Basic information

2012/0244(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
European Banking Authority (EBA): adjustment of procedural modalities Amending Regulation (EC) No 1093/2010 2009/0142(COD) See also 2012/0242(CNS) **Subject** 2.50.02 Savings 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.08 Financial services, financial reporting and auditing 2.50.10 Financial supervision 8.40.08 Agencies and bodies of the EU	

Key players

European Parliament

Committee responsible	Rapporteur	Appointed
ECON Economic and Monetary Affairs	GIEGOLD Sven (Verts/ALE)	11/09/2012
	Shadow rapporteur BALZ Burkhard (PPE) SÁNCHEZ PRESEDO Antolín (S&D) GOULARD Sylvie (ALDE) STREJČEK Ivo (ECR) KLUTE Jürgen (GUE/NGL)	

Committee for opinion	Rapporteur for opinion	Appointed
BUDG Budgets	HAUG Jutta (S&D)	26/09/2012
JURI Legal Affairs	The committee decided not to give an opinion.	
AFCO Constitutional Affairs	RANGEL Paulo (PPE)	19/11/2012

Council of the European Union

Council configuration	Meetings	Date
Economic and Financial Affairs ECOFIN	3205	2012-12-04

	Economic and Financial Affairs ECOFIN	3264	2013-10-15
	Economic and Financial Affairs ECOFIN	3215	2013-01-22
	Economic and Financial Affairs ECOFIN	3220	2013-02-12
	Economic and Financial Affairs ECOFIN	3198	2012-11-13

European Commission	Commission DG	Commissioner
	Financial Stability, Financial Services and Capital Markets Union	BARNIER Michel

European Economic and Social Committee

Key events

Date	Event	Reference	Summary
12/09/2012	Legislative proposal published	COM(2012)0512	Summary
22/10/2012	Committee referral announced in Parliament, 1st reading		
13/11/2012	Debate in Council		Summary
28/11/2012	Vote in committee, 1st reading		
03/12/2012	Committee report tabled for plenary, 1st reading	A7-0393/2012	Summary
04/12/2012	Debate in Council		
22/01/2013	Debate in Council		
12/02/2013	Debate in Council		
21/05/2013	Debate in Parliament		
22/05/2013	Decision by Parliament, 1st reading	T7-0212/2013	Summary
22/05/2013	Results of vote in Parliament		
12/09/2013	Decision by Parliament, 1st reading	T7-0371/2013	Summary
12/09/2013	Results of vote in Parliament		
15/10/2013	Act adopted by Council after Parliament's 1st reading		
22/10/2013	Final act signed		
22/10/2013	End of procedure in Parliament		
29/10/2013	Final act published in Official Journal		

Technical information

Procedure reference	2012/0244(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation

Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EC) No 1093/2010 2009/0142(COD) See also 2012/0242(CNS)
Legal basis	Treaty on the Functioning of the European Union TFEU 114-p1
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/10648

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE497.795	09/10/2012	
Amendments tabled in committee		PE498.137	30/10/2012	
Committee opinion	BUDG	PE496.641	07/11/2012	
Committee opinion	AFCO	PE500.374	27/11/2012	
Committee report tabled for plenary, 1st reading/single reading		A7-0393/2012	03/12/2012	Summary
Text adopted by Parliament, partial vote at 1st reading /single reading		T7-0212/2013	22/05/2013	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0371/2013	12/09/2013	Summary

Council of the EU

Document type	Reference	Date	Summary
Draft final act	00022/2013/LEX	23/10/2013	

European Commission

Document type	Reference	Date	Summary
Legislative proposal	COM(2012)0512	12/09/2012	Summary
Commission response to text adopted in plenary	SP(2013)774	06/12/2013	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	DE_BUNDESRAT	COM(2012)0512	07/11/2012	
Contribution	BG_PARLIAMENT	COM(2012)0512	08/11/2012	
Contribution	PT_PARLIAMENT	COM(2012)0512	08/11/2012	
Contribution	IT_CHAMBER	COM(2012)0512	15/11/2012	

