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THE EUROPEAN PARLIAMENT

THE COUNCIL

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Subject: 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 the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No .../2013

REGULATION (EU) No .../2013
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

**amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority
(European Banking Authority) as regards the conferral of specific tasks
on the European Central Bank pursuant to Council Regulation (EU) No .../2013^{*}**

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 Central Bank¹,

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

Acting in accordance with the ordinary legislative procedure³,

^{*} OJ: please insert the number of the Regulation in st9044/13.

¹ OJ C 30, 1.2.2013, p. 6.

² OJ C 11, 15.1.2013, p. 34.

³ Position of the European Parliament of 12 September 2013 (not yet published in the Official Journal) and decision of the Council of

Whereas:

- (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). In its conclusions of 29 June 2012, the European Council invited its President 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 internal market in financial services.
- (2) 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 for resolution.
- (3) In order to provide for a single supervisory mechanism, Council Regulation (EU) No .../...^{1*} confers specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions in Member States whose currency is the euro and allows other Member States to establish close cooperation with the ECB.

¹ OJ L ...

* OJ: please insert the number, date, full title and OJ reference for the Regulation in st9044/13.

- (4) The conferral of supervisory tasks on the ECB relating to credit institutions in some of the Member States should not in any way hamper the functioning of the internal market for financial services. The European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council¹, should therefore maintain its role and retain all its existing powers and tasks: it should continue to develop and to contribute to the consistent application of the single rulebook applicable to all Member States and to enhance convergence of supervisory practices across the Union as a whole.
- (5) It is crucial that the banking union contain democratic accountability mechanisms.
- (6) When carrying out the tasks conferred on it, and with due regard to the objective of ensuring the safety and soundness of credit institutions, EBA should have full regard to the diversity of credit institutions and their size and business models, as well as to the systemic benefits of diversity in the European banking industry.

¹ OJ L 331, 15.12.2010, p. 12.

- (7) In order to promote best supervisory practices in the internal market, it is fundamentally important that the single rulebook be accompanied by a European supervisory handbook on the supervision of financial institutions, drawn up by EBA in consultation with the competent authorities. That supervisory handbook should identify best practices across the Union as regards supervisory methodologies and processes to achieve adherence to core international and Union principles. The handbook should not take the form of legally binding acts or restrict judgement-led supervision. It should cover all matters which are within EBA's remit, including, to the extent applicable, consumer protection and the fight against money laundering. It should set out metrics and methodologies for risk assessment, 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 under Regulation (EU) No 1093/2010.
- (8) EBA should be able to request information from financial institutions in accordance with Regulation (EU) No 1093/2010 in relation to any information to which those financial institutions have legal access, including information held by persons remunerated by those financial institutions for carrying out relevant activities, audits provided to those financial institutions by external auditors and copies of relevant documents, books and records.

- (9) Requests for information by EBA should be duly justified and reasoned. Objections to specific requests for information on grounds of non-compliance with Regulation (EU) No 1093/2010 should be raised in accordance with the relevant procedures. Where an addressee of a request for information raises such objections, this should not absolve him from providing the information requested. The Court of Justice of the European Union should be competent to decide, in accordance with the procedures set out in the Treaty on the Functioning of the European Union, whether a specific request for information by EBA complies with that Regulation.
- (10) The internal market and the cohesion of the Union should be secured and in this context concerns relating to EBA's governance and voting arrangements should be considered carefully and the equal treatment between Member States participating in the Single Supervisory Mechanism (SSM) as established in Regulation (EU) No .../...^{*} and other Member States should be guaranteed.
- (11) Since EBA, in which all Member States participate with equal rights, was established with the aim of developing and contributing towards the consistent application of the single rulebook and of enhancing the coherence of supervisory practices within the Union and since the ECB has a leading role within the SSM, EBA should be equipped with adequate instruments to enable it to carry out efficiently the tasks conferred on it concerning the integrity of the internal market.

^{*} OJ: please insert the number of the Regulation in st9044/13.

