

EUROPEAN ECONOMIC AREA

STANDING COMMITTEE OF THE EFTA STATES

Ref. 18-1553

24 April 2018

SUBCOMMITTEE II ON THE FREE MOVEMENT OF CAPITAL AND SERVICES

EEA EFTA Comment

In connection with Commission proposals COM(2017) 536 on the review of the European Supervisory Authorities and COM(2017) 538 with amendments to the ESRB regulation

Executive summary:

The EEA EFTA States support the current governance structure of the European Supervisory Authorities (ESAs) with full participation for the EEA EFTA States except for the right to vote. Furthermore, the EEA EFTA States would like to emphasise that direct supervision at a European level should be limited to instances where national supervision is obviously inferior due to the nature of the supervised entities. Regarding the ESRB, the EEA EFTA States encourage the European Parliament and the Council to accept the proposal by the Commission in COM (2017) 538, so that the amended Regulation and the subsequent Joint Committee Decision may provide for improved participation by the EEA EFTA States in the ESRB.

1. The EEA EFTA States (Iceland, Liechtenstein and Norway) refer to Commission proposal [COM\(2017\) 536](#) on the review of the European Supervisory Authorities (ESAs), and to the related proposals in COM (2017) 537, COM(2017) 538, and COM (2017) 539. Reference is also made to the [EEA EFTA Comment of 15 May 2017](#) on the Commission consultation held prior to publication of the Commission's proposal.
2. The EEA Agreement allows the EEA EFTA States to participate fully in the Internal Market. Continued incorporation of relevant EU legislation into the Agreement ensures legal homogeneity throughout the EEA.

3. The EU and EEA EFTA Ministers of Finance and Economy approved principles for the incorporation of the three regulations that established the three micro-prudential European Supervisory Authorities (ESAs) on 14 October 2014.¹ The regulations establishing the three ESAs were incorporated into the EEA Agreement in 2016² after complex negotiations on necessary adaptations to the acts in line with the agreed principles. Their incorporation allowed for the inclusion of the post-crisis EU legal framework in financial services in the EEA Agreement.
4. The adaptations are based on the two-pillar structure of the EEA Agreement and the legal framework of the EU and of the EEA EFTA States. EEA EFTA State representatives participate as members without voting rights in the Board of Supervisors in the three ESAs. Binding decisions towards EEA EFTA competent authorities and market operators are taken by the EFTA Surveillance Authority, based on a draft from the relevant ESA. The ESAs perform actions of a non-binding nature throughout the EEA.
5. The EEA EFTA States want to highlight the importance of maintaining the balanced solution found regarding EFTA participation in the governing of the ESAs. Regarding the Commission proposal to transfer important decision-making powers from the Board of Supervisors to a new “Executive Board”, it is difficult to see how the balance can be maintained, unless the EFTA States are allowed sufficient participation in such an Executive Board. The present governance structure, with EFTA participation, should be maintained.
6. The ESAs should continue their important role in fostering supervisory convergence and coordinating necessary issues between National Competent Authorities (NCAs). A harmonized European approach to supervision is welcome but should nonetheless allow for supervision to benefit from the local expertise of the national supervisory authorities. With regard to the proposal for more centralised coordination of plans for national supervision, the EEA EFTA States will, however, emphasise the need for flexibility for the national supervisory authorities to respond to local developments, and for clear division of responsibilities between the NCAs and the supervisory authorities at the European level. Regarding the proposed new direct supervisory tasks, the EEA EFTA States would like to emphasise that direct supervision at a European level should be limited to instances where national supervision is obviously inferior due to the nature of the supervised entities. Extension of direct supervision needs to respect the principles of subsidiarity and proportionality. The practical alignment of national approaches is in most cases sufficiently secured by issuing guidelines and opinions at a European level while safeguarding the positive effects of proximity of NCAs to the local market. As mentioned above, we have already established a system for centralised supervision and decision-making within the two-pillar structure for certain situations. The procedure for transferring new powers from national authorities in the EEA EFTA States to the EFTA Surveillance Authority may, however, raise complicated constitutional and political issues which are challenging to solve.

¹ Council Conclusions on the EU and EEA EFTA Ministers of Finance and Economy, 14178/1/14 REV1. <http://www.efta.int/sites/default/files/documents/eea/eea-news/2010-10-14-EEA-EFTA-ECOFIN-joint-conclusions.pdf>

² JCD No. 199/2016; JCD No. 200/2016; JCD No. 201/2016.

7. With regard to the Commission's proposal on revised funding of the ESAs, we foresee that the financial contribution by the EEA EFTA States will be established in the Joint Committee Decision incorporating the relevant legal acts into the EEA Agreement, in line with Article 82 of the EEA Agreement. The decision on the funding mechanism could be facilitated by early participation of the EEA EFTA States in discussion on delegated acts that establish the funding mechanism.
8. The EEA EFTA States reiterate the importance of taking the EEA dimension duly into account when deciding on the current proposals, not least regarding the aforementioned aspects. A revision of the ESAs that is consistent with the EEA Agreement, its structure and objectives, and accommodates the current balanced two-pillar solution, will allow a subsequent timely incorporation of new acts regarding the ESAs into the EEA Agreement.
9. The need to consider EFTA participation in the European Systemic Risk Board (ESRB) parallel to the EFTA participation in the ESAs was addressed in a Joint Declaration to the EEA Joint Committee Decision 30 September 2016 incorporating Regulation 1092/2010.
10. The European supervisory framework for the EEA financial market rests on the two macro- and micro-prudential pillars of the ESRB and the three ESAs, respectively. It is vital, for the internal market to function well, that the EEA EFTA States are granted participation in the ESRB similar to their participation in the three ESAs.
11. The EEA EFTA states take note of the proposed deletion of Article 9(5) of Regulation (EU) No 1092/2010 in the Commission's proposal and welcome the direct reference to the EEA in the proposal's preamble.
12. The institutional and procedural setup of the EEA Agreement provides that the terms of incorporation of acts into the EEA Agreement and participation in EU agencies/bodies are to be negotiated and agreed upon in the EEA Joint Committee. The EEA EFTA States therefore expect that the EEA Joint Committee will agree upon a framework for their participation within the ESRB that is parallel to their participation within the three ESAs.
13. The EEA EFTA States encourage the European Parliament and the Council to accept the proposal by the Commission in COM (2017) 538, so that the amended Regulation and the subsequent Joint Committee Decision may provide for improved participation by the EEA EFTA States in the ESRB. This will allow for the continuation of an effective micro- and macro-prudential supervisory framework in the entire internal market for financial services.