Basic information

2017/0230(COD) COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
European Supervisory Authorities: powers, governance and funding Amending Regulation (EU) No 1093/2010 2009/0142(COD) Amending Regulation (EU) No 1094/2010 2009/0143(COD) Amending Regulation (EU) No 1095/2010 2009/0144(COD) Amending Regulation (EU) No 600/2014 2011/0296(COD) Amending Regulation (EU) No 345/2013 2011/0417(COD) Amending Regulation (EU) No 346/2013 2011/0418(COD) Amending Directive 2015/849 2013/0025(COD) Amending Regulation (EU) 2015/760 2013/0214(COD) Amending Regulation (EU) 2016/1011 2013/0314(COD) Amending Regulation (EU) 2017/1129 2015/0268(COD) **Subject** 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	KARAS Othmar (PPE) BERÈS Pervenche (S&D)	05/10/2017 05/10/2017
	Shadow rapporteur SWINBURNE Kay (ECR) KLINZ Wolf (ALDE) CARTHY Matt (GUE/NGL) GIEGOLD Sven (Verts/ALE) MEUTHEN Jörg (EFDD) KAPPEL Barbara (ENF)	

Committee for opinion	Rapporteur for opinion	Appointed
BUDG Budgets	GEIER Jens (S&D)	09/10/2017
ITRE Industry, Research and Energy	The committee decided not to give an opinion.	
IMCO Internal Market and Consumer Protection	The committee decided not to give an opinion.	

	JURI Legal Affairs	The committee decided not to give an opinion.	

Council of the European Union	Council configuration	Meetings	Date
	Justice and Home Affairs (JHA)	3735	2019-12-02

European Commission	Commission DG	Commissioner
	Economic and Financial Affairs	DOMBROVSKIS Valdis

European Economic and Social Committee

Key events

Date	Event	Reference	Summary
20/09/2017	Legislative proposal published	COM(2017)0536	Summary
16/11/2017	Committee referral announced in Parliament, 1st reading		
10/01/2019	Vote in committee, 1st reading		
10/01/2019	Committee decision to open interinstitutional negotiations with report adopted in committee		
14/01/2019	Committee report tabled for plenary, 1st reading	A8-0013/2019	Summary
15/01/2019	Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 72)		
17/01/2019	Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 72)		
01/04/2019	Approval in committee of the text agreed at 1st reading interinstitutional negotiations	PE637.424 GEDA/A/(2019)003029	
15/04/2019	Debate in Parliament		
16/04/2019	Decision by Parliament, 1st reading	T8-0374/2019	Summary
16/04/2019	Results of vote in Parliament		
02/12/2019	Act adopted by Council after Parliament's 1st reading		
18/12/2019	Final act signed		
18/12/2019	End of procedure in Parliament		
27/12/2019	Final act published in Official Journal		

Technical information

Procedure reference	2017/0230(COD)

Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Amendments and repeals	Amending Regulation (EU) No 1093/2010 2009/0142(COD) Amending Regulation (EU) No 1094/2010 2009/0143(COD) Amending Regulation (EU) No 1095/2010 2009/0144(COD) Amending Regulation (EU) No 600/2014 2011/0296(COD) Amending Regulation (EU) No 345/2013 2011/0417(COD) Amending Regulation (EU) No 346/2013 2011/0418(COD) Amending Directive 2015/849 2013/0025(COD) Amending Regulation (EU) 2015/760 2013/0214(COD) Amending Regulation (EU) 2016/1011 2013/0314(COD) Amending Regulation (EU) 2017/1129 2015/0268(COD)
Legal basis	Treaty on the Functioning of the European Union TFEU 114
Other legal basis	Rules of Procedure EP 165
Mandatory consultation of other institutions	European Economic and Social Committee
Stage reached in procedure	Procedure completed
Committee dossier	ECON/8/11084

Documentation gateway

European Parliament

Document type	Committee	Reference	Date	Summary
Committee draft report		PE625.358	10/07/2018	
Committee opinion	BUDG	PE622.198	16/07/2018	
Amendments tabled in committee		PE627.677	11/09/2018	
Amendments tabled in committee		PE627.678	18/09/2018	
Amendments tabled in committee		PE627.679	18/09/2018	
Amendments tabled in committee		PE627.680	21/09/2018	
Amendments tabled in committee		PE627.681	21/09/2018	
Amendments tabled in committee		PE629.533	31/10/2018	
Committee report tabled for plenary, 1st reading/single reading		A8-0013/2019	14/01/2019	Summary
Text agreed during interinstitutional negotiations		PE637.424	01/04/2019	
Text adopted by Parliament, 1st reading/single reading		T8-0374/2019	16/04/2019	Summary

