

European Banking Authority (EBA): adjustment of procedural modalities

2012/0244(COD) - 12/09/2012 - Legislative proposal

OBJECTIVE: [to amend Regulation \(EU\) No 1093/2010 establishing a European Supervisory Authority \(European Banking Authority\)](#) with a view to ensuring a high, effective and consistent level of prudential regulation and supervision across the European Union in the context of creating a banking union.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: the establishment 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 therefore called for **the creation of 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, to enforce prudential rules in a strict and impartial manner and perform effective oversight of cross border banking markets.

On 29 June 2012, the Euro area Heads of State or Government called on the Commission to present proposals to provide for a single supervisory mechanism involving the European Central Bank (ECB). The European Council in its conclusions of 29 June 2012 invited the President of the European Council to develop, in close collaboration with the President of the Commission, the President of the Eurogroup and the President of the ECB, a specific and time-bound road map for the achievement of a genuine Economic and Monetary Union.

To avoid fragmentation of the internal market following the establishment of the single supervisory mechanism, the proper functioning of the EBA needs to be ensured. The role of the EBA should therefore be preserved in order to further develop the single rulebook and ensure convergence of supervisory practices throughout the EU.

Along with the proposal for a [Council Regulation](#) conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions in accordance with Article 127(6) TFEU, this proposal introduces targeted amendments to the Regulation establishing the European Banking Authority.

IMPACT ASSESSMENT: 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 114 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the proposal is limited to an **adjustment of the procedural modalities under which the EBA operates** to take account of the conferral of supervisory tasks on the ECB and to ensure that the EBA can continue to pursue its functions to protect the integrity, efficiency and orderly functioning of the internal market for financial services and maintaining the stability of the financial system within the

internal market. It does not alter the balance of respective competences between the EBA and national authorities.

The proposal deals in particular with the following points:

- **EBA powers, in particular binding mediation/emergency situations:** in order to ensure that the EBA can carry out its tasks to settle disagreements and also act in emergency situations in relation to the ECB, a new provision is introduced to provide for a specific procedure in relation to the decision taken by the EBA. The procedure provides that if the ECB does not comply with an action by EBA to settle a disagreement or to address an emergency situation, it should be required to explain its reasons. In that unlikely case, where the relevant requirements are set out in directly applicable Union law, the EBA can adopt an individual decision addressed to the financial institution concerned to enforce its action, and it is normally expected to do so.
- **Voting modalities:** the fact that the ECB will coordinate the position of the Euro area Member States requires a review of the voting modalities currently provided for in the EBA regulation, in order to ensure that EBA decisions are taken in the interest of maintaining and strengthening the internal market for financial services.
- **Composition of the Management Board:** in view of the decisive influence of members from Member States participating in or closely cooperating with the single supervisory mechanism when electing the Management Board (simple majority of members present), members from Member States not participating in the SSM could not be appropriately represented adequately in the Management Board. To ensure a balanced composition of the Management Board, reflecting the EU as a whole and including Member States not participating in the single supervisory mechanism, the proposal amends the composition of the Management Board of the EBA to ensure that at least two members from Member States not participating in the single supervisory mechanism are represented in the Management Board.

BUDGETARY IMPLICATION: the proposal has no implications for the EU budget.