



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Legal Affairs

2009/0143(COD)

19.5.2010

OPINION

of the Committee on Legal Affairs

for the Committee on Economic and Monetary Affairs

on the proposal for a regulation of the European Parliament and of the Council
establishing a European Insurance and Occupational Pensions Authority
(COM(2009)0502 – C7-0168/2009 – 2009/0143(COD))

Rapporteur: Françoise Castex

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SHORT JUSTIFICATION

I. Background

Building upon the recommendations of the De Larosière report, the Commission issued proposals for a new European financial supervisory architecture. These legislative proposals, published by the Commission on 23 September 2009, aim to create:

- a European System of Financial Supervisors (ESFS) for the supervision of individual financial institutions (“micro-prudential supervision”), consisting of a network of national supervisors working in tandem with new European Supervisory Authorities (ESAs¹), thereby combining an overarching European framework for financial supervision with the expertise of local and micro-prudential supervisory bodies;
- a European Systemic Risk Board (ESRB), to monitor and assess risks to the stability of the financial system as a whole (“macro-prudential supervision”).

The ESAs will be Community bodies with legal personality and their objectives shall be to contribute to: (i) improving the level of regulation and supervision in the internal market, (ii) ensuring the integrity and orderly running/functioning of financial markets, and (iii) safeguarding the stability of the financial system while strengthening the coordination of supervision at European and international levels.

II. Position of the rapporteur

Your rapporteur broadly supports the Commission's proposal for a regulation establishing a new financial supervisory architecture and its aim of ensuring more effective supervision to better identify risks in the financial system. The financial crisis has shown the need for a reform in this field in order to increase competition by encouraging a level playing field and to ensure consistency of arrangements and regulation.

1. Article 7 – Technical Standards

The proposal, which was presented before the entry into force of the Lisbon Treaty, refers in Article 7 to the areas of the directives mentioned in Article 1(2), in which the authority could develop draft technical standards, which, according to the proposal, are endorsed by the Commission and adopted by the Commission by means of Regulations or Decisions. The new system of delegated and implementing acts introduced by the Treaty of Lisbon is different from the "old" comitology, which has no longer a basis in the Treaties. It should, therefore, be made clear that the Commission acts in the form of a delegated act under Article 290 TFEU and that Parliament is involved in the procedure in accordance with Article 290 TFEU. It should also be clarified that the Commission is not bound by the draft technical standards formulated by the Authority.

2. Article 9 - Consistent application of Community rules - Article 10 - Action in emergency situations and

¹ These are the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA).

Article 11 - Settlement of disagreements between national supervisory authorities

a) Conferral of powers

The draft regulation confers specific powers on the new Authority. According to ECJ case-law European Union institutions have a limited possibility to delegate powers to independent executive or regulatory bodies, in so far as the delegation relates only to clearly defined executive competences and as, in particular, no power for making policy choices is granted to the delegated body. Furthermore, since the Union can only exercise the powers it has been conferred in the Treaty in accordance with the procedures determined in the Treaty, the institutions can not delegate more powers than those conferred by the Treaty (see ECJ, Case *Meroni*, 9/56, and 10/57 (1958) ECR 133 and 157).

b) Direct action by the Authority

Articles 9 paragraph 6, 10 paragraph 3 and 11 paragraph 4 of the proposed regulation, confer, "without prejudice to the powers of the Commission under Article 226" EC (new Article 258 TFEU), "where the relevant requirements of the legislation referred to in Article 1(2) are directly applicable to financial institutions, the power to take individual decisions addressed directly to financial institutions in the Member States that are binding on them. Your rapporteur proposes to limit this possibility of the Authority to address binding decision directly to a market participant to the extraordinary situations of crisis of Article 10. While Article 10 follows the political will to react quickly and efficiently in times of crisis to guarantee the functioning and integrity of the financial market and system, Articles 9 and 11 apply in normal every-day-situations.

Based on a broadly supported compromise, the Committee on Legal Affairs adopted amendments as regards the powers of the Authorities to address individual decisions to market participants in every day situations (Articles 9(6) and 11(4)) proposing a procedure to be followed between the Authority and the Commission in order to better align the powers of the Authorities with the powers conferred on the Commission under Article 17(1) TEU and Article 258 TFEU.

