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# REPORT

with recommendations to the Commission on the European System of  
Financial Supervision (ESFS) Review  
(2013/2166(INL))

Committee on Economic and Monetary Affairs

Rapporteur: Sven Giegold

(Initiative – Rule 42 of the Rules of Procedure)

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### with recommendations to the Commission on the European System of Financial Supervision (ESFS) Review (2013/2166(INL))

*The European Parliament,*

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board<sup>1</sup>,
- having regard to Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority)<sup>2</sup>,
- having regard to Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority)<sup>3</sup>,
- having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)<sup>4</sup>,
- having regard to Council Regulation (EU) No 1096/2010 of 17 November 2010 conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board<sup>5</sup>,
- having regard to Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)<sup>6</sup>,
- having regard to its position of 12 September 2013 on the 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) as regards

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<sup>1</sup> OJ L 331, 15.12.2010, p. 1.

<sup>2</sup> OJ L 331, 15.12.2010, p. 12.

<sup>3</sup> OJ L 331, 15.12.2010, p. 48.

<sup>4</sup> OJ L 331, 15.12.2010, p. 84.

<sup>5</sup> OJ L 331, 15.12.2010, p. 162.

<sup>6</sup> OJ L 331, 15.12.2010, p. 120.

its interaction with Council Regulation (EU) No .../.... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions<sup>1</sup>,

- having regard to its position of 12 September 2013, with a view to the adoption of Council regulation (EU) No .../2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions<sup>2</sup>,
- having regard to the report of its Committee on Economic and Monetary Affairs of 3 June 2010 on the proposal for a regulation of the European Parliament and of the Council establishing a European Banking Authority<sup>3</sup> and to its position of 22 September 2010 on that proposal<sup>4</sup>,
- having regard to the report of its Committee on Economic and Monetary Affairs of 3 June 2010 on the proposal for a regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority<sup>5</sup> and to its position of 22 September 2010 on that proposal<sup>6</sup>,
- having regard to the report of its Committee on Economic and Monetary Affairs of 3 June 2010 on the proposal for a regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority<sup>7</sup> and to its position of 22 September 2010 on that proposal<sup>8</sup>,
- having regard to the report of its Committee on Economic and Monetary Affairs of 18 May 2010 on the proposal for a directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets<sup>9</sup> and to its position of 22 September 2010 on that proposal<sup>10</sup>,
- having regard to the report of its Committee on Economic and Monetary Affairs of 25 May 2010 on the proposal for a regulation of the European Parliament and of the Council on Community macro prudential oversight of the financial system and establishing a European Systemic Risk Board<sup>11</sup> and to its position of 22 September 2010

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<sup>1</sup> Texts adopted, P7\_TA(2013)0371.

<sup>2</sup> Texts adopted, P7\_TA(2013)0372.

<sup>3</sup> A7-0166/2010.

<sup>4</sup> Texts adopted, P7\_TA(2010)0337.

<sup>5</sup> A7-0170/2010.

<sup>6</sup> Texts adopted, P7\_TA(2010)0334.

<sup>7</sup> A7-0169/2010.

<sup>8</sup> Texts adopted, P7\_TA(2010)0339.

<sup>9</sup> A7-0163/2010.

<sup>10</sup> Texts adopted, P7\_TA(2010)0336.

<sup>11</sup> A7-0168/2010.

on that proposal<sup>1</sup> ,

- having regard to the report of its Committee on Economic and Monetary Affairs of 25 May 2010 on the proposal for a Council regulation entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board<sup>2</sup> and to its position of 22 September 2010 on that proposal<sup>3</sup> ,
  - having regard to the opinion of its Committee on Economic and Monetary Affairs of 1 March 2013 on discharge in respect of the implementation of the budget of the European Banking Authority for the financial year 2011,
  - having regard to the opinion of its Committee on Economic and Monetary Affairs of 1 March 2013 on discharge in respect of the implementation of the budget of the European Insurance and Occupational Pensions Authority for the financial year 2011,
  - having regard to the opinion of its Committee on Economic and Monetary Affairs of 1 March 2013 on discharge in respect of the implementation of the budget of the European Securities and Markets Authority for the financial year 2011,
  - having regard to the opinion of its Committee on Economic and Monetary Affairs of 5 September 2013 on the General budget of the European Union for the financial year 2014 - all sections,
  - having regard to the Core Principles for Effective Banking Supervision endorsed by the Basel Committee on Banking Supervision on 13 to 14 September 2012<sup>4</sup>,
  - having regard to the Key Attributes of Effective Resolution Regimes for Financial Institutions of Financial Stability Board published in October 2011,
  - having regard to the Good practice principles on supervisory colleges issued by the Basel Committee on Banking Supervision in October 2010<sup>5</sup>,
  - having regard to the judgment of the Court of Justice of the European Union of 22 January 2014 in Case C-270/12 *United Kingdom of Great Britain and Northern Ireland v Council of the European Union and European Parliament*,
  - having regard to Rules 42 and 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0133/2014),
- A. whereas the financial crisis has demonstrated that inadequate risk management and inefficient, uneven and fragmented supervision of financial markets have contributed to

