European Banking Authority (EBA): establishment

2009/0142(COD) - 23/09/2009 - Legislative proposal

PURPOSE: to establish a European Banking Authority.

PROPOSED ACT: Regulation 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. Building on the recommendations presented in February 2009 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) which proposed the establishment of :

- 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), thereby combining the advantages of an overarching European framework for financial supervision with the expertise of local micro-prudential supervisory bodies that are closest to the institutions operating in their jurisdictions; and
- a European Systemic Risk Board (ESRB), to monitor 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.

The European Council, in its conclusions of 19 June 2009, recommended that a European System of Financial Supervisors, comprising three new European Supervisory Authorities, be established. The system should be aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross border groups and establishing a European single rule book applicable to all financial institutions in the Single Market.

It should be noted that this proposal is closely linked to proposals on:

- a European Insurance and Occupational Pensions Authority (EIOPA),
- a European Securities and Markets Authority (ESMA),
- a European Systemic Risk Board (ESRB).

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 (see SEC(2009)1234.)

CONTENT: in order to take account of sectoral specificities, three separate Regulations are needed to establish the Authorities for banking, insurance and occupational pensions, and securities. The broad thrust of these proposals is, however, identical. The proposal discusses the common elements and briefly touches upon the differences between the three Regulations.

Objectives of the ESAs:these 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, investors, policyholders and other beneficiaries, (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.

The ESAs will be Community bodies with a legal personality and a key element of the proposed ESFS. The latter shall function as a network of supervisors and comprise the national authorities in the Member States, a Joint Committee of European Supervisory Authorities, to cover cross-sectoral issues, and the European Commission. While the ESAs should enjoy maximum independence to objectively fulfil their mission, the Commission has to be involved where institutional reasons and the responsibilities under the Treaty so require.

The main decision-making body of each ESA will be its Board of Supervisors, consisting of the heads of the relevant national supervisors as well as the Chairperson of the respective Authority. The Chairperson will preside over meetings of the Board of Supervisors and the Management Board. The day-to-day management of each Authority will be in the hands of an Executive Director.

Tasks and powers: the ESAs will take on all the tasks of the existing European supervisory committees, but also have significantly increased responsibilities, defined legal powers and greater authority.

Develop technical standards: a single EU rule book should be established, applicable to all financial institutions in the Single Market. To this end, differences in the national transposition of Community law stemming from exceptions, derogations, additions or ambiguities must be removed, so that one harmonised core set of standards can be defined and applied. To contribute to this, the Authorities will develop draft technical standards. These standards constitute an effective instrument to strengthen Level 3 of the Lamfalussy structure, which currently is limited to the adoption of non-binding guidelines.

Powers to ensure the consistent application of Community rules: a mechanism will be put in place to address behaviour by national supervisory authorities who are considered to be diverging from the existing Community legislation (including technical standards). The proposal describes the steps of the mechanism.

Action in emergency situations: whilst ESAs will have a coordination role between national supervisory authorities, in some emergency situations coordination may not be sufficient, notably when national supervisors alone lack the tools to respond rapidly to an emerging cross-border crisis. The ESAs should thereforehave the power to require national supervisors to take specific action jointly. The determination of a cross-border emergency situation will be left to the Commission. This is subject to the safeguard clause.

Settlement of disagreements between national supervisory authorities: a mechanism is proposed to ensure that relevant national supervisory authorities take due account of the interests of other Member States, including within colleges of supervisors. This mechanism consists of three possible steps which are set out in the text.

Colleges of supervisors: the latter are central to the EU supervisory system and play an important role in ensuring a balanced flow of information between home and host authorities. The ESAs will contribute to promoting the efficient and consistent functioning of colleges of supervisors and may participate as observers in colleges of supervisors and receive all relevant information shared between the members of the college.

