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From: General Secretariat of the Council  
To: Permanent Representatives Committee (Part 2)/Council  
Subject: ESFS Review  
= Adoption of Council conclusions

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1. On 15 May 2014, the European Court of Auditors adopted its Special Report No 5/2014: "European banking supervision taking shape - EBA and its changing context", doc. 13090/2014.
2. On 8 August 2014, the Commission presented two reports to the European Parliament and to the Council. The first report focused on the mission and organisation of the European Systemic Risk Board (ESRB), doc. 12446/14+ADD1. The second one covered the operation of the European Supervisory Authorities (ESAs) and the European System of Financial Supervision (ESFS), doc. 12447/14+ADD1+ADD2.
3. Against this background, the Financial Services Committee discussed the outcome of the ESFS Review (i.e. covering ESAs and ESRB) at its meetings of 10 September and 17 October and prepared draft Council conclusions on the EFSF Review. These were further considered by the Economic and Financial Committee and agreed at the latter's meeting on 27 October.
4. It is suggested that **COREPER** invites the **Council** to adopt the enclosed draft Council conclusions as an A-item at the Council (ECOFIN) meeting of 7 November.

## **DRAFT Council Conclusions on the ESFS Review:**

The Council,

### 1. RECALLING:

- The efforts undertaken in the aftermath of the 2008 financial crisis to restore confidence in the financial system and enhance the stability of the sector, in particular the recommendation of the de Larosière Group to establish a European System of Financial Supervision (ESFS), comprised of one overarching macro-prudential and three sectorial micro-prudential supervision authorities;
- Regulations (EU) No 1092/2010, 1093/2010, 1094/2010 and 1095/2010 of the European Parliament and of the Council, as well as Council Regulation No 1096/2010 and Directive 2010/78/EU of the European Parliament and of the Council, of 24 November 2010, reforming the European financial supervision system through the establishment of the European Systemic Risk Board (ESRB), the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) and the European Securities and Markets Authority (ESMA), coupled with various Regulations and Directives that have updated the mandates of the ESAs;
- Article 81 of the ESAs Regulations and Article 20 of the ESRB Regulation providing for Commission reports which should review, by January 2014, the experience acquired as a result of the operation of the ESAs and the ESRB since their operation setup in 2011;
- The importance of respecting in full the principles of subsidiarity and proportionality in developing the regulatory and supervisory framework, as well as ensuring confidence in, and the stability of the EU financial system;

2. RECALLING the European Court of Auditors' Special Report No 5/2014: "European banking supervision taking shape - EBA and its changing context", which assesses whether the Commission and the European Banking Authority have satisfactorily carried out their responsibilities in setting up the new arrangements for the regulation and supervision system of the banking sector, NOTES that the Court of Auditors presents in its report a number of important findings and recommendations regarding the EBA, in particular to the effect that:
- The process for preparing draft technical standards should be improved and better factored in the context of level 1 discussions in order to allow sufficient time for the consultation process, the impact analysis and the drafting of the acts;
  - The EBA should enhance its focus on supervisory convergence, possibly through a reinforced mandate and enhanced authority to resolve disputes between NSAs;
  - The necessary resources, in particular experienced staff, should be ensured in order to enable the EBA to fulfil its tasks and responsibilities, i.a. preparing and updating the necessary draft technical standards, conducting stress tests or taking actions in the area of consumer protection;
  - Regarding the EBA's consumer protection mandate, the work should be better coordinated, both internally to ensure cross-sectorial consistency, and externally to improve the representation of national consumer protection authorities in the ESAs decision-making process;
  - The roles and responsibilities relating to the setting up and the functioning of the Banking Union should be clarified between all institutions and authorities concerned, in particular the EBA, the ECB and the other ESAs;
3. WELCOMES the Commission reports published on 8 August 2014 on the operation of the ESAs and on the mission and organisation of the ESRB;

4. AGREES with the Commission that overall the ESAs and ESRB have performed well and that there is no need for a major overhaul of the ESFS, whilst targeted adaptations should be considered to improve, in particular, the ESAs' performance, governance and financing, whereas the ESRB might warrant a more significant evolution of its role, notably taking into account the emergence of new actors in the field of macro-prudential oversight. That notwithstanding, the Council CONSIDERS that a possible, deeper reform would need to be prepared well in advance also on the basis of experience accumulated on the new institutional setting following the establishment of the SSM and the SRM.