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<sup>1</sup> Texts adopted, P7\_TA(2010)0335.

<sup>2</sup> Texts adopted, P7\_TA(2010)0338.

<sup>3</sup> A7-0167/2010.

<sup>4</sup> <http://www.bis.org/publ/bcbs230.pdf>.

<sup>5</sup> <http://www.bis.org/publ/bcbs177.pdf>.

financial instability and a lack of consumer protection in financial services;

- B. whereas the European Parliament was strongly in favour of the creation of the European Supervisory Authorities (ESAs), has provided for more powers in coordination and direct supervision for the ESAs, and believes that they are key actors in the creation of more stable and safer financial markets and that the Union needs stronger and better coordinated supervision at Union level;
- C. whereas the establishment of the European System of Financial Supervision (ESFS) has enhanced the quality and consistency of financial supervision in the internal market; whereas this is an evolutionary process in which Members of the Supervisory Board should focus on Union values and interests;
- D. whereas, since the establishment of the ESFS, micro-prudential supervision in the Union has developed at a faster pace than macro-prudential surveillance;
- E. whereas powers for micro-and macro-economic supervision are concentrated in the hands of the European Central Bank (ECB) that has to take appropriate measures to avoid conflicts of interest due to the ECB's tasks in monetary policy;
- F. whereas the ESAs should prevent fragmentation of financial markets in the Union;
- G. whereas the ESAs are tasked, inter alia, with convergence and with assisting raising the quality of day-to-day supervision, and there is a need to develop performance indicators that focus on the regulatory outcomes achieved in day to day supervision;
- H. whereas the ESAs have largely fulfilled their mandate to contribute to legislative procedures and to propose technical standards;
- I. whereas, although the regulations establishing the ESAs are almost identical, their scope has evolved very differently;
- J. whereas in respect of regulatory technical standards (RTS) and implementing technical standards (ITS) the Commission has the responsibility to adopt, with or without amendment, the drafts proposed by the ESA, and should provide detailed reasons for departing from those drafts;
- K. whereas direct supervision of credit rating agencies by the European Securities and Markets Authority (ESMA) may enhance the quality of supervision in this area;
- L. whereas RTSs are adopted as delegated acts and guarantee the involvement of the ESAs in areas for which they have greater technical expertise for drafting lower levels of legislation;
- M. whereas paragraph 2 of the Common Understanding between Parliament, the Council and the Commission on delegated acts states that the three institutions shall cooperate throughout the procedure leading to the adoption of delegated acts with a view to a smooth exercise of delegated power and an effective control of this power by Parliament and the Council;

- N. whereas the establishment of the Single Supervisory Mechanism (SSM) was an important next step towards coherent supervision of banks in the euro area and in the other participating Member States;
- O. whereas the creation of the SSM has very important implications for the institutional setting up of micro- and macro-prudential supervision in the Union given the powers attributed to the ECB in those fields;
- P. whereas the European Systemic Risk Board (ESRB) has provided useful macroeconomic recommendations for the legislative process which were in the areas of money market funds, capital requirements, the mortgage credit directive or symmetrical long-term guarantee measures in Solvency II<sup>1</sup> only partly taken into account by the Commission and the co-legislators;
- Q. whereas the ESRB does not have a mandatory role in legislation, even where macro-economic issues are concerned;
- R. whereas the Advisory Scientific Committee has played an important and constructive role driving the ESRB's agenda, in particular by encouraging the ESRB to focus on controversial and fundamental issues;
- S. whereas some of the ESRB proposals might have been taken into account by the co-legislators or the Commission, if they were issued at an earlier stage of the legislative process;
- T. whereas in the course of the financial crisis the ESRB was established to prevent further crisis and to preserve financial stability;
- U. whereas the systemic risk posed by very low interest rates kept for an excessively long period has never been mentioned by a statement issued by the ESRB;
- V. whereas monetary policy can have significant influence on credit and asset price bubbles and therefore a conflict of interests between the monetary policy of the ECB and the ESRB's activity might arise;
- W. whereas the ESRB following the first proposals of the Commission was supposed to have more than twice as many members of staff than it actually has and the fluctuation of qualified staff is detrimental to its work;
- X. whereas the statements by the ESRB on the EMIR regulation have not been taken into account by ESMA;
- Y. whereas the establishment of the ESRB outside the ECB would, due to Article 130 of the Treaty on the Functioning of the European Union (TFEU), not allow the ESRB to address the ECB in opinions, recommendations or warnings;
- Z. whereas the structure of the ESRB and the size of its decision-making body hinder a swift

