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NOTE

from: Presidency
to: Delegations

Subject: Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EC) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards its interaction with Council Regulation (EU) No.../... conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions
- Presidency compromise

Delegations will find below an updated Presidency compromise on the above Commission proposal, with a view to the Council (ECOFIN) meeting of 4 December.

2012/244 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority
(European Banking Authority) as regards its interaction with Council Regulation (EU)
No.../... conferring specific tasks on the European Central Bank concerning policies relating
to the prudential supervision of credit institutions**

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,

Having regard to the opinion of the European Economic and Social Committee¹,

Having regard to the opinion of the European Central Bank²

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , , p. .

² OJ C , , p. .

- (1) On 29 June 2012, the Euro area Heads of State or Government have called on the Commission to present proposals to provide for a single supervisory mechanism involving the European Central Bank (ECB). The European Council in its conclusions of 29 June 2012 invited the President of the European Council to develop, in close collaboration with the President of the Commission, the President of the Eurogroup and the President of the ECB, a specific and time-bound road map for the achievement of a genuine Economic and Monetary Union, which includes concrete proposals on preserving the unity and integrity of the Single Market in financial services and which takes account of the Euro Area statement and the intention of the Commission to bring forward proposals based on Article 127 of the Treaty on the Functioning of the European Union (TFEU).
- (2) The provision for a single supervisory mechanism is the first step towards the creation of a European banking union, underpinned by a true single rulebook for financial services.
- (3) In order to provide for the single supervisory mechanism, Council Regulation (EU) No .../...³[127(6) Regulation] confers specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions in the Member States whose currency is the euro. Other Member States may enter in a close cooperation with the ECB.
- (4) The conferral of supervisory tasks to the ECB in the banking sector for part of the Member States of the Union should not in any way hamper the functioning of the internal market in the field of financial services. It is therefore necessary to ensure the proper functioning of the EBA following that conferral.

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- (5) In view of the supervisory tasks conferred on the ECB by Council Regulation (EU) No .../... [127(6) Regulation], EBA should be able to carry out its tasks also in relation to the ECB. In order to ensure that existing mechanisms for settlement of disagreements and actions in emergency situations remain effective, they should be adjusted accordingly.
- (6) In order to ensure that interests of all Member States are adequately taken into account and to allow for the proper functioning of the EBA with a view to maintain and deepen the internal market in the field of financial services, the voting modalities within the Board of Supervisors should be adapted, in particular with regard to decisions taken by the EBA at simple majority.
- (7) Decisions concerning breaches of Union law and settlement of disagreements should be examined by an independent panel composed of voting members of the Board of Supervisors which do not have any conflicts of interest, appointed by the Board of Supervisors. The decisions proposed by the panel to the Board of Supervisors should be considered as adopted unless rejected by a simple majority, which should include an adequate number of votes from members from Member States participating in the SSM and from Member States that do not participate in the SSM.
- (8) The EBA should develop rules of procedure for the panel that ensure its independence and objectivity.

- (9) The composition of the Management Board should be balanced and proper representation of Member States not participating in the SSM should be ensured.
- (10) In order to ensure the proper functioning of the EBA and adequate representation of all Member States, the voting modalities, the composition of the Management Board, and the composition of the independent panel should be reviewed after an appropriate period of time taking into account any experience gained and further developments.
- (11) Since the objectives of this Regulation, namely ensuring a high, effective and consistent level of prudential regulation and supervision across the European Union, protecting the integrity, efficiency and orderly functioning of financial markets and maintaining the stability of the financial system, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1093/2010 is amended as follows:

1. Article 4(2)(i) is replaced by the following:

"(i) Competent authorities as defined in Directives 2006/48/EC and 2006/49/EC, including the ECB for matters related to the tasks conferred upon it by Council Regulation (EU) No .../...*[127(6) TFEU Council Regulation], in Directive 2007/64/EC, and as referred to in Directive 2009/110/EC.

* OJ L ...,, p...."

2. Article 18 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. In the case of adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union, the Authority shall actively facilitate and, where deemed necessary, coordinate any actions undertaken by the relevant competent supervisory authorities.

