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A7-0166/ 001-264

## AMENDMENTS 001-264

by the Committee on Economic and Monetary Affairs

### Report

**José Manuel García-Margallo y Marfil**

European Banking Authority

**A7-0166/2010**

Proposal for a regulation (COM(2009)0501 – C7-0169/2009 – 2009/0142(COD))

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### Amendment 1

#### Proposal for a regulation

##### Title

*Text proposed by the Commission*

REGULATION OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

establishing a European **Banking**  
Authority

*Amendment*

REGULATION OF THE EUROPEAN  
PARLIAMENT AND OF THE COUNCIL

establishing a European **Supervisory**  
Authority (**Banking**)

*(This amendment applies throughout the  
text.)*

### Amendment 2

#### Proposal for a regulation

##### Recital 1

*Text proposed by the Commission*

(1) The financial crisis in 2007/2008  
exposed important shortcomings in  
financial supervision, both in particular  
cases and in relation to the financial system  
as a whole. Nationally-based supervisory  
models have lagged behind the integrated

*Amendment*

(1) The financial crisis in 2007/2008  
exposed important shortcomings in  
financial supervision, both in particular  
cases and in relation to the financial system  
as a whole. Nationally-based supervisory  
models have lagged behind the **financial**

and interconnected reality of European financial markets, in which many financial firms operate across borders. The crisis exposed shortcomings in the area of cooperation, coordination, consistent application of **Community** law and trust between national supervisors.

**globalisation and the** integrated and interconnected reality of European financial markets, in which many financial firms operate across borders. The crisis exposed shortcomings in the area of cooperation, coordination, consistent application of **Union** law and trust between national supervisors.

### Amendment 3

#### Proposal for a regulation Recital 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(1a) Long before the financial crisis the European Parliament was already calling regularly for the reinforcement of a true level playing field for all actors at Union level while pointing out significant failures in the Union's supervision of ever more integrated financial markets ((in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan<sup>1</sup>, of 25 November 2002 on prudential supervision rules in the European Union<sup>2</sup>, of 11 July 2007 on financial services policy (2005-2010) – White Paper<sup>3</sup>, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity<sup>4</sup>, of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision<sup>5</sup>, of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)<sup>6</sup> and of 23 April 2009 on the proposal for a regulation of the European parliament and of the Council on Credit Rating Agencies<sup>7</sup>).***

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<sup>1</sup> OJ C 40, 7.2.2001, p. 453.

<sup>2</sup> *OJ C 25 E, 29.1.2004, p. 394.*

<sup>3</sup> *OJ C 175 E, 10.7.2008, p. xx.*

<sup>4</sup> *OJ C 8 E, 14.1.2010, p. 26.*

<sup>5</sup> *OJ C 9 E, 15.1.2010, p. 48.*

<sup>6</sup> *Texts adopted, P6\_TA(2009)0251.*

<sup>7</sup> *Texts adopted, P6\_TA(2009)0279.*

## Amendment 4

### Proposal for a regulation

#### Recital 2

##### *Text proposed by the Commission*

(2) A report published on 25 February 2009 by a high-level group of experts chaired by J. de Larosière, requested by the Commission, concluded that the supervisory framework needed to be strengthened to reduce the risk and severity of future financial crises. It recommended **far-reaching** reforms to the structure of supervision of the financial sector in the **Community**. That group of experts also concluded that a European System of Financial Supervisors should be created, comprising three European Supervisory Authorities, one for the banking sector, one for the securities sector and one for the insurance and occupational pensions sector, and the creation of a European Systemic Risk Council.

##### *Amendment*

(2) A report published on 25 February 2009 by a high-level group of experts chaired by J. de Larosière (**the de Larosière Report**), requested by the Commission, concluded that the supervisory framework needed to be strengthened to reduce the risk and severity of future financial crises. It recommended reforms to the structure of supervision of the financial sector in the **Union**. That group of experts also concluded that a European System of Financial Supervisors should be created, comprising three European Supervisory Authorities, one for the banking sector, one for the securities sector and one for the insurance and occupational pensions sector, and the creation of a European Systemic Risk Council. **The recommendations in the report represented the lowest level of change that the experts qualified as necessary to avoid a similar crisis to take place in the future.**

## Amendment 5

### Proposal for a regulation

#### Recital 3

##### *Text proposed by the Commission*

(3) *The Commission* in its Communication of 4 March 2009 entitled "Driving

##### *Amendment*

(3) In its Communication of 4 March 2009 entitled "Driving European Recovery", *the*

European Recovery" proposed to bring forward draft legislation creating a European System of Financial Supervisors and a European Systemic Risk Board, and in its Communication of 27 May 2009 entitled "European Financial Supervision" provided more detail about the possible architecture of such a new supervisory framework.

*Commission* proposed to bring forward draft legislation creating a European System of Financial Supervisors and a European Systemic Risk Board, and in its Communication of 27 May 2009 entitled "European Financial Supervision", it provided more detail about the possible architecture of such a new supervisory framework ***but did not include all the recommendations made in the de Larosière Report.***

## Amendment 6

### Proposal for a regulation Recital 4 a (new)

*Text proposed by the Commission*

*Amendment*

***(4a) On 2 April 2009, the G-20 leaders expressed in their statement 'The Global Plan for Recovery and Reform' their will "to build a stronger, more globally consistent, supervisory and regulatory framework for the future financial sector, which will support sustainable global growth and serve the needs of business and citizens". At the 2009Pittsburg summit, the G-20 leaders, requested for the IMF to prepare "a report ... with regard ... as to how the financial sector could make a fair and substantial contribution towards paying for any burden associated with government interventions to repair the banking system". The interim report of 16 April 2010 entitled, 'A Fair and Substantial Contribution by the Financial Sector', which was written to meet that request, stated, inter alia, that "the direct fiscal cost of financial sector failures should be contained and covered by a Financial Stability Contribution (FSC) linked to a credible and effective resolution mechanism. The FSC would ensure that the industry helps meet the costs of any potential resolution and would reduce systemic risk. If defined properly, resolution mechanisms will avoid***

*governments in the future being forced to bail out institutions too important, too big or too interconnected to fail".*

## Amendment 7

### Proposal for a regulation Recital 4 b (new)

*Text proposed by the Commission*

*Amendment*

*(4b) The Commission Communication of 3 March 2010 entitled 'Europe 2020' stated that a crucial priority in the short term would be to set "in motion an ambitious policy that will allow us in the future to better prevent and if needed manage possible financial crises, and that--taking into account the specific responsibility of the financial sector in the current crisis--will look also into adequate contributions from the financial sector". At its meeting on 25 and 26 March 2010, the European Council agreed that "progress is particularly needed on issues such as... systemic institutions, financing instruments for crisis management; increasing transparency on derivate markets and considering specific measures in relation to sovereign credit default swaps."*

## Amendment 8

### Proposal for a regulation Recital 5

*Text proposed by the Commission*

*Amendment*

(5) The financial and economic crisis has created real and serious risks to the stability of the internal market. Restoring and maintaining a stable and reliable financial system is an absolute prerequisite to preserving trust and coherence in the internal market, hence to preserve and improve the conditions for the establishment of a fully integrated and

(5) The financial and economic crisis has created real and serious risks to the stability of the **financial system and the functioning of the** internal market. Restoring and maintaining a stable and reliable financial system is an absolute prerequisite to preserving trust and coherence in the internal market, hence to preserve and improve the conditions for the

functioning internal market in the field of financial services. Moreover, deeper and more integrated financial markets offer better opportunities for financing and risk diversification, and thus help to improve the capacity of the economies to absorb shocks.

establishment of a fully integrated and functioning internal market in the field of financial services. Moreover, deeper and more integrated financial markets offer better opportunities for financing and risk diversification, and thus help to improve the capacity of the economies to absorb shocks.

## Amendment 9

### Proposal for a regulation

#### Recital 6

##### *Text proposed by the Commission*

(6) The **Community** has reached the limits of what can be done with the present status of the Committees of European Supervisors, **which remain advisory bodies to the Commission**. The **Community** cannot remain in a situation where there is no mechanism to ensure that national supervisors arrive at the best possible supervisory decisions for cross-border institutions; where there is insufficient cooperation and information exchange between national supervisory authorities; where joint action by national authorities requires complicated arrangements to take account of the patchwork of regulatory and supervisory requirements; where national solutions are most often the only feasible option in responding to European problems, where different interpretations of the same legal text exist. The **European System of Supervisors** should be designed to overcome these deficiencies and provide a system that is in line with the objective of a stable and single **Community** financial market for financial services, linking national supervisors into a strong **Community** network.

##### *Amendment*

(6) The **Union** has reached the limits of what can be done with the present status of the Committees of European Supervisors. The **Union** cannot remain in a situation where there is no mechanism to ensure that national supervisors arrive at the best possible supervisory decisions for cross-border institutions; where there is insufficient cooperation and information exchange between national supervisory authorities; where joint action by national authorities requires complicated arrangements to take account of the patchwork of regulatory and supervisory requirements; where national solutions are most often the only feasible option in responding to European problems, where different interpretations of the same legal text exist. The **European System of Financial Supervision (ESFS)** should be designed to overcome these deficiencies and provide a system that is in line with the objective of a stable and single **Union** financial market for financial services, linking national supervisors into a strong **Union** network.

## Amendment 10

## Proposal for a regulation

### Recital 7

*Text proposed by the Commission*

(7) The **European System of Financial Supervisors** should be a network of national and **Community** supervisory authorities, leaving day-to-day supervision of financial institutions **at** the national level, **and according a central role in the supervision of cross-border groups to colleges of supervisors**. Greater harmonisation and the coherent application of rules for financial institutions and markets across the **Community** should also be achieved. **A European Banking Authority should be established, along with** a European **Insurance and Occupational Pensions** Authority and a European **Securities and Markets** Authority (**the European Supervisory Authorities**).

*Amendment*

(7) The **ESFS** should be **an integrated** network of national and **Union** supervisory authorities, leaving day-to-day supervision of financial institutions **to** the national level. **Colleges of supervisors should supervise financial institutions. A European supervisory Authority (Banking) (the Authority) should take over the supervision of financial institutions meeting the systemic risk criteria to the extent they could jeopardise the stability of the Union financial system, where a national authority has failed to exercise its powers.** Greater harmonisation and the coherent application of rules for financial institutions and markets across the **Union** should also be achieved. **In addition to the Authority**, a European **Supervisory Authority (Insurance and Occupational Pensions)** and a European **Supervisory Authority (Securities and Markets) as well as a European Supervisory Authority (Joint Committee) should be established. A European Systemic Risk Board should form part of the EFSF.**

## Amendment 11

### Proposal for a regulation

#### Recital 8

*Text proposed by the Commission*

(8) The European Supervisory **Authorities** should replace the Committee of European Banking Supervisors established by Commission Decision 2009/78/EC, the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2009/79/EC and the Committee of European Securities Regulators established by Commission Decision 2009/77/EC, and

*Amendment*

(8) The European Supervisory **Authority** should replace the Committee of European Banking Supervisors established by Commission Decision 2009/78/EC, the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2009/79/EC and the Committee of European Securities Regulators established by Commission Decision 2009/77/EC, and

assume all of the tasks and competences of those committees. The scope of each Authority's action should be clearly defined. Where institutional reasons and the responsibilities assigned in the *Treaty* so require, the Commission should also be part of the network of supervisory activities.

assume all of the tasks and competences of those committees. The scope of each Authority's action should be clearly defined. Where institutional reasons and the responsibilities assigned in the *Treaty on the Functioning of the European Union (TFEU)* so require, the Commission should also be part of the network of supervisory activities.

## Amendment 12

### Proposal for a regulation

#### Recital 9

##### *Text proposed by the Commission*

(9) The **European Banking Authority** (“**the Authority**”) should act with a view to improving the functioning of the internal market, including in particular by ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States, **to protect** depositors and investors, **to ensure the integrity, efficiency and orderly functioning of financial markets, to safeguard the stability of the financial system**, and **to** strengthen international supervisory coordination, for the benefit of the economy at large, including financial institutions and other stakeholders, consumers and employees. ***In order to be able to fulfil its objectives, it is necessary and appropriate that the Authority should be a Community body having legal personality and it should have legal, administrative and financial autonomy.***

##### *Amendment*

(9) The Authority should act with a view to improving the functioning of the internal market, in particular by ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States **and the different nature of financial institutions. The Authority should protect public values like the stability of the financial system, the solvency and liquidity of financial institutions, the transparency of markets and financial products and the protection of** depositors and investors. **The Authority should also prevent regulatory arbitrage and guarantee a level playing field**, and strengthen international supervisory coordination, for the benefit of the economy at large, including financial institutions and other stakeholders, consumers and employees, **while taking account of the need to enhance competition and innovation within the internal market and to ensure global competitiveness. Its tasks should also include promoting supervisory convergence and providing advice to the EU institutions in the areas of banking, payments, e-money regulation and supervision, and related corporate governance, auditing and financial**



*reporting issues.*

### **Amendment 13**

#### **Proposal for a regulation Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

*(9a) In order to be able to fulfil its objectives, it is necessary and appropriate that the Authority should be an EU body with legal personality and legal, administrative and financial autonomy. As suggested by the Basel Committee on Banking Supervision, the Authority should be granted “powers to address compliance with laws as well as safety and soundness concerns”, in particular those related with systemic risk and cross-border risks.*

### **Amendment 14**

#### **Proposal for a regulation Recital 9 b (new)**

*Text proposed by the Commission*

*Amendment*

*(9b) On 28 October 2009, the Financial Stability Board, the Bank for International Settlements, the International Monetary Fund and the G-20 defined systemic risk as "a risk of disruption to financial services that is (i) caused by an impairment of all or parts of the financial system and (ii) has the potential to have serious negative consequences for the real economy. All types of financial intermediaries, markets and infrastructure can potentially be systematically important to some degree".*

### **Amendment 15**

## Proposal for a regulation

### Recital 9 c (new)

*Text proposed by the Commission*

*Amendment*

***(9c) Cross-border risk, according to those institutions, includes all risks caused by economic imbalances or financial failures in all or parts of the Union that have the potential to have significant negative consequences for the transactions between economic operators of two or more Member States, for the functioning of the internal market or for the public finances of the Union or any of its Member States.***

## Amendment 16

### Proposal for a regulation

#### Recital 10

*Text proposed by the Commission*

*Amendment*

(10) The Court of Justice of the European **communities** in its judgement of 2 May 2006 in Case C-217/04 (United Kingdom/European Parliament and Council) **has acknowledged that Article 95 of the Treaty relating to the adoption of measures for the approximation of legislation for the establishment and functioning of the internal market provides an appropriate legal basis for setting up a "Community body responsible for contributing to the implementation of a process of harmonisation", when** the tasks conferred on such a body are closely related to the subject-matter of the acts approximating the national legislations. The purpose and tasks of the Authority - assisting competent national supervisory authorities in the consistent interpretation and application of **Community** rules and contributing to financial stability necessary for financial integration - are closely linked to the objectives of the **Community** acquis concerning the internal market for financial

(10) The Court of Justice of the European **Union** in its judgement of 2 May 2006 in Case C-217/04 (United Kingdom/European Parliament and Council) **held that: "nothing in the wording of Article 95 TEC [now Article 114 TFEU] implies that the addressees of the measures adopted by the Community legislature on the basis of that provision can only be the individual Member States. The legislature may deem it necessary to provide for the establishment of a Community body responsible for contributing to the implementation of a process of harmonization in situations where, in order to facilitate the uniform implementation and application of acts based on that provision, the adoption of non-binding supporting and framework measures seems appropriate"** and the tasks conferred on such a body are closely related to the subject-matter of the acts approximating the national legislations. The purpose and tasks of the Authority - assisting competent national supervisory

services. The Authority should therefore be established on the basis of **Article 95 of the Treaty**.

authorities in the consistent interpretation and application of **Union** rules and contributing to financial stability necessary for financial integration - are closely linked to the objectives of the **Union** acquis concerning the internal market for financial services. The Authority should therefore be established on the basis of **Article 114 TFEU**.

## Amendment 17

### Proposal for a regulation

#### Recital 11

##### *Text proposed by the Commission*

(11) The legal acts which lay down the tasks for competent authorities of Member States, including cooperating with each other and with the Commission, are the following: Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions and Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes.

##### *Amendment*

(11) The legal acts which lay down the tasks for competent authorities of Member States, including cooperating with each other and with the Commission, are the following: Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions, Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions and Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes. ***The application of this Regulation to Directive 94/19/EC should be without prejudice to the ongoing review of that Directive and should not pre-empt the powers, if any, that may be conferred on the Authority as a result of that review.***

## Amendment 18

### Proposal for a regulation

#### Recital 12

##### *Text proposed by the Commission*

(12) Existing **Community** legislation regulating the field covered by this

##### *Amendment*

(12) Existing **Union** legislation regulating the field covered by this Regulation also

Regulation also includes Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council, Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services.

includes Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate, **Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds<sup>1</sup>, Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions<sup>2</sup> and relevant parts of** Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, and Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services.

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<sup>1</sup> OJ L 345, 8.12.2006, p. 1.

<sup>2</sup> OJ L 267, 10.10.2009, p. 7.

## Amendment 19

### Proposal for a regulation

#### Recital 13

##### *Text proposed by the Commission*

(13) It is desirable that the Authority promote a consistent approach in the area of deposit guarantees to ensure a level playing field and the equitable treatment of depositors across the **Community**. As deposit guarantee schemes are subject to oversight in their Member States rather than regulatory supervision, it is appropriate that the Authority should be able to exercise its powers under this Regulation in relation to the deposit guarantee scheme itself and its operator.

