



# Procedure file

Basic information	
<p>COD - Ordinary legislative procedure (ex-codecision procedure) Directive</p> <p>2009/0161(COD)</p> <p>Procedure completed</p>	
<p>Financial supervision: powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority</p> <p>Amending Directive 98/26/EC <a href="#">1996/0126(COD)</a>            Amending Directive 2003/41/EC <a href="#">2000/0260(COD)</a>            Amending Directive 2002/87/EC <a href="#">2001/0095(COD)</a>            Amending Directive 2003/71/EC <a href="#">2001/0117(COD)</a>            Amending Directive 2003/6/EC <a href="#">2001/0118(COD)</a>            Amending Directive 2004/39/EC <a href="#">2002/0269(COD)</a>            Amending Directive 2004/109/EC <a href="#">2003/0045(COD)</a>            Amending Directive 2005/60/EC <a href="#">2004/0137(COD)</a>            Amending Directive 2006/48/EC <a href="#">2004/0155(COD)</a>            Amending Directive 2006/49/EC <a href="#">2004/0159(COD)</a>            Amending Directive 2009/65/EC <a href="#">2008/0153(COD)</a></p> <p>Subject</p> <p>2.50.02 Savings            2.50.03 Securities and financial markets, stock exchange, CIUTS, investments            2.50.04 Banks and credit            2.50.05 Insurance, pension funds            2.50.10 Financial supervision            8.40.08 Agencies and bodies of the EU</p>	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ECON</b> Economic and Monetary Affairs		20/10/2009
		S&D <a href="#">SÁNCHEZ PRESEDO Antolín</a>	
European Parliament	Committee for opinion	Rapporteur for opinion	Appointed
	<b>JURI</b> Legal Affairs		14/12/2009
		ECR <a href="#">KARIM Sajjad</a>	
	<b>LIBE</b> Civil Liberties, Justice and Home Affairs	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3045</a>	17/11/2010
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3030</a>	07/09/2010
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3027</a>	13/07/2010
European Commission	Commission DG	Commissioner	
	<a href="#">Financial Stability, Financial Services and Capital Markets Union</a>	BARNIER Michel	

Key events			
26/10/2009	Legislative proposal published	<a href="#">COM(2009)0576</a>	Summary
12/11/2009	Committee referral announced in Parliament, 1st reading		
10/05/2010	Vote in committee, 1st reading		Summary
18/05/2010	Committee report tabled for plenary, 1st reading	<a href="#">A7-0163/2010</a>	
06/07/2010	Debate in Parliament		
07/07/2010	Results of vote in Parliament		
07/07/2010	Decision by Parliament, 1st reading	<a href="#">T7-0269/2010</a>	Summary
13/07/2010	Debate in Council	<a href="#">3027</a>	Summary
22/09/2010	Decision by Parliament, 1st reading	<a href="#">T7-0336/2010</a>	Summary
17/11/2010	Act adopted by Council after Parliament's 1st reading		
24/11/2010	Final act signed		
24/11/2010	End of procedure in Parliament		
15/12/2010	Final act published in Official Journal		

Technical information	
Procedure reference	2009/0161(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Recast
Legislative instrument	Directive
	<p>Amending Directive 98/26/EC <a href="#">1996/0126(COD)</a></p> <p>Amending Directive 2003/41/EC <a href="#">2000/0260(COD)</a></p> <p>Amending Directive 2002/87/EC <a href="#">2001/0095(COD)</a></p> <p>Amending Directive 2003/71/EC <a href="#">2001/0117(COD)</a></p> <p>Amending Directive 2003/6/EC <a href="#">2001/0118(COD)</a></p> <p>Amending Directive 2004/39/EC <a href="#">2002/0269(COD)</a></p> <p>Amending Directive 2004/109/EC <a href="#">2003/0045(COD)</a></p> <p>Amending Directive 2005/60/EC <a href="#">2004/0137(COD)</a></p> <p>Amending Directive 2006/48/EC <a href="#">2004/0155(COD)</a></p> <p>Amending Directive 2006/49/EC <a href="#">2004/0159(COD)</a></p> <p>Amending Directive 2009/65/EC <a href="#">2008/0153(COD)</a></p>
Legal basis	Treaty on the Functioning of the EU TFEU 114-p1; Treaty on the Functioning of the EU TFEU 053-p1; Treaty on the Functioning of the EU TFEU 062; Treaty on the Functioning of the EU TFEU 050
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/01474

