Legislative proposal

OBJECTIVE: to confer specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions in the context of creating a banking union.

PROPOSED ACT: Council Regulation.

BACKGROUND: the creation of the European Banking Authority (EBA) by Regulation (EU) No. 1093/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), and of the European System of Financial Supervision (ESFS) already contributed to improved cooperation between national supervisors and to the development of a single rulebook for financial services in the EU. However, supervision of banks remains to a large extent within national boundaries and thereby fails to keep up with integrated banking markets.

In May 2012 the Commission has therefore called for a banking union to restore confidence in banks and in the euro. Among the key elements of the banking union will be a Single Supervisory Mechanism (SSM) with direct oversight of banks. The European Council conclusions of 29 June 2012 invited the President of the European Council to develop a road map for the achievement of a genuine Economic and Monetary Union.

The European Parliament called on various occasions for a European body to be directly responsible for certain supervisory tasks over financial institutions, starting with its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan, and of 21 November 2002 on prudential supervision rules in the European Union.
The present proposal accompanies a related proposal amending the Regulation establishing the EBA towards a new bank monitoring system in order to ensure that EBA decision-making structures continue to be balanced and to preserve fully the integrity of the Single Market.

IMPACT ANALYSIS: the Commission has taken into account the analysis done in the context of the adoption of the "supervisory package" creating the European Supervisory Authorities, which assessed operational, governance, financial and legal aspects relevant to the establishment of a SSM.

LEGAL BASIS: Article 127 (6) of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the proposal foresees that the ECB will be responsible for specific tasks concerning the prudential supervision of credit institutions which are established in Member States whose currency is the Euro (participating Member States) with the objective to promote the safety and soundness of credit institutions and the stability of the financial system.

After a transitional period, the ECB:

- will be responsible for carrying out key supervisory tasks for all credit institutions established in participating Member States, regardless of their business model or size;
- shall be the host supervisor for credit institutions established in non-participating Member States, which establish a branch or provide cross-border services in a participating Member State .

The ECB will carry out its tasks within the framework of the ESFS and will cooperate closely with national supervisors and the EBA. The EBA will keep its powers and tasks to further develop the single rulebook and ensure convergence and consistency of supervisory practice.

Tasks of the ECB: the ECB will be exclusively competent for key supervisory tasks which are indispensable to detect risks for banks' viability and require them to take the necessary action. It will, inter alia, be the competent authority for licensing and authorizing credit institutions:

- assessing qualifying holdings,
- ensuring compliance with the minimum capital requirements, ensuring the adequacy of internal capital in relation to the risk profile of a credit institution (Pillar 2 measures),
- supervising financial conglomerates.

However, the ECB will be only responsible for carrying out its tasks for the supplementary supervision of financial conglomerates on a group-wide basis, while the prudential supervision of the individual insurance undertaking itself will be carried out by national competent authorities.

Role of national supervisors: National supervisors will continue to play an important role with the creation of a Single Supervisory Mechanism (SSM):

1) all tasks not conferred on the ECB will remain with national supervisors. for example, national supervisors will remain in charge of consumer protection and the fight against money laundering, and of the supervision of third country credit institutions establishing branches or providing cross-border services within a Member State;

2) even for the tasks conferred on the ECB, most day-to-day verifications and other supervisory activities necessary to prepare and implement the ECB's acts could be exercised by national supervisors operating as an integral part of the SSM.

Powers of the ECB: the ECB will have the supervisory powers that those authorities shall have in accordance with the EU banking legislation. Those include supervisory powers:

- the authorisation of credit institutions and the withdrawal of authorisations and the removal of a member of a credit institution's management board;
- the power to impose pecuniary sanctions and periodic penalty payments;

- all necessary investigatory powers, including on-site inspections, to be able to carry out its tasks.

Relationship with Member States whose currency is not the Euro: as regards the supervision of cross-border banks active both within and outside the Euro area, the proposal does not affect in any way the position of non participating Member States in the Colleges of Supervisors set up under Directive 2006/48/EC. The provisions on those colleges and the obligation to cooperate and exchange information in consolidated supervision and between home and host supervisors will apply fully to the ECB as the competent authority for the participating Member States.

Subject to meeting specific conditions Member States that have not adopted the euro but wish to participate in the banking union will be able to enter into a close supervisory cooperation with the ECB.

Entry into force: due to the urgency of setting up an effective SSM, the regulation will enter into force on 1 January 2013. A phasing-in approach is envisaged:

- as of 1 January 2013, the ECB will be able to to apply its supervisory tasks to any banks, in particular banks which have received or requested public financial assistance;
- as of 1 July 2013, the most significant credit institutions of European systemic importance shall be subject to ECB supervision;
- in relation to all other banks, the ECB will assume in full its tasks as from 1 January 2014 at the latest.

BUDGETARY IMPLICATION: this proposal has no implication for the Union budget, since in accordance with the Treaty the ECB's budget is not part of the Union budget.