



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Constitutional Affairs

2009/0142(COD)

12.4.2010

OPINION

of the Committee on Constitutional Affairs

for the Committee on Economic and Monetary Affairs

on the proposal for a regulation of the European Parliament and of the Council
establishing a European Banking Authority
(COM(2009)0501 – C7-0169/2009 – 2009/0142(COD))

Rapporteur: Íñigo Méndez de Vigo

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SHORT JUSTIFICATION

The lack of adequate financial regulation at a European level and the weakness of the market supervisory mechanisms were clearly evident during the economic and financial crisis that hit Europe in 2008, the repercussions of which we are still suffering. The Commission has drawn up four proposals – for whose passage through Parliament the Committee on Economic and Monetary Affairs is responsible – based upon the report by the group of experts presided over by Jacques de Larosiere.

In giving its opinion, the Committee on Constitutional Affairs has sought to examine carefully how the new European Supervisory Authority and the European Systemic Risk Board created in these proposals can best fit into the institutional system. It has also focused on the establishment of harmonised technical standards for financial services, in order to ensure that their actions are consistent on the one hand and to guarantee adequate protection for depositors, investors and consumers in the European Union on the other. The relationship with private-sector institutions has been studied with special care in this opinion, as has the relationship between the European Supervisory Authority and national supervisory authorities. Finally, we have stressed the problems connected with supervision of cross-border institutions.

The 2008 financial crisis demands a European response to European problems: thanks to the new powers granted to it under the Lisbon Treaty, Parliament must play a decisive role in all these matters.

AMENDMENTS

The Committee on Constitutional Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

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 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.

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 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.

(This amendment applies throughout the text.)

Amendment 3

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*

Amendment

(7) The European System of Financial Supervisors should be a network of national and **Union** supervisory authorities, leaving day-to-day supervision of financial institutions *that do not have a Union dimension to the national level. Colleges of supervisors should supervise cross-border institutions that do not have a Union dimension. The European Supervisory Authority (Banking) -(the "Authority") should gradually take over the supervision of institutions with a Union dimension*. 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*

Authorities).

Occupational Pensions) and a European Supervisory Authority (Securities and Markets) as well as a European Supervisory Authority (Joint Committee) (the "Joint Committee") should be established. The European Systemic Risk Board should form part of a European System of Financial Supervision.

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

Amendment 4

Proposal for a regulation Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) In Case No C-217/04, UK v. European Parliament and Council of the European Union, the Court of Justice held that: “nothing in the wording of Article 95 TEC 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 appropriate¹”. Measures adopted under Article 95 of the EC Treaty (now, following the entry into force of the Lisbon Treaty, Article 114 of the Treaty on the Functioning of the European Union) may take the form of directives or regulations. For instance, the European Network and Information Security Agency was established by Regulation (EC) No 460/2004 of the European Parliament and of the Council² and the

Authority will also be established by a regulation.

¹ *Judgment of 2 May 2006, ECR 2006, p. I-3771, at paragraph 44.*

² *OJ L 77, 13.3.2004, p. 1.*

Amendment 5

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 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 **the Union**. 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 technical 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 of the Treaty on the Functioning of the European Union concerning technical standards in financial services.***

Amendment 6

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 technical standards in order to give them binding legal effect. They will 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 the acquis of Union financial services legislation. 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 7

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 technical 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 state their reasons where they do not comply with those guidelines and recommendations **publicly in order to be fully transparent with market participants. In areas not covered by technical standards, the Authority should establish and promulgate best practices.**

Amendment 8

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 9

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** of the Treaty.

Amendment 10

Proposal for a regulation

Recital 21

Text proposed by the Commission

(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.

Amendment 11

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

Amendment

(21) Serious threats to the orderly 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 establish 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

(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 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.

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 **Union** law directly applicable to them. ***This also applies to disagreements within a college of supervisors.***

Amendment 12

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 13

Proposal for a regulation Recital 22 b (new)

Text proposed by the Commission

Amendment

(22b) The cooperation mechanism used to resolve this 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"¹.

¹ at p. 101.