In order to be able to perform that facilitating and coordinating role, the Authority shall be fully informed of any relevant developments, and shall be invited to participate as an observer in any relevant gathering by the relevant competent supervisory authorities."

(b) the following paragraph replaces paragraph 3:

"3. Where the Council has adopted a decision pursuant to paragraph 2, and in exceptional circumstances where coordinated action by competent authorities is necessary to respond to adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union, the Authority may adopt individual decisions requiring competent authorities to take the necessary action in accordance with the legislation referred to in Article 1(2) to address any such developments by ensuring that financial institutions and competent authorities satisfy the requirements laid down in that legislation."

3. *deleted*

4. In Article 35, paragraphs 1, 2 and 3 are replaced by the following:

"1. At the request of the Authority, the competent authorities shall provide the Authority with all the necessary information to carry out the duties assigned to it by this Regulation, provided that they have legal access to the relevant information and that the request for information is necessary in relation to the nature of the duty in question.

2. The Authority may also request information to be provided at recurring intervals and in specified formats. Such requests shall, where possible, be made using common reporting formats.

3. Upon a duly justified request from a competent authority, the Authority may provide any information that is necessary to enable the competent authority to carry out its duties, in accordance with the professional secrecy obligations laid down in sectoral legislation and in Article 70."

IN CONJUNCTION WITH OPTION SMV A BELOW, ARTICLE 41 OF THIS REGULATION SHOULD READ:

5. Article 41, paragraphs 2, 3 and 4 are replaced by the following:

"2. For the purposes of Article 17 and 19, the Board of Supervisors shall convoke independent panels to facilitate an impartial settlement of the disagreement, consisting of the Chairperson and four of its members, who are not representatives of the competent authorities which are party to the disagreement and who have neither any interest in the conflict nor direct links to the competent authorities concerned.

If the European Central Bank as competent authority and a Member State which is not a participating Member State in accordance with Regulation (EU) No .../... [127(6) TFEU Council Regulation] are subject to a settlement process pursuant to article 19, the independent panel shall consist of the Chairperson and four members appointed by the Board of Supervisors among its voting members. At least two members of the independent panel shall be from a Member State which is not a participating Member State in accordance with the aforementioned Regulation.

The members of the panel shall act independently and objectively in accordance with Article 42.

3. The panel shall propose a decision for final adoption by the Board of Supervisors, in accordance with the procedure set out in the third subparagraph of Article 44(1).

4. The Board of Supervisors shall adopt rules of procedure for the panel referred to in paragraph 2, including rules implementing the requirement set out in the second subparagraph of that paragraph."

IN CONJUNCTION WITH OPTION SMV B BELOW, ARTICLE 41 SHOULD READ:

5. In Article 41, paragraph 1a (new) is inserted and paragraphs 2, 3 and 4 are replaced by the following:

"1a. For the purposes of Article 17, the Board of Supervisors shall convoke an independent panel, consisting of the Chairperson of the Board of Supervisors and six other members, who are not representatives of the competent authority alleged to have breached Union law and who have neither any interest in the matter nor direct links to the competent authority concerned.

Each member of the panel shall have one vote.

Decisions of the panel shall be taken where at least four members of the panel vote in favour of the decision.

2. For the purposes of Article 19, the Board of Supervisors shall convoke an independent panel consisting of the Chairperson of the Board of Supervisors and six other members, who are not representatives of the competent authorities which are party to the disagreement and who have neither any interest in the conflict nor direct links to the competent authorities concerned.

Each member of the panel shall have one vote.

Decisions of the panel shall be taken where at least four members of the panel vote in favour of the decision.

3. The panel shall propose a decision under Article 17 or Article 19 for final adoption by the Board of Supervisors.

4. The Board of Supervisors shall adopt rules of procedure for the panel referred to in paragraphs 1a and 2."

6. In Article 42 the following paragraph is added:

"The first and second paragraphs are without prejudice to the tasks conferred upon the ECB by Regulation (EU) No .../... [127(6) TFEU Council Regulation]."

7. Article 44(1) is replaced by the following:

"1. Decisions of the Board of Supervisors shall be taken by a simple majority of its members. Each member shall have one vote.

