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Committee on Economic and Monetary Affairs

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DRAFT REPORT

on the 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
(COM(2012)0512 – C70289/2012 – 2012/0244(COD))

Committee on Economic and Monetary Affairs

Rapporteur: Sven Giegold

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) No1093/2010 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 (COM(2012)0512 – C7-0289/2012 – 2012/0244(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2012)0512),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0289/2012),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of ...¹,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Budgets and the Committee on Legal Affairs (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1 Proposal for a regulation Recital 3

Text proposed by the Commission

(3) In order to **provide for** the single supervisory mechanism, Council

Amendment

(3) In order to **involve the ECB within** the single supervisory mechanism (**SSM**),

¹ Not yet published in the Official Journal

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. Under that Regulation, the ECB is to coordinate **and express** the position of those Member States on the decisions to be taken by the Board of Supervisors of the European Banking Authority (EBA) falling within the scope of the ECB tasks.

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. Under that Regulation, the ECB is to coordinate the position of those Member States on the decisions to be taken by the Board of Supervisors of the European Supervisory Authority (European Banking Authority) (EBA) falling within the scope of the ECB tasks. ***Notwithstanding such coordination, the competent authorities participating in the ECB component of the SSM, when participating in the decision-making as Members of the Board of Supervisors of EBA should act independently and only in the Union's interest.***

Or. en

Amendment 2
Proposal for a regulation
Recital 4

Text proposed by the Commission

(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.

Amendment

(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, ***as the ultimate guarantor of the harmonised implementation of prudential rules for banks in the Union,*** following that conferral. ***Moreover the establishment of a single supervisory mechanism in the banking sector for part of the Member States of the Union should not hamper the implementation of the European single rulebook applicable to all financial institutions in the Union. It is therefore***

crucial that full harmonisation of prudential definitions and rules is achieved in the banking sector and EBA effectively guards their uniform and consistent application.

Or. en

Amendment 3
Proposal for a regulation
Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) In order to prevent the risk that the establishment of a supervisory mechanism which covers only some of the Member States could lead to a fragmentation of supervisory practices within the internal market, it is fundamental that the single rulebook is accompanied by a European supervisory handbook, drawn up by EBA, in order to identify the practices of the highest quality across the Union as regards supervisory methodologies and processes, including in the areas of consumer protection and efforts against money laundering. In addition to clear guidelines for the implementation of sectoral legislation, including technical standards, the handbook should set out metrics and methodologies for risk assessment, identification of early warnings and criteria for supervisory action. Competent authorities should apply the handbook strictly and should not treat it as a tick-box exercise. Any divergence in their practices should be considered as a significant element in the assessment of malpractices or breaches of Union law.

Or. en

Amendment 4
Proposal for a regulation
Recital 4 b (new)

Text proposed by the Commission

Amendment

(4b) Recent experience has highlighted the need to ensure that credit institutions fully comply with the information requests of the European Supervisory Authorities with regard to stress testing and other tasks conferred upon it by this Regulation. It is therefore necessary to strengthen the provisions relating to such requests, streamline the processes associated with them and, in the case of obstruction or other non-compliance it is appropriate that Member States concerned afford such assistance to EBA as is necessary for it to obtain the information requested, including access to business premises of credit institutions or other legal persons holding relevant information, such as those to whom a credit institution may have outsourced functions.

Or. en

Amendment 5
Proposal for a regulation
Recital 5

Text proposed by the Commission

Amendment

(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, a specific procedure should be provided for. In particular, if the ECB does not comply with an action by EBA to settle a

(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 in relation to the ECB ***in the same manner as in relation to other supervisory authorities***. In order to ensure that existing mechanisms for settlement of disagreements and actions in emergency situations remain effective, a specific procedure should be provided for. In

disagreement or to address an emergency situation, it should be required to explain its reasons. In that case, whenever based on requirements set out in directly applicable Union law EBA *can* adopt an individual decision addressed to the financial institution concerned, it should do so.

particular, if the ECB does not *wish to* comply with an action by EBA to settle a disagreement or to address an emergency situation, it should be required to explain its reasons. In that case, ***and having taken into consideration the ECB's reasons, EBA should be able to require compliance of the ECB with the original or modified action or, if it would be more effective,*** whenever, based on requirements set out in directly applicable Union law, EBA *should be able to* adopt an individual decision addressed to the financial institution concerned, it should do so.

Or. en

Amendment 6
Proposal for a regulation
Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) It is important to maintain a balance among euro area and non-euro area competent authorities participating in the ECB component of the SSM since the latter are not represented on the Governing Council of the ECB. Therefore, where a competent authority from a Member State that has entered into close cooperation with the ECB in accordance with Regulation (EU) No .../... [127(6) Regulation] disagrees with a supervisory action of the ECB addressed to an institution within that Member State, it should be able to refer the matter to an independent panel within EBA, consisting of the competent authorities of the participating Member States and of the Member States that have entered into close cooperation agreements with the ECB. The panel, by simple majority of the competent authorities represented, should be able to propose a decision on the matter to the Board of Supervisors, where

it should be considered adopted unless opposed by a simple majority.

Or. en

Amendment 7
Proposal for a regulation
Recital 7

Text proposed by the Commission

(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**.

Amendment

(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 **ECB component of the SSM** and from Member States that do not participate in the **ECB component of the SSM**. *Furthermore, in order to maintain the necessary incentives for closer integration of Member States within a single Union-wide supervisory mechanism, where disagreements occur between home and host competent authorities, a balance should be maintained in the decision-making process to ensure that the ability of host Member States to apply stricter prudential standards is not undermined.*

Or. en

Amendment 8
Proposal for a regulation
Recital 8

Text proposed by the Commission

(8) The members of the independent panel set up according to Article 41(2) of Regulation (EU) No 1093/2010 should not be considered to be in a situation of conflict of interest on the sole ground that they are representatives of competent authorities which are part of the SSM and a given case to be decided upon by the Panel concerns the **SSM**. The EBA should develop rules of procedure for the panel that ensure its independence and objectivity.

Amendment

(8) The members of the independent panel set up according to Article 41(2) of Regulation (EU) No 1093/2010 should not be considered to be in a situation of conflict of interest on the sole ground that they are representatives of competent authorities which are part of the **ECB component of the SSM** and a given case to be decided upon by the Panel concerns the **ECB component of the SSM**. The EBA should develop rules of procedure for the panel that ensure its independence and objectivity.

Or. en

Amendment 9
Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) The composition of the Management Board should be balanced and proper representation of Member States not participating in the SSM should be ensured.

