment Fund Managers</td>
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<td>Bank Recovery and Resolution Directive</td>
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<td>Binding Technical Standards</td>
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INTRODUCTION

The aim of this dissertation is to examine the phenomenon of the global financial crisis that occurred in late 2007 – start of 2008 and to investigate the impact it had on the system of financial supervision as it has developed throughout the passage of years and was followed by the European Union. It is a matter of great interest to understand how this new system operates in practice, especially since numerous assumptions surround it. As it is known, the new economic conditions affected the European capital markets law significantly; as a consequence, this reform focuses on financial integration and centralization, steps that might lead to future amendments by the financial supervision within the European Union. However, it is critical to examine the extent that this financial integration and centralization may take.¹

In September 2009, the European Commission proposed the replacement of the current supervision system by the European System of Financial Supervision (ESFS), which consists of three European Supervisory Authorities that are commonly referred to as ESAs: the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA), and also the Joint Committee of the European Supervisory Authorities, the European Systemic Risk Board (ESRB)² and the National Competent Authorities (NCAs). This new established system completely changes the existing European financial landscape. The key purposes of the new supervisory authorities, established in January 2011, were to reinforce the control of cross-border members, to improve the stability and the quality of supervision nationwide, to augment and obstruct the systemic risk to financial consistency within the

European Union and implement a European common Rulebook ready to apply to all financial markets within the broader economic reality.³

Personally speaking, I believe that the existence of the ESAs is vital, as they ensure control over the existing tasks and responsibilities of the European Banking Supervisors Committee. In contrast to their predecessors, the competent authorities are able to engage, to implement and to draft binding Regulatory Technical Standards.⁴

In this dissertation, the European System of Financial Supervision will be firstly analyzed, especially in regards to its necessity, the possible further steps to reform, the relation of the old legal framework with the new one and the reasons that led to the creation of the ESAs after the economic crisis of 2008.⁵ Moreover, the legal framework of ESAs will be presented, as well as their supervisor and rule-making powers. Additionally, the European Systemic Risk Board will be referred, which is tasked with the macro-prudential supervision of the financial system within the European Union. Finally, the challenges facing ESAs and ESRB will be analyzed and critiqued.

CHAPTER ONE: The European System of Financial Supervision

This chapter examines the phenomenon of the 2008 global financial crisis illustrating the main reasons that contributed to the changes in the European System of Financial Supervision.

Historical Reasons – Financial Crisis

The 2008 economic crisis it is known as the worst financial recession the world economy has faced since the ‘Great depression of the 1930’s’. Within the European Zone since the emergence of the crisis, none of the financial institutions could guarantee creditworthiness and, as a result, the uncertainty surrounding the financial system was leading in random and less productive investments. The basic aftermath of this condition was that both banks and financial institutions were faced with a grave challenge of liquidity malfunctions. It was widely believed that the economies of the United States and the European Union would not be able to face and overpass such worldwide economic agitation. That belief had as its base the common perception that a strong economy, as they were being developed until that period, had its fundamentals to ongoing growth in exports or the success of production.

In contrast with historical banking instabilities of the 19th and the early 20th centuries, the 2007-2008 banking crisis was referred to panic. In the 19th century, the banking sector was characterized as insolvent as they could not satisfy the depositors' demands for cash. However, in 2007-2008 the involved financial institutions turned to other financial institutions by not increasing the repo margin (‘haircut’) and repurchasing agreements (‘repo’) or renewing the sales, resulting in the insolvency of the banking sector and in huge deleverage causing the shutdown of many markets, which had consequences in the economy at large.

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The global economic crisis has its origins in the change of the banking sector, which includes two different changes, a huge need for guarantees, and the movement of big amount of loan assets to the capital market as securities by the banks.

**The Necessity and the Steps ahead to Reform**

The economic crisis of 2007 and 2008 revealed the problems of the financial supervision of the time, some of which resulted in delays to the process of financial globalization and the tightly interwoven European financial markets by the competent supervisory models. Notably, the financial crisis caused adversities in many sectors, including guidance, collaboration and the steady application of European Law. The European Parliament, prior and during the economic crisis, implemented requirements in order to set up the foundation for more thorough European supervision, where all the key agents, within the European Union, would participate in further harmonization of the financial markets.\(^8\)

In November 2008, Jacques de Larosière de Champfeu proposed ways to reinforce European financial supervision aiming to protect citizens and regain their trust. These impactful suggestions (‘de Larosière Report’) aimed to decisively reduce the chances of other potential financial recessions and strengthen the existing supervisory structure. They led to changes to the supervisory formation of the financial sector within the European Union and included the creation of the ESFS and the three ESAs, one for the banking sector (EBA), one for the securities sector (ESMA) and one for the insurance and occupational pensions sector (EIOPA), as well as the European Systemic Risk Council (ESRC).\(^9\) Also, in November 2014 the European Central Bank (ECB) was created as the institution, which is in charge of the supervision of banks in the Eurozone.\(^10\)

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\(^9\) Ibid


The New Legal Framework and its Connection with the Old Regime

The ESFS, created by legislation adopted in 2010, includes the EBA (EBA Regulation 1093/2010), the ESMA (ESMA Regulation 1095/2010), the EIOPA (EIOPA Regulation 1094/2010), the Joint Committee of the European Supervisory Authorities (Articles 54–57 EBA/ESMA/EIOPA Regulations), the ESRB (ESRB Regulation 1092/2010) and the national competent authorities (NCAs) (Article 1 (2) EBA/ESMA/EIOPA Regulations). European Supervisory Authorities (ESAs) were established at the beginning of 2011.\(^\text{11}\)

The EBA, the ESMA, the EIOPA, and the ESRB should closely collaborate throughout the Joint Committee in order to find common ground regarding the supervision of financial issues and to guarantee cross-sectoral stability. These aforementioned authorities must be liable to the European Parliament and the Council. EBA, ESMA and EIOPA are liable for the supervision from micro-prudential perspective, while ESRB, cooperating with the ECB, conducts the macro-prudential supervision. A ‘hub-and-spoke' type was followed in relation to legislation. Whatever regards this type, ESAs (the ‘hub’) exercise and follow precise suggestions and regulations, and the competent authorities (the ‘spokes’) introduce them partially in their rule-making process and partially in their daily supervision.\(^\text{12}\)

The Council selected the city of Paris as the new seat of EBA, where ESMA’s one is, while the seat of EIOPA was selected to be located in Frankfurt. EBA’s seat was in London until November 2017. However, EBA was required to be relocated in Paris as an aftermath of the UK’s withdrawal from the European Union in March of 2019. Both Council and Commission agreed to the aforementioned relocation in order to ensure the steady operational process of EBA during Brexit.\(^\text{13}\)

The previous system had significant blind spots, like the lack of collaboration between authorities, leading to concerns regarding its efficiency. The ESFS has to constitute a


\(^{12}\) ibid

unified system for both European and competent authorities, and their bodies should collaborate with reliance, specifically to secure all relevant and proper information is shared between them. Within the European Union, all rules and their methods of application need to be harmonized between the Member-States, in a coherent system, so that all financial market participants are under the same level of scrutiny.\textsuperscript{14}

CHAPTER TWO: The Legal Framework of EBA, ESMA, EIOPA and NCAs

This chapter presents the Legal Framework of EBA, ESMA, EIOPA and NCAs examining each of them both collectively and separately. The ESAs are European bodies with legal personality and have legal capacity granted to legal persons under the national law applicable in each case. They proceed in actions on behalf of the European Union, both autonomously and as members of the Board of Supervisors, the Board of Appeal, the Management Board, the Executive Director and their representative Chairperson. Neither the European institutions, nor Member-State, nor any other private or public member can have authority or influence over them.\(^\text{15}\)

**Governance Structure**

ESAs’ representation consists of their Chairperson, who is responsible for the guidance and preparation of the discussions of the Board of Supervisors’ table, the Executive Director, who oversees the Authorities’ daily functional work and to prepare the Management Board meetings.\(^\text{16}\)

The ESAs’ governing bodies are: The Board of Supervisors (BoS) that makes the decisions of the Authorities and also the ESAs’ policy decisions such as the adoption of the draft of Technical Standards, Opinions, Guidelines and Reviews. The Resolution Committee (ResCo) undertook all the decisions for particular subjects related to resolution of financial institutions for the BoS; and the Management Board (MB) having as a role to secure that the Authorities perform their assigned tasks and generally follow their general mission. To do so, the MB enjoys the authority to make suggestions on the yearly budget, review, tasks’ program and the staff policy scheme.\(^\text{17}\)


\(^{17}\) ibid
ESAs are, also, in co-operation with each other in the Joint Committee’s structure for cases of cross-sectoral coherence. Specifically, the Joint Committee is responsible for controlling and accounting, assessing risks and identifying weaknesses of the economic consistency, introducing means confronting money laundering and supervising financial institutions.\(^\text{18}\)

The Board of Appeal, ESAs’ joint entity, has been, also, established for the efficient protection of rights of bodies that have been impacted by ESAs’ decisions. Even though its secretariat is enhanced by the Authorities, which consist of the Board of Appeal, it is completely independent in the decision-making process.\(^\text{19}\)

**Supervision**

The ESAs undertook all the assignments of the former European Supervisory Committees, 3L3 Committees (CESR, CEBS, CEIOPS), however they have been assigned to enhanced liabilities underlining regulatory competences.\(^\text{20}\)

Parallel to the new ESFS, other competent authorities maintain their position to supervise the market day-to-day, while the functional supervision and imposition remain on them. Nevertheless, they in turn are supervised by ESAs, which can improve guidance among national authorities, particularly, when circumstances endanger the integrity and function of financial markets or the consistency of the financial system within the Union (Article 31 EBA/ESMA/EIOPA Regulations). In order to achieve the best possible results, ESAs conduct peer reviews upon the competent authorities’ activities. Therefore, these peer reviews are evaluated and compared based on techniques introduced by the ESAs, which take into

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consideration any existing assessment and information (Article 30 EBA/ESMA/EIOPA Regulations).  

