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2009 - 2014

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*Committee on Economic and Monetary Affairs*

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**2009/0142(COD)**

10.2.2010

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## **DRAFT REPORT**

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))

Committee on Economic and Monetary Affairs

Rapporteur: José Manuel García-Margallo y Marfil

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position*  
*majority of Parliament's component Members, to reject or amend*  
*the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases*  
*covered by Articles 105, 107, 161 and 300 of the EC Treaty and*  
*Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position*  
*majority of Parliament's component Members, to reject or amend*  
*the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**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))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2009)0501),
  - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0169/2009),
  - having regard to the Communication from the Commission to the European Parliament and the Council entitled "Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures" (COM(2009)0665),
  - having regard to Article 294(3) and Article 114 of the Treaty on the Functioning of the EU,
  - having regard to the opinion of the European Economic and Social Committee,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Legal Affairs, the Committee on Budgets and the Committee on Constitutional Affairs (A7-0000/2010),
1. Adopts the position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, to the Commission and to the national parliaments.

### **Amendment 1**

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

*Text proposed by the Commission*

*Amendment*

Proposal for a  
REGULATION OF THE EUROPEAN

Proposal for a  
REGULATION OF THE EUROPEAN

PARLIAMENT AND OF THE COUNCIL  
establishing a European **Banking**  
Authority

PARLIAMENT AND OF THE COUNCIL  
establishing a European **Supervisory**  
Authority (**Banking**)

*(This amendment applies throughout the  
text.)*

Or. en

## 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 **EU** law and trust between national supervisors.

*(This amendment applies throughout the  
text.)*

Or. en

## 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 regularly called for the reinforcement of a true level playing***

*field for all actors at the Union level while pointing out significant failures in the Union's supervision of ever more integrated financial markets (see García-Margallo y Marfil Report on the Commission communication on implementing the framework for financial markets: Action Plan (2000)<sup>1</sup>, Van den Burg Report on prudential supervision rules in the European Union (2002)<sup>2</sup>, Van den Burg Report on financial services policy (2005–2010) – White Paper (2007)<sup>3</sup> and Van den Burg & Daianu Report with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision (2008)<sup>4</sup>. In addition, see also Skinner – Solvency II Report (2009) and Gauzès – CRA regulation (2009)).*

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

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

<sup>3</sup> Not published in the Official Journal.

<sup>4</sup>OJ C 9E, 15.1.2010, p. 48.

Or. en

## 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,

#### *Amendment*

(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 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

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.

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.***

Or. en

## 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 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.

#### *Amendment*

(3) The Commission in its Communication of 4 March 2009 entitled "Driving 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. ***The Communication does not include all the recommendations made in the de Larosière Report.***

Or. en

## Amendment 6

### Proposal for a regulation Recital 7

#### *Text proposed by the Commission*

(7) The European System of Financial

#### *Amendment*

(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*).

Supervisors should be a network of national and Community supervisory authorities, leaving day-to-day supervision of financial institutions *that do not have an EU dimension* to the national level. *Colleges of Supervisors should exert supervision over cross-border institutions that do not have an EU dimension. The Authority should gradually take over supervision of institutions with an EU dimension.* 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 *Supervisory* Authority (*Insurance and Occupational Pensions*) and a European *Supervisory* Authority (*Securities and Markets*) *as well as a European Supervisory Authority (Joint Committee)*. *The European Systemic Risk Board shall form part of a European System of Financial Supervision.*

Or. en

## Amendment 7

### 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 assume all of the tasks and competences of those committees. The scope of each

#### *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.

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.

Or. en

## Amendment 8

### 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, 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 prevent regulatory arbitrage and guarantee a level playing field***, 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. ***Its tasks 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.*** 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

### Proposal for a regulation

#### Recital 10

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

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

##### *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 (***now Article 114 of the Treaty on the Functioning of the European Union***) 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 services. The Authority should therefore be established on the basis of **Article 114** of the Treaty.

## Amendment 10

### 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 appropriate<sup>1</sup>” Measures adopted under Article 95 of the EC Treaty (now, 114 TFEU) may take the form of directives or regulations. For instance, the European Network and Information Security Agency was established by means of regulation EC 460/2004 and also the Authority will be established by a regulation.***

<sup>1</sup> Judgment of 2 May 2006, at paragraph 44.

Or. en

## Amendment 11

### 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.***

Or. en

## Amendment 12

### Proposal for a regulation Recital 12

#### *Text proposed by the Commission*

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

#### *Amendment*

(12) Existing *EU* legislation regulating the field covered by this 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, ***Regulation (EC)***

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.