Documentation gateway					
Legislative proposal		<a href="#">COM(2009)0576</a>	26/10/2009	EC	Summary
Committee draft report		<a href="#">PE439.086</a>	26/02/2010	EP	
Economic and Social Committee: opinion, report		<a href="#">CES0446/2010</a>	17/03/2010	ESC	
European Central Bank: opinion, guideline, report		<a href="#">N7-0018/2010</a> <a href="#">OJ C 087 01.04.2010, p. 0001</a>	18/03/2010	ECB	Summary
Amendments tabled in committee		<a href="#">PE439.899</a>	19/03/2010	EP	
Committee opinion	JURI	<a href="#">PE438.379</a>	30/04/2010	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0163/2010</a>	18/05/2010	EP	
Text adopted by Parliament, partial vote at 1st reading/single reading		<a href="#">T7-0269/2010</a>	07/07/2010	EP	Summary
Text adopted by Parliament, 1st reading/single reading		<a href="#">T7-0336/2010</a>	22/09/2010	EP	Summary
Commission response to text adopted in plenary		<a href="#">SP(2010)7193</a>	13/10/2010	EC	
Draft final act		<a href="#">00043/2010/LEX</a>	24/11/2010	CSL	

Additional information	
National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

Final act
<p><a href="#">Directive 2010/78</a> <a href="#">OJ L 331 15.12.2010, p. 0120</a> Summary</p> <p><a href="#">Corrigendum to final act 32010L0078R(01)</a> <a href="#">OJ L 170 30.06.2011, p. 0043</a></p> <p><a href="#">Corrigendum to final act 32010L0078R(02)</a> <a href="#">OJ L 054 22.02.2014, p. 0023</a></p> <p>Final legislative act with provisions for delegated acts</p>

## Financial supervision: powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

**PURPOSE:** to complement the package of proposals on financial supervision presented by the Commission on 23 September 2009, with a view to strengthening financial supervision in Europe.

**PROPOSED ACT:** Directive of the European Parliament and of the Council.

**BACKGROUND:** experience of the financial crisis has exposed important failures in financial supervision, both in particular cases and in relation to the financial system as a whole. On the basis of recommendations of a group of high-level experts, chaired by Mr Jacques de Larosière, the Commission set out proposals for a new European financial supervisory architecture in its Communication to the Spring European Council of March 2009 ([COM\(2009\)0114](#)). The Commission presented its ideas in more detail in its Communication of May 2009 ([COM\(2009\)0252](#)) in which it proposed:

- establishing a European System of Financial Supervisors (ESFS), consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities (ESAs), created by transforming the existing European supervisory committees into a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA), and a European Securities and Markets Authority (ESMA), and
- establishing a European Systemic Risk Board (ESRB), to monitor and assess potential threats to financial stability that arise from

macro-economic developments and from developments within the financial system as a whole. To this end, the ESRB would provide an early warning of system-wide risks that may be building up and, where necessary, issue recommendations for action to deal with these risks.

On 23 September 2009, the Commission adopted:

- a proposal for a Regulation establishing a [European Banking Authority](#),
- a proposal for a Regulation establishing a [European Insurance and Occupational Pensions Authority](#), and
- a proposal for a Regulation establishing a [European Securities and Markets Authority](#).

The May 2009 Communication also concluded that in order for the ESFS to work effectively, changes to the financial services legislation would be necessary, in particular to provide an appropriate scope to the more general powers provided for in the individual regulations establishing the Authorities, ensuring a more harmonised set of financial rules through the possibility to develop draft technical standards and facilitate the sharing, where necessary, of micro-prudential information.

IMPACT ASSESSMENT: the May Commission Communication on Financial Supervision in Europe was accompanied by an impact assessment analysing the main policy options for establishing the ESFS and ESRB.