There are two options of intervention under the new regime against competent authorities: The one includes ESAs’ decisions on disagreements and emergencies and the other one refers to potential breaches of European Union law by the competent authorities. Whether a national authority fails to comply sufficiently with European Union law in a corrective way, and having issued a relevant request from the national authorities, the Commission, the Council, the Banking Stakeholder Group or the European Parliament, and after relative information to the competent authorities, the ESAs should conduct investigations in order to identify violations of European Union law. Appropriate information should be provided by competent authorities to ESAs without delay. After the addressing of this report and no longer than two months, ESAs should proceed with further suggestions to the national authorities for the relevant actions to be taken in order to obey European Union law. During ten working days, after receiving the suggestions, the competent authority should update ESAs on the ongoing moves it would take to guarantee compliance with European Union law. However, in case that the competent authorities are not compliant with European Union law, and during the one month period from receiving ESAs’ suggestions, ESAs should inform the Commission and the latter should introduce an official opinion, based on ESAs’ suggestions, for the national authority to ensure its compliance with European Union law (Article 17 EBA/ESMA/EIOPA Regulations).  

Furthermore, the new system ensures the contingency of ESAs to interfere directly against the market agents. ESAs can take any individual decision for any financial institution and require of them to proceed to action in order to be compliant with its directions under European Union law, containing the suspension of any practice, and without the prejudgment Commission’s authority (Article 258 Treaty on the Functioning of the EU).

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22 Ibid
European Union (TFEU)), where a national authority is not compliant with the Commissions’ formal recommendations or when it is required to guarantee the competition within the market.\(^{23}\)

In cases of emergency, ESAs can automatically intervene in order to settle potential disagreements among the national authorities. For this power to be put into effect, a basic requirement is that a competent authority is not compliant with ESAs’ orders.\(^{24}\)

When a problem arises in a scale that may put at risk either the good function or the consistency of the financial system of the European Union or the integrity of its financial market, ESAs can immediately act, and, where appropriate, give directions to the national authorities. The ESRB, the Commission, in co-operation with the Council, and, where necessary, the ESAs, should introduce a suggestion directed to the ESAs, specifying that an emergency condition exists. If the Council follows this suggestion, ESAs should take the appropriate single decisions and force competent authorities to proceed with improvements for emergency conditions making sure that competent authorities and financial institutions are complying with the requests of this Regulation (Article 18 EBA/ESMA/EIOPA Regulations).\(^{25}\)

Additionally, ESAs have the competence to directly intervene and supervise market participants. The ESAs can also set an alarm in conditions that an economic activity might jeopardize the efficiency and consistency of the financial system, within the European Union and its citizens too. Particularly, ESAs can provisionally limit or forbid certain economic activities, which could endanger the integrity and steady function of financial system in European Union.\(^{26}\)

ESAs have the capability to interfere and settle down the disagreements among competent authorities in cross-border conditions. In case that the competent authorities do not accord with the activity of competent authority of some Member State, ESAs


\(^{24}\) ibid

\(^{25}\) ibid

\(^{26}\) ibid
should take the lead and give co-ordinations in order to resolve any potential disagreement. Accompanied with that, ESAs’ responsibility is to determine the time limitation for conciliation among competent authorities taking into consideration the urgency and complexity of the matter. When agreement cannot be reached, the ESAs intervene with binding decisions aimed to resolve the issue in accordance with European Union laws. In case that a competent authority disregards such a decision, then the relevant ESA can use its powers to intervene in actions of market participants. Therefore, the relevant ESA can force any financial institution to be compliant with its requirements under European Union law and proceed to appropriate actions, in case that the financial institution shows unwillingness to do so. This decision is over any previous decision that might have been adopted by some other responsible authority for the same matter (Article 19 EBA/ESMA/EIOPA Regulations).  

Decisions taken by ESAs, which regard Articles 17, 18 and 19 EBA/ESMA/EIOPA Regulations can be easily challenged by any legal or natural person before the Board of Appeal, which decides within two months from the filing of the appeal. It proceeds in its decisions independently, however it constitutes a joint party of the ESAs. According to Article 263 TFEU, all the processes should be initiated before ECJ, when a decision should be adopted by the Board of Appeal or in situations where the appeal cannot be launched before the Board of Appeal from ESAs.

**Rule-making Powers**

The ESAs, in the process of Lamfalussy, have to substitute the Committee of European Insurance and Occupational Pensions Supervisors, the Committee of European Banking Supervisors and the Committee of European Securities Regulators and to reconsider all of their authorities and objectives. Undoubtedly, there are differences between the old and new one regime. In the old version, on the level 1 process, the European Commission took the place of old Committees in order to provide consultation on the technical elements of

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28 ibid
rules and policies. On the level 2 regulations, the Committees were called by the European Commission for the submission of their advice, which were introduced after detailed deliberation with the Committee. The new regime keeps this advisory role, nevertheless this role converts in obligatory and from technical point of view ESAs position is getting stronger during the legislative process. Furthermore, it is important to be mentioned that these propositions remain obligatory only in situations that they rigorously declare in the level 1 process.\textsuperscript{29}

The ESAs must have an independent role in the process of advising the Commission, the Council and the European Parliament in their jurisdiction’s areas and in preparing new regulation. The ESAs, also, have the ability to introduce suggestions and guidelines to participants of financial markets or competent authorities according to Article 16 EBA/ESMA/EIOPA Regulations. These suggestions and guidelines have significant role on the process of implementation of European Regulations and Directives to ensure stable application of European Union law, even though they are not binding. The mechanism of ‘comply or explain’ stems from Article 16 EBA/ESMA/EIOPA Regulations and both participants of financial markets and competent authorities must follow these suggestions and guidelines; if they choose not to, the relevant competent authority needs to provide explanatory reasons to the ESAs.\textsuperscript{30}

Issuing of implementing and regulatory technical standards is a crucial rule-making competence of the ESAs. The regulatory technical standards (RTS), which have to be followed by the decisions or legislations, lay down to Article 10 EBA/ESMA/EIOPA Regulations. Additionally, Article 290 TFEU consists of a set of acts and denotes that any legislative act can represent to the Commission the capability to follow any potential non-legislative act in order to substitute or alter specific insignificant segments of the


legislative act. ESAs have to register their standards’ suggestions to the Commission for validation, while the content of regulatory technical standards must be bound by these acts and must be completely independent of policy and strategic decisions. Then, the Commission must make the decision to accept or not the draft of regulatory technical standards in three months. It also has the option to accept the suggested rules either partially or by proceeding to some amendments according to European Union’s interests. If the Commission does not proceed with the validation of the aforementioned draft, it has to return it to ESAs with related justification.\(^\text{31}\)

The ESAs can proceed with alteration on the draft regulatory technical standard based on the Commission’s amended proposals, to resend it copied in a formal way both to the Council and European Parliament within six weeks. In case ESAs fail to process this in time, then the Commission can either adopt the amended regulatory technical standard or decline it. Also, there is a chance that the Commission may not proceed by altering the content of the proposed regulatory technical standard before the collaboration with ESAs.

