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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

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To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY
OF THE IMPACT ASSESSMENT Accompanying the document Proposal
for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE
COUNCIL amending Regulation (EU) No 1093/2010 establishing a
European Supervisory Authority (European Banking Authority), Regulation
(EU) No 1094/2010 establishing a European Supervisory Authority
(European Insurance and Occupational Pensions Authority), Regulation
(EU) No 1095/2010 establishing a European Supervisory Authority
(European Securities and Markets Authority), Regulation (EU) No
345/2013 on European venture capital funds, Regulation (EU) No
346/2013 on European social entrepreneurship funds, Regulation (EU) No
600/2014 on markets in financial instruments, Regulation (EU) 2015/760
on European long-term investment funds, Regulation (EU) 2016/2011 on
indices used as benchmarks in financial instruments and financial contracts
or to measure the performance of investment funds, Regulation (EU)
2017/1129 on the prospectus to be published when securities are offered
to the public or admitted to trading on a regulated market

Delegations will find attached document SWD(2017) 309 final.

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COMMISSION STAFF WORKING DOCUMENT
EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 345/2013 on European venture capital funds, Regulation (EU) No 346/2013 on European social entrepreneurship funds, Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2015/760 on European long-term investment funds, Regulation (EU) 2016/2011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market

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Executive Summary Sheet

Impact assessment on: Proposal for amending the Regulations establishing the European Supervisory Authorities (Regulation (EU) No 1093/2010; Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010)

A. Need for action

Why? What is the problem being addressed? Maximum 11 lines

After 6 years of operation the following problems in the ESAs' framework have been identified:

1) **Constraints on the ESAs to fulfil their existing mandates in full.** This problem is concerned with current constraints on the ESAs to meet their mandates in full and deliver the right output in terms of regulatory tasks, and supervisory convergence actions in particular, and how these constraints may put even more pressure on the ESAs as the process of financial integration continues. The problem drivers stem from inadequacies in how their powers have been framed, how the decision making operates (governance) and how they are resourced for these tasks.

2) **Inadequate scope of existing mandates going forward.** This problem is concerned with inadequacies in the scope of their mandates in relation to efforts to further integrate markets. This problem is mainly driven by the absence of certain powers and tasks pertaining to large EU-wide cross-border firms, products or market infrastructures, as well as to third-country instruments and aspects. Inadequate governance and funding contributes to this problem by further hampering an effective exercise of wider powers.

What is this initiative expected to achieve? Maximum 8 lines

The objective of reviewing the **ESAs' powers** is to put in place an effective and efficient supervision of the EU financial and capital markets, in particular with regard to cross-border activities and entities. This will enhance financial stability, appropriate protection of consumers and investors and the proper functioning of financial markets in the Union. The objective of reviewing the **ESAs' governance** structure is to ensure that they are incentivised to effectively apply their powers and carry out their tasks in line with their mandates, and to take swift decisions in the EU interest so that the ESAs have the appropriate governance structure to also face upcoming challenges. The objectives of reviewing ESAs **funding** are to ensure sufficiency of resources in view of the ESAs' tasks and mandate, as well as proportionality of the costs that all contributing parties have to bear.

What is the value added of action at the EU level? Maximum 7 lines

Cross-border integration of financial markets increases the availability of investment opportunities, improves funding and risk management services for the benefit of the EU economy. Enhancements of the ESAs' framework will promote market integration and ensure it takes place in a safe and sound supervisory environment. Because how the ESAs operate is enshrined in EU law, only EU level action can provide for the desired improvements.

B. Solutions

What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why? Maximum 14 lines

The identified problems in the areas of ESAs powers, governance and funding call for amending the ESA Regulations and also selected sectoral legislative acts. In the area of powers the preferred option involves clarifying and strengthening certain existing powers and attributing new powers to the ESAs in targeted areas. This reflects the importance of cross-border activities and the growing *acquis* in the area of financial services. The latter concerns in particular attributing ESMA with powers vis-à-vis data reporting service providers, European long-term investment funds (ELTIFs) and EU label collective investment undertakings or managers (EuVECA and EuSEF) critical benchmarks, certain prospectuses and certain benchmarks.

