

Press Release

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The European Supervisory Authorities Room for improvement

cep has examined the regulatory role of the European Supervisory Authorities (ESAs) and the EU Commission and produced an Analysis.

cep makes ten recommendations for improving control and scrutiny of the ESAs' activities at Level 2 and Level 3. These recommendations will help to ensure that the ESAs and the Commission comply with four essential principles when carrying out their regulatory work: adherence to the mandate, subsidiarity, proportionality and consistence.

At Level 2 (binding standards), these include calling on the Council to strengthen its monitoring structures. The very informal procedures which currently exists in Parliament and the Council need a moderate level of formalisation. The authors of the cepAnalysis also argue that Parliament and the Council should not seek to resolve political conflicts by way of Level 2 measures. In this regard, consultations with the ESAs at an early stage, in Parliament and the Council, could promote a uniform understanding of the mandate. Effective scrutiny by the Council and Parliament requires sufficient "breathing space" between entry into force of Level 2 measures and the application of the legislative act on which the measures are based. Such a period of breathing space should be included as standard in every Directive and Regulation.

At Level 3 (non-binding guidelines), the ESAs should, in future, only be able to develop guidelines where Parliament and the Council do not object. In addition, political scrutiny at national level - by Parliament or the responsible ministry -, of whether EU guidelines should in fact be complied with, is perfectly legitimate. This scrutiny should provide national supervisors with the necessary room for manoeuvre but at the same time prevent guidelines from offending against the national political will.

Context:

The European Supervisory Authorities (ESAs) are EU agencies. These are the European Banking Authority (EBA) in London, the European Securities and Markets Authority (ESMA) in Paris and the European Insurance and Occupational Pensions Authority (EIOPA) in Frankfurt. They have been in operation since 2011.

At Level 2, the ESAs develop legally binding technical standards. The power to do this is conferred by the European Parliament and the Council in a Level 1 legislative act. The Commission can amend ESA drafts and adopts the standards. The Council and Parliament scrutinise the standards and may raise an objection; so far they have done so on only one occasion.

Level 3 measures issued by the ESAs are non-binding guidelines. A comply-or-explain mechanism applies to national regulatory authorities. The ESAs can also adopt guidelines without an explicit delegation of power in a Level 1 text.

You can read the Analysis [here](#). Please note that the information is under embargo until: 18 October – 3.30 p.m.