In cases that ESAs do not present a draft regulatory technical standard to the Commission in timely manner, the Commission can follow a regulatory technical standard through devolved activity without any draft issued by ESAs.\(^\text{32}\)

There is the chance that potential objections to regulatory technical standards may occur. The Council and the European Parliament can provide their objections to regulatory technical standards in the period of three months starting from the date when the Commission accepted them. There is, also, the chance of alteration or non-validation of draft regulatory technical standards. In case the Commission does not proceed with the endorsement of the draft regulatory technical standards or alterations, the Commission must update ESAs, the Council and the European Parliament quoting its justifications. Moreover, where is considered necessary, the Council or the European Parliament has to


\(^{32}\) ibid
invite for a briefing-session both Chairperson of the specific ESA and the Commissioner in order to justify its objections.\textsuperscript{33}

Article 15 EBA/ESMA/EIOPA Regulations explains the process behind the adoption of implementing technical standards (ITS). ESAs can develop them by introducing acts based on Article 291 TFEU and the European Union securities legislation. Article 291 (2) TFEU describes that if there is a need for implementation of legally mandatory European Union acts, these acts can insert related implementing competences on the Council or the Commission. The implementing technical standards can be followed by relevant decisions or legislation, independent of policy options and strategic decisions. Furthermore, these standards must be technical and define the terms of application.\textsuperscript{34}

The specific ESA should present the draft, where there are implementing technical standards, to the Commission for validation. In three months from the time of their receipt, the Commission should take the decision either to validate them or not. The Commission also has the ability to extend the aforementioned period to one more month and validate implementing technical standards either partially or with alterations, in case the European Union needs request them. If there is an intention that the Commission proceed with partial validation or with alterations, it has to explain its decision back to the relevant ESA. The specific ESA can alter the draft with implementing technical standards according to the Commission’s suggested alteration and resend it back to the Commission in six weeks in official form. A copy of this official format must be sent both to the Council and the European Parliament. In case that this six weeks period is passed and the specific ESA neither has altered the draft with implementing technical standards as the Commission requires, nor have even sent them, the Commission can accept the aforementioned technical standards altered or reject them based on what it will consider the best. Moreover, the Commission has no right to modify the body of the suggestion of the implementing technical standards, without the ESA’s directions. In case that the


\textsuperscript{34} ibid
relevant ESA has not sent the draft with implementing technical standards, within the requested time boundaries, then the Commission can require it to be submitted in new ones’. Only in cases that ESAs have not submitted any draft with implementing technical standards, the Commission can follow implementing technical standards without the existence of a draft coming from the specific ESA but only with an implementing act. Both the Council and the Parliament cannot withdraw or object any implementing technical standard, however they can proceed with these practices concerning the regulatory technical standards. This is a major distinction between the proceeding of the establishment of the implementing technical standards and the one of the establishment of the regulatory technical standards.\textsuperscript{35}

The introduction of ESFS was accompanied with the introduction of Omnibus I Directive altering the sectoral regulation of financial services in order to secure the efficiency of ESFS (Directive 2010/78/EU)\textsuperscript{36} through amendments of the current financial services Directives, followed by the accurate aim of them to practice the suggested new authorities. Such changes can be divided as follows: Firstly, there is a review of the denotation of the relevant points where ESAs are capable of introducing technical standards as a method in addition to supervisory convergence having in mind the potential improvement of the Single Rulebook. Secondly, there is a reference, ESAs to arrange disagreements among the competent authorities in that way in order to achieve the appropriate balance, but only in cases where the sectoral regulation is enclosed in the rule-making procedure. In the third category, there is a discussion where alterations are needed for the proper function of the Directive, to secure the data sharing.\textsuperscript{37}


The Single Rulebook

The Single Rulebook looks to introduce a system of rules, which all European Union’s institutions must follow. The idea of the Single Rulebook was fabricated in 2009 by the Council having as objective to make a reference to the aim of integrated legislative framework for the economic field, which would constitute the common market within financial services. This will secure consistency in the application of Basel III, the regulatory framework for banks, within all Member States and will cover all the gaps of legislation contributing to better Single Market’s operation.38

The regulation of European banking commenced from Directives, which caused critical declination in national laws. That created confusion contributing to regulatory instability and various contradicting interpretations, causing adversities in companies’ function within the Single Market, allowing institutions to take advantage of legislative gaps and manipulating the competition.39

Furthermore, the economic crisis illustrated that in the unified financial markets, these declinations can imply disaster impact. From the time dangers produced due to the absence of harmonization, the effect can be extended throughout the Single Market and not only to be included in national borders.40

It is also important to utilize the same calculation’s techniques of the main necessities such as liquidity and capital ratios standards and the exact terminology of regulatory compounds.41

The Single Rulebook has as an objective to cover these weaknesses in order to create a more clear, effective and flexible Banking sector within the European Union. Firstly, for a clearer European Banking sector: A Single Rulebook secures that condition of financial situation is more comparable and transparent throughout European Union for investors, deposit holder and supervisors. The economic crisis revealed that regulatory requirements’ opacity in different Member States was the main reason of financial

39 ibid
40 ibid
41 ibid
disequilibrium. Secondly, for a more effective European Banking sector: A Single Rulebook shall secure that all institutions must not be compliant with the 28 different orders of rules. Finally, for a more flexible European Banking sector: A Single Rulebook secures that all relevant conservations are followed within the European Union, and not confined to the single Member States since the financial turbulence illustrated to which level the economies of Member States were correlated.\footnote{European Banking Authority. (2013). [online] Available at: https://eba.europa.eu/regulation-and-policy/single-rulebook [Accessed 2 January 2020].}

The new legislative framework has to be established in this form in order the national resilience to be avoided in the macro-prudential methods’ activation, since the financial cycles and credits are not coordinated throughout the European Union, even though a Single Rulebook constitutes the key for the European Union.\footnote{Ibid}

Therefore, Member States have maintained some capabilities in order to demand their institutions to keep more capital. For instance, Member States will maintain the capability to place greater capital standards for lending in real estate sector, which standards should also be applicable to businesses from other Member States that operate in that Member State. Furthermore, any Member State has the task to provide protection to its financial sector from external threats that can jeopardize the economic consistency. Moreover, Member States would maintain their existing competences under ‘pillar2’, for instance, the possibility to introduce further demands on a particular financial institution following the procedure of supervisory review.\footnote{Ibid}

\textbf{European Banking Authority (EBA)}

The European Banking Authority (EBA) constitutes an independent European Union Authority responsible for the stability and efficiency of supervision and prudential legislation throughout the banking sector in Europe.\footnote{Haentjens, M., Gioia-Carabellese, P. (2015). \textit{European Banking and Financial Law}. New York Routledge.} Its targets are the guaranteed
integrity and the preservation of financial consistency within the European Union and the successful operation and effectiveness of the banking sector.\textsuperscript{46}

EBA’s basic objective is to assist in the establishment of the European Single Rulebook in the banking sector, whose target is related to the introduction of a single set of well-established prudential regulations for the financial institutions across the European Union.

EBA, also, has a crucial role in the implementation of supervisory acts and it is mandatory to provide an evaluation of the weaknesses and threats of banking sector of the European Union.\textsuperscript{47}

The EBA was created on the 1\textsuperscript{st} of January 2011 as a body of the European System of Financial Supervision (ESFS) and undertaking all the assignments and liabilities of the Committee of European Banking Supervisors. Its delegation is the building of a single supervisory and regulatory structure for the whole banking sector across the European Union, in order to guarantee a consistent, clear and effective Single Market, which is useful to businesses, to consumers and to the wider economy within the European Union.\textsuperscript{48}

In addition, EBA is responsible for the potential vulnerabilities within the European banking sector and the assessment of the risk that might occur through European Union wide stress tests.\textsuperscript{49}

\textbf{Missions and Tasks}

EBA’s basic objective is its influence to the introduction of Guidelines and Binding Technical Standards (BTS) in order to establish a European Single Rulebook in banking sector.\textsuperscript{50}

\textsuperscript{47} ibid
\textsuperscript{48} ibid
Furthermore, EBA has a critical role in the convergence of supervision acts in order to guarantee that prudential rules will be orderly followed. Moreover, it is mandatory that EBA evaluate the weaknesses and threats throughout the European banking sector via stress tests and steady assessments.51

Other assignments, that EBA is responsible for, include: The decision-making expressed to financial institutions or to national authorities in emergency conditions; the research of alleged inefficient or mistaken application of European Union law by the competent authorities; its action as an individual advisory part to the Commission, the Council and the European Parliament; mediation in order to settle different perspectives among the national authorities in cross-border cases; a predominant role in the adoption of justice, simplicity and clarity for services throughout the inner market.52

In order EBA to implement the aforementioned assignments, it can introduce a number of non-legislative or legislative texts, which contain Recommendations, Guidelines, Binding Technical Standards, Opinions and ordinal reviews.53

The Binding Technical Standards constitute legislative acts that determine specific elements of European Union regulatory text (Regulation or Directive) and intend to secure steady harmonization in particular sectors. EBA introduces draft BTS that are eventually followed and validated by the Commission. The BTS are straight applicable and legally mandatory to all Member States, which does not happen with Recommendations or Guidelines.54

**EBA’s Role in Stress Testing**

One of the rules of the EBA is to supervise and evaluate market developments and to recognize possible risk, norms and weaknesses arising from the micro-prudential dimension.55

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52 ibid
53 ibid
54 ibid
One of the main supervisory techniques to proceed with such examination is the European Union broad stress test practice. The EBA Regulation grants to the EBA competences to originate and guide the European Union broad stress tests, in collaboration with the ESRB. The objective of this kind of test is to evaluate the flexibility of economic institutions in potential adverse conditions of market and also to provide assistance to the general evaluation of systemic threat within the European Union economic system.\textsuperscript{56}