A second impact assessment accompanies these proposals, examining the options in more detail. The second impact assessment analysed the options for the appropriate powers for the Authority to work towards achieving a single set of harmonised rules and concluded that this capacity would be rightly limited to those areas to be defined in forthcoming sectoral legislation, and identified such potential areas. Additionally, in developing the draft technical standards themselves, the Authorities should undertake appropriate analysis of potential related costs and benefits and consult stakeholders before submitting them to the Commission.

CONTENT: having proposed a battery of legislative measures designed to beef up financial supervision in Europe, in particular by the creation of a European System of Financial Supervisors and three new European supervisory authorities, the Commission is proposing that certain changes are made to existing legislation on financial services to allow the new authorities to work effectively. The areas in which amendments are proposed fall broadly into the following categories:

- definition of the appropriate scope of technical standards as an additional tool for supervisory convergence and with a view of developing a single rule book;
- the possibility for the authority to settle disagreements in a balanced way to those areas where common decision making processes already exist in sectoral legislation; and
- general amendments which are common to most sectoral legislation and necessary for the directives to operate in the context of new authorities for example, renaming the level 3 committees to the new authorities and ensuring the appropriate gateways for the exchange of information are present. It is also proposed that the ESAs will be given the duty to establish, publish and regularly update registers and lists of financial actors in the Community and other important issues, which is currently the duty of each national competent authority.

This amending directive is proposed with a view to amending sectoral directives concerning: capital requirements; financial conglomerates; institutions for occupational retirement provisions; market abuse; markets in financial instruments; prospectuses; settlement finality, transparency, anti-money laundering and undertakings for collective investments in transferable securities (UCITS).

Moreover, where appropriate, the Commission will make further proposals for amendments to the [Solvency II Directive](#), which is currently being finalised, after publication of the Directive.

In addition to the areas identified in this proposed Directive, the Commission is considering further whether additional empowerments for technical standards should be made in some areas ? in particular, securities. These further amendments would concern, in particular, Directives 2003/6/EC, 2003/71/EC and 2004/39/EC and could form a second Omnibus Directive, along with proposals for amendments to the Solvency II Directive.

BUDGETARY IMPLICATIONS: the proposal has no implication for the Community budget.

## Financial supervision: powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

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OPINION OF THE EUROPEAN CENTRAL BANK on a proposal for a Directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.

General observations: the ECB supports the objective of the proposed directive, which introduces in 11 financial sector directives amendments that are necessary to ensure the proper functioning of the European Supervisory Authorities (ESAs) and of the European Systemic Risk Board (ESRB).

Adoption of technical standards: the proposed ESAs regulation provide for a uniform procedure for the adoption of technical standards. The draft technical standards will be developed by each of the ESAs and endorsed by the Commission. In this context, the proposed directive provides for several amendments to sectoral legislation, identifying the areas in which technical standards should be developed. The ECB fully supports the establishment of a European single rulebook applicable to all financial institutions in the single market and therefore the need for an effective instrument to establish harmonised binding technical standards in financial services.

As regards the implementing powers conferred on the Commission, the Treaty establishes a distinction between delegated acts and implementing acts. As a result, regulations and decisions adopted by the Commission to endorse draft technical standards will fall under one of these two categories. In the context of EU financial services legislation, a common understanding should be reached among the Union institutions involved in the legislative process on an appropriate methodology to be adopted to incorporate the Commission legal acts endorsing such draft technical standards within the more general framework within which delegated and implementing powers operate under the Treaty.

To the extent that draft technical standards qualify as 'proposed Union acts' and fall within the ECB's fields of competence, the ECB should be consulted on the proposed delegated or implementing acts endorsing the draft technical standards.

#### Specific observations

Directive 2003/71/EC: the publication of all prospectuses in electronic form and their availability either directly on the future European Securities and Markets Authority (ESMA) website or through a hyperlink to the relevant websites will enhance transparency. In this respect, the ECB strongly supports the idea of improving the availability and comparability of certain key information in the prospectuses, through the creation of a standard for reference data on securities and issuers, with the aim of making such data available to policymakers, regulators and the financial markets through an international public infrastructure. The ECB stands ready to cooperate with the ESMA in contributing to the design and set-up of an electronic repository and related processes.

