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INFORMATION NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 as regards the location of the seat of the European Banking Authority - Outcome of the European Parliament's first reading (Strasbourg, 22 to 25 October 2018)

I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the joint declaration on practical arrangements for the codecision procedure ¹, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this dossier at first reading, thereby avoiding the need for second reading and conciliation.

¹ OJ C 145, 30.6.2007, p.5

In this context, the co-rapporteurs, Othmar KARAS (EPP, AT) and Pervenche BERÈS (S&D, FR), presented two amendments (amendment 2 and amendment 3) to the proposal for a Regulation on behalf of the Committee on Economic and Monetary Affairs. These amendments had been agreed during the informal contacts referred to above.

II. VOTE

When it voted on 25 October 2018, the plenary adopted two amendments (amendment 2 and amendment 3) to the proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto².

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

² The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

Location of the seat of the European Banking Authority *I**

European Parliament legislative resolution of 25 October 2018 on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 as regards the location of the seat of the European Banking Authority (COM(2017)0734 – C8-0420/2017 – 2017/0326(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2017)0734),
- having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0420/2017),
- having regard to Article 295 of the Treaty on the Functioning of the European Union as well as the Interinstitutional Agreement of 13 April 2016 between the European Parliament, the Council and the Commission on Better Law-Making, which are committed to sincere and transparent cooperation throughout the entire legislative cycle and the equality of both co-legislators;
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the Joint Statement of the European Parliament, the Council of the European Union and the European Commission on decentralised agencies from 19 July 2012,
- having regard to the Procedure leading up to a decision on the relocation of the European Medicines Agency and the European Supervisory Authority (European Banking Authority) (EBA) in the context of the United Kingdom's withdrawal from the Union, as endorsed in the margins of the European Council (Article 50 TEU format) on 22 June 2017;
- after consulting the European Central Bank;
- having regard to the opinion of the European Economic and Social Committee of 17 January 2018³,

³ OJ C 197, 8.6.2018, p. 72

- having regard to the provisional agreement approved by the committee responsible under Rule 69f(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 17 October 2018 to approve Parliament’s position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Budgets and the Committee on Constitutional Affairs (A8-0153/2018),
1. Adopts its position at first reading hereinafter set out;
 2. Takes note of the statement by the Council annexed to this resolution;
 3. Calls for an immediate review of the Common Approach annexed to the Joint Statement of the European Parliament, the Council of the European Union and the European Commission on decentralised agencies of 19 July 2012 in order to take due account of the role of Parliament in the decision-making process on the location of agencies in view of its prerogatives as co-legislator under the ordinary legislative procedure and calls therefore for a close involvement of Parliament in that decision-making process;
 4. Recalls criteria defined by the Commission and endorsed by the Heads of State or Government of the EU27 at the European Council (Article 50 TEU format) on 22 June 2017 for relocation of Union agencies from London in the context of the United Kingdom's withdrawal from the Union, namely: i. the assurance that the agency can be set up on site and take up its functions at the date of the United Kingdom’s withdrawal from the Union; ii. the accessibility of the location; iii. the existence of adequate education facilities for the children of agency staff; iv. appropriate access to the labour market, social security and medical care for both children and spouses; v. business continuity and vi. geographical spread;
 5. Deplores that Parliament was not involved in the definition and the weighting of the criteria to select the location of the seat of the EBA despite Parliament's prerogatives, whereby Parliament and the Council are equal co-legislators on Regulation (EU) No 1093/2010⁴ establishing EBA and defining its location;

⁴ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p.12).

6. Recalls that the 2010 decision on the location of EBA, along with the decision on the location of EIOPA and ESMA, was concluded in accordance with the ordinary legislative procedure following a full-fledged trilogue procedure; observes that the seat of the agency equally concerned by a relocation from London was decided by a common agreement between the representatives of the governments of the Member States, meeting at Head of State and Government level; points to the fact that the Council (Article 50 TEU format) selected the new seat of the EBA on the basis of the Joint Statement on decentralised agencies of 19 July 2012 which is of a lower legal order compared to Regulation (EU) No 1093/2010;
7. Deplores the lack of transparency and accountability, in the voting procedure the Council has undertaken on the 20 November 2017, leaving final decisions to the drawing of lots; points to the fact that the agencies are currently partly funded by the Union budget and that also relocation costs may partly occur at the expense of the Union budget which are subject to ongoing negotiations between the European Union and the United Kingdom; highlights therefore the need for democratic accountability as well as a transparent and understandable decision-making in the interest of the European public; Requests further details on the weighting of the criteria applied by the Council in the selection procedure for the location of EBA;
8. Believes that Parliament should be systematically and on equal terms with the Commission and Council involved in defining and weighting the criteria for the location of all Union bodies and agencies; requests the Commission and Council to launch a revision of the Joint Statement of 19 July 2012 on decentralised agencies with the aim of ensuring a strong involvement of Parliament whilst respecting in particular its co-decision powers;
9. Highlights the different tasks and areas of competence of the European Supervisory Authorities EBA, EIOPA and ESMA; recalls the deliberate decision of the co-legislators to set up three authorities with separate tasks and fields of competence, one for banking, one for securities and one for insurance and pensions; demands that this separation remains to be reflected in the regulatory and supervisory competences and the governance, the main organisation and main financing of their activities independent of their location, while allowing for sharing, where applicable, administrative support services and facility management services which are not related to core activities, requests the Commission and Council to safeguard the current set-up of the three authorities during and after the relocation of EBA; demands a regular update from the Commission in this regard, in particular during the ongoing legislative procedure on the review of the European Supervisory authorities (COM(2017)536); recalls that Article 7 of Regulation (EU) No 1093/2010 is part of the legislative procedure under review of the European Supervisory Authorities (COM(2017)536);
10. Underlines that the relocation and the new premises need to be ready and fit by the time the withdrawal of the United Kingdom from the European Union comes into effect;
11. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
12. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Position of the European Parliament adopted at first reading on 25 October 2018 with a view to the adoption of Regulation (EU) 2018/... of the European Parliament and of the Council amending Regulation (EU) No 1093/2010 as regards the location of the seat of the European Banking Authority