Amendment 14

Proposal for a regulation Recital 22 c (new)

Text proposed by the Commission

Amendment

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

Amendment 15

Proposal for a regulation Recital 22 d (new)

Text proposed by the Commission

Amendment

(22d) The national solution implies that 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 16

Proposal for a regulation Recital 22 e (new)

Text proposed by the Commission

Amendment

(22e) The European solution calls for the reinforcement of the colleges of supervisors in the supervision of cross-border institutions and for the progressive shift of supervisory powers over institutions with a Union dimension to a European authority. Financial institutions with a Union dimension include those operating cross-border as well as those operating within national territory provided that their bankruptcy could threaten the stability of the Union's single financial market.

Amendment 17

Proposal for a regulation Recital 22 f (new)

Text proposed by the Commission

Amendment

(22f) 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, 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 18

Proposal for a regulation Recital 22 g (new)

Text proposed by the Commission

Amendment

(22g) Colleges of supervisors should play an important role in the efficient, effective and consistent supervision of cross-border financial institutions that do not have a Union dimension, but in most cases the differences between national standards and practices subsist. There is no value in converging basic financial regulations if supervisory 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 19

Proposal for a regulation Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) The prudential supervision of financial institutions with a Union dimension should be entrusted to the Authority. National supervisors should act as agents of the Authority and should be bound to the Authority's instructions when they supervise cross-border financial institutions with a Union dimension.

Amendment 20

Proposal for a regulation

Recital 23 b (new)

Text proposed by the Commission

Amendment

(23b) The financial institutions with a Union dimension should be identified, taking into account international standards.

Amendment 21

Proposal for a regulation

Recital 24

Text proposed by the Commission

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. 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

(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 ***the Authority or 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

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 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.

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 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 promulgate best practices regarding delegation and delegation agreements.

Amendment 22

Proposal for a regulation

Recital 26

Text proposed by the Commission

(26) Peer reviews are an efficient and effective tool for fostering consistency within the network of financial supervisors. The Authority should therefore develop the methodological framework for such reviews and conduct them on a regular basis. Reviews should focus not only on convergence of supervisory practices but also on the capacity of supervisors to achieve high quality supervisory outcomes as well as the independence of competent authorities.

Amendment

(26) Peer reviews are an efficient and effective tool for fostering consistency within the network of financial supervisors. The Authority should therefore develop the methodological framework for such reviews and conduct them on a regular basis. Reviews should focus not only on convergence of supervisory practices but also on the capacity of supervisors to achieve high quality supervisory outcomes as well as the independence of competent authorities. ***The outcome of peer reviews should be made public and best practices should be identified and made public.***

Amendment 23

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** dialogue and cooperation with supervisors outside the **Union**.

Amendment 24

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 technical standards, guidelines and recommendations and provide them with a reasonable opportunity to comment on proposed measures. **Before adopting such draft technical standards, guidelines and recommendations the Authority should carry out an impact assessment.** For reasons of efficiency, a Banking Stakeholder Group should be established for that purpose, representing in balanced proportions **Union** credit and investment institutions (including as appropriate institutional investors and other financial institutions which themselves use financial services), their employees, **academia** 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 **by Union** legislation.

Amendment 25

Proposal for a regulation Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) Without prejudice to the particular responsibilities of the Member States in crisis situations it is evident that where a Member State chooses to invoke the safeguard, the European Parliament should be informed 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 26

Proposal for a regulation Recital 38

Text proposed by the Commission

Amendment

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

(38) A full-time Chairperson, selected by the ***European Parliament following*** an open competition ***managed by the Commission and the subsequent drawing up of a short list by 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 27

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 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.***

Amendment 28

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

Amendment

2. The Authority shall act within the scope of ***this Regulation and of*** Directive 2006/48/EC, Directive 2006/49/EC, Directive 2002/87/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.

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** 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 reporting, provided that such actions by the Authority are necessary to ensure the effective and consistent application of the legislation referred to in this paragraph.