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<sup>1</sup> Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) ( OJ L 335, 17.12.2009, p. 1).

decision-making process;

- Aa. whereas the ESRB Recommendation 2011/3 states that central banks should have a leading role in macro-prudential supervision and, accordingly, representatives of central banks should necessarily be members of the ESRB decision-making bodies;
- Ab. whereas the membership of the ESRB is strongly based around central banks which have an important role but also have similar perspectives;
- Ac. whereas major parts of the sectoral legislation conferring specific competences to the ESAs did not yet enter into force, thereby making it impossible for the ESAs to fulfil their tasks equally;
- Ad. whereas legislation relating to financial markets, financial services and financial products is highly fragmented and the multitude of legal texts causes loopholes, duplication of reporting obligations, institutional divergence and regulatory overlap and can cause unintended consequences and negative impacts on the real economy;
- Ae. whereas the United States of America created a federal Consumer Financial Protection Bureau with a strong mandate;
- Af. whereas transparency and independence are an important ingredient of good governance and it is important to increase the transparency of the work of the ESAs and their independence;
- Ag. whereas even though the ESAs generally operate in a transparent way through information on their websites, there is a need for increased transparency regarding their work and progress on advice and proposals as well as more information regarding issues such as task forces and working groups;
- Ah. whereas the Commission is involved formally and informally in the operations of the ESAs, its involvement is not yet be on a transparent basis, and its role should be aligned with that of the Parliament and the Council, so that the independence of the ESAs is not called into question;
- Ai. whereas the benefit of stakeholder groups contributions to the work of the ESAs seems to have been limited;
- Aj. whereas increased transparency is of utmost importance for the Stakeholder groups for creating well considered and workable rules for the financial markets and cooperation with market participants would work much better if those groups were more transparent regarding the composition of the group and the detailed duties assigned to the group;
- Ak. whereas the ESAs should support the Commission by making their expertise in financial services available in a transparent way;
- Al. whereas the ESAs should assist the Commission and the co-legislators by assessing the extent to which legislation is meeting its regulatory objectives, and in the interests of transparency should make that assessment public. The ESAs should provide formal



opinions on proposed Union legislation and assess the strength of the evidence and analysis contained in impact assessments of legislative proposal;

- Am. whereas in Case C-270/12, the ruling of the Court of Justice of the European Union indicated a potentially enhanced scope for activities of the European System of Financial Supervisors under Article 114 TFEU in comparison to the prevailing interpretation of the judgment in Case C-9/56 *Meroni*<sup>1</sup> at the time when the ESFS was created and therefore the Commission should assess its potential implications in the forthcoming review of the ESFS;
- An. whereas supervision by the ECB of financial conglomerates active in banking and insurance business is limited by the legal basis for the SSM;
- Ao. whereas the creation of the SSM modifies the underlying supervisory scheme of the ESFS and creates a certain degree of asymmetry between the different authorities and their scopes of supervision;
- Ap. whereas after the entry into force of the SSM it is particularly important to avoid regulatory arbitrage, guarantee a level-playing field, ensure the good functioning of the internal market, prevent distortions and preserve fundamental freedoms;
- Aq. whereas the ECB and the ESAs use different reporting standards and intervals and the creation of the SSM might pose a serious risk of duplication of reporting requirements, if national authorities do not cooperate sufficiently with the SSM and ESAs;
- Ar. whereas the right of investigation against possible breaches of Union law and the possibility of binding mediation has seldom been used and the ESAs have only very limited possibilities to initiate investigations into alleged breaches of law by national competent authorities;
- As. whereas concerning possible breaches of Union law the decisions affecting national supervisory authorities are taken by national supervisors within the ESA's Boards of Supervisors;
- At. whereas under the influence of the binding mediation powers of the ESAs many useful solutions were found between national supervisory authorities;
- Au. whereas it has been difficult for national representatives to separate their role of head of a national competent authority and European decision-making challenging their ability to genuinely adhere to the requirement to act independently and objectively in the sole interest of the Union as a whole in accordance with Article 42 of the ESA regulations;
- Av. whereas peer pressure has not worked as envisaged during the original design of the ESAs and is necessary to enable the ESAs to stimulate its development;
- Aw. whereas some ESAs are still struggling to collect the information necessary for their work in the necessary format and whereas EBA had to carry out stress tests, but in some