The EBA’s broad stress tests of European Union are executed in bottom-up method, utilizing stable methods, frameworks and hypothesis initiated in collaboration with, the ECB, the ESRB and the Commission.\textsuperscript{57}

**EBA’s Role in the Single Rulebook**

The EBA has a dominant role of Single Rulebook’s creation in banking sector. It is binding that EBA introduce a high volume of Binding Technical Standards (BTS) for implementation of Deposit Guarantee Schemes Directive (DGSD), Banking Recovery and Resolution Directive (BRRD) and Capital Requirements Directive IV (CRD IV) set. BTS represent legislative acts, which constitute specific elements of a European Union legislative text (Regulation or Directive), targeting to secure steady coordination in particular fields. BTS can be followed by the Commission via legislative texts and then they can be immediately applied and legally mandatory within all Member States. Therefore, from the day that their force starts, their establishment into national law is forbidden since they constitute part of Member States’ national law. Furthermore, EBA can provide, where necessary, a report on the application of all BTS, which have been followed by the Commission as well as on the recommended alterations, as part of its participation to an integrated supervisory method throughout European Union.\textsuperscript{58}

Moreover, EBA provides directions to the Single Rulebook Q&A procedure. Via this procedure, EBA is responsible to reply to queries issued by stakeholders upon the practical


\textsuperscript{57} Ibid

introduction of DGSD, BRRD and the CRD IV set, containing guidelines and technical standards as part of the Directives and Regulations.  

EU Agency

EBA represents one, among others, specialized European Union agencies that have been established by the Council and the European Parliament in order to undergo particular technical, scientific or legal functions and is a critical element of the European Union. The above agencies work in co-operation with Member States and European Union institutions, providing them trust-worthy based recommendations to assist in formation of updated rules and procedures at national and European Union level. They also contribute to the exchange of valuable data within the European Union.

Peer Reviews

The Review Panel of EBA was developed in order to introduce a methodological approach for peer reviews carrying out them regularly. These peer reviews require comparison and evaluation of the efficiency of the supervision acts and the provisions’ execution by national authorities. According to Article 30 EBA Regulation, the Review Panel of EBA will regularly arrange and undertake peer reviews of national authorities’ acts, to enhance surveillance stability.

The peer review will contain an evaluation of the sufficiency of the governance settlements and assets of the national authorities mainly in cases concerning the application of implementing and regulatory technical standards; the best practices launched by the national authorities; and the level of convergence achieved between supervision acts and the application of the EU regulation.

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61 ibid
63 ibid
Whatever regards its tasks, the Review Panel of EBA undertakes reviews exclusively based on self-evaluation introduced by national authorities in relation with objective and transparent harmonization criteria. The trustworthiness and efficiency of this practice are secured by the procedure’s clarity, by the transparent practices, the knowledge and experience and by the autonomy and objectivity of the Review Panel Community’s members and of its Chair.64

EBA conceived the decision to set up the Review Panel on 4th May 2011, but the Board of Supervisors of EBA accepted its method for the peer review system in June 2012. This agreement establishes the necessity of the Review Panel, describes the Review Panel member’s designated processes and outlines the area of the peer reviews. The method marks assistance and processes for the conduct of peer reviews and self-evaluation as well as for publication demands.65

**Supervisory Disclosure**

Supervisory disclosure illustrates a completed outline of legislative and supervisory acts in order to grant direct access to data concerning the regulations, laws, administrative rules and generic coordination followed by the Member States in the sector of prudential surveillance and regulation and to provide important information of the techniques followed by the national authorities across the Member States.66

The content of this disclosure is divided in four areas:

Rules and coordination;

Options and national discretions: Regulation (EU) No 575/2013, on prudential claims for financial institutions67, and Directive 2013/36/EU, on access to the practices and the

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65 ibid
prudential supervision of financial institutions\textsuperscript{68}, include set of national discretions and options that may apply in national conditions. This part may facilitate individuals to proceed in important comparisons on how the aforementioned national discretions and options are applied into the single Member States.\textsuperscript{69}

Supervisory review: the generic standards and methods applied by competent authorities in the Supervisory Review and Evaluation Process (SREP), the minimum demands for the Internal Capital Adequacy Assessment Process (ICAAP) executed by the financial institutions, and the procedures that coordinate competent supervisory authorities in proceeding supervisory measures regarding the particular institutions.\textsuperscript{70}

Consolidated Statistical data: the supervisory disclosure presents consolidated statistical information on key factors of the establishment of the prudential structure among the Member States. This disclosure comprises national statistical data on the banking sector, on the market, credit and functional risk, and on the supervision measures and acts.\textsuperscript{71}

**Supervisory Colleges**

The main point to enhance the supervision of transnational banking bodies is the improved collaboration among ESAs and NCAs. Supervisory colleges constitute the means via which supervision acts are directed. The European Union law visualizes the implementation of supervisory colleges for banks of Eurozone with subsidiaries or important branches in other European countries and these banks can also have supervisors in non-European countries.\textsuperscript{72}

The predecessor of EBA, CEBS, introduced co-ordinations on common evaluation of the principles followed by the assessment procedure and by the supervision review, on the well-operation of colleges and on common decisions on assets sufficiency of transnational banking parties in college setting, in order to contribute to the progress of efficient and


\textsuperscript{70} ibid

\textsuperscript{71} ibid

steady college scheme. After the establishment of the updated Capital Requirements Directive (CRD) and the Capital Requirements Regulation (CRR), the guidelines will be substituted by the relevant technical standards including common decision on particular prudential demands, well-operation of colleges and information sharing among host and home supervisors related to institutions that function via branches.\textsuperscript{73}

The system of colleges illustrates the supervised bodies’ acts. Smaller ones contain two authorities, while other consist of 20 or more authorities coming from all around the world. There might be a difference in the frequency of college acts, which depends on the complexity and the extent of the institutions.\textsuperscript{74}

Because of the set up of the Single Supervisory Mechanism (SSM), supervisory colleges shall have a dominant role in banks with existence in non-SSM countries and the role of EBA will be considered more important. One bank will be under SSM authorities’ liability, if only functions in SSM countries and is considered as ‘domestic’.\textsuperscript{75}

\textbf{European Securities and Markets Authority (ESMA)}

The European Securities and Markets Authority (ESMA) constitutes an independent European Union Authority that helps in securing the consistency of the EU economic system by strengthening the safety of investors and advancing consistent financial markets. It accomplishes this by evaluating threats to markets, investors and economic consistency, encouraging supervisory convergence, enhancing a Single Rulebook for European Union economic market and directly controlling the trade repositories and the credit rating agencies.\textsuperscript{76}

\textbf{Legal Status}

There are some doubts regarding the legal framework of ESMA. Article 5 ESMA Regulation defines it as ‘Union body with legal personality’ however it is called ‘Authority’. Its formation is narrowly connected to the European Union ‘agencies’, which impose


\textsuperscript{74} Ibid

\textsuperscript{75} Ibid

authorities arising from the Commission. Adversities with ESMA’s legal position have two aftermaths regarding its efficiency as supervisor. Firstly, doubtfulness regarding its flexibility can impact ESMA’s approach on supervision. Secondly, ESMA has many of the elements connected with European Union agencies and the Meroni’s theory. These elements and their associations for legislative securitization may obstruct ESMA’s efficiency as a supervisor.77

Scope and Objectives

ESMA’s goal is the conservation of general interest by participating in the consistency and efficiency of the European Union economic system. For this reason, it contributes to a number of specific actions: ameliorating the inner market’s operation, containing an efficient and stable status of supervision and legislation; securing the coherence, effectiveness, clarity and well-function of the economic market; enhancing cross-border supervisory guidance; advancing equivalent competition’s situations and obstructing arbitration; securing the well-regulation and well-supervision of investments and threats and strengthening consumer’s safety. It is granted to a set of relevant competences that can be sorted as functional, supervisory and quasi-rule-making competences and which aforementioned set illustrates its competences and assignments precisely.78

In exerting its competences, ESMA should function according to its limitations and it is authorized to operate according to the legal acts, and all regulatory measures rested on those acts; it is also empowered to operate in the area of market participators’ acts with respect to subject that does not directly belong under those rules, containing controlling and economic reporting, since those acts are important to secure the efficiency and steady application of these actions.79

ESMA controls these financial market participators, which are not intended for the national authorities’ controls; provisionally forbids or limits specific types of economic

79 ibid
acts, in which the financial markets’ integrity and well-operation or the economic system’s consistency is in danger; enhances cross-border institutions’ decisions; and controls them in case they cause threats in the system.\textsuperscript{80} The aim of evaluating these threats to markets investors and the economic consistency is to identify rising threats, norms and weaknesses and if it is feasible, occasionally to take preventative measures. ESMA exploits its exceptional powers in order to spot potential market conditions that can put in danger the economic consistency, the well-operation of financial markets and the investors’ safety.\textsuperscript{81}