Council of the EU

Document type	Reference	Date	Summary
Coreper letter confirming interinstitutional agreement	GEDA/A/(2019)003029	01/04/2019	
Draft final act	00075/2019/LEX	18/12/2019	

European Commission

Document type	Reference	Date	Summary

Legislative proposal	COM(2017)0536	20/09/2017	Summary
Document attached to the procedure	SWD(2017)0308	20/09/2017	
Document attached to the procedure	SWD(2017)0309	20/09/2017	
Supplementary legislative basic document	COM(2018)0646	12/09/2018	Summary
Commission response to text adopted in plenary	SP(2019)440	08/08/2019	

National parliaments

Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	ES_PARLIAMENT	COM(2017)0536	19/12/2017	
Contribution	PT_PARLIAMENT	COM(2017)0536	10/01/2018	
Contribution	DE_BUNDESRAT	COM(2017)0536	06/02/2018	
Contribution	FR_SENATE	COM(2017)0536	08/02/2018	
Contribution	RO_SENATE	COM(2017)0536	15/02/2018	
Reasoned opinion	SE_PARLIAMENT	PE615.521	23/02/2018	
Contribution	ES_CONGRESS	COM(2018)0646	27/11/2018	

Other institutions and bodies

Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES5295/2017	15/02/2018	
ECB	European Central Bank: opinion, guideline, report	CON/2018/0019 OJ C 255 20.07.2018, p. 0002	11/04/2018	Summary
ECB	European Central Bank: opinion, guideline, report	CON/2018/0026 OJ C 251 18.07.2018, p. 0002	11/05/2018	Summary
ECB	European Central Bank: opinion, guideline, report	CON/2018/0055 OJ C 037 30.01.2019, p. 0001	07/12/2018	Summary
EESC	Economic and Social Committee: opinion, report	CES4922/2018	12/12/2018	

Additional information

Source	Document	Date
European Commission	EUR-Lex	

Final act

Corrigendum to final act 32019R2175R(03)
OJ C 131 05.05.2022, p. 0009

Regulation 2019/2175
OJ L 334 27.12.2019, p. 0001 Summary

European Supervisory Authorities: powers, governance and funding

2017/0230(COD) - 14/01/2019 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Othmar KARAS (EPP, AT) and Pervenche BERES (S&D, FR) 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); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 345/2013 on European venture capital funds; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2015/760 on European long-term investment funds; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market; and (EU) Directive 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing.

As a reminder, the proposal aims to strengthen the mandates, governance and financing of the European Supervisory Authorities (ESAs) by giving them greater responsibility for ensuring the convergence of financial market supervision.

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

Combating money laundering and terrorist financing

In view of the consequences for financial stability of the misuse of the financial sector for money laundering or terrorist financing, the European Banking Authority (EBA) would have, in addition to its current powers, the authority to prevent the use of the financial system for money laundering and terrorist financing purposes.

The measures it adopts should not go beyond what is necessary to achieve the objectives of the regulation and should take into account the nature, scale and complexity of risks, economic practices, business models and the size of financial sector operators and markets.

In particular, the EBA should:

- collect and analyse information from the competent national authorities on weaknesses identified in their efforts to prevent or combat money laundering and terrorist financing. The EBA would have the power to carry out analysis of the information collected and, if necessary, pursue investigations on allegations brought to its attention concerning breaches of EU law. In the event it has evidence or significant indications of material breaches, it could request the competent authorities to investigate possible breaches of the rules and to consider taking decisions and imposing sanctions on financial institutions to oblige them to comply with their legal obligations;

- provide assistance to competent authorities in response to their requests, and share information with competent authorities, including the European Central Bank, as well as with financial intelligence units (FIUs);

- develop common guidance and standards for preventing and combating money laundering and terrorist financing in the financial sector and promoting their consistent implementation;

- monitor market developments and assess vulnerabilities and risks to money laundering, terrorist financing and, where applicable, tax good governance in the financial sector;

- carry out reviews of the competent authorities, as well as risk assessment exercises relating to money laundering and terrorist financing. The EBA should initiate proceedings to correct these weaknesses and propose new regulatory technical standards, if necessary;

- facilitate cooperation with third countries in cross-border cases.

Specific organ within the EBA

The EBA’s Joint Committee should serve as a forum in which the EBA should cooperate regularly and closely to ensure cross-sectoral consistency, while taking full account of sectoral specificities, with the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), in particular, where required by Union law, regarding: (i) financial conglomerates and cross-border consolidation; (ii) accounting and auditing; (iii) cybersecurity; (iv) retail financial services and consumer protection issues.

