



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 25 March 2013

7775/13

LIMITE

**EF 54
ECOFIN 220
CODEC 657**

**Interinstitutional File:
2012/0244 (COD)**

NOTE

from: Presidency
to: Permanent Representatives Committee (part 2)
No. Cion prop.: COM(2012) 512 final

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
- Final compromise text

Please find enclosed the final compromise text for the Regulation in subject, with a view to COREPER on 27 March.

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 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.
- (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 and new frameworks for deposit insurance and resolution.
- (3) In order to provide for the single supervisory mechanism, Council Regulation (EU) No .../... [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. The EBA should therefore maintain its role and retain all its existing powers and tasks: it should continue developing and contributing to the consistent application of the single rulebook applicable to all Member States and enhancing convergence of supervisory practices across the whole Union.
- (4aaa) It is critical that the banking union should contain democratic accountability mechanisms.
- (4aa) When carrying out the tasks conferred on it, and without prejudice to the objective to ensure the safety and soundness of credit institutions, the EBA should have full regard to the diversity of credit institutions and their size and business models, as well as the systemic benefits of diversity in the European banking industry.

- (4a) In order to promote best supervisory practices in the internal market, it is fundamental that the single rulebook is accompanied by a European supervisory handbook on the supervision of financial institutions, drawn up by EBA in consultation with competent authorities. The Supervisory Handbook should identify the best practices across the Union as regards supervisory methodologies and processes so that core international and Union principles are adhered to. The handbook should not take the form of legally binding acts and should not restrict judgement led supervision. It should cover all matters which are within the remit of EBA, including to the extent applicable the areas of consumer protection and efforts against money laundering. It should set out metrics and methodologies for risk assessment, identification of early warnings and criteria for supervisory action. Competent authorities should use the handbook. The use of the handbook should be considered as a significant element in the assessment of the convergence of supervisory practices and for the peer review referred to in this Regulation.
- (4b) Requests for information by the EBA should be duly justified and reasoned. Objections as to whether a specific request for information by EBA complies with the requirements set out in this Regulation should be raised in accordance with the relevant procedures. The raising of such an objection should not absolve the addressee of the request from providing the information. The European Court of Justice should be competent to decide, in accordance with the procedures set out in the Treaty, whether a specific request for information by EBA complies with the requirements set out in this Regulation.
- (4ba) The possibility for the EBA to request information from financial institutions subject to the conditions set out in this Regulation should relate to any information to which the financial institution has legal access, including information held by persons remunerated by the relevant financial institution for carrying out relevant activities, audits provided to the relevant financial institution by external auditors, copies of relevant documents, books and records.

- (4c) The single market and the cohesion of the EU should be secured. With regard to this, concerns such as governance and voting arrangements in the EBA should be considered carefully and equal treatment of Member States participating in the SSM and other Member States should be guaranteed.
- (4d) Bearing in mind that the EBA, in which all Member States participate with equal rights, was established with an aim to develop and contribute to the consistent application of the single rulebook and to enhance the coherence of supervisory practices within the EU and given the establishment of the single supervisory mechanism with a leading role for the ECB, the EBA should be equipped with adequate instruments, which should enable it to efficiently perform its entrusted tasks concerning the integrity of the single market.
- (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 the same manner as in relation to the other competent authorities. In particular, existing mechanisms for settlement of disagreements and actions in emergency situations should be adjusted accordingly to remain effective.
- (5a) In order to be able to perform its facilitating and coordinating role in emergency situations, the Authority should be fully informed of any relevant developments, and should be invited to participate as an observer in any relevant gathering by the relevant competent supervisory authorities. This includes the right to speak or to make any other contributions.
- (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 maintaining and deepening the internal market in the field of financial services, the voting modalities within the Board of Supervisors should be adapted.

- (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 adopted by a simple majority of the members of the Board of Supervisors from Member States participating in the SSM and a simple majority of its members from Member States that do not participate in the SSM.
- (7a) Decisions concerning actions in emergency situations should be adopted by a simple majority of the Board of Supervisors, which should include a simple majority of its members from Member States participating in the SSM and a simple majority of its members from Member States that do not participate in the SSM.
- (7b) Decisions concerning the acts specified in Articles 10 to 16 of Regulation (EU) 1093/2010 and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI of that Regulation should be adopted by a qualified majority of the Board of Supervisors which should include a simple majority of its members from Member States participating in the SSM and a simple majority of its members 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.
- (9a) Appointments of the members of EBA internal bodies and committees should ensure a geographical balance among Member States.