Rule-making

ESMA’s key point of mission is its contribution to the introduction of a Single Rulebook for the financial markets of the European Union. Consequently, the aim of implementing a Single Rulebook for economic markets is to strengthen the Single Market by developing a fair operating ground for both producers and investors throughout the European Union. ESMA participates in enhancing the level of quality of the Single Rulebook for the all the European Union economic markets by drafting Technical Standards and by furnishing guidance to European Union institutions for projects related to the legislation.\textsuperscript{82}

Within Article 8 ESMA Regulation its responsibilities are enclosed. ESMA has been assigned to a number of quasi-rule-making operations. Although this quasi-rule-making is coalescent with many of ESMA’s assignments, it is narrowly related with the duty to contribute in the introduction of high-level unified regulatory and supervision standards, particularly by sharing suggestions with European Union institutions and by introducing recommendations, guidelines and issuing BTS; with the duty of evaluating and controlling market developments and running financial analysis of the market; as well as enhancing investors’ safety. ESMA’s concerned competences, which, regarding the quasi-rule-


\textsuperscript{82} ibid
making, describe the authority to draft recommendations and guidelines and as well as BTS.\textsuperscript{83}

Similar to CESR, the predecessor of ESMA, it cannot follow, autonomously, laws and from the beginning has developed a set of soft-law techniques for itself in order to form the legislative environment more broadly and without the restrictions that are set by the rule-making proceeding. However, ESMA has also carried many of the adversities faced during the CESR period, especially regarding the legality of its soft-law acts and is impacted by the adversities coming from its agency condition. This happens in situations regarding the Commission’s capability to refuse ESMA’s suggested BTS and recommendations, doubting ESMA’s independence.\textsuperscript{84}

**Supervision**

Concerning the supervision, the connection between NCAs and ESMA can be considered as hierarchic, since ESMA has the capability to instruct decision on NCAs, to interfere in competent markets in outstanding conditions, and to set its supervisory directions to ‘comply or explain’ mechanism. From the other side, ESMA belongs to the similar status with NCAs as ‘peer supervisor’, but with distinct liability for specific market participants. ESMA time to time initiates and implements peer reviews on most of the practices of NCAs in order to enhance more the stability in supervisory results. The aforementioned peer review processes, which recognize and enclose well-operations, may be more efficient in enhancing supervisory acts and European Union stability. Moreover, ESMA directs international relationships, guides NCAs activity, evolves and exchanges intelligence and best methods and supervises the system in general.\textsuperscript{85}

Also, there are some other set of levels to ESMA’s supervision operation. Firstly, ESMA works on the CESR’s tasks by participating in a series of cross-border guidance acts, with respect to the support of economic consistency.\textsuperscript{86}


\textsuperscript{84} ibid

\textsuperscript{85} ibid

\textsuperscript{86} ibid
Secondly, it is authorized to operate as a direct supervisor. Via ESMA, the European Union has the ability to strengthen NCAs obedience to European Union law (Article 17 ESMA Regulation), to give guidance in crisis conditions (Article 18), and resolutions in NCAs’ stalemate with mandatory mediation (Article 19). ESMA has also been empowered with unique and direct specific-area supervision competences over two bodies with widespread range, trade repositories and rating agencies. ESMA can also impose its direct supervision competences over economic market participators, in cases such as NCAs might breach the European Union law (Article 17), urgent conditions (Article 18) and in cases that ESMA is authorized to intervene among NCAs (Article 19). 87

Thirdly, ESMA is authorized to enhance supervision convergence, by forming daily regional supervision by NCAs. ESMA is introducing a stable method to surveillance, beyond and further the management and guidance of host, home and cross-border threats, and it is in capable of exercising excessive functional processes by NCAs. 88

Finally, ESMA has been granted to a set of competences and responsibilities connected to economic consistency via macro-prudential system supervision and restriction of systemic risk and also connected to collaboration with the ESRB. ESMA has been delegated with the responsibility of controlling the systemic risk and confront any threat of interruption in financial services that is provoked by malfunctions of the economic system, and has possible damages within the market and generally to the economy. ESMA in co-operation with the ESRB, introduce a similar method to recognize and manage the systemic risk, containing both qualitative and quantitative indicators. ESMA, in order to regularly collaborate with the ESRB, must take into consideration the ESRB warnings and recommendations in the execution of its assignments. Furthermore, ESMA is responsible to supervise and evaluate the market growth and, if it is necessary, update the ESRB, the other ESAs, the Council, the European Parliament and the Commission about possible threats and weaknesses. 89

88 ibid
89 ibid
Direct Supervision: Credit Rating Agencies and Trade Repositories

The ESMA Regulation does not refer to daily ESMA’s direct supervision over specific market sections. These authorities are indirectly expressed by Article 8(1) (j) that demands ESMA to complete particular assignments defined in the Regulation or other regulatory acts. So far, ESMA has been charged with sole direct functional supervisory authorities, over two institutions: Trade Repositories and Credit Rating Agencies. ESMA’s liabilities can be considered as the tasks of direct supervision and enrolment of Credit Rating Agencies (CRAs) in order to ensure that the latter are complying with the CRA Regulation. The Credit Rating Agency system assigns surveillance authorities on ESMA and sets a functional standard where ESMA reserves single functional competences but can also request NCAs to perform a series of supervision roles, and which describes the NCAs relevant tasks in reinforcement of ESMA. The CRA Regulation established a single approach to the CRAs Supervision and Regulation across the European Union. This template was created to strengthen the powers of credit rating acts to secure high standards of ratings and investors’ safety. The success of this process can be reached through supervisory practices by ESMA such as demanding the appropriate information, investigating and analyzing documents. ESMA can proceed with surveillance measures in case of violation in the CRA Regulation, depending on which level the breach is.

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Finally, this approach has been also developed for the assignment of sole supervision, registration and executive competences on ESMA regarding Trade Repositories (TRs).  

**Supervisory Convergence**

ESMA’s aim is to secure a stable surveillance method to ensure investors’ safety, the well-operation of economic markets and the financial consistency. Supervisory Convergence is an ESMA’s priority for 2016-2020. ESMA contributes in the initiation of a common surveillance attitude among NCAs to implement effective and stable supervision, across the European Union, which is called supervisory convergence. To accomplish this task, ESMA prioritizes its yearly convergence via its relevant Programme known as Supervisory Convergence Work Programme, exploiting a set of techniques, as introducing coordinations and advices, encouraging close communication among NCAs and ESAs throughout the European Union, proceeding in peer reviews to evaluate competent supervisory acts, mediation among national authorities and acting on violation of European Union Law. Therefore, ESMA fosters a stable and efficient introduction and execution of the same methods and rules throughout the 28 Member States. The general objective is to make an effort for supervisory and regulatory results. Additionally, supervisory convergence denotes the exchange of top methods and the accomplishment of positive outcomes for the economy and the NCAs, which operation is executed in collaboration with NCAs, and constitutes a dominant aftermath of the introduction and execution of the Single Rulebook. The endeavors for enhanced supervisory convergence are useful for both economic market participators and supervisors. The technique in order this to be accomplished is the assignment of liabilities among NCAs or to ESMA. The aim of this delegation is to promote collaboration, avoid the

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duplication in supervisory duties, organize and improve the supervisory procedure and decrease the charges applied to financial market participators.97

Mediation

In conditions where NCAs do not agree with each other in cross-border level, ESMA can contribute in the arrangement of their disagreements, if this is included in the European Union Law, via the process of Article 19 ESMA Regulation with which ESMA helps the related NCAs in achieving an arrangement of agreement for all parties; if this cannot be achieved, ESMA may follow a mandatory decision to arrange the situation; or via non-mandatory mediation according to the procedure of Article 31 ESMA Regulation.98

More specifically, on the one side, ESMA has the authority to introduce legally mandatory decisions for the arrangement of cross-border disagreements among NCAs, requesting an NCA to proceed or not to a particular action for the settlement of the issue. ESMA can proceed in actions either by NCA’s requirement or by itself. The arrangement can be achieved by joint decision of the NCAs during the conciliation stage or if they cannot end up in settlement of the matter, and by mandatory resolution arisen by ESMA on the relevant NCAs. On the other side, in conditions of dispute among NCAs, ESMA, by itself or after the relevant NCA’s requirement, can proceed in actions to implement an arrangement of agreement via non-mandatory mediation.99

European Insurance and Occupational Pensions Authority (EIOPA)

The European Insurance and Occupational Pensions Authority (EIOPA) was introduced as a result of the reforms to the supervision’s structure within the European Union’s economic sector. Prior and during the economic crisis in 2007 and 2008, the European Parliament suggested proceeding for a unified European supervision, in order to secure competitiveness among all the areas in the European Union level and to reflect the growing consolidation of economic market within the Union. As an aftermath, the

99 ibid
supervisory framework was to elaborate in order to minimize the potential threat of future economic crises. EIOPA constitutes one of the three European Supervisory Authorities and is the successor of CEIOPS.\(^\text{100}\)