Reporting channels

The EBA should have in place dedicated reporting channels for receiving and handlinginformation provided by a reporting person on actual or potential breaches of Union acts or abuse of law or cases of maladministration.The EBA should ensure that information may be submitted anonymously and safely. Where it deems that the submitted information contains evidence or significant indications of material breaches, EBA should provide feedback to the reporting person.

Headquarters

The EBA would have its headquarters in Paris, France.

The location of the EBA's seat should not affect the execution of its tasks and powers, the organisation of its governance structure, the operation of its main organisation, or the main financing of its activities, while allowing, where applicable, for the sharing with EU agencies of administrative support services and facility management services which are not related to the core activities.

No later than the date of application of this amending Regulation and every 12 months thereafter, the Commission should report to the European Parliament and the Council on the compliance of the European Supervisory Authorities with that requirement.

Accountability of the European System of Financial Supervision

At the request of the European Parliament, the President of the Authority should participate in a hearing before the European Parliament on the Authority's performance. A hearing would be held at least once a year. The President should make a statement to the European Parliament and answer all questions put by its members when invited.

European Supervisory Authorities: powers, governance and funding

2017/0230(COD) - 12/09/2018 - Supplementary legislative basic document

The purpose of this proposal for a Regulation is to **amend the proposal for a revision of the Regulations establishing the European Supervisory Authorities** as presented by the Commission in September 2017 in order to decisively strengthen the **role of the European Banking Authority (EBA) in protecting the financial system from money laundering and terrorist financing risks**. Despite the strengthening of legislation in this area, several recent money laundering cases in European banks have shown that there is a need to further improve the EU's supervisory framework.

The proposal specifically amends the revised proposal currently under consideration. It amends the three regulations establishing the European Supervisory Authorities and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing.

The proposed amendments:

- **extend the scope of action of the European Banking Authority** in a targeted way, to incorporate into the European Banking Authority's mandate matters related to combating money-laundering and terrorist financing across the financial sector;
- **strengthen the tools at the disposal of the EBA** to promote coherent, systematic and effective action in the area of preventing and combating money-laundering and terrorist financing in the Union's financial system.

In concrete terms, it is proposed to entrust the EBA:

- **with a leading and coordination role** to centralise the resources currently scattered among the three European Supervisory Authorities and give it a stronger support structure;
- **with a more explicit and comprehensive mandate** to ensure that the risks of money laundering and terrorist financing in the Union's financial system are effectively and consistently taken into account by all competent authorities in their supervisory strategies and practices.

To carry out its tasks and exercise its powers, the EBA shall:

- **collect all relevant information** relating to money laundering and terrorist financing activities detected by the Union authorities and the national authorities concerned, store such information in a centralised database and encourage cooperation between authorities by ensuring the dissemination of relevant information;
- collect all relevant information in relation to money laundering and terrorist financing activities identified by the relevant Union and national authorities and store such information in a centralised database and foster cooperation among authorities by ensuring appropriate dissemination of relevant information;
- carry out reviews of competent authorities, as well as **risk assessment** exercises relating to money laundering and terrorist financing;
- cooperate and liaise with relevant **third country authorities** on these matters with a view to better coordinate action at Union level in material cases of anti-money laundering and terrorist financing having a cross-border and third country dimension;
- have the power, in the event of indications of significant breaches, to request the competent authorities to investigate possible breaches of the relevant rules and to consider taking decisions and imposing sanctions on financial institutions to oblige them to comply with their legal obligations;
- be able to **address decisions directly to individual financial sector operators** with regard to money-laundering matters and engage in **binding mediation** between national competent authorities on such matters.

The amended proposal specifies that the Joint Committee of the three supervisory authorities shall serve as a **forum for cooperation** between the three authorities on issues relating to the interaction between prudential and anti-money laundering aspects.

European Supervisory Authorities: powers, governance and funding

2017/0230(COD) - 11/05/2018 - European Central Bank: opinion, guideline, report

OPINION OF THE EUROPEAN CENTRAL BANK on a **proposal for a regulation** of the European Parliament and of the Council amending Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority) and related legal acts; and on a proposal for a directive of the European Parliament and of the Council amending Directive 2014/65/EU on markets in financial instruments and Directive 2009/138/EC on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II).

The proposed regulation and directive form part of a comprehensive package of proposals to reform the European System of Financial Supervision, consisting of the three European Supervisory Authorities (ESAs) and the European Systemic Risk Board (ESRB).

The ECB restricted its comments to those parts of the Commission's proposal which are relevant for the implementation of monetary policy, the promotion of the smooth operation of payment systems, and for the specific tasks conferred on the ECB concerning the prudential supervision of credit institutions.