**With regard to the ESAs, the Council:**

5. WELCOMES the Commission's suggestions for short-term improvements to the ESAs and in particular:
- STRESSES the need for the ESAs to strengthen their focus on supervisory convergence within the limits of the Treaty, besides their regulatory role, through a more extensive use of the instruments provided by their founding regulations, including through peer reviews;
  - SUPPORTS the call for giving a higher profile to consumer and investor protection by giving the matter a higher priority in its practical activities, within the remits of their existing powers;
  - NOTES the need to enhance the governance, effectiveness and transparency of the ESAs, while ensuring there is adequate accountability, legitimacy and effective use of NCA expertise;
  - SUPPORTS in that respect reviewing in particular the composition of the ESAs' Stakeholder Groups and the role of the Joint Committee;
  - SUPPORTS the ESAs' call for being heard when ESAs' mandates, such as the preparation of implementing and regulatory technical standards are being discussed at Level 1, while respecting the limits posed by the Treaty;

6. STRESSES the need for further reflection with regard to medium to long-term changes to the ESAs. In particular, the Council:
- Generally CONSIDERS that the existing mandates of the ESAs should be fully exploited before considering a possible expansion, also in light of the still limited hindsight on the ESFS framework, taking into account the impact the SSM and the SRM will have and the ESAs' predominant focus on regulatory work so far;
  - SUPPORTS clarifying the ESAs' existing mandate in the area of consumer and investor protection;
  - AGREES that the ESAs' resources, in particular experienced staff, should be adequate to their tasks and responsibilities;
  - NOTES the Commission's intention to explore options on how to improve the governance of the ESAs to ensure that decisions are taken in the best interest of the EU as a whole while preserving the careful balance reached in the context of the establishment of the SSM, having regard to the expertise provided by the national competent authorities;
  - STRESSES the importance of the role of regulatory technical standards as expressed in Article 10 of the ESAs founding regulations as a supplement to the role of the co-legislators in shaping level 1 regulation;
  - CONSIDERS that the supervisory data flows could be optimised in line with the ESAs founding regulations whilst avoiding additional reporting burden on the supervised entities;
7. ACKNOWLEDGES the value of existing provisions on binding mediation as an incentive for proper cooperation of the competent authorities concerned, without prejudice to possible consideration of further clarifications on this tool in the medium term;

8. RECOGNISES the fact that funding arrangements are possibly a more pressing issue than other medium term matters and may necessitate further reflection, with a view to ensuring stable, sustainable and sufficient funding of the ESAs. This could include considering different funding models consistent with the principles of fair burden-sharing and budget discipline, as well as alignment to the ESAs' tasks, resources and responsibilities, with effective governance and appropriate accountability rules in place.

**With regard to the ESRB, the Council:**

9. SUPPORTS the Commission's recommendations for short-term to improvements to the ESRB.
- CONSIDERS that with a view to enhancing flexibility and fostering early intervention, it could be further clarified that the ESRB may use informal tools ("soft powers") and HIGHLIGHTS the need for the ESRB to develop a more proactive communication strategy;
  - EMPHASISES the need to enhance the interface between the ESRB on the one hand, and the Council and the Economic and Financial Committee (EFC) on the other hand;
  - STRESSES the need to agree on the modalities for the designation of the ESRB Chair as from December 2015, without prejudice to the broader issue of the institutional arrangements and governance of the ESRB;
  - ENCOURAGES the ESRB to continue expanding the scope of its monitoring activities beyond the banking sector.

10. UNDERLINES that caution should be taken when considering more structural changes with regard to the ESRB. The Council RECOGNISES the need to enhance the ESRB's governance and decision-making, but STRESSES that it is necessary to identify and consider a broader range of suggestions and solutions before concrete changes are made. In particular, the Council:
- ACKNOWLEDGES the necessity to reconcile the need to facilitate efficient decision-making by reviewing the composition and possibly the size of the General Board, with the need to ensure appropriate representation taking into account notably the emergence of new actors in the field of macro-prudential oversight whose expertise can support the effectiveness and authority of the ESRB;
  - SUPPORTS a thorough review of the ESRB's organisational identity, in particular the ESRB's coordination with the ESAs as well as its visibility, its autonomy and its relationship with the ECB, and CONSIDERS the possible creation of the position of Managing Director to be part of a broader discussion on the ESRB governance.

**With regard to the ESFS as a whole, the Council:**

11. RECOGNISES the need, within the context of achieving stronger EU coordination, for appropriate involvement of the European supervisory framework in the work of relevant international bodies;
12. UNDERLINES that before considering any medium to long-term improvements to the supervisory framework, it is necessary to understand the impact of the Single Supervisory Mechanism, the Single Resolution Mechanism and the Banking Union at large;
13. INVITES accordingly the EFC and the FSC, in cooperation with the Commission, to monitor the implementation of the aforementioned short-term improvements, to progress reflections on longer-term enhancements of the ESFS including changes stemming from the phasing-in of the Single Supervisory Mechanism and the forthcoming establishment of the Single Resolution Mechanism and to report back by end 2016 at the time of the next review of the ESFS.