- (12) In view of the supervisory tasks conferred on the ECB by Regulation (EU) No .../...*, 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.
- (13) In order to be able to perform its facilitating and coordinating role in emergency situations, EBA 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 authorities, including the right to take the floor or to make any other contributions.
- (14) In order to ensure that the interests of all Member States are adequately taken into account and to allow for the proper functioning of EBA with a view to maintaining and deepening the internal market for financial services, the voting arrangements within its Board of Supervisors should be adapted.
- (15) Decisions concerning breaches of Union law and concerning the 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 voting members of the Board of Supervisors, which should include a simple majority of its members from competent authorities of Member States participating in the SSM ("participating Member States") and a simple majority of its members from competent authorities of Member States that are not participating Member States ("non-participating Member States").

* OJ: please insert the number of the Regulation in st9044/13.

- (16) 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 competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States.
- (17) Decisions concerning the acts specified in Articles 10 to 16 of Regulation (EU) No 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 at least a simple majority of its members from competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States.
- (18) EBA should develop rules of procedure for the panel that ensure its independence and objectivity.
- (19) The composition of the Management Board should be balanced and proper representation of non-participating Member States should be ensured.
- (20) Appointments of the members of EBA internal bodies and committees should ensure a geographical balance among Member States.
- (21) In order to ensure the proper functioning of EBA and adequate representation of all Member States, the voting arrangements, the composition of the Management Board, and the composition of the independent panel should be monitored. They should be reviewed after an appropriate period of time, taking into account any experience gained and developments.

- (22) No Member State or group of Member States should be discriminated against, directly or indirectly, as a venue for financial services.
- (23) EBA should be provided with appropriate financial and human resources to enable it adequately to carry out any additional tasks conferred on it under this Regulation. 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 those additional tasks. EBA should ensure that the highest standards of efficiency are met.
- (24) 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.
- (25) Regulation (EU) No 1093/2010 should therefore be amended accordingly,

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 94/19/EC, Directive 2002/87/EC, Regulation (EC) No 1781/2006, Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms^{*}, Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms^{**} 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 2002/65/EC, Directive 2005/60/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 (EU) No .../...⁺ ***.

* OJ L 176, 27.6.2013, p. 1.

** OJ L 176, 27.6.2013, p. 338.

*** OJ L ...";

⁺ OJ: please insert the number, date, full title and OJ reference of the Regulation in st9044/13.

- (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, objectively and in a non-discriminatory manner, in the interests of the Union as a whole.";

- (2) in Article 2(2), point (f) is 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 with regard to the tasks conferred on it by Regulation (EU) No ...⁺, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.";

⁺ OJ: please insert the number of the Regulation in st9044/13.

- (3) Article 3 is replaced by the following:

"Article 3

Accountability of the Authorities

The Authorities referred to in points (a) to (d) of Article 2(2) shall be accountable to the European Parliament and to the Council. The European Central Bank shall be accountable to the European Parliament and to the Council with regard to the exercise of the supervisory tasks conferred on it by Regulation (EU) No .../...⁺ in accordance with that Regulation.";

- (4) in point (2) of Article 4, point (i) is replaced by the following:

"(i) competent authorities as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013, including the European Central Bank with regard to matters relating to the tasks conferred on it by Regulation (EU) No .../...⁺, in Directive 2007/64/EC, and as referred to in Directive 2009/110/EC;"

⁺ OJ: please insert the number of the Regulation in st9044/13.

(5) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (a) is replaced by the following:

"(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, draft regulatory and implementing technical standards, and other measures 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 in the Union as a whole, which sets out supervisory best practices for methodologies and processes;"

(ii) point (c) is replaced by the following:

"(c) to facilitate the delegation of tasks and responsibilities among competent authorities;"

(iii) point (i) is replaced by the following:

"(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;"

(iv) point (l) is deleted;

(b) the following paragraph is inserted:

"1a. When carrying out its tasks in accordance with this Regulation, the Authority shall:

- (a) use the full powers available to it; and
- (b) with due regard to the objective to ensure the safety and soundness of credit institutions, take fully into account the different types, business models and sizes of credit institutions."