Contribution	IT_SENATE	COM(2012)0512	21/12/2012	
Contribution	CZ_SENATE	COM(2012)0512	21/03/2013	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES2048/2012	14/11/2012	
ECB	European Central Bank: opinion, guideline, report	N7-0045/2013 OJ C 030 01.02.2013, p. 0006	27/11/2012	Summary

Additional information

Source	Document	Date
National parliaments	IPEX	
European Commission	EUR-Lex	
European Commission	EUR-Lex	

Final act

Regulation 2013/1022
OJ L 287 29.10.2013, p. 0005 Summary

European Banking Authority (EBA): adjustment of procedural modalities

2012/0244(COD) - 13/11/2012

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.

European Banking Authority (EBA): adjustment of procedural modalities

2012/0244(COD) - 03/12/2012 - Committee report tabled for plenary, 1st reading/single reading

The committee on Economic and Monetary Affairs adopted the report by Sven GIEGOLD (Greens/EFA, DE) on the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards its interaction with the Council Regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

The committee recommended that the European Parliament's position at first reading under the ordinary legislative procedure should be to amend the Commission proposal as follows:

Towards the creation of a European banking union: the report clarifies that the introduction of a single supervisory mechanism (SSM) is the first step towards the creation of a European banking union, underpinned by a true single rulebook for financial services and comprising also harmonisation of the various national deposit insurance systems and a common European resolution framework.

Democratic control: Members consider it vital that the banking union should contain democratic accountability mechanisms. The banking union should be underpinned by proper chacks and balances and accountability mechanisms between political institutions at EU and national level and those bodies exercising supervisory responsibilities at both EU and national level.

Member States not belonging to the euro area: the implementation of the banking union should at all its different stages ensure that due consideration be given to the potential mutual spill-over effects of the banking union in the euro area for non-euro area members. To this aim, appropriate preventive measures should be put in place to avoid possible disruption of the internal market. In particular, the ECB should be required to ensure that it performs its supervisory tasks in a manner that is non-discriminatory and is consistent with the proper functioning of the internal market.

Role and tasks of the European Banking Authority (EBA): the conferral of supervisory tasks to the ECB in the banking sector for part of the Member States of the Union should not in any way hamper the functioning of the internal market in the field of financial services. Members therefore stress the EBA should maintain its role and retain all its existing powers and tasks: it should continue developing and ensuring the **implementation of the single rulebook** applicable to all Member States **and enhance convergence of supervisory practices across the whole Union**.

With a view to improving the operation of the single market, in particular in ensuring efficient regulation and supervision in the union, the EBA should:

- protect public values such as the stability of the financial system, the transparency of markets and financial products, and the protection of depositors and investors;
- prevent regulatory arbitrage and guarantee a level playing field, and strengthen international supervisory coordination, for the benefit of the EU economy, including financial institutions and consumers;
- respect the differences in supervisory culture adopted by competent authorities. In this regard no Member States or group of Member States should be discriminated against, directly or indirectly, as a venue for financial services, whether by reference to their currency or otherwise;
- promote supervisory convergence and providing advice to the Union institutions in the areas of banking, payments, e-money regulation and supervision, and related corporate governance, auditing and financial reporting issues.

Given the establishment of the single supervisory mechanism with a leading role of the ECB, the EBA needs to be equipped with adequate instruments, which will enable it to efficiently perform its entrusted tasks concerning the integrity of the single market in the area of financial services.

European supervisory handbook: in order to prevent the risk that the establishment of a supervisory mechanism which covers only some of the Member States could lead to a fragmentation of supervisory practices within the internal market, it is fundamental that the single rulebook is accompanied by a European supervisory handbook, drawn up by EBA in consultation with national supervisory authorities.

This handbook:

- should identify the practices of the highest quality across the Union as regards supervisory methodologies and processes so that core Basel and Union principles are not undermined;
- should not restrict judgement led supervision and should also include, where appropriate and within the remit of EBA, the areas of consumer protection and efforts against money laundering;
- should set out metrics and methodologies for risk assessment, identification of early warnings and criteria for supervisory action;
- should apply the handbook strictly and should not treat it as a tick-box exercise.