Amendment 29

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 30

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 31

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), which shall function as an integrated network of supervisors that brings together all the Union and Member State authorities with competence in the field of financial supervision as referred in this Regulation and in related Union regulations. The main objective of the ESFS shall be to ensure strong and consistent Union supervision of financial institutions in such a way as to ensure confidence in the financial system, support sustainable Union growth and serve the needs of business and citizens.

2. The ESFS shall comprise the following:

(a) the European Systemic Risk Board established by Regulation (EU) No .../... [ESRB];

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

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

(d) the Authority;

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

(f) the authorities in the Member States referred to in Article 1(2) of Regulations (EU) No .../... [ESMA], Regulation (EU) No .../2009 [EIOPA] and Regulation (EU) No .../... [EBA];

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

3. All the parties to the ESFS shall cooperate closely with one another, with trust and full mutual respect, pursuant to the principle of sincere cooperation in accordance with Article 4(3) of the Treaty on European Union.

4. All financial institutions are subject to legally binding acts under Union law and the supervision of the competent authorities that are party to the ESFS.

5. The ESFS shall not prevent competent authorities from the exercise of national supervisory powers in conformity with Union legally binding acts and in accordance with the international prudential principles on banking supervision.

6. Only those supervisory authorities included in the European System of Financial Supervisor shall be entitled to supervise financial institutions in the Union.

Amendment 32

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 **standards and** legislation, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of **this Regulation and** the legislation referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, **ensuring effective and consistent supervision of financial institutions with a Union dimension and** a coherent functioning of colleges of supervisors and taking actions,

inter alia, in emergency situations;

Amendment 33

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 technical standards ***to complete, update and amend elements that are not essential to the legislative acts*** referred to in Article 1(2). ***Those technical standards shall not involve strategic decisions and their content shall be limited by the legislative acts on which they are based.***

Amendment 34

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

The Authority shall conduct open public consultations on the draft technical standards and analyse the potential related costs and benefits before adopting them. The Authority shall request an opinion or advice of the Banking Stakeholder Group.

Amendment 35

Proposal for a regulation

Article 7 – paragraph 1 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

The Authority shall submit the draft technical standards to the Commission for endorsement and shall, simultaneously, forward them to the European Parliament and the Council.

Amendment 36

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 ***technical*** standards, the Commission shall decide whether to endorse, ***reject or amend them***. 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.***

Amendment 37

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 38

Proposal for a regulation

Article 7 – paragraph 2

Text proposed by the Commission

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.***

Amendment

2. The ***Commission*** shall ***adopt technical standards in accordance with Articles 7a to 7d, in the form of regulations or decisions.***

Amendment 39

Proposal for a regulation Article 7 a (new)

Text proposed by the Commission

Amendment

Article 7a

Exercise of the delegation to adopt technical standards

- 1. The powers to adopt technical standards in the form of delegated acts referred to in Article 7 shall be conferred on the Commission for an indeterminate period of time.*
- 2. As soon as it adopts technical standards, the Commission shall notify them simultaneously to the European Parliament and to the Council.*
- 3. The power to adopt technical standards is conferred on the Commission subject to the conditions laid down in Articles 7b to 7d.*
- 4. In the Chairperson's report referred to in Article 35(2), the Authority shall inform the European Parliament and the Council about the technical standards that have been approved and which national authorities have not complied with them.*

Amendment 40

Proposal for a regulation Article 7 b (new)

Text proposed by the Commission

Amendment

Article 7b

Revocation of the delegation to adopt technical standards

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

2. 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 technical standard which could be subject to revocation and the possible reasons for a revocation.

3. The decision of revocation shall state the reasons for the revocation and shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the technical standards already in force. It shall be published in the Official Journal of the European Union.

Amendment 41

Proposal for a regulation

Article 7 c (new)

Text proposed by the Commission

Amendment

Article 7c

Objections to technical standards

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

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

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

technical standard. In such cases, the technical standard shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.

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

Amendment 42

Proposal for a regulation Article 7 d (new)

Text proposed by the Commission

Amendment

Article 7d

Non-endorsement or amendment of technical standards

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

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

Amendment 43

Proposal for a regulation Article 8 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

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 an opinion or

Amendment 44

Proposal for a regulation Article 8 – subparagraph 2

Text proposed by the Commission

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

Amendment

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. In the event that it intends not to comply, it shall inform the Authority, stating reasons. The Authority shall publish those reasons.