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

After consulting the European Central Bank,

Having regard to the opinion of the European *Economic and Social* ■ Committee⁵,

Acting in accordance with the ordinary legislative procedure⁶,

Whereas:

⁵ OJ C 197, 8.6.2018, p. 72

⁶ Position of the European Parliament of 25 October 2018.

- (1) In the context of the United Kingdom's notification on 29 March 2017 of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union (**TEU**), the other 27 Member States, meeting on 20 November 2017 in the margins of the Council, selected Paris, France, as the new seat of the **European Supervisory Authority** (European Banking Authority) (*the ‘Authority’*).
- (2) *Taking note of the “Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union” of 8 December 2017 and in particular its chapter on financial settlement, and of the commitment of the United Kingdom to contribute to the general budget of the Union for the financial years 2019 and 2020 as if it remained in the Union and to contribute to its share of the financing of the commitments outstanding at 31 December 2020, the costs of relocation of the seat of the Authority arising from the decision of the United Kingdom to withdraw from the Union are to be borne by all Union taxpayers through the general budget of the Union. The United Kingdom has offered to discuss with those Union agencies that are located in London how they could reduce their withdrawal costs.*

- (3) Having regard to Article 50(3) *TEU*, the *Authority* should take its new seat as ■ of 30 March 2019 ■ .
- (4) To ensure the proper functioning of the Authority in its new location, a headquarters agreement should be concluded between the Authority and France *and a building project in accordance with Article 88 of Commission Delegated Regulation (EU) No 1271/2013⁷ should be approved* before the *Authority* takes up its new seat. *The new premises should be ready and fit for the purpose of permanent relocation by 30 March 2019. The headquarters agreement should reflect the responsibility of the French authorities to provide the most appropriate conditions in order to ensure the proper functioning of the Authority in the context of its relocation.*
- (5) *The transfer of the seat of the Authority does not call into question the establishment plan as adopted by the European Parliament and the Council, nor the application of the Staff Regulations to officials or other agents who work at the Authority.*

⁷ *Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).*

- (6) *The relocation of the Authority should not have any consequences with regard to the execution of the distinct mandates of the European Supervisory Authorities or the maintenance of their separate legal status. The relocation might allow, where applicable, for the sharing among Union agencies of administrative support services and facility management services which are not related to core activities.*

- (7) *Relations between Union institutions are to be carried out in mutual sincere cooperation, with each institution acting within the limits of the powers conferred on it in the TEU and in the Treaty on the Functioning of the European Union and in conformity with the procedures, conditions and objectives set out therein.*
- (8) To give the **Authority** sufficient time to relocate, this Regulation should enter into force as a matter of urgency *following its adoption in accordance with the ordinary legislative procedure.*
- (9) *Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁸ should therefore be amended accordingly,*

⁸ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

HAVE ADOPTED THIS REGULATION:

Article 1

Article 7 of Regulation (EU) No 1093/2010 is replaced by the following:

“Article 7

Seat

The Authority shall have its seat in Paris, France.

The location of the seat of the Authority shall not affect the Authority’s 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 Union agencies of administrative support services and facility management services which are not related to the core activities of the Authority. By ... [date of application of this amending Regulation] and every 12 months thereafter, the Commission shall report to the European Parliament and the Council on the compliance of the European Supervisory Authorities with that requirement.”

Article 2

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Union*.

This Regulation shall apply ■ from 30 March 2019■ .

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done ,

For the European Parliament

For the Council

The President

The President

Council statement EBA/EMA

Recalling the commitment of the European Parliament, the Council and the Commission to sincere and transparent cooperation, and in the light of the process followed for the relocation of the EMA and EBA, which was specific to the situation and did not constitute a precedent for location of agencies in the future,

While recalling the Treaties, the Council acknowledges the value of enhanced exchange of information from the initial stages of future processes for the location of agencies.

Such early exchange of information would make it easier for the three Institutions to exercise their rights according to the Treaties through the related procedures.

The Council takes note of the request by the EP to revise, as soon as possible, the 2012 Joint Statement and Common Approach on decentralised Agencies. As a first step, it invites the Commission to provide, by April 2019, an in-depth analysis of the implementation of the Joint Statement and Common Approach as regards the location of decentralised Agencies. This analysis would serve as a basis to assess the way forward in engaging with the process of such a revision.