Stress tests: Members insist on the need to ensure that credit institutions fully comply with the information requests of the European Supervisory Authorities with regard to stress testing and other tasks conferred upon it by this Regulation. It is therefore necessary to strengthen the provisions relating to such requests, streamline the processes associated with them and, in the case of obstruction or other non-compliance, it is appropriate that Member States concerned afford such assistance to EBA as is necessary for it to obtain the information requested, including access to business premises of credit institutions or other legal persons holding relevant information, such as those to whom a credit institution may have outsourced functions.

Governance and voting: as the single market and the cohesion of the EU must be secured, Members consider that concerns such as governance and voting arrangements in the EBA should be considered carefully and equal treatment of Member States participating in the SSM and other Member States must be guaranteed.

Guidelines and recommendations: in areas not covered by regulatory or implementing technical standards, the Authority should have the power to issue guidelines and recommendations on the application of Union law. In order to ensure transparency and to strengthen compliance by the ECB's Supervisory Board and European Union national competent authorities with those guidelines and recommendations, it should be possible for the Authority to publish the reasons provided by supervisory authorities for not complying with those guidelines and recommendations.

Breaches of Union law and settlement of disagreements: decisions in these fields should be examined by an independent panel composed of voting members of the Board of Supervisors which do not have any conflicts of interest and appropriately qualified experts, appointed by the Board of Supervisors.

Members stress the importance of maintaining the necessary incentives for closer integration of Member States within a single Union-wide supervisory mechanism, where disagreements occur between home and host competent authorities, a balance should be maintained in the decision-making process to ensure that the ability of host Member States to apply stricter prudential standards is not undermined in particular where the entity in the host Member State is of systemic importance or size.

Management Board: the composition of the Management Board should be balanced and proper representation of Member States participating in the SSM, Member States that have entered into close cooperation and Member States not participating in the SSM should be ensured.

The Management Board shall be composed of the Chairperson and six other members appointed by the European Parliament following a hearing of the candidates designated by the Council from among persons of recognised standing and professional experience in financial matters. The list of candidates shall be gender-balanced and sufficiently diverse with regards to expertise and geographical balance. The head of the Management Board should be different from the respective heads of the European System of Financial Supervision (ESFS).

Conflict between Euro-area monetary policy and Union-wide supervisory policy: where there is a conflict between Euro-area monetary policy and Union-wide supervisory policy, the requirements of Euro-area monetary policy are not imposed on non-Euro area countries where it would be damaging to their monetary policy. Any analysis of such conflict may not be made solely by the ECB, but must be referred inter alia to the ESRB. The monetary policy of the ECB must be conducted independently.

European Banking Authority (EBA): adjustment of procedural modalities

2012/0244(COD) - 27/11/2012

OPINION OF THE EUROPEAN CENTRAL BANK

on a proposal for a Council Regulation conferring specific tasks on the European Central Bank concerning

policies relating to the prudential supervision of credit institutions and a

proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010

establishing a European Supervisory Authority (European Banking Authority)

Since both texts relate to the conferral of specific supervisory tasks on the ECB and the establishment of the single supervisory mechanism (SSM), and despite the distinct legislative procedures applying to these texts, the **ECB has adopted a single opinion on the two proposals**.

The ECB broadly welcomes such proposals, which are in line with the main findings of the report by the President of the European Council and the conclusions of the European Council of 29 June and 18 October 2012. The ECB stands ready to perform the new tasks relating to the prudential supervision of credit institutions provided for in the proposed SSM regulation. The ECB considers that **Article 127(6) of the Treaty constitutes the appropriate legal basis** for rapidly and effectively conferring specific supervisory tasks upon the ECB.

The ECB supports the conclusions of the Interim Report by the President of the European Council on economic and monetary union and an integrated financial framework and is of the opinion that such a **single resolution mechanism** - focused on a European Resolution Authority - is indeed a necessary complement to the SSM to achieve a well-functioning financial market union. Therefore, such a mechanism should be established, or at least there should be clear deadlines for its establishment, when the ECB assumes its supervisory responsibility in full.