Directive 2006/48/EC: a number of amendments to sectoral directives under the proposed directive aim at further improving information gateways between relevant authorities at the Union and national level. The ECB welcomes these proposed amendments and more particularly those introduced to take account of the establishment of the ESRB. In addition, the ECB would suggest the two following amendments.

- the proposed directive clarifies that competent authorities are entitled to share information with the European Banking Authority (EBA). The ECB recommends introducing an amendment to one provision of Directive 2006/48/EC with a view to removing any possible legal obstacle to the exchange of information between the EBA and the ESRB. The introduction of such an amendment would clarify that the EBA, in accordance with Directive 2006/48/EC and the relevant provisions of the proposed EBA regulation, is entitled to transmit to the ESRB all the information received from national authorities necessary for the fulfilment of the ESRB's tasks without prejudice to other applicable European rules;
- Directive 2006/48/EC entrusts colleges of supervisors with the exercise of certain tasks (including in terms of exchange of information) and, in this context, the applicable confidentiality requirements must not prevent competent authorities from exchanging confidential information within colleges of supervisors. In view of the potential importance of the information accessible within supervisory colleges, the ECB would recommend explicitly specifying that the ESAs may share confidential information related to the activities of the colleges of supervisors with the ESRB, when this information is relevant for the fulfilment of its tasks and based on reasoned requests from the ESRB.

## Financial supervision: powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

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The Committee on Economic and Monetary Affairs adopted the report drawn up by Antolin SANCHEZ PRESEDO (S&D, ES) on the proposal for a directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority. It recommended that the European Parliament's position at first reading under the ordinary legislative procedure (formerly known as the codecision procedure) should be to amend the Commission proposal as follows:

Technical standards: the committee states that the relevant legislation should define those areas where the ESA are empowered to develop draft technical standards and how should they be adopted. While the relevant legislation should lay down the elements, conditions and specifications as detailed in Article 290 of the Treaty on the Functioning of the European Union in the case of delegated acts, the rules and general principles concerning mechanisms for control should be defined in advance in accordance with Article 291 of the Treaty on the Functioning of the European Union in the case of implementing acts. With regard to the identification of areas for technical standards, only those areas should be selected where consistent technical rules will contribute significantly and effectively to the achievement of the objectives of the relevant legislation, while ensuring that policy decisions are taken by the European Parliament, the Council and the Commission in accordance with their usual procedures.

The report goes on to state that the technical standards adopted as delegated acts (Level 2 measures) should further develop, specify and determine the conditions for consistent harmonisation and uniform application of the rules included in basic instruments adopted by the European Parliament and the Council, supplementing or amending certain non-essential elements of the legislative act. On the other hand, technical standards adopted as implementing acts should not amend any element of legally binding Union acts. Technical standards should not involve policy choices.

In the case of delegated acts Members state that it is appropriate, for the sake of consistency, to introduce the procedure for adoption of technical standards provided for in Article 7 of the EBA, the ESMA and the EIOPA Regulations. In cases where the technical standards are designed to determine the conditions of application of a Level 2 measure, they will be developed only once the Level 2 measure has been adopted.

Precautionary principle: the report states that in accordance with the precautionary principle on supervision, binding technical standards will not prevent Member States' competent authorities from requiring additional information or imposing additional or more stringent requirements than those specified in the relevant legislative acts which they develop, when they allow for such prudential discretion.

Settlement of disputes between national authorities: the Directive should identify situations where a procedural or a substantive issue of compliance with Union law may need to be resolved and the supervisors may not be able to resolve the matter on their own. Members consider that in such a situation, one of the supervisors involved should be able to raise the issue with the competent European Supervisory Authority. That European Supervisory Authority should act in accordance with the procedure set out in this Directive. It should be able to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter and to ensure compliance with Union law, with binding effects on the competent authorities concerned.

In cases where the relevant Union legislation confers discretion on Member States, decisions taken by the European Supervisory Authority will not replace the exercise of discretion by the competent authorities in compliance with Union law.