##### *Amendment*

(13) It is desirable that the Authority promote a consistent approach in the area of deposit guarantees to ensure a level playing field and the equitable treatment of depositors across the **Union**. As deposit guarantee schemes are subject to oversight in their Member States rather than regulatory supervision, it is appropriate that the Authority should be able to exercise its powers under this Regulation in relation to the deposit guarantee scheme itself and its operator. **The role of the**

***Authority should be reviewed once a European Deposit Guarantee fund is established.***

*Justification*

*The role of the Authority in the area of deposit guarantees needs to be reconsidered when a European Deposit Guarantee fund will be established.*

**Amendment 20**

**Proposal for a regulation**

**Recital 14**

*Text proposed by the Commission*

(14) There is a need to introduce an effective instrument to establish harmonised ***technical*** standards in financial services to ensure, also through a single rulebook, a level playing field and an adequate protection of depositors, investors and consumers across Europe. As a body with highly specialised expertise, it is efficient and appropriate to entrust the Authority, in areas defined by ***Community*** law, with the elaboration of draft ***technical*** standards, which do not involve policy choices. The Commission should ***endorse those draft technical standards in accordance with Community law in order to give them binding legal effect. The draft technical standards have to be adopted by the Commission. They would be subject to amendment if, for example, the draft technical standards were incompatible with Community Law, would not respect the principle of proportionality or would run counter to the fundamental principles of the internal market for financial services as reflected in the acquis of Community financial services legislation. To ensure a smooth and expedited adoption process for those standards, the Commission should be subject to a time limit for its decision on the endorsement.***

*Amendment*

(14) There is a need to introduce an effective instrument to establish harmonised ***regulatory*** standards in financial services to ensure, also through a single rulebook, a level playing field and an adequate protection of depositors, investors and consumers across Europe. As a body with highly specialised expertise, it is efficient and appropriate to entrust the Authority, in areas defined by ***Union*** law, with the elaboration of draft ***regulatory*** standards, which do not involve policy choices. The Commission should ***be empowered to adopt delegated acts in accordance with the procedure referred to in Article 290 TFEU concerning regulatory standards in financial services.***

## Amendment 21

### Proposal for a regulation

#### Recital 15

*Text proposed by the Commission*

*(15) The process for the development of technical standards in this regulation is without prejudice to the Commission's powers to adopt on its own initiative implementing measures under comitology procedures at level 2 of the Lamfalussy structure as laid out in the relevant Community legislation. The matters concerned by the technical standards do not involve policy decisions, and their content is framed by the Community acts adopted at Level 1. Development of the draft standards by the Authority ensures that they fully benefit from the specialised expertise of national supervisory authorities.*

*Amendment*

*(15) The Commission should endorse those draft regulatory standards in order to give them binding legal effect. They should be subject to amendment if, for example, they are incompatible with Union law, do not respect the principle of proportionality or run counter to the fundamental principles of the internal market for financial services as reflected in Union financial services law. To ensure a smooth and expeditious adoption process for those standards, the Commission should be subject to a time limit for its decision on the endorsement.*

## Amendment 22

### Proposal for a regulation

#### Recital 16

*Text proposed by the Commission*

(16) In areas not covered by **technical** standards, the Authority should have the power to issue **non-binding** guidelines and recommendations on the application of **Community** legislation. In order to ensure transparency and strengthen compliance by national supervisory authorities with those guidelines and recommendations, national authorities should be obliged to **state their** reasons where they do not comply with those guidelines and recommendations.

*Amendment*

(16) In areas not covered by **regulatory** standards, the Authority should have the power to issue guidelines and recommendations on the application of **Union** legislation. In order to ensure transparency and strengthen compliance by national supervisory authorities with those guidelines and recommendations, national authorities should be obliged to **publish the** reasons where they do not comply with those guidelines and recommendations **in order to ensure full transparency towards market participants. In areas not covered by regulatory standards, the Authority should establish and promulgate best practices.**

## Amendment 23

### Proposal for a regulation

#### Recital 17

*Text proposed by the Commission*

(17) Ensuring the correct and full application of **Community** law is a core prerequisite for the integrity, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial institutions in the **Community**. A mechanism should therefore be established whereby the Authority addresses instances of incorrect or insufficient application of **Community** law. This mechanism should apply in areas where **Community** legislation defines clear and unconditional obligations

*Amendment*

(17) Ensuring the correct and full application of **Union** law is a core prerequisite for the integrity, **transparency**, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial institutions in the **Union**. A mechanism should therefore be established whereby the Authority addresses instances of incorrect or insufficient application of **Union** law. This mechanism should apply in areas where **Union** legislation defines clear and unconditional obligations.

## Amendment 24

### Proposal for a regulation

#### Recital 19

*Text proposed by the Commission*

(19) Where the national authority does not comply with the recommendation, the **Commission** should **be empowered to** address a Decision to the national supervisory authority concerned in order to ensure compliance with **Community** law, creating direct legal effects which can be invoked before national courts and authorities and enforced under **Article 226 of the Treaty**.

*Amendment*

(19) Where the national authority does not comply with the recommendation **within a deadline fixed by the Authority**, the **Authority** should address a Decision **without delay** to the national supervisory authority concerned in order to ensure compliance with **Union** law, creating direct legal effects which can be invoked before national courts and authorities and enforced under **Article 258 TFEU**.

## Amendment 25

### Proposal for a regulation

#### Recital 21

*Text proposed by the Commission*

(21) Serious threats to the orderly

*Amendment*

(21) Serious threats to the orderly

functioning and integrity of financial markets or the stability of the financial system in the **Community** require a swift and concerted response at **Community** level. The Authority should therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. **As the determination of an emergency situation involves a significant degree of discretion, this power should be conferred on the Commission.** To ensure an effective response to the emergency situation, in the event of inaction by the competent national supervisory authorities, the Authority should be empowered to adopt, as a last resort, decisions directly addressed to financial institutions in areas of **Community** law directly applicable to them aimed at mitigating the effects of the crisis and restoring confidence in the markets.

functioning and integrity of financial markets or the stability of the financial system in the **Union** require a swift and concerted response at **Union** level. The Authority should therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. **The European Systemic Risk Board should determine when there is an emergency situation.** To ensure an effective response to the emergency situation, in the event of inaction by the competent national supervisory authorities, the Authority should be empowered to adopt, as a last resort, decisions directly addressed to financial institutions in areas of **Union** law directly applicable to them aimed at mitigating the effects of the crisis and restoring confidence in the markets.

## Amendment 26

### Proposal for a regulation

#### Recital 22

##### *Text proposed by the Commission*

(22) In order to ensure efficient and effective supervision and a balanced consideration of the positions of the competent authorities in different Member States, the Authority should be able to settle disagreements between those competent authorities with binding effect, including within colleges of supervisors. A conciliation phase should be provided for, during which the competent authorities may reach an agreement. The Authority's competence should cover disagreements on procedural obligations in the cooperation process as well as on the interpretation and application of **Community** law in supervisory decisions. Existing conciliation mechanisms provided for in sectoral legislation have to be respected. In the event of inaction by the national supervisory authorities concerned, the

##### *Amendment*

(22) In order to ensure efficient and effective supervision and a balanced consideration of the positions of the competent authorities in different Member States, the Authority should be able to settle disagreements between those competent authorities with binding effect, including within colleges of supervisors. A conciliation phase should be provided for, during which the competent authorities may reach an agreement. The Authority's competence should cover disagreements on procedural obligations in the cooperation process as well as on the interpretation and application of **Union** law in supervisory decisions. Existing conciliation mechanisms provided for in sectoral legislation have to be respected. In the event of inaction by the national supervisory authorities concerned, the



Authority should be empowered to adopt, as a last resort, decisions directly addressed to financial institutions in areas of **Community** law directly applicable to them.

Authority should be empowered to adopt, as a last resort, decisions directly addressed to financial institutions in areas of **Union** law directly applicable to them. ***This also applies to disagreements within a college of supervisors.***

## Amendment 27

### Proposal for a regulation Recital 22 a (new)

*Text proposed by the Commission*

*Amendment*

***(22a) The crisis has exposed major fault lines in existing approaches to supervision of cross-border financial institutions, particularly the biggest and most complex institutions, the bankruptcy of which is capable of producing systemic damages. Those fault lines arise from the different areas of activity of the financial institutions and from the supervisory bodies on the other. The former act in a market without borders, the latter check on a daily basis whether their jurisdictions end at national borders.***

## Amendment 28

### Proposal for a regulation Recital 22 b (new)

*Text proposed by the Commission*

*Amendment*

***(22b) The cooperation mechanism used to solve that asymmetry has clearly been shown to be insufficient. As the Turner Review, published in March 2009, points out, "the current arrangements, combining branch passporting rights, home country supervision, and purely national deposit insurance, are not sound basis for the future regulation and supervision of European cross-border retail banks"<sup>1</sup>.***

## **Amendment 29**

### **Proposal for a regulation Recital 22 c (new)**

*Text proposed by the Commission*

*Amendment*

***(22c) There are two possible solutions to solve that asymmetry: to give more power to host-country supervisors (the national solution) or to create a genuine alternative Union authority (the Union solution). As the Turner review states, "sounder arrangements require either increased national powers, implying a less open single market, or a greater degree of European integration".***

## **Amendment 30**

### **Proposal for a regulation Recital 22 d (new)**

*Text proposed by the Commission*

*Amendment*

***(22d) Under the national solution, the host country could refuse local branches the right to operate, to oblige foreign institutions to act only through the subsidiaries and not through branches and to oversee the capital and liquidity of banks operating in their country, which would amount to more protectionism.***

## **Amendment 31**

### **Proposal for a regulation Recital 22 e (new)**

*Text proposed by the Commission*

*Amendment*

***(22e) Under the Union solution, the colleges of supervisors supervising cross-border institutions should be reinforced and there should be a progressive shift of***

*supervisory powers over institutions meeting the systemic risk criteria to a Union authority. That supervisory framework should comprise cross-border or nationally operating financial institutions whose bankruptcy could threaten the stability of the Union's single financial market.*

## **Amendment 32**

### **Proposal for a regulation Recital 22 f (new)**

*Text proposed by the Commission*

*Amendment*

*(22f) The colleges of supervisors should have the power to define supervisory rules to foster the coherent application of Union law. The Authority should have full participation rights in colleges of supervisors with a view to streamlining the functioning of the information-exchange process and to foster convergence and consistency across colleges in the application of Union law. The Authority should act as leader in supervising cross-border financial institutions operating in the Union. The Authority should also have a binding mediation role to solve conflicts between national supervisors.*

## **Amendment 33**

### **Proposal for a regulation Recital 22 g (new)**

*Text proposed by the Commission*

*Amendment*

*(22g) The colleges of supervisors should play an important role in the efficient, effective and consistent supervision of cross-border financial institutions that do not fall within the scope of the Authority, but where differences between national standards and practices subsist. It is not enough to converge basic financial*

*regulations if the supervision practices remain fragmented. As the de Larosière Report points out, "competition distortions and regulatory arbitrage stemming from different supervisory practices must be avoided, because they have the potential of undermining financial stability – inter alia by encouraging a shift of financial activity to countries with lax supervision. The supervisory system has to be perceived as fair and balanced".*

#### **Amendment 34**

##### **Proposal for a regulation Recital 23**

*Text proposed by the Commission*

*Amendment*

*(23) Colleges of supervisors play an important role in the efficient, effective and consistent supervision of financial institutions operating across borders. The Authority should have full participation rights in colleges of supervisors with a view to streamlining the functioning of and the information exchange process in colleges and to foster convergence and consistency across colleges in the application of Community law.*

*deleted*

#### **Amendment 35**

##### **Proposal for a regulation Recital 23 a (new)**

*Text proposed by the Commission*

*Amendment*

*(23a) The prudential supervision of financial institutions meeting the systemic risk criteria should be entrusted to the Authority where national supervisors have failed to exercise their powers in a timely and orderly manner. The national supervisors should be subject to the Authority's instructions concerning institutions meeting the systemic risk*

*criteria. The Authority should act through the national supervisors.*

#### **Amendment 36**

##### **Proposal for a regulation Recital 23 b (new)**

*Text proposed by the Commission*

*Amendment*

*(23b) A new framework for financial crisis management should therefore be established because the existing mechanism for ensuring the stability of the financial system does not work. Key elements of crisis management are a common set of rules and financial resolution vehicles (execution and funding to deal with the crisis of large, cross-border and/or interconnected institutions).*

#### **Amendment 37**

##### **Proposal for a regulation Recital 23 c (new)**

*Text proposed by the Commission*

*Amendment*

*(23c) The systemic risk should be identified, taking into account international standards, in particular those established by the Financial Stability Board, the International Monetary Fund, the International Association of Insurance Supervisors (IAIS) and the G-20. Interconnectedness, substitutability and timing are the most commonly used criteria for the identification of systemic risk. Depending on the extent to which financial institutions meet the systemic risk criteria, they should fall within the jurisdiction of the Authority and be subject to the obligation to contribute to the European Deposit Guarantee Fund and the European Banking Stability Fund.*

## Amendment 38

### Proposal for a regulation Recital 23 d (new)

*Text proposed by the Commission*

*Amendment*

***(23d) To ensure the co-responsibility of cross-border financial institutions, protect Union depositors' interests and reduce the cost to tax payers of a systemic financial crisis, the European Deposit Guarantee Fund should be established to finance the orderly winding-up or rehabilitation interventions in ailing cross-border financial institutions, the impact of which would threaten the financial stability of the Union's single financial market. The Fund should be financed through contributions from those institutions, through debt issued by the Fund or, in exceptional circumstances, through contributions made by the affected Member States in accordance with criteria previously agreed upon in a revised Memorandum of Understanding. The contributions to the Fund should replace those made to the national deposit guarantee schemes.***

## Amendment 39

### Proposal for a regulation Recital 23 e (new)

*Text proposed by the Commission*

*Amendment*

***(23e) The European Banking Stability Fund should finance the orderly winding-up or rescue interventions of financial institutions facing difficulties when those could menace financial stability of the Union's single financial market. The Fund should be financed through adequate contributions from the financial sector. The contributions to the Fund should replace those made to the national***

*funds of similar nature.*

## Amendment 40

### Proposal for a regulation

#### Recital 24

##### *Text proposed by the Commission*

(24) The delegation of tasks and responsibilities can be a useful instrument in the functioning of the network of supervisors in order to reduce the duplication of supervisory tasks, foster cooperation and thereby streamline the supervisory process as well as reduce the burden imposed on financial institutions. The Regulation should therefore provide a clear legal basis for such delegation. Delegation of tasks means that tasks are carried out by another supervisory authority instead of the responsible authority, while the responsibility for supervisory decisions remains with the delegating authority. By delegation of responsibilities one national supervisory authority, the delegatee, **shall** be able to decide upon a certain supervisory matter in its name in lieu of another national supervisory authority. Delegations should be governed by the principle of allocating supervisory competence to a supervisor which is well placed to take action in the subject matter. A reallocation of responsibilities can be appropriate for example for reasons of economies of scale or scope, of coherence in group supervision, and of optimal use of technical expertise among national supervisory authorities. Relevant **Community** legislation may further specify the principles for reallocation of responsibilities upon agreement. The Authority should facilitate delegation agreements between national supervisory authorities by all appropriate means. It should be informed in advance of intended delegation agreements to be able to express

##### *Amendment*

(24) The delegation of tasks and responsibilities can be a useful instrument in the functioning of the network of supervisors in order to reduce the duplication of supervisory tasks, foster cooperation and thereby streamline the supervisory process as well as reduce the burden imposed on financial institutions, **particularly for those financial institutions that do not have a Union dimension.** The Regulation should therefore provide a clear legal basis for such delegation. Delegation of tasks means that tasks are carried out by another supervisory authority instead of the responsible authority, while the responsibility for supervisory decisions remains with the delegating authority. By delegation of responsibilities one national supervisory authority, the delegatee, **should** be able to decide upon a certain supervisory matter in its name in lieu of **the Authority or of** another national supervisory authority. Delegations should be governed by the principle of allocating supervisory competence to a supervisor which is well placed to take action in the subject matter. A reallocation of responsibilities can be appropriate for example for reasons of economies of scale or scope, of coherence in group supervision, and of optimal use of technical expertise among national supervisory authorities. Relevant **Union** legislation may further specify the principles for reallocation of responsibilities upon agreement. The Authority should facilitate **and monitor** delegation agreements between national supervisory authorities by

an opinion where appropriate. It should centralise the publication of such agreements to ensure timely, transparent and easily accessible information about agreements for all parties concerned.

all appropriate means. It should be informed in advance of intended delegation agreements to be able to express an opinion where appropriate. It should centralise the publication of such agreements to ensure timely, transparent and easily accessible information about agreements for all parties concerned. ***It should identify and disseminate best practices regarding delegation and delegation agreements.***

## Amendment 41

### Proposal for a regulation

#### Recital 27

##### *Text proposed by the Commission*

(27) The Authority should actively promote a coordinated **Community** supervisory response, in particular ***where adverse developments could potentially jeopardise*** the orderly functioning and integrity of financial markets or the stability of the financial system in the **Community**. In addition to its powers for action in emergency situations, it should therefore be entrusted with a general coordination function within the **European System of Financial Supervisors**. The smooth flow of all relevant information between competent authorities should be a particular focus of the Authority's actions.

##### *Amendment*

(27) The Authority should actively promote a coordinated **Union** supervisory response, in particular ***to ensure*** the orderly functioning and integrity of financial markets or the stability of the financial system in the **Union**. In addition to its powers for action in emergency situations, it should therefore be entrusted with a general coordination function within the **ESFS**. The smooth flow of all relevant information between competent authorities should be a particular focus of the Authority's actions.

## Amendment 42

### Proposal for a regulation

#### Recital 28

##### *Text proposed by the Commission*

(28) In order to safeguard financial stability it is necessary to identify, at an early stage, trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors. The Authority should monitor and assess such developments in the area of its

##### *Amendment*

(28) In order to safeguard financial stability it is necessary to identify, at an early stage, trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors. The Authority should monitor and assess such developments in the area of its



competence and, where necessary, inform the European Parliament, the Council, the Commission, the other European Supervisory Authorities and the European Systemic Risk Board on a regular and, as necessary, ad hoc basis. The Authority should also coordinate **Community-wide** stress tests to assess the resilience of financial institutions to adverse market developments, ensuring an as consistent as possible methodology is applied at the national level to such tests.

competence and, where necessary, inform the European Parliament, the Council, the Commission, the other European Supervisory Authorities and the European Systemic Risk Board on a regular and, as necessary, ad hoc basis. The Authority should also **initiate and** coordinate **Union-wide** stress tests to assess the resilience of financial institutions to adverse market developments, ensuring an as consistent as possible methodology is applied at the national level to such tests. ***In order to inform the discharge of its functions, the Authority should conduct economic analyses of the markets and the impact of potential market developments.***

#### *Justification*

*The use of economic analysis will allow the ESA to make more informed decisions on the impact of its actions on the wider market, and the impact of wider market events on its actions. This is in line with best practice at member state level.*

#### **Amendment 43**

##### **Proposal for a regulation**

##### **Recital 29**

###### *Text proposed by the Commission*

(29) Given the globalisation of financial services and the increased importance of international standards, the Authority should **foster the** dialogue and cooperation with supervisors **outside the Community**. ***It shall fully respect the existing roles and competences of the European Institutions in relations with authorities outside the Community and in international forums.***

###### *Amendment*

(29) Given the globalisation of financial services and the increased importance of international standards, the Authority should **represent the Union in relation to** dialogue and cooperation with supervisors **in third countries**.