Amendment

(9) The composition of the Management Board should be balanced and proper representation of Member States not participating in the **ECB component of the SSM** should be ensured.

Or. en

Amendment 10
Proposal for a regulation
Recital 11

Text proposed by the Commission

(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,

Amendment

(11) Since the objectives of this Regulation, namely ensuring **the highest level of effective, consistent and fair implementation** of prudential regulation and supervision across **all Member States**,

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,

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.

Or. en

Amendment 11
Proposal for a regulation
Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) An effective single, Union-wide supervisory mechanism should include not only an authority with the power to design and ensure the consistent Union-wide implementation, of a single rulebook, but also the harmonised execution by competent authorities of that single rulebook. While the ECB component of the SSM can perform this role for some Member States, it is not feasible for it to do so for all as there are institutional obstacles to ensuring equal treatment of non-euro area participants and a possibility of conflict between euro area monetary policy and Union-wide supervisory policy. Therefore, harmonised execution through a single supervisory body can only be achieved by other means.

Or. en

Amendment 12
Proposal for a regulation
Recital 11 b (new)

Text proposed by the Commission

Amendment

(11b) In order to achieve a truly effective single supervisory mechanism that includes all Member States on an equal basis it is indispensable that the Council and the Commission give full consideration, prior to the publication of the review of Regulation (EU) No 1093/2010, which is due by 2 January 2014, to the timely introduction of proposals entrusting an independent Union body with implementing powers, the exercise of which it should be able to delegate to competent authorities, with regard to all aspects of prudential rules concerning all credit institutions established in the Union, using the legal acts provided for under Articles 114 and 352 TFEU and 20 TEU if necessary, in the absence of which an amendment of the TFEU remains the only option,

Or. en

Amendment 13
Proposal for a regulation
Article 1 – point -1 (new)
Regulation (EU) No 1093/2010
Article 1 – paragraph 2

Text proposed by the Commission

Amendment

-1. In Article 1, paragraph 2 is replaced by the following:

"2. The Authority shall act within the powers conferred by this Regulation, by Council Regulation (EU) No .../... [conferring specific tasks on the ECB] 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."

Or. en

Amendment 14
Proposal for a regulation
Article 1 – point -1 a (new)
Regulation (EU) No 1093/2010
Article 1 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

-1a. In Article 1(5), the first subparagraph is replaced by the following:

"5. The objective of the Authority shall be to act as the final decision-making body for supervisory policy regarding all financial institutions within the meaning of Article 4(1) which are established in the European Union in order to protect the public interest by ensuring the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The Authority shall [...]:

(a) improve the functioning of the internal market, including, in particular, a sound, effective and consistent level of regulation and supervision;

(b) ensure the integrity, transparency, efficiency and orderly functioning of

- financial markets;
- (ba) strengthen the integration of the European Central Bank into the system of European Supervisory Authorities;*
- (c) strengthen international supervisory coordination;**
- (d) prevent regulatory arbitrage and promote equal conditions of competition;**
- (e) ensure that the taking of credit risk and other risks is appropriately supervised; and**
- (f) enhance consumer protection."**

Or. en

Justification

Defining EBA as SSM

Amendment 15

Proposal for a regulation

Article 1 – point -1 b (new)

Regulation (EU) No 1093/2010

Article 1 – paragraph 5 – subparagraph 2

Text proposed by the Commission

Amendment

-1b. In Article 1(5), the second subparagraph is replaced by the following:

"For those purposes, the Authority shall ensure 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, undertake economic analyses of the markets to promote the achievement of the Authority's objective and take the necessary actions and decisions in this regard."

Or. en

Justification

Defining EBA as SSM

Amendment 16

Proposal for a regulation

Article 1 – point -1 c (new)

Regulation (EU) No 1093/2010

Article 1 – paragraph 5 – subparagraph 4

Text proposed by the Commission

Amendment

-1c. In Article 1(5), the fourth subparagraph is replaced by the following:

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

Or. en

Justification

Defining EBA as SSM

Amendment 17

Proposal for a regulation

Article 1 – point -1 d (new)

Regulation (EU) No 1093/2010

Article 2 – paragraph 2 – point (f a) new

Text proposed by the Commission

Amendment

-1d. In Article 2(2), the following point is added:

"(fa) the European Central Bank."

Or. en

Amendment 18

Proposal for a regulation

Article 1 – point -1 e (new)

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Regulation (EU) No 1093/2010
Article 3

Text proposed by the Commission

Amendment

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

"Article 3

Accountability of the Authorities

The Authorities *comprising the ESFS* referred to in *Article 2(2)* shall be accountable to the European Parliament and the Council.

For the competent or supervisory authorities referred to in Article 2(2)(f), the first paragraph shall apply without prejudice to their accountability to national parliaments.

For the European Central Bank, this shall apply without prejudice to Article 130 TFEU and only for matters related to the tasks conferred upon it by Regulation (EU) No.../...[conferring specific tasks on the ECB]]."

Or. en

Justification

(See Art. 130 TFEU and Art. 7 Protocol 4 to the TFEU)

Amendment 19

Proposal for a regulation

Article 1 – point -1 f (new)

Regulation (EU) No 1093/2010

Article 4 – point 1

Text proposed by the Commission

Amendment

-1f. In Article 4, point 1 is replaced by the following:

"(1) "financial institutions" means "credit institutions" as defined in Article 4(1) of Directive 2006/48/EC, "investment firms" as defined in Article

3(1)(b) of Directive 2006/49/EC, "financial conglomerates" as defined in Article 2(14) of Directive 2002/87/EC and "deposit guarantee schemes" introduced and officially recognised in accordance with Directive 94/19/EEC, save that, with regard to Directive 2005/60/EC, "financial institutions" means credit institutions and financial institutions as defined, respectively, in Article 3(1) and (2) of that Directive;"

Or. en

Amendment 20

Proposal for a regulation

Article 1 – point 1 a (new)

Regulation (EU) No 1093/2010

Article 7

Text proposed by the Commission

Amendment

1a. Article 7 is replaced by the following:

"Article 7

Seat

The Authority shall have its seat in Frankfurt am Main."

Or. en

Amendment 21

Proposal for a regulation

Article 1 – point 1 b (new)

Regulation (EU) No 1093/2010

Article 8 – paragraph 1

Text proposed by the Commission

Amendment

1b. In Article 8, paragraph 1 is replaced by the following:

"1. The Authority shall have the following tasks:

(-a) to ensure the implementation of a single supervisory rulebook by all supervisory authorities in respect to all financial institutions in the Union;

(a) to establish high-quality common regulatory and supervisory standards and practices, in particular 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);

(b) to enforce the consistent application of legally binding Union acts, in particular by establishing 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;

[...]