*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.*

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

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

Or. en

## Amendment 13

### 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***

#### *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 Europe. As a body with highly specialised expertise, it is efficient and appropriate to entrust the Authority, in areas defined by *EU 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***

*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.*

*in Article 290 of the Treaty on the Functioning of the European Union concerning technical standards in financial services.*

Or. en

#### **Amendment 14**

#### **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 EU 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 European 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.*

Or. en

## Amendment 15

### 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 *EU* 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.***

Or. en

## Amendment 16

### 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 *EU* law, creating direct legal effects which can be invoked before national courts and authorities and enforced under ***Article 258*** of the Treaty.

Or. en



## Amendment 17

### 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*

(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.

Or. en

## Amendment 18

### 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

#### *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.

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

Or. en

## Amendment 19

### 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.***

Or. en

## Amendment 20

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

*Text proposed by the Commission*

*Amendment*

***(22b) The cooperation mechanism used to solve this asynchrony has clearly been shown not to be sufficient. 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>.***

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<sup>1</sup> p. 101.

Or. en

## Amendment 21

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

*Text proposed by the Commission*

*Amendment*

***(22c) There are only two possible solutions to solve this issue: either 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".***

Or. en

## Amendment 22

### 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.***

Or. en

## Amendment 23

### 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 an EU dimension to a European authority. Financial institutions with an EU dimension include those operating cross-border as well as those operating within national territory provided that their bankruptcy could threaten the stability of the European single financial market.***

Or. en

## Amendment 24

### 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 EU 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 EU law. The Authority should act as leader in supervising cross-border financial institutions operating in the European Union. The Authority should also have a binding mediation role to solve conflicts between national supervisors.***

Or. en

## Amendment 25

### 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 an EU dimension, but in most cases the differences between national standards and practices subsist. There is no point in converging 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".*

Or. en

## **Amendment 26**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

## **Amendment 27**

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

*Text proposed by the Commission*

*Amendment*

*(23b) The financial institutions with an EU dimension should be identified, taking into account international standards.*

Or. en

## Amendment 28

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

*Text proposed by the Commission*

*Amendment*

***(23c) A European Financial Protection Fund (Fund) should be established to protect depositors and institutions facing difficulties when those could menace financial stability of the European 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 (revised Memorandum of Understanding). The contributions to the Fund should replace those made to the national Deposit Guarantee Schemes.***

Or. en

## Amendment 29

### 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

(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 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.

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 *EU* 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.***

Or. en

## Amendment 30

### 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.

#### *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 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 also made public.***

Or. en

## Amendment 31

### 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. The smooth flow of all relevant information between competent authorities should be a particular focus of the Authority's actions.

Or. en

## Amendment 32

### 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 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

#### *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 ***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.

Or. en

## Amendment 33

### 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 European Union in*** the dialogue and cooperation with supervisors outside the *Union*.

**Amendment 34****Proposal for a regulation****Recital 32***Text proposed by the Commission*

(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.

*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, ***as appropriate***, ensure follow-up.

**Amendment 35****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

*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 draft technical standards, guidelines and recommendations the Authority should carry out an impact study.*** For reasons of efficiency, a Banking Stakeholder Group should be established

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.

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 EU* legislation.

Or. en

## Amendment 36

### Proposal for a regulation Recital 34

#### *Text proposed by the Commission*

(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.

#### *Amendment*

(34) Member States have a core responsibility ***in ensuring coordinated crisis management and*** in preserving financial stability in crisis ***situations***, 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.

Or. en

## Amendment 37

### 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 should a Member State choose 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.***

Or. en

## Amendment 38

### Proposal for a regulation Recital 36

*Text proposed by the Commission*

*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 ***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

(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,

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.

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 **Article 16 of** 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.

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

Or. en

## Amendment 39

### 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").

Or. en

## Amendment 40

### 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

#### *Amendment*

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 *EU* act which confers tasks on the

on the Authority.

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.*

Or. en

## **Amendment 41**

### **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** of the Treaty to ensure compliance with *EU* law.

Or. en

## **Amendment 42**

### **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

*Amendment*

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 Council, and the Commission.

financial markets, (iv) safeguarding the stability of the financial system, (v) strengthening international supervisory coordination **and (vi) preventing regulatory arbitrage and contributing to a level playing field.** For this purpose, the Authority shall contribute to ensuring the consistent, efficient and effective application of the *EU legislation* referred to in Article 1(2), fostering supervisory convergence and providing opinions to the European Parliament, the Council, and the Commission **and undertaking an economic analysis of markets to promote the achievement of the Authority's objectives.**

Or. en

#### Amendment 43

##### 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**

Or. en

#### Amendment 44

##### 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**

**deleted**



*Risk Board, hereinafter referred to as 'ESRB' as laid down in Article 21 of this Regulation*

Or. en

## **Amendment 45**

### **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 the main objective of which is 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 European System of Financial Supervision shall comprise the following:***

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

***(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 European Supervisory Authority (Joint Committee) provided for in Article 40;***