#### **Amendment 44**

##### **Proposal for a regulation**

##### **Recital 32**

###### *Text proposed by the Commission*

(32) Close cooperation between the

###### *Amendment*

(32) Close cooperation between the

Authority and the European Systemic Risk Board is essential to give full effectiveness to the functioning of the European Systemic Risk Board and the follow-up to its warnings and recommendations. The Authority should share any relevant information with the European Systemic Risk Board. Data related to individual undertakings should be provided only upon reasoned request. Upon receipt of warnings or recommendations addressed by the European Systemic Risk Board to the Authority or a national supervisory authority, the Authority should ensure follow-up.

Authority and the European Systemic Risk Board is essential to give full effectiveness to the functioning of the European Systemic Risk Board and the follow-up to its warnings and recommendations. The Authority **and the European Systemic Risk Board** should share any relevant information with the European Systemic Risk Board. Data related to individual undertakings should be provided only upon reasoned request. Upon receipt of warnings or recommendations addressed by the European Systemic Risk Board to the Authority or a national supervisory authority, the Authority should ensure follow-up **as appropriate**.

#### *Justification*

*Better explanation of the text.*

#### **Amendment 45**

##### **Proposal for a regulation**

##### **Recital 33**

###### *Text proposed by the Commission*

(33) **Where appropriate**, the Authority should consult interested parties on **technical** standards, guidelines and recommendations and provide them with a reasonable opportunity to comment on proposed measures. For reasons of efficiency, a Banking Stakeholder Group should be established for that purpose, representing in balanced proportions **Community** credit and investment institutions (including as appropriate institutional investors and other financial institutions which themselves use financial services), **their employees**, and consumers and other retail users of banking services, including SMEs. The Banking Stakeholder Group should actively work as an interface with other user groups in the financial services area established by the Commission or **Community** legislation.

###### *Amendment*

(33) The Authority should consult interested parties on **regulatory** standards, guidelines and recommendations and provide them with a reasonable opportunity to comment on proposed measures. **Before adopting draft regulatory standards, guidelines and recommendations the Authority should carry out an impact study**. For reasons of efficiency, a Banking Stakeholder Group should be established for that purpose, representing in balanced proportions **Union** credit and investment institutions (**representing the diverse models and sizes of financial institutions and businesses**, including as appropriate institutional investors and other financial institutions which themselves use financial services), **trade unions, academics** and consumers and other retail users of banking services, including SMEs. The Banking Stakeholder Group should actively work as

an interface with other user groups in the financial services area established by the Commission or *Union* legislation.

#### Amendment 46

##### Proposal for a regulation Recital 33 a (new)

*Text proposed by the Commission*

*Amendment*

***(33a) Non-profit organisations are marginalised in the debate on the future of financial services and in the corresponding decision making process in comparison to well-funded and well-connected industry representatives. That disadvantage should be compensated for by adequate funding of their representatives in the Banking Stakeholder group.***

#### Amendment 47

##### Proposal for a regulation Recital 34

*Text proposed by the Commission*

*Amendment*

(34) Member States have a core responsibility *in* preserving financial stability in crisis *management*, in particular with regard to stabilising and resolving individual ailing financial institutions. Measures by the Authority in emergency or settlement situations affecting the stability of a financial institution should not impinge on the fiscal responsibilities of Member States. A mechanism should be established whereby Member States may invoke this safeguard and ultimately bring the matter before the Council for a decision. It is appropriate to confer on the Council a role in this matter given the particular responsibilities of the Member States in this respect.

(34) Member States have a core responsibility ***for ensuring coordinated crisis management and*** preserving financial stability in crisis *situations*, in particular with regard to stabilising and resolving individual ailing financial institutions. ***Their actions should be closely coordinated with the framework and the principles of the EMU.*** Measures by the Authority in emergency or settlement situations affecting the stability of a financial institution should not impinge on the fiscal responsibilities of Member States. A mechanism should be established whereby Member States may invoke this safeguard and ultimately bring the matter before the Council for a decision. It is appropriate to confer on the Council a role in this matter given the

particular responsibilities of the Member States in this respect.

#### **Amendment 48**

##### **Proposal for a regulation Recital 34 a (new)**

*Text proposed by the Commission*

*Amendment*

***(34a) Within three years from the entry into force of a regulation establishing such a mechanism, clear and sound guidance on when the safeguard is triggered by Member States should be laid down at Union level by the Commission on the basis of the experience acquired. Member States' use of the safeguard clause should be assessed against that guidance.***

*Justification*

*The Commission's proposal lacks guidance as to when a decision would impinge on national fiscal responsibilities. Legal certainty underlying the concept of "fiscal responsibility" must be provided to ensure a level playing field for the national authorities and financial market participants across the EU. Clear guidance on when an impingement on the fiscal responsibility may be claimed must be commonly defined and agreed upon.*

#### **Amendment 49**

##### **Proposal for a regulation Recital 34 b (new)**

*Text proposed by the Commission*

*Amendment*

***(34b) Without prejudice to the particular responsibilities of the Member States in crisis situations, if a Member State chooses to invoke the safeguard, it should inform the European Parliament at the same time as the Authority, the Council and the Commission. Furthermore, the Member State should explain its reasons for invoking the safeguard. The Authority should, in cooperation with the Commission, set out the next steps to be taken.***

## Amendment 50

### Proposal for a regulation

#### Recital 36

##### *Text proposed by the Commission*

(36) A Board of Supervisors composed of the heads of the relevant competent authority in each Member State, and chaired by the Chairperson of the Authority, should be the principal decision-making organ of the Authority. Representatives of the Commission, the European Systemic Risk Board, the European Central Bank and the **other two** European Supervisory **Authorities** should participate as observers. Members of the Board of Supervisors should act independently and only in the **Community's** interest. For acts of a general nature, including those related to the adoption of **technical** standards, guidelines and recommendations as well as budgetary matters, it is appropriate to apply the rules on qualified majority as laid down in the **Treaty**, whereas for all other decisions simple majority of members should apply. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted panel.

##### *Amendment*

(36) A Board of Supervisors composed of the heads of the relevant competent authority in each Member State, and chaired by the Chairperson of the Authority, should be the principal decision-making organ of the Authority. Representatives of the Commission, the European Systemic Risk Board, the European Central Bank and the European Supervisory **Authority (Insurance and Pensions) and the European Supervisory Authority (Securities and Markets)** should participate as observers. Members of the Board of Supervisors should act independently and only in the **Union's** interest. For acts of a general nature, including those related to the adoption of **regulatory** standards, guidelines and recommendations as well as budgetary matters, it is appropriate to apply the rules on qualified majority as laid down in **Article 16 TFEU**, whereas for all other decisions simple majority of members should apply. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted panel.

*(The changes to the authorities' names should apply throughout the text.)*

## Amendment 51

### Proposal for a regulation

#### Recital 38

##### *Text proposed by the Commission*

(38) A full time Chairperson, selected by the **Board of Supervisors through** an open competition, should represent the

##### *Amendment*

(38) A full time Chairperson, selected by the **European Parliament following** an open competition **managed by the**

Authority. The management of the Authority should be entrusted to an Executive Director, who should have the right to participate in meetings of the Board of Supervisors and the Management Board without the right to vote.

***Commission and the subsequent drawing up of a short list for the Commission,*** should represent the Authority. The management of the Authority should be entrusted to an Executive Director, who should have the right to participate in meetings of the Board of Supervisors and the Management Board without the right to vote.

## Amendment 52

### Proposal for a regulation

#### Recital 39

##### *Text proposed by the Commission*

(39) In order to ensure cross-sectoral consistency in the activities of the European Supervisory Authorities, those authorities should coordinate closely ***in a Joint Committee of*** European Supervisory Authorities and reach common positions where appropriate. The Joint Committee ***of European Supervisory Authorities*** should ***assume all of the functions of the Joint Committee on Financial Conglomerates.*** Where relevant, acts also falling within the area of competence of the European Insurance and Occupational Pensions ***Authority*** or the European Securities and Markets ***Authority*** should be adopted in parallel by the European Supervisory Authorities concerned.

##### *Amendment*

(39) In order to ensure cross-sectoral consistency in the activities of the European Supervisory Authorities, those authorities should coordinate closely ***through the*** European Supervisory Authorities ***(Joint Committee) (the "Joint Committee")*** and reach common positions where appropriate. The Joint Committee should ***coordinate the functions of the three European Supervisory Authorities in relation to financial conglomerates.*** Where relevant, acts also falling within the area of competence of the European ***Supervisory Authority (European Insurance and Occupational Pensions) or the European Supervisory Authority (Securities and Markets)*** should be adopted in parallel by the European Supervisory Authorities concerned. ***The Joint Committee should be chaired for a 12-month term on a rotating basis by the Chairpersons of the three European Supervisory Authorities. The Chairperson of the Joint Committee should be a Vice-Chair of the European Systemic Risk Board. The Joint Committee should have a permanent secretariat, staffed on secondment from the three European Supervisory Authorities to allow for informal information sharing and the development of a common cultural approach across the three European***

## ***Supervisory Authorities.***

### *Justification*

*To strengthen the role of the Joint Committee in the coordination of the authorities as stated in the Skinner Report.*

### **Amendment 53**

#### **Proposal for a regulation**

#### **Recital 41**

##### *Text proposed by the Commission*

(41) In order to guarantee its full autonomy and independence, the Authority should be granted an autonomous budget with revenues mainly from obligatory contributions from national supervisory authorities and from the General Budget of the European Union. The ***Community*** budgetary procedure should be applicable ***as far as the Community contribution is concerned***. The auditing of accounts should be undertaken by the Court of Auditors.

##### *Amendment*

(41) In order to guarantee its full autonomy and independence, the Authority should be granted an autonomous budget with revenues mainly from obligatory contributions from national supervisory authorities and from the General Budget of the European Union. ***Union financing of the Authority is subject to an agreement by the budgetary authority in accordance with Point 47 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management<sup>1</sup> (IIA)***. The ***Union*** budgetary procedure should be applicable. The auditing of accounts should be undertaken by the Court of Auditors. ***The overall budget is subject to the discharge procedure.***

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<sup>1</sup> *OJ C 139, 14.6.2006, p. 1.*

### *Justification*

*The Authority is set up as a European Union decentralised agency and will be financed in accordance with the IIA. This should be reflected in its legal base.*

### **Amendment 54**

## Proposal for a regulation

### Recital 44

*Text proposed by the Commission*

(44) It is essential that business secrets and other confidential information are protected. The confidentiality of information exchanged in the network should *likewise be safeguarded*.

*Amendment*

(44) It is essential that business secrets and other confidential information are protected. The confidentiality of information *made available to the Authority and* exchanged in the network should *be subject to stringent and effective confidentiality rules*.

*Justification*

*Given the market sensitivity of firm specific data, it is essential that the ESAs are required to establish secure mechanisms to gather, store, and transmit it. There is clearly a need for improved information exchange to enhance understanding of systemic risk. However, it is important not to undermine market sentiment by potential disclosure of sensitive and confidential data that could upset the orderly functioning of financial markets.*

### Amendment 55

## Proposal for a regulation

### Article 1 – paragraph 1

*Text proposed by the Commission*

1. This Regulation establishes a European **Banking** Authority ("the Authority").

*Amendment*

1. This Regulation establishes a European **Supervisory Authority (Banking)** ("the Authority").

### Amendment 56

## Proposal for a regulation

### Article 1 – paragraph 2

*Text proposed by the Commission*

2. The Authority shall act within the scope of Directive 2006/48/EC, Directive 2006/49/EC, Directive 2002/87/EC, Directive 2005/60/EC, Directive 2002/65/EC and Directive 94/19/EC, including all directives, regulations, and decisions based on these acts, and of any further **Community** act which confers tasks on the Authority.

*Amendment*

2. The Authority shall act within the scope of **this Regulation**, Directive 2006/48/EC, Directive 2006/49/EC, Directive 2002/87/EC, Directive 2005/60/EC, Directive 2002/65/EC and Directive 94/19/EC, including all directives, regulations, and decisions based on these acts, and of any further **Union legislative** act which confers tasks on the Authority.



*The Authority shall also act in the field of activities of credit institutions, financial conglomerates, investment firms, payment institutions and e-money institutions, including matters of corporate governance, auditing and financial report, in order to ensure the consistent application of the legislative acts referred to in subparagraph 1.*

## Amendment 57

### Proposal for a regulation Article 1 – paragraph 3

*Text proposed by the Commission*

3. The provisions of this Regulation are without prejudice to the powers of the Commission, in particular under **Article 226 of the Treaty** to ensure compliance with **Community** law.

*Amendment*

3. The provisions of this Regulation are without prejudice to the powers of the Commission, in particular under **Article 258 TFEU** to ensure compliance with **Union** law.

## Amendment 58

### Proposal for a regulation Article 1 – paragraph 4

*Text proposed by the Commission*

4. The objective of the Authority shall be to contribute to: (i) improving the functioning of the internal market, including in particular a high, effective and consistent level of regulation and supervision, (ii) protecting depositors and investors, (iii) ensuring the integrity, efficiency and orderly functioning of financial markets, (iv) **safeguarding the stability of the financial system, and (v) strengthening international supervisory coordination. For this purpose, the Authority shall contribute to ensuring the consistent, efficient and effective application of the Community law** referred to in Article 1(2) **above**, fostering supervisory convergence and providing opinions to the European Parliament, the

*Amendment*

4. The objective of the Authority shall be to **protect public values such as the short, medium and long-term stability of the financial system, the solvency and liquidity of financial institutions, the transparency of markets and financial products and the protection of depositors and investors. The Authority shall** contribute to: (i) improving the functioning **and competitiveness** of the internal market, including in particular a high, effective and consistent level of regulation and supervision, (ii) **enhancing competition and innovation within the internal market and fostering global competitiveness, (iia) promoting financial inclusion,** (iii) ensuring the integrity, **transparency,** efficiency and orderly functioning of

Council, and the Commission.

financial markets, (iv) strengthening international supervisory coordination, (v) *supporting the Union's new strategy for jobs and growth*, (vi) *preventing regulatory arbitrage and contributing to a level playing field*, (vii) *precluding the generation of future credit bubbles from the Union's financial institutions*, and (viii) *developing common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of institutions and on customer protection*. For *those purposes*, the Authority shall contribute to ensuring the consistent, efficient and effective application of the *Union legislative acts* referred to in Article 1(2), fostering supervisory convergence and providing opinions to the European Parliament, the Council, and the Commission *and undertaking economic analyses of the markets to promote the achievement of the Authority's objective*.

## Amendment 59

### Proposal for a regulation

#### Article 1 – paragraph 4 – subparagraphs 1 a and 1 b (new)

*Text proposed by the Commission*

*Amendment*

*In the exercise of the tasks conferred upon it by this Regulation, the Authority shall pay particular attention to the systemic institutions which failure or malfunction may impair the operation of the financial system or the real economy.*

*When carrying out its tasks, the Authority shall act independently and objectively in the sole interest of the Union.*

## Amendment 60

**Proposal for a regulation**  
**Article 1 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

**5. The Authority shall form part of a European System of Financial Supervisors, hereinafter referred to as 'ESFS', which shall function as a network of supervisors, as further specified in Article 39.**

**deleted**

**Amendment 61**

**Proposal for a regulation**  
**Article 1 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. The European Banking Authority shall co-operate with the European Systemic Risk Board, hereinafter referred to as 'ESRB' as laid down in Article 21 of this Regulation**

**deleted**

**Amendment 62**

**Proposal for a regulation**  
**Article 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 1a**

**The European System of Financial Supervision**

**1. The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented in order to preserve financial stability and thereby to ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services.**

**2. The ESFS shall comprise the following:**

**(a) the European Systemic Risk Board;**

**(b) the Authority;**

**(c) the European Supervisory Authority (Securities and Markets) established by Regulation (EU) No .../2010 [ESMA];**

**(d) the European Supervisory Authority (Insurance and Occupational Pensions) established by Regulation (EU) No .../2010 [EIOPA];**

**(e) the European Supervisory Authority (Joint Committee) provided for by Article 40 (the "Joint Committee");**

**(f) the authorities in the Member States referred to in Article 1(2) of Regulation (EU) No .../2010 [ESMA], Regulation (EU) No .../2010 [EIOPA] and Regulation (EU) No .../2010 [EBA];**

**(g) the Commission, for the purposes of carrying out the tasks referred to in Articles 7 and 9.**

**3. The Authorities forming part of the ESFS, including the competent authorities of the Member States, shall be accountable to the European Parliament without prejudice to their accountability of Member States' competent authorities to national parliaments.**

**4 The Authority shall cooperate regularly and closely, ensure cross-sectoral consistency of work and arrive at joint positions in the area of supervision of financial conglomerates and on other cross-sectoral issues with the European Systemic Risk Board as well as with the European Supervisory Authority (Insurance and Occupational Pensions) and the European Supervisory Authority (Securities and Markets) through the Joint Committee.**

**5. In accordance with the principle of sincere cooperation under Article 4(3) of the Treaty on European Union, the parties of the ESFS shall cooperate with**

*trust and full mutual respect, in particular in ensuring that appropriate and reliable information flows between them.*

*6. Only those supervisory authorities included in the ESFS shall be entitled to supervise financial institutions operating in the Union.*

## Amendment 63

### Proposal for a regulation

#### Article 2 – paragraph 1 – point 1

*Text proposed by the Commission*

(1) 'financial institutions' means 'credit institutions' as defined in Directive 2006/48/EC, 'investment firms' as defined in Directive 2006/49/EC, and 'financial conglomerates' as defined in Directive 2002/87/EC;

*Amendment*

(1) 'financial institutions' means 'credit institutions' as defined in Directive 2006/48/EC, 'investment firms' as defined in Directive 2006/49/EC, and 'financial conglomerates' as defined in Directive 2002/87/EC, **and any other undertaking or entity operating in the Union, whose business is of a similar nature, even if they have no direct dealings with the public at large, including public banks and development banks. However, with regard to Directive 2005/60/EC, 'financial institutions' means only credit and financial institutions as defined in that Directive;**

## Amendment 64

### Proposal for a regulation

#### Article 2 – point 2

*Text proposed by the Commission*

(2) 'competent authorities' means competent authorities as defined in Directives 2006/48/EC and 2006/49/EC and, where deposit guarantee schemes are concerned, bodies which administer deposit-guarantee schemes pursuant to Directive 94/19/EC.

