



December the 26th 2011

REASONED OPINION OF THE FRENCH SENATE

on the proposal for a regulation on prudential requirements for credit institutions and investment firms (COM (2011) 452 final)

Article 443 of the proposal for a regulation gives the European Commission the power to impose stricter prudential requirements on financial institutions of the European Union “*for a limited period of time*”. This power is delegated “*where this is necessary to address changes in the intensity of micro-prudential and macro-prudential risks which arise from market developments (...)*” and under an urgent procedure, which is defined in Articles 445 and 446.

Having regard to Article 88-6 of the French Constitution,

The Senate makes the following observations:

– Article 443 of this proposal for a regulation does not include any justification regarding the principle of subsidiarity,

– The delegation of powers granted to the European Commission comes to exceed the very nature of a delegated act as defined in Article 290 of the Treaty on the Functioning of the European Union, which states that the Commission may adopt such an act to supplement or amend “*certain non-essential elements*” of a legislative act,

– The framework for this delegation – when a delegated act shall be adopted, what its objective shall be and how long it shall be valid – is not distinctly and clearly defined,

The Senate notes that:

– In order to better cover all bank risks, the second pillar of the Basel III Framework enables national authorities to impose supplementary capital requirements to the banks and the other financial institutions they supervise,

– Regulations No.1092/2010, No.1093/2010, No.1094/2010 and No.1095/2010, which were adopted by the European institutions and comply with the principle of subsidiarity, set up a European system of supervisors,

– The regulations allocate supervisory and micro- and macro-prudential risk management powers to the different bodies, especially in the event of an emergency.

The Senate notes that Article 443 of the proposal for a regulation is likely to enable the European Commission to unilaterally change this allocation and possibly infringe upon the principle of subsidiarity.

The Senate therefore considers that Article 443 of the proposal for a regulation does not comply, in its current wording, with Article 5 of the Treaty on the European Union and its Protocol No.2.

The Senate considers that this delegation of powers shall be without prejudice to the powers given in an emergency situation to the European Systemic Risk Board and to the European Bank Authority within the framework of the European System of Financial Supervisors, and to those conferred to national authorities under the second pillar of the Basel Framework.

The other Articles of the proposal do not call for any particular comment regarding the principle of subsidiarity.