Common supervisory culture: the ESAs shall play an active role in building a common European supervisory culture and ensuring uniform procedures and consistent supervisory practices throughout the Community. The common supervisory culture may increasingly create opportunities for supervisors to delegate certain tasks to one another. The ESAs shall periodically conduct peer review analysis of national supervisory authorities.

Assessment of market developments: although the proposed ESRB will be responsible for macro-prudential analysis of the EU financial sector, the ESAs should continue the work of the existing European supervisory committees in this area as: (i) the focus of their analysis is different, i.e., micro-prudential analysis provides a bottom-up analysis, rather than macro-prudential analysis which is top-down, and (ii) their analysis may serve as helpful input into the work carried-out by the ESRB.

International role: through these proposals the Commission is responding to the weaknesses identified during the crisis as well as to the G20 call to take action to build a stronger, more globally consistent, regulatory and supervisory system for financial services. The ESAs could serve as helpful contact points for supervisory authorities from third countries. They may enter into administrative arrangements with administrations of third countries and may also assist in preparing equivalence decisions pertaining to supervisory regimes in third countries. They may provide advice to the European Parliament, the Council and the Commission or publish opinions, including with respect to the prudential assessments of cross-border mergers and acquisitions.

Collection of information: at the request of the Authority, 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. In principle, all information should be transferred to the ESAs by the national supervisory authorities.

Relationship with the ESRB: the framework for EU supervision can only work if the ESRB and ESFS cooperate closely. In fulfilling its role as macro-prudential supervisor, the ESRB would need a timely flow of micro-prudential information, while micro-prudential supervision by national authorities would benefit from the ESRB?s insights on the macro-prudential environment. The Regulations also specify the procedures to be followed by the ESAs to act upon recommendations by the ESRB and how the ESAs should use their powers to ensure timely follow-up to recommendations addressed to one or more national supervisory authorities.

Safeguard: in view of the fact that decisions by the ESAs should not impinge on the fiscal responsibilities of the Member States, a safeguard clause is introduced which ensures that, where a Member State considers that a decision taken under provisions concerning emergency decisions or settlement of disagreements of these Regulations impinges on its fiscal responsibility, it may notify the Authority and the Commission that the national supervisory authority does not intend to implement the Authority's decision, clearly demonstrating how the decision by the Authority impinges on its fiscal responsibilities.

Joint Committee of European Supervisory Authorities: a Joint Committee of European Supervisory Authorities will ensure mutual understanding, cooperation and consistent supervisory approaches between the three new ESAs.

Board of Appeal: an appeal system will ensure that any person, including national supervisory authorities, may in first instance appeal to a Board of Appeal against a decision by the ESAs to ensure the coherent application of Community rules, action in emergency situations, and the settlement of disagreements. The Board of Appeal shall be a joint body of three ESAs, i.e., it will deal with issues related to banking, insurance and securities.

Key differences between the three Regulations: the main differences between the three proposed Regulations concern the objectives of the Authorities, the scope of action, and the definitions, which are adapted to the specificities of the relevant sector and existing Community legislation. Moreover, the European Council concluded that the ESAs should also have supervisory powers for credit rating agencies. ESMA would be responsible to register credit rating agencies. ESMA would also be empowered to take supervisory measures such as withdrawing the registration or suspending the use for regulatory purposes of credit ratings. Supervisory powers could include the power to request information and to conduct investigations or on-site inspections. The responsibilities and powers of ESMA with regard to credit rating agencies will be defined in an amendment to the Regulation on Credit Rating Agencies.

BUDGETARY IMPLICATIONS: for the transformation of the existing European supervisory committees into effective ESAs, enhanced resources are needed - both personnel and budgetary. For the EBA, the total operational expenditure from the Community budget in commitment and payment appropriations for the years 2011-2013 is EUR 21.527 million. In addition, Member States (national supervisory authorities or ministries of finance) will contribute EUR 32.290 million over the three year period. This gives a total of EUR 53.816 million from 2011 to 2013.