- (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 monitored, and reviewed after an appropriate period of time taking into account any experience gained and further developments.
- (10a) No Member State or group of Member States should be discriminated against, directly or indirectly, as a venue for financial services.
- (10b) The EBA should be provided with the appropriate financial and human resources, in order to adequately fulfil any additional tasks assigned to it under this Regulation. For this purpose, the procedure for the establishment, implementation and control of its budget as set out in Articles 63 and 64 of Regulation (EU) No 1093/2010 should take due account of these tasks. EBA should ensure that the best standards of efficiency are met.
- (11) Since the objectives of this Regulation, namely ensuring a high level of effective and consistent prudential regulation and supervision across all Member States, protecting the integrity, efficiency and orderly functioning of the internal market 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 1 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2006/48/EC, Directive 2006/49/EC, Directive 2002/87/EC, Regulation (EC) No 1781/2006, Directive 94/19/EC and, to the extent that those acts apply to credit and financial institutions and the competent authorities that supervise them, within the relevant parts of Directive 2005/60/EC, Directive 2002/65/EC, Directive 2007/64/EC and Directive 2009/110/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority. The Authority shall also act in accordance with Council Regulation ... [conferring specific tasks on the ECB]."

(b) in paragraph 5 the second subparagraph is replaced by the following:

"For those purposes, the Authority shall contribute to the consistent, efficient and effective application of the acts referred to in paragraph 2, foster supervisory convergence, provide opinions to the European Parliament, the Council, and the Commission, and undertake economic analyses of the markets to promote the achievement of the Authority's objective."

(c) in paragraph 5 the fourth subparagraph is replaced by the following:

"When carrying out its tasks, the Authority shall act independently and objectively and in a non discriminatory way in the interests of the Union as a whole."

-1a. In Article 2(2) point f shall be replaced by the following:

"(f) the competent or supervisory authorities as specified in the Union acts referred to in Article 1(2) of this Regulation, including the European Central Bank for the tasks conferred on it by Council Regulation ... [conferring specific tasks on the ECB], of Regulation No 1094/2010 and of Regulation 1095/2010."

- 1b. Article 3 is replaced by the following:

"Article 3

Accountability of the Authorities

The Authorities referred to in Article 2(a) to (d) shall be accountable to the European Parliament and the Council. The ECB shall be accountable to the European Parliament and the Council for the exercise of its supervisory tasks conferred upon it by Regulation [127(6) TFEU Council Regulation] in accordance with that Regulation."

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..... "

- 1a. Article 8 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. The Authority shall have the following tasks:

- (a) to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, in particular by providing opinions to the Union institutions and by developing guidelines, recommendations, and draft regulatory and implementing technical standards and other decisions which shall be based on the legislative acts referred to in Article 1(2);
- (ab) to develop and maintain up to date, taking into account, inter alia, changing business practices and business models of financial institutions, a European supervisory handbook on the supervision of financial institutions for the whole Union. The European supervisory handbook shall set out supervisory best practice in methodologies and processes;

- (b) to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the acts referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, ensuring effective and consistent supervision of financial institutions, ensuring a coherent functioning of colleges of supervisors and taking actions, inter alia, in emergency situations;
- (c) to facilitate the delegation of tasks and responsibilities among competent authorities;
- (d) to cooperate closely with the ESRB, in particular by providing the ESRB with the necessary information for the achievement of its tasks and by ensuring a proper follow up to the warnings and recommendations of the ESRB;
- (e) to organise and conduct peer review analyses of competent authorities, including issuing guidelines and recommendations and identifying best practices, in order to strengthen consistency in supervisory outcomes;
- (f) to monitor and assess market developments in the area of its competence, including where appropriate trends in credit, in particular, to households and SMEs;
- (g) to undertake economic analyses of markets to inform the discharge of the Authority's functions;
- (h) to foster depositor and investor protection;

- (i) to promote the consistent and coherent functioning of colleges of supervisors, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans, providing a high level of protection to depositors and investors throughout the Union and developing methods for the resolution of failing financial institutions and an assessment of the need for appropriate financing instruments, with a view to fostering cooperation between competent authorities involved in the management of crisis concerning cross-border institutions that have the potential to pose a systemic risk, in accordance with Articles 21 to 26;
- (j) to fulfil any other specific tasks set out in this Regulation or in other legislative acts;
- (k) to publish on its website, and to update regularly, information relating to its field of activities, in particular, within the area of its competence, on registered financial institutions, in order to ensure information is easily accessible by the public;

When fulfilling its tasks in accordance with this Regulation, the EBA shall

1. use the full powers available to it and
2. without prejudice to the objective to ensure the safety and soundness of credit institutions, have full regard to the different types, business models and sizes of credit institutions.