**Supervision and Regulation**

EIOPA assists in the establishment of high-level regulation and supervision within the European Union. EIOPA introduces a single rulebook for pensions and insurance within the European Union and is authorized to develop suggestions and co-ordinations, establish technical standards, issue regulatory and furnish recommendations to the European Union institutions for respective acts in European Union law. Also, EIOPA provides harmonization in supervisory procedures across the European Union. For these reasons, EIOPA utilizes tools such as peer review, work of supervisor’s colleges, seminars and trainings and the supervisory manual.\(^\text{101}\)

**Insurance**

The target of EIOPA is to safeguard the public interest. EIOPA’s competencies comprise recommendations and developments in draft implementing and regulatory technical standards. Furthermore, EIOPA is authorized to share recommendations to the European Parliament, the European Commission and to the Council for insurance-wise.\(^\text{102}\)

**Financial Stability**

For the securitization of economic stability, EIOPA monitors and evaluates norms, weaknesses and threats arising across sectors and borders in the field of its powers and from the micro-prudential level as well. Additionally, EIOPA proceeds in markets’ financial review and in the effects of market establishments informing, on regular basis, about its


research results the European Systemic Risk Board, others European Supervisory Authorities and the institutions of European Union.\textsuperscript{103} The EIOPA’s philosophy to economic stability is to assemble the vulnerability and risk reviews in order to evaluate the consistency of the sector timely. For this work, EIOPA utilizes the followings:

Financial Stability Report: twice a year, EIOPA executes an integrated financial review of vulnerabilities and risks experiencing the pension and insurance sector, in order to evaluate their economic stability.

Risk Dashboard: its goal is to provide coordinated ideas to tackle the dangers of economic sector and to contribute with evaluation of these dangers and augment policies.

Stress Tests: stress test functions for the pension and insurance sector must be performed on a regular basis and they have as an aim to evaluate the sturdiness of financial institutions and stiff growth conditions utilizing stable techniques throughout jurisdictions.

Cooperation with the ESRB: through co-operation EIOPA is permitted to escalate insurance issues to ESRB and update about its progress, and at the same time to benefit by ESRB’s wide area of review in EIOPA’s own task.\textsuperscript{104}

**Crisis Prevention**

EIOPA’s main task is the securitization of avoidance and management of crisis and the maintenance of economic consistency in crisis conditions, which can be divided into three categories: in the micro-prudential category, which concentrates on the dangers influencing individual institutions; the macro-prudential category, which aims to find the origins of systemic risk; and the internal category, describing procedures for EIOPA to perform well in crisis conditions.\textsuperscript{105}

The Regulation, that introduced EIOPA, assigns to it the following objectives, which constitute EIOPA’s philosophy to crisis avoidance and management:


\textsuperscript{104} ibid

Crisis prevention and management: In case of malfunction in progress, EIOPA has to accommodate and, if necessary, to guide the actions of competent authorities.

Recovery and resolution: EIOPA should provide contribution and involvement in the growth and co-ordination of the efficient and steady recovery, procedures in emergency conditions and measures to reduce the systemic impact of any omittance.

Macro-prudential policy in insurance: EIOPA must secure that it has progressive and continuous capability to act efficiently to potential systemic risks’ materialization, especially to institutions that might create systemic risk.106

**National Competent Authorities (NCAs)**

Despite the ESA’s introduction into the organization of European financial market surveillance, the latter is centered around the body of National Competent Authorities (NCAs). The ESFS must constitute a wide decentralized network where NCAs will maintain the duty of daily supervision and most of their responsibilities demonstrating both the effectiveness of decentralization and the most important complications of centralized supervision.107

NCAs are liable for authorizing the actors of financial market, for continuous supervision, and, accordingly on local policy agreements, for enhancement. Whilst ESMA is investigating how NCAs impose their supervision, it, still, constitutes the basic local operation. The European Union regulatory structure, which rules the NCAs’ surveillance acts and competences, has, nevertheless, been focused on the results. The regulatory measures, that shape markets regulation and European Union securities, demand Member States to assign to NCAs to perform the relevant operations. Furthermore, they determine the supervisory competences the authorities are responsible for.108

NCAs have the competence to: demand data from any individual associated with actions of alternative investments funds managers (AIFM) and, if needed, conduct investigations; have access to all the records; proceed with direct research, with or without any notice;

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108 ibid
report criminal issues; request the termination of any action against the alternative investments funds managers directive (AIFMD)\textsuperscript{109}; require the seize of properties; demand the provisional forbiddance of professional actions; request from entitled controllers and AIFMD depositaries to give information; take any measure that secures that depositaries comply with the AIFMD’s requests; suspend manager’s or depositary’s potential given authorities and; demand controllers to conduct affirmations or examinations.\textsuperscript{110}


CHAPTER THREE: The European Systemic Risk Board

This chapter presents the functions of the European Systemic Risk Board. The basic meaning of systemic risk is described as the financial system’s risk with a possible negative impact on the economy and the internal market\textsuperscript{111}. The European Systemic Risk Board (ESRB) constitutes a collaborative group that consists of representatives of the ESAs, the European Commission and the national central banks. Under the European Systemic Risk Board’s responsibility lays the task of the European Union financial system’s macro-prudential supervision, in cooperation with the ECB, for the mitigation or better prevention of possible systemic risks to economic consistency within the European Union. Also, its contribution provides a good function of the internal market resulting in securitization of sustainability of economic growth within the financial sector (Article 1(1) ESRB Regulation).\textsuperscript{112}

In contrast with ESAs, ESRB does not have supervisory and legally binding rule-making powers. Additionally, it must always co-operate with both the ESAs and NCAs. Whatever regards the ESRB’s targets, the ESRB undertook a number of objectives, including the control, identification and provision of recommendations and warnings related to risk (Article 3(2)). Therefore, in conditions where financial stability might be agitated by potential systemic risk, ESRB can introduce \textit{ex-ante} warnings, where potential risk is considered to be critical, and recommendations and controls the on-goings to its recommendations and warnings. ESRB addresses classified warnings to the Council where it regards an ‘urgent condition’, in the scope of Article 18 EBA/ESMA/EIOPA Regulations. ESRB analyzes and gathers all the important information. Furthermore, ESRB must have close cooperation with authorities and provide them with all the relevant information upon the systemic risks for the execution of their objectives. ESRB can introduce a number


of qualitative and quantitative signs, a ‘risk dashboard’, for measurement and identification of the systemic risk, once again in close co-operation with authorities.\textsuperscript{113}

The ESRB has advisory character and is not engaged in ESAs’ rule-making activities and supervisory field. However, ESRB was created to affect and form regulatory, supervisory and fiscal rule-making. ESRB, in contrast to ESAs, is not independent. Nevertheless, ESRB applies objectivity requirements. ESRB’s members ought to perform their tasks objectively and in favor of the European Union.\textsuperscript{114}

\textbf{ESRB Functions}

ESRB has two basic objectives: it is responsible for gathering and reviewing information (Article 15 ESRB Regulation) as well as for giving recommendations and warnings (Articles 16–18). ESRB has to update the ESAs regarding information upon risks to succeed in their goals, when ESCB, the Commission, competent authorities and the ESAs have to collaborate with ESRB and supply it with all important information to accomplish its objectives. The ESRB is exclusively authorized to request information from both ESAs and other financial institutions if its requirements are not covered (Article 36(1), (2) EBA/ESMA/EIOPA Regulations).\textsuperscript{115}

Main position in ESRB’s efficiency as control of macro-prudential risk is its competences to introduce recommendations and warnings (Articles 16–19) to the national and European Union authorities. In case that threats might emerge in the process of achievement of its targets, the ESRB must warn and if necessary introduce recommendations for preventive activities and recommendations for regulatory initiatives as well (Article 16(1)).\textsuperscript{116}


\textsuperscript{115} ibid

\textsuperscript{116} ibid
Recommendations and warnings can be of particular or generic subject, and must be conveyed to the European Union itself or at least one or more Member States, the NCAs, or the ESAs. Furthermore, recommendations can be addressed to the Commission regarding European Union law (Article 16(2)). Recommendations and warnings to any receiver must be addressed to the Commission, the Council and the ESAs, if the receiver is a competent authority.\textsuperscript{117}

ESRB recommendations and warnings constitute soft law and are non-mandatory, but to which a process of ‘act or explain’ is applicable. Recommendations and warnings can be published after the decision of ESRB’s General Board as appropriate\textsuperscript{118}. In case that, ESRB considers that a recommendation is not applied, or insufficient excuse is given, it has to update the Council and also the ESAs where necessary (Article 17(2)). Furthermore, ESAs are obliged to evaluate the implications of any recommendation or warning granted to it, to consider the appropriate action and to update the Council and ESRB on the reasons of non-followed actions (Article 36(4) EBA/ESMA/EIOPA Regulations).\textsuperscript{119}