(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 ensure 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, 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;

(l) to issue a single supervisory handbook in order to identify the practices to be considered of the highest quality as regards supervisory methodologies and processes, including metrics to assess and determine the relevant prudential capital and liquidity requirements, off-site and on-site examinations, identification of early warnings and triggers for supervisory actions;

(m) 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;

(n) to act as the competent authority to manage crises of cross-border institutions that has the potential to pose a systemic

risk."

Or. en

Amendment 22

Proposal for a regulation

Article 1 – point 1 c (new)

Regulation (EU) No 1093/2010

Article 9 – paragraph 4

Text proposed by the Commission

Amendment

1c. In Article 9, 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 [...] 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."

Or. en

Amendment 23

Proposal for a regulation

Article 1 – point 1 d (new)

Regulation (EU) No 1093/2010

Article 9 – paragraph 5 – subparagraph 1

Text proposed by the Commission

Amendment

1d. In Article 9(5), the first subparagraph is replaced by the following:

"5. The Authority may [...] prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the

financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or, if so required, in the case of an emergency situation in accordance with and under the conditions laid down in Article 18."

Or. en

Amendment 24
Proposal for a regulation
Article 1 – point 1 e (new)
Regulation (EU) No 1093/2010
Article 9 – paragraph 5 – subparagraph 4

Text proposed by the Commission

Amendment

1e. In Article 9(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, the European Central Bank or the permanent college of supervisors referred to in Article 20a in order to facilitate the adoption of any such prohibition or restriction."

Or. en

Amendment 25
Proposal for a regulation
Article 1 – point 1 f (new)
Regulation (EU) No 1093/2010
Article 10 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

1f. In Article 10(1), the second subparagraph is replaced by the

following:

"Regulatory technical standards are delimited by the boundaries of Article 290 TFEU and the legislative acts on which they are based."

Or. en

Amendment 26

Proposal for a regulation

Article 1 – point 1 g (new)

Regulation (EU) No 1093/2010

Article 17 – paragraph 3

Text proposed by the Commission

Amendment

1g. In Article 17, paragraph 3 is replaced by the following:

"3. The Authority may [...] address a recommendation to the competent authority concerned setting out the action necessary to comply with Union law. Such a recommendation shall include a deadline for the authority to comply with the recommendation. Except in cases of urgency the deadline shall be no sooner than 10 days after receipt of the recommendation by the competent authority.

The competent authority shall, within the deadline referred to in the first subparagraph, inform the Authority of the steps it has taken or intends to take to ensure compliance with Union law."

Or. en

Amendment 27

Proposal for a regulation

Article 1 – point 1 h (new)

Regulation (EU) No 1093/2010

Article 17 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

1h. In Article 17(4), the first subparagraph is replaced by the following:

"4. Where the competent authority has not complied with Union law within the deadline referred to in paragraph 3, the Commission may, after having been informed by the Authority, or on its own initiative, issue a formal opinion requiring the competent authority to take the action necessary to comply with Union law. The Commission's formal opinion shall take into account the Authority's recommendation."

Or. en

Amendment 28

Proposal for a regulation

Article 1 – point 2 – point a

Regulation (EU) No 1093/2010

Article 18 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

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.

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, **the part under direct supervision of the European Central Bank or other parts** of the financial system in the Union, the Authority shall where deemed necessary, coordinate any actions undertaken by the relevant competent authorities.

Or. en

Amendment 29

Proposal for a regulation

Article 1 – point 2 – point a

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Text proposed by the Commission

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.

Amendment

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

Or. en

Amendment 30

Proposal for a regulation

Article 1 – point 2 – point a a (new)

Regulation (EU) No 1093/2010

Article 18 – paragraph 2

Text proposed by the Commission

Amendment

(aa) paragraph 2 is replaced by the following:

"2. [...] In consultation with the [...] ESRB and, where appropriate, the ESAs, the Council or the Commission, following a request by the Authority, the European Central Bank or the ESRB, or on their own initiative may adopt a decision addressed to the Authority, determining the existence of an emergency situation for the purposes of this Regulation [...]. The Council *in consultation with the Commission* shall review that decision at appropriate intervals and at least once a month. If the decision is not renewed at the end of a *one-month* period, it shall automatically expire. The Council *in agreement with the Commission* may declare the discontinuation of the emergency situation at any time.

Where the ESRB or the Authority

considers that an emergency situation may arise, it shall issue a confidential recommendation addressed to the Council *and the Commission* and provide it with an assessment of the situation. In that process, due care of confidentiality shall be guaranteed.

If the Council *or the Commission* determines the existence of an emergency situation, *they* shall duly inform the European Parliament [...] without delay."

Or. en

Amendment 31
Proposal for a regulation
Article 1 – point 2 – point a b (new)
Regulation (EU) No 1093/2010
Article 18 – paragraph 3

Text proposed by the Commission

Amendment

(ab) paragraph 3 is replaced by the following:

"3. Where [...] a decision pursuant to paragraph 2 *has been adopted, and* 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 [...] in accordance with the legislative acts referred to in Article 1(2), *including in regulatory technical standards and implementing technical standards adopted in accordance with those acts, adopt individual decisions requiring competent authorities to take the necessary action [...] to address any such developments by ensuring that financial institutions and competent authorities satisfy the*

requirements laid down in *those legislative acts.*"

Or. en

Amendment 32
Proposal for a regulation
Article 1 – point 2 – point b
Regulation (EU) No 1093/2010
Article 18 – paragraph 3a (new)

Text proposed by the Commission

3a. Where the Authority requests the *ECB* as competent authority to take the necessary action in accordance with paragraph 3, the *ECB* shall comply with it or shall provide within 48 hours at the latest adequate justification to the Authority for its non-compliance."

Amendment

3a. Where the Authority requests the *European Central Bank* as competent authority to take the necessary action in accordance with paragraph 3 ***concerning tasks other than those conferred upon it by Regulation (EU) No .../... [conferring specific tasks on the ECB]***, the *European Central Bank* shall comply with it or shall provide within 48 hours at the latest adequate justification to the Authority for its non-compliance.