(b) in paragraph 2 the following subparagraph is added:

"When undertaking the tasks referred to in paragraph 1 and exercising the powers referred to in this paragraph, the Authority shall have due regard to the principles of better regulation, including to the results of the analysis of costs and benefits produced in compliance with the requirements of this Regulation."

1b. Article 9 is amended as follows:

(a) paragraph 4 is replaced by the following:

"4. The Authority shall establish, as an integral part of the Authority, a Committee on financial innovation, which brings together all relevant competent supervisory authorities with a view to achieving a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing advice for the Authority to present to the European Parliament, the Council and the Commission."

(b) in paragraph 5 the fourth subparagraph is replaced by the following:

"The Authority may also assess the need to prohibit or restrict certain types of financial activity and, where there is such a need, inform the Commission and competent authorities in order to facilitate the adoption of any such prohibition or restriction."

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*

3aa. In Article 19(1), the first subparagraph is replaced by the following:

"1. Without prejudice to the powers laid down in Article 17, where a competent authority disagrees about the procedure or content of an action or inaction of another competent authority in cases specified in the acts referred to in Article 1(2), the Authority, at the request of one or more of the competent authorities concerned, may assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 of this Article."

3a. The following Article is inserted after Article 20:

"Article 20a

Convergence of Pillar 2

The Authority shall promote, within the scope of its powers, the convergence of the supervisory review and evaluation process ("Pillar 2") in accordance with Directive .../...EU [CRD4] in order to bring about strong supervisory standards in the Union."

3b. Article 21 is amended as follows:

(a) paragraph 1 is replaced by the following:

"1. The Authority shall promote, within the scope of its powers, the efficient, effective and consistent functioning of the colleges of supervisors referred to in Directive 2006/48/EC and foster the coherence of the application of Union law among the colleges of supervisors. With the objective of converging supervisory best practices, the Authority shall promote joint supervisory plans and joint examinations, and staff from the Authority shall be able to participate in the activities of the colleges of supervisors, including on-site examinations, carried out jointly by two or more competent authorities."

(b) in paragraph 2 the first subparagraph is replaced by the following:

"2. The Authority shall lead in ensuring a consistent functioning of colleges of supervisors for cross-border institutions across the Union, taking account of the systemic risk posed by financial institutions referred to in Article 23, and shall, where appropriate, convene a meeting of a college."

3c. In Article 22, the following paragraph is inserted after paragraph 1:

"1a. At least once per year the Authority shall consider the appropriateness of carrying out Union-wide assessments of the resilience of financial institutions - in accordance with Article 32 and shall inform the European Parliament, the Commission and the Council of its considerations. Where such assessments are carried out the Authority shall, where it deems it relevant or appropriate provide disclosures of the results for each participating financial institution. "

3d. In Article 25 paragraph 1 is replaced by the following:

"1. The Authority shall contribute to and participate actively in the development and coordination of effective, consistent and up to date recovery and resolution plans for financial institutions. The Authority shall also where provided for in the legislative acts referred to in Article 1(2) assist in developing procedures in emergency situations and preventive measures to minimise the systemic impact of any failure."

3e. In Article 27(2) first subparagraph is replaced by the following:

"2. The Authority shall provide its assessment of the need for a system of coherent, robust and credible funding mechanisms, with appropriate financing instruments linked to a set of coordinated crisis management arrangements."

3f. In Article 29 paragraph 2 the following subparagraph is added:

"2a. For the purpose of building a common supervisory culture, the Authority shall develop and maintain up to date, taking into account, inter alia, changing business practices and business models of financial institutions, a European supervisory handbook on the supervision of financial institutions for the whole Union. The European supervisory handbook shall set out supervisory best practice in methodologies and processes."