***(f) the authorities in the Member States***

*referred to in Article 1(2) of Regulations (EC) No .../... [ESMA], Regulation (EC) No .../2009 [EIOPA] and Regulation (EC) No .../... [EBA];*

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

*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 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 European Supervisory Authorities (Joint Committee) referred to in Article 40.*

*4. In accordance with the principle of sincere cooperation in accordance with Article 4(3) of the EU Treaty, 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.*

Or. en

## Amendment 46

### Proposal for a regulation

#### Article 2 – paragraph 1 – 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.*

Or. en

## Amendment 47

### 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 [...].

Or. en

## Amendment 48

### 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 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, ***ensuring effective and consistent supervision of financial institutions with EU dimension and a*** coherent functioning of colleges of supervisors and taking actions, ***inter alia***, in emergency situations;

Or. en

## **Amendment 49**

### **Proposal for a regulation**

#### **Article 6 – paragraph 1 – point f a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

## **Amendment 50**

### **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;*

Or. en

## **Amendment 51**

### **Proposal for a regulation**

#### **Article 6 – paragraph 1 – point f c (new)**

*Text proposed by the Commission*

*Amendment*

*(fc) foster investor protection;*

Or. en

## **Amendment 52**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

## **Amendment 53**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

## **Amendment 54**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

*(fb) prohibit the trading of certain products or types of transactions to prevent damage to investor protection, the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in*

*the Union.*

Or. en

## **Amendment 55**

### **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 and modify elements that are not essential to the legislation* referred to in Article 1(2). *The technical standards shall not represent strategic decisions and their content shall be limited by the legislation on which they are based.*

Or. en

## **Amendment 56**

### **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 technical standards and analyse the potential related costs and benefits before adopting draft technical standards. The Authority shall also request an opinion or advice of the Banking Stakeholder Group referred to in Article 22.*

Or. en

## Amendment 57

### Proposal for a regulation

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

*Text proposed by the Commission*

*Amendment*

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

Or. en

## Amendment 58

### Proposal for a regulation

#### Article 7 – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

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.***

Within three months of receipt of the draft standards, the Commission shall decide whether to endorse, ***reject or amend*** the draft 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.***

Or. en

## Amendment 59

### Proposal for a regulation

#### Article 7 – paragraph 1 – subparagraph 4

*Text proposed by the Commission*

*Amendment*

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

***deleted***

## Amendment 60

### 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 delegated acts in accordance with Articles 7a to 7d, designed to establish the technical standards referred to in paragraph 1. Those acts shall be in the form of regulations or decisions.***

Or. en

## Amendment 61

### 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 technical standards referred to in Article 7 shall be conferred on the Commission for an indeterminate period of time.***

***2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.***

***3. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 7b to 7d.***

***4. In the report referred to in Article 35, 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.*

Or. en

## **Amendment 62**

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

*Text proposed by the Commission*

*Amendment*

#### **Article 7b**

##### ***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 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 delegated powers 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.***

Or. en

## **Amendment 63**

### **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 delegated act 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 delegated act, 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 delegated act. In such cases, the delegated act 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 delegated act.***

Or. en

## **Amendment 64**

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

*Text proposed by the Commission*

*Amendment*

#### **Article 7d**

#### ***Non-endorsement or amendment of the draft delegated acts***

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

***2. The European Parliament 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 to present their differences. 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.***

Or. en

## **Amendment 65**

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

*Text proposed by the Commission*

*Amendment*

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

***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 EU legislation, issue guidelines and recommendations addressed to competent authorities or financial institutions.***

institutions.

Or. en

## **Amendment 66**

### **Proposal for a regulation**

#### **Article 8 – paragraph 1 – subparagraph 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 an opinion or advice from the Banking Stakeholder Group referred to in Article 22.***

Or. en

## **Amendment 67**

### **Proposal for a regulation**

#### **Article 8 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

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

***1b. 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 does not intend to comply, it shall inform the Authority, stating reasons. The Authority shall publish those reasons.***

Or. en

## Amendment 68

### Proposal for a regulation

#### Article 8 – paragraph 1 – subparagraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. In its the report on its activities referred to in Article 32(6) (Report) the Authority shall inform the European Parliament, the Council and the Commission of the guidelines and recommendations that are 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.***

Or. en

## Amendment 69

### Proposal for a regulation

#### Article 8 – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

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

***deleted***

Or. en

## Amendment 70

### Proposal for a regulation

#### Article 9 – paragraph 1

*Text proposed by the Commission*

*Amendment*

**1. Where a competent authority has not correctly applied the legislation referred to in Article 1(2), in particular by failing to**

**1. Where a competent authority has not correctly applied the legislation referred to in Article 1(2), *including the technical***

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.

*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.

Or. en

## Amendment 71

### 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, from the Commission, ***from the European Parliament, the Council or a member of 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*.

Or. en

## Amendment 72

### 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 *EU 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 *EU law*.