The ECB recalled that **safe and efficient financial market infrastructures**, in particular clearing systems for financial instruments, are essential for the fulfilment of the basic tasks of the European System of Central Banks (ESCB) and the pursuit of its primary objective of maintaining price stability. Consideration may also be given to the role of the ECB as supervisor of credit institutions.

The **ECB generally supported the proposed regulation's objective** of contributing to the further development and deepening of the Capital Markets Union (CMU). To attain the long-term goal of deepening and integrating EU capital markets, the ECB considered that single supervision of, at least, specific market segments needs to be envisaged. This is particularly important for pan-European entities and activities in order to ensure consistency and equal enforcement across the EU, thus ensuring no leakages by moving activities across borders. Single supervision could also be warranted for data reporting service providers as well as administrators of critical benchmarks under a fully-fledged CMU.

The ECB made specific observations on the role of the central bank of issue with regard to central counterparties (CCPs). It supported the need to **revise the European Securities and Markets Authority's structure (ESMA).** It also considered it vital to **include one representative of the ECB**, under the monetary policy mandate, as a permanent non-voting member of the Board of Supervisors. This would ensure effective cooperation, coordination and exchange of information between supervisory authorities and the ECB as central bank of issue responsible for the euro, which is of key importance considering the proposed enhancements to the role of the central bank of issue under the EMIR II proposal.

The ECB welcomed the proposed amendments set out in the EMIR II proposal, which clarify the tasks conferred on the CCP Executive Session, of which the relevant central bank of issue is a permanent, non-voting member.

Given the ECB's representation in the CCP Executive Session as the central bank of issue, the ECB considered that this clarification will enable the ESCB members to have meaningful and effective involvement in decision-making and information-sharing on matters of direct relevance to the fulfilment of the ESCB's basic tasks, and the achievement of its primary objective of maintaining price stability.

European Supervisory Authorities: powers, governance and funding

2017/0230(COD) - 11/04/2018 - European Central Bank: opinion, guideline, report

OPINION OF THE EUROPEAN CENTRAL BANK on 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) and related legal acts.

The proposed regulation forms part of a comprehensive package of proposals to reform the European System of Financial Supervision (ESFS) introduced in September 2017, consisting of the three European Supervisory Authorities (ESAs) and the European Systemic Risk Board (ESRB).

The ECB **welcomes the proposed regulation's objective** and supports further integration of the supervisory framework at Union level for the banking sector and strengthening the Union dimension of supervision by re-examining the ESAs' current set-up.

With regard to aligning the governance framework of the European Banking Authority (EBA) with the outlined objectives and developments, the ECB would like to highlight that the Banking Union and the Capital Markets Union (CMU) projects are at different stages of progress. The review of the ESAs should thus not necessarily produce three identical outcomes for the three agencies, but rather address their respective **mandates and functions**.

Specifically with regard to the new supervisory functions in the proposed regulation, the ECB is of the view that certain proposed amendments **do not adequately distinguish between the scope of the ECB's microprudential supervisory tasks and the EBA's competence** to set regulatory standards to promote supervisory convergence. The ECB considers it vital that synergies arising from the ECB's and the EBA's mandates are maximised. In order to accomplish this objective, duplication or inappropriate allocation of tasks, which could blur the responsibilities of the respective authority and thereby render the system less effective as a whole, should be avoided.

The ECB's main recommendations address the following issues:

New EBA governance framework: the proposed regulation seeks to establish an Executive Board as a new body within the EBA's governance structure.

While supporting the review of the governance structure of the ESAs, the ECB recommends that the **Board of Supervisors** should remain the decision-making body in relation to tasks aimed at fostering supervisory convergence in the Union, rather than granting broad supervisory powers to a newly set-up body. The ECB does not support conferring a general right of initiative for regulatory acts on the Executive Board. Moreover, the Council and the Parliament should consider **granting the ECB observer status** on the proposed Executive Board.

Strategic supervisory plans: the ECB does not consider it **appropriate** to confer strategic planning powers on the EBA. Identifying micro-prudential trends, potential risks and vulnerabilities for financial institutions, and defining respective strategic supervisory priorities, are core supervisory tasks that should be **carried out by the competent micro-prudential supervisory authority, and not the EBA** in its function as a standard-setting regulator.

The EBA must not decide on any strategic supervisory planning for which the ECB might ultimately be held accountable.

From a practical perspective, the ECB considers that the proposed regulation poses the risk of significantly impeding the SSM's strategic and operational planning processes as well as its required risk identification process.