From the ECB's perspective, **the proposed SSM regulation should comply with the following main principles**:

- the ECB, within the SSM, should be able to carry out the tasks assigned to it **effectively and rigorously** without any risk to its reputation;
- the ECB is of the view that the proposed SSM regulation should enable the **activation of the macro-prudential instruments** provided by Union law, either at the initiative of the ECB or the national authorities;
- the ECB should remain **independent** in carrying out all its tasks; the ECB considers that the liability of the ECB, the national competent authorities and their respective officials should only be incurred in cases of intentional misconduct or gross negligence;
- there should be a **strict separation** between the ECB's new tasks concerning supervision and its monetary policy tasks assigned by the Treaty to prevent potential conflicts of interest and ensure autonomous decision-making for the performance of these tasks;
- the ECB should be able to have **full recourse to the knowledge, expertise and operational resources** of national supervisory authorities;
- the SSM should operate in a manner fully consistent with the **principles underpinning the single market in financial services** and in full adherence to the single rulebook for financial services. In this regard, the ECB also welcomes the possibility to involve non-euro area Member States in the SSM to ensure greater harmonisation of supervisory practices within the European Union, thus strengthening the internal market;
- the ECB is ready to comply with the highest standards of **accountability** for the supervisory tasks.

The ECB stresses the importance of reaching an agreement on the above proposals **by the end of 2012** to maintain the envisaged timetable, namely the entry into force of the proposed SSM regulation on 1 January 2013, gradual operational implementation in the course of 2013, and full implementation by 1 January 2014.

To ensure that the **proposed SSM regulation can in the future be technically adjusted**, the ECB recommends that the European Council considers having recourse to Article 48 of the Treaty on European Union under which the European Council may either authorise the Council to act by qualified majority for future technical amendments to the proposed SSM regulation, or for such amendments to be adopted under the ordinary legislative procedure.

European Banking Authority (EBA): adjustment of procedural modalities

2012/0244(COD) - 22/05/2013 - Text adopted by Parliament, partial vote at 1st reading/single reading

The European Parliament adopted **amendments** on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards its interaction with Council Regulation (EU) No .../.... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

The matter has been referred back to the committee responsible. The vote has been postponed.

The main amendments adopted in plenary are the following:

Scope: it is stipulated that the European Banking Authority (EBA) shall foster supervisory convergence, provide opinions to the European Parliament, the Council, and the Commission, and undertake economic analyses of the markets to promote the achievement of the Authority's objective. It shall act independently and objectively and in a non discriminatory way in the interests of the Union as a whole. It should be equipped with **adequate instruments** , which should enable it to efficiently perform its entrusted tasks concerning the integrity of the single. It should also be provided with the **appropriate financial and human resources**, in order to adequately fulfil any additional tasks assigned to it under this Regulation. Appointments of the members of EBA internal bodies and committees should ensure a **geographical balance** among Member States

Responsibility of authorities: the Authorities shall be accountable to the European Parliament and the Council. The ECB shall be accountable to the European Parliament and the Council for the exercise of its specific supervisory tasks.

Role of the EBA: Members stress that the EBA should maintain its role and **retain all its existing powers and tasks**: it should continue developing and contributing to the consistent application of the **single rulebook** applicable to all Member States and enhancing convergence of supervisory practices across the whole Union. In order to ensure the safety and soundness of credit institutions, EBA should have full regard to the diversity of credit institutions and their size and business models, as well as the systemic benefits of diversity in the European banking industry. It is fundamental that the

single rulebook is accompanied by a **European supervisory handbook on the supervision of financial institutions**, drawn up by EBA in consultation with competent authorities. The Supervisory Handbook should identify the best practices across the Union as regards supervisory methodologies and processes so that core international and Union principles are adhered to.

Request for information: requests for information by EBA should be duly **justified and reasoned**. Objections as to whether a specific request for information by EBA complies with the requirements set out in this Regulation should be raised in accordance with the relevant procedures. The raising of such an objection should not absolve the addressee of the request from providing the information. The Court of Justice of the European Union should be competent to decide, in accordance with the procedures set out in the Treaty, whether a specific request for information by EBA complies with the requirements set out in this Regulation

The possibility for EBA to request information from financial institutions should relate to **any information to which the financial institution has legal access**, including information held by persons remunerated by the relevant financial institution for carrying out relevant activities, audits provided to the relevant financial institution by external auditors, copies of relevant documents, books and records.