Or. en

Amendment 33
Proposal for a regulation
Article 1 – point 2 – point b a (new)
Regulation (EU) No 1093/2010
Article 18 – paragraph 4

Text proposed by the Commission

Amendment

(ba) paragraph 4 is replaced by the following:

"4. Without prejudice to the powers of the Commission pursuant to Article 258 TFEU, where a competent authority does not comply with the decision of the Authority referred to in paragraph 3 within the period laid down in that decision, the Authority may [...] adopt

an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations [...], including the cessation of any practice. This shall *also* apply in situations in which a competent authority, *with regard to the application of the legislative acts referred to in Article 1(2), including regulatory technical standards and implementing technical standards adopted in accordance with those acts, [...] appears to be in breach of those acts [...]."*

Or. en

Amendment 34
Proposal for a regulation
Article 1 – point 2 a (new)
Regulation (EU) No 1093/2010
Article 19 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

2a. 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 *the European Central Bank* or a competent authority of another Member State 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, *shall* assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 of this Article."

Or. en

Amendment 35
Proposal for a regulation
Article 1 – point 3
Regulation (EU) No 1093/2010
Article 19 – paragraph 3a (new)

Text proposed by the Commission

"3a. Where the Authority requests the *ECB* as competent authority to take specific action or to refrain from action in accordance with paragraph 3, the *ECB* shall comply with it or shall within ten working days of the receipt of the request provide adequate justification to the Authority for its **non-compliance**."

Amendment

"3a. Where the Authority requests the *European Central Bank* as competent authority to take specific action or to refrain from action **concerning tasks conferred upon it by Regulation (EU) No .../... [conferring specific tasks on the ECB]** in accordance with paragraph 3, the *European Central Bank* shall comply with it or shall within ten working days of the receipt of the request provide adequate justification to the Authority for its **objections. In that case having taken into consideration that justification, EBA may require compliance of the European Central Bank with the original or modified request or, where it is more effective, whenever, based on requirements set out in directly applicable Union law, EBA may adopt an individual decision addressed to the financial institutions concerned, it shall do so.**"

Or. en

Amendment 36
Proposal for a regulation
Article 1 – point 3 a (new)
Regulation (EU) No 1093/2010
Article 19 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3a. In Article 19, the following paragraph is inserted after paragraph 3:

"3b. Disagreements concerning the application of Union law in a situation where one competent authority acts as host and the other as home supervisor

concerning the fact that the host supervisor applies or intends to apply stricter prudential requirements than the home supervisor shall only be subject to this article, if the action of the host supervisor is held by the home supervisor to be in breach of the legal acts referred to in Article 1(2) including regulatory technical standards or implementing technical standards."

Or. en

Amendment 37
Proposal for a regulation
Article 1 – point 3 b (new)
Regulation (EU) No 1093/2010
Article 20 a (new)

Text proposed by the Commission

Amendment

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

"Article 20a

Permanent college of supervisors

1. The Authority shall establish a permanent college of supervisors to facilitate the consistent and effective exercise of the tasks referred to in the second sub-paragraph and implementation of the decisions, recommendations and guidelines issued by the Authority in accordance with Chapter II and, subject to compatibility with Community law, ensure appropriate coordination and cooperation with relevant third country competent authorities where appropriate.

The permanent college of supervisors shall provide a framework for the Authority and the other competent authorities concerned to carry out the following tasks:

- (a) exchanging information;*
- (b) agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;*
- (c) determining supervisory examination programmes based on a risk assessment of institutions or groups;*
- (d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 35;*
- (e) consistently and effectively applying the acts referred to in Article 1(2) across institutions in the Union without prejudice to the options and discretions available in Union legislation;*

The competent authorities participating in the colleges of supervisors shall cooperate closely.

Any confidentiality requirements under the acts referred to in Article 1(2) shall not prevent competent authorities from exchanging confidential information within the permanent college of supervisors.

2. The permanent college of supervisors shall be composed of:

- (a) the Authority;*
- (b) the head of the national public authority competent for the supervision of credit institutions in each Member State;*
- (c) one representative of the Commission, who shall be non-voting;*
- (d) one representative of the European Central Bank, who shall be non-voting;*
- (e) one representative of the ESRB, who shall be non-voting;*
- (f) one representative of each of the other two European Supervisory Authorities, who shall be non-voting.*

By way of derogation to point (b), where the Member State of the authority referred to is a participating Member State or a Member State that has entered into a close cooperation agreement in accordance with Regulation (EU) No .../... [conferring specific tasks on the ECB] it shall not be included in the permanent college of supervisors.

3. The establishment and functioning of the permanent college of supervisors shall be based on written arrangements determined, after consultation with competent authorities concerned, by the Authority.

The Authority shall chair the meetings of the permanent college of supervisors and shall decide which competent authorities participate in a meeting or in an activity of the permanent college of supervisors . The Authority shall keep all members of the permanent college of supervisors fully informed, in advance, of the organisation of such meetings, the main issues to be discussed and the activities to be considered.

The Authority shall also keep all the members of the permanent college of supervisors fully informed, in a timely manner, of the actions taken in those meetings or the measures carried out.

The decision of the Authority shall take account of the relevance of the supervisory activity to be planned or coordinated for those authorities, in particular the potential impact on the stability of the financial system in the Member States concerned.

The Authority shall inform the Committee of European Banking Supervisors of the activities of the permanent college of supervisors, including in emergency situations, and communicate to that Committee all information that is of particular relevance for the purposes of

supervisory convergence.

4. The Authority may develop draft regulatory and implementing technical standards to ensure uniform conditions of application with respect to the provisions regarding the operational functioning of the permanent college of supervisors and issue guidelines and recommendations adopted pursuant to Article 16 to promote convergence in supervisory functioning and best practices adopted by the supervisors participating in that college."

Or. en

Amendment 38
Proposal for a regulation
Article 1 – point 3 c (new)
Regulation (EU) No 1093/2010
Article 21 – paragraph 1

Text proposed by the Commission

Amendment

3c. In Article 21, paragraph 1 is replaced by the following:

"1. The Authority shall ensure the promotion and monitoring of 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, 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."

Or. en

Amendment 39
Proposal for a regulation
Article 1 – point 3 d (new)
Regulation (EU) No 1093/2010
Article 21 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

3d. In Article 21(2), the first subparagraph is replaced by the following:

"2. The Authority may, on its own initiative take the lead [...] 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."

Or. en

Amendment 40
Proposal for a regulation
Article 1 – point 3 e (new)
Regulation (EU) No 1093/2010
Article 22 – paragraph 1a (new)

Text proposed by the Commission

Amendment

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

"1a. The Authority shall conduct at least annual Union-wide stress tests in accordance with Article 32 and provide appropriate disclosures of the results for each participating financial institution."

