

**Michel BARNIER**

Membre de la Commission européenne, chargé du Marché intérieur et des Services

**"The new European Supervisory Markets Authority: helping enhance the resilience of financial markets"**

Check Against Delivery  
Seul le texte prononcé fait foi  
Es gilt das gesprochene Wort

ESMA

Paris, 11th July 2011

Ladies and Gentlemen,

We are here today to celebrate the birth of ESMA, the European Securities and Markets Authority. It is the first EU body to be located in Paris. And it is a very important body.

The financial crisis is not over. We are still in stormy waters. And ESMA and national regulators have an important task in steering the financial markets through these waters.

We are in the process of drawing all the lessons from the crisis.

The first of these lessons is that financial markets cannot be left without adequate supervision. And we need more – not less – European supervision in the Internal Market.

This was the wise and insightful conclusion of the De Larosière report in spring 2009.

Two years later, we see the result: EBA in London, EIOPA in Frankfurt and ESMA in Paris. As well of course as the European Systemic Risk Board.

This is revolutionary. And we can be proud of what we have achieved together so far, together with the Council, the European Parliament, national supervisors and all of you here.

But there are many challenges ahead.

### **I. The first challenge: effective supervision**

ESMA is the only one of the three new authorities with direct supervisory responsibilities, and in crucial areas.

I hope that very shortly, ESMA will become the EU's supervisor for trade repositories: we must have sufficient transparency to know who is doing what on the markets. This is the aim of our legislative proposal on OTC derivatives, which I hope to see finally agreed by Council and Parliament by the end of the summer.

Today, ESMA is already the EU's supervisor for credit rating agencies.

These agencies occupy a place which is far too important in Europe. They must be subject to European supervision.

Since the crisis displayed to all the weaknesses of the credit rating agencies, we have not been wasting our time.

With the first regulation on CRAs – CRA I – we established in 2009 the beginnings of a robust legal framework for CRAs, the first in the world.

With CRA II, agreed a year ago, we created a robust supervisory framework for CRAs.

I am now working on new initiatives to respond to new challenges. They will focus on tackling in particular our overreliance on ratings. It is one of our main concerns. We want credit ratings to be considered simply as one view amongst others.

CRA ratings are too embedded in our legislation, and I intend to reduce as much as possible the references made to those ratings in our prudential rules. That is my first priority.

I observe that the ECB has also just taken a step in a similar direction. It is an issue of financial stability. It is an issue of political responsibility and democracy. Who can justify and accept that private companies have such power over populations who are committed to efforts which are unheard of?

Today, I can already tell you that the first of these measures to limit overreliance will be integrated into the upcoming modification of the Capital Requirements Directive, otherwise known as CRD IV and which is the effective translation of Basel III into EU law. I will make these proposals on 20 July. To limit overreliance, we will be strengthening the requirement for banks to carry out their own analysis of risk, and not rely on external ratings in an automatic and mechanical way.

We will also make other concrete proposals before the end of the year to limit overreliance to deal with the insurance, asset management and investment fund sectors.

But other questions are also essential, including sovereign debt ratings, the limited competition in the rating industry, liability towards investors and issues pertaining to conflict of interests. All essential issues that we won't shy away from.

Europe will move forward in the coming weeks. But we also need to act at a global level. In the coming days, I will write to Francois Baroin so that we can look at these issues again the G20 context, helped of course by the expertise of the IMF.

We need to be more demanding when it comes to how CRAs rate sovereign debt. These ratings play a crucial role not only for the rated countries but for all our countries: a downgrading has the immediate effect of making a country's borrowing more expensive, it makes states weaker, and there are possible effects of contagion on neighbouring economies.

The objective is not to break the thermometer: clearly some Member States face real difficulties. But one can't just not take into account the fact that these Member States are members of a European Union, they benefit from the solidarity of its members; and they are subject to internationally agreed aid packages.

That is why we should ask ourselves, in the same way as Madame Lagarde has, whether it is appropriate to allow sovereign ratings on countries which are subject to an internationally agreed programme.

I intend to ask the Polish Presidency to put this issue up for discussion at one of the forthcoming meetings of finance ministers.

CRAs must follow a methodology which is both specific and very rigorous when they rate sovereign debt, and they must be held accountable by supervisors.

The EU regulatory framework for credit ratings already contains some rules on conduct, disclosure, and transparency that do apply to sovereign debt ratings. But I believe further measures in this area are necessary; so we can improve further transparency, monitoring, and methodology.

For example, we are considering introducing requirements which would allow a government to check the accuracy of the data used by an agency in advance of any downgrading. We are considering compulsory publication of the analysis which leads to the modification of a rating and the obligation of conducting a full analysis more regularly.

