



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 6 September 2010**

**13179/10**

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**Interinstitutional Files:  
2009/0140 (COD)  
2009/0142 (COD)**

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**EF 92  
ECOFIN 499  
SURE 39  
CODEC 772**

**REPORT**

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from : Presidency  
to : Council

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No. Cion prop.: 13652/09 EF 119 ECOFIN 580 SURE 26 CODEC 1120;  
13648/09 EF 118 ECOFIN 579 SURE 25 CODEC 1118;

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Subject : Financial Supervision Reform

- Proposal for a regulation of the European Parliament and the Council on European Union macro prudential oversight of the financial system and establishing a European Systemic Risk Board
- Proposal for a regulation of the European Parliament and the Council establishing a European Banking Authority;

= *agreement*

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**I. INTRODUCTION**

1. In Autumn of 2009, the Commission presented its proposals for Financial Supervision Reform in the EU. The proposals aim at establishing a new supervisory architecture consisting of:
  - (i) a **European Systemic Risk Board (ESRB)** that would be responsible for macro-prudential oversight of the financial system within the European Union. The ECB would be entrusted with the secretariat of the ESRB according to a Proposal for a Council Regulation which is not under co-decision;

- (ii) a European System of Financial Supervisors (**ESFS**), consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities (**ESAs**), created by the transformation of existing European supervisory committees<sup>1</sup> into a European Banking Authority (**EBA**), a European Securities and Markets Authority (**ESMA**), a European Insurance and Occupational Pensions Authority (**EIOPA**) and their **Joint Committee** that should coordinate the functions of the three ESAs in relation to financial conglomerates and other cross-sectoral matters;
  - iii) amendments to a number of existing Directives with the aim of attributing concrete powers and competences to the new Authorities, the so-called "**Omnibus Directive**".
2. General approach was reached in Council on the ESRB on 20 October 2009, on the Supervisory Authorities on 2 December 2009 and on the Omnibus Directive on 14 April 2010. The European Central Bank gave its opinion on 8 January 2010 and the European Economic and Social Committee on 22 January 2010, on the proposals setting up the new supervisory structure. The European Parliament has not yet rendered its opinion since the aim of both the Parliament and of the Council is an agreement in first reading.
  3. The three proposed Regulations on ESAS, the Regulation establishing the ESRB as well as the "Omnibus" Directive attributing powers to the ESAS, will be adopted in the codecision procedure with the European Parliament. The Regulation entrusting the ECB with specific tasks will be adopted by the Council having consulted the European Parliament. It has from the outset been the intention of the involved institutions to seek agreement in first reading on the files subject to co-decision.
  4. Intensive negotiations with the European Parliament has since then been carried out. To grant new impetus to these negotiations the Council (ECOFIN) on 13 July agreed a reinforced negotiating mandate to the Presidency on a number of key issues.

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<sup>1</sup> These are the Committee of European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the Committee of European Securities Regulators (CESR).

## **II. PROVISIONAL AGREEMENT**

5. On 2 September the Presidency and the European Parliament reached provisional agreement on the text concerning the ESRB and the EBA. The text as it results from this agreement is set out in document no 12815/1/10 REV 1 relating to the ESRB and 13070/1/10 REV 1 relating to the EBA.
6. Provisional agreement was also reached to align the text of the Regulations setting up the ESMA and the EIOPA on the text agreed for the EBA, with the necessary modifications. In this respect a specific recital was agreed to be inserted in the ESMA text. This is inserted in a footnote in document 13070/1/10 REV 1.
7. In addition provisional agreement was reached on the remaining outstanding substantial issues on the Omnibus Directive<sup>2</sup>.
8. The draft statements to the Council minutes to be inserted into the minutes of the Council which finally adopts the texts, are set out in the Annex to the present note.

## **III. NEXT STEPS**

9. In case Council is in a position to confirm the provisional agreement reached with the European Parliament, the texts of the Regulations on the ESMA and EIOPA can be aligned on the agreement reached on the EBA Regulation and the text of the Omnibus Directive can be finalised. The Permanent Representatives Committee can then in accordance with the usual procedure confirm the agreement to the European Parliament. Following the vote in the Plenary session of the Parliament, scheduled for the week of 20-23 September, the text can be finalised by the legal linguist services and be submitted to Council for final adoption as an A-item on the agenda. The text enabling the ECB to provide the secretariat to the ESRB can then be adopted at the same time.

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<sup>2</sup> Document 13185/10 EF 93 ECOFIN 501 SURE 40 CODEC 777.

#### IV. CONCLUSION

10. Against this background the Council is invited to:

- confirm the agreement reached with the Parliament on the text of the ESRB Regulation, set out in document 12815/1/10 REV 1 EF 90 ECOFIN 476 SURE 38 CODEC 757;
- confirm the agreement reached with the Parliament on the text of the EBA Regulation, set out in document 13070/1/10 REV 1 EF 89 ECOFIN 490 SURE 37 CODEC 756;
- invite the Permanent Representatives Committee to finalise the text of the ESMA and EIOPA Regulations aligning them on the text of the EBA Regulation where appropriate;
- invite the Permanent Representatives Committee to finalise the text of the Omnibus Directive on the basis of the agreement reached with the Parliament;
- invite the Permanent Representatives Committee to confirm to the European Parliament that should the Parliament adopt the texts as agreed in first reading the Council would be in a position to approve the Parliaments position and adopt the legal Acts concerned.

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Declarations of the Commission linked to Articles 12 - 12e:

"In its Communication of 26 May 2010 on Bank Resolution Funds, the Commission emphasised that 'an appropriate first step could be a system based around the establishment of a harmonized network of national funds linked to a set of coordinated national crisis management arrangements.

The Commission confirms that it will make legislative proposals for a complete set of tools for prevention and resolution of failing banks in Spring 2011. This will ensure that public authorities are able to resolve failing financial institutions whilst minimising the impact of failures on the financial system, limiting damage to the economy and the use of public sector resources.

The Commission confirms that the ESAs should play an important role in these areas and that it will examine which powers concerning the tools for prevention and resolution of failing banks should be conferred upon it.

These arrangements are a first step and would be reviewed by 2014 with the aim of creating Union integrated crisis management and supervisory arrangements, as well as a Union Resolution Fund in the longer term.

The Commission confirms that it will make proposals for the revision of the Deposit Guarantee Schemes Directive to ensure further harmonisation of the rules to ensure effective protection for depositors throughout the Union in July 2010. In parallel, the Investor Compensation Schemes Directive will be revised to increase protection of investors, and in the insurance sector, a White Paper on Insurance Compensation Schemes will examine the possibility of introducing European rules protecting insurance policy holders in case of a failing insurance company."

Commission to make a declaration concerning article 6 about future changes to sectoral legislation, in particular with regard to derivatives and short selling

Commission Declaration on its intention concerning article 66:

"....pm.....to be provided by Commission"

On the Omnibus Directive:

"The Commission is reviewing Markets in Financial Instruments Directive (MiFID) and will propose improvements of the Directive. In this context, the Commission will examine, among other things, ways to strengthen pre- and post-trade transparency, including the rules and arrangements required from regulated markets, and any necessary amendments to adjust the Directive to the Lisbon Treaty."

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