Or. en

Amendment 41
Proposal for a regulation
Article 1 – point 3 f (new)
Regulation (EU) No 1093/2010
Article 25 – paragraph 1

Text proposed by the Commission

Amendment

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

"1. The Authority shall ensure that effective and consistent recovery and resolution plans for all financial institutions are developed and kept up to date. The Authority shall also develop procedures in emergency situations and preventive measures to minimise the systemic impact of any failure."

Or. en

Amendment 42

Proposal for a regulation

Article 1 – point 3 g (new)

Regulation (EU) No 1093/2010

Article 25 – paragraph 3

Text proposed by the Commission

Amendment

3g. In Article 25, paragraph 3 is replaced by the following:

"3. The Authority shall develop regulatory and implementing technical standards [...] in accordance with the procedure laid down in Articles 10 to 15 to set up a common framework for emergency proceedings for competent authorities and recovery and resolution plans for financial institutions."

Or. en

Amendment 43

Proposal for a regulation

Article 1 – point 3 h (new)

Regulation (EU) No 1093/2010

Article 26 – paragraph 1

Text proposed by the Commission

Amendment

3h. In Article 26, paragraph 1 is replaced by the following:

"1. The Authority shall contribute to strengthening the European system of [...] deposit guarantee schemes by acting under the powers conferred to it in this Regulation to ensure the correct application of Directive 94/19/EC with the aim of ensuring that *all* deposit guarantee schemes are adequately funded by contributions from financial institutions including from those financial institutions established and taking deposits within the Union but headquartered outside the Union as provided for in Directive 94/19/EC and provide a high level of protection to all depositors in a harmonised framework throughout the Union, which leaves the stabilising safeguard role of mutual guarantee schemes intact, provided they comply with Union legislation."

Or. en

Justification

By this amendment no final decision about the future architecture of deposit guarantee schemes is taken, but by deleting the word "national" in the "European system of national deposit guarantee schemes" further developments in this area will not necessarily require changes of the EBA text. At the same time purely national schemes are still possible.

Amendment 44

Proposal for a regulation

Article 1 – point 3 i (new)

Regulation (EU) No 1093/2010

Article 26 – paragraph 4a (new)

Text proposed by the Commission

Amendment

3i. In Article 26, the following paragraph is added:

"4a. When national deposit guarantee schemes merge they shall be under the supervision of a college of supervisors pursuant to Article 21."

Or. en

Amendment 45
Proposal for a regulation
Article 1 – point 3 j (new)
Regulation (EU) No 1093/2010
Article 27 – paragraph 1

Text proposed by the Commission

Amendment

3j. In Article 27, paragraph 1 is replaced by the following:

"1. The Authority shall *develop* methods for the resolution of failing financial institutions, in particular those that may pose a systemic risk, in ways which avoid contagion and allow them to be wound down in an orderly and timely manner, including, where applicable, coherent and robust funding mechanisms as appropriate."

Or. en

Amendment 46
Proposal for a regulation
Article 1 – point 3 k (new)
Regulation (EU) No 1093/2010
Article 27 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

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

"2. The Authority shall *assess* the need for a system of coherent, robust and credible funding mechanisms, with

appropriate financing instruments linked to a set of coordinated national or multi-national crisis management arrangements."

Or. en

Amendment 47

Proposal for a regulation

Article 1 – point 3 l (new)

Regulation (EU) No 1093/2010

Article 29 – paragraph 1 – introductory part

Text proposed by the Commission

Amendment

3l. In Article 29(1), the introductory part is replaced by the following:

"1. The Authority shall foster a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union. The Authority shall carry out, at a minimum, the following activities:"

Or. en

Amendment 48

Proposal for a regulation

Article 1 – point 3 m (new)

Regulation (EU) No 1093/2010

Article 29 – paragraph 1 – point b

Text proposed by the Commission

Amendment

3m. In Article 29(1), point (b) is replaced by the following:

"(b) ensuring an effective bilateral and multilateral exchange of information between competent authorities [...];"

Or. en

Amendment 49
Proposal for a regulation
Article 1 – point 3 n (new)
Regulation (EU) No 1093/2010
Article 29 – paragraph 1 – point c

Text proposed by the Commission

Amendment

3n. In Article 29(1), point (c) is replaced by the following:

"(c) [...] developing high-quality and uniform supervisory standards, including reporting standards, and international accounting standards in accordance with Article 1(3);"

Or. en

Amendment 50
Proposal for a regulation
Article 1 – point 3 o (new)
Regulation (EU) No 1093/2010
Article 29 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

3o. In Article 29(2), the following subparagraph is added:

"For this purpose the EBA shall issue a European supervisory handbook in order to identify the practices to be considered of the highest quality as regards supervisory methodologies and processes, including metrics to assess and determine the relevant prudential capital and liquidity requirements, off-site and on-site examinations, identification of early warnings and triggers for supervisory actions."

Or. en

Amendment 51
Proposal for a regulation
Article 1 – point 3 p (new)
Regulation (EU) No 1093/2010
Article 30 – paragraph 3

Text proposed by the Commission

Amendment

3p. 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 and any other information acquired in the conduct of its tasks in order to ensure convergence on the standards and practices of the highest quality."

Or. en

Amendment 52
Proposal for a regulation
Article 1 – point 3 q (new)
Regulation (EU) No 1093/2010
Article 30 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3q. In Article 30, 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 full harmonisation of

prudential definitions and rules. The opinion shall be adopted by the Board of Supervisors."

Or. en

Amendment 53
Proposal for a regulation
Article 1 – point 3 r (new)
Regulation (EU) No 1093/2010
Article 31 – subparagraph 2

Text proposed by the Commission

Amendment

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

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

- (a) *coordinating the exchange of information between the competent authorities;***
- (b) *determining the scope and [...] verifying the reliability of information that should be made available to all the competent authorities concerned;***
- (c) *without prejudice to Article 19, [...] mediating between competent authorities [...];***
- (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 necessary actions;***
- (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;

(g) establishing sub-committees to the board of supervisors where deemed necessary;

(h) issuing a single European supervisory handbook."