### Amendment 73

#### 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 74

#### 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 75

#### 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 76

### 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.

Or. en

## Amendment 77

### 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 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*

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



## Amendment 78

### 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.

Or. en

## Amendment 79

### Proposal for a regulation

#### Article 9 – paragraph 7 a (new)

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

##### *Amendment*

***7a. In the Report, the Authority shall set out which national authorities and financial institutions have not complied with the decisions referred to in paragraphs 4 and 6.***

Or. en

## Amendment 80

### Proposal for a regulation

#### Article 10 – paragraph 1

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

##### *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 Community, the **Commission**, upon its own initiative or

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 **ESRB**, 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***.

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***.

Or. en

## Amendment 81

### 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.***

Or. en

## Amendment 82

### 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

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

requirements laid down in that legislation.

authorities satisfy the requirements laid down in that legislation.

Or. en

## Amendment 83

### 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.

Or. en

## Amendment 84

### 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 regularly and at the request of the European Parliament or the Authority.**

Or. en

## Amendment 85

### Proposal for a regulation

#### Article 10 – paragraph 4 b (new)

*Text proposed by the Commission*

*Amendment*

***4b. In the Report, the Authority shall set out the individual decisions addressed to national authorities and financial institutions under paragraphs 3 and 4.***

Or. en

## Amendment 86

### Proposal for a regulation

#### Article 11 – paragraph 1

*Text proposed by the Commission*

*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, 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***.

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***.

Or. en

## Amendment 87

### 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.***

Or. en

## Amendment 88

### 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.***

Or. en

## Amendment 89

### 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.

Or. en

## Amendment 90

### 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.***

Or. en

## Amendment 91

### Proposal for a regulation

#### Article 11 – paragraph 4 b (new)

*Text proposed by the Commission*

*Amendment*

***4b. In the Report, the Authority shall set out the disagreement between competent authorities, the agreements reached and the decision taken to settle such disagreements.***

Or. en

## Amendment 92

### 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 European Supervisory Authority (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.***

Or. en

## Amendment 93

### 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

1. The Authority shall contribute to promote ***and monitor*** the efficient ***effective*** and consistent functioning of *the* colleges

referred to in Directive 2006/48/EC and foster the coherence of the application of *Community legislation* across colleges.

of supervisors referred to in Directive 2006/48/EC and foster the coherence of the application of *Union law* across colleges.

Or. en

## Amendment 94

### 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.

Or. en

## Amendment 95

### 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.***

Or. en



## **Amendment 96**

### **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.***

Or. en

## **Amendment 97**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

#### ***Article 12a***

#### ***Supervision of financial institutions with an EU dimension***

***1. National authorities shall exert prudential supervision of financial institutions with an EU 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 European 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 EU dimension. The criteria for identifying such financial institutions shall take into account the criteria established by the FSB, the IMF and the BIS.*

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

*5. To ensure the co-responsibility of financial institutions with EU dimension, to protect European depositors' interests and to reduce the cost to tax payers of a systemic financial crisis, a European Financial Protection Fund (Fund) shall be established. The Fund will also play a role in helping the EU institutions facing difficulties when those are likely to threaten the financial stability of the European single financial market. The Fund shall be financed through contributions from those institutions. Those contributions replace those made to national funds of a similar nature.*

*6. When the accumulated resources from the contributions made by banks are not sufficient to solve the crisis, the Fund shall have the capacity to increase its resources through debt issuance. Member States may, in exceptional circumstances, facilitate the issuance of debt by the Fund through guarantees, and in exchange of 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 this burden according to principles established in the current Memorandum of Understanding (MoU), properly amended. Burden-sharing arrangements could include one of the following criteria, or a combination thereof: the deposits of the institution; the assets (either in terms of accounting values, market values or risk-weighted values) of the institution; the revenue flows of the institution; and the share of payment system flows of the institution.*

*8. The membership in the Fund shall replace the membership in the existing national Deposit Guarantee Schemes for the EU institutions participating in it. The Fund shall be managed by a Board appointed by the European Supervisory Authority (Banking) for a period of five years. The members of the Board shall be elected from staff of the national authorities. The Fund shall also create a Consultative Board comprising the financial institutions participating in the Fund.*

Or. en

## **Amendment 98**

### **Proposal for a regulation**

#### **Article 13 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

*3a. No bilateral agreements concerning delegation to institutions that are identified as significant cross-border financial institutions pursuant to Article 12a shall be entered into.*

Or. en

## Amendment 99

### 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 **accounting and** reporting standards;

Or. en

## Amendment 100

### 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 issue **guidelines and** recommendations **pursuant to Article 8** to the competent authorities concerned, **or adopt a decision addressed to competent authorities or adopt draft technical standards in accordance with Articles 7 to 7d.**

Or. en

## Amendment 101

### Proposal for a regulation

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

*Text proposed by the Commission*

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

*Amendment*

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

## Amendment 102

### Proposal for a regulation

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

*Text proposed by the Commission*

*Amendment*

***(4a) taking all appropriate measures in situations of financial instability and crisis with a view to facilitating the coordination of actions undertaken by relevant national competent supervisory authorities.***

Or. en

## Amendment 103

### Proposal for a regulation

#### Article 18 – paragraph -1 (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

## Amendment 104

### 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***

***1. The Authority shall*** develop contacts with supervisory authorities from third

*may* develop contacts with supervisory authorities from third countries. It may enter into administrative arrangements with international organisations and the administrations of third countries.

countries. It may enter into administrative arrangements with international organisations and the administrations of third countries.