*Amendment*

(2) 'competent authorities' means competent authorities as defined in Directives 2006/48/EC and 2006/49/EC and, where deposit guarantee schemes are concerned, bodies which administer deposit-guarantee schemes pursuant to Directive 94/19/EC, **or where the operation of the deposit guarantee scheme is administered by a private company, the**

*public authority supervising that scheme pursuant to Directive 94/19/EC.*

#### Amendment 65

##### Proposal for a regulation Article 3 – paragraph 1

*Text proposed by the Commission*

1. The Authority shall be a **Community** body with legal personality.

*Amendment*

1. The Authority shall be a **Union** body with legal personality.

#### Amendment 66

##### Proposal for a regulation Article 5

*Text proposed by the Commission*

The Authority shall have its seat in **London**.

*Amendment*

The Authority shall have its seat in **Frankfurt**.

#### Amendment 67

##### Proposal for a regulation Article 6 – paragraph 1 – point a

*Text proposed by the Commission*

(a) contribute to the establishment of *high quality* common regulatory and supervisory standards and practices, in particular by providing opinions to the **Community** institutions and by developing guidelines, recommendations, and draft **technical** standards which shall be based on the **legislation** referred to in Article 1(2);

*Amendment*

(a) contribute to the establishment of *high-quality* common regulatory and supervisory standards and practices, in particular by providing opinions to the **Union** institutions and by developing guidelines, recommendations, and draft **regulatory and implementing** standards which shall be based on the **legislative acts** referred to in Article 1(2);

## Amendment 68

### Proposal for a regulation

#### Article 6 – paragraph 1 – point b

*Text proposed by the Commission*

(b) contribute to a consistent application of **Community legislation**, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the **legislation** referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, **promoting** a coherent functioning of colleges of supervisors and taking actions in emergency situations;

*Amendment*

(b) contribute to a consistent application of **Union legislative acts**, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the **legislative acts** referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, **ensuring effective and consistent supervision of financial institutions and ensuring** a coherent functioning of colleges of supervisors and taking actions, **inter alia**, in emergency situations;

## Amendment 69

### Proposal for a regulation

#### Article 6 – paragraph 1 – point c

*Text proposed by the Commission*

(c) facilitate the delegation of tasks and responsibilities between competent authorities;

*Amendment*

(c) **stimulate and** facilitate the delegation of tasks and responsibilities between competent authorities;

## Amendment 70

### Proposal for a regulation

#### Article 6 – paragraph 1 – point e

*Text proposed by the Commission*

(e) conduct peer review analysis of competent authorities, to strengthen consistency in supervisory outcomes;

*Amendment*

(e) **organise and** conduct peer review analysis of competent authorities, to strengthen consistency in supervisory outcomes;

## Amendment 71

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

*(fa) assess, in particular, the accessibility, availability and credit cost for households and enterprises, in particular SMEs;*

**Amendment 72**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f b (new)**

*Text proposed by the Commission*

*Amendment*

*(fb) undertake economic analyses of markets to inform the discharge of the Authority's functions;*

**Amendment 73**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f c (new)**

*Text proposed by the Commission*

*Amendment*

*(fc) foster depositor and investor protection;*

**Amendment 74**

**Proposal for a regulation**  
**Article 6 – paragraph 1 – point f d (new)**

*Text proposed by the Commission*

*Amendment*

*(fd) act as the competent body to manage crisis of cross-border institutions that has the potential to pose a systemic risk referred to in Article 12b, leading and executing all early interventions, resolution or insolvency procedures for such institutions through its Banking Resolution Unit as set out in Article 12(c);*



## Amendment 75

### Proposal for a regulation

#### Article 6 – paragraph 1 – point g

*Text proposed by the Commission*

(g) fulfil any other specific tasks set out in this Regulation or in the **Community legislation** referred to in Article 1(2).

*Amendment*

(g) fulfil any other specific tasks set out in this Regulation or in the **Union legislative acts** referred to in Article 1(2);

## Amendment 76

### Proposal for a regulation

#### Article 6 – paragraph 1 – point g a (new)

*Text proposed by the Commission*

*Amendment*

**(ga) supervise those financial institutions that are not subject to the supervision of competent authorities;**

## Amendment 77

### Proposal for a regulation

#### Article 6 – paragraph 1 – point g b (new)

*Text proposed by the Commission*

*Amendment*

**(gb) provide a database of registered financial institutions in the area of its competence and, where specified in the legislative acts referred to in Article 1(2), at a central level.**

## Amendment 78

### Proposal for a regulation

#### Article 6 – paragraph 2 – point a

*Text proposed by the Commission*

*Amendment*

(a) develop draft **technical** standards in the specific cases referred to in Article 7;

(a) develop draft **regulatory** standards in the specific cases referred to in Article 7;

## Amendment 79

### Proposal for a regulation

#### Article 6 – paragraph 2 – point a a (new)

*Text proposed by the Commission*

*Amendment*

***(aa) develop draft implementing standards in the specific cases referred to in Article 7e;***

## Amendment 80

### Proposal for a regulation

#### Article 6 – paragraph 2 – point d

*Text proposed by the Commission*

*Amendment*

(d) take individual decisions addressed to competent authorities in the specific cases referred to in **Article** 10 and 11;

(d) take individual decisions addressed to competent authorities in the specific cases referred to in **Articles** 10 and 11;

## Amendment 81

### Proposal for a regulation

#### Article 6 – paragraph 2 – point f a (new)

*Text proposed by the Commission*

*Amendment*

***(fa) collect directly the necessary information concerning financial institutions;***

## Amendment 82

### Proposal for a regulation

#### Article 6 – paragraph 2 – point f b (new)

*Text proposed by the Commission*

*Amendment*

***(fb) temporarily prohibit or restrict certain types of transactions that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union. The Authority shall review this decision with regular, timely intervals.***

## Amendment 83

### Proposal for a regulation

#### Article 6 – paragraph 2 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***The Authority shall review decisions taken under point (fb) at regular intervals.***

## Amendment 84

### Proposal for a regulation

#### Article 6 – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

*Amendment*

3. The Authority shall execute any exclusive supervisory powers over entities with ***Community-wide*** reach or economic activities with ***Community-wide*** reach entrusted to it in the ***legislation*** referred to in Article 1(2).

3. The Authority shall execute any exclusive supervisory powers over entities with ***Union-wide*** reach or economic activities with ***Union-wide*** reach entrusted to it in the ***legislative acts*** referred to in Article 1(2).

## Amendment 85

### Proposal for a regulation

#### Article 6 – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

For ***that*** purpose, the Authority shall have appropriate powers of investigation and enforcement as specified in the relevant legislation, as well as the possibility of charging fees.

***4. For the purpose of exercising its exclusive supervisory powers under paragraph 3, the Authority shall have appropriate powers of investigation and enforcement as specified in the relevant legislation, as well as the possibility of charging fees. The Authority shall work in close cooperation with the competent authorities and build on their expertise, facilities and powers to carry out its tasks.***

## Amendment 86

**Proposal for a regulation**  
**Article 7 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

1. The Authority may develop **technical standards in the areas specifically set out in the legislation** referred to in Article 1(2). **The Authority shall submit its draft standards to the Commission for endorsement.**

*Amendment*

1. The Authority may develop **regulatory standards to complete, update or modify elements that are not essential to the legislative acts** referred to in Article 1(2). **The regulatory standards shall not imply strategic decisions and its content shall be delimited by the legislative acts on which they are based.**

**Amendment 87**

**Proposal for a regulation**  
**Article 7 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

**Before submitting them to the Commission, the Authority shall, where appropriate, conduct open public consultations on technical standards and analyse the potential related costs and benefits.**

*Amendment*

**2. The Authority shall conduct open public consultations on regulatory standards and analyse the potential related costs and benefits before adopting draft regulatory standards. The Authority shall also request the opinion or advice of the Banking Stakeholder Group referred to in Article 22.**

**Amendment 88**

**Proposal for a regulation**  
**Article 7 – paragraph 1 – subparagraph 2 a (new)**

*Text proposed by the Commission*

**The Authority shall submit its draft standards to the Commission for endorsement and at the same time to the European Parliament and the Council.**

*Amendment*

**Amendment 89**

**Proposal for a regulation**  
**Article 7 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

Within three months of receipt of the draft standards, the Commission shall decide whether to endorse the draft standards. The Commission may extend that period by one month. The Commission *may endorse the draft standards only in part or with amendments where the Community interest so requires.*

*Amendment*

Within three months of receipt of the draft **regulatory** standards, the Commission shall decide whether to endorse, **reject or amend** the draft **regulatory** standards. The Commission may extend that period by one month. The Commission **shall inform the European Parliament and the Council of its decision, stating the reason.**

**Amendment 90**

**Proposal for a regulation**  
**Article 7 – paragraph 1 – subparagraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***The Commission may amend the draft regulatory standards if they are incompatible with Union law, do not respect the principle of proportionality or run counter to the fundamental principles of the internal market for financial services as reflected in Union financial services legislation.***

**Amendment 91**

**Proposal for a regulation**  
**Article 7 – paragraph 1 – subparagraph 4**

*Text proposed by the Commission*

***Where the Commission does not endorse the standards or endorses them in part or with amendments, it shall inform the Authority of its reasons.***

*Amendment*

***deleted***

## Amendment 92

### Proposal for a regulation

#### Article 7 – paragraph 2

*Text proposed by the Commission*

*Amendment*

***2. The standards shall be adopted by the Commission by means of Regulations or Decisions and published in the Official Journal of the European Union.***

***deleted***

## Amendment 93

### Proposal for a regulation

#### Article 7 a (new)

*Text proposed by the Commission*

*Amendment*

#### ***Article 7a***

##### ***Exercise of the delegation***

***1. The powers to adopt regulatory standards referred to in Article 7 shall be conferred on the Commission for an indeterminate period of time.***

***2. The draft regulatory standards shall be adopted by the Commission in the form of regulations or decisions.***

***3. As soon as it adopts a regulatory standard, the Commission shall notify it simultaneously to the European Parliament and to the Council.***

***4. The power to adopt regulatory standards is conferred on the Commission subject to the conditions laid down in Articles 7b to 7d.***

***5. In the report referred to in Article 35(2), the Chairperson of the Authority shall inform the European Parliament and the Council of the regulatory standards that have been approved and that the competent authorities have not complied with.***

## Amendment 94

**Proposal for a regulation**  
**Article 7 b (new)**

*Text proposed by the Commission*

*Amendment*

**Article 7b**

***Objections to regulatory standards***

***1. The European Parliament or the Council may object to a regulatory standard within a period of four months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by two months.***

***2. If on expiry of that period, neither the European Parliament nor the Council has objected to a regulatory standard, it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.***

***3. Before the expiry of that period and in exceptional and duly justified cases, the European Parliament and the Council may both inform the Commission that they do not intend to raise objections to a regulatory standard. In such cases, the regulatory standard shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.***

***4. If the European Parliament or the Council objects to a regulatory standard, it shall not enter into force. The institution which objects shall state the reasons for objecting to a regulatory standard.***

**Amendment 95**

**Proposal for a regulation**  
**Article 7 c (new)**

*Text proposed by the Commission*

*Amendment*

**Article 7c**

***Non-endorsement or amendment of draft***

*regulatory standards*

***1. In the event that the Commission does not endorse a draft regulatory standard or amends them, the Commission shall inform the Authority, the European Parliament and the Council, stating its reasons.***

***2. The European Parliament or Council may convene the responsible Commissioner, together with the Chairman of the Authority, within one month for an ad hoc meeting of the competent committee of the European Parliament or Council to present and explain their differences.***

**Amendment 96**

**Proposal for a regulation  
Article 7 d (new)**

*Text proposed by the Commission*

*Amendment*

***Article 7d***

***Revocation of the delegation***

***1. The delegation of power referred to in Article 7 may be revoked by the European Parliament or by the Council.***

***2. The decision of revocation shall state the reasons for the revocation and shall put an end to the delegation.***

***3. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the regulatory standard powers which could be subject to revocation and the possible reasons for a revocation.***

**Amendment 97**



**Proposal for a regulation**  
**Article 7 e (new)**

*Text proposed by the Commission*

*Amendment*

*Article 7e*

*Implementing standards*

*1. The Authority may develop draft standards to implement legally binding Union acts in the areas specifically set out in the present regulation and in the legislative acts referred to in Article 1(2).*

*2. The Authority shall conduct open public consultations on implementing standards and analyse the potential related costs and benefits before adopting draft implementing standards. The Authority shall also request an opinion or advice of the Banking Stakeholder Group referred to in Article 22.*

*3. The Authority shall submit its draft implementing standards to the Commission for endorsement in accordance with Article 291 TFEU and, at the same time, to the European Parliament and the Council.*

*4. Within three months of receipt of the draft implementing standards, the Commission shall decide whether to endorse, reject or amend the draft implementing standards. The Commission may extend that period by one month. The Commission shall inform the European Parliament and the Council of its decision, stating the reasons.*

*5. The draft implementing standards may be amended by the Commission if they are incompatible with Union law, do not respect the principle of proportionality or run counter to the fundamental principles of the internal market for financial services.*

*6. In the event that the Commission does not endorse the draft implementing standards or amends them, the Commission shall inform the Authority, the European Parliament and the*

*Council, stating its reasons.*

***7. Having completed the due procedure the standards shall be published in the Official Journal of the European Union.***

## **Amendment 98**

### **Proposal for a regulation Article 8 – paragraph 1**

*Text proposed by the Commission*

The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of **Community** legislation, issue guidelines and recommendations addressed to competent authorities or financial institutions.

*Amendment*

***1.*** The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of **Union** legislation, issue guidelines and recommendations addressed to competent authorities or financial institutions.

## **Amendment 99**

### **Proposal for a regulation Article 8 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The Authority shall conduct open public consultations regarding the guidelines and recommendations and analyse the potentially related costs and benefits. The Authority shall also request the opinion or advice from the Banking Stakeholder Group referred to in Article 22. Those consultations, analyses and opinions and that advice shall be proportionate in relation to scope, nature and impact of the guideline or recommendation.***

## Amendment 100

### Proposal for a regulation Article 8 – paragraph 2

*Text proposed by the Commission*

The competent authorities shall make every effort to comply with those guidelines and recommendations.

*Amendment*

**2. Within two months of the issuance of a guideline or recommendation, each competent authority shall decide whether it intends to comply with that guideline or recommendation.** The competent authorities **and financial institutions** shall make every effort to comply with those guidelines and recommendations. **In the event that a competent authority does not intend to comply, it shall inform the Authority, stating reasons. The Authority shall publish those reasons.**

## Amendment 101

### Proposal for a regulation Article 8 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. The financial institutions shall report annually, in a clear and detailed way, if they comply with that guideline or recommendation.**

## Amendment 102

### Proposal for a regulation Article 8 – paragraph 2 b (new)

*Text proposed by the Commission*

*Amendment*

**2b. In the report referred to in Article 35(2) the Chairperson of the Authority shall inform the European Parliament, the Council and the Commission of the guidelines and recommendations that are issued, stating which competent authority has not complied with them and outlining how the Authority intends to ensure that it follow its recommendations and**

*guidelines in the future.*

### Amendment 103

#### Proposal for a regulation Article 8 – paragraph 3

*Text proposed by the Commission*

*Where the competent authority does not apply those guidelines or recommendations it shall inform the Authority of its reasons.*

*Amendment*

*deleted*

### Amendment 104

#### Proposal for a regulation Article 9 – paragraph 1

*Text proposed by the Commission*

1. Where a competent authority has not correctly applied the **legislation** referred to in Article 1(2), in particular by failing to ensure that a financial institution satisfies the requirements laid down in that legislation, the Authority shall have the powers set out in paragraphs 2, 3 and 6 of this Article.

*Amendment*

1. Where a competent authority has not correctly applied the **legislative acts** referred to in Article 1(2), **including the regulatory and implementing standards established in accordance with Articles 7 and 7e**, in particular by failing to ensure that a financial institution satisfies the requirements laid down in that legislation, the Authority shall have the powers set out in paragraphs 2, 3 and 6 of this Article.

### Amendment 105

**Proposal for a regulation**

**Article 9 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

2. Upon request from one or more competent authorities, **from** the Commission or on its own initiative and after having informed the competent authority concerned, the Authority may investigate the alleged incorrect application of **Community** law.

*Amendment*

2. Upon request from one or more competent authorities, **the European Parliament, the Council,** the Commission **or the Banking Stakeholder Group,** or on its own initiative and after having informed the competent authority concerned, the Authority may investigate the alleged incorrect application of **Union** law.

**Amendment 106**

**Proposal for a regulation**

**Article 9 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

Without prejudice to the powers laid down in Article 20, the competent authority shall provide the Authority with all information which the Authority considers necessary for its investigation without delay.

*Amendment*

3. Without prejudice to the powers laid down in Article 20, the competent authority shall provide the Authority with all information which the Authority considers necessary for its investigation without delay.

**Amendment 107**

**Proposal for a regulation**

**Article 9 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

3. The Authority may, at the latest within two months from initiating its investigation, address to the competent authority concerned a recommendation setting out the action necessary to comply with **Community** law.

*Amendment*

4. The Authority may, at the latest within two months from initiating its investigation, address to the competent authority concerned a recommendation setting out the action necessary to comply with **Union** law. **The Authority shall ensure the respect of the right to be heard of the addressees of the decision.**

**Amendment 108**

**Proposal for a regulation**  
**Article 9 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

The competent authority shall, within ten working days of the receipt of the recommendation, inform the Authority of the steps it has taken or intends to take to ensure compliance with **Community** law.

*Amendment*

5. The competent authority shall, within ten working days of the receipt of the recommendation, inform the Authority of the steps it has taken or intends to take to ensure compliance with **Union** law.

**Amendment 109**

**Proposal for a regulation**  
**Article 9 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

4. Where the competent authority has not complied with **Community** law within **one month** from receipt of the Authority's recommendation, the **Commission may, after having been informed by the Authority or on its own initiative**, take a decision requiring the competent authority to take the action necessary to comply with **Community** law.

