

## European Banking Authority (EBA): establishment

2009/0142(COD) - 10/05/2010 - \${summary.subTitle}

The Committee on Economic and Monetary Affairs adopted the report drawn up by Jose Manuel GARCIA-MARGALLO y MARFIL (EPP, ES) on the proposal for a regulation of the European Parliament and of the Council establishing a European Banking 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

**Name:** Members want the body to be called the European Supervisory Authority (Banking), rather than European Banking Authority.

**Objective:** the Authority must protect public values like the stability of the financial system, the solvency and liquidity of financial institutions, the transparency of markets and financial products and the protection of depositors and investors. The Authority should also prevent regulatory arbitrage and guarantee a level playing field.

**Seat:** the Authority shall have its seat in Frankfurt (rather than London.)

**Tasks and powers:** the committee added that the Authority should be able to assess the accessibility, availability and credit cost for households and enterprises, in particular SMEs. The Authority will also be able to: act as the competent body to manage crisis of cross-border institutions that has the potential to pose a systemic risk, leading and executing all early interventions, resolution or insolvency procedures for such institutions through its Banking Resolution Unit. It will also (i) supervise those financial institutions that are not subject to the supervision of competent authorities; (ii) provide a database of registered financial institutions in the area of its competence; (iii) develop draft regulatory and implementing standards; and (iv) temporarily prohibit or restrict certain types of transactions that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union.

**Regulatory standards:** these must be submitted to the Commission for endorsement and at the same time to the European Parliament and the Council.

**Implementing standards:** the Authority may develop draft standards to implement legally binding Union acts in the areas specifically set out in the regulation and in the legislative acts referred to in the text, following public consultation. Draft implementing standards will be sent to the Commission for endorsement in accordance with Article 291 of the Treaty on the Functioning of the European Union and, at the same time, to the European Parliament and the Council. The committee also made some amendments to the provisions on guidelines and recommendations.

**Consistent application of Community rules:** Members amended these provisions to specify that where the competent authority has not complied with Union law within 10 working days from receipt of the Authority's recommendation, the Authority (rather than the Commission) shall take a decision requiring the competent authority to take the action necessary to comply with Union law.

**Action in emergency situations:** Members expand the powers of the Authority and state that in the case of adverse developments, the ESRB, upon its own initiative or 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 individual decisions. Where the addressee of the decision refuses to comply with Union law or a specific decision taken by the Authority, the Authority may issue proceedings in the national courts, including applications for interim relief.

**College of supervisors:** the report states that the colleges of supervisors should have the power to define supervisory rules to foster the coherent application of Union law. The Authority should have full participation rights in colleges of supervisors with a view to streamlining the functioning of the information-exchange process and to foster convergence and consistency across colleges in the application of Union law. The Authority should act as leader in supervising cross-border financial institutions operating in the Union. It should also have a binding mediation role to solve conflicts between national supervisors. Members expanded the tasks and powers of the Authority, and in particular, they stipulate that the Authority shall (i) collect and share all relevant information; (ii) initiate and coordinate Union-wide stress tests to assess the resilience of financial institutions, in particular of those identified as potentially posing a systemic risk, to adverse market developments; (iii) plan and lead supervisory activities in going concern as well as in emergency situations, including evaluating the risks to which financial institutions are or might be exposed; and (iv) oversee the tasks carried out by the competent authorities.

The Authority, in collaboration with the ESRB, shall develop a common set of quantitative and qualitative indicators (risk dashboard), which will serve as the basis to assign a supervisory rating to cross-border institutions identified as potentially posing a systemic risk. It shall exert supervision of cross-border institutions that may pose a systemic risk, acting through the competent authorities. It will also establish a Banking Resolution Unit with a mandate to put in practice the clearly defined governance and modus operandi of crisis management from early intervention to resolution and insolvency and lead such procedures. All financial institutions identified as posing a systemic risk must take part in the European Deposit Guarantee Scheme as well as in the European Banking Stability Fund which are established in this report. Financial institutions operating in a single Member State shall have the option to join the European Deposit Guarantee Scheme or the European Banking Stability Fund. The contributions made to the European Funds shall replace those made to national funds of a similar nature.

The committee goes on to insert provisions on identification of cross-border institutions that potentially could pose a systemic risk.

**Other tasks:** the committee added that on the basis of Joint Guidelines, the Authority may conduct the change of control procedure under Directive 2007/44/EC. Upon receipt of the notification, the Authority shall coordinate with the relevant competent authorities.

**Collection of information:** where competent authorities are not obliged to collect the information requested, the Authority may amend the regulatory or implementing standards that refer to reporting requirements.

**Safeguards:** Members made these provisions more stringent, specifying that where a Member State considers that a decision taken under provisions on emergency situations or on settlements of disagreements between competent authorities, impinges directly and in a significant manner on its fiscal responsibilities, it shall notify the Authority, the Commission and the European Parliament within ten working days after

notification of the Authority's decision to the competent authority. The Member State shall justify why and provide an impact assessment on how much the decision impinges on its fiscal responsibilities.

The report also amended provisions on the majority required in Council to maintain or revoke the Authority's decision.

It went on to make several changes to the clauses of composition of the Authority, and stressed the latter's independence. The report increased Parliament's powers regarding the appointment of a Chairperson, as well as the responsibility of the latter to appear before Parliament and submit relevant reports.

Joint Committee: the Committee will have its headquarters in Frankfurt. Members specify a number of fields for cooperation with other ESAs, such as anti-money laundering measures.

They also made some amendments to the provisions on the Board of Appeal.

Budget: under the Commission's proposals, the ESAs' budget would be part of the Commission budget. To enhance the independence of the ESAs the committee wants a separate budget line for the ESAs in the overall EU Budget. Therefore it is proposed to provide for an independent budget line as has been done for the Data Protection Supervisor.

Report: the Commission's report must evaluate (a) the convergence in supervisory standard practices reached by competent authorities; (b) the functioning of the colleges of supervisors; (c) the role of the Authority on the supervision of systemic institutions; and (d) the application of the safeguard clause.

Evaluation: the Commission must also evaluate whether:

- it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets, or whether they should be brought under a single supervisor;
- prudential supervision and supervision of the conduct of business should be combined or separated; it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;
- it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;
- it is appropriate to increase the regulatory powers of the ESAs;
- the evolution of the ESFS is consistent with that of the global evolution;
- there is sufficient diversity and excellence within the ESFS;
- accountability and transparency in relation to publication requirements are adequate.