Or. en

## **Amendment 105**

### **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*

***1a.*** 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).

Or. en

## **Amendment 106**

### **Proposal for a regulation Article 18 – paragraph 2 a (new)**

#### *Text proposed by the Commission*

#### *Amendment*

***The Commission shall adopt delegated acts in accordance with Articles 7a to 7d, for the purpose of making assessments of equivalence referred to in this Article.***

Or. en

## Amendment 107

### Proposal for a regulation

#### Article 18 – paragraph 2 b (new)

*Text proposed by the Commission*

*Amendment*

***2b. In the Report, the Authority shall set out the administrative arrangements and equivalent decisions agreed upon with international organisations or administrations or third countries.***

Or. en

## Amendment 108

### Proposal for a regulation

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

*Text proposed by the Commission*

*Amendment*

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

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.***

Or. en

## Amendment 109

### 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 with the ESRB.

Or. en

## Amendment 110

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

#### *Text proposed by the Commission*

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].

#### *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]. ***The Authority shall develop an adequate protocol for the disclosure of confidential information regarding individual financial institutions.***

Or. en

## Amendment 111

### 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.

Or. en



## Amendment 112

### 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. Not less than 5 of the members shall be independent top-ranking academics. The number of members representing market participants shall not exceed 10. Not less than 10 members shall be elected by SME organisations.**

Or. en

## Amendment 113

### Proposal for a regulation

#### Article 22 – paragraph 3 – subparagraph 2

*Text proposed by the Commission*

***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*

***deleted***

Or. en

## Amendment 114

### Proposal for a regulation

#### Article 22 – paragraph 5

*Text proposed by the Commission*

5. The Banking Stakeholder Group **may**

*Amendment*

5. The Banking Stakeholder Group **shall**

submit opinions and advice to the Authority on any issue related to the tasks of the Authority specified in Articles 7 and 8.

submit opinions and advice to the Authority on any issue related to the tasks of the Authority specified in Articles 7 and 8.

Or. en

## Amendment 115

### 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*** on the fiscal responsibilities of Member States.

Or. en

## Amendment 116

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

#### *Text proposed by the Commission*

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.

#### *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 ***ten working days*** after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority.

Or. en

## Amendment 117

### 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.

Or. en

## Amendment 118

### Proposal for a regulation

#### Article 23 – paragraph 2 – subparagraph 5

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

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.

##### *Amendment*

Where the Authority maintains its decision, the Council shall ***take a decision*** whether the Authority's decision is maintained or revoked ***on the basis of a qualified majority of its members, as defined in Article 16(4) of the EU Treaty and in Article 3 of the Protocol on transitional provisions annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, at a meetings no later than two months after the Authority has informed the Member State as set out in the fourth subparagraph.***

Or. en

## Amendment 119

### Proposal for a regulation

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

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

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.

##### *Amendment*

The Council, acting by qualified majority as defined in **Article 16** of the **EU** Treaty, shall, within ten working days, decide whether the Authority's decision is maintained or revoked.

Or. en

## Amendment 120

### Proposal for a regulation

#### Article 24 – paragraph 1

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

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

##### *Amendment*

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

Or. en

## Amendment 121

### Proposal for a regulation

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

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

##### *Amendment*

**(fa) two representatives of the Banking Stakeholder Group, one of them representing the SME, who shall be non-voting.**

## Amendment 122

### 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*

Or. en

## Amendment 123

### 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*

Or. en

## Amendment 124

### Proposal for a regulation

#### Article 26 – paragraph 2 –subparagraph 1

*Text proposed by the Commission*

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.