*Amendment*

6. Where the competent authority has not complied with **Union** law within **the 10 working days set out in paragraph 3** from receipt of the Authority's recommendation, the **Authority shall** take a decision requiring the competent authority to take the action necessary to comply with **Union** law.

**Amendment 110**

**Proposal for a regulation**  
**Article 9 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

The **Commission** shall take such a decision no later than **three months** from the adoption of the recommendation. **The Commission may extend this period by one month.**

*Amendment*

The **Authority** shall take such a decision no later than **one month** from the adoption of the recommendation.

## Amendment 111

### Proposal for a regulation Article 9 – paragraph 5

*Text proposed by the Commission*

5. The competent authority shall, within ten working days of receipt of the decision referred to in paragraph 4, inform the Commission and the Authority of the steps it has taken or intends to take to implement the *Commission's* decision.

*Amendment*

7. The competent authority shall, within ten working days of receipt of the decision referred to in paragraph 4, inform the Commission and the Authority of the steps it has taken or intends to take to implement the *Authority's* decision.

## Amendment 112

### Proposal for a regulation Article 9 – paragraph 6

*Text proposed by the Commission*

6. Without prejudice to the powers of the Commission under *Article 226 of the Treaty*, where a competent authority does not comply with the decision referred to in paragraph 4 of this Article within the period of time specified therein, and where it is necessary to remedy in a timely manner the non compliance by the competent authority in order to maintain or restore neutral conditions of competition in the market or ensure the orderly functioning and integrity of the financial system, the Authority *may, where the relevant requirements of the legislation* referred to in Article 1(2) *are directly applicable to financial institutions*, adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under *Community* law including the cessation of any practice.

*Amendment*

8. Without prejudice to the powers of the Commission under *Article 258 TFEU*, where a competent authority does not comply with the decision referred to in paragraph 4 of this Article within the period of time specified therein, and where it is necessary to remedy in a timely manner the non compliance by the competent authority in order to maintain or restore neutral conditions of competition in the market or ensure the orderly functioning and integrity of the financial system, the Authority *shall, pursuant to the legislative acts* referred to in Article 1(2), adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under *Union* law including the cessation of any practice. The decision of the Authority shall be in conformity with the decision adopted pursuant to paragraph 4. *Any legal or judiciary expenses imposed on the Authority as a result of the application of this Article shall be borne by the Commission.*

The decision of the Authority shall be in conformity with the decision adopted

pursuant to paragraph 4.

### Amendment 113

#### Proposal for a regulation Article 9 – paragraph 7

*Text proposed by the Commission*

7. Decisions adopted under **paragraph 6** shall prevail over any previous decision adopted by the competent authorities on the same matter.

Any action by the competent authorities in relation to facts which are subject to a decision pursuant to **paragraph 4 or 6** shall be compatible with those decisions.

*Amendment*

9. Decisions adopted under **paragraph 8 shall apply to all relevant financial institutions which are active in the non-compliant jurisdiction and** shall prevail over any previous decision adopted by the competent authorities on the same matter. Any action by the competent authorities in relation to facts which are subject to a decision pursuant to **paragraph 5 or 8** shall be compatible with those decisions.

### Amendment 114

#### Proposal for a regulation Article 9 – paragraph 7 a (new)

*Text proposed by the Commission*

*Amendment*

**7a. In the Report referred to in Article 35(2), the Chairperson shall set out which competent authorities and financial institutions have not complied with the decisions referred to in paragraphs 4 and 6.**

### Amendment 115

#### Proposal for a regulation Article 10 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. In the case of adverse developments

1. In the case of adverse developments



which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the **Community**, the **Commission**, upon its own initiative or following a request by the Authority, the Council, or the **ESRB**, may **adopt a decision addressed to the Authority, determining** the existence of an emergency situation **for the purposes of this regulation**.

which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the **Union**, the **ESRB**, upon its own initiative or following a request by the Authority, the Council, **the European Parliament** or the **Commission**, may **issue a warning declaring** the existence of an emergency situation **in order to enable the Authority without further requirements to adopt the individual decisions referred to in paragraph 3**.

#### **Amendment 116**

##### **Proposal for a regulation**

##### **Article 10 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

**1a. When it issues a warning, the ESRB shall notify it simultaneously to the European Parliament, the Council, the Commission and the Authority. The conclusion drawn by the ESRB shall be subject to an exchange of views ex-post between the ESRB Chairman, the European Parliament and the competent Commissioner and shall be effective as soon as possible.**

#### **Amendment 117**

##### **Proposal for a regulation**

##### **Article 10 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

**1b. Where a warning has been issued, the Authority shall actively facilitate and, where deemed necessary, coordinate any actions by the relevant competent authorities.**

#### **Amendment 118**

## Proposal for a regulation

### Article 10 – paragraph 2

*Text proposed by the Commission*

2. Where **the Commission** has adopted a decision pursuant to paragraph 1, the Authority **may** adopt individual decisions **requiring** competent authorities to take the necessary action in accordance with the **legislation** referred to in Article 1(2) to address any risks that may jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system by ensuring that financial institutions and competent authorities satisfy the requirements laid down in that legislation.

*Amendment*

2. Where the **ESRB** has adopted a decision pursuant to paragraph 1, the Authority **shall** adopt individual decisions **to ensure that** competent authorities to take the necessary action in accordance with **this regulation and the legislative acts** referred to in Article 1(2) to address any risks that may jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system by ensuring that financial **institutions** and competent authorities satisfy the requirements laid down in that legislation.

## Amendment 119

### Proposal for a regulation

#### Article 10 – paragraph 3

*Text proposed by the Commission*

3. Without prejudice to the powers of the Commission under **Article 226 of the Treaty**, where a competent authority does not comply with the decision of the Authority referred to in paragraph 2 within the period laid down therein, the Authority **may, where** the relevant requirements laid down in the **legislation** referred to in Article 1(2) **are directly applicable to financial institutions**, adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under that legislation, including the cessation of any practice.

*Amendment*

3. Without prejudice to the powers of the Commission under **Article 258 TFEU**, where a competent authority does not comply with the decision of the Authority referred to in paragraph 2 within the period laid down therein, the Authority **shall, pursuant to** the relevant requirements laid down in the **legislative acts** referred to in Article 1(2), adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under that legislation, including the cessation of any practice.

## Amendment 120

**Proposal for a regulation**  
**Article 10 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. Where the addressee of the decision refuses to comply with Union law or a specific decision taken by the Authority, the Authority may issue proceedings in the national courts, including applications for interim relief.**

**Amendment 121**

**Proposal for a regulation**  
**Article 10 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

**4a. The ESRB shall review the decision referred to in paragraph 1 upon its own initiative or following a request by the European Parliament, the Council, the Commission or the Authority, and declare the discontinuation of the emergency situation when appropriate.**

**Amendment 122**

**Proposal for a regulation**  
**Article 10 – paragraph 4 b (new)**

*Text proposed by the Commission*

*Amendment*

**4b. In the Report referred to in Article 35(2), the Chairperson of the Authority shall set out the individual decisions addressed to competent authorities and financial institutions under paragraphs 3 and 4.**

## Amendment 123

### Proposal for a regulation

#### Article 11 – paragraph 1

##### *Text proposed by the Commission*

1. Without prejudice to the powers laid down in Article 9, where a competent authority disagrees on the procedure or content of an action or inaction by another competent authority in areas where the **legislation** referred to in Article 1(2) requires cooperation, coordination or joint decision making by competent authorities from more than one Member State, the Authority, at the request of one or more of the competent authorities concerned, **may assist** the authorities in reaching an agreement in accordance with the procedure set out in **paragraph 2**.

##### *Amendment*

1. Without prejudice to the powers laid down in Article 9, where a competent authority disagrees on the procedure or content of an action or inaction by another competent authority in areas where the **legislative acts** referred to in Article 1(2) requires cooperation, coordination or joint decision making by competent authorities from more than one Member State, the Authority, **on its own initiative or** at the request of one or more of the competent authorities concerned, **shall take the lead in assisting** the authorities in reaching an agreement in accordance with the procedure set out in **paragraphs 2 to 4**.

## Amendment 124

### Proposal for a regulation

#### Article 11 – paragraph 2

##### *Text proposed by the Commission*

2. The Authority shall set a time limit for conciliation between the competent authorities taking into account any relevant time periods specified in the **legislation** referred to in Article 1(2) and the complexity and urgency of the matter.

##### *Amendment*

2. The Authority shall set a time limit for conciliation between the competent authorities taking into account any relevant time periods specified in **the legislative acts** referred to in Article 1(2) and the complexity and urgency of the matter. **At that stage the Authority shall act as a mediator.**

## Amendment 125

### Proposal for a regulation

#### Article 11 – paragraph 3

##### *Text proposed by the Commission*

3. If, at the end of the conciliation phase, the competent authorities concerned have

##### *Amendment*

3. If, at the end of the conciliation phase, the competent authorities concerned have

failed to reach an agreement, the Authority *may* take a decision *requiring* them to take specific action *or to refrain from action in order to settle the matter*, in compliance with *Community* law.

failed to reach an agreement, the Authority *shall in accordance with the procedure set out in the second subparagraph of Article 29(1)* take a decision *to settle the disagreement and to require* them to take specific action, in compliance with *Union* law *with binding effects on the competent authorities concerned*.

## Amendment 126

### Proposal for a regulation Article 11 – paragraph 4

#### *Text proposed by the Commission*

4. Without prejudice to the powers of the Commission under *Article 226 of the Treaty*, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial institution complies with requirements directly applicable to it by virtue of the *legislation* referred to in Article 1(2), the Authority *may* adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under *Community* law, including the cessation of any practice.

#### *Amendment*

4. Without prejudice to the powers of the Commission under *Article 258 TFEU*, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial institution complies with requirements directly applicable to it by virtue of the *legislative acts* referred to in Article 1(2), the Authority *shall* adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under *Union* law, including the cessation of any practice.

## Amendment 127

### Proposal for a regulation Article 11 – paragraph 4 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

*4a. Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter.*

*Any action by the competent authorities in relation to facts which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.*

## Amendment 128

### Proposal for a regulation

#### Article 11 – paragraph 4 b (new)

*Text proposed by the Commission*

*Amendment*

***4b. In the Report referred to in Article 35(2), the Chairperson of the Authority shall set out the disagreement between competent authorities, the agreements reached and the decision taken to settle such disagreements.***

## Amendment 129

### Proposal for a regulation

#### Article 11 a (new)

*Text proposed by the Commission*

*Amendment*

#### ***Article 11a***

***Settlement of disagreements between competent authorities across sectors***

***The Joint Committee shall, in accordance with the procedure laid down in Article 11, settle disagreements that may arise between competent authorities acting under Article 42.***

## Amendment 130

### Proposal for a regulation

#### Article 12 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. The Authority shall contribute to promote the efficient and consistent functioning of colleges of supervisors referred to in Directive 2006/48/EC and foster the coherence of the application of ***Community legislation*** across colleges.

1. The Authority shall contribute to promote ***and monitor*** the efficient ***effective*** and consistent functioning of ***the*** colleges of supervisors referred to in Directive 2006/48/EC and foster the coherence of the application of ***Union law*** across ***the*** colleges. ***Staff from the authority shall be able to participate in any activities, including on-site examinations, carried out jointly by two or more competent***

authorities.

## Amendment 131

### Proposal for a regulation Article 12 – paragraph 2

*Text proposed by the Commission*

2. The Authority shall ***participate as an observer*** in colleges of supervisors as it deems appropriate. For ***the purpose of that participation***, it shall be considered a 'competent authority' within the meaning of the relevant legislation ***and, at its request, shall receive all relevant information shared with any member of the college.***

*Amendment*

2. The Authority shall ***lead the*** colleges of supervisors as it deems appropriate. For ***that*** purpose it shall be considered a 'competent authority' within the meaning of the relevant legislation. ***It shall, at least:***

***(a) collect and share all relevant information in going concern and emergency situations in order to facilitate the work of the colleges of supervisors and establish and manage a central system to make such information accessible to the competent authorities in the colleges of supervisors;***

***(b) initiate and coordinate Union-wide stress tests to assess the resilience of financial institutions, in particular of those identified in Article 12b, to adverse market developments, ensuring an as consistent as possible methodology is applied at the national level to such tests;***

***(c) plan and lead supervisory activities in going concern as well as in emergency situations, including evaluating the risks to which financial institutions are or might be exposed; and***

***(d) oversee the tasks carried out by the competent authorities.***

## **Amendment 132**

### **Proposal for a regulation**

#### **Article 12 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. The Authority may issue regulatory and implementing standards, guidelines and recommendations adopted under Articles 7, 7e and 8 to harmonise supervisory functioning and best practices adopted by the colleges of supervisors. The authorities shall approve written arrangements for the functioning of each college in order to ensure convergent functioning between all of them.***

## **Amendment 133**

### **Proposal for a regulation**

#### **Article 12 – paragraph 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***3b. A legally binding mediation role should allow the Authority to solve disputes between competent authorities following the procedure set up on Article 11. Where no agreement can be reached within the relevant college of supervisors, the Authority may take supervisory decisions directly applicable to the institution concerned.***

## **Amendment 134**

### **Proposal for a regulation**

#### **Article 12 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 12a***

***General provisions***

***1. The Authority shall pay special attention to and address risks of disruption in financial services that (i) is***



*caused by an impairment of all or parts of the financial system and (ii) has the potential to have serious negative consequences for internal market and the real economy (systemic risk). All types of financial intermediaries, markets and infrastructure can potentially be systematically important to some degree.*

*2. The Authority, in collaboration with the European Systemic Risk Board, shall develop a common set of quantitative and qualitative indicators (risk dashboard), which will serve as the basis to assign a supervisory rating to cross-border institutions identified in Article 12b. That rating shall be reviewed on a regular basis, to take into account material changes of the risk profile of an institution. The supervisory rating shall be a critical element for the decision to directly supervise or intervene in an ailing institution.*

*3. Without prejudice to legislative acts referred to in Article 1(2), the Authority shall propose, as necessary, additional draft regulatory and implementing standards as well as guidelines and recommendations for institutions identified in Article 12b.*

*4. The Authority shall exert supervision of cross-border institutions that may pose a systemic risk as established in Article 12b. In those cases, the Authority shall act through the competent authorities.*

*5. The Authority shall establish a Banking Resolution Unit with a mandate to put in practice the clearly defined governance and modus operandi of crisis management from early intervention to resolution and insolvency and lead such procedures.*

*6. All financial institutions identified in Article 12b must take part in the European Deposit Guarantee Scheme as well as in the European Banking Stability Fund as established by Articles 12d and 12e. Financial institutions operating in a single Member State shall have the option*

*to join the European Deposit Guarantee Scheme or the European Banking Stability Fund. The contributions made to the European Funds shall replace those made to national funds of a similar nature.*

## **Amendment 135**

### **Proposal for a regulation Article 12 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 12b**

*Identification of cross-border institutions that potentially could pose a systemic risk*

- 1. The Board of Supervisors, following consultation of the ESRB, may, in accordance with the procedure set out in Article 29(1), identify cross-border institutions that, due to the systemic risk they may pose need to be subject to direct supervision by the Authority or placed under the Banking Resolution Unit referred to in Article 12c.*
- 2. The criteria for identifying such financial institutions shall be consistent with the criteria established by the FSB, the IMF and the BIS.*

## **Amendment 136**

### **Proposal for a regulation Article 12 c (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 12c**

##### **Banking Resolution Unit**

- 1. The Banking Resolution Unit shall preserve financial stability and minimise the contagion effect of distressed institutions identified in Article 12b to the rest of the system and the economy at large and limit the cost to taxpayers*

*respecting the principle of proportionality, creditors' hierarchy and guaranteeing equal treatment across borders.*

*2. The Banking Resolution Unit shall be empowered to fulfil the tasks set out in paragraph 1, in order to rehabilitate distressed institutions or to decide on a winding-up on non-viable institutions (critical to limit moral hazard). Among other actions it could require adjustments in capital or liquidity, adapt the business mix, improve processes, appoint or replace management, recommend guarantees, loans and liquidity assistance, total or partial sales, create a good bank / bad bank or a bridge bank, swap debt into equity (with appropriate haircuts) or take the institution into temporary public ownership.*

*3. The Banking Resolution Unit shall comprise experts appointed by the Board of Supervisors of the Authority with knowledge and expertise in restructuring, turn-a-rounds and liquidation of financial institutions.*

## **Amendment 137**

### **Proposal for a regulation Article 12 d (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 12d*

##### *European Deposit Guarantee Fund*

*1. A European Deposit Guarantee Fund (Fund) shall be established in order to ensure the co-responsibility of financial institutions on the protection of European depositors' interests and to minimise the cost for the taxpayers.*

*2. The Fund shall be financed through contributions from all financial institutions identified in Article 12b(1). The contribution to the fund shall be determined by, inter alia, the level of deposits and the risk exposure of the*

*financial institution.*

*3. The Fund shall be managed by a Board appointed by the Authority and the European Supervisory Authority (Insurance and Occupational Pensions) for a period of five years. The members of the Board shall be elected from national authorities responsible for national guarantee schemes. The Fund shall also create a Consultative Board comprising representatives of financial institutions participating in the Fund.*

*4. When the accumulated resources from the contributions made by banks or insurers are not sufficient to protect the interests of European depositors or policy holders, the Fund may increase its resources through debt issuance or other financial means.*

## **Amendment 138**

### **Proposal for a regulation Article 12 e (new)**

*Text proposed by the Commission*

*Amendment*

#### *Article 12e*

##### *European Banking Stability Fund*

*1. A European Banking Stability Fund shall be established in order to strengthen the internalisation of the costs of the financial system and to assist in crisis resolution for failing cross-border financial institutions. Financial institutions operating in only one Member State shall have the option to join the fund. The European Banking Stability Fund shall adopt appropriate measures to avoid that the availability of aid generates a moral hazard.*

*2. The European Banking Stability Fund shall be financed through direct contributions from all financial institutions identified in Article 12b(1). Those contributions shall be proportionate to the level of risk and*

*contributions to systemic risk that each of them poses and variations in overall risk over time, as identified through their risk dashboard. Levels of contributions required shall take into account broader economic conditions and the need for financial institutions to maintain capital for other regulatory and business requirements.*

*3. The European Banking Stability Fund shall be managed by a Board appointed by the Authority for a period of five years. The members of the Board shall be selected from staff proposed by the national authorities. The Fund shall also create a Consultative Board involving non-voting representation of the financial institutions participating in the Fund. The Board of the Fund may propose that the Authority outsource the management of its liquidity to reputable institutions (such as the EIB). The funds managed by the European Banking Stability Fund shall be invested in safe and liquid instruments.*

*4. When the accumulated resources from the contributions made by banks are not sufficient to face the difficulties, the European Stability Fund shall have the capacity to increase its resources through debt issuance or other financial means.*

## Amendment 139

### Proposal for a regulation Article 13 – paragraph 1

*Text proposed by the Commission*

1. Competent authorities may, by bilateral agreement, delegate tasks and responsibilities to *other* competent authorities *supervisory*.