Comitology: the alignment of comitology procedures to the Treaty on the Functioning of the European Union and, in particular, Articles 290 and 291 should be effected step by step. The report adapts to Articles 290 and 291 only to those provisions of the amended directives in so far as the ESA are concerned and in so far as they are related to technical standards. That alignment, as well as further alignments of other

comitology provisions contained in the amended directives, should not be limited to those measures previously dealt with under the regulatory procedure with scrutiny, but should cover all appropriate measures of general scope independently of the decision-making procedure of the comitology procedure applicable to them prior to the entry into force of the Treaty on the Functioning of the European Union. In order to ensure consistency, further alignment of other comitology procedures to Articles 290 or 291 contained in the amended directives referred to above must be effected in accordance with the provisions of this Directive.

Confidential information: confidential information transmitted to or exchanged between competent authorities and the European Securities and Markets Authority or the European Systemic Risk Board should be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

## Financial supervision: powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

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The European Parliament adopted amendments, at first reading under the ordinary legislative procedure (formerly known as the codecision procedure), to the proposal for a directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

The vote on the legislative resolution was postponed to a future plenary session. The main amendments to the Commission's proposal were as follows:

Objectives: the objectives of the directive should include the viability of the financial system, the protection of the real economy and the safeguard of public finances.

Technical standards: the text recalls that the Regulations establishing the ESFS provide that, in the areas specifically set out in the relevant legislation, the ESA may develop draft technical standards, to be submitted to the Commission for adoption in accordance with Articles 290 and 291 of the TFEU by means of delegated or implementing acts. This Directive identifies a first set of such areas and should be without prejudice to inclusion of other areas in the future. The relevant legislation should define those areas where the ESA are empowered to develop draft technical standards and how they should be adopted. While the relevant legislation should lay down the elements, conditions and specifications as detailed in Article 290 TFEU in the case of delegated acts, the rules and general principles concerning mechanisms for control of implementing acts should be based on Decision 1999/468/EC (comitology) until the Regulation provided for in Article 291 TFEU is adopted. The identification of areas for technical standards should strike an appropriate balance between building a single set of harmonised rules and avoiding unduly complicated regulation and enforcement. The only areas selected should be those in which consistent technical rules will contribute significantly and effectively to the achievement of the objectives of the relevant legislation, while ensuring that policy decisions are taken by the European Parliament, the Council and the Commission in accordance with their usual procedures.

Members state that matters subject to technical standards should be genuinely technical, where their development requires the expertise of supervisory experts. The technical standards adopted as delegated acts should further develop, specify and determine the conditions for consistent harmonisation of the rules included in basic instruments adopted by the European Parliament and the Council, supplementing or amending certain non-essential elements of the legislative act. On the other hand, technical standards adopted as implementing acts should set conditions for the uniform application of legally binding EU acts. Technical standards should not give rise to policy choices.

Best practice : Parliament stresses that the ESA should not at this stage develop draft technical standards on the existing requirements that the persons who effectively direct the business of investment firms, credit institutions, UCITS and their management companies be of sufficiently good repute and sufficiently experienced as to ensure their sound and prudent management. However, given the importance of these requirements, the ESA should give priority to identify the best practices in guidelines and to ensure the convergence of supervisory and prudential practices towards these best practices. They should do the same with respect to prudential requirements relative to the head office of these institutions.

Precautionary principle : to the extent that certain requirements in EU legislative acts are not fully harmonised, and in accordance with the precautionary principle on supervision, binding technical standards developing, specifying or determining the conditions of application for those requirements should not prevent Member States from requiring additional information or imposing more stringent requirements. Technical standards should therefore allow Member States to do so in specific areas, when these legislative acts provide for such prudential discretion.

