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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 proceedings
(Brussels, 4 May 2018)

On 11 December 2017, Coreper endorsed a mandate for negotiations with the European Parliament on the proposal referred to above.

At the opening of the plenary sitting on 3 May 2018, the Committee on Economic and Monetary Affairs announced its decision to enter into interinstitutional negotiations.

Since no request for vote was received, the Committee on Economic and Monetary Affairs may therefore start the negotiations, on the basis of the report adopted on 24 April 2018, as set out in the Annex to this note.

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

(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 Treaty on European Union, and in particular Article 13(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank¹,

Having regard to the opinion of the European Social and European Committee²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ [...]

² [...]

- (1) In the context of the United Kingdom's notification on 29 March 2017 of its intention to leave the Union, pursuant to Article 50 of the Treaty on European Union (**TEU**), the other 27 Member States, meeting in the margins of the General Affairs Council ('Article 50'), selected Paris, France, as the new seat of the **European Supervisory Authority (European Banking Authority) (EBA)**.
- (1a) *The costs of the relocation of the seat of the EBA arise as a result of the unilateral decision of the United Kingdom to leave the Union. Nevertheless, on the basis of the joint report from the negotiators of the European Union and the United Kingdom Government agreed on 8 December 2017 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, those costs 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.*
- (2) Having regard to Article 50(3) **TEU**, the **EBA** should take its new seat as from the date on which the Treaties cease to apply to the United Kingdom or from 30 March, 2019, whichever is the earlier.
- (3) To ensure the proper functioning of the **EBA** in its new location, a headquarters agreement should be concluded *and a building project in accordance with Article 88 of Commission Delegated Regulation (EU) No 1271/2013³ should be approved* before the **EBA** takes up its new seat. *The new premises should be ready and fit for the purpose of permanent relocation by the time the withdrawal of the United Kingdom from the Union comes into effect. The headquarters agreement should reflect the responsibility of the French authorities to provide the most appropriate conditions and the most efficient solution for the location of the EBA.*

³ **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).**

- (3a) *The transfer of the seat of the EBA 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 EBA.*
- (4) To give the *EBA* sufficient time to relocate, this Regulation should enter into force as a matter of urgency *while taking into account the co-decision powers of the European Parliament and the Council.*
- (4a) *In order to acknowledge that it is possible for the location of a decentralised agency to be set out in a Union legislative act which is subject to the ordinary legislative procedure, the European Parliament, the Council and the Commission are committed to concluding, by 31 December 2018, a revision of the Joint Statement on decentralised agencies. The location of a Union agency should be selected in a transparent procedure which reinforces democratic accountability and by jointly defining and weighting the selection criteria.*
- (4b) *The relocation of the EBA should not have any consequences with regard to executing the distinct mandate or maintaining the separate legal status of the European Supervisory Authorities. The relocation might allow, where applicable, for the sharing of administrative support services and facility management services among Union agencies which are not related to core activities. To address the efficiency of those agencies, the European Parliament, the Council and the Commission should, when revising the Joint Statement on decentralised agencies, also build on the recommendations of the Interinstitutional Working Group on decentralised agencies' resources.*
- (5) Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁴ should therefore be amended accordingly.
- (5a) *Article 13(2) TEU requires relations between the institutions of the Union to be carried out in mutual sincere cooperation, while each of them is acting within the limits of the powers conferred on it in the Treaties and in conformity with the procedures, conditions and objectives set out in them. The European Parliament is to be fully informed and involved throughout all steps of the ordinary legislative procedure,*

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).

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 Authority, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) shall separately execute their powers and tasks, organise their governance structure, operate their main organisation, and ensure the main financing of their activities, which all are different in their field of competence, independent of their location, while, where applicable, allowing for the sharing of administrative support services and facility management services among Union agencies which are not related to core activities. By ... [date of application of this Regulation] and every 12 months thereafter, the Commission shall report to the European Parliament and the Council on the compliance of those 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 the date on which the Treaties cease to apply to the United Kingdom or from 30 March 2019, whichever is the earlier.

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

Done at Brussels,

For the European Parliament

For the Council

The President

The President

ATTACHMENT TO REGULATION 2018/...

STATEMENT OF THE EUROPEAN PARLIAMENT

The European Parliament regrets that its role of co-legislator has not been duly taken into account since it was not involved in the procedure leading to the selection of the new seat of the European Banking Authority (EBA).

The European Parliament wishes to recall its prerogatives as co-legislator and insists on the full respect of the ordinary legislative procedure in relation to the location of bodies and agencies.

As the only directly elected Union institution and representative of the Union's citizens, it is the first guarantor of the respect of the democratic principle in the Union.

The European Parliament condemns the procedure followed for the selection of the new location of the seat, which has de facto deprived the European Parliament of its prerogatives since it was not effectively involved in the process, but is now expected to simply confirm the selection made for the new location of the seat by means of the ordinary legislative procedure.

The European Parliament recalls that the Common Approach annexed to the Joint Statement of the European Parliament, Council and European Commission on decentralised agencies signed in 2012 is legally non-binding, as acknowledged in the Statement itself and that it was agreed without prejudice to the legislative powers of the institutions.

Therefore, the European Parliament insists that the procedure followed for the selection of a new location for the agencies will be revised and not used anymore in this form in the future.

Finally, the European Parliament wishes to recall as well that in the Inter-institutional Agreement of 13 April 2016 on Better Law-Making⁵, the three institutions committed to sincere and transparent cooperation while recalling the equality of both co-legislators as enshrined in the Treaties.

⁵ *OJ L 123, 12.5.2016, p. 1.*