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CHAPTER FOUR: Implications of the New Financial Architecture

This chapter aims to review the ESFS and to evaluate the problems the ESAs and ESRB may face. Article 81 of the EBA/ESMA/EIOPA Regulations awards the Commission the right to issue reports on the operation of the ESFS, ESAs, and ESRB. The Commission published these reports in August 2014. Bearing in mind these reports and the public consultations, in September 2017 the Commission has proposed ways to strengthen the operation and organization of the ESFS in general. Therefore, this will allow more effective financial supervision within the European Union\(^\text{120}\) for further economic integration and complete capital market union in the scope of growth and investment across the European Union and stability of the monetary and economic union. Upon their approvals, the suggestions will enhance the funding of the ESAs, the governance and mandates, for financial markets and securities (ESMA) for banking (EBA) and pensions and insurance (EIOPA). To secure an integrated implementation of European Union law and prompt for real Capital Markets Union, the suggestions grant ESMA with competences for direct supervision in particular economic fields.\(^\text{121}\)

In September 2018 the suggestion was modified by the Commission publishing a “Communication on strengthening the Union framework for prudential and anti-money laundering supervision”, which proposes the centralization of anti-money laundering competences to EBA, reinforcing the anti-money laundering policy.\(^\text{122}\)

In March 2019 Member States and the European Parliament came on the conclusion on amending the supervision of financial markets in the European Union, making it stronger and more integrated. This conclusion strengthens the existence and role of the ESAs.\(^\text{123}\)


Finally, in April 2019 the European Parliament approved the regulation concerning the organization of a capital markets union, as well as the assessment of the ESFS.¹²⁴

**Assessment of ESAs Work**

The Commission introduced a review, as demanded under ESAs Regulations, with accompanying suggestions that illustrate the aftermaths of the new economic system. More particularly, it denotes that, generally, the ESAs have succeeded in their existing objectives since they have created well-functioning organizations. Nevertheless, there are some areas that still need to be developed to confront future challenges.¹²⁵

Generally, ESA’s supervisory competences constitute the biggest interest of stakeholders, who mainly did not concern for the challenging Articles 17–19 EBA/ESMA/EIOPA Regulations interference authorities, even though the Review encouraged the daily supervision to remain at NCAs level. There was not so much support for the assigned of additional direct competences in ESAs however there was expressed supportive action for ESMA to gain extra authorities connected with market abuse supervision and prospectuses.¹²⁶

The Review supported the idea for progressive reform in the sphere of ESFS’s institutional restructuring. Stakeholder perception was that ESAs supervisory stability work impacted less than its legal practices; the Report underlined, particularly, poor or non-use of peer reviews, intervention, and violation of European Union law competences.¹²⁷

Likewise, although the European Parliament understood that the ESFS has improved the stability and integrity of supervision, it requested some extra improvements. These

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¹²⁷ ibid
contained the enhancing of peer review, the specification in mandatory mediation and the supervision discretion, the improvement of Single Rulebook and generally, the introduction of defined ‘ESA approach’ and the undertaking of ESAs practices in favor of European Union’s interest.\textsuperscript{128}

Alongside the ESFS Review, the International Monetary Fund (IMF) proceeded in precise evaluation of ESAs that mainly concentrated in surveillance. The IMF asked for enhancing of its peer review practices, defining the restrictions of the Articles 17–19 violations of European Union law and binding mediation competences, and of its capabilities to proceed in crisis prevention and in risk determination.\textsuperscript{129}

ESA’s self-evaluation mirrored the main subjects of the Review. It understood the necessity that granted to its Rulebook operations and to ESAs in order to strengthen its convergence of supervision actions. Thus, the legal practices have to be defined and followed in a relative and steady way and compliance has to be assessed in a regular manner. This goal is accomplished by European Union actions relating to the convergence of supervision.\textsuperscript{130} However, it also highlighted the adversities that its existing governance model creates where it is getting crucial to critique the surveillant exercises of the Board of Supervisors and recommended its organization to be reconsidered regarding its efficiency connected to supervisory convergence. Its official suggestions, nevertheless, were restricted to ESAs being introduced with a more powerful regulatory command and sufficient assets to enhance its capability to gather and share information with and from national authorities.\textsuperscript{131}


\textsuperscript{129} Ibid

\textsuperscript{130} European Commission. (2017). Public Consultation on the operations of the European Supervisory Authorities, Brussels.


More specifically, the target of the ESAs' actions is considered wide with the possibility for expansions in the area of investor and consumer safety, as well as in the banking sector. Therefore, the Commission should reconsider whether it is necessary to extend the existing powers of the ESAs in order to cover the aforementioned areas and make the ESAs more effective.132

Concerning the regulatory role of ESAs, ESAs tasks taken over for the establishment of the Single Rulebook has led to crucial enforcement towards strengthened regulatory harmonization and stability. Therefore, the European Union assigned to itself a considerable number of high-quality rules in a reasonable time-manner. In order ESAs to dispose adequate time to prepare and submit high-quality draft technical standards to the Commission, there is a need for flexible deadlines. Furthermore, there is an absence of completed review on deliberations.133

The ESAs has been established as European Union agencies and, hence, they contribute to the establishment of European Union procedures. Nevertheless, they are different from European Union institutions and their position in the regulatory procedure has to be evaluated in limits implemented by the Treaty.134

Recommendations followed by the ESAs according to Article 16 EBA/ESMA/EIOPA Regulations are non-mandatory, but imply the ‘comply or explain’ aspect. These measures proved to be adaptable, however, there are some doubts concerning to their nature. This contradicts the Commission's perspective that the ESAs' competences should have a legal form.135


133 ibid

134 ibid

135 ibid
A suggested way to deal with that is to increase the clarity of the regulatory procedure. The ESAs should also draft legislative texts for draft technical standards, while the Commission should introduce more suitable deadlines.\textsuperscript{136} Furthermore, the establishment of a single supervision network and practices constitutes a future aim, as the ESAs have granted priority to their regulatory role, a decision partially caused by their weaknesses to governance. Undoubtedly, the existing ESAs governance structure creates adversities in the management of disagreements between NCAs and ESAs and there is a potential threat that ESAs decisions are not in the same line with the European Union’s interests.\textsuperscript{137} The ESA’s privilege for access to national authorities’ data could be utilized in a more efficient way. This was made even more apparent by the economic crisis, which exposed the insufficiency of the existing information sharing system between ESAs and NCAs, denoting the need for a more close cooperation between them. Thus, the ESAs have to be authorized to acquire data straight from market participators in particular cases and without using every other method of collecting data. This authorization can enhance the ESAs’ operation for the unhindered fulfillment of their objectives and strengthen the supervision.\textsuperscript{138} The ESAs did not introduce suggestions, or obligatory decisions according to Articles 17–19 EBA/ESMA/EIOPA Regulations, on urgent conditions, mandatory mediation, violation of law, however, they have used their moral offer and their non-mandatory mediation. The absence of binding mediation usage has been ascribed by the stakeholders to several reasons such as the ESAs’ governance body that is reluctant to proceed with actions or decisions against competent authorities, the preventing implications of the relevant competences, and the absence of transparency of the established Regulations in terms of


application and the activation of mandatory mediation. One way for further investigation is to define the field of application of the mandatory mediation.\textsuperscript{139}

The Commission also provides alterations to Article 17 EBA/ESMA/EIOPA Regulations regarding the violations of European Union law. In order the ESAs’ competences to identify violations of law to be efficient, it has been determined crucial that the ESAs have on their disposal all the related data. The alterations secure that in the cases of violation of European Union law inspections the ESAs will be in position to direct a reasonable request for data straight to related financial market participators, financial institutions or other national authorities. In this case, the national authorities have to be updated and accommodate the ESAs to gather the required data.\textsuperscript{140}

There are a number of ameliorations that could be taken over by the ESAs to confront uncertainties in this scope. Firstly, the ESAs must target to enhance the activity of supervisory convergence, via enhanced and necessary usage of peer reviews. Secondly, the Commission should investigate more choices in order to reconsider the uncertainties in the mediation competences.\textsuperscript{141}

Regarding the financial stability as well as the ESAs’ monitoring and coordination role, the ESAs undoubtedly play a critical role in the observation of the progress within the financial markets as well as in considering the sturdiness of financial institutions and economic system of the European Union in general. For this reason, ESAs have created different methods to accomplish their liabilities to recognize systemic risks. Until now, any urgent condition has not been reported, however, ESAs have taken preventative measures to efficiently act, if this is needed.\textsuperscript{142}

Furthermore, the ESAs have proceeded to different decisions in order to enable the information sharing and advance the coordinated movement. The most remarkable


\textsuperscript{142} ibid
examples consist of the Joint Committee review of risks, the ESMA’s measures guidance being followed by the national authorities and the EIOPA suggestion on the low-interest rates conditions. Most stakeholders are satisfied with ESAs’ guiding role.\textsuperscript{143}