Amendment 45

Proposal for a regulation Article 8 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

In the report on its activities referred to in Article 32(6), the Authority shall inform the European Parliament, the Council and the Commission of the guidelines and recommendations that it has issued, stating which national authority has not complied with them and outlining how the Authority intends to ensure that they will follow its recommendations and guidelines in the future.

Amendment 46

Proposal for a regulation Article 8 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Where the competent authority does not apply those guidelines or

Amendment

deleted

recommendations it shall inform the Authority of its reasons.

Amendment 47

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 applied the **legally binding acts and** legislation referred to in Article 1(2) **or has applied them in a way which appears to be in breach of Union law, including the technical standards established in accordance with Article 7**, 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 48

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 **breach or non-application** of **Union** law.

Amendment 49

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

4. Where the competent authority has not complied with **Union** law within **ten working days as provided for in the second subparagraph of paragraph 3**, the **Authority shall** take a decision requiring the competent authority to take the action necessary to comply with **Union** law.

Amendment 50

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 51

Proposal for a regulation

Article 9 – paragraph 4 – subparagraph 3

Text proposed by the Commission

The **Commission** shall ensure that the right to be heard of the addressees of the decision is respected.

Amendment

The **Authority** shall ensure that the right to be heard of the addressees of the decision is respected.

Amendment 52

Proposal for a regulation

Article 9 – paragraph 4 – subparagraph 4

Text proposed by the Commission

The **Authority and the** competent authorities shall provide the **Commission** with all necessary information.

Amendment

The competent authorities shall provide the **Authority** with all necessary information.

Amendment 53

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

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 **Authority's** decision.

Amendment 54

Proposal for a regulation

Article 9 – paragraph 6 – subparagraph 1

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**

Amendment

6. Without prejudice to the powers of the Commission under **Article 258** 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 **shall, pursuant to** the legislation referred to in Article 1(2), adopt an individual decision addressed to a

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.

financial institution requiring the necessary action to comply with its obligations under **Union** law including the cessation of any practice.

Amendment 55

Proposal for a regulation

Article 9 – paragraph 6 – subparagraph 2

Text proposed by the Commission

The decision of the Authority shall be in conformity with the decision adopted *by the Commission* pursuant to paragraph 4.

Amendment

The decision of the Authority shall be in conformity with the decision adopted pursuant to paragraph 4.

Amendment 56

Proposal for a regulation

Article 9 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. In the report referred to in Article 32(6), the Authority shall set out which national authorities and financial institutions have not complied with the decisions referred to in paragraphs 4 and 6.

Amendment 57

Proposal for a regulation

Article 10 – paragraph 1

Text proposed by the Commission

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*

Amendment

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 **Union**, the **ESRB**, upon its own initiative or following a request by the Authority, the Council, **the European Parliament** or the **Commission**,

decision addressed to the Authority, determining the existence of an emergency situation for the purposes of this regulation.

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 58

Proposal for a regulation Article 10 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. As soon as it issues a warning, the ESRB shall notify it simultaneously to the European Parliament, the Council, the Commission and the Authority.

Amendment 59

Proposal for a regulation Article 10 – paragraph 2

Text proposed by the Commission

Amendment

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.

2. Where the *existence of an emergency situation is declared* pursuant to paragraph 1, the Authority *shall* adopt individual decisions *necessary to ensure that* competent authorities 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 60

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** 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 **shall, pursuant to** the relevant requirements laid down in the legislation 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 61

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 on its own initiative or following a request by the Authority, the European Parliament, the Council or the Commission.

Amendment 62

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

Text proposed by the Commission

Amendment

4b. In the report referred to in Article 32(6), the Authority shall set out the individual decisions addressed to national authorities and financial institutions under paragraphs 3 and 4.

Amendment 63

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 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, **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 64

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 legislation 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 65

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 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.

