

PRESS RELEASE

ESMA finds diversity across Europe in regulators' contingency measures for financial crisis situations

ESMA publishes today a summary of a pan-European mapping on contingency measures (Ref. ESMA/11-26). In December 2009, a mapping exercise was launched under CESR in order to provide a better understanding on how national authorities in the financial sector across Europe, are equipped to deal with emerging crisis situations and apply contingency measures available to them at national level, in times of financial crisis. This work will help to ensure better co-ordination in future crisis situations under ESMA.

The mapping carried out by the Review Panel, ESMA's peer pressure group, contributes to achieving increased supervisory convergence amongst national authorities.

Jean Guill, Member of the Management Board of ESMA, Chair of the Luxembourg Commission de Surveillance du Secteur Financier (CSSF), and Chair of ESMA's Review Panel that conducted the mapping, stated:

"Today's publication shows the importance of creating a common legal basis in order to enable national supervisors to act in a co-ordinated way in times of financial crisis and also in order for ESMA to succeed in effectively facilitating and co-ordinating the response in a crisis situation. To enable both ESMA and national supervisors to effectively fulfil their functions and roles, should a crisis arise, further steps seem to be necessary in order to vest competent authorities with suitable tools to address in a common way future situations that constitute or might lead to a crisis. This work therefore provides a useful foundation for consideration by Member States and EU Institutions."

The financial crisis revealed the importance of competent authorities being able to undertake emergency actions in a co-ordinated manner in order to intervene in crisis situations when critical market conditions arise with potential systemic impact that may cause disruption of the securities markets, or, affect the stability of the whole or of a part of the financial markets. Examples of such powers include the power to shut down the market, to suspend the redemption and repurchase of UCITS-units, to deal with market insolvencies, and major fails by market traders, clearing houses or settlement systems.

Diversity in powers across Europe

The main conclusion of this mapping carried out in 2010, is that it is unlikely that national authorities could address a crisis situation on a common or comparable legal basis and accordingly act in a fully co-ordinated way in a crisis. The availability of powers for national authorities in a crisis, with respect to the different areas of securities regulation, is diverse throughout Europe; the nature and scope of their contingency powers as well as the legal conditions governing their exercise differ significantly. The availability of powers that might need to be applied in a crisis situation generally has not been assessed throughout the national authorities in the financial sector before, as a result, this may be the reason why national authorities reported practical experience mainly with respect to the ban of short-selling in specific financial instruments.



Since empirical evidence with past crisis situations may not be exhaustive, a review of the legal provisions that grant national authorities powers without reference to a specific situation (“general clauses”) or with reference to a more or less unspecified emergency situation, have been addressed in this mapping as well.

Stronger role for ESMA in crisis situations

This mapping was conducted in the context of preparatory work, given the new legal framework for action in emergency situations set out in the ESMA Regulation. Under the provisions of this Regulation, ESMA will now have an important role in the event of adverse systemic developments, and in case of emergency situations. The Regulation gives ESMA both the general role of facilitating and co-ordinating the actions to be undertaken at national level and the power of adopting individual decisions that apply across the Union, under certain conditions in emergency situations as declared by the Council.



Notes for editors

1. ESMA is an independent EU Authority that was established on 1 January 2011 according to EU Regulation No. 1095/2010 as published on December 15, 2010, in the Official Journal of the European Union (L 331/84). The Authority contributes to safeguarding the stability of the European Union's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, as well as enhancing investor protection. In particular, ESMA fosters supervisory convergence both amongst securities regulators, and across financial sectors by working closely with the other European Supervisory Authorities competent in the field of banking (EBA), and insurance and occupational pensions (EIOPA).
2. ESMA's work on securities legislation contributes to the development of a single rule book in Europe. This serves two purposes; firstly, it ensures the consistent treatment of investors across the Union, enabling an adequate level of protection of investors through effective regulation and supervision. Secondly, it promotes equal conditions of competition for financial service providers, as well as ensuring the effectiveness and cost efficiency of supervision for supervised companies. As part of its role in standard setting and reducing the scope of regulatory arbitrage, ESMA strengthens international supervisory co-operation. Where requested in European law, ESMA undertakes the supervision of certain entities with pan European reach.
3. ESMA also contributes to the financial stability of the European Union, in the short, medium and long-term, through its contribution to the work of the European Systemic Risk Board, which identifies potential risks to the financial system and provides advice to diminish possible threats to the financial stability of the Union. ESMA is also responsible for coordinating actions of securities supervisors or adopting emergency measures when a crisis situation arises.
4. ESMA replaced the Committee of European Securities Regulators (CESR), an advisory body comprised of EU securities regulators that advised the European Commission from 2001 to 2010 on policy issues around securities legislation.

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