Settlement of disagreements: Members recall that the binding procedure for the settlement of disagreements is designed to solve situations where competent supervisors cannot resolve among themselves procedural or substantive issues relating to compliance with Union law. This Directive should therefore identify situations where a procedural or a substantive issue of compliance with Union law may need to be resolved and the supervisors may not be able to resolve the matter on their own. In such a situation, one of the supervisors involved should be able to raise the issue with the competent European Supervisory Authority. That ESA should act in accordance with the procedure set out in its establishing Regulation and in this Directive. It should be able to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter and to ensure compliance with Union law, with binding effects on the competent authorities concerned. In cases where the relevant Union legislation confers discretion on Member States, decisions taken by the ESA should not replace the exercise of discretion by the competent authorities in compliance with Union law.

Comitology: Members consider that the alignment of comitology procedures to the TFEU and, in particular, Articles 290 and 291, should be effected case by case and be fully completed within three years. In order to take account of the technical developments in the financial markets and to specify the requirements laid down in the amended directives, the Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU.

Confidentiality: confidential information transmitted to or exchanged between competent authorities and the European Securities and Markets Authority or the European Systemic Risk Board should be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

# Financial supervision: powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

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The Council adopted a political guideline with a view to continuing negotiations with the European Parliament on a package of measures which are intended to reform the European framework for supervision of the financial system, in the wake of the global financial crisis.

The proposals, presented by the Commission in the autumn of 2009, are:

- draft Regulations on Community macro prudential oversight of the financial system and establishing a European Systemic Risk Board (ESRB), and entrusting the European Central Bank (ECB) with specific tasks concerning the functioning of that Board;
- draft Regulations establishing a European Banking Authority (EBA) a European Insurance and Occupational Pensions Authority (EIOPA) and a European Securities and Markets Authority (ESMA);
- a draft Directive intended to amend existing legislation in respect of the powers of these three new authorities.

Most of these texts are subject to the ordinary legislative procedure (formerly co decision) between the Parliament and the Council. The negotiations with Parliament are intended to allow them to be adopted at first reading, so that the European Systemic Risk Board and the three new supervisory authorities can be operational from 1 January 2011.

There is now a large degree of convergence between the two institutions, thanks to the negotiations which have already taken place, but it has not proven possible to find an overall agreement in time to enable Parliament to hold its first reading on 8 July, as originally intended. Parliament has therefore decided to postpone the vote to a subsequent plenary session.

On the basis of the general approaches already defined, the Council has agreed on the compromise proposals submitted by the Presidency with a view to facilitating continuing negotiations. It has thus strengthened the negotiating mandate given to the Presidency, while allowing it the necessary degree of flexibility.

# Financial supervision: powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

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The European Parliament adopted a resolution under the consultation procedure amending the proposal for a directive of the European Parliament and of the Council amending Directives 1998/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority. The amendments are the result of a compromise agreement between Parliament and Council. The main points are as follows:

**Objectives:** the objectives of the directive should include the sustainability of the financial system, the protection of the real economy and the safeguard of public finances.

**Technical standards:** the text recalls that the Regulations establishing the ESFS provide that, in the areas specifically set out in the relevant legislation, the ESA may develop draft technical standards, to be submitted to the Commission for adoption in accordance with Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU) by means of delegated or implementing acts. This Directive identifies a first set of such areas and should be without prejudice to inclusion of other areas in the future. The relevant legislation should define those areas where the ESA are empowered to develop draft technical standards and how they should be adopted. The relevant legislation should lay down the elements, conditions and specifications as detailed in Article 290 TFEU in the case of delegated acts. The identification of areas for technical standards should strike an appropriate balance between building a single set of harmonised rules and avoiding unduly complicated regulation and enforcement. The only areas selected should be those in which consistent technical rules will contribute significantly and effectively to the achievement of the objectives of the relevant legislation, while ensuring that policy decisions are taken by the European Parliament, the Council and the Commission in accordance with their usual procedures.

Members state that matters subject to technical standards should be genuinely technical, where their development requires the expertise of supervisory experts. The technical standards adopted as delegated acts should further develop, specify and determine the conditions for consistent harmonisation of the rules included in basic instruments adopted by the European Parliament and the Council, supplementing or amending certain non-essential elements of the legislative act. On the other hand, technical standards adopted as implementing acts should set conditions for the uniform application of legally binding EU acts. Technical standards should not involve policy choices.