*Amendment*

2. For the purposes of Article 11, the Board of Supervisors shall convoke **an independent 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.**

Or. en

## Amendment 125

### Proposal for a regulation

#### Article 26 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. The Board of Supervisors shall establish an Experts' Panel comprising a limited number of independent high-level individuals, committed to the objectives of the European Union.**

**The Experts' Panel shall have the following tasks:**

**(a) to express views on the Authority's work programme;**

**(b) to assist the Authority in the definition of priorities;**

**(c) to alert the Authority on regulatory inconsistencies in the internal market and suggest areas for further work; and**

**(d) to inform the Authority about major financial market developments.**

**The Authority shall ensure adequate**

*secretarial support for the Experts' Panel.*

Or. en

## **Amendment 126**

### **Proposal for a regulation**

#### **Article 26 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

***2b. The members of the Experts' Panel shall serve for a period of two-and-a-half years, following which a new selection procedure shall take place.***

***The members may serve two successive terms.***

Or. en

## **Amendment 127**

### **Proposal for a regulation**

#### **Article 26 – paragraph 2 c (new)**

*Text proposed by the Commission*

*Amendment*

***2c. The Experts' Panel shall adopt its rules of procedure.***

Or. en

## **Amendment 128**

### **Proposal for a regulation**

#### **Article 27 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

When carrying out the tasks conferred

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 from any other public or private body.

upon it by this Regulation, the Chairperson and the voting members of the Board of Supervisors shall act independently and objectively in the *Union* interest ***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 body.

Or. en

## **Amendment 129**

### **Proposal for a regulation**

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

*Text proposed by the Commission*

*Amendment*

***Member States, the EU 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 European Supervisory Authority (Banking) tasks.***

Or. en

## **Amendment 130**

### **Proposal for a regulation**

#### **Article 29 – paragraph 1 – subparagraph 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 under Chapter VI.***

1. The Board of Supervisors shall act on the basis of qualified majority of its members, as defined in ***Article 16*** of the ***EU Treaty and in Article 3 of the Protocol on transitional provisions annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union.***

Or. en



## Amendment 131

### 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 **six members:** the Chairperson, a representative of the Commission, and four members elected by the Board of Supervisors from among its **voting** members.

Or. en

## Amendment 132

### 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*

Each member shall have an alternate, who may replace the member of the Management Board if that person is prevented from attending. ***The Chairperson's alternate shall be elected in accordance with Article 33(2).***

Or. en

## Amendment 133

### Proposal for a regulation

#### Article 30 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

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

*Amendment*

2. Decisions by the Management Board shall be adopted on the basis of a majority of the members ***elected by the Board of Supervisors*** present. Each ***of those***

shall have one vote.

**members** shall have one vote.

Or. en

#### Amendment 134

##### Proposal for a regulation Article 31

*Text proposed by the Commission*

*Amendment*

##### **Article 31**

**deleted**

##### **Independence**

***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.***

Or. en

#### Amendment 135

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

*Text proposed by the Commission*

*Amendment*

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.

6. The Management Board shall, after consulting the Board of Supervisors, adopt ***a*** report on the activities of the Authority (***Report***) on the basis of the draft report referred to in Article 38(7) and shall transmit ***the 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.

Or. en

## Amendment 136

### 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.***

Or. en

## Amendment 137

### 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.***

Or. en

## Amendment 138

### 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.***

Or. en

## Amendment 139

### 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***

Or. en

## Amendment 140

### Proposal for a regulation

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

*Text proposed by the Commission*

*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.

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 141

### Proposal for a regulation

#### Article 34 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

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

Or. en

## Amendment 142

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

Or. en

## Amendment 143

### 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

2. The Chairperson ***shall*** submit a report on the performance of his ***or her*** duties ***to the European Parliament when requested***

the performance of his duties.

*and at least 15 days before making the statement referred to in paragraph 1.*

Or. en

#### **Amendment 144**

##### **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, 8, 9, 10, 11a and 18, the Report shall include information on, in particular, the availability, amount and cost of banking credit to households and SMEs, and the volume and changes therein of public debt owned by credit institutions.*

Or. en

#### **Amendment 145**

##### **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 confirmation by the European Parliament.*

Or. en

## **Amendment 146**

### **Proposal for a regulation**

#### **Article 37 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

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

Or. en

## **Amendment 147**

### **Proposal for a regulation**

#### **Article 38 – paragraph 7**

*Text proposed by the Commission*

*Amendment*

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.

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.

Or. en

## **Amendment 148**

### **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.***

Or. en

## **Amendment 149**

### **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

#### *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 *European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority*.

cross-sectoral consistency *within all pillars* of the *European Supervisory Authority*, *in particular regarding:*

- *financial conglomerates;*
- *accounting and auditing;*
- *micro-prudential analyses for financial stability;*
- *retail investment products;*
- *money laundering measures.*

Or. en

## **Amendment 150**

### **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 European Union.*

Or. en

## **Amendment 151**

### **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 European Supervisory Authority (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.*

Or. en

## Amendment 152

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

#### *Text proposed by the Commission*

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.

#### *Amendment*

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

Or. en

## Amendment 153

### 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 European Supervisory Authorities (*Joint Committee*) as well as the Sub-Committees mentioned in Article 43 as observers.

Or. en

## Amendment 154

### 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 European Supervisory ***Authority (Joint Committee)*** 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)***.