Or. en

Amendment 54

Proposal for a regulation

Article 1 – point 3 s (new)

Regulation (EU) No 1093/2010

Article 32 – paragraph 2

Text proposed by the Commission

Amendment

3s. In Article 32, 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

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

Or. en

Amendment 55
Proposal for a regulation
Article 1 – point 3 t (new)
Regulation (EU) No 1093/2010
Article 32 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3t. In Article 32, the following paragraph is inserted after paragraph 3:

"3a. For the purpose of running the Union-wide risk assessment exercise as described in this Article, the Authority may require all the information needed directly from financial institutions. During the exercise, the Authority may interact directly with financial institutions, request directly information from them and require competent authorities to conduct specific reviews, including through on-site inspections envisaging also the participation of the Authority, to ensure comparability and reliability of methods, practices and results. The financial institutions and competent authorities shall comply with the Authorities requests."

Or. en

Amendment 56
Proposal for a regulation
Article 1 – point 3 u (new)
Regulation (EU) No 1093/2010
Article 32 – paragraph 3 b (new)

Text proposed by the Commission

Amendment

3u. In Article 32, the following paragraph is inserted after paragraph 3:

"3b. On request of the Authority competent authorities shall order the financial institutions to be subject to an

external independent audit following specific criteria set by the Authority."

Or. en

Amendment 57
Proposal for a regulation
Article 1 – point 4
Regulation (EU) No 1093/2010
Article 35 – paragraph 1

Text proposed by the Commission

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.***

Amendment

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.

Or. en

Amendment 58
Proposal for a regulation
Article 1 – point 4 a (new)
Regulation (EU) No 1093/2010
Article 35 – paragraph 5

Text proposed by the Commission

Amendment

4a. In Article 35, paragraph 5 is replaced by the following:

"5. Where information is not available or is not made available by the competent authorities in a timely fashion, the Authority may address [...] 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."

Or. en

Amendment 59
Proposal for a regulation
Article 1 – point 4 b (new)
Regulation (EU) No 1093/2010
Article 35 – paragraph 6

Text proposed by the Commission

Amendment

4b. In Article 35, paragraph 6 is replaced by the following:

"6. Where information is not available or is not expected to be made available [...] in a timely fashion, the Authority may by simple request or by decision require information from

- relevant financial institutions,***
- relevant financial holding companies,***
- relevant mixed financial holding companies,***
- relevant mixed-activity holding companies,***
- persons involved in the activities of the relevant financial institutions,***
- third parties to whom the financial institutions have outsourced operational functions or activities,***

The addressees of such a request or decision shall provide the Authority with 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."

Or. en

Amendment 60

Proposal for a regulation

Article 1 – point 4 c (new)

Regulation (EU) No 1093/2010

Article 35 – paragraph 7a (new)

Text proposed by the Commission

Amendment

4c. In Article 35, the following paragraph is added:

"7a. In order to receive the information necessary in order to carry out the tasks conferred upon it, the Authority may conduct all necessary investigations of persons referred to in paragraph 6. To that end the Authority may require the submission of documents, examine the books and records, take copies of the books and records and obtain written or oral explanations. When addressees of any request for information under this Article obstruct the conduct of investigation the Member State where the relevant premises or persons are located shall afford the necessary assistance including access by the Authority to business premises."

Or. en

Amendment 61

Proposal for a regulation

Article 1 – point 4 d (new)

Regulation (EU) No 1093/2010

Article 36 – paragraph 4 – subparagraph 3

Text proposed by the Commission

Amendment

4d. In Article 36(4), the third subparagraph is replaced by the

following:

"If the Authority does not act on a recommendation, it shall explain to the ESRB, the European Parliament, the Council and the Commission its reasons for not doing so."

Or. en

Amendment 62

Proposal for a regulation

Article 1 – point 4 e (new)

Regulation (EU) No 1093/2010

Article 36 – paragraph 5 – subparagraph 3

Text proposed by the Commission

Amendment

4e. In Article 36(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."

Or. en

Amendment 63

Proposal for a regulation

Article 1 – point 4 f (new)

Regulation (EU) No 1093/2010

Article 37 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

4f. In Article 37(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.*"

Or. en

Amendment 64
Proposal for a regulation
Article 1 – point 4 g (new)
Regulation (EU) No 1093/2010
Article 37 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

4g. In Article 37(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."

Or. en

Amendment 65
Proposal for a regulation
Article 1 – point 4 h (new)
Regulation (EU) No 1093/2010
Article 38 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

4h. In Article 38, the following paragraph is added:

"5a. This Article is not applicable to Member States which are subject to Regulation (EU) No .../... [conferring specific tasks on the ECB]."

Or. en

Amendment 66
Proposal for a regulation
Article 1 – point 4 i (new)
Regulation (EU) No 1093/2010
Article 38 – paragraph 5 b (new)

Text proposed by the Commission

Amendment

4i. In Article 38, the following paragraph is added:

"5b. Where a decision of the Authority is revoked by the Council, the Authority may take the case before the Court of Justice of the European Union."

Or. en

Amendment 67
Proposal for a regulation
Article 1 – point 4 j (new)
Regulation (EU) No 1093/2010
Article 39 – paragraph 1

Text proposed by the Commission

Amendment

4j. In Article 39, paragraph 1 is replaced

by the following:

"1. Before taking the decisions provided for in this Regulation *and where possible*, the Authority shall inform any named addressee of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter. This applies *mutatis mutandis* to recommendations as referred to in Article 17(3)."

Or. en

Amendment 68

Proposal for a regulation

Article 1 – point 5

Regulation (EU) No 1093/2010

Article 41 – paragraph 2 – subparagraph 1

Text proposed by the Commission

"2. For the purposes of Article **17 and** 19, the Board of Supervisors shall ***establish an*** independent panel ***consisting*** of the Chairperson and two members appointed by the Board of Supervisors among its voting members. At least one member of the independent panel shall be from a Member State which is not a participating Member State in accordance with *Regulation (EU) No .../... [127(6) TFEU Council Regulation]*."

Amendment

"2. For the purposes of Article 19, the Board of Supervisors shall ***convoke independent panels to facilitate an impartial settlement of the disagreement, consisting of the Chairperson and two 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 .../... [conferring specific tasks on the ECB]nor has entered into close cooperation with the European Central Bank in accordance with that Regulation are subject to a settlement process pursuant to article 19, the independent panel shall consist of the Chairperson and

two members appointed by the Board of Supervisors among its voting members. At least one member of the independent panel shall be from a Member State which is not a participating Member State in accordance with *Regulation (EU) No .../... [conferring specific tasks on the ECB]* **nor has entered into close cooperation with the European Central Bank in accordance with that Regulation.**

If only Member States which are participating Member States in accordance with Regulation (EU) No .../... [conferring specific tasks on the ECB] or which have entered into close cooperation with the European Central Bank in accordance with that Regulation, or the European Central Bank as competent authority are subject to the settlement procedure the panel shall consist of the Chairperson and all voting members which are representing Member States which are participating Member States in accordance with Regulation (EU) No .../... [conferring specific tasks on the ECB] or which have entered into close cooperation with the European Central Bank in accordance with that Regulation. The members of the panel shall act independently and objectively in accordance with Article 42."