Stress testing: the proposed regulation transfers the decision-making powers of the Board of Supervisors with respect to the initiation and coordination of Union-wide stress tests to the Executive Board. The ECB considers stress tests to be a **key supervisory tool**, which needs to be employed by those authorities that have supervisory responsibilities, in order to ensure that stress tests fulfil their purpose of supporting individual risk assessments of supervised credit institutions. Therefore, the ECB would remark specifically on why the envisaged changes could undermine the effectiveness of supervision, and thus run counter to the Commission's objective of strengthening the stability of the internal market. The ECB is concerned that the proposed regulation, in its current form, does not adequately ensure the quality and comprehensiveness of stress tests for supervisory purposes.

Coordination on delegation and outsourcing of activities as well as risk transfers to third countries: from a supervisory perspective, the requirement to notify the EBA in respect of such arrangements may not adequately cater for the proposed regulation's objective of deterring regulatory arbitrage across Member States. It may instead overlap with micro-prudential supervisory tasks carried out by the ECB in the context of the SSM, and could add an unwarranted layer of administrative burden in the supervisory process.

International cooperation: the ECB welcomes the EBA's role to assist the Commission in preparing and monitoring equivalence decisions. However, the ECB would like to make a few remarks regarding the envisaged procedure for negotiating and concluding administrative agreements between CAs and the respective third-country supervisory authority. The ECB considers that if the EBA takes an active role in the negotiation process, this would add unnecessary complexity to the negotiation process, and might delay the conclusion of Memoranda of Understanding (MoUs) for supervisory cooperation.

Changes to fining powers and requests for information: the ECB generally supports the stated objective of ensuring that the EBA has the right to collect information that is necessary to enable it to carry out its duties and tasks. However, the ECB considers that the proposed strengthening of the EBA's right to collect information, by empowering it to impose fines and periodic penalty payments, should be without prejudice to the possibility that CAs exercise powers available to them in response to a failure by respective financial institutions to comply with CAs' requests for information in an accurate, complete, or timely manner.

Supervisory reporting and Pillar 3 disclosure requirements: looking ahead, the co-legislators may consider formalising and expanding the EBA's role with respect to the transparency of financial institutions, while avoiding the duplication of their reporting obligations. In particular, the EBA could be tasked with integrating supervisory reporting and quantitative Pillar 3 disclosure requirements for financial institutions, as set out under Union law, into a single reporting framework, in which the data disclosed under Pillar 3 would form a sub-set of the data subject to supervisory reporting. Moreover, establishing a framework for a **central data repository at the EBA** could significantly improve the quality of supervisory data.

European Supervisory Authorities: powers, governance and funding

2017/0230(COD) - 07/12/2018 - European Central Bank: opinion, guideline, report

Opinion of the European Central Bank on an amended 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) and related legal acts.

The ECB fully supports the amended proposal which seeks to reinforce the mandate of the European Banking Authority (EBA) in the prevention of the use of the financial system for the purpose of money laundering (ML) and terrorism financing (TF), in order to strengthen confidence in the Banking and Capital Market Unions.

In particular, the risk of the use of the financial system for ML or TF is relevant for ECB prudential supervisory decisions concerning acquisitions of qualifying holdings in supervised entities (including regarding the process of granting authorisations to credit institutions) and fit and proper assessments of existing or prospective managers of supervised entities, as well as for day-to-day supervision in the context of the supervisory review and evaluation process.

It is therefore of utmost importance that the ECB, as well as other prudential supervisors, receive from AML/CFT supervisors timely and reliable information about ML/TF risks and breaches of AML/CFT requirements by supervised entities.

Since the ECB has already given its opinion on the original legislative proposal, it will focus only on the new elements contained in the amended proposal.

Information to be collected by the EBA

The ECB notes that the precise information that needs to be reported to the EBA is not clear and that the amended proposal does not contain any qualification of the weaknesses that should be reported. It suggests that the regulation should clarify that this new reporting requirement captures any material weaknesses that increase the risk that the financial system could be used for ML or TF and calls on the EBA to develop guidance for competent authorities as to what constitutes such material weaknesses.

Further, the regulation should specify any additional elements or processes that might be necessary for the efficient functioning of the information exchange procedure.

The ECB also suggests extending the information collected by the EBA to include such as procedures in granting authorisations or assessments of acquisitions of qualifying holdings in financial market operators.

In addition, the amended proposal should:

- further clarify that reporting to the EBA and the subsequent dissemination of information by the EBA does not replace the direct exchange of information among competent authorities;
- stipulate that only the competent authority that originally collected the information or produced the document should report to the EBA;
- ensure that where the EBA participates in colleges of supervisors and receives information about a relevant material weakness through those colleges, competent authorities should not be required to report it again to the EBA;
- specify what the EBA should coordinate with the Financial Intelligence Units with regard to the information to be provided to it, and clarify whether and how this coordination is related to information collection.