Concerning the ESAs' structure, it seems suitable as it encourages the close cooperation between the micro- and the macro-prudential level, ESAs and ESRB respectively. In the need of structural alterations, like consolidating the powers into one seat or establishing a ‘twin-peaks’ model, must be thoroughly evaluated considering the foundation of Banking Union.\textsuperscript{144}

Furthermore, it is wide-spread known that the direct supervision of CRAs by ESMA is considerably efficient. Therefore, an expansion of direct supervision to financial markets could be examined by the Commission.\textsuperscript{145} Such a potential expansion of ESMA’s competences can be assigned in market sectors, where it is crucial to enhance more unified, effective and well-operating financial markets’ means. Moreover, the aforementioned powers can be applied in fields where exceptional transnational action or harmonization implies wider threats for the financial consistency or in fields where integrated interpretations in the application of European Union rules are effective.\textsuperscript{146}

\textit{Challenges Facing ESAs}

The European System of Financial Supervisors visibly lacks the sufficient competences or the appropriate regulatory approach to perform its objectives and more specifically, the effective intervention powers to obstruct economic systemic risk even though this was described as a weakness in the economic field.\textsuperscript{147}

Whatever regards the legal effects, there are reconsiderations to ESAs’ new regulation, which regards the absence of imposed powers since the new regulation does not prohibit


\textsuperscript{144} ibid

\textsuperscript{145} ibid


the mandatory rules to be adjusted by the authorities. Nevertheless, it is vague the understanding of ‘binding’ terminology since it denotes imposed measures, but it does not mean that the authority should proceed with actions opposed to a competent authority. It is unfortunate that the cross-institutional organization and a lot of elements of European Union law have made more difficult the processes of the mandatory technical standards’ creation.\textsuperscript{148}

The struggle for the imposed competences between the national and European Union level has undoubtedly remained within the ESAs’ operation. ESAs’ influence to impose European Union supervision regulations on the European Union three-step-mechanism and assign instructions to financial institutions, can be considered hard. Furthermore, there is an argument the courts, which are independent, must agree with the violation of European Union supervision regulations of the competent authorities as the violation processes introduced by the Commission will be inapplicable and might be time-consuming.\textsuperscript{149}

In urgent conditions, ESAs has the ability to demand for a national authority to be compliant with the European Union law and in particular occasions to assign, directly, orders to single economic market participators, in quicker way than the unwieldy procedure in conditions of breach of European Union law in accordance to Article 17 EBA/ESMA/EIOPA Regulations.\textsuperscript{150}

Nevertheless, the aforementioned competences demand a denotation of an emergency condition by the Council before any ESAs’ action that is important for an ESA to interpose. Also, there have to be non-conventional cases, where synchronized practices are required to act on stiff growth conditions that may put at risk the good operation and the financial institutions’ consistency. It is remarkable to view the way that ESAs utilize these competences whether an emergency condition will happen in the time beyond.\textsuperscript{151}

\textsuperscript{149} ibid
\textsuperscript{150} ibid
\textsuperscript{151} ibid
Furthermore, the ESAs’ influence over urgent conditions is not that effective. ESAs, theoretically, would have influenced over the competent authorities in order to proceed in appropriate measures, whether the competent authority has not responded and that ESAs’ board has considered predominantly that an action should be undertaken for the Markets’ and institutions’ financial consistency. Nevertheless, the current regulation has the versa implications of conceding the Member States’ right for objection, with legal aftermath interrupting ESAs’ powers. This process, in crisis period, might be time-consuming and can have critical impacts. For instance, ESMA’s privilege on the ultimate decision in urgent conditions is not all the time in accordance with the European Union law, as demonstrated in the *Meroni Decision* by the ECJ (Case 9/56). According to that decision, the institutions that are included in the TFEU may enjoy such competence upon them. Nevertheless, it is not clear if Meroni Decision, that impacted the subsidies’ promotion, might be applied to ESMA. Moving the privilege of last decision to the Commission, it can be contrary to the stated purpose to distinguish the external entities from the supervisory authority in order its independence to be secured.\(^{152}\)

One other doubt on Article 38 EBA/ESMA/EIOPA Regulations and the particularly safeguards of Member States, which article grants the latter with a ‘last resort’ power to prevent ESAs’ significant competences in the arrangement of different opinions between Member States and in urgent conditions. Even though the Member States might not refer to this anticipation regularly, its aftermath lies on the restriction upon ESAs’ competences. Nevertheless, it is important to state that the final decisions are adopted not by the single Member States but by the Council, although the Council should double-check its decision that secures coherence within European Union and prohibits single Member States to obstruct decisions.\(^{153}\)

Last, another criticism can be considered with reference to the absence of directions between the budget and the entities. This criticism is associated with the ESAs’ well function. Indeed, in consideration with other, the cooperation among ESAs is not


\(^{153}\) ibid
functional due to their geographical positions, located in two different European cities (Paris and Frankfurt).\textsuperscript{154}

**Challenges Facing ESRB**

The main concern related to ESRB is its efficiency in those responsibility fields that exceed the information assessment and gathering. At first, ESRB confronts topics of legal certainty, which have correlation with the determination of its suggested operations’ legal validity. Article 114 TFEU that permits a body of authority to be covered by the law with liabilities for accommodating integrated establishment by the Member States and for participating in the coordination process, appears to be not practicable in this scenario. The terms of systemic risk and macro-prudential are not indicated in the current EU regulation, and this prohibits the association between the main body of integrated laws and the assignments granted to the ESRB.\textsuperscript{155}

In addition to this, the similar doubts, which concern the co-ordination, are applicable to the ESRB’s condition. The systemic risks efficient supervision demand data gathering and assessment both in macro-level of the economic system and in micro-level of the single financial system participators. ESRB must secure coherence between macro- and micro-supervision, and this assignment relies on the data exchange method’s efficiency among ESFS. The ESRB’s reliance on other entities for the interpretation of its requests, warnings and recommendations for decisive actions denotes its success, or in other words, will inescapably be impacted by the aim of the authorities vested within these entities, the political press on them and also how they will utilize them. Finally, the ESRB’s reputation might be contested, since the ECB has introduced a steady draft of the systemic risk critiques that investigate the situation of the economic system and procure potential risks within a two-year-period.\textsuperscript{156}

The ESRB shall provide assistance to its role of European guidance and supervision, and its capability to introduce individual and public cautions and suggestions. Even though its


\textsuperscript{155} ibid

\textsuperscript{156} ibid
suggestions and cautions are non-mandatory, there is remarkable indirect enhancement. Nevertheless, to manage its targets the ESRB must obtain a reputation for effectiveness and reliability.\textsuperscript{157}

CONCLUSIONS

In January 2011, the Commission suggested the Omnibus II Directive (Directive 2014/51/EU)\(^{158}\) as an aftermath of the introduction of the three new European Supervisory Authorities (ESAs). The suggestion included decisive alterations in regulation and more specifically in the sectors of securities and insurance legislations in order to secure efficient function of ESAs. In essence, these suggestions established the right of ESAs to use their competences, containing the tasks of draft technical standards improvements and the resolution of disagreements among competent authorities. The objectives of this new regime can be considered critical since it aims to secure the stability of the financial market within the European Union.\(^{159}\)

The ESAs set their contribution to initiate integrated supervisory and regulatory standards through the reinforcement of recommendations and guidelines and issue implementing and regulatory technical standards. In addition to this, their enhancements include the steady application of common supervisory practice and legally mandatory European Union practices, securitization of efficient application of European Union legislations of securities, mediation and arrangement of different opinions among competent authorities, acting in urgent conditions and last, maintenance of the financial market participants’ efficient surveillance and the consistency in supervisory colleges’ operations.\(^{160}\)


Nevertheless, there are doubts on the effectiveness of certain views of this new regime. Even though ESAs had been granted with potent rule-making competences, which can secure Rulebook efficiency to European Union securities legislation, potential difficulties might be arisen by the supervisory competences concerning the delimitation and effectiveness of competent authorities’ supervisory powers. From one side, the absence of centralization in supervision leads to reconsiderations due to the potential malfunction of the system, while from the other side, ESAs’ competences to direct and introduce decisions directly to market participants were doubted as well. These aforementioned powers reduce the capabilities of competent authorities and create issues on their functions.\textsuperscript{161}

Notwithstanding the adversities, the ESAs have successfully built well-functioned organizations. They have managed to fulfill their liabilities, even though confronting many requirements. Nevertheless, more developments are needed for the ESAs to completely benefit from their powers.\textsuperscript{162}

Undoubtedly, the capital markets law is remarkably impacted by the financial situations. Therefore, this new system must function in relation to the complexities and the special demands of the markets. This reform pursued the trend to the economic harmonization. Therefore, it can proceed in future alterations of economic supervision, within the European Union. Additionally, it is discussed that future alterations should extend ESAs’ rule-making competences. There are measures that should be applied in political scale, after thorough research of the experiences and the practical impacts, until now.\textsuperscript{163}

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