AMENDMENTS

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

Amendment 1

Proposal for a regulation

Recital 16

Text proposed by the Commission

(16) Ensuring the correct and full application of **Community** law is a core

Amendment

(16) Ensuring the correct and full application of **Union** law is a core

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

Amendment 2

Proposal for a regulation Recital 30

Text proposed by the Commission

(30) In order to effectively carry out its duties, the Authority should have the right to request all necessary information. To avoid duplication of reporting obligations for financial *institutions*, that information should normally be provided by the *national supervisory* authorities who are closest to financial markets and *institutions*. However, the Authority should have the power to request information directly from financial *institutions* and other parties where a *national supervisory* authority does not or cannot provide such information in a timely fashion. Member States' authorities should be obliged to assist the Authority in enforcing such direct requests.

prerequisite for the integrity, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial *market participants* in the *Union*. A mechanism should therefore be established whereby the Authority addresses instances of *non-application* of *Union* law. This mechanism should apply in areas where *Union* legislation defines clear and unconditional obligations.

Amendment

(30) In order to effectively carry out its duties, the Authority should have the right to request all necessary information. To avoid duplication of reporting obligations for financial *market participants*, that information should normally be provided by the *competent* authorities who are closest to financial markets and *market participants*, *subject to the requirement that confidential information is not made available to bodies or authorities that are not entitled to it*. However, the Authority should have the power to request information directly from financial *market participants* and other parties where a *competent* authority does not or cannot provide such information in a timely fashion. Member States' authorities should be obliged to assist the Authority in enforcing such direct requests.

Amendment 3

Proposal for a regulation

Recital 31

Text proposed by the Commission

(31) 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

(31) 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 ***and should be protected systematically and in accordance with Union law***. Upon receipt of warnings or recommendations addressed by the European Systemic Risk Board to the Authority or a ***competent*** authority, the Authority should ***take immediate action and*** ensure follow-up.

Amendment 4

Proposal for a regulation

Recital 33

Text proposed by the Commission

(33) 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***

Amendment

(33) Member States have a core responsibility 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 ***request that the decision of the Authority be reconsidered.***

given the particular responsibilities of the Member States in this respect.

Amendment 5

Proposal for a regulation

Article 6 – paragraph 2 – point e

Text proposed by the Commission

(e) take individual decisions addressed to financial institutions, in the specific cases referred to in Article 9(6), Article 10(3), and Article 11(4);

Amendment

(e) take individual decisions addressed to financial institutions, in the specific cases referred to in Article 9(6), Article 10(3), and Article 11(4) ***in cases concerning directly applicable Union law;***

Amendment 6

Proposal for a regulation

Article 7 – Title

Text proposed by the Commission

Technical standards

Amendment

Technical standards – ***delegated acts***

Amendment 7

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 standards shall be adopted by the Commission by means of *regulations* or *decisions as delegated acts* ***in accordance with Article 290 of the Treaty on Functioning*** of the European Union.

Amendment 8

Proposal for a regulation

Article 8

Text proposed by the Commission

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

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

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

Amendment 9

Proposal for a regulation

Article 9

Text proposed by the Commission

Consistent application of Community rules

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

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 **Union** legislation, issue guidelines and recommendations addressed to **competent** authorities or financial institutions. **The Authority shall conduct open public consultations on guidelines and recommendations and analyse the potential related costs and benefits. The guidelines shall be published on the Authority's website.**

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

Where **a competent** authority does not apply those guidelines or recommendations it shall inform the Authority of its reasons. **The Authority shall publish those reasons, giving the competent authority due notice of its intention to do so.**

Amendment

Non-application of Union law

1. Where a **competent** authority has not applied the legislation referred to in Article 1(2), in particular by failing to ensure that a financial **market participant** satisfies the requirements laid down in that legislation, the Authority shall have the powers set out

this Article.

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

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

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

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

4. Where the ***national supervisory*** 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 ***national supervisory*** authority to take the action necessary to comply with ***Community*** law.

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.

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

in paragraphs 2, 3 and 6 of this Article.

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

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

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

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

4. Where the ***competent*** authority has not complied with ***Union*** 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 ***Union*** law.

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.

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

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

5. The ***national supervisory*** 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.

6. Without prejudice to the powers of the Commission under ***Article 226*** of the Treaty, where a ***national supervisory*** 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 ***national supervisory*** 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.

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

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.

6. Without prejudice to the powers of the Commission under ***Article 258*** of the Treaty ***on the Functioning of the European Union***, 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 ***internal market*** or ensure the orderly functioning and integrity of the financial system ***in cross-border activities***, the Authority may, where the relevant requirements of the legislation referred to in Article 1(2) are directly applicable to financial ***market participants***, adopt an individual decision addressed to a financial ***market participant*** requiring the necessary action to comply with its obligations under ***Union*** law including the cessation of any practice. ***Before adopting an individual decision, the Authority shall inform the Commission thereof.***

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

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

The Commission shall decide whether to endorse the Authority's draft decision within two weeks of receipt. The Commission shall not extend that period. The Commission may endorse the draft

decision only in part or with amendments, where the Union interest so requires.