The compromise text notes that the European Council endorsed the four-level 'Lamfalussy' approach to make the regulatory process for Union financial legislation more efficient and transparent. The Commission is empowered to adopt level-2 measures in many areas, and a large number of level-2 Commission regulations and directives are in force. In cases where the technical standards are designed to further develop, specify or determine the conditions of application of such level-2 measures, they should be adopted only once the relevant level-2 measures has been adopted and should respect the content of that level-2 measure.

Binding technical standards contribute to a single rulebook for financial services legislation as endorsed by the European Council in its conclusions of June 2009. To the extent that certain requirements in Union legislative acts are not fully harmonised, and in accordance with the precautionary principle on supervision, binding technical standards developing, specifying or determining the conditions of application for those requirements should not prevent Member States from requiring additional information or imposing more stringent requirements. Technical standards should therefore allow Member States to do so in specific areas, when those legislative acts provide for such discretion.

**Settlement of disagreements:** the regulations establishing the ESA require that the cases where the mechanism to settle disagreements between competent national authorities may be applied are to be specified in the sectoral legislation. This Directive identifies a first set of such cases and should be without prejudice to adding further cases in the future. This Directive should not prevent the ESA from acting in accordance with other powers or fulfilling tasks specified in their establishing regulations, including non-binding mediation and contributing to the consistent, efficient and effective application of legal acts of the Union. Moreover, in those areas where some form of non-binding mediation is already established in the relevant legal act, or where there are time limits for joint decisions to be taken by one or more competent national authorities, amendments are needed to ensure clarity and minimum disruption to the process for reaching a joint decision, but also that where necessary, the ESA should be able to resolve disagreements. The binding procedure for the settlement of disagreements

is designed to solve situations where competent supervisors cannot resolve, among themselves, procedural or substantive issues relating to compliance with legal acts of the Union.

This Directive therefore identifies situations where a procedural or a substantive issue of compliance with Union law may need to be resolved and the supervisors may not be able to resolve the matter on their own. In such a situation, one of the supervisors involved should be able to raise the issue with the competent European Supervisory Authority. That European Supervisory Authority should act in accordance with the procedure set out in its establishing regulation and in this Directive. It should be able to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter and to ensure compliance with Union law, with binding effects on the competent authorities concerned. In cases where the relevant legal act of the Union confers discretion on Member States, decisions taken by a European Supervisory Authority should not replace the exercise of discretion by the competent authorities in compliance with Union law.

Comitology: in order to give full effect to the new framework provided for in the TFEU, it is necessary to adapt and replace the implementing powers designed under Article 202 of the Treaty establishing the European Community (EC Treaty) with the appropriate provisions in accordance with Articles 290 and 291 TFEU. That review should be finalised within three years from the entry into force of the Treaty of Lisbon and the remaining powers conferred under Article 202 EC Treaty should cease to apply on that date. The alignment of comitology procedures to the TFEU should be effected on a case-by-case basis. In order to take account of the technical developments in the financial markets and to specify the requirements laid down in the directives amended by this Directive, the Commission is empowered to adopt delegated acts in accordance with Article 290 TFEU.

The European Parliament and the Council have three months from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by three months in regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections. Such early approval of delegated acts is particularly appropriate when deadlines need to be met, for example where there are timetables in the basic act for the Commission to adopt delegated acts.

Confidentiality: confidential information transmitted to or exchanged between competent authorities and the European Securities and Markets Authority or the European Systemic Risk Board should be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

Report: the Commission should, by 1 January 2014, report to the European Parliament and to the Council on the submission by the ESA of the draft technical standards provided for in this Directive and present any appropriate proposals.

## Financial supervision: powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

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**PURPOSE:** to make amendments to existing legal acts of the Union in the field of operation of the three ESA in order for the European System of Financial Supervisors (ESFS) to work effectively.

**LEGISLATIVE ACT:** Directive 2010/78/EU of the European Parliament and of the Council amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority).

**CONTENT:** following an agreement reached with the European Parliament at first reading, the Council adopted a directive amending existing legislation in respect of the powers conferred on the three supervisory bodies (European Banking Authority, European Insurance and Occupational Pensions Authority and European Securities and Markets).