Or. en

Amendment 69
Proposal for a regulation
Article 1 – point 7
Regulation (EU) No 1093/2010
Article 44 – paragraph 1 – subparagraph 3

Text proposed by the Commission

With regard to decisions in accordance with **Articles 17 and 19**, the decision proposed by the panel shall be considered

Amendment

With regard to decisions in accordance with **Article 19 which have to be applied by Member States which are neither**

as adopted unless it is rejected by a simple majority which shall include at least three votes from members of participating Member States and three votes from members of Member States which 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."

participating Member States in accordance with Regulation (EU) No .../... [conferring specific tasks on the ECB]nor have entered into close cooperation with the European Central Bank in accordance with that Regulation, the decision proposed by the panel shall be considered as adopted unless it is rejected by a simple majority.

With regard to decisions in accordance with 19 which have to be applied by the European Central Bank, competent authorities representing participating Member States in accordance with Regulation (EU) No .../... [conferring specific tasks on the ECB]or those which have entered into close cooperation with the European Central Bank 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 three votes from members of participating Member States and three votes from members of Member States which are neither participating Member States in accordance with Regulation (EU) No .../... [conferring specific tasks on the ECB]nor have entered into close cooperation with the European Central Bank in accordance with that Regulation.

With regard to decisions taken under Article 19 where only Member States are involved in the settlement procedure which are participating Member States in accordance with Regulation (EU) No .../... [conferring specific tasks on the ECB]or have entered into close cooperation with the European Central Bank in accordance with that Regulation, The decision shall be taken by qualified majority by an independent panel consisting of all members representing participating Member States in accordance with Regulation (EU) No

.../... [conferring specific tasks on the ECB]and those which have entered into close cooperation with the European Central Bank in accordance with that Regulation.

Or. en

Amendment 70

Proposal for a regulation

Article 1 – point 7

Regulation (EU) No 1093/2010

Article 44 – paragraph 1 – subparagraph 6

Text proposed by the Commission

"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."

Amendment

"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."

Or. en

Amendment 71

Proposal for a regulation

Article 1 – point 8 a (new)

Regulation (EU) No 1093/2010

Article 48 – paragraph 2a (new)

Text proposed by the Commission

Amendment

8a. In Article 48, the following paragraph is inserted after paragraph 2:

"2a. In an emergency situation, the Board of Supervisors may decide to delegate certain specified decision-making powers to the Chairperson. The rules concerning the delegation of those powers and the revocation of such delegation shall be laid down in the rules of procedure adopted by

the Board of Supervisors."

Or. en

Amendment 72

Proposal for a regulation

Article 1 – point 8 b (new)

Regulation (EU) No 1093/2010

Article 60 – paragraph 5

Text proposed by the Commission

Amendment

8b. In Article 60, paragraph 5 is replaced by the following:

"5. The Board of Appeal may confirm the decision taken by the competent body of the Authority, or remit the case to the competent body of the Authority. That body shall confirm the decision of the Board of Appeal and [...] adopt an amended decision regarding the case concerned, or the Authority shall bring the case before the Court of Justice of the European Union."

Or. en

Amendment 73

Proposal for a regulation

Article 1 – point 8 c (new)

Regulation (EU) No 1093/2010

Article 62 – paragraph 1 – point a

Text proposed by the Commission

Amendment

8c. In Article 62(1), point (a) is deleted.

Or. en

Amendment 74
Proposal for a regulation
Article 1 – point 8 d (new)
Regulation (EU) No 1093/2010
Article 63 – paragraph 7

Text proposed by the Commission

Amendment

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

Or. en

Amendment 75
Proposal for a regulation
Article 1 – point 8 e (new)
Regulation (EU) No 1093/2010
Article 76

Text proposed by the Commission

Amendment

8e. Article 76 is deleted.

Or. en

Amendment 76
Proposal for a regulation
Article 1 – point 8 f (new)
Regulation (EU) No 1093/2010
Article 77

Text proposed by the Commission

Amendment

8f. Article 77 is deleted.

Or. en

Amendment 77
Proposal for a regulation
Article 1 – point 8 g (new)
Regulation (EU) No 1093/2010
Article 81 – paragraph 3

Text proposed by the Commission

Amendment

8g. 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 appropriate timing for proposals entrusting an Authority with pan-European supervisory responsibilities in this area."

Or. en

Amendment 78
Proposal for a regulation
Article 2 – paragraph 1 – point c

Text proposed by the Commission

Amendment

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

(c) the composition of the independent **panels** preparing decisions for the purposes of **Article 19**.

Or. en

Amendment 79
Proposal for a regulation
Article 2 – paragraph 2

Text proposed by the Commission

Amendment

The report shall take into account in particular any developments in the number

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.

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 (EU) No .../... [conferring specific tasks on the ECB]** 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 **and that those decisions are complied with consistently across all competent authorities as defined in Article 4(2)(i).**

Or. en

EXPLANATORY STATEMENT

A True EU-wide Single Supervisory Mechanism is Essential to the future of the Union

This report welcomes the Commission's proposal to ensure the effective functioning of the European Banking Authority in the context of initiatives taken towards a Banking Union.

It also recognises the importance of including the ECB in that mechanism, in general as a valuable source of expertise and as an immediate way of providing much needed harmonisation of supervisory action to address the current Eurozone crisis. The ECB's powers have also been able to bring a valuable stabilising influence in the continuing sovereign and banking crisis, while member states were struggling to take decisions and definitive solutions are sought.

This report emphasises the importance of establishing an EU-wide robust single supervisory mechanism (EUSSM), with appropriate division of tasks between it and national supervisory authorities according to size and business models, covering all banks in the Union as called for by the June 2012 summit.

It recalls that in the strong cross-party position it adopted on the new European Supervisory Authorities in 2010 the European Parliament strongly advocated to move towards precisely such a mechanism. The procrastination of the Council has cost European tax payers tens of billions and Europe immensely credibility.

