



COMMISSIE VOOR HET BANK-, FINANCIE- EN ASSURANTIEWEZEN  
COMMISSION BANCAIRE, FINANCIÈRE ET DES ASSURANCES  
BANKING, FINANCE AND INSURANCE COMMISSION



*The financial architecture and control  
measures of the financial institutions*

CONFERENCE OF THE FINANCE COMMITTEE CHAIRS OF THE PARLIAMENTS OF THE MEMBER  
STATES OF THE EUROPEAN UNION AND THE CANDIDATE STATES

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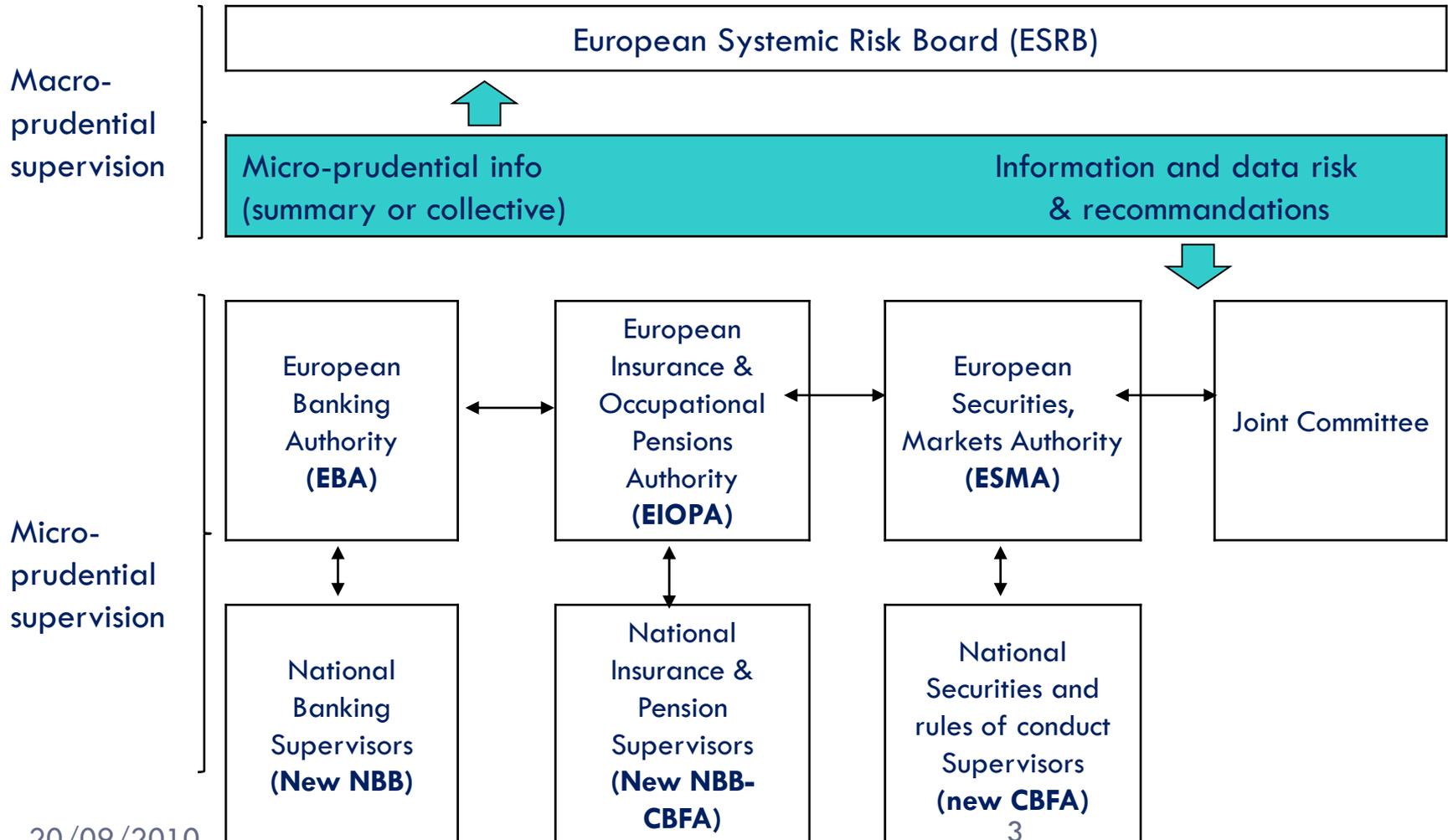
# Overview

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Pillar I - Evolution of International regulatory framework	Pillar II - Evolution of Belgian regulatory framework in order to enhance client protection	Pillar III - New Belgian Supervisory Architecture
<p><b>International level</b></p> <ul style="list-style-type: none"> <li>• Basel III</li> <li>• Solvency 2</li> </ul>	<p>1. <b>Loi du 2 juin 2010 sur les risques de défaillance d'un établissement menaçant la stabilité financière</b></p>	<p>1. loi du 2 juillet 2010 - Comité des Risques et Etablissements Financiers Systémiques (CREFSI)</p>
<p><b>European level</b></p> <ul style="list-style-type: none"> <li>• Supervisory package</li> <li>• MiFID</li> <li>• Directive AIM</li> <li>• EMIR (European Market Infrastructure Regulation)</li> <li>• Regulation on Short selling</li> <li>• PRIIP's (Packaged Retail Investor Product's)</li> <li>• ...</li> </ul>	<p>2. <b>loi du 2 juillet 2010 sur la réforme de la supervision</b></p> <ul style="list-style-type: none"> <li>• organisation of separate service in CBFA that will be exclusively responsible for the supervision of conduct of business rules</li> <li>• traceability of products: possibility for CBFA to restrict or prohibit commercialisation of some products</li> <li>• Possibility to extend By Royal Decree the MiFID-rules to Life Insurance Products</li> </ul>	<p>2. In 2011: Twin-Peaks</p>