Amendment

3. If, at the end of the conciliation phase, the competent authorities concerned have 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 66

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** 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 **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 67

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 national supervisory authorities on the same matter.

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

Amendment 68

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

Text proposed by the Commission

Amendment

4b. In the report referred to in Article 32(6), the Authority shall set out the disagreement between competent authorities, the agreements reached and the decision taken to settle such disagreements.

Amendment 69

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 70

Proposal for a regulation Article 12 – paragraph 1

Text proposed by the Commission

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.

Amendment

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 colleges.

Amendment 71

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 participate 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 72

Proposal for a regulation Article 12 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Authority may issue technical standards, guidelines and recommendations adopted under Articles 7 and 8 to harmonise supervisory functioning and best practices adopted by the colleges of supervisors.

Amendment 73

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 new Authorities to solve disputes between national supervisors following the procedure set up on Article 11. Where no agreement can be reached between the supervisors of a cross-border institution, the Authority should be empowered to take supervisory decisions directly applicable to the institution concerned.

Amendment 74

Proposal for a regulation Article 12 a (new)

Text proposed by the Commission

Amendment

Article 12a

Supervision of financial institutions with a Union dimension

1. National authorities shall exert prudential supervision of financial institutions with a Union dimension by acting as the agent of and following the instructions given by the Authority, in order to guarantee that the same supervisory rules are applied across the Union.

2. The Authority shall submit its draft supervisory rules to the Commission and, simultaneously, to the European Parliament and the Council. The Commission shall endorse the draft supervisory rules following the procedure set out in Article 7 or 8.

3. A decision taken by the Board of Supervisors in accordance with the procedure set out in Article 29(1) shall identify the significant financial institutions with a Union dimension. The criteria for identifying such financial institutions shall take into account the criteria established by the Financial Stability Board, the International Monetary Fund and the Bank for International Settlements.

4. The Authority, in collaboration with the European Systemic Risk Board, shall develop an information template for significant institutions in order to ensure sound management of their systemic risk.

5. To ensure the co-responsibility of financial institutions with a Union dimension, to protect the interests of depositors in the Union and to reduce the cost to tax payers of a systemic financial crisis, a European Financial Protection Fund (the Fund) shall be established. The Fund shall play a role in helping the Union's financial institutions overcome difficulties when such difficulties are likely to threaten the financial stability of the Union's single financial market. The Fund shall be financed through contributions from those financial institutions. The contribution of each financial institution shall be calculated in accordance with criteria which reward good management. Those contributions replace those made to national funds of a similar nature.

6. Where the accumulated resources from the contributions made by banks are insufficient to resolve the crisis, the resources of the Fund may be increased through debt issuance. Member States may, in exceptional circumstances, facilitate the issuance of debt by the Fund through guarantees, and in exchange for a fee reflecting appropriately the risk assumed. Those guarantees shall be shared by Member States in accordance with the criteria laid down in

paragraph 7.

7. Where, under extreme, exceptional circumstances and in the context of a systemic crisis, there is a failure of one or several institutions, and the resources available are insufficient, the affected Member States will deal with that burden in accordance with the principles established in the current Memorandum of Understanding (MoU), as amended. Burden-sharing arrangements may include one of the following, or a combination thereof: the deposits of the institution; the assets (either in terms of accounting values, market values or risk-weighted values), revenue flows, or share of payment system flows of the institution.

8. Membership of the Fund shall replace Membership of the existing national Deposit Guarantee Schemes for the Union institutions participating therein. The Fund shall be managed by a Board appointed by the Authority for a period of five years. The members of the Board shall be elected from staff of the national authorities. A Consultative Board comprising the financial institutions participating in the Fund shall be established.

Amendment 75

Proposal for a regulation Article 13 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. The Authority shall delegate to the authorities in the Member States the tasks and responsibilities of supervising the prudential supervision of financial institutions with a Union dimension as referred to in Article 12a.

Amendment 76

Proposal for a regulation Article 18 – paragraph -1 (new)

Text proposed by the Commission

Amendment

The Authority shall represent the European Union in all international forums concerning the regulation and supervision of the institutions falling under the legislation referred to in Article 1(2).