(c) the following paragraph is inserted:

"2a. When carrying out the tasks referred to in paragraph 1 and exercising the powers referred to in paragraph 2, the Authority shall have due regard to the principles of better regulation, including the results of cost-benefit analyses produced in accordance with this Regulation.";

(6) 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 the competent authorities in order to facilitate the adoption of any such prohibition or restriction.";

(7) 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) paragraph 3 is replaced by the following:

"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.";

(8) 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 Union acts referred to in Article 1(2), the Authority, at the request of one or more of the competent authorities concerned, may assist the competent authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 of this Article.";

(9) the following Article is inserted:

"Article 20a

Convergence of supervisory review process

The Authority shall promote, within the scope of its powers, convergence of the supervisory review and evaluation process in accordance with Directive 2013/36/EU in order to bring about strong supervisory standards in the Union.";

(10) 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 Regulation (EU) No 575/2013 and Directive 2013/36/EU [CRR] and foster the consistency 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 may 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.";

(11) in Article 22, the following paragraph is inserted:

"1a. At least annually, the Authority shall consider whether it is appropriate to carry out Union-wide assessments of the resilience of financial institutions, in accordance with Article 32, and shall inform the European Parliament, the Council and the Commission of its reasoning. Where such Union-wide assessments are carried out and the Authority considers it appropriate to do so, it shall disclose the results for each participating financial institution.";

(12) 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 Union 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.";

(13) in Article 27(2), the 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.";

(14) in Article 29(2), the following subparagraph is added:

"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 Union as a whole. The European supervisory handbook shall set out supervisory best practices for methodologies and processes.";

(15) in Article 30, 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 carrying out its tasks, in order to ensure convergence of the standards and practices of the highest quality.

3a. The Authority shall submit an opinion to the Commission where the peer review or any other information acquired in carrying out its tasks shows that a legislative initiative is necessary to ensure the further harmonisation of prudential rules.";

(16) in Article 31, the second subparagraph is amended as follows:

(a) point (b) is replaced by the following:

"(b) determining the scope and verifying where appropriate the reliability of information that should be made available to all the competent authorities concerned;"

(b) points (d), (e) and (f) are replaced by the following:

"(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 of institutions. The Authority shall share that information with the other competent authorities concerned.";

(17) 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 those assessments of the resilience of financial institutions;
- (c) common methodologies for assessing the effect of particular products or distribution processes on an institution; and
- (d) common methodologies for asset evaluation, as necessary, for the purpose of the stress testing.";

(b) the following paragraphs are inserted:

- "3a. For the purpose of running the Union-wide assessments of the resilience of financial institutions under this Article, the Authority may, in accordance with Article 35 and subject to the conditions set out therein, request information directly from those financial institutions. It may also require competent authorities to conduct specific reviews. It may request competent authorities to carry out on-site inspections, and may participate in such on-site inspections in accordance with Article 21 and subject to the conditions set out therein, in order to ensure comparability and reliability of methods, practices and results.
- 3b. The Authority may request that the competent authorities require that financial institutions subject to an independent audit information that they must provide under paragraph 3a.";

(18) Article 35 is amended as follows:

(a) 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, in specified formats, to carry out the tasks conferred on it by this Regulation, provided that they have legal access to the relevant information. The information shall be accurate, coherent, complete and timely.
2. The Authority may also request information to be provided at recurring intervals and in specified formats or by way of 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 tasks in accordance with the professional secrecy obligations laid down in sectoral legislation and in Article 70.";

(b) in paragraph 6, the first subparagraph is replaced by the following:

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

- (a) relevant financial institutions;
- (b) holding companies 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 promptly and without undue delay with clear, accurate and complete information.";

(c) the following paragraph is added:

"7a. Where the addressees of a request under paragraph 6 do not provide clear, accurate and complete information promptly, the Authority shall inform the European Central Bank where applicable and the relevant authorities in the Member States concerned which, subject to national law, shall cooperate with the Authority with a view of ensuring full access to the information and to any originating documents, books or records to which the addressees have legal access in order to verify the information.";

(19) 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 Council and to the ESRB its reasons for not doing so. The ESRB shall inform the European Parliament thereof in accordance with Article 19(5) of Regulation (EU) No 1092/2010.";

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

"Where the competent authority, in accordance with Article 17(1) of Regulation (EU) No 1092/2010, informs the Council and the ESRB of the actions it has undertaken in response to a recommendation of the ESRB, it shall take due account of the views of the Board of Supervisors and shall also inform the Commission.";

(20) 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 as necessary, and in any event 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 Title V, Chapter 1, Section 2 of the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68* (Staff Regulations). The Banking Stakeholder Group may establish working groups on technical issues. Members of the Banking Stakeholder Group shall serve for a period of two-and-a-half years, following which a new selection procedure shall take place.