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<sup>1</sup> Case 9/56 *Meroni v High Authority* [1957 and 1958] ECR 133.

cases neither had the necessary legal power to collect the data required for the tests nor the legal powers to verify data which appeared to be imprecise;

- Ax. whereas the ESAs may refrain from certain necessary requests for information in anticipation of a rejection in their Boards of Supervisors;
- Ay. whereas recently agreed legislation has enhanced the powers of the ESAs to investigate alleged breaches or non-application of Union law obliging competent authorities to provide the relevant ESA with all information which is considered necessary, including how the legislation is applied in accordance with Union law;
- Az. whereas in course of the establishment of the SSM some progress was made in giving EBA the necessary powers to collect directly information but such capacity needs to be given to the other ESAs;
- Ba. whereas guidelines have proven to be a useful and necessary tool to fill gaps in regulation where no powers for the ESAs were provided for in the sectorial legislation;
- Bb. whereas the ESAs do have the mandate to monitor the implementation of Union law in the Member States but lack the resources to assess the actual enforcement;
- Bc. whereas MiFID I Directive<sup>1</sup> is implemented in all Member States, but some Member States refuse to apply and enforce the rules on consumer protection in practice;
- Bd. whereas the participation of ESA representatives in colleges of supervisors has improved the functioning of colleges, but the colleges have only made limited progress in enhancing supervisory convergence;
- Be. whereas the voting rights in the Boards of Supervisors of the ESAs are not proportionate to the size of the relevant Member States, as is currently the case in the ECB and other European agencies;
- Bf. whereas the changes in the original voting system of EBA which has proven to ensure a fair treatment of Member States and smooth working conditions for the ESAs were a concession to some Member States and made the decision making procedures in the Board of Supervisors more onerous and cumbersome;
- Bg. whereas there should be no age or gender discrimination in the appointment of ESAs Chairpersons, a position that should be widely advertised across the Union;
- Bh. whereas the Chair, Executive Director and the members of the Board of Supervisors and Management Boards should be in a position to act independently and only in the interest of the Union;
- Bi. whereas some national supervisors from Member States have had difficulties to meet their compulsory contributions to the ESAs' budgets;

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<sup>1</sup> Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1).

- Bj. whereas compulsory contributions of Member States conflict with the independence of the ESAs;
- Bk. whereas the ESAs stated having difficulties in employing staff members of a certain seniority and are limited in fulfilling their mandate by a lack of resources, staff and available resources do not reflect the tasks required to be carried out;
- Bl. whereas the current financing of ESAs, with a mixed-financing arrangement, is inflexible, creates administrative burden, and poses a threat to the agencies' independence;
- Bm. whereas the regulatory mandate to develop implementing and delegated acts has been a priority for the ESAs in their setting-up phase and has had a disproportionate weight in their workload compared to other responsibilities;
- Bn. whereas the ESAs have been unable to devote sufficient resources to the core function of undertaking economic analyses of financial markets (as prescribed by Article 8(1)(g) of Regulations (EU) No 1093/2010, No 1094/2010, and No 1095/2010), which is an essential foundation for drafting high quality rules;
- Bo. whereas the common mandate to produce a consumer trends report requires that all Member States collect information about those trends;
- Bp. whereas EBA still lacks a legal basis in payment services and in the consumer credit Directive<sup>1</sup> inter alia;
- Bq. whereas some requirements foreseen by the ESAs for all market participants were considered by some market participants to be onerous, inappropriate and not proportional to the size and business model of the addressees and sectoral legislation did not always provide sufficient flexibility for the application of Union law;
- Br. whereas the ECB has the right to participate in Council working groups while the ESAs are largely absent from the formal decision making process;
- Bs. whereas in the field of consumer protection, the efforts, deployed resources and results of the ESAs differed and were considerably low with regard to EBA;
- Bt. whereas a weak corporate governance and system of disclosure were significant contributing factors to the current crisis;
- Bu. whereas the new Basel supervisory principles include two new principles on corporate governance and transparency and disclosure;
- Bv. whereas misselling, unfair competition and rent seeking behaviour may harm consumers;
- Bw. whereas the European Insurance and Occupational Pensions Authority (EIOPA) and EBA did not provide substantial consumer trend reports;

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<sup>1</sup> Directive 2008/48/EC of the European Parliament and of the Council of 23 April 2008 on credit agreements for consumers and repealing Council Directive 87/102/EEC (OJ L 133, 22.5.2008, p. 66).

