European Banking Authority (EBA): adjustment of procedural modalities

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The Council discussed proposals aimed at establishing a single supervisory mechanism (SSM) for credit institutions in the eurozone and in other EU Member States choosing to participate. The two proposed regulations are a key element of a broader plan to establish **a banking union for the euro area**.

- The first proposal conferring specific supervisory tasks on the European Central Bank, is based on Article 127 (6) of the Treaty on the Functioning of the European Union which requires unanimity for adoption by the Council, after consulting the European Parliament and the ECB.
- The second proposal modifying Regulation 1093/2010 establishing the European Banking Authority, is based on Article 114 of the Treaty on the Functioning of the European Union which requires a qualified majority for adoption by the Council, in agreement with the Parliament.

The October European Council set **1 January 2013** as the deadline for agreeing on the legal framework set out in the two regulations, whilst indicating that work on operational implementation would take place during 2013.

According to the **Presidency's progress report** of 6 November 2012, consensus is emerging on a number of issues, in particular the separation within the ECB of monetary policy and supervisory functions (Article 18 of the ECB Regulation), subject to finalisation of the drafting. Nevertheless, certain other matters remain open:

1. The equitable treatment of euro-area and non-euro area Member States. There are two important issues in this regard:

(i) The status and role of non-euro area Member States who choose to participate in the SSM (under Articles 6 and 19 of the ECB proposal): the Presidency has amended the Commission's proposal to allow for all participating Member States to be treated equally in the Supervisory Board (i.e. non-euro area participating Member States will be voting members).

Furthermore, the Presidency has already introduced a number of safeguards for participating non-euro area Member States. More work is needed to meet the concerns of delegations. Nonetheless the Presidency finds that these safeguards should lay the foundations for a satisfactory compromise, subject to further guidance from the Council, especially on the voting rights in the supervisory board.

*(ii) The changes to voting modalities in the EBA (Article 1(7) of the EBA proposal):*a number of Member States consider that the voting rules should still be further (thoroughly) reviewed, and allow for additional safeguards, e.g. in terms of double majority requirements, in all cases (including qualified majority voting). Against this backdrop, the Presidency considers that further political guidance from the Council is needed to find the adequate balance between anti-discrimination safeguards for non-participating Member States and effective decision-making.

The Presidency has decided in its forthcoming compromise to make it clear that when the EBA engages in binding mediation, all competent authorities, including the ECB acting in its supervisory capacity, will be treated equally.

2. The distribution of tasks between the ECB and the NCAs: the Commission proposal assigned a wide range of tasks to the ECB with regard to all credit institutions established in the Member States participating in the SSM. Most of them have proved uncontroversial, except in particular those referring to so-called "macroprudential tools" (especially, the setting of buffers under the ECB Proposal) and to the coordination of a single position of NCAs from Member States participating in the SSM.

The Commission proposal was not very explicit in regard to the respective roles of the ECB and the NCAs in their foreseen cooperation within the SSM. Without touching the basic principle of the ECB's exclusive responsibility, the Presidency has introduced a number of significant changes, which aim to establish the supervisory architecture, without prejudice to further specifications. A certain number of improvements were proposed, especially on the exact competences to be granted to the ECB and on the modalities for cooperation between the ECB and the NCAs.

Lastly, the question of granting and withdrawal of authorisation has given rise to concerns by some delegations which find that the key issue of access to and removal from the market should remain within the remit of national authorities.

3. Phasing in of the SSM (Article 27 of the ECB proposal): some delegations have questioned the phasing-in arrangements proposed by the Commission and suggestions have been made to seek a more flexible phasing-in arrangement, thus leaving the ECB more time to prepare for the taking over of its new supervisory tasks.