Promoting convergence of supervisory processes and risk assessments on competent authorities

The ECB understands that these supervisory processes only concern AML/CFT supervisors and not prudential supervisors. This fact should be explicitly clarified in the amended proposal.

The ECB suggests rephrasing the amended proposal to more clearly distinguish the risk assessments (which refer only to the 'most important emerging risks') from the periodic reviews (which appear to cover ML/TF risks in general). At the same time; the notion of 'the most important emerging risks' should be further clarified.

Facilitating cooperation with relevant authorities in third countries

The ECB welcomes any support from the EBA that helps competent authorities interact more efficiently with relevant authorities in third countries. The ECB believes, however, that the EBA's coordination should not replace any direct contacts that competent authorities may need to have with relevant authorities in third countries.

The concept of 'material breaches' should be further specified, so that it is clear in which situations the requirement for EBA support would be triggered. To this end, the ECB recommends specifying the criteria that the EBA or national competent authorities should follow in identifying such cases.

The ECB therefore suggests that the EBA should issue guidelines specifying all the necessary elements and processes necessary for the efficient functioning of this procedure.

European Supervisory Authorities: powers, governance and funding

2017/0230(COD) - 20/09/2017 - Legislative proposal

PURPOSE: to upgrade the European Supervisory Agencies (ESAs) framework to ensure they can assume an enhanced responsibility for financial market supervision.

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

ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: as a reminder, the three ESAs established following the financial crisis are the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA). They contribute to developing a unified set of rules for EU financial markets (the Single Rulebook). They also help to foster supervisory convergence among competent authorities and to enhance consumer and investor protection.

EU action is needed to **address identified problems in the area of powers** available to the ESAs, their governance framework and their funding framework.

IMPACT ASSESSMENT: the scope of the impact assessment covered the areas of: (i) powers; (ii) governance; and (iii) funding of the ESAs, to meet the identified shortcomings and new challenges, such as regulatory and supervisory convergence.

Following this analysis,

- the preferred option as regards **governance** includes **independent members with voting powers alongside the national competent authorities** in the decision-making process; introduces a new appointment process and role for the Chairperson and replaces the Management Board by an independent Executive Board composed of full time members that are externally appointed.
- the preferred option as regards **powers** clarifies some powers, such as giving a **formal role to the ESAs** in the ongoing monitoring of the equivalence process, improving the ability for the ESAs to ensure the correct application of Union law, and transfers supervisory powers to the ESAs in targeted areas with predominantly third country or cross-border relevance;
- the preferred option as regards **funding** keeps the current annual EU contribution to ESAs' budget, but replaces the residual funding with private sector funding.

The preferred options identified were those that best ensured that the ESAs would be able to cope with the growing workload and anticipate the changes to the supervisory framework coming from sectoral legislation. In addition, the preferred options were mostly focusing on targeted changes to the current regime, rather than a complete overhaul. This was in line with the conclusion in the evaluation that **the ESAs' framework has been working relatively well** in relation to the significant challenges that they had to face and the available means to meet their mandates.

CONTENT: the objective of the present proposal is to **adjust and upgrade the ESAs framework** to ensure they can assume an enhanced responsibility for financial market supervision. The ESAs must be adequately equipped in terms of powers, governance and funding.

The proposal addresses these issues as follows:

1) Powers: while harmonised regulation through the Single Rulebook is important for the Single Market, it is not sufficient. Having a coherent approach to the interpretation and application of EU legislation is equally important in order to improve the functioning of the single market and reduce risks of supervisory arbitrage and competition. For this purpose, the ESAs need to be equipped to promote the proper application of EU law and effective common supervisory standards across the EU via supervisory convergence measures and direct supervision in certain areas. This is particularly the case for ESMA within the context of the CMU. This proposal seeks to **grant new powers** to enhance market integration (for ESMA) and strengthen or clarify existing powers set out in the ESA Regulations. Similarly, the ESAs should be more involved in the authorisation and supervision of entities from non-EU countries that are active in the Union.

2) Governance: this proposal envisages a more effective governance structure for the ESAs by introducing an independent Executive Board with full-time members, replacing the current Management Board and to adjust the composition of the Board of Supervisor. This proposal clarifies the respective competences of these two boards. In addition, the **standing and powers of the Chairperson will be enhanced**.

The newly proposed **Executive Board's** main function will be to prepare decisions to be taken by the Board of Supervisors. This should ensure that the decision making within the Board of Supervisors is quicker and more streamlined.