Bx. whereas the publication of the Financial Stability Report of the ESRB as promised by ECB's President Mr Mario Draghi is still due;

By. whereas the need to take decisions on consumer protection issues requires an equivalent level of expertise among members of the ESAs even though some of them have not a parallel mandate in their home Member State;

Bz. whereas the current safeguard clauses in Article 38(1) of Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010 limit the possibilities for mediation pursuant to Articles 18 and 19 thereof, in particular in cases of cross-border group resolution under the bank recovery and resolution Directive because final decision making powers are left with the Member State which has fiscal responsibility for the institution in question;

1. Requests the Commission to submit to Parliament, by 1 July 2014, legislative proposals for the revision of Regulations (EU) No 1092/2010, (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) No 1096/2010, following the detailed recommendations made in the Annex hereto, based on the experience gained since the ESAs were established and on an in-depth analysis of the legal basis and alternatives available to Article 114 TFEU, including recent case-law;
2. Confirms that the recommendations respect fundamental rights and the principle of subsidiarity;
3. Considers that the financial implications of the requested proposals should be covered by appropriate budgetary allocations from the Union budget, while taking into account the option for the ESAs to deduct fees from entities under their supervision;
4. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission and the Council.

**ANNEX TO THE MOTION FOR A RESOLUTION:  
DETAILED RECOMMENDATIONS AS TO THE CONTENT  
OF THE PROPOSAL REQUESTED**

The European Parliament considers the legislative act or the legislative acts to be adopted should provide for the following:

The European System of Financial Supervision should be further adapted to the SSM as follows:

- Enhance the mandate for all ESAs for binding and non-binding mediation especially with regard to the ECB;
- clarify the mandate of the ESAs to carry out binding mediation in areas involving the exercise of supervisory judgement;
- Give the ESAs the possibility to trigger binding and non-binding mediation where provided for in sectorial legislation on the own initiative of the management board;
- Enhance the powers of all ESAs to conduct stress tests to have at least the possibilities comparable to those given to EBA in the course of the establishment of the SSM;
- Ensure that the ESAs, the ESRB, national supervisory authorities and the ECB in the case of those Member States participating in the SSM have access to the same supervisory information, which has to be provided where possible in the same frequency and a common electronic format which has to be determined by the ESAs, however, the common format does not entail any new requirement to supply data in accordance with international standards, such as IFRS, and in addition adequate transitional periods will be allowed for the compulsory introduction of the common format;
- Make sure the ESRB may further develop as a strong network ensuring a permanent monitoring and analysis of systemic risks among decision makers, developing a culture of dialogue between micro-prudential supervision and macro-prudential oversight;
- Provide for mechanisms enhancing the independence of the ESRB, while ensuring interaction with the ECB;
- Ensure the necessary operational changes to the ESRB as a consequence of the establishment of the SSM, including the possibility for the ESRB to address warnings and recommendations to the ECB and the SSM;
- Develop a single point of entry for any data collection, which will be responsible for the selection, validation and transmission of the supervisory and statistical data;
- Enlarge the role of the scientific committee of the ESRB;
- Appoint an executive Chairperson of the ESRB;
- Assess and clarify the mandate and tasks of the ESRB in order to avoid conflicts of

interest arising between micro-prudential supervision and supervisory tools and macro-economic oversight;

- Strengthen the coordinating role of the Steering Committee of the ESRB and adjusting its composition;
- Expand the list of possible addressees of warnings and recommendations issued by the ESRB to include the ECB (in its roles as defined in the SSM) and national macro-prudential authorities;
- include the ESRB recommendations in the European Semester through country-specific recommendations and the recommendations to the Union as a whole;

Where experience has shown the necessity for revision, new legislative acts shall improve the functioning of the ESFS by:

### ***Chairpersons***

- enhancing the powers of the chairpersons of all three ESAs to take technical and operational decisions or to request information from other supervisory authorities in line with the mandate of the respective ESA and facilitating the delegation of further competences from the Boards of Supervisors to the chairperson;
- empowering the chairpersons to issue peer reviews pursuant to Article 30 of the ESA Regulations;
- granting the chairpersons and the executive directors the right to vote in the Board of Supervisors;
- ensuring that the chairpersons of ESAs will be empowered to appoint the chairpersons of internal committees and working groups pursuant to Article 41 of the ESA Regulations;
- ensuring that the Chairpersons of the ESAs and the ESRB are formally invited to ECOFIN meetings at least twice per year to report on their activities and work programme;
- ensuring that gender balance is actively pursued within the framework of the selection procedures of chairpersons and their deputies, the process is transparent and is planned in a way that allows Parliament to exercise its role in such proceedings;
- ensuring not withstanding respect for the principle in the previous paragraph that ESA chairpersons are selected solely on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation;

### ***Governance: organisation, decision making, independence and transparency***

- amending Article 45 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 and transforming the Management Boards of the three ESAs into independent bodies, staffed by three professionals with a European mandate, appointed by Parliament, the chairperson of the ESAs and the

executive directors and granting the members of the Management Board the right to vote on the Board of Supervisors to ensure more independence from national interests. The Chairperson of the Management Board shall coincide with the Chairperson of the Board of Supervisors and have a casting vote both in the Management Board and in the Board of Supervisors;

- amending Article 40 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 and modifying the composition of the Board of Supervisors which should be composed of the head of the national competent authorities plus the members of the Management Board;
- reallocating the tasks between the Management Board and the Board of Supervisors in a way that the Board of Supervisors will focus on giving strategic guidance to the ESAs work, adopting technical standards, general guidelines and recommendations and decisions on temporary interventions and other decisions are taken by the Management Board with, in certain cases a right for the Board of Supervisors to object to the Management Boards proposal;
- granting the ESAs an independent budget line as for the European Data Protection Supervisor funded by the contributions from market participants and the Union budget;
- enhancing the independence of the ESAs from the Commission, especially with regard to day-to-day operations;
- establishing more streamlined decision making processes within the Boards of Supervisors for all three ESAs;
- simplifying the voting mechanisms and reintroducing the same voting rules for all three ESAs, based on the current voting mechanisms of ESMA and EIOPA;
- enhancing and safeguarding the independence of the ESAs from the European Commission by establishing formal procedures and disclosure obligations on communications, legal opinions and formal or informal oral advice provided by the Commission;
- ensuring that on questions concerning consumer protection for members of the Board of Supervisors which do not have a mandate for consumer protection in their Member State are accompanied by a representative from the national authority in charge in the relevant board meetings;
- develop quick and effective decision making procedures within the Joint Committee to allow swifter decisions and reduce the possibilities for objections;
- enhancing the flexibility of the ESAs to employ specialised staff for specific tasks, also for limited periods;
- enhancing transparency of stakeholder involvement and potential conflicts of interest and developing a stricter regime on cooling-off periods, in particular through a greater outreach to retail groups, efficient consultations and more transparent processes;

- revising the system of the stakeholder groups including their structure, their composition and resources and rebalancing the composition of the stakeholder groups to ensure that input from consumers and non-industry stakeholders will be taken into account;
- establish an Economic Analysis Unit to provide fully evidenced cost benefit analysis of ITS, RTS and guidelines proposed, as well as to provide input to the opinions given to the Commission, Parliament and the Council in preparing new legislation as well as in reviews of existing legislation;

### ***Single rule book and single market***

- revising the scope of action and the list of sectorial legislation in Article 1(1) of the ESA Regulations;
- requiring the Commission and, where relevant, the ESAs to provide a timely response to comments from Members of the European Parliament on draft RTS, in particular where the views expressed by Members of the European Parliament are not reflected in the regulatory technical standards adopted by the Commission;
- requiring the Commission where it does not endorse the draft RTS or ITS proposed by the ESAs to publish its reasons and fully evidenced cost-benefit analysis to justify the decision;
- establish a formal method of communication with the Commission’s Directorate-General for Competition to ensure that financial services legislation supports fair and sustainable competition in the single market and avoids anticompetitive imbalances occurring as a result of legislation, both at the level of consumers access to retail services and how they differ across the Union as well as at the level of professional counterparties and the wholesale markets;
- giving the ESAs the mandate to report to the Commission where national legislation or differences in national legislation hamper the functioning of the single market;
- giving the ESAs the mandate and the powers to identify price differences across Member States and analyse particular markets where rent seeking behaviour may be evident;
- enhancing the mandate of the ESAs for contributing to the dissemination of financial data and market discipline by requiring them to publish on their websites information concerning individual financial institutions which it considers is necessary to ensure the transparency of financial markets;
- clarifying that guidelines to improve common standards for the whole internal market pursuant to Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 can be issued only based on the respective empowerment in sectorial legislation and clarifying the relevant Recitals, which can secure democratic legitimacy;
- clarifying that guidelines pursuant to Article 9(1) of the ESA regulations are identical with guidelines pursuant to Article 16 thereof;