3g. Article 30 is amended as follows:

(a) paragraph 3 is replaced by the following:

"3. On the basis of a peer review, the Authority may issue guidelines and recommendations pursuant to Article 16. In accordance with Article 16(3), the competent authorities shall endeavour to follow those guidelines and recommendations. When developing draft regulatory technical or implementing technical standards in accordance with Articles 10 to 15 the Authority shall take into account the outcome of the peer review, along with any other information acquired in the conduct of its tasks, in order to ensure convergence on the standards and practices of the highest quality."

(b) the following paragraph is inserted after paragraph 3:

"3a. The Authority shall address an opinion to the Commission whenever the peer review or any other information acquired in the conduct of its tasks shows that a legislative initiative is necessary to ensure the further harmonisation of prudential definitions and rules."

3h. In Article 31, the second subparagraph is replaced by the following:

"The Authority shall promote a coordinated Union response, inter alia, by:

- (a) facilitating the exchange of information between the competent authorities;
- (b) determining the scope and verifying where appropriate the reliability of information that should be made available to all the competent authorities concerned;
- (c) without prejudice to Article 19, carrying out non-binding mediation upon a request from the competent authorities or on its own initiative;
- d) notifying the ESRB, the Council and the Commission of any potential emergency situations without delay;

- e) taking all appropriate measures in case of developments which may jeopardise the functioning of the financial markets with a view to the coordination of actions undertaken by relevant competent authorities;
- f) centralising information received from competent authorities in accordance with Articles 21 and 35 as the result of the regulatory reporting obligations for institutions. The Authority shall share that information with the other competent authorities concerned."

3i. Article 32 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. The Authority shall, in cooperation with the ESRB, initiate and coordinate Union-wide assessments of the resilience of financial institutions to adverse market developments. To that end it shall develop:

(a) common methodologies for assessing the effect of economic scenarios on an institution's financial position;

(b) common approaches to communication on the outcomes of these assessments of the resilience of financial institutions;

(c) common methodologies for assessing the effect of particular products or distribution processes on an institution; and

(ca) common methodologies for asset evaluation as deemed necessary for the purpose of the stress testing."

(b) the following paragraphs are inserted after paragraph 3:

"3a. For the purpose of running the Union-wide assessments of the resilience of financial institutions as described in this Article, the Authority may, in accordance with and subject to the conditions set out in Article 35, request directly information from them. It may also require competent authorities to conduct specific reviews. It may request them to carry out on-site inspections, including also the participation of the Authority in accordance with and subject to the conditions set out in Article 21, to ensure comparability and reliability of methods, practices and results.

3b. The Authority may request competent authorities to have the financial institutions be subject to an independent audit of the information referred to in paragraph 3a."

4. Article 35 is replaced by the following:

"1. At the request of the Authority, the competent authorities shall provide the Authority with all the necessary information in specified formats to carry out the duties assigned to it by this Regulation, provided that they have legal access to the relevant information. The information must be accurate, coherent, complete and timely."

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

3. Upon a duly justified request from a competent authority, the Authority shall 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.

4. Before requesting information in accordance with this Article and in order to avoid the duplication of reporting obligations, the Authority shall take account of any relevant existing statistics produced and disseminated by the European Statistical System and the European System of Central Banks.

5. Where information is not available or is not made available by the competent authorities in a timely fashion, the Authority may address a duly justified and reasoned request to other supervisory authorities, to the ministry responsible for finance where it has at its disposal prudential information, to the national central bank or to the statistical office of the Member State concerned.

6. Where complete or accurate information is not available or is not made available under paragraph 1 or 5, in a timely fashion, the Authority may request information, by way of a duly justified and reasoned request, directly from:

- (a) relevant financial institutions,
- (b) holding companies and/or branches of a relevant financial institution,
- (c) non-regulated operational entities within a financial group or conglomerate that are significant to the financial activities of the relevant financial institutions.

The addressees of such a request shall provide the Authority with clear, accurate and complete information promptly and without undue delay.

The Authority shall inform the relevant competent authorities of requests in accordance with this paragraph and with paragraph 5.

At the request of the Authority, the competent authorities shall assist the Authority in collecting the information.

7. The Authority may use confidential information received pursuant to this Article only for the purposes of carrying out the duties assigned to it by this Regulation.

7a. Where the addressees of a request in accordance with paragraph 6 do not provide clear, accurate and complete information promptly, the EBA shall inform the ECB when applicable and shall inform the relevant authorities in Member States concerned which, subject to national law, shall cooperate with the EBA with a view of ensuring full access to the information and to any originating documents, books or records to which the addressee has legal access in order to verify the information."

