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REPORT

on the proposal for a Council regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions
(COM(2012)0511 – C7-0314/2012 – 2012/0242(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Marianne Thyssen

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 Council regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions

(COM(2012)0511 – C7-0314/2012 – 2012/0242(CNS))

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2012)0511),
 - having regard to Article 127(6) of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0314/2012),
 - having regard to the Statute of the European System of Central Banks and of the European Central Bank (C-83/230),
 - having regard to the letter of the Committee on Legal Affairs,
 - having regard to the letter of the Committee on Civil Liberties, Justice and Home Affairs,
 - 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 opinion of the Committee on Constitutional Affairs (A7-0392/2012),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
 5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

AMENDMENTS BY THE EUROPEAN PARLIAMENT*

to the Commission proposal

COUNCIL REGULATION

conferring specific tasks on the European central Bank concerning policies relating to the prudential supervision of credit institutions

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127(6) 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 Parliament,

Having regard to the opinion of the European Central Bank,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Over the past decades, the Union has made considerable progress in creating an internal market for banking services. Consequently, in many Member States, banking groups with their headquarters established in other Member States hold a significant market share, and credit institutions have geographically diversified their business, within *both* the Euro area *and non-euro area*.
- (1a) *The present financial and economic crisis has seen Europe's banking system brought close to collapse. The integrity of the single currency and the single market is threatened by the fragmentation of the financial sector. It is now essential to intensify the integration of the banking sector in order to bolster European unity, restore financial stability and lay the basis for economic recovery.*
- (2) Maintaining and deepening the internal market for banking services is essential in order to foster economic *growth* in the Union *and adequate funding of the real economy*. However this proves increasingly challenging. Evidence shows that the integration of banking markets in the Union is coming to a halt *and the renationalisation of banks is proceeding*.

* Amendments: new or amended text is highlighted in bold italics; deletions are indicated by the symbol **■**.

- (3) At the same time, ***in addition to the adoption of more stringent legislation in the EU***, supervisors must step up their supervisory scrutiny to take account of the lessons of the financial crisis in recent years, and be able to oversee highly complex and inter-connected markets and institutions.
- (4) Competence for supervision of individual banks in the Union remains mostly at national level. ***Coordination between supervisors is vital but the crisis has shown that mere coordination is not enough, in particular in the context of a single currency.*** In order to preserve ***financial stability in Europe*** and increase the positive effects of market integration on growth and welfare, integration of supervisory responsibilities should therefore be enhanced.
- (4a) ***Leaving the competence for supervision of individual banks within large and interconnected banking groups exclusively at national level precludes the possibility for a smooth and sound overview over an entire banking group and its overall health. This can lead to different interpretations and contradictory decisions on the individual entity level.***
- (5) The solidity of credit institutions is in many instances still closely linked to the Member State in which they are established. Doubts about the sustainability of public debt, economic growth prospects, and the viability of credit institutions have been creating negative, mutually reinforcing market trends. This ***link affects specifically the use of the euro as a single currency because it causes financial fragmentation which impedes that the different members of private and public sectors being financed according their own creditworthiness altering the level playing field*** and may lead to risks for the viability of some credit institutions as well as for the stability of the financial system, and may impose a heavy burden for already strained public finances of the Member States concerned. The problem poses specific risks within the Euro area where the single currency increases the likelihood that negative developments in one Member State can create risks for economic development and the stability of ***other Euro area Member States and consequently the Euro area as a whole, but also in non-Euro area Member States where significant activities of banks from the Euro area are in place.***
- (6) The European Banking Authority (EBA), established in 2011 by Regulation (EU) No. 1093/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority),¹ and the European System of Financial Supervision established by Article 2 of that Regulation and of Regulation (EU) No 1094/2010 of 24 November 2010 establishing a European Supervisory Authority (EIOPA),² and Regulation (EU) No 1095/2010 of 24 November 2010 establishing a European Supervisory Authority (ESMA)³ have significantly improved cooperation between banking supervisors within the Union. EBA is making important contributions to the creation of a single rulebook for

¹ OJ L 331, 15.12.2010, p. 12.

² OJ L 331, 15.12.2010, p. 37.

³ OJ L 331, 15.12.2010, p. 84.

financial services in the Union, and has been crucial in implementing in a consistent way the recapitalisation of major *euro area* credit institutions agreed by the European Council in October 2011, *as well as the guidelines and conditions relating to State aid whose adoption the independent EU competition authority has succeeded in securing.*

- (7) The European Parliament called on various occasions for a European body to be directly responsible for certain supervisory tasks over financial institutions, starting with its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan,¹ and of 21 November 2002 on prudential supervision rules in the European Union.²
- (8) The European Council conclusions of 29 June 2012 invited the President of the European Council to develop a road map for the achievement of a genuine Economic and Monetary Union. On the same day, the Euro area Heads of State or Government Summit pointed out that when an effective single supervisory mechanism is established involving the ECB for banks in the euro area, the ESM could, following a regular decision, have the possibility to recapitalize banks directly which would rely on appropriate conditionality, including compliance with state aid rules.
- (8a) *The European Council on 18 October 2012 concluded that the process towards deeper economic and monetary union should build on the EU's institutional and legal framework and be characterised by openness and transparency towards Member States which do not use the single currency and by respect for the integrity of the single market. The integrated financial framework will have a Single Supervisory Mechanism (SSM) which will be open to the extent possible to all Member States wishing to participate.***
- (9) A European banking union should therefore be set up, underpinned by a ***comprehensive and detailed*** single rulebook for financial services for the Single Market as a whole and composed of a single supervisory mechanism, and a common deposit insurance and resolution framework. In view of the ***interdependence of the*** Member States participating in the common currency, the banking union ***must include*** all euro area Member States ***and should include all other States intending and preparing to join the euro. The institutional and legal modalities to allow for this must strike a balance between equal status for all participating Member States and offering incentives for non-Euro area Member States to join the common currency.*** With a view to maintaining and deepening the internal market, and to the extent that this is institutionally possible, the banking union should ***include all Member States, with the exception of those Member States that explicitly indicate their wish not to participate.***
- (10) As a first step towards the banking union, a single supervisory mechanism should ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective way, that the single rulebook for financial services is applied equally to credit institutions in all Member States