Emergency situations: in order to be able to perform its facilitating and coordinating role in emergency situations, EBA should be fully informed of any relevant developments, and should be invited to **participate as an observer** in any relevant gathering by the relevant competent supervisory authorities. This includes the right to speak or to make any other contributions.

Decisions concerning actions in emergency situations should be adopted by a **simple majority** of the Board of Supervisors, which should include a simple majority of its members from Member States participating in the SSM and a simple majority of its members from Member States that do not participate in the Single Supervisory Mechanism (SSM).

Decisions concerning the acts specified in Articles 10 to 16 of Regulation (EU) No 1093/2010 (Regulatory technical standards and implementation) and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI of that Regulation should be adopted by a **qualified majority** of the Board of Supervisors which should include a simple majority of its members from Member States participating in the SSM and a simple majority of its members from Member States that do not participate in the SSM.

European Banking Authority (EBA): adjustment of procedural modalities

2012/0244(COD) - 12/09/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 556 votes to 54 with 28 abstentions a legislative resolution on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards its interaction with Council Regulation (EU) No .../.... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

Parliament adopted its position in first reading following the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise between Parliament and Council. They amend the proposal as follows:

Objectives of the EBA: the European Banking Authority (EBA or 'the Authority') shall enhance convergence of supervisory practices across the Union as a whole, provide opinions to the European Parliament, the Council and the Commission, and undertake economic analyses of the markets to promote the achievement of the Authority's objective.

It shall act independently, objectively and in a non-discriminatory manner, in the interests of the Union as a whole.

When carrying out the tasks conferred on it, the EBA should have full regard to the diversity of credit institutions and their size and business models, as well as to the systemic benefits of diversity in the European banking industry.

Accountability of the Authorities: the supervisory Authorities shall be accountable to the European Parliament and to the Council. The European Central Bank shall be accountable to the European Parliament and to the Council with regard to the exercise of the supervisory tasks conferred on it.

Tasks and competences of the EBA: the amended text states that the EBA will:

- contribute to the establishment of high-quality **common regulatory and supervisory standards and practices**, in particular by providing opinions to the Union institutions and by developing guidelines, recommendations, draft regulatory and implementing technical standards, and other measures;
- develop and maintain up to date, taking into account, inter alia, changing business practices and business models of financial institutions, **a European supervisory handbook** on the supervision of financial institutions in the Union as a whole, which sets out supervisory best practices for methodologies and processes;
- promote the **coherent functioning of colleges of supervisors**, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans;
- provide a **high level of protection to depositors** and investors throughout the Union
- develop **methods for the resolution of failing financial institutions** and an assessment of the need for appropriate financing instruments, with a view to fostering cooperation between competent authorities involved in the management of crisis concerning cross-border institutions that have the potential to pose a systemic risk.

- **Consumer protection and financial activities**: the Authority shall, a Committee on financial innovation, which brings together all relevant competent supervisory authorities with a view to achieving a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing advice for the Authority to present to the European Parliament, the Council and the Commission.

The Authority may also assess the need to **prohibit or restrict certain types of financial activity** and, where there is such a need, inform the Commission and the competent authorities in order to facilitate the adoption of any such prohibition or restriction.

Emergency action: in exceptional circumstances where coordinated action by competent authorities is necessary, the Authority may adopt individual decisions requiring competent authorities to take the necessary action.

Decisions concerning actions in emergency situations should be adopted by a **simple majority** of the Board of Supervisors, which should include a simple majority of its members from competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States.

Information: at the request of the Authority, the competent authorities shall provide the Authority with all the necessary information to carry out the tasks conferred on it. The information shall be accurate, coherent, complete and timely.

The EBA will be able to **request information from financial institutions** in relation to any information to which those financial institutions have legal access, including information held by persons remunerated by those financial institutions for carrying out relevant activities, audits provided to those financial institutions by external auditors and copies of relevant documents, books and records.