Where the Commission does not endorse the draft decision or endorses it in part or with amendments, it shall inform the Authority without delay in the form of a formal opinion.

Within one week of receipt of that formal opinion, the Authority shall review and adapt its decision to the Commission's formal opinion and transmit it without delay to the Commission.

Within one week of receipt of the amended decision of the Authority, the Commission shall decide whether to endorse it or reject it.

If the amended decision is rejected by the Commission, the decision shall be deemed not to have been adopted.

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

7. Decisions adopted under paragraph 6 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 4 or 6 shall be compatible with those decisions.

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

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

Amendment 10

Proposal for a regulation Article 11 – Title

Text proposed by the Commission

Settlement of disagreements between
national supervisory authorities

Amendment

Settlement of disagreements between
*competent authorities in cross-border
situations*

Amendment 11

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 **national supervisory** 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 **on the Functioning of the European Union**, where a **competent** authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial **market participant** 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, **in accordance with the procedure laid down in Article 9(6)**, addressed to a financial **market participant** requiring the necessary action to comply with its obligations under **Union** law, including the cessation of any practice.

Amendment 12

Proposal for a regulation Article 18

Text proposed by the Commission

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

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

Without prejudice to the competences of the **Union institutions**, the Authority may develop contacts with supervisory authorities, **international organisations and the administrative bodies of third countries**. **Such arrangements shall create no legal obligations on the part of the Union or its Member States.**

Amendment 13

Proposal for a regulation Article 20 – paragraph 1

Text proposed by the Commission

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

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

Amendment

1. At the request of the Authority, ***the competent*** authorities of the Member States shall provide the Authority with all the necessary information to carry out the duties assigned to it by this Regulation, ***fully respecting the applicable confidentiality and data protection provisions laid down in the relevant Union law.***

The Authority may also request information to be provided at recurring intervals. ***Any such request shall, where possible, use a common reporting format.***

Amendment 14

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 ***Article*** 10 or 11 impinges ***directly*** on the fiscal responsibilities of Member States.

Amendment 15

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

Amendment

2. Where a Member State considers that a decision taken under Article 11 impinges on its fiscal responsibilities, it may notify the Authority, ***the Council*** and the Commission within ***three working days***

Authority's decision to *the national supervisory authority that the decision will not be implemented by the national supervisory* authority.

after notification of the Authority's decision to the *competent* authority.

Amendment 16

Proposal for a regulation Article 23 – paragraph 2 – subparagraph 4

Text proposed by the Commission

Within a period of *one month* from the notification by the Member State, the Authority shall inform the Member State as to whether it maintains its decision or whether it amends or revokes it.

Amendment

Within a period of *one week* from the notification by the Member State, the Authority shall inform the Member State as to whether it maintains its decision or whether it amends or revokes it.

Amendment 17

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, acting by qualified majority as defined in *Article 238* of the *Treaty on the Functioning of the European Union*, shall, within *one month*, decide whether the Authority's decision is maintained or revoked.

Amendment 18

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

Text proposed by the Commission

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 *national supervisory* authorities or other

Amendment

The Board of Appeal shall be composed of six members and six alternates, who shall be individuals *of high repute* with *a proven record of* relevant knowledge and *professional, including supervisory,*

national or **Community** institutions involved in the activities of the Authority.

experience *at a sufficiently high level in the fields of banking, insurance, securities markets or other financial services*, excluding current staff of the *competent* authorities or other national or **Union** institutions involved in the activities of the Authority.

PROCEDURE

Title	European Insurance and Occupational Pensions Authority
References	COM(2009)0502 – C7-0168/2009 – 2009/0143(COD)
Committee responsible	ECON
Opinion by Date announced in plenary	JURI 7.10.2009
Rapporteur Date appointed	Françoise Castex 5.10.2009
Discussed in committee	27.1.2010
Date adopted	28.4.2010
Result of final vote	+: 23 –: 0 0: 0
Members present for the final vote	Raffaele Baldassarre, Luigi Berlinguer, Sebastian Valentin Bodu, Françoise Castex, Christian Engström, Lidia Joanna Geringer de Oedenberg, Daniel Hannan, Klaus-Heiner Lehne, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Francesco Enrico Speroni, Alexandra Thein, Diana Wallis, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka
Substitute(s) present for the final vote	Piotr Borys, Sergio Gaetano Cofferati, Kurt Lechner, Eva Lichtenberger, József Szájer
Substitute(s) under Rule 187(2) present for the final vote	Kay Swinburne