¹ OJ C 40, 7.2.2001, p. 453.

² OJ C 25 E, 29.1.2004, p. 394.

concerned, and that those credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations. ***In particular, the single supervisory mechanism should be consistent with the functioning of the internal market for financial services and with the free movement of capital.*** A single supervisory mechanism is the basis for the next steps towards the banking union. This reflects the principle that any ***possible*** introduction of common intervention mechanisms in case of crises, ***including a direct access to ESM***, should be preceded by common controls to reduce the likelihood that intervention mechanisms will have to be used.

- (11) As the Euro area's central bank with extensive expertise in macroeconomic and financial stability issues, ***with access to multiple information resources, with widely recognised expertise and having maintained its credibility through the crisis***, the ECB is well placed to carry out ***clearly defined*** supervisory tasks with a focus on protecting the stability of Europe's financial system. Indeed in many Member States Central Banks are already responsible for banking supervision. The ECB should therefore be conferred specific tasks concerning policies relating to the supervision of credit institutions within the ***participating Member States***.
- (12) The ECB should be conferred those specific supervisory tasks which are crucial to ensure a coherent and effective implementation of the Union's policy relating to the prudential supervision of credit institutions, while other tasks should remain with national authorities. The ECB's tasks should include measures taken in pursuance of macro-prudential stability.
- (13) Safety and soundness of large banks is essential to ensure the stability of the financial system. However, recent experience shows that smaller banks can also pose a threat to financial stability. Therefore, the ECB ***may at any time and under any circumstances assume the responsibilities conferred to the national competent authorities and carry out all of specific supervisory tasks.***
- (14) Prior authorisation for taking up the business of credit institutions is a key prudential technique to ensure that only operators with a sound economic basis, an organisation capable of dealing with the specific risks inherent to deposit taking and credit provision, and suitable directors carry out those activities. The ECB should therefore have the task to authorise credit institutions and should be responsible for the withdrawal of authorisations, ***subject to specific arrangements reflecting the role of national authorities.***
- (15) In addition to the conditions set out in Union ***law*** for authorisation of credit institutions and the cases for withdrawal of such authorisations, Member States ***are currently able to*** provide for further conditions for authorisation and cases for withdrawal of authorisation. The ECB should therefore carry out its task to authorise credit institutions and to withdraw the authorisation in case of non-compliance with national law upon a proposal by the relevant national competent authority, which assesses compliance with the relevant conditions set out by national law. ***Where the conditions provided for in Union law are met the ECB shall grant the authorisation within 30 working days of receiving the proposal by the relevant national competent authority, extendable once for the same period in duly justified cases.***

- (16) An assessment of the suitability of any new owner prior to the purchase of a significant stake in a credit institution is an indispensable tool to ensure the continuous suitability and financial soundness of credit institutions' owners. The ECB as a Union institution is well-placed to carry out such an assessment without imposing undue restrictions to the internal market. The ECB should have the task to assess the acquisition and disposal of significant holdings in credit institutions.
- (17) Compliance with Union rules requiring credit institutions to hold certain levels of capital against risks inherent to the business of credit institutions, to limit the size of exposures to individual counterparties, to publicly disclose information on a credit institutions' financial situation, to dispose of sufficient liquid assets to withstand situations of market stress, and to limit leverage is a prerequisite for credit institutions' prudential soundness. The ECB should have the task to ensure compliance with those rules and to set higher prudential requirements and apply additional measures to credit institutions in the cases specifically set out in Union acts.
- (18) Additional capital buffers, including a capital conservation buffer and a countercyclical capital buffer to ensure that credit institutions accumulate during periods of economic growth a sufficient capital base to absorb losses in stressed periods, are key prudential tools to ensure the availability of adequate loss absorbency. The ECB should have the task to impose such buffers and ensure credit institutions comply with them.
- (19) The safety and soundness of a credit institution depend also on the allocation of adequate internal capital, having regard to the risks to which it may be exposed, and on the availability of appropriate internal organisation structures and corporate governance arrangements. The ECB should therefore have the task to apply requirements ensuring that credit institutions have in place robust governance arrangements, processes and mechanisms, including strategies and processes for assessing and maintaining the adequacy of their internal capital. In case of deficiencies it should also have the task to impose appropriate measures including specific additional own funds requirements, specific publication requirements, and specific liquidity requirements.
- (20) Risks for the safety and soundness of a credit institution can arise both at the level of an individual credit institution and at the level of a banking group or of a financial conglomerate. Specific supervisory arrangements to mitigate these risks are important to ensure the safety and soundness of credit institutions. In addition to supervision of individual credit institutