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Committee on Economic and Monetary Affairs

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DRAFT REPORT

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

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(INI))

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 Board¹,
- 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)²,
- 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)³,
- 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)⁴,
- 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 Board⁵,
- 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)⁶,
- 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

¹ OJ L 331, 15.12.2010, p. 1.

² OJ L 331, 15.12.2010, p. 12.

³ OJ L 331, 15.12.2010, p. 48.

⁴ OJ L 331, 15.12.2010, p. 84.

⁵ OJ L 331, 15.12.2010, p. 162.

⁶ 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 institutions¹,

- 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 institutions²,
- 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 Authority³ and to its position of 22 September 2010 on that proposal⁴,
- 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 Authority⁵ and to its position of 22 September 2010 on that proposal⁶,
- 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 Authority⁷ and to its position of 22 September 2010 on that proposal⁸,
- 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 Markets⁹ and to its position of 22 September 2010 on that proposal¹⁰,
- 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 Board¹¹ and to its position of 22 September 2010

¹ P7_TA-PROV(2013)0371.

² P7_TA-PROV(2013)0372.

³ A7-0166/2010.

⁴ Texts Adopted, P7_TA(2010)0337.

⁵ A7-0170/2010.

⁶ Texts Adopted, P7_TA(2010)0334.

⁷ A7-0169/2010.

⁸ Texts Adopted, P7_TA(2010)0339.

⁹ A7-0163/2010.

¹⁰ Texts Adopted, P7_TA(2010)0336.

¹¹ A7-0168/2010.

on that proposal¹,

- 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 Board² and to its position of 22 September 2010 on that proposal³,
 - 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 2012⁴,
 - having regard to the Good practice principles on supervisory colleges issued by the Basel Committee on Banking Supervision in October 2010⁵,
 - having regard to the Opinion of the Advocate General of 12 September 2013 in Case C-270/12 *United Kingdom of Great Britain and Northern Ireland v Council of the European Union and European Parliament*⁶,
 - 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 and the opinion of the Committee on Legal Affairs (A7-0000/2013),
- A. whereas the financial crisis has demonstrated that inefficient and fragmented supervision of financial markets contributed to financial instability and a lack of consumer protection in financial services;
- B. whereas the establishment of the European System of Financial Supervision (ESFS) has

¹ Texts Adopted, P7_TA(2010)0335.

² Texts Adopted, P7_TA(2010)0338.

³ A7-0167/2010.

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

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

- enhanced the quality and consistency of financial supervision in the internal market;
- C. whereas the European Supervisory Authorities (ESAs) have fulfilled their mandate to contribute to legislative procedures and to propose technical standards;
 - D. whereas the establishment of the Single Supervisory Mechanism (SSM) was an important next step towards coherent supervision of banks;
 - E. whereas the European Systemic Risk Board (ESRB) has provided useful macroeconomic recommendations for the legislative process which were not always taken into account by the Commission and the co-legislators;
 - F. whereas, since the ESFS was created, micro-prudential supervision in the Union has developed at a faster pace than macro-prudential surveillance;
 - G. whereas the structure of the ESRB and the size of its decision-making body hinders a swift decision-making process;
 - H. whereas Parliament provided for more powers in coordination and direct supervision for the ESAs in its original proposals on the creation of the ESFS;
 - I. 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 and regulatory overlap;
 - J. whereas the three different locations of the seats of the ESAs have proven to be an obstacle to their cooperation and to coherent supervision in the Union;
 - K. whereas in Case C-270/12, the Advocate General opined that the limitations of the judgment in Case C-9/56 *Meroni*¹ are less restrictive than what was considered to be the right interpretation of that judgment at the time when the ESFS was created;
 - L. whereas supervision by the European Central Bank (ECB) of financial conglomerates active in banking and insurance business is limited by the legal basis for the SSM which could have been avoided by establishing the SSM on the basis of Article 352 of the Treaty on the Functioning of the European Union (TFEU);
 - M. whereas the ECB and the ESAs have different reporting standards and intervals and the creation of the SSM poses a serious risk of duplication of reporting requirements;
 - N. whereas the right of investigation against possible breaches of Union law has seldom been used;
 - O. whereas the possibility of binding mediation has seldom been used;
 - P. whereas the ESAs refrain from certain necessary requests for information in anticipation of a rejection in their Boards of Supervisors;

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

- Q. whereas in course of the establishment of the SSM some progress was made in giving the European Banking Authority (EBA) necessary powers to collect information;
- R. 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;
- S. whereas the voting rights in the Boards of Supervisors of the ESAs are not proportionate to the size of the relevant Member States;
- T. whereas some Member States had difficulties to meet their compulsory contributions to the ESAs' budgets;
- U. whereas the ESAs are limited in fulfilling their mandate by a lack of resources, staff and flexibility in recruiting;
- V. whereas some requirements that the ESAs imposed on all market participants were considered to be onerous, inappropriate and not proportional to the size and business model of the addressees;
- X. whereas the ESAs have only very limited possibilities to initiate investigations within the Member States;
- Y. whereas in the field of consumer protection, the efforts, deployed resources and results of the ESAs differed and were considerably low at EBA;
- Z. whereas the European Insurance and Occupational Pensions Authority (EIOPA) and EBA did not provide substantial consumer trend reports;
- AA. whereas some members of the ESAs in the Boards of Supervisors took decisions on consumer protection issues without having a mandate for it in their home Member State;
- AB whereas the current safeguard clauses in Article 38(1) of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of 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];
1. Requests the Commission to submit to Parliament, by 1 July 2014, legislative proposals for the revision and, where appropriate, the merger, 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 indepth 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 proposal should be covered by appropriate budgetary allocations;
 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 the all ESAs for binding and non-binding mediation especially with regard to the ECB and delete Recital 32 which is misleading on the mandate for non-binding mediation;
- Give the ESAs the possibility to trigger binding and non-binding mediation on their own initiative;
- 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, national supervisory authorities and the ECB have access to the same supervisory information which has to be provided where possible in a common format which has to be determined by the ESAs;
- Establish the ESRB outside the ECB to avoid the arising conflicts of interest between micro-prudential supervision and macro-economic oversight.

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

- proposing a single seat for all three ESA;
- enhancing the powers of the chairpersons of all three ESAs to take technical and operational decisions or to request information from other supervisory authorities without requiring consent by the respective Boards of Supervisors;
- 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 the European 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;
- 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;
- taking account of the size of Member States when reviewing the voting rights on the boards of supervisors and introducing simple majority voting for all decisions within the ESAs;

- 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 without additional empowerment in sectorial legislation and deleting Recital 26 of those Regulations;
- enhancing the investigatory powers of the ESAs and increasing their resources in order to control the appropriate implementation of legal acts for example by ‘mystery shopping’;
- withdrawing the right to vote 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;
- enabling the ESRB to explore and to propose additional measures for macroeconomic stability such as leverage and loan-to-value ratios, counter cyclical buffers and accounting standards promoting financial stability;
- 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;
- revising the structure of the ESRB to allow swifter decision-making and stronger accountability by establishing a systemic stability council with a limited number of members;
- enhancing the ESAs' investigatory powers with regard to possible breaches of Union law;
- giving the ESAs a mandate and the power to set standards for national complaints handling and the collection of complaints data;
- merging the units responsible for consumer protection within the ESAs under the responsibility of the Joint Committee and creating a corresponding consumer stakeholder group with sufficient support by secretarial and research staff;
- requiring the ESAs to have a possibility for citizens of all Member States in place to contact the ESAs to ask questions, obtain answers and file complaints;
- enhancing the flexibility of the ESAs to employ specialised staff for specific tasks, also for limited periods and to adapt remuneration;
- providing for the mandatory involvement of the ESAs and of the ESRB in legislative processes concerning their fields of expertise;
- enhancing transparency of stakeholder involvement and potential conflicts of interest and developing a stricter regime on cooling-off periods;
- ensure that the European Parliament and its Members have the possibility to benefit from the expertise of the ESAs and the ESRB and to ask questions;
- ensuring that the Consumer Trend Report produced by EIOPA comprises at least four pages.

Before the legislative act 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 ESAs should receive more power in direct supervision over systemic institutions such as central counterparties and large cross-border insurance undertakings;
- whether the multitude and partial overlap in Union law 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;
- whether the emergency powers of the ESAs should be maintained.