4a. Article 36 is amended as follows:

(a) in paragraph 4 the third subparagraph is replaced by the following:

"If the Authority does not act on a recommendation, it shall explain to the ESRB and the Council its reasons for not doing so. The ESRB shall inform the European Parliament in accordance with Article 19(5) of the ESRB-Regulation."

(b) in paragraph 5 the third subparagraph is replaced by the following:

"The competent authority shall take due account of the views of the Board of Supervisors when informing the Council and the ESRB in accordance with Article 17 of Regulation (EU) No 1092/2010. Where the competent authority thus informs the Council and the ESRB, it shall also inform the Commission."

4b. Article 37 is amended as follows:

(a) in paragraph 1 the second subparagraph is replaced by the following:

"The Banking Stakeholder Group shall meet on its own initiative whenever deemed necessary, but at least four times a year."

(b) in paragraph 4 the first subparagraph is replaced by the following:

"4. The Authority shall provide all necessary information subject to professional secrecy as set out in Article 70 and ensure adequate secretarial support for the Banking Stakeholder Group. Adequate compensation shall be provided to members of the Banking Stakeholder Group representing non-profit organisations, excluding industry representatives. Such compensation shall be at least equivalent to the reimbursement rates of officials pursuant to Annex V, Section 2 of the Staff Regulations of Officials of the European Communities. The Banking Stakeholder Group may establish working groups on technical issues. Members of the Banking Stakeholder Group shall serve for a period of 2 1/2 years, following which a new selection procedure shall take place."

4c. In Article 40(1) point d is replaced by the following:

"(d) one representative nominated by the Supervisory Board of the European Central Bank, who shall be non-voting;"

4d. In Article 40, the following paragraph shall be inserted:

"In discussions not relating to individual financial institutions, as provided in Article 44(4), the ECB representative may be accompanied by a second representative with expertise on central banking tasks."

5. Article 41 is amended as follows:

(a) the following paragraph is inserted after paragraph 1:

"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."

(b) paragraphs 2, 3 and 4 are replaced by the following:

"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.

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.

With regard to decisions in accordance with Articles 17 and 19, the decision proposed by the panel shall be adopted by a simple majority of the members of the Board of Supervisors 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.

By derogation from the third subparagraph, from the date when four or fewer Member States are not participating Member States in accordance with Regulation (EU) No .../... [127(6) TFEU Council Regulation], [...] the decision proposed by the panel shall be [...] adopted [...] by a simple majority of the members of the Board of Supervisors which shall include at least one vote from members from 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.

With regard to decisions adopted under Article 18(3) and (4), 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."

7aa. In Article 44, paragraph 4 is amended as follows:

"The non-voting members and the observers, with the exception of the Chairperson, the Executive Director and the ECB representative nominated by the Supervisory Board, shall not attend any discussions within the Board of Supervisors relating to individual financial institutions, unless otherwise provided for in Article 75(3) or in the acts referred to in Article 1(2)."

7a. In Article 44 the following paragraph (4a) is added:

"The EBA Chair shall have the prerogative to call a vote at any time. Without prejudice to that prerogative and to the effectiveness of the EBA's decision making procedures, the Board of Supervisors of the EBA shall strive for consensus when taking its decisions."

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."

8a. The following Article is inserted after Article 53:

"Article 53a

The Chair and Executive Director shall make public meetings held and hospitality received. Expenses shall be recorded publicly in accordance with the staff regulation of officials of the European Communities."

8b. In Article 63, paragraph 7 is deleted.

8c. Article 81(3) is replaced by the following:

"3. Concerning the issue of direct supervision of institutions or infrastructures of pan-European reach and taking account of market developments, the stability of the internal market and the cohesion of the Union as a whole, the Commission shall draw up an annual report on the appropriateness of entrusting the Authority with further supervisory responsibilities in this area."

8d. 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 to the European Parliament, the European Council and the Council on the operation of the voting arrangements described in Articles 41 and 44, taking into account any experience gained since the entry into force of this Regulation."

Article 2

Without prejudice to Article 81 of Regulation (EU) No 1093/2010, by 1 January 2016, the Commission shall publish a report on the application of the provisions of this Regulation in relation to:

- (a) *deleted*
- (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