The Directive is part of a package of legal texts underpinning a reform of the EU framework for supervision of the financial system, aimed at eliminating deficiencies that were exposed during the financial crisis. The package consists of the following regulations establishing:

It adopted regulations establishing:

- a [European Systemic Risk Board \(ESRB\)](#), which will provide macro-prudential oversight of the financial system;
- a [European Banking Authority \(EBA\)](#) for the supervision of banking services;
- a [European Insurance and Occupational Pensions Authority \(EIOPA\)](#) for the supervision of insurance services;
- a [European Securities and Markets Authority \(ESMA\)](#) for the supervision of the securities industry.

The Council also adopted:

- a [regulation](#) entrusting the European Central Bank with specific tasks with regard to the day-to-day running of the ESRB;
- a directive amending directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers conferred on the three European authorities.

In order for the ESFS to work effectively, changes to legal acts of the Union in the field of operation of the three ESA are necessary. Such changes concern the definition of the scope of certain powers of the ESA, the integration of certain powers established in legal acts of the Union, and amendments to ensure a smooth and effective functioning of the ESA in the context of the ESFS.

This directive amends sectoral directives concerning: capital requirements; financial conglomerates; institutions for occupational retirement provisions; market abuse; markets in financial instruments; prospectuses; settlement finality, transparency, anti-money laundering and undertakings for collective investments in transferable securities (UCITS).

Such changes concern the definition of the scope of certain powers of the ESA, the integration of certain powers established in legal acts of the Union, and amendments to ensure a smooth and effective functioning of the ESA in the context of the ESFS.

The areas concerned by the proposed amendments may be found in the following categories:

**Technical standards:** the regulations establishing the ESFS provide that, in the areas specifically set out in the relevant legislation, the ESA may develop draft technical standards, to be submitted to the Commission for adoption in accordance with Articles 290 and 291 of the Treaty



on the Functioning of the European Union (TFEU) by means of delegated or implementing acts. This Directive should identify a first set of such areas and should be without prejudice to adding further areas in the future.

The technical standards adopted as implementing acts should set conditions for the uniform application of legally binding Union acts. Technical standards should not involve policy choices.

Binding technical standards contribute to a single rulebook for financial services legislation. To the extent that certain requirements in Union legislative acts are not fully harmonised, and in accordance with the precautionary principle on supervision, binding technical standards developing, specifying or determining the conditions of application for those requirements should not prevent Member States from requiring additional information or imposing more stringent requirements.

Before submitting the technical standards to the Commission, the ESA should, where appropriate, conduct open public consultations relating thereto and analyse the potential related costs and benefits.

It should be possible for technical standards to provide for transitional measures subject to adequate deadlines, if the costs of immediate implementation would be excessive compared to the benefits involved.

Settlement disagreements: the regulations establishing the ESA require that the cases where the mechanism to settle disagreements between national competent authorities may be applied are to be specified in the sectoral legislation. This Directive should identify a first set of such cases and should be without prejudice to adding further cases in the future.

This Directive should therefore identify situations in which a procedural or a substantive issue of compliance with Union law needs to be resolved and the national competent authorities are not able to resolve the matter on their own. In such a situation, one of the national competent authorities concerned should be able to raise the issue with the European Supervisory Authority concerned. That European Supervisory Authority should act in accordance with its establishing regulation and with this Directive. The European Supervisory Authority concerned should be able to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter and to ensure compliance with Union law, with binding effects on the competent authorities concerned.

Comitology: the alignment of committee procedures to the TFEU and, in particular, to Articles 290 and 291 thereof, should be effected on a case-by-case basis. In order to take account of the technical developments in the financial markets and to specify the requirements laid down in the directives amended by this Directive, the Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU.

Confidentiality: information transmitted to or exchanged between competent authorities and the ESA or the ESRB should be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

Report: the Commission shall, by 1 January 2014, submit to the European Parliament and to the Council a report specifying whether the ESA have submitted the draft regulatory technical standards provided for in this Directive, with any appropriate proposals.

ENTRY INTO FORCE: 04/01/2011.

TRANSPOSITION: 31/12/2011.