- ensuring a level playing field between all financial institutions within the Union and requiring the ESAs to respect the principle of proportionality especially with regard to small and medium-sized market participants when carrying out their tasks and developing their supervisory methods, practices and handbooks;
- requiring the ESAs to carry out assessments on the impact of proposed measures on small businesses and barriers to entry to the financial sector;
- enhancing the ESAs' investigatory powers with regard to possible breaches of Union law and the regulatory technical standards they have drafted;
- giving the ESAs a clear mandate in the field of corporate governance, transparency and disclosure in order to increase the comparability of information across the Union and market discipline, allow all stakeholders to understand and compare the risk profile and practices and to promote public confidence;
- ensuring that Parliament will have at least three months to consider a rejection of delegated or implementing acts;
- providing for the mandatory early involvement of the ESAs and of the ESRB in the preparation of legislative processes concerning their fields of expertise;
- ensure that Parliament have the possibility to benefit from the expertise of the ESAs and the ESRB including in the framing and timing of proposed technical standards and to ask questions;

### ***Supervisory cooperation and convergence***

- enhancing the balance in the supervision of the three sectors by fostering the role of ESMA and EIOPA in the ESFS in order to avoid that banking-oriented regulation will be adapted and applied to other sectors inappropriately while maintaining a level playing field;
- revising the ESAs peer review model and developing a more independent assessment model, such as that of the International Monetary Fund (IMF) (FSAP);
- establish an appropriate mechanism for, where deemed necessary, an assessment of supervisory practices in the Member States in dialogue with the competent authorities by means of onsite visits and, where appropriate, followed up by recommendations for improvements;
- enhancing the responsibility of EBA to develop and update the supervisory handbook on the supervision of financial institutions and giving ESMA and EIOPA similar responsibilities in order to improve consistent supervision and a common supervisory culture in Europe;
- ensuring that the consumer protection work of the ESAs is not hampered by differences between the legal bases of the ESAs, in their respective founding regulations and in the mandates assigned to them in the sectorial legislation;

- clarifying that the ESAs ability to settle disagreements is a separate power from their ability to investigate potential breaches of Union law and can be used to promote the coordination of supervisory consistency and convergence of supervisory practices without additional empowerment in sectorial legislation;
- expanding the mandate of supervisory colleges in supervision and improving the role of the ESAs as lead supervisor within the colleges;
- ensure, in cases where the SSM is the assigned coordinator for the supplementary supervision of financial conglomerates, that the supervision of the insurance undertaking or group being part of the conglomerate provides for an at least equal involvement of the supervisory authorities responsible for the insurance undertaking or group;
- requiring the ESAs to identify overlap in their mandates and to make recommendations for clustering revisions and reviews of legislation to enable stronger coherence and a streamlined approach towards cross-sector and cross-legislation consistency, in particular as regards consumer protection rules, in order to increase the coherence of the single rule-book;
- enhancing the role of the ESAs and the ESRB in representing the EU within international organisations and granting them the same membership status as national supervisory authorities;
- ensuring that ESAs, jointly within the joint committee, elaborate an structured policy and strategy, listing their priorities and defining their respective roles and its articulation with the NCAs, and issue annually a joint and horizontal report on consumer protection;

### ***Enhanced powers***

- enhancing the investigatory powers of the ESAs and increasing their resources in order to directly monitor the appropriate implementation of rules derived from legal acts and the compliance with other decisions adopted under the Union legal framework;
- introducing direct supervision, including stress tests, by the ESAs of highly integrated pan European entities or activities, giving ESMA and EIOPA the power, the mandate and the resources to perform these activities and to monitor the consistency of the relevant recovery and resolution planning;
- giving EBA the power, the mandate and the resources to develop measures to identify new risks for consumers in the banking sector;
- strengthening the legal basis for the ESAs work on consumer protection, by bringing legislation containing consumer protection measures into the ESAs' scope of action; extending the definition of financial institutions to ensure that the same activities are subject to the same regulation and updating references to competent authorities for the purposes of ESAs regulations;
- giving the ESAs a mandate and the power to set standards for national complaints handling and the collection of complaints data;