*(This amendment applies throughout the text.)*

Or. en

## Amendment 155

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

*Text proposed by the Commission*

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***.

*Amendment*

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

Or. en

## Amendment 156

### Proposal for a regulation

#### Article 44 – paragraph 2 – subparagraph 1

*Text proposed by the Commission*

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.

*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 *EU* institutions ***or financial institutions*** involved in the activities of the Authority.

Or. en

## Amendment 157

### Proposal for a regulation

#### Article 44 – paragraph 3 – subparagraph 1

*Text proposed by the Commission*

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.

*Amendment*

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. ***It shall include at least one member representing a consumer organisation, one member representing SMEs and one member representing the research community. The latter as well as his alternate shall be appointed by the Banking Stakeholder Group.***

Or. en

## Amendment 158

### 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*

Or. en

## Amendment 159

### 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.

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

Or. en

## Amendment 160

### Proposal for a regulation

#### Article 47 – title

*Text proposed by the Commission*

*Amendment*

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

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

*(This amendment applies throughout the text.)*

## Amendment 161

### 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** 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.

Or. en

## Amendment 162

### 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** of the Treaty.

Or. en

## Amendment 163

### Proposal for a regulation

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

*Text proposed by the Commission*

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

*Amendment*

*deleted*

Or. en

## Amendment 164

### Proposal for a regulation

#### Article 48 – paragraph 2

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 165

### 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* of the Treaty.

## Amendment 166

### 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 shall be subject to the requirements of professional secrecy pursuant to **Article 339** of the Treaty and the relevant provisions in the relevant community legislation, even after their duties have ceased.

## Amendment 167

### 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 168**

### **Proposal for a regulation**

#### **Article 66 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. The Commission shall draft its report taking into account the proposals made by the Banking Stakeholder, the Board of Supervisors, and the Joint Committee. Those proposals shall be annexed to the report published by the Commission.***

Or. en

## **Amendment 169**

### **Proposal for a regulation**

#### **Article 66 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***1b. 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 the ones with an EU dimension; the functioning of Article 23 on safeguarding and regulatory and supervisory convergence in the fields of crisis management and resolution in the Union.***

Or. en

## Amendment 170

### 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*

*1c. That report shall examine whether to combine the supervision of all financial sectors whether banking or insurance or to supervise separately; whether prudential and conducts of business should be combined or separated.*

Or. en

## EXPLANATORY STATEMENT

The current financial crisis has brought to light something that Parliament criticised many years ago: the lack of adequate financial regulation and the weakness of the market supervisory mechanisms. When the Financial Services Action Plan (FSAP) was under discussion (see García-Margallo Report on the Commission communication on ‘Implementing the framework for financial markets: Action Plan’ (1999)<sup>1</sup>), Parliament warned that, if a crisis in the system were to be avoided, it was essential to pursue equally all three objectives in the Plan: liberalisation of the markets, strengthening of control mechanisms and harmonisation of taxation on savings. Subsequent reports (Van den Burg Report on prudential supervision rules in the European Union (2002)<sup>2</sup>, Van den Burg Report on financial services policy (2005-2010) - White Paper (2007)<sup>3</sup> and Van den Burg & Daianu Report with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision (2008)<sup>4</sup>) stressed that on its own coordination between national supervisors whose jurisdiction stopped at their own country’s borders would not be sufficient to control financial institutions that view the internal market as a truly borderless region. Furthermore, some of the rules have already laid down the fundamental principles for the future European Supervisory Structure and given a general idea of the direction in which it should go (Skinner-Solvency II Report (2009); Gauzès-CRA regulation (2009)).

To close the regulatory gaps and correct the weaknesses in the supervisory system, the Commission commissioned a group of experts presided over by Jacques de Larosière to produce a report that would draw on the lessons learnt from the crisis and make the recommendations necessary to try and stop another such crisis occurring. The Commission proposal recommends, firstly, the establishment of a **network of national supervisors** which would work in tandem with a new European Supervisory Authority (ESA) formed of three pillars: one pillar for Banks (EBA), one pillar for Insurance and Occupational Pensions (EIOPA), and one pillar for Securities and Markets (ESMA). A ‘Joint Committee of the European Supervisory Authorities’ is proposed to ensure rules are correctly consolidated and to supervise the European financial markets. Secondly, the Commission proposal recommends setting up a European Systemic Risk Board (ESRB) to monitor and assess potential threats to financial stability that arise from macro-economic developments. Parliament is in agreement with this approach, adding two important points: integration of the ESRB into the European Supervisory Authorities (ESA) and more powers being granted to the new authorities to give them a truly European dimension.

Thirdly, the Commission emphasises the need to introduce an effective instrument to establish harmonised **technical standards** for financial services to ensure, also through a **single Rulebook**, a level-playing field and adequate protection for depositors, investors and consumers in the European Union. Technical standards are a powerful instrument in achieving this harmonisation and the Commission therefore handles them with special care. Parliament

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

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

<sup>3</sup> Not published in the Official Journal.