* OJ L 56, 4.3.1968, p. 1.";

(21) Article 40 is amended as follows:

(a) in paragraph 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;"

(b) the following paragraph is inserted:

"4a. In discussions not relating to individual financial institutions, as provided in Article 44(4), the representative nominated by the Supervisory Board of the European Central Bank may be accompanied by a representative of the European Central Bank with expertise on central banking tasks.";

(22) In Article 41 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 vote in favour.

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 of six other members who are not representatives of the competent authorities 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 vote in favour.

3. The panels referred to in this Article shall propose decisions 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 panels referred to in this Article.";

(23) in Article 42, the following paragraph is added:

"The first and second paragraphs are without prejudice to the tasks conferred on the European Central Bank by Regulation (EU) No .../...⁺.";

(24) Article 44 is amended as follows:

(a) paragraph 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.

⁺ OJ: please insert the number of the Regulation in st9044/13.

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 Protocol No 36 on transitional provisions, which shall include at least a simple majority of its members from competent authorities of Member States that are participating Member States as defined in point 1 of Article 2 of Regulation (EU) No .../...^{*} (participating Member States) and a simple majority of its members from competent authorities of Member States that are not participating Member States as defined in point 1 of Article 2 of Regulation (EU) No .../2013^{*} (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 voting members of the Board of Supervisors, which shall include a simple majority of its members from competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States.

^{*} OJ: please insert the number of the Regulation in st9044/13.

By way of derogation from the third subparagraph, from the date when four or fewer voting members are from competent authorities of non-participating Member States, the decision proposed by the panel shall be adopted by a simple majority of the voting members of the Board of Supervisors, which shall include at least one vote from members from competent authorities of non-participating Member States.

Each voting 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 voting members. Each voting 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 voting members, which shall include a simple majority of its members from competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States.";

(b) paragraph 4 is replaced by the following:

"4. The non-voting members and the observers, with the exception of the Chairperson, the Executive Director and the European Central Bank representative nominated by its 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).";

(c) the following paragraph is added:

"4a. The Authority's Chair shall have the prerogative to call a vote at any time. Without prejudice to that power and to the effectiveness of the Authority's decision-making procedures, the Board of Supervisors of the Authority shall strive for consensus when taking its decisions.";

(25) 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 two-and-a-half 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 of non-participating Member States. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.";

(26) in Article 47, paragraph 4 is replaced by the following:

"4. The Management Board shall adopt the Authority's staff policy plan and, pursuant to Article 68(2), the necessary implementing measures of the Staff Regulations.";

(27) the following Article is inserted:

"Article 49a

Expenses

The Chair shall make public meetings held and hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations.";

(28) the following Article is inserted:

"Article 52a

Expenses

The Executive Director shall make public meetings held and hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations.";

(29) in Article 63, paragraph 7 is deleted;

(30) in Article 81, paragraph 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.";

(31) the following Article is inserted:

"Article 81a

Review of voting arrangements

From the date on which the number of non-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 in the application of this Regulation."

Article 2

Without prejudice to Article 81 of Regulation (EU) No 1093/2010, by 31 December 2015, the Commission shall publish a report on the application of the provisions of this Regulation in relation to:

- (a) the composition of the Management Board; and
- (b) the composition of the independent panels referred to in Article 41 of Regulation (EU) No 1093/2010, preparing decisions for the purposes of Articles 17 and 19 of that Regulation.

The report shall take into account in particular any developments in the number of participating Member States 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 ...,

For the European Parliament
The President

For the Council
The President