## ***ESRB***

- ensuring that the ESRB will be represented in the meetings of the Economic and Financial Committee;
- enabling the ESRB to issue EU-wide guidance to Member States on macro-prudential instruments as leverage, loan to value and debt to income ratios;
- enabling the ESRB to address warnings and recommendations to the ECB in its role in monetary policy as well as in its function as single supervisor (SSM);
- revising and simplifying Article 15 of the ESRB Regulation in order to facilitate data collection by the ESRB, establishing swifter and easier decision-making on data requests for the ESRB and ensuring that the ESRB will have access to real-time data;
- revising the structure of the ESRB to allow swifter decision-making and stronger accountability;
- strengthening the ESRB's contribution to international macro-prudential regulatory fora;
- expanding the analytical resources available to the ESRB Secretariat and providing the Advisory Scientific Committee of the ESRB with more resources;
- ensuring that the ESRB will be consulted where stress testing regimes are developed by competent authorities including the ECB or by the ESAs;
- ensuring that representatives from the ESRB will be invited as observers to relevant meetings and discussions within the ECB, including the meetings of the Financial Stability Committee;
- revising Article 18 of the ESRB Regulation on publication of warnings and recommendations in order to strengthen the ESRB's public profile and the follow up its warnings and recommendations;

Before the legislative acts are adopted, the following questions should be assessed thoroughly, considering that even during the worst times of the financial crisis Member States were not willing to confer on the ESAs substantial supervisory power:

- whether the current model of three separate supervisory authorities is the best solution for coherent supervision;
- whether the European Commission has stepped beyond its role as observer on the ESAs' Board of Supervisors;
- whether in the light of the independence of the ESAs their strong dependence on the European Commission is hampering the development of the ESAs and whether transparency in this relationship should be enhanced;
- which consequences implicit in the establishment of the SSM on the financial supervision in the Union as a whole;

- whether, regarding banking supervision, the creation of the SSM requires a full revision of the tasks and the mandate of EBA;
- whether the multitude and partial overlapping in Union legislation on financial regulation creates loopholes and differing definitions and whether this could be overcome by a comprehensive European Financial Code;
- how reporting to the ESAs and national supervisors could be standardised, optimised and simplified for market participants;
- how the emergency powers of the ESAs should be maintained;
- whether the possibility for the ESAs to suspend temporarily the application of a particular rule could be useful to prevent unintended consequences due to extraordinary market developments;
- whether merging responsibilities of the ESAs i.e. for consumer protection in standing committees under the responsibility of the Joint Committee could enhance efficiency and minimise duplication of tasks;
- whether an Insurance Union following the model of the Banking Union is necessary and what roles the ESFS could take in an Insurance Union;
- whether EBA and EIOPA should receive further resources to monitor and promote supervisory convergence with regard to internal models for capital requirements;
- whether the recently created US financial consumer protection bureau's mandate, powers and resources could serve as a model for the ESFS;
- whether further fees from financial industry could be an additional source of revenue for the ESAs for example when accepting fees from central counterparties (CCPs) from third countries;
- whether the ESAs could contribute more efficiently to enhance financial literacy through the operation of a European financial Programme for International Assessment (PISA) in analogy to the OECD's PISA;
- whether the three ESAs and ESRB should issue a common newsletter.

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	12.2.2014
<b>Result of final vote</b>	+: 33 -: 4 0: 0
<b>Members present for the final vote</b>	Marino Baldini, Burkhard Balz, Jean-Paul Basset, Sharon Bowles, Udo Bullmann, Rachida Dati, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Markus Ferber, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Othmar Karas, Wolf Klinz, Jürgen Klute, Rodi Kratsa-Tsagaropoulou, Philippe Lamberts, Werner Langen, Astrid Lulling, Sławomir Nitrás, Ivari Padar, Anni Podimata, Olle Schmidt, Peter Simon, Theodor Dumitru Stolojan, Kay Swinburne, Marianne Thyssen, Ramon Tremosa i Balcells
<b>Substitute(s) present for the final vote</b>	Zdravka Bušić, Saïd El Khadraoui, Ashley Fox, Emilie Turunen
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Ana Gomes, Emma McClarkin