*Amendment*

1. Competent authorities may, by bilateral agreement, delegate tasks and responsibilities to *the Authority or* competent authorities.

## Amendment 140

## Proposal for a regulation

### Article 13 – paragraph 2

*Text proposed by the Commission*

2. The Authority shall facilitate the delegation of tasks and responsibilities between competent authorities by identifying those tasks and responsibilities that can be delegated or jointly exercised and by promoting best practices.

*Amendment*

2. The Authority shall ***stimulate and*** facilitate the delegation of tasks and responsibilities between competent authorities by identifying those tasks and responsibilities that can be delegated or jointly exercised and by promoting best practices.

## Amendment 141

### Proposal for a regulation

#### Article 13 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. The delegation of responsibilities shall result in the reallocation of competencies laid down in the legislative acts referred to in Article 1(2). The law of the delegate authority shall govern the procedure, enforcement and administrative and judicial review relating to the delegated responsibilities.***

## Amendment 142

### Proposal for a regulation

#### Article 13 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. No bilateral agreements concerning delegation shall be entered into concerning those institutions that are identified in Article 12b(1).***

## Amendment 143

**Proposal for a regulation**  
**Article 14 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. The Authority shall play an active role in building a common European supervisory culture and consistent supervisory practices, and ensuring uniform procedures and consistent approaches throughout the **Community** and shall carry out, at a minimum, the following activities:

*Amendment*

1. The Authority shall play an active role in building a common European supervisory culture and consistent supervisory practices, and ensuring uniform procedures and consistent approaches throughout the **Union** and shall carry out, at a minimum, the following activities:

**Amendment 144**

**Proposal for a regulation**  
**Article 14 – paragraph 1 – point c**

*Text proposed by the Commission*

(c) contribute to developing high quality and uniform supervisory standards, including reporting standards;

*Amendment*

(c) contribute to developing high quality and uniform supervisory standards, including **global accounting and** reporting standards;

**Amendment 145**

**Proposal for a regulation**  
**Article 15 – paragraph 1**

*Text proposed by the Commission*

1. The Authority shall periodically conduct peer review analyses of some or all of the activities of competent authorities, to further enhance consistency in supervisory outcomes. To this end, the Authority shall develop methods to allow for objective assessment and comparison between the authorities reviewed.

*Amendment*

1. The Authority shall periodically **organise and** conduct peer review analyses of some or all of the activities of competent authorities, to further enhance consistency in supervisory outcomes. To this end, the Authority shall develop methods to allow for objective assessment and comparison between the authorities reviewed.

**Amendment 146**

**Proposal for a regulation**  
**Article 15 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) the adequacy of institutional arrangements, resourcing and staff expertise of the competent authority, with particular regard to the effective application of the **legislation** referred to in Article 1(2) and to the capacity to respond to market developments;

*Amendment*

(a) the adequacy of institutional arrangements, resourcing and staff expertise of the competent authority, with particular regard to the effective application of the **regulatory and implementing standards referred to in Articles 7 and 7e and legislative acts** referred to in Article 1(2) and to the capacity to respond to market developments;

**Amendment 147**

**Proposal for a regulation**  
**Article 15 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) the degree of convergence reached in the application of **Community** law and in supervisory practice, including **technical** standards, guidelines and recommendations adopted under Articles 7 and 8, and the extent to which the supervisory practice achieves the objectives set out in **Community** law;

*Amendment*

(b) the degree of convergence reached in the application of **Union** law and in supervisory practice, including **regulatory and implementing** standards, guidelines and recommendations adopted under Articles 7 and 8, and the extent to which the supervisory practice achieves the objectives set out in **Union** law;

**Amendment 148**

**Proposal for a regulation**  
**Article 15 – paragraph 3**

*Text proposed by the Commission*

3. On the basis of the peer review the Authority may issue recommendations **to the competent authorities concerned**.

*Amendment*

3. On the basis of the peer review the Authority may **adopt draft regulatory or implementing standards in accordance with Articles 7 to 7e**, issue **guidelines and recommendations pursuant to Article 8**, or **adopt a decision addressed to competent authorities**.



## Amendment 149

### Proposal for a regulation

#### Article 15 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a. The Authority shall make the outcome of peer reviews and the best practices that can be identified from those peer reviews publicly available.**

*Justification*

*In order to promote transparency, the outcome of peer reviews and the best practices that can be identified from these peer reviews should be made publicly available.*

## Amendment 150

### Proposal for a regulation

#### Article 16 – paragraph 2 – introductory part

*Text proposed by the Commission*

*Amendment*

The Authority shall promote a coordinated **Community** response, inter alia by:

The Authority shall promote a coordinated **and consolidated Union** response, inter alia by:

## Amendment 151

### Proposal for a regulation

#### Article 16 – paragraph 2 – point 4 a (new)

*Text proposed by the Commission*

*Amendment*

**(4a) taking all appropriate measures to ensure coordination of competent authorities in case of developments which may jeopardise the functioning of the financial markets;**

## Amendment 152

**Proposal for a regulation**  
**Article 16 – paragraph 2 – point 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***(4b) acting as the central recipient of regulatory reporting for institutions active in more than one Member States. Upon receipt of the reporting, the Authority shall share the information with the competent authorities.***

*Justification*

*In many instances EBA will set technical standards to implement capital and other rules (see Omnibus Directive). To ensure that all regulators work from the same set of facts and that coordination in a crisis would be much more seamless, EBA should become the central recipient of regulatory reporting thereby also avoiding current duplication due to reporting at member states level.*

**Amendment 153**

**Proposal for a regulation**  
**Article 17 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

1. The Authority shall monitor and assess market developments in the area of its competence and, where necessary, inform the European Insurance and Occupational Pensions **Authority**, the European Securities and Markets **Authority**, the ESRB and the European Parliament, the Council and the Commission about the relevant micro-prudential trends, potential risks and vulnerabilities.

1. The Authority shall monitor and assess market developments in the area of its competence and, where necessary, inform the European **Supervisory Authority** (Insurance and Occupational Pensions), the European **Supervisory Authority** (Securities and Markets), the ESRB and the European Parliament, the Council and the Commission about the relevant micro-prudential trends, potential risks and vulnerabilities. ***The Authority shall include in its assessments an economic analysis of the markets for financial institution, and an impact assessment of potential market developments on them.***

**Amendment 154**

**Proposal for a regulation**

**Article 17 – paragraph 1 – subparagraph 2 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) common methodologies for assessing the effect of particular products or distribution processes on an institution's financial position and on depositors, investors and customer information.***

**Amendment 155**

**Proposal for a regulation**

**Article 17 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

3. The Authority shall ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities by closely cooperating with the European Insurance and Occupational Pensions **Authority** and the European Securities and Markets **Authority**.

3. The Authority shall ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities by closely cooperating with the European **Supervisory Authority** (Insurance and Occupational Pensions) and the European **Supervisory Authority** (Securities and Markets) **through the Joint Committee**.

*Justification*

*Important to establish that the JC plays the key role in intra-ESA coordination.*

**Amendment 156**

**Proposal for a regulation**

**Article 18 – paragraph -1 (new)**

*Text proposed by the Commission*

*Amendment*

***-1. Without prejudice to the competences of the Union institutions and the competent authorities, the Authority shall represent the Union in all international forums concerning the regulation and supervision of the institutions falling under the legislative acts referred to in Article 1(2).***

## Amendment 157

### Proposal for a regulation

#### Article 18 – paragraph 1

*Text proposed by the Commission*

*Without prejudice to the competences of the Community Institutions, the Authority may develop contacts with supervisory authorities from third countries. It may enter into administrative arrangements with international organisations and the administrations of third countries.*

*Amendment*

**1.** The Authority *shall* develop contacts with supervisory authorities from third countries. It may enter into administrative arrangements with international organisations and the administrations of third countries. ***Those arrangements shall not prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with third countries.***

## Amendment 158

### Proposal for a regulation

#### Article 18 – paragraph 2

*Text proposed by the Commission*

The Authority shall assist in preparing equivalence decisions pertaining to supervisory regimes in third countries in accordance with the **legislation** referred to in Article 1(2).

*Amendment*

**2.** The Authority shall assist in preparing equivalence decisions pertaining to supervisory regimes in third countries in accordance with the **legislative acts** referred to in Article 1(2). ***The Commission shall adopt regulatory standards in accordance with Articles 7a to 7d, for the purpose of making equivalence assessments referred to in this Article.***

## Amendment 159

### Proposal for a regulation

#### Article 18 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a.** ***In the report referred to in Article 35(2), the Chairperson of the Authority shall set out the administrative arrangements and equivalent decisions agreed upon with international***

*organisations or administration in third countries.*

## **Amendment 160**

### **Proposal for a regulation Article 19 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. On the basis of Joint Guidelines, the Authority may conduct the change of control procedure under Directive 2007/44/EC. Upon receipt of the notification, the Authority shall coordinate with the relevant competent authorities.***

#### *Justification*

*Currently, cross-border bank acquisitions and increases of holdings typically involve affiliates in several EU (EEA) countries which triggers almost similar information requirements. Such duplication and multiple discussions on the documents that are required to make the filing complete, turn out to be extremely cumbersome. To foster integration and to enhance coordination of change-of-control procedures (DIR 2007/44/EC), thereby avoiding multiple change-of-control procedures, EBA should coordinate the process with the national authorities concerned (“one stop model”).*

## **Amendment 161**

### **Proposal for a regulation Article 20 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

1. At the request of the Authority, competent authorities and other public authorities of the Member States shall provide the Authority with all the necessary information to carry out the duties assigned to it by this Regulation.

1. At the request of the Authority, competent authorities and other public authorities of the Member States shall provide the Authority with all the necessary information to carry out the duties assigned to it by this Regulation, ***provided that the addressee has legal access to the relevant data, and provided that the request for information is proportionate in relation to the nature of the duty in question.***

## Amendment 162

### Proposal for a regulation

#### Article 20 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

The Authority may also request information to be provided at recurring intervals.

*Amendment*

The Authority may also request information to be provided at recurring intervals. ***Those requests shall use common reporting formats to be fulfilled, where appropriate, at a consolidated level.***

## Amendment 163

### Proposal for a regulation

#### Article 20 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. Where competent authorities are not obliged to collect the information requested, the Authority may amend the regulatory or implementing standards that refer to reporting requirements.***

## Amendment 164

### Proposal for a regulation

#### Article 20 – paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

***1b. On a request from a competent authority of a Member State, the Authority may provide any information that is necessary to enable the competent authority to carry out its duties, provided the competent authority concerned has appropriate confidentiality arrangements in place.***

## Amendment 165

**Proposal for a regulation**  
**Article 20 – paragraph 1 c (new)**

*Text proposed by the Commission*

*Amendment*

***1c. To avoid duplication of reporting obligation, the Authority shall first take account of the existing statistics produced, disseminated and developed by the European Statistical System and the European System of Central Banks.***

**Amendment 166**

**Proposal for a regulation**  
**Article 21 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. The ***European Banking*** Authority shall co-operate with the ESRB.

1. The Authority shall co-operate ***closely and on a regular basis*** with the ESRB.

**Amendment 167**

**Proposal for a regulation**  
**Article 21 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. The Authority shall cooperate closely with the ESRB. It shall provide the ESRB with regular and up-to-date information necessary for the achievement of its tasks. Any data necessary for the achievement of its tasks that are not in summary or collective form shall be provided without delay to the ESRB upon a reasoned request, as specified in Article [15] of Regulation (***EC***) No ..../... [ESRB].

2. The Authority shall cooperate closely with the ESRB. It shall provide the ESRB with regular and up-to-date information necessary for the achievement of its tasks. Any data necessary for the achievement of its tasks that are not in summary or collective form shall be provided without delay to the ESRB upon a reasoned request, as specified in Article [15] of Regulation (***EU***) No ..../2010 [ESRB]. ***The Authority shall develop an adequate protocol for the disclosure of confidential information regarding individual financial institutions.***

## Amendment 168

### Proposal for a regulation

#### Article 21 – paragraph 6

*Text proposed by the Commission*

6. In discharging its tasks set out in this regulation, the Authority shall take **the utmost** account of the warnings and recommendations of the ESRB.

*Amendment*

6. In discharging its tasks set out in this regulation, the Authority shall take account of the warnings and recommendations of the ESRB.

## Amendment 169

### Proposal for a regulation

#### Article 22 – paragraph 1

*Text proposed by the Commission*

1. **For the purpose** of consultation with stakeholders in areas relevant to the tasks of the Authority, a Banking Stakeholder Group shall be established.

*Amendment*

1. **To help facilitate** consultation with stakeholders in areas relevant to the tasks of the Authority, a Banking Stakeholder Group shall be established. **The Banking Stakeholder Group shall be consulted on all relevant decisions and actions of the authority. If actions must urgently be taken and consultation becomes impossible, the Banking Stakeholder Group shall be informed as soon as possible.**

**The Banking Stakeholder Group shall meet at least four times a year.**

## Amendment 170

### Proposal for a regulation

#### Article 22 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

2. The Banking Stakeholder Group shall be composed of 30 members, representing in balanced proportions **Community** credit and investment institutions, their employees as well as consumers **and** users of banking services.

*Amendment*

2. The Banking Stakeholder Group shall be composed of 30 members, representing in balanced proportions **Union** credit and investment institutions, their employees as well as consumers, users of banking services **and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten**



*of its members shall represent financial institutions and three of those shall represent cooperative and saving banks, with at least three representing institutions identified in Article 12b(1). At least ten of its members shall be elected by SME organisations.*

#### **Amendment 171**

##### **Proposal for a regulation**

##### **Article 22 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*The Banking Stakeholder Group shall meet at least twice a year.*

*deleted*

#### **Amendment 172**

##### **Proposal for a regulation**

##### **Article 22 – paragraph 3 – subparagraph 1 and 2**

*Text proposed by the Commission*

*Amendment*

3. The members of the Banking Stakeholder Group shall be appointed by the Board of Supervisors of the Authority, following proposals from the relevant stakeholders.

3. The members of the Banking Stakeholder Group shall be appointed by the Board of Supervisors of the Authority, following proposals from the relevant stakeholders. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical **and gender** balance and representation of stakeholders across the **Union**.

In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical balance and representation of stakeholders across the **Community**.

#### **Amendment 173**

**Proposal for a regulation**  
**Article 22 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. The Authority shall provide all necessary information and ensure adequate secretarial support for the Banking Stakeholder Group. Adequate compensation shall be established for members of the stakeholder group representing non-profit organisations. The Group may establish working groups on technical issues to which further experts may also be appointed to ensure the necessary technical expertise. Members of the Banking Stakeholder Group shall serve for a period of five years following which a new selection procedure shall take place.***

**Amendment 174**

**Proposal for a regulation**  
**Article 22 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

5. The Banking Stakeholder Group ***may*** submit opinions and advice to the Authority on any issue related to the tasks of the Authority specified in ***Articles 7 and 8***.

5. The Banking Stakeholder Group ***shall*** submit opinions and advice to the Authority on any issue related to the tasks of the Authority ***with particular focus on the tasks set out in*** specified in ***Articles 7 to 7e, 8, 10, 14, 15 and 17***.

*Justification*

*Coherence with Skinner Report.*

**Amendment 175**

**Proposal for a regulation**  
**Article 22 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

6. The Banking Stakeholder Group shall adopt its rules of procedure

6. The Banking Stakeholder Group shall adopt its rules of procedure ***on the basis of***

*the agreement of a two-thirds majority of members.*

#### *Justification*

*Given the likelihood of significant divergences of views within the Stakeholder Group it is important the strong rules of procedure are established at the outset. This is best achieved through a buy-in to those rules by at least two-thirds of members. This also prevents representatives from one stakeholder group being able to dominate decision-making.*

#### **Amendment 176**

##### **Proposal for a regulation Article 23 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

***1. The Authority shall ensure that no decision adopted under Articles 10 or 11 impinges in any way on the fiscal responsibilities of Member States.***

***deleted***

#### **Amendment 177**

##### **Proposal for a regulation Article 23 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

2. Where a Member State considers that a decision taken under Article 11 impinges on its fiscal responsibilities, it ***may*** notify the Authority and the Commission within ***one month*** after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority.

2. Where a Member State considers that a decision taken under ***Article 10(2) or*** Article 11 impinges ***directly and in a significant manner*** on its fiscal responsibilities, it ***shall*** notify the Authority, the Commission ***and the European Parliament*** within ***ten working days*** after notification of the Authority's decision to the competent authority. ***In its notification, the Member State shall justify why and provide an impact assessment on how much the decision impinges on its fiscal responsibilities.***

#### **Amendment 178**

**Proposal for a regulation**  
**Article 23 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***In its notification, the Member State shall justify why and clearly demonstrate how the decision impinges on its fiscal responsibilities.***                      ***deleted***

*Justification*

*In its notification, the Member State shall justify why and clearly demonstrate how the decision impinges on its fiscal responsibilities.*

**Amendment 179**

**Proposal for a regulation**  
**Article 23 – paragraph 2 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

***In that case, the decision of the Authority shall be suspended.***                      ***deleted***

*Justification*

*If art. 23 is to be kept to some Member States sensitivity, it should apply only to decision taken only in emergency situations, i.e. art. 10, where Member States are likely to intervene, possibly with public money. Art. 11 should not be covered since mediation would apply only in normal times, for on-going supervision.*

**Amendment 180**

**Proposal for a regulation**  
**Article 23 – paragraph 2 – subparagraph 5**

*Text proposed by the Commission*

*Amendment*

Where the Authority maintains its decision, the Council, ***acting by qualified majority as defined in Article 205 of the Treaty***, shall, ***within two months***, decide whether the Authority's decision is maintained or revoked.