Requests for information by EBA must be duly justified and reasoned.

European Banking Authority (EBA): adjustment of procedural modalities

2012/0244(COD) - 22/10/2013 - Final act

PURPOSE: to guarantee a high level of regulation and prudential supervision in all the Member States and to maintain the stability of the financial system in the context of the creation of a banking union.

LEGISLATIVE ACT: Regulation (EU) No 1022/2013 of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Banking Authority (EBA).

CONTENT: the present regulation amends Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) to ensure a high, effective and consistent level of regulation and prudential supervision throughout the European Union (EU) **in the context of the creation of a banking union**.

In the light of establishing a **Single Supervisory Mechanism (SSM)**, the Regulation (EU) No 1024/2013 confers on the European Central Bank (ECB) specific tasks concerning the prudential supervision of credit institutions which are established in Member States whose currency is the Euro and allows other Member States to establish a close cooperation with the ECB.

Therefore, the **European Banking Authority (EBA) should maintain its role to develop a single rulebook for the banking sector** and to ensure its consistent application and the convergence of supervisory practices.

The main amendments to the regulation establishing the EBA are as follows:

Missions and tasks of the EBA: the regulation stipulates that the authority: i) contribute to the consistent and effective application of European legislation; ii) foster supervisory convergence; iii) provide opinions to the European Parliament, the Council and the Commission; and iv) undertake economic analyses of the markets to promote the achievement of the Authority's objective. The Authority shall act **independently**, objectively and in a **non-discriminatory** manner, in the interests of the Union as a whole.

Specifically, the EBA would be charged:

- to contribute to the establishment of **high-quality common** regulatory and supervisory standards and practice;
- to develop and maintain up to date a **European supervisory handbook** applicable across the Union as a whole, which sets out supervisory best practices for methodologies and processes for financial institutions;
- to promote the **consistent and coherent functioning of colleges of supervisors**, the monitoring, assessment and measurement of systemic risk, as well as the development and coordination of recovery and resolution plans;
- to provide a high level of **protection to depositors and investors** throughout the Union;
- to develop **methods for the resolution of failing** financial institutions and an assessment of the need for appropriate financing instruments.

Responsibility of the authorities: the European supervisory authorities would be responsible to the European Parliament and the Council. The ECB would be accountable to the European Parliament and to the Council with regard to the exercise of its specific supervisory tasks.

Consumer protection and financial activity: the EBA should establish **a Committee on financial innovation** with a view to achieving a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing advice for the Authority to present to the European Parliament, the Council and the Commission

The EBA may also assess the need to prohibit or restrict certain types of financial activity.

Action in emergency situations: in exceptional circumstances where coordinated action by competent authorities is necessary, the EBA may **adopt individual decisions** requiring competent authorities to take the necessary action to address the situation.

Voting arrangements: the regulation establishing the EBA is amended in relation to voting arrangements so as to **ensure that the decision process within the EU single market is fair and effective**. The amendments carried allow the assurance that countries participating in the SSM do not occupy a position of undue influence on the board of the EBA supervisory authorities.

Decisions concerning breaches of Union law and concerning the settlement of disagreements should be examined by an independent panel composed of voting members of the Board of Supervisors which do not have any conflicts of interest, appointed by the Board of Supervisors.

The decisions proposed by the panel to the Board of Supervisors should be adopted by a simple majority of the voting members of the Board of Supervisors, which should include i) a simple majority of its members from competent authorities of Member States participating in the SSM and ii) a simple majority of its members from competent authorities of Member States that are not participating Member States.

Requests for information: the EBA should be able to request information from financial institutions in relation to any information to which those financial institutions have legal access, including: i) information held by persons remunerated by those financial institutions for carrying out relevant activities, ii) audits provided to those financial institutions by external auditors and iii) copies of relevant documents, books and records.

Requests for information by EBA should be duly justified and reasoned. Where an addressee of a request for information raises such objections, this should not absolve him from providing the information requested

ENTRY INTO FORCE: 30/10/2013.

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.