Other priority: improving competition in the rating business. As I have said in the past, I believe that the CRA market is too concentrated, and more competition and diversity is essential.

This is a complex issue but there are interesting ongoing projects in some Member States. The Commission will do its best to support directly or indirectly the emergence of new actors. Another interesting idea to explore is the possibility of creating a network of small and medium-sized agencies.

Finally, when one knows the role of agencies and the impacts of their decisions, how can we not look at how to make them more responsible; including looking at the issue of civil liability with respect to investors?

European regulation could allow for investors to take agencies to court when there has been negligence or violation of applicable rules. Of course; there are already rules relating to civil liability in some member states. But a European framework will allow for a much more coherent application of rules and might help to make financial actors more responsible.

However, full application of the current regulatory regime is needed before all those changes occur. That is why it is essential the registration of CRAs is finalised rapidly and all regulators/ESMA should be in a position to fulfil their tasks as soon as possible to ensure efficient and rigorous supervision of rating agencies.

## **II. ESMA's second challenge: to act as a rulemaker.**

ESMA is at the centre of a network of EU securities **supervisors**, with more muscle and more powers to coordinate than its predecessor CESR. More than ever, we need coherent and harmonised supervisory standards.

That is why we are moving towards a single European rulebook, with more directly applicable legislation. Rules which will be imposed on everyone and will have to be interpreted in the same way across Europe, unlike what has been happening until now. It is one of the objectives of our draft Regulations on OTC Derivatives and short-selling.

ESMA will also have a role **drafting** legislation, in the form of technical standards. These will be crucial to the success of our new regulatory framework. And the technical standards prepared by ESMA will also be directly-applicable.

The upcoming MiFID review is a good example. This Directive has contributed to the creation of a genuine single market for investment services and activities across Europe. It has led to more competition and a high level of protection for investors across Europe.

But we also have to recognise its limits when it comes to transparency and its ability to anticipate technological changes, which have led to regulatory loopholes.

It is why we need adapt the existing rules to **address new market and technological developments** such as the widespread use of automated trading (or high frequency trading) and new types of trading facilities.

We must also make sure that trade **transparency** extends beyond shares, to other types of instruments such as **commodity and other derivatives**. Commodity markets in particular are just too important, both for producers and consumers throughout the world, for them to be manipulated by actors with no link or interest in the actual trade or the physical markets.

These are all areas where ESMA will have the necessary expertise to play a large role in developing new technical standards.

The fact that all these norms will be directly applicable means ESMA will be better able to monitor their correct application, in a more effective way than when EU legislation is transposed into national law.

### **III. The third challenge/ active surveillance of the markets**

ESMA will also be responsible for constantly monitoring markets, together with national supervisors. ESMA will play a key role putting an end to the remaining shadowy parts of the financial sector.

Our proposals on derivatives and short-selling will bring about far more transparency, and give wide-ranging powers to ESMA.

On short selling, ESMA can and must play a central role in ensuring a consistent and effective European **response in exceptional situations**. During the financial crisis, we saw the uncertainty and ineffectiveness of fragmented national responses, with Member States temporarily restricting short selling at different times and in different ways. I trust that the European Parliament and Council will preserve the level of ambition of the Commission's proposal so that ESMA is given clear powers to coordinate and, if necessary, act on short selling in exceptional situations.

In terms of monitoring, I would also like to recall that ESMA has important consumer-related powers, and must monitor market innovations, with the power to temporarily ban activities when this is justified.

### **Conclusion**

It is clear that ESMA has many tasks and responsibilities. And the number of tasks will increase in the future.

Today, only fifty people are working for ESMA. This is clearly very challenging. I commit to do whatever I can to ensure that ESMA receives the resources necessary to carry out its important tasks, both in the short and the longer term.

And I will continue to remind Member States about their budgetary responsibilities.

ESMA was created on 1 January. But now the transitional period is over and ESMA is walking on its own. Let me take this opportunity to thank all those who worked so hard to make this happen. Many of you are present here today. This includes Olivier Salles from DG MARKT, who has ensured the function of temporary Executive Director.

Needless to say, I also want to congratulate the first chairperson of ESMA, Steven Maijor and the Executive Director, Verena Ross. Steven and Verena - you have passed a demanding selection process. And you have all my confidence in doing this important job!

Let me finish by emphasising that ESMA is independent – independent of the Commission, of the European Parliament, of the Member States. This independence is crucial for ESMA's credibility. We will work together. We will support each other. But we will always respect each other's independence.

I look forward to our co-operation and I will surely be back.