Where the Authority maintains ***or amends*** its decision, the Council shall ***take a decision*** whether the Authority's decision is maintained or . ***The decision to maintain the Authority's decision shall be taken by simple majority of members. The decision to revoke the Authority's decision shall be taken by a qualified majority of its members. In neither of these cases the***

*vote of the Members concerned shall be taken into account. A qualified majority shall be defined as at least 55 % of the members of the Council excluding the Member State concerned, comprising at least 65 % of the population of the European Union excluding the population of the Member State concerned.*

## **Amendment 181**

### **Proposal for a regulation**

#### **Article 23 – paragraph 2 – subparagraph 6**

*Text proposed by the Commission*

*Amendment*

*Where the Council decides to maintain the Authority's decision, or where it does not take a decision within two months, the suspension of that decision shall be immediately terminated.*

*deleted*

*Justification*

*If art. 23 is to be kept to some Member States sensitivity, it should apply only to decision taken only in emergency situations, i.e. art. 10, where Member States are likely to intervene, possibly with public money. Art. 11 should not be covered since mediation would apply only in normal times, for on-going supervision.*

## **Amendment 182**

### **Proposal for a regulation**

#### **Article 23 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

*3. Where a Member State considers that a decision taken under Article 10(2) impinges on its fiscal responsibilities, it may notify the Authority, the Commission and the Council within three working days after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority.*

*deleted*

## Amendment 183

### Proposal for a regulation

#### Article 23 – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

***In its notification, the Member State shall justify why and clearly demonstrate how the decision impinges on its fiscal responsibilities.***

***deleted***

## Amendment 184

### Proposal for a regulation

#### Article 23 – paragraph 3 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

***The Council, acting by qualified majority as defined in Article 205 of the Treaty, shall, within ten working days, decide whether the Authority's decision is maintained or revoked.***

***deleted***

## Amendment 185

### Proposal for a regulation

#### Article 23 – paragraph 3 – subparagraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

***3a. If a decision adopted under Article 10 leads to use of the funds set up according to Article 12d or 12e Member States shall not call on the Council to maintain or revoke a decision taken by the Authority.***

## Amendment 186

### Proposal for a regulation

#### Article 24 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. Before taking the decisions provided for in ***Article 9(6), Article 10(2) and(3) and***

1. Before taking the decisions provided for in ***this Regulation***, the Authority shall

*Article 11(3) and (4)*, the Authority shall inform the addressee of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the matter, taking full account of the urgency of the matter.

inform the addressee of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the matter, taking full account of the urgency, ***complexity and potential consequences*** of the matter.

*Justification*

*In coherence with the Skinner Report.*

**Amendment 187**

**Proposal for a regulation**  
**Article 24 – paragraph 5**

*Text proposed by the Commission*

5. The decisions which the Authority takes pursuant to Articles 9, 10 and 11 shall be made public and shall state the identity of the competent authority or financial institution concerned and the main content of the decision, ***having regard to the legitimate interest of financial institutions in the protection of their business secrets.***

*Amendment*

5. The decisions which the Authority takes pursuant to Articles 9, 10 and 11 shall be made public and shall state the identity of the competent authority or financial institution concerned and the main content of the decision, ***unless such publication is in conflict with the legitimate interest of financial institutions in the protection of their business secrets or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the European Union.***

*Justification*

*It is not appropriate to divulge the identity of individual institutions where such disclosure could conflict with legitimate business interest or jeopardise financial markets.*

**Amendment 188**

**Proposal for a regulation**  
**Article 25 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the Head of the national public authority competent for the supervision of credit institutions in each Member State;

*Amendment*

(b) the Head of the national public authority competent for the supervision of credit institutions in each Member State.  
***Where more than one competent authority***

*in a Member State is responsible for the application of Union law, they shall decide between themselves how to exercise their representation, including any votes under Article 29, which shall be shared;*

#### **Amendment 189**

##### **Proposal for a regulation**

##### **Article 25 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

*(fa) two non-voting representatives of the Banking Stakeholder Group.*

#### **Amendment 190**

##### **Proposal for a regulation**

##### **Article 25 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

*3. Where the authority referred to in paragraph 1(b) is not a central bank, the member of the Board of Supervisors referred to in paragraph 1(b) may be accompanied by a representative from the Member States' central bank, who shall be non-voting.*

*deleted*

#### **Amendment 191**

##### **Proposal for a regulation**

##### **Article 25 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

*4. For the purpose of acting within the scope of Directive 94/19/EC the member of the Board of Supervisors referred to in paragraph 1(b) may, where appropriate, be accompanied by a representative from the relevant bodies which administers deposit-guarantee schemes in each Member State, who shall be non-voting.*

*deleted*



## Amendment 192

### Proposal for a regulation Article 25 – paragraph 5

*Text proposed by the Commission*

*Amendment*

**5. The Board of Supervisors may decide to admit observers.**

**deleted**

***The Executive Director may participate in meetings of the Board of Supervisors without the right to vote.***

## Amendment 193

### Proposal for a regulation Article 26 – paragraph 2 –subparagraph 1

*Text proposed by the Commission*

*Amendment*

2. For the purposes of Article 11, the Board of Supervisors shall convoke **a** panel to facilitate **the** settlement of the disagreement, consisting of the Chairperson and two of its members, who are not representatives of the competent authorities which are parties to the disagreement.

2. For the purposes of Article 11, the Board of Supervisors shall convoke **an independent impartial** panel to facilitate **an impartial** settlement of the disagreement, consisting of the Chairperson and two of its members, who are not representatives of the competent authorities which are parties to the disagreement **and who shall not have any interest in the conflict.**

## Amendment 194

### Proposal for a regulation Article 27

*Text proposed by the Commission*

*Amendment*

When carrying out the tasks conferred upon it by this Regulation, the Chairperson and the voting members of the Board of Supervisors shall act independently and objectively in the **Community interest** and shall neither seek nor take instructions from **Community** institutions or bodies, from a Government of a Member State or

When carrying out the tasks conferred upon it by this Regulation, the Chairperson and the voting members of the Board of Supervisors shall act independently and objectively in the **sole interest of Union as a whole** and shall neither seek nor take instructions from **Union** institutions or bodies, from a Government of a Member State or from any other public or private

from any other public or private body.

body.

#### **Amendment 195**

##### **Proposal for a regulation**

##### **Article 27 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States, the Union institutions and any other public or private body shall not seek to influence the members of the Board of Supervisors in the performance of their tasks relating to the Authority.***

#### **Amendment 196**

##### **Proposal for a regulation**

##### **Article 28 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. The Board of Supervisors shall, on the basis of a proposal by the Management Board, adopt the annual report on the activities of the Authority on the basis of the draft report referred to in Article 38(7) and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee by 15 June every year. The report shall be made public.***

#### **Amendment 197**

##### **Proposal for a regulation**

##### **Article 29 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. The Board of Supervisors shall act on the basis of ***qualified*** majority of its members, ***as defined in Article 205 of the Treaty, for acts specified in Articles 7, 8 and all measures and decisions adopted***

1. The Board of Supervisors shall act on the basis of ***simple*** majority of its members. ***Each member of the Board of Supervisors shall have one vote.***

*under Chapter VI.*

**All other decisions of the Board of Supervisors shall be taken by simple majority of members.**

**In relation to acts specified in Articles 7 and 8 and all measures and decisions adopted under Chapter VI, the Board of Supervisors shall act on the basis of qualified majority of its members, as defined in Article 16 of the Treaty on European Union.**

*Justification*

*The principle of “simple majority voting” shall be the only rule concerning the voting modalities within the Board of Supervisors. It will ensure the efficient work of the EBA. It will also reflect the equal position of the national supervisors. It shall be remembered that the EBA is planned to be an expert body. Qualified majority voting (QMV) might cause that the EBA will be perceived as a politically influenced body. As a result it may lower the public trust toward it, and a repute in case of such authority shall be considered as an important value. Finally, the professional knowledge of the Members of the Board of Supervisors is not necessary linked with the size of the Member State.*

**Amendment 198**

**Proposal for a regulation  
Article 30 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

1. The Management Board shall be composed of the Chairperson, **a representative of the Commission**, and four members elected by the Board of Supervisors from among its members.

*Amendment*

1. The Management Board shall be composed of the Chairperson and four members elected by the Board of Supervisors from among its **voting** members.

**Amendment 199**

**Proposal for a regulation  
Article 30 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

**Each member other than the Chairperson shall have an alternate, who may replace the member of the Management Board if that person is prevented from attending.**

*Amendment*

**deleted**

**Amendment 200**

**Proposal for a regulation**  
**Article 30 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

*The term of office of the members elected by the Board of Supervisors shall be two and a half years. It may be extended once.*      *deleted*

**Amendment 201**

**Proposal for a regulation**  
**Article 30 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

*2. Decisions by the Management Board shall be adopted on the basis of a majority of the members present. Each member shall have one vote.*      *deleted*

**Amendment 202**

**Proposal for a regulation**  
**Article 30 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

The Executive Director shall participate in meetings of the Management Board without the right to vote.

The Executive Director *and a representative of the Commission* shall participate in meetings of the Management Board without the right to vote.

**Amendment 203**

**Proposal for a regulation**  
**Article 30 – paragraph 2 – subparagraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*The term of office of the members elected by the Board of Supervisors shall be two-and-a-half years. It may be extended once.*

**Amendment 204**

**Proposal for a regulation**  
**Article 30 – paragraph 2 – subparagraph 3**

*Text proposed by the Commission*

The Management Board shall ***adopt and make public its rules of procedure.***

*Amendment*

The Management Board shall ***meet at least preceding every Board of Supervisors meeting and as often as it deems necessary.***

**Amendment 205**

**Proposal for a regulation**  
**Article 31**

*Text proposed by the Commission*

The members of the Management Board shall act independently and objectively in the ***Community*** interest, without seeking or taking any instructions from ***Community*** institutions or bodies, from any government of a Member State or from any other public or private body.

*Amendment*

The members of the Management Board shall act independently and objectively in the ***sole*** interest ***of the Union as a whole***, without seeking or taking any instructions from ***Union*** institutions or bodies, from any government of a Member State or from any other public or private body.

**Amendment 206**

**Proposal for a regulation**  
**Article 32 – paragraph 6**

*Text proposed by the Commission*

6. The Management Board shall, after consulting the Board of Supervisors, adopt ***the annual report on the activities of the Authority on the basis of the draft report referred to in Article 38(7) and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors, the European Economic and Social Committee by 15 June. The report shall be made public.***

*Amendment*

6. The Management Board shall, after consulting the Board of Supervisors, adopt ***the quarterly reports that the Chairperson of the Authority shall submit to the European Parliament in accordance with Article 35(2).***

***6a. The Management Board shall also adopt an annual report and the Chairperson of the Authority shall submit it to the European Parliament.***

## Amendment 207

### Proposal for a regulation

#### Article 33 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

2. The Chairperson shall be appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation, following an open selection procedure.

*Amendment*

2. The Chairperson shall be appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation, following an open selection procedure ***organised and managed by the Commission.***

## Amendment 208

### Proposal for a regulation

#### Article 33 – paragraph 2 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***The Commission shall present a shortlist of three candidates to the European Parliament. After conducting hearings of those candidates, the European Parliament shall select one of those candidates. The candidate so selected shall be appointed by the Board of Supervisors.***

## Amendment 209

### Proposal for a regulation

#### Article 33 – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

***Before appointment, the candidate selected by the Board of Supervisors shall be subject to confirmation by the European Parliament.***

*Amendment*

***deleted***

## Amendment 210

### Proposal for a regulation

#### Article 33 – paragraph 2 – subparagraph 3

*Text proposed by the Commission*

The Board of Supervisors shall also elect from among its members an alternate who shall carry out the functions of the Chairperson in his absence.

*Amendment*

The Board of Supervisors shall also elect from among its members an alternate who shall carry out the functions of the Chairperson in his absence. ***That alternate shall not be a member of the Management Board.***

## Amendment 211

### Proposal for a regulation

#### Article 34 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***Member States, Union institutions and any other public or private bodies shall not seek to influence the Chairman in the performance of his or her tasks.***

## Amendment 212

### Proposal for a regulation

#### Article 35 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. The ***European Parliament may invite the Chairperson or his alternate, while fully respecting his or her independence, to make a statement regularly before its competent committee*** and answer questions put by members ***of that committee.***

1. The Chairperson ***shall*** make a statement ***before the European Parliament at least quarterly*** and ***shall*** answer ***any*** questions put by ***its*** members.

## Amendment 213

### Proposal for a regulation

#### Article 35 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. In accordance with the Staff Regulations referred to in Article 54, the Chairperson shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.***

Or. en

## Amendment 214

### Proposal for a regulation

#### Article 35 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. The ***European Parliament may also call upon the Chairperson to submit a report on the performance of his duties.***

2. The Chairperson ***shall*** submit a report on the ***activities of the Authority to the European Parliament when requested and at least 15 days before making the statement referred to in paragraph 1.***

## Amendment 215

### Proposal for a regulation

#### Article 35 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. In addition to the information referred to in Articles 7a to 7e, 8, 9, 10, 11a and 18, the Report shall include information, in particular, on the availability, amount and cost of banking credit to households and SMEs, the volume and changes therein of public debt owned by credit institutions and the responses given to the opinion issued by the Banking***



***Stakeholder Group. It shall also include any relevant information requested by the European Parliament on an ad-hoc basis.***

#### **Amendment 216**

##### **Proposal for a regulation Article 35 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. The Chairperson shall also submit an annual report on the performance of his or her duties to the European Parliament.***

#### **Amendment 217**

##### **Proposal for a regulation Article 36 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. The Executive Director shall be appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation and managerial experience, following an open selection procedure.

2. The Executive Director shall be appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation and managerial experience, following an open selection procedure ***organised and managed by the Commission and after the confirmation of the European Parliament.***

#### **Amendment 218**

##### **Proposal for a regulation Article 37 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***Member States, the Union institutions and any other public or private body shall not seek to influence the Executive Director in the performance of his tasks.***

## Amendment 219

### Proposal for a regulation

#### Article 38 – paragraph 7

*Text proposed by the Commission*

7. Each year the Executive Director shall prepare a draft **annual** report with a section on the regulatory and supervisory activities of the Authority and a section on financial and administrative matters.

*Amendment*

7. Each year the Executive Director shall prepare a draft report with a section on the regulatory and supervisory activities of the Authority and a section on financial and administrative matters.

## Amendment 220

### Proposal for a regulation

#### Article 39

*Text proposed by the Commission*

**Article 39**

**Composition**

**1. The Authority shall form part of the ESFS, which shall function as a network of supervisors.**

**2. The ESFS shall comprise the following:**

**(a) the authorities in the Member States as specified in Article 1(2) of this Regulation, Article 1(2) of Regulation (EC) No .../... [EIOPA] and Article 1(2) of Regulation (EC) No .../... [ESMA];**

**(b) the Authority,**

**(c) the European Insurance and Occupational Pensions Authority set up under Article 1 of Regulation (EC) No .../...[EIOPA];**

**(d) the European Securities and Markets Authority set up under Article 1 of Regulation (EC) No .../... [ESMA];**

**(e) the Joint Committee of European Supervisory Authorities provided for in Article 40;**

**(f) the Commission for the purposes of carrying out the tasks referred to in**

*Amendment*

**deleted**

*Articles 7, 9 and 10.*

***3. The Authority shall cooperate regularly and closely, ensure cross-sectoral consistency of work and arrive at joint positions in the area of supervision of financial conglomerates and on other cross-sectoral issues with the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority through the Joint Committee of European Supervisory Authorities set up in Article 40.***

#### **Amendment 221**

##### **Proposal for a regulation Chapter IV – Section 2 – title**

*Text proposed by the Commission*

***JOINT COMMITTEE OF EUROPEAN  
SUPERVISORY AUTHORITIES***

*Amendment*

***EUROPEAN SUPERVISORY  
AUTHORITY (JOINT COMMITTEE)***

*Justification*

*For sake of coherence with the Skinner report.*

#### **Amendment 222**

##### **Proposal for a regulation Article 40 – paragraph 1**

*Text proposed by the Commission*

***1. A Joint Committee of the European Supervisory Authorities is hereby established.***

*Amendment*

***1. The European Supervisory Authorities (Joint Committee) is hereby established and shall have its headquarters in Frankfurt.***

#### **Amendment 223**

**Proposal for a regulation**  
**Article 40 – paragraph 2**

*Text proposed by the Commission*

2. The **Joint Committee** shall serve as a forum in which the Authority shall cooperate regularly and closely and ensure cross-sectoral consistency with the **European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority**.

*Amendment*

2. The **Joint Committee** shall serve as a forum in which the Authority shall cooperate regularly and closely and ensure cross-sectoral consistency with the **other ESAs, in particular on:**

- **financial conglomerates;**
- **accounting and auditing;**
- **micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability;**
- **retail investment products;**
- **anti-money laundering measures; and**
- **information exchange with the European Systemic Risk Board and developing the relationship between the European Systemic Risk Board and the European Supervisory Authorities.**

*Justification*

*The joint committee is developing further fields of common action. Therefore it is proposed to specify a number of fields for cooperation in the regulations. On the basis of the preparatory work of the Joint committee final decisions will be taken by the constituent committees.*

**Amendment 224**

**Proposal for a regulation**  
**Article 40 – paragraph 3**

*Text proposed by the Commission*

3. The Authority shall contribute adequate resources to **the administrative support of the Joint Committee of European Supervisory Authorities. This includes staff**, administrative, infrastructure, and operational expenses.

*Amendment*

3. **The Joint Committee shall have a permanent secretariat, staffed on secondment from the three European Supervisory Authorities.** The Authority shall contribute adequate resources to administrative, infrastructure, and operational expenses.

## *Justification*

*A permanent secretariat will allow for the JC to move effectively perform the roles assigned to it, and allow for an increase in roles over time. Furthermore, it should create cross-sectoral learning and a common supervisory culture among the secretariat seconded from the three ESAs.*

### **Amendment 225**

#### **Proposal for a regulation Article 40 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 40a**

**Supervision**

***In the event that an institution identified in Article 12b(1) reaches across different sectors, the Joint Committee shall decide which European Supervisory Authority shall act as leading competent authority and/ or adopt binding decisions to resolve problems between the European Supervisory Authorities.***

### **Amendment 226**

#### **Proposal for a regulation Article 41 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. The **Joint Committee** shall **be** composed of **the Chairperson and** the Chairpersons of the European **Insurance and Occupational Pensions Authority and the European Securities and Markets Authority**, and, where applicable, the Chairperson of a Sub-Committee established under Article 43.