In the area of governance the preferred option encompasses: adjusting the scope of decision making of the Board of Supervisors; replacing the Management Board by an Executive Board composed of independent full-time members and providing it with a stronger role in decision-making on certain non-regulatory tasks; enhancing the powers to the Chairperson and appointing him/her externally.

The current funding regime would be replaced with a mixed funding model combining contributions from the EU budget and contributions by the industry which would ensure sufficiency of the resources in view of the increasing tasks for the ESAs and proportionality in distributions of the costs.

Who supports which option? Maximum 7 lines

Stakeholder views on strengthening and attributing the ESAs with new powers are split. Other EU institutions have previously expressed support to strengthening and attributing new powers to the ESAs. Respondents to the public consultation pronounced themselves only on CCPs, data services providers and certain EU funds. Most respondents did not reply to the question on direct supervision. Stakeholders across the board (international organizations, EU institutions, industry and some public authorities) support adjustments in the governance model which aim at more efficiency and better incentive-mechanisms. The changes in the funding model and shifting towards industry funding are supported mainly by the Parliament and to a more limited extent among public authorities. Most stakeholders do not have insight into the functioning of the ESAs funding arrangements or internal governance.

C. Impacts of the preferred option

What are the benefits of the preferred option (if any, otherwise main ones)? Maximum 12 lines

The centralisation of certain tasks and powers to the ESAs would lead to considerable gains in efficiency and effectiveness of supervision across the EU. The preferred option would reduce the costs for business and national competent authorities; lead to more uniform application of EU law and limit the risk of misinterpretation. Adding independent, permanent members to the ESAs' Boards introduces an exclusive EU perspective in the decision-making procedure, counterbalancing the views of representatives of national competent authorities who are more likely to face conflicts of interest. Permanent members would also ensure more continuity and a longer-term perspective in the ESAs' decision-making. Attributing voting rights to the Chairperson would enhance his/her authority. The mixed model of funding ensures that the ESAs' budget can better respond to needs while keeping the current budget control and accountability to the EU institutions. In addition, it introduces proportionality in the distributions of costs.

What are the costs of the preferred option (if any, otherwise main ones)? Maximum 12 lines

The introduction of the preferred options under powers, governance and funding are expected not to adversely impact the EU budget. This is because the proposed funding methodology respects the ceilings provided by the current MFF while allowing ESAs to tap the additional funding they need from the private sector. Moreover, direct supervision will be funded by fees charged directly to the directly supervised entities. For the rest, a more intensive use of the ESAs existing powers and possible new indirect supervisory powers will mean higher costs of the ESAs operations, which should however be offset by cost savings from more efficient supervision.

How will businesses, SMEs and micro-enterprises be affected? Maximum 8 lines

Businesses of all sizes should benefit from more integrated financial markets offering better opportunities for investment, funding and risk management and from the safety and soundness that more integrated supervision offers to integrated markets. Moreover, as taxpayers, they should benefit from the cost of the ESAs being levied on general taxpayers to a lesser extent. For what concerns small and medium sized financial services providers, contributions and fees will be distributed in proportion to the size of their activities.

Will there be significant impacts on national budgets and administrations? Maximum 4 lines

The national competent authorities will be relieved from their current obligation to contribute to the ESAs' budget. Some of the changes in the allocation of decision-making powers (with a greater involvement of a newly set-up Executive Board) and the attribution of new direct powers to the ESAs in specific areas will limit the role of the national competent authorities in areas where there is a genuine EU value added. In net terms, there should be either no impact on national budgets or a positive one (in terms of additional savings for no longer paying to the ESAs' budget).

Will there be other significant impacts? Max 6 lines

The reformed ESAs will be able to better fulfil their mandates which will bring additional benefits for financial institutions and financial market participants. The review of the ESAs will bring general benefits to the providers and users of financial services across and outside the EU. The preferred options in the impact assessment in all sections impact directly the ESAs, the way they are funded, their governance model and their powers.

D. Follow up

When will the policy be reviewed? Maximum 4 lines

The ESA Regulations provide for evaluation of the European System of Financial Supervision (ESFS) every three years, starting from the effective start of its operation. The first Commission's report was issued in 2014. The Commission will continue to monitor the functioning of the ESFS and to report accordingly.