The Executive Board will consist of the Chairperson and a number of full-time members. The number will differ between ESMA on the one hand and EBA and EIOPA on the other hand as the proposal is entrusting ESMA with a significant number of additional tasks in different areas compared to the other two ESAs.

The Executive Board will retain the role of the Management Board in relation to the preparation of the ESAs work programmes and budget. It shall be attributed decision making powers in a number of areas. For example, dispute settlements, breach of Union law matters and independent reviews.

The amendments also replace the reference to the Management Board with the Executive Board.

3) New funding system: the proposal revises the current funding system. Currently there is a fixed distribution of funding between national authorities (60%) and the EU budget (40%). This rigid funding structure has been deemed insufficient and has often meant in practice that the ESAs have not been able to find the resources needed to cope with increased workloads and have had to abstain from doing certain other tasks.

This proposal shall change the funding structure of the ESAs. It is proposed that the ESAs budget shall now rely on three different sources of financing:

- **annual contributions paid by financial institutions** that are indirectly supervised by the ESAs. The proposal also provides for a delegated act that will establish how the total amount of annual contributions are shared among the different categories of financial institutions, based on the activity required by each category of them. It shall also establish *de minimis* thresholds under which small financial institutions do not pay financial contributions or it will set minimum contributions;
- **supervisory fees paid by entities** that are directly supervised by the ESAs;
- a **balancing contribution from the EU** that would not exceed 40% of the overall revenues of each agency. The amount of this balancing contribution will be set in advance in the Multiannual Financial Framework (MFF).

During the transitional period (i.e., until the adoption of the delegated act determining some parameters of the annual contributions), the current funding structure relying on contributions from the EU (40%) and from the national competent authorities (60%) shall be maintained. This shall have an impact on the EU budget as well as on the budget of the various national competent authorities.

BUDGETARY IMPLICATIONS: the proposed changes to the governance structure, the indirect supervisory powers, the funding system and the direct supervisory powers of the ESAs shall require new resources. EBA, EIOPA and ESMA will respectively require 29, 35 and 156 additional full-time employees when the different provisions of the proposal will enter into application. The ESAs will also incur additional IT costs (estimated at EUR 10.2 million for the period 2019-2020) and translation costs (estimated at EUR 1.8 million for the period 2019-2020). The total appropriations for the period 2019-2012 is estimated at EUR 64.166 million.

European Supervisory Authorities: powers, governance and funding

2017/0230(COD) - 16/04/2019 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 521 votes to 70, with 65 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); Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority); Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority); Regulation (EU) No 345/2013 on European venture capital funds; Regulation (EU) No 346/2013 on European social entrepreneurship funds; Regulation (EU) No 600/2014 on markets in financial instruments; Regulation (EU) 2015/760 on European long-term investment funds; Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds; Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market; and (EU) Directive 2015/849 on the prevention of the use of the financial system for the purposes of money-laundering or terrorist financing.

As a reminder, the proposal aims to strengthen the mandates, governance and financing of the European Supervisory Authorities (ESAs) by giving them greater responsibility for ensuring the convergence of financial market supervision.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amended the Commission's proposal as follows:

Strengthening the powers of the ESAs

Combating money laundering and terrorist financing

The amended text strengthens the role of the European Banking Authority (EBA) with regard to the risks posed to the financial sector by money laundering and terrorist financing activities. To this end, the EBA shall:

- collect information from the competent national authorities. The competent authorities shall be required to provide all information to the Authority;

- develop common regulatory and supervisory standards, including by developing draft technical regulatory standards, draft technical implementing standards, guidance, recommendations and opinions, with a view to preventing and combating money laundering and terrorist financing in the financial sector. The measures adopted by the EBA shall take due account of the nature, scale and complexity of risks inherent in the business of an institution, undertaking, other subject or financial activity, that is affected by the Authority's action;

- conduct peer reviews of competent authorities and risk assessment exercises on the appropriateness of competent authorities' strategies and resources in the light of the most significant emerging risks related to money laundering and terrorist financing;

- assess the strategies, capacities and resources of the competent authorities to deal with emerging risks related to money laundering and terrorist financing;

- play a leading role in helping to facilitate cooperation between the competent authorities of the Union and the authorities concerned in third countries on these issues, with a view to better coordinating measures taken at Union level in important cases with a cross-border dimension.

Protection of consumers and financial activities

EBA shall take a leading role in promoting transparency, simplicity and equity in the market for financial products or services throughout the internal market, including:

- collecting, analysing and reporting consumption trends, such as changes in the costs and charges of retail financial products and services in the Member States;

- by developing risk indicators for the timely identification of potential causes of consumer harm;

- foster further developments in terms of regulation and supervision which could ease a deeper harmonization and integration at the EU level.