1. The **Joint Committee** shall **have a Board** composed of the Chairpersons of the European **Supervisory Authorities**, and, where applicable, the Chairperson of a Sub-Committee established under Article 43.

### **Amendment 227**

## Proposal for a regulation

### Article 41 – paragraph 2

*Text proposed by the Commission*

2. The Executive Director, the Commission and the ESRB shall be invited to the meetings of the **Joint Committee of European Supervisory Authorities** as well as the Sub-Committees mentioned in Article 43 as observers.

*Amendment*

2. The Executive Director, **a representative of** the Commission and the ESRB shall be invited to the meetings of the **Board of the Joint Committee** as well as the Sub-Committees mentioned in Article 43 as observers.

## Amendment 228

### Proposal for a regulation

#### Article 41 – paragraph 3

*Text proposed by the Commission*

3. The chair of the Joint Committee of **European Supervisory Authorities** shall be appointed on an annual rotational basis from among the Chairpersons of the European Banking **Authority**, the European Insurance and Occupational Pensions **Authority** and the European Securities and Markets **Authority**.

*Amendment*

3. The chair of the Joint Committee of shall be appointed on an annual rotational basis from among the Chairpersons of the European **Supervisory Authority (Banking)**, the European **Supervisory Authority (Insurance and Occupational Pensions)** and the European **Supervisory Authority (Securities and Markets)**. **The Chairperson of the Joint Committee shall be a Vice-Chair of the European Systemic Risk Board.**

*Justification*

*It is important that the micro-level expertise of the ESAs is given sufficient weight within the ESRB. Furthermore it is important that the ESRB is not too bank-focused, and that banking, insurance and securities and markets are adequately represented by a chairperson from the JC, which can represent all three sectors.*

## Amendment 229

### Proposal for a regulation

#### Article 41 – paragraph 4 – subparagraph 2

*Text proposed by the Commission*

The **Joint Committee of European Supervisory Authorities** shall meet at least once every two months.

*Amendment*

The **Board of the Joint Committee** shall meet at least once every two months.

*Justification*

*In coherence with the Skinner Report.*

**Amendment 230**

**Proposal for a regulation  
Article 44 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. The Board of Appeal shall be a joint body of the European **Banking Authority, the European Insurance and Occupational Pensions Authority, and the European Securities and Markets Authority.**

1. The Board of Appeal shall be a joint body of the **three** European **Supervisory Authorities.**

**Amendment 231**

**Proposal for a regulation  
Article 44 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

2. The Board of Appeal shall be composed of six members and six alternates, **who shall be individuals with relevant knowledge and experience, excluding current staff of the competent authorities or other national or Community institutions involved in the activities of the Authority.**

2. The Board of Appeal shall be composed of six members and six alternates **with sufficient legal expertise to provide expert legal advice on the legality of Authority's exercise of its powers.**

**Amendment 232**

**Proposal for a regulation  
Article 44 – paragraph 2 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

**The decisions of the Board of Appeal shall be adopted on the basis of a majority of at least four of its six members.**

**deleted**

**Amendment 233**

**Proposal for a regulation**  
**Article 44 – paragraph 2 – subparagraph 4**

*Text proposed by the Commission*

*Amendment*

***The Board of Appeal shall be convened by its President when necessary.***

***deleted***

**Amendment 234**

**Proposal for a regulation**  
**Article 44 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

3. ***Two*** members of the Board of Appeal and ***two*** alternates shall be appointed by the ***Management Board of the Authority*** from a short-list proposed by the Commission, following a public call for expression of interest published in the Official Journal of the European Union, and after consultation of the Board of Supervisors.

3. ***The*** members of the Board of Appeal and ***their*** alternates shall be appointed by the ***European Parliament*** from a short-list proposed by the Commission, following a public call for expression of interest published in the Official Journal of the European Union, and after consultation of the Board of Supervisors.

**Amendment 235**

**Proposal for a regulation**  
**Article 44 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

***The other Members shall be appointed in accordance with Regulation (EC) No .../...[EIOPA] and Regulation (EC) No .../...[ESMA].***

***deleted***

**Amendment 236**

**Proposal for a regulation**  
**Article 44 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. The decisions of the Board of Appeal shall be adopted on the basis of a majority of at least four of its six members.***



## Amendment 237

### Proposal for a regulation Article 44 – paragraph 4

*Text proposed by the Commission*

*Amendment*

**4. The term of office of the members of the Board of Appeal shall be five years. This term may be extended once.**

**deleted**

## Amendment 239

### Proposal for a regulation Article 44 – paragraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

**4a. The Board of Appeal shall be convened by its President when necessary.**

## Amendment 238

### Proposal for a regulation Article 44 – paragraph 5

*Text proposed by the Commission*

*Amendment*

**5. A member of the Board of Appeal, who was appointed by the Management Board of the Authority, may not be removed during his term of office, unless he has been found guilty of serious misconduct, and the Management Board takes a decision to that effect after consulting the Board of Supervisors.**

**deleted**

## Amendment 240

### Proposal for a regulation Article 44 – paragraph 6

*Text proposed by the Commission*

*Amendment*

6. The Authority, the European Insurance

6. The Authority, the European

and Occupational Pensions **Authority** and the European Securities and Markets **Authority** shall ensure adequate operational and secretarial support for the Board of Appeal.

**Supervisory Authority** (Insurance and Occupational Pensions) and the European **Supervisory Authority** (Securities and Markets) shall ensure adequate operational and secretarial support for the Board of Appeal **through the Joint Committee**.

*Justification*

*Since the Board of Appeal will be within the Joint Committee is appropriate that the JC provide the Board with access to support from its secretariat.*

**Amendment 241**

**Proposal for a regulation  
Article 46 – paragraph 5**

*Text proposed by the Commission*

5. The Board of Appeal may, **within the provisions of this Article, exercise any power which lies within the competence** of the Authority, or **it may** remit the case to the competent body of the Authority. That body shall be bound by the decision of the Board of Appeal.

*Amendment*

5. The Board of Appeal may **confirm the decision taken by the competent body** of the Authority, or remit the case to the competent body of the Authority. That body shall be bound by the decision of the Board of Appeal **and shall adopt an amended decision regarding the case concerned**.

*Justification*

*The Board of Appeal should confirm or reject a decision, but it is not its task to reformulate the decision which lies within the competence of Authority.*

**Amendment 242**

**Proposal for a regulation  
Article 47 – title**

*Text proposed by the Commission*

Actions before the Court **of First Instance** and the Court of Justice

*Amendment*

Actions before the **General** Court and the Court of Justice

*(This amendment applies throughout the text.)*

## Amendment 243

### Proposal for a regulation Article 47 – paragraph 1

*Text proposed by the Commission*

1. An action may be brought before the Court of First Instance or the Court of Justice, in accordance with **Article 230 of the Treaty**, contesting a decision taken by the Board of Appeal or, in cases where there is no right of appeal before the Board of Appeal, by the Authority.

*Amendment*

1. An action may be brought before the Court of First Instance or the Court of Justice, in accordance with **Article 263 TFEU**, contesting a decision taken by the Board of Appeal or, in cases where there is no right of appeal before the Board of Appeal, by the Authority.

## Amendment 244

### Proposal for a regulation Article 47 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**1a. Member States and the Union institutions, as well as any natural or legal person, may lodge a direct appeal before the Court of Justice against decisions of the Authority, in accordance with Article 263 TFEU.**

## Amendment 245

### Proposal for a regulation Article 47 – paragraph 2

*Text proposed by the Commission*

2. In the event that the Authority has an obligation to act and fails to take a decision, proceedings for failure to act may be brought before the Court of First Instance or the Court of Justice in accordance with **Article 232 of the Treaty**.

*Amendment*

2. In the event that the Authority has an obligation to act and fails to take a decision, proceedings for failure to act may be brought before the Court of First Instance or the Court of Justice in accordance with **Article 265 TFEU**.

## Amendment 246

### Proposal for a regulation

#### Article 48 – paragraph 1 – point a

*Text proposed by the Commission*

*Amendment*

***(a) obligatory contributions from the national public authorities competent for the supervision of financial institutions;***

***deleted***

## Amendment 247

### Proposal for a regulation

#### Article 48 – paragraph 1 – point b

*Text proposed by the Commission*

*Amendment*

***(b) a subsidy from the Community, entered in the General Budget of the European Union (Commission Section);***

***(b) a subsidy from the Union, shown in a separate budget heading in Section [XII] of the general budget of the European Union;***

#### *Justification*

*Under the Commission proposals, the ESAs' budget would be part of the Commission budget. To enhance the independence of the ESAs it would be better to identify a separate and specific budget line for the ESAs in the overall EU Budget. Therefore it is proposed, also to enable the authorities to achieve their ambitions, to provide for an independent budget line as has been done for the Data Protection Supervisor (see: Regulation No 45/2001 of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data).*

## Amendment 248

### Proposal for a regulation

#### Article 48 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. The expenditure of the Authority shall include, at least, staff, remuneration, administrative, infrastructure and operational expenses.

2. The expenditure of the Authority shall include, at least, staff, remuneration, administrative, infrastructure ***professional training*** and operational expenses.

## Amendment 249

### Proposal for a regulation Article 49 – paragraph 3

*Text proposed by the Commission*

3. On the basis of the statement of estimates, the Commission shall enter in the preliminary draft General Budget of the European Union the estimates it deems necessary in respect of the establishment plan and the amount of the subsidy to be charged to the general budget of the European Union in accordance with *Article 272 of the Treaty*.

*Amendment*

3. On the basis of the statement of estimates, the Commission shall enter in the preliminary draft General Budget of the European Union the estimates it deems necessary in respect of the establishment plan and the amount of the subsidy to be charged to the general budget of the European Union in accordance with *Articles 313 and 314 TFEU*.

## Amendment 250

### Proposal for a regulation Article 50 – paragraph 9

*Text proposed by the Commission*

9. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget for the financial year N.

*Amendment*

9. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget *comprising revenue from the General Budget of the European Union and competent authorities* for the financial year N.

## Amendment 251

### Proposal for a regulation Article 54 – paragraph 1

*Text proposed by the Commission*

1. The Staff Regulations, the Conditions of employment of other servants and the rules adopted jointly by the European *Community* institutions for the purpose of applying these shall apply to the staff of the Authority, *including* its *Executive Director*.

*Amendment*

1. The Staff Regulations, the Conditions of employment of other servants and the rules adopted jointly by the *Union* institutions for the purpose of applying these shall apply to the staff of the Authority, *excluding* its *Chairperson*.

### *Justification*

*The Chairperson should not be subject to the EU staff regulation. The terms and conditions of employment for the Chairperson should be determined by the Board of Supervisors as it is already the case for the President and members of the executive board of the European Central Bank. Bearing in mind the fact that the Chairs will be part of the ESRB and its Steering Committee, a consistent approach with that of ECB is appropriate.*

### **Amendment 252**

#### **Proposal for a regulation Article 54 – paragraph 2**

##### *Text proposed by the Commission*

2. The Management Board, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations.

##### *Amendment*

2. The Management Board, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations. ***The implementing measures shall allow justified deviations in order to guarantee the most effective implementation of the tasks identified for the Authority.***

### **Amendment 253**

#### **Proposal for a regulation Article 55 – paragraph 1**

##### *Text proposed by the Commission*

1. In the case of non-contractual liability, the Authority shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its staff in the performance of their duties. The Court of Justice shall have jurisdiction in any dispute over the remedying of such damage.

##### *Amendment*

1. In the case of non-contractual liability, the Authority shall, in accordance with the general principles common to the laws of the Member States, make good any ***unjustified*** damage caused by it or by its staff in the performance of their duties. The Court of Justice shall have jurisdiction in any dispute over the remedying of such damage.

### *Justification*

*During the course of its actions it may be that the ESA causes damages to individual financial institutions in order to ensure the greater good. Such damage would be justifiable in the context of ensuring systemic stability and as such the ESA should not be held liable for such damage.*

## Amendment 254

### Proposal for a regulation Article 56 – paragraph 1

*Text proposed by the Commission*

1. Members of the Board of Supervisors and the Management Board, the Executive Director, and members of the staff of the Authority including officials seconded by Member States on a temporary basis shall be subject to the requirements of professional secrecy pursuant to **Article 287 of the Treaty** and the relevant provisions in **the relevant community** legislation, even after their duties have ceased.

*Amendment*

1. Members of the Board of Supervisors and the Management Board, the Executive Director, and members of the staff of the Authority including officials seconded by Member States on a temporary basis **and all other persons carrying out tasks for the Authority on a contractual basis** shall be subject to the requirements of professional secrecy pursuant to **Article 339 TFEU** and the relevant provisions in **Union** legislation, even after their duties have ceased.

## Amendment 255

### Proposal for a regulation Article 56 – paragraph 1 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***They shall not enter a job with financial institutions previously supervised by the ESFS in the first 18 months after they left their position.***

## Amendment 256

### Proposal for a regulation Article 61 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***Participation in the work of the Authority which is of direct interest to them shall also be open to third countries applying legislation which has been recognised as equivalent in the areas of competence of the Authority referred to in Article 1(2), subject to the conclusion of agreements with the Union.***

## **Amendment 257**

### **Proposal for a regulation Article 61 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***This participation should materialise in an effective bilateral and multilateral exchange of information between competent authorities and the Authority, with full respect of the applicable confidentiality and data protection provisions provided for in the relevant Union legislation.***

## **Amendment 258**

### **Proposal for a regulation Article 62 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. During the period after the entry into force of this Regulation, and before the establishment of the Authority, the Level 3 Committee shall act in close cooperation with the Commission to prepare for the replacement of the Level 3 Committee by the Authority. The Level 3 Committee may take all useful preparatory actions, subject to final decision by the relevant bodies of the Authority.***

## **Amendment 259**

### **Proposal for a regulation Article 62 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. During the period from the entry into force of this Regulation and the date of the designation of the Chairperson and the members of the Management Board, and of the appointment the Executive Director, the Authority shall be provisionally chaired by the Chair of the***



*existing Level 3 Committee and managed by its Secretary General.*

*Justification*

*It is proposed to clarify the provisions on the preparatory actions that can be taken before the establishment of the ESAs. For reasons of efficiency, it is imperative that after the entry into force of the Regulation, the 3L3 Committees can take all useful steps to prepare the establishment of the ESAs, subject to ratification by the relevant ESA bodies of this preparatory work. This modus operandi will contribute to shorten as much as possible the period during which the ESAs may not be fully operational due the non-nomination of their respective Chairperson and Executive Director.*

**Amendment 260**

**Proposal for a regulation**

**Article 63 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

2. All members of staff under contracts referred to in paragraph 1 shall be offered the possibility of concluding **temporary agent contracts under Article 2(a) of the Conditions of Employment of Other Servants at the various grades as set out in the Authority's establishment plan.**

*Amendment*

**2. In order to allow the smooth transition of the existing staff to the Authority,** all members of staff under contracts referred to in paragraph 1, **including those under secondment contracts,** shall be offered the possibility of concluding **employment temporary agent contracts with equivalent or comparable economic and legal conditions, in accordance with the relevant legal framework.**

*Justification*

*It is proposed to provide for specific transitional provisions related to the existing staff of the Level 3 Committees.*

**Amendment 261**

**Proposal for a regulation**

**Article 63 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

An internal selection limited to staff who have contracts with the Committee **of European Banking Supervisors** or its Secretariat shall be carried out after the entry into force of this Regulation by the

*Amendment*

An internal selection limited to staff who have contracts with the **Level 3** Committee or its Secretariat shall be carried out after the entry into force of this Regulation by the authority authorised to conclude

authority authorised to conclude contracts in order to check the ability, efficiency and integrity of those to be engaged.

contracts in order to check the ability, efficiency and integrity of those to be engaged. ***The internal selection procedure shall take full account of the skills and experience demonstrated by the individual in the performance of his or her role prior to the transition.***

#### *Justification*

*It is proposed to provide for specific transitional provisions related to the existing staff of the Level 3 Committees.*

### **Amendment 262**

#### **Proposal for a regulation Article 66 – paragraph -1 (new)**

*Text proposed by the Commission*

*Amendment*

***-1. By ...\*, the Commission shall submit to the European Parliament and the Council the necessary proposals to ensure a smooth shift to the supervision of institutions identified in Article 12b by the Authority and the establishment of a new framework for financial crisis management.***

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*\* OJ please insert date: six months from the date of entry into force of this Regulation.*

### **Amendment 263**

#### **Proposal for a regulation Article 66 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

1. ***Within three years from the date set out in the second paragraph of Article 67*** and every three years thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation.

1. ***By ...\**** and every three years thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation. ***That report shall evaluate, inter alia:***

- (a) the convergence in supervisory standard practices reached by competent authorities;*
- (b) the functioning of the colleges of supervisors;*
- (c) the role of the Authority on the supervision of systemic institutions; and*
- (d) the application of the safeguard clause established in Article 23.*

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*\*OJ please insert date: three years after the date of application of this Regulation.*

#### *Justification*

*The proposed amendments are aimed at creating a commitment for the Commission to put forward proposals to clarify the concept of Member States' fiscal responsibility and to update the Regulation to make it consistent with any potential improvements which will come from the implementation of a framework of community regulations for crisis management in the banking sector, recently put under consultation by the Commission.*

#### **Amendment 264**

##### **Proposal for a regulation Article 66 – paragraph 1 – subparagraph 2**

###### *Text proposed by the Commission*

*That report shall also evaluate progress achieved towards regulatory and supervisory convergence in the fields of crisis management and resolution in the Community. The evaluation shall be based on extensive consultation, including with the Banking Stakeholder Group.*

###### *Amendment*

*1a. The report referred to in paragraph 1 shall also examine whether:*

- (a) it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets, or whether they should be brought under a single supervisor;*
- (b) it is appropriate to supervise prudential supervision and the conduct of business separately or by the same supervisor;*
- (c) it is appropriate to simplify and reinforce the architecture of the ESFS in*

*order to increase the coherence between the macro and the micro levels and between the ESAs;*

*(d) it is appropriate to increase the regulatory powers of the ESAs;*

*(e) the evolution of the ESFS is consistent with that of the global evolution;*

*(f) there is sufficient diversity and excellence within the ESFS;*

*(g) accountability and transparency in relation to publication requirements are adequate.*