<sup>4</sup> OJ C 9E, 15.1.2010, p. 48.

agrees with this approach, but makes two important claims: when these technical standards are drawn up, Parliament must play the role due to it (Article 290 of the Treaty on the Functioning of the European Union) and the European Banking Authority's leading role in drawing up these standards must be stressed. In this way, whenever the Commission does not fully or partially approve the Authority's proposals, the Commission President and the Commissioner responsible will be required to explain the reasons for this before Parliament and the Council.

In areas not covered by the technical standards, the Authority may issue **guidelines and recommendations** on the application of EU law. Parliament would wish for the guidelines and recommendations approved by the Authority to be as binding as possible on national supervisory authorities. Parliament therefore asks that the Authority's President be able to 'report' national supervisory authorities who fail to comply and to state the measures the Authority intends adopting to make compliance mandatory. Publicising those occasions on which national authorities fail to comply constitutes a powerful incentive for them to comply with the Authority's recommendations and guidelines.

Relations between the Commission and private institutions are a particularly delicate issue. The Commission proposal allows the Authority to require that national supervisory authorities comply with EU law; it also allows it to issue an official warning that national supervisory authorities must adopt necessary measures in emergency situations. When a national supervisory authority fails to comply with these decisions, the national authority will be able to turn to financial institutions in areas to which EU law is directly applicable, to restore market confidence. The **right to turn to private financial institutions** is, in my opinion, the only instrument possible to guarantee that decisions taken by the Authority are complied with.

The main new points of this report refer to supervision of the financial institutions, and cross-border ones in particular. Special attention needs to be paid to those large financial entities whose bankruptcy could cause the collapse of the whole financial system, the so-called 'too big to fail' bodies. There are only two choices here: increased powers for national supervisory authorities or more Europe (Turner Review). More protectionism or more internal market. Continuing with mechanisms whose inefficiency has been evident during the crisis does not make any sense.

Going for the 'national' choice would mean it must be possible for the supervisory authorities in the host countries to force foreign banks to operate through subsidiaries instead of through branches, as well as giving the supervisory authorities more direct control over foreign banks' capital and liquidity.

The 'Europe' solution would mean giving the Colleges of Supervisors the right to dictate rules, compliance with which would be mandatory, when national supervisory authorities cannot reach an agreement. The 'Europe' choice would also mean the Authority would be responsible for supervising financial bodies whose bankruptcy could threaten the stability of the system. The Authority would always act through the national authorities which, in this case, would be acting as bodies responsible to and following the instructions of the former. National standards (FSA, IMF, BIS) would be taken into account in defining institutions with an EU dimension. The change from one model to another could be made gradually, beginning

with those entities where there is the greatest risk and moving on to the rest over a reasonable period of time.

Parliament's report also proposes the creation of a European Fund financed by contributions from the financial institutions, to protect depositors and go to the rescue of institutions in difficulty where their bankruptcy could ruin the entire system. In the event that the Fund's resources should prove insufficient, the Fund would be able to issue public debt. Should even this not suffice and the use of public funds be deemed absolutely essential to prevent the system collapsing, the Member States would have to intervene. The burden of these government interventions would be shared among the Member States affected in accordance with a previously negotiated Memorandum of Understanding.

The Commission proposal has been drafted almost exclusively from a banking point of view, forgetting the viewpoint of parties seeking loans. For this reason, it is proposed that a special role be given to small and medium-sized enterprises, as they depend a great deal more on bank financing than do large firms, as the latter are accustomed to meeting their needs normally by turning to the markets. Representatives from SME organisations should form part of the Stakeholder Group and elect two members of the Board of Supervisors.

Parliament's report seeks, in short, to go beyond the Commission's proposal and retrieve proposals that were made in Parliament many years ago. The Larosière Report was a well-structured report but did not go as far as its writers would have liked. The Commission's proposal is weaker, probably to facilitate an agreement with the Council. The Council agreement of December 2009 devalued even more the already weak Commission proposal. Therefore, four of Parliament's Groups (PPE, PSE, ALDE and the Greens) made it known through a public note that they wished to go further than the other two institutions.

Two different strategies could have been followed in drawing up this Parliamentary report: either try to anticipate the Council's wishes in order to reach a rapid agreement or, alternatively, look at things from a clearly European point of view. Preference was given to profiting from this opportunity to help the European integration process leap forward. The second strategy was chosen and the report therefore backs the setting up of a truly European Authority.

The hope is that this report will lead to the possibility of setting up a truly European Authority, with clear powers, being explored, as well as the possibility of establishing, at the same time, a mechanism to resolve future crises that will make it less likely that European taxpayers will find themselves having to deal with the repercussions of a breakdown in the financial system. It is now up to Members of the European Parliament to express their views.