# A. The new EU financial architecture

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# New powers of ESA's

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- Operational powers
  - ▣ Binding regulatory technical standards
  - ▣ Guidelines and recommendations
  - ▣ Supervision of Credit Rating Agencies (ESMA)
  - ▣ New tasks related to consumer protection
  
- Emergency and conflicts
  - ▣ Action in case of breach of Union law
  - ▣ Binding mediation
  - ▣ Action in emergency situations

# Tasks related to consumer protection (ESMA)

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- promotion of transparency, simplicity and fairness in the market for consumer financial products or services
- monitoring of new and existing financial activities and may adopt guidelines and recommendations with a view to promoting the safety and soundness of markets
- issue warnings in case a financial activity poses a serious threat
- establishment of a Committee on financial innovation, -coordinated approach for new or innovative financial activities
- temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system

# ESA's - Binding Regulatory Technical Standards

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- 1) **ESA's can develop binding regulatory technical standards**  
In areas and on the basis of a delegation defined in the different directives
- 2) **Endorsement by Commission**
  - ❑ Commission can endorse, refuse to endorse, endorse in part or endorse with amendments
  - ❑ Commission must coordinate with Authority
  - ❑ Commission shall conduct open public consultations
  - ❑ BRTS = applicable by Commission Regulations or decisions
  - ❑ EP and Council may object within 3 months/1 month
- 3) **Implementing technical standards - light procedure**

# ESA's - Guidelines and recommendations

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- 1) goal: establishing consistent, efficient and effective supervisory practices
- 2) where appropriated public consultations
- 3) obligation to make efforts to comply with guidelines and recommendations
- 4) confirmation of compliance within 2 months
- 5) ESA's will publish if non complying

# ESA's - Breach of Union law

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- 1) Investigation of national supervisors non applying or incorrectly applying EU law in supervisory practice
- 2) Within 2 months ESA's can make a recommendation with action necessary to comply with Union law
- 3) If no compliance within 1 month the Commission can issue a formal opinion requiring action from Authority
- 4) if no compliance ESA's can adopt an individual decision adressed to financial market participant requiring necessary action to comply with Union law including cessation of any practice
- 5) sanction: publicity in annual report of ESA's

# ESA's - action in emergency situations

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- 1) Council decides on "emergency situation", on request of ESA's, Commission or ESRB
- 2) Allows ESA's, where coordinated action is needed, to take individual decisions requiring competent Authority to take necessary action to address crisis developments
- 3) if no compliance with decision ESA's can adopt an individual decision adressed to financial market participant requiring necessary action to comply with its legal obligations including cessation of any practice

# ESA's - Settlement of disagreements between Authorities in cross-border situations

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- 1) Conciliation phase during which ESA's are mediator
- 2) After conciliation phase ESA's can take decision requiring competent Authority to take action or to refrain from action
- 3) If competent authority doesn't comply with decision, ESA's can adopt an individual decision addressed to financial market participant requiring necessary action to comply with its legal obligations including cessation of any practice

# ESMA - Fiscal Safeguards

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- 1) ESA's decisions may not impinge on fiscal responsibilities of member states
- 2) Decisions: in emergency cases and in mediation
- 3) Member state may object to implement ESA's decision, stating its reasons
- 4) Suspension of ESA's decision
- 5) Council will decide by simple majority

# ESA's - Limits of Binding powers

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	Fiscal exception	ESA's direct powers on firms
Breach of EU Law	NO	YES
Emergency power	YES	YES
Mediation	YES	YES

# ESMA - supervisory powers on CRA's

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- Supervision of Credit Rating Agencies
  - ▣ Specific for ESMA
  - ▣ Exclusive licensing & supervisory powers for ESMA
  - ▣ Draft regulation on CRA (2 June 2010) : involves Commission to take administrative enforcement action

# European Systemic Risk Board (1)

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- High level board responsible for EU wide macro-prudential oversight and identifying systemically dangerous developments
- Independent body without legal responsibility
- Leading role for ECB and NCB's
- Governance: General board, Steering Committee, Secretariat, Advisory Technical Committee
- In liaison with other institutions such as IMF & FSB

# European Systemic Risk Board (2)

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- Early risk detection and warning & recommendations for remedial action to national governments, supervisors
- On the basis of information from Authorities or, if not available, from national supervisors or member states
- Summary information, no data on individual banks, unless exceptionally

# European Systemic Risk Board (3)

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- General or specific recommendations addressed to the Community, one or more MS, ESAs or national supervisor
- "Act or explain"
- Public disclosure decided on case by case basis
- Monitor follow up to recommendations

## B. Important European challenges for financial institutions and financial markets (priorities under Belgian Presidency)

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- Financial Supervisory Package (agreement on 5 regulations)
- Directive on Alternative Investment Fund Managers - (ongoing discussion in trialogue)
- Regulation on short-selling
- MiFID review and EMIR (European Market Infrastructure Regulation - for OTC derivatives)
- EC proposals on corporate governance in financial institutions (green book)
- PRIP's
- ..

# Conclusion

- Times are changing...
- "back to business as usual" = unacceptable
- Work in progress is tremendous