



## Subsidiarity check of the Commission's proposal on the review of the European supervisory authorities (ESA authorities)

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### Summary

The Committee proposes that the Riksdag submit a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission in accordance with Chapter 10, Art. 3 of the Riksdag Act. The Committee considers that the Commission's proposal conflicts with the principle of subsidiarity.

The Commission's proposed amendment will give the three European supervisory authorities, referred to here as ESA authorities, extended powers and more assignments. In particular, it has been proposed that the European Securities and Markets Authority (ESMA) should be given new supervisory duties, which will include prospectuses and three categories of funds. In addition to this, it has been proposed that the ESA authorities should coordinate and standardise the supervision activities of the national supervisory authorities, for example through the use of strategic supervision plans. In the Committee's assessment, the proposal goes too far when it comes to rules concerning prospectuses, certain types of funds and strategic supervision plans.

The Committee considers that the proposed provisions run the risk of rendering the division of responsibility between what is to be decided at EU level and what is to be decided at national level unclear. The proposal may result in supervision being less effective, less predictable and less well suited to national conditions. The aim of the proposal, as far as these parts are concerned, can, in the opinion of the Committee, be achieved to a sufficient extent by measures being taken at member-state level. Alternatively, less intrusive measures, which would to a sufficient extent lead to the desired goal, could be taken at EU level.

*The examined proposals*

The Commission's Proposal for a Regulation of the European Parliament and 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) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; and 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 (COM(2017) 536).

ANNEX 2

## Reasoned opinion of the Riksdag

The Riksdag has examined the Commission's Proposal for a Regulation of the European Parliament and 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) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; and 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 (COM(2017) 536).

The Riksdag takes a positive view of the fact that a review is being carried out of the ESA authorities and that efforts should be continued to establish smoothly functioning capital markets in the EU. The Riksdag agrees with the Commission that it is important to increase integration and the integrity of the finance market and safeguard financial stability by strengthening the system of financial supervision. However, the Commission's proposed amendment contains provisions that run the risk of rendering the division of responsibility between what is to be decided at EU level and what is to be decided at national level unclear. The proposal may result in supervision being less effective, less predictable and less well suited to national conditions. The Riksdag considers that the aim of the proposal, as far as these parts are concerned, can be achieved by measures being taken at member-state level. Alternatively, less intrusive measures, which would to a sufficient extent lead to the desired goal, can be taken at EU level.

The Commission's proposal states that the three ESA authorities are to be given extended powers and more assignments. This is largely linked to the proposal that increased direct supervision should be transferred to the ESA authorities. In particular, it has been proposed that ESMA is to be given new supervisory duties, which will include prospectuses and three categories of funds. The proposal also contains new tasks for the ESA authorities to coordinate and standardise the supervision activities of the national supervisory authorities, for example through the use of strategic supervision plans. According to the Riksdag's assessment, the proposal goes too far when it comes to rules concerning prospectuses, certain types of funds and strategic supervision plans and is in breach of the principle of subsidiarity.

### *Prospectuses*

The Riksdag considers that the Commission's proposal appears to rest on the presumption that prospectuses that are issued by specialised issuers are complex by definition. The proposal may result in the fact that prospectuses that are neither transnational nor complex will be the object of centralised supervision, which would not provide the added value that the Commission states as one of the reasons for the proposal. The increase in the volume of tasks that would be transferred to ESMA would also mean a greater burden for ESMA. There is thus a great risk that the processing times for examinations would be longer than would be the case if such examinations were to remain at national level. The costs for translation of prospectuses to different languages would also increase.

### *Certain types of funds*

The fact that it is proposed that ESMA be given responsibility for direct supervision of certain types of funds and responsibility for ensuring that the fund managers adhere to national law gives rise to concern on the part of the Riksdag. As a rule, national authorities are best suited to applying the rules of their own legal system. The fact that a European authority should be responsible for ensuring that Swedish legal entities follow Swedish legislation would appear to be inefficient, apart from the fact that ambiguities would arise when it comes to the division of responsibilities as regards supervision between ESMA and national authorities. There is also a risk that national supervisory authorities would be drained of competence if too many cases were to be moved to ESMA. In addition to this, the supervisory practices that are to be developed at ESMA may be less well-suited to the needs of local markets.

### *Strategic supervision plans*

The Riksdag's assessment is that the proposal regarding strategic supervision plans could pose difficulties for member states when it comes to having to adapt their supervisory activities to their own conditions and needs. The common goals that are to be stated in the supervisory plans run the risk of either being of too general a nature to suit all member states, or being less relevant for some member states and therefore not contributing any added value compared with the current procedure. Work on the plans will also entail a great administrative burden for the Swedish authorities affected. The Riksdag believes that coordination of the national supervisory authorities could instead be carried out in a less intrusive fashion without risking a lack of convergence in supervisory practices or in the application of EU law. For example, the ESA authorities could, with the support of their current mandate, increase their focus on providing better, generally applicable recommendations and advice for work on supervision.