OPTION QMV A (Qualified majority voting - Commission Proposal)

"With regard to the acts specified in Articles 10 to 16 and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions."

OPTION QMV B (Qualified majority voting combined with double SMV)

"With regard to the acts specified in Articles 10 to 16 and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions, which shall include at least a simple majority from members of participating Member States, in accordance with Regulation (EU) No .../...[127(6) TFEU Council Regulation], and a simple majority from members of non participating Member States."

OPTION SMV A (Commission proposal - but language adapted taking into account the definition of 'participating Member States' in doc. 16668/12)

" With regard to decisions in accordance with Articles 17 and 19, the decision proposed by the panel shall be considered as adopted unless it is rejected by a simple majority which shall include at least three votes from members of participating Member States, in accordance with Regulation (EU) No .../...[127(6) TFEU Council Regulation], and three votes from members of non participating Member States."

OPTION SMV B (Double simple majority - enlarged panel)

"With regard to decisions in accordance with Articles 17 and 19, the decision proposed by the panel shall be considered as adopted unless it is rejected by a simple majority of its members from participating Member States, in accordance with Regulation (EU) No .../... [127(6) TFEU Council Regulation], and a simple majority of its members from non participating Member States."

N.B. THE FOLLOWING PARAGRAPHS ARE COMMON TO BOTH SETS OF OPTIONS.

By derogation from the third subparagraph, from the date when four or less Member States are neither participating Member States in accordance with Regulation (EU) No .../... [127(6) TFEU Council Regulation] nor have entered into close cooperation with the ECB in accordance with that Regulation, the decision proposed by the panel shall be considered as adopted unless it is rejected by a simple majority which shall include at least one vote from members of those Member States.

Each member shall have one vote.

With regard to the composition of the panel in accordance with Article 41(2), the Board of Supervisors shall strive for consensus. In the absence of consensus, decisions of the Board of Supervisors shall be taken by a majority of three quarters of its members. Each member shall have one vote."

[ADDITIONAL OPTION IN RESPECT OF CASES OF EMERGENCY SITUATIONS:

"With regard to decisions adopted under Article 18(3), and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a simple majority of its members from participating Member States, in accordance with Regulation (EU) No .../... [127(6) TFEU Council Regulation], and a simple majority of its members from non participating Member States."]

8. In Article 45(1), the third subparagraph is replaced by the following:

"The term of office of the members elected by the Board of Supervisors shall be 2 1/2 years. That term may be extended once. The composition of the Management Board shall be balanced and proportionate and shall reflect the Union as a whole. The Management Board shall include at least two representatives from Member States which are not participating Member States in accordance with Regulation [127(6) TFEU Council Regulation] nor have entered into close cooperation with the ECB in accordance with that Regulation. Mandates shall be overlapping and an appropriate rotating arrangement shall apply."

IN CONJUNCTION WITH OPTION QMV B ABOVE:

"7a. The following Article 81a is inserted:

"Article 81a

Review of voting arrangements

As from the date on which the number of Member States that are not participating Member States reaches [four], the Commission shall review and report on the voting arrangements described in Articles 41 and 44.

The report shall be forwarded to the European Parliament and to the Council."

Article 2

Without prejudice to Article 81 of Regulation (EU) No 1093/2010, by 1 January 2016, or at any earlier time when participating Member States as defined in Regulation [127(6) TFEU Council Regulation] together have the votes necessary to reach a qualified majority in accordance with Article 16 TFEU and Article 3 of the Protocol No 36 on transitional provisions, the Commission shall publish a report on the application of the provisions of this Regulation in relation to:

- (a) the suitability of the voting modalities;
- (b) the composition of the Management Board; and

- (c) the composition of the independent panel preparing decisions for the purposes of Articles 17 and 19.

The report shall take into account in particular any developments in the number of Member States whose currency is the Euro or whose competent authorities have entered into a close cooperation in accordance with Article 6 of Regulation .../... and shall examine whether in light of such developments any further adjustments of those provisions are necessary to ensure that EBA decisions are taken in the interest of maintaining and strengthening the internal market for financial services.

Article 3

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

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

Done at Brussels,

For the European Parliament
The President

For the Council
The President