It is clear however that, while it can certainly be a valuable part of such a mechanism, the ECB Supervisory Mechanism in the proposed Council regulation cannot itself be extended to be the desired EUSSM.

This is a direct consequence of the fact that non-Euro Member States

- on the one hand cannot be obliged to join the ECB consolidated supervisory mechanism and
- on the other hand, if they "opt-in", they can, for legal reasons in the treaty, at most have a say on operational matters delegated to the Supervisory Board by the ECB's Governing Council, on which only Eurozone Member States are represented

Non-Euro Member States cannot be expected to share the sovereignty over their banking system without receiving the same rights as Euro Member States. The foreseeable result would be an undesirable and avoidable split within the single market.

A robust solution must provide equally strong incentives for all Member States to participate in an EUSSM under which they are guaranteed equal rights and accept equal responsibilities. This must also include the appropriate safeguards for host countries to protect their capital base in particular in situations of crisis and conflict.

In addition, the current mandate of the ECB means that monetary policy must prevail over other duties, meaning that there is no political accountability for weighing these objectives

against prudential supervision objectives, despite the fact that this is a fundamentally political issue.

Finally, the limitation imposed on the ECB by the Treaty with respect to supervisory tasks in relation to insurance undertakings is likely to lead to difficulties when it comes to financial conglomerates.

This report concludes for all the reasons above, that the "opt-in" system proposed for the ECB regulation is not a sufficient basis for constructing a truly European SSM. We propose that, if such a mechanism is put in place as a short-term solution, in the absence of safeguards for non Eurozone members within the ECB mechanism, this regulation should provide them within the context of EBA.

For this reason this report includes several proposals for safeguards in the decision making process for Article 19 (Binding Mediation).

If Member States are to join an EUSSM it must be one that, by construction, gives all of them equal say in decision making and has the power to enforce those decisions EU-wide.

The political objective of this report is therefore, to offer to all EU member states strong incentives to share the sovereignty in the area of banking supervision. The road towards common European supervision must be as broad as possible rather than as narrow as conservative jurists can imagine it.

The Ultimate Authority over the EUSSM should be granted to an independent EU body with its powers enshrined in the Treaty

This report calls for the recognition that a true Banking Union requires the acceptance of an independent, politically accountable, European Authority with all the necessary powers - that may be delegated at its discretion - to directly, consistently and fairly supervise all banks in all Member States.

The report urges the Committee to take a firm stand that the legal basis for this already exists: Art. 114 TFEU can be used to confer implementing powers for the purpose of ensuring uniform application of prudential regulation on an EU body.

Art. 127(6) TFEU is indeed the only instrument available if the legislator wishes to confer "certain tasks" on the ECB.

However, this does not imply that Art. 114 TFEU cannot be used by the legislator to confer supervisory tasks on a different body.

All that is required is the political will in Commission and Council to recognise the need for action and adopt the necessary measures as provided for in TFEU 352. If it becomes clear that certain EU member states decide never to join such a mechanism, the same legal basis could still be used in combination with Art. 20 TEU.

If this position on the Treaty is not accepted, the only alternative is to make the necessary

Treaty changes and definitively end the unsatisfactory situation that the establishment of such a body depends on interpretations by the ECJ.

Today, EBA is the only existing body with an EU wide banking supervisory mandate and fair representation of all Member States

This report proposes that that EBA, currently the only body with a purely supervisory mandate for the whole of the EU banking system, has the final say on the implementation of the Single Rule Book by all supervisors, national and supranational.

This report makes a distinction within an EU-SSM between:

- effective decision making on EU supervisory policy
- effective execution of that policy

The first must be the responsibility of EBA's Board of Supervisors while the second is the responsibility of supervisory authorities "on the ground".

This report is intended to clarify that the ECB component of the EU supervisory mechanism, just like other supervisory authorities, should be responsible for the planning and execution of supervisory tasks, with EBA responsible for ensuring that all authorities do so in accordance with the Single Rule Book.

The ECB could have a valuable role within a true EU-wide SSM, but, like other competent authorities, it must comply with EBA decisions.

The establishment of an independent authority in charge of a true EU- SSM does not prevent consolidation of some national supervisors under one body for the purpose of effective execution of supervisory policy such as that proposed under the Council regulation conferring supervisory tasks on the ECB.

It does mean, however, that, the ECB, in the same sense as non-participating national competent authorities, should be considered responsible for planning and execution tasks in relation to the Single Rule Book, with any differences of opinion or questions of interpretation being settled under the ultimate authority and guidance of EBA.

Here this draft report takes a firm stand on the interpretation of Article 130 of the TFEU, which prohibits the ECB from taking instructions from other bodies in relation to tasks conferred by the Treaty.

While monetary tasks are conferred upon the ECB by the Treaty and its Statutes, Article 127(6) TFEU confers power *on the Council* enabling the *Council to confer on the ECB*, via secondary legislation, certain supervisory tasks.

Since these supervisory tasks are not conferred by the TFEU, the ECB is not required to ignore outside instructions regarding their execution.

For this reason, this report removes the "comply or explain" provision in the Commission's proposal in relation to the ECB in order to maintain equal treatment of supervisors with regard to EBA's decisions.

This of course is in addition to the need for strong accountability of the ECB to the European Parliament with regards to financial supervision.

Reinforcing EBA's powers is an essential part of moving towards a Banking Union

Recent experience, such as the inadequacy of data provided for the Stress Testing exercises by certain banks and national supervisors have shown that that it is essential to strengthen EBA's powers to conduct investigations and enforce compliance of both local supervisory bodies and institutions with information requests.

More generally the ability of EBA to assess compliance of supervisory actions with the Single Rule Book and enforce corrective action in the case of non-compliance is of extreme importance in achieving the desired harmonisation.

There was a broad consensus, expressed in the Parliament's position on the EBA regulation in 2010, for more far reaching powers for EBA's in order to ensure consistent application of prudential legislation in the single market.

This report therefore includes a number of amendments based on that consensus:

- Enhanced powers for EBA to obtain information of the required quality on time
- Enhanced powers of on-site investigation
- Enhanced role in colleges of supervisors
- Enhanced role in setting standards for recovery and resolution plans
- Enhanced role with respect to deposit guarantee schemes
- Rationalisation of Member-State safeguard clauses to promote

In addition the report includes a mandate for EBA to produce a supervisory handbook to harmonise not only EU supervisory policy but also practice, processes and methodologies.

Finally, this report clarifies EBA's mandate to maintain diversity in the EU banking landscape as a way of promoting resilience.