Amendment 77

Proposal for a regulation Article 18 – paragraph 1

Text proposed by the Commission

Amendment

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.

Without prejudice to the competences of the ***Union institutions and Member States***, the Authority may develop contacts ***and enter into administrative arrangements*** with supervisory authorities, international organisations and the administrations of third countries.

Amendment 78

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 (EC) No/... [ESRB]. ***The***

Authority shall develop an appropriate protocol for the disclosure of confidential information regarding individual financial institutions.

Amendment 79

Proposal for a regulation Article 23 – paragraph 1

Text proposed by the Commission

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.

Amendment

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

Amendment 80

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

Text proposed by the Commission

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

Amendment

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 81

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 82

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, the European Parliament shall select one of those candidates. The candidate so selected shall be appointed by the Board of Supervisors.

Amendment 83

Proposal for a regulation

Article 33 – paragraph 2 – subparagraph 1 b (new)

Text proposed by the Commission

Amendment

Where the European Parliament is of the opinion that none of the shortlisted candidates sufficiently fulfils the qualifications set out in the first subparagraph, the open selection procedure will recommence.

Amendment 84

Proposal for a regulation

Article 33 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

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

deleted

Amendment 85

Proposal for a regulation Article 35 – paragraph 1

Text proposed by the Commission

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**.

Amendment

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

Amendment 86

Proposal for a regulation Article 35 – paragraph 2

Text proposed by the Commission

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

Amendment

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

Amendment 87

Proposal for a regulation Article 36 – paragraph 2

Text proposed by the Commission

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.

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 **organised and managed by the Commission and after endorsement of the European Parliament**.

Amendment 88

Proposal for a regulation Article 39

Text proposed by the Commission

Amendment

Article 39

deleted

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 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 89

Proposal for a regulation Chapter IV – section 2 – title

Text proposed by the Commission

Joint Committee *of European Supervisory Authorities*

Amendment

Joint Committee

Amendment 90

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 ***and learning*** with the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority, ***in particular on:***

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

Amendment 91

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 by personnel on secondment from the three** European Supervisory Authorities. **The Authority shall contribute a fair proportion of the** administrative, infrastructure and operational expenses.

Amendment 92

Proposal for a regulation
Article 40 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Only those supervisory authorities included in the European System of Financial Supervisors shall be entitled to supervise financial institutions operating in the Union.

Amendment 93

Proposal for a regulation
Article 40 a (new)

Text proposed by the Commission

Amendment

Article 40a

Supervision

In the event that a significant cross-border financial institution 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 94

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 ***unjustifiable*** 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 95

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

Text proposed by the Commission

Amendment

1a. The Commission's report shall evaluate inter alia: the degree of convergence in supervisory standard practices reached by national authorities; the functioning of the colleges of supervisors; the supervision mechanism of cross-border institutions, in particular those with a Union dimension; the functioning of Article 23 with regard to safeguards and regulators; supervisory convergence in the fields of crisis management and resolution in the Union and the question whether prudential activities and the conduct of business should be combined or separated. It shall contain proposals on how to further develop the role of the Authority and the ESFS, with a view to creating an integrated European supervisory architecture

PROCEDURE

Title	European Banking Authority
References	COM(2009)0501 – C7-0169/2009 – 2009/0142(COD)
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Date adopted	7.4.2010
Result of final vote	+: 18 -: 0 0: 2
Members present for the final vote	Carlo Casini, Andrew Duff, Ashley Fox, Matthias Groote, Gerald Häfner, Ramón Jáuregui Atondo, Constance Le Grip, David Martin, Jaime Mayor Oreja, Morten Messerschmidt, Paulo Rangel, Algirdas Saudargas, György Schöpflin, Guy Verhofstadt
Substitute(s) present for the final vote	Elmar Brok, Jean-Luc Dehaene, Enrique Guerrero Salom, Anneli Jäätteenmäki, Íñigo Méndez de Vigo, Adrian Severin, Tadeusz Zwiefka
Substitute(s) under Rule 187(2) present for the final vote	Emma McClarkin