ESMA and EBA shall also be empowered to coordinate 'mystery shopping' by the competent authorities, if applicable.

In addition, ESMA shall be granted direct supervisory powers over administrators of critical benchmarks, as well as data communication service providers.

When launching and coordinating Union-wide assessments of the resilience of financial institutions to adverse market developments, ESAs shall take into account the risks that environmental, social and governance factors pose to the financial stability of these institutions.

Coordination groups

In order to improve the current supervisory convergence system, the amended text introduces a new tool, namely coordination groups. Such coordination groups should promote convergence in relation to the supervisory practices undertaken by competent authorities, in particular through the exchange of information and experiences. The participation of all competent authorities in these coordination groups should be mandatory and competent authorities should provide the coordination groups with the necessary information. Coordination groups should be considered to be set up wherever the competent authorities identify a need to coordinate in view of specific market developments.

Reporting channels

The EBA shall have reporting mechanisms in place for the receiving and handling of information provided by a natural or legal person reporting on actual or potential breaches, abuse of law, or non-application of Union law. It shall ensure that information can be transmitted anonymously and

securely. Where the Authority considers that the information communicated contains significant evidence or indications of significant infringements, it shall provide feedback to the informant.

Responsibility of the European System of Financial Supervision

At the request of the European Parliament, the Chairperson shall participate in a hearing before the European Parliament on the performance of the Authority. A hearing shall take place at least annually. The Chairperson shall make a statement before the European Parliament and answer any questions put by its members, whenever so requested.

European Supervisory Authorities: powers, governance and funding

2017/0230(COD) - 27/12/2019 - Final act

PURPOSE: to review the tasks, powers, governance and funding of the three European Supervisory Authorities (ESAs) to strengthen and improve the supervision of EU financial markets.

LEGISLATIVE ACT: Regulation (EU) 2019/2175 of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 establishing a European Banking Authority, Regulation (EU) No 1094/2010 establishing a European Insurance and Occupational Pensions Authority and Regulation (EU) No 1095/2010 establishing a European Securities and Markets Authority, Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and contracts or to measure the performance of investment funds and Regulation (EU) 2015/847 on information accompanying transfers of funds.

CONTENT: the Regulation strengthens the mandates, governance and funding of the three European Supervisory Authorities (ESAs) - the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA) - by giving them greater responsibility for ensuring convergence of financial market supervision.

Combating money laundering and terrorist financing

The Regulation strengthens the role and powers of the EBA with regard to supervision for the purpose of combating money laundering. In particular, the EBA is entrusted with the task of collecting information from the competent national authorities, improving the quality of supervision by developing common standards, carrying out risk assessments and facilitating cooperation with non-EU countries in cross-border cases.

Supervisory convergence system

The Regulation improves the current system in order to increase the efficiency, consistency and transparency of the process. It builds on existing tools, such as peer reviews, guidelines and question-and-answer systems, while introducing new ones, such as the establishment of coordination groups at EU level to be considered whenever competent authorities see the need for coordination in the light of specific market developments.

Protection of consumers and financial activities

The powers of each of the three ESAs are strengthened.

The EBA shall take a leading role in promoting transparency, simplicity and fairness in the market for financial products or services throughout the internal market, in particular by: (i) analysing consumer trends, such as the evolution of costs and charges of retail financial products and services in the Member States; (ii) developing retail risk indicators for customers.

The ESAs shall be empowered to coordinate so-called 'mystery shopping' by competent authorities, where appropriate.

In addition, ESMA shall be granted direct supervisory powers over the administrators of critical benchmarks, as well as over providers of data communication services.

ESAs shall also play an important role in identifying and signalling risks to financial stability arising from environmental, social and governance factors and in improving the compatibility of financial market activity with sustainability objectives.

Governance of the ESAs

The Regulation provides for decisions to be taken by the Board of Supervisors and gives the competent national authorities a key role in the governance structure of the ESAs. It also reinforces the role and powers of the chairperson, who should be selected on the basis of merit and skills, respecting the principle of gender balance.

Reporting channels

ESAs shall have specific reporting channels for receiving and handling information provided by a natural or legal person reporting on actual or potential breaches, abuse of law, or non-application of Union law. ESAs shall ensure that information be provided anonymously, or confidentially and securely, and provide feedback.

Responsibility of the European System of Financial Supervisors

At the request of the European Parliament, the Chairperson of the Authority shall attend a hearing before the European Parliament on the performance of the Authority. A hearing will take place at least once a year. The Chairperson shall make a statement before the European Parliament and answer any questions put by its members, whenever so requested.

ENTRY INTO FORCE: 30.12.2019. Some provisions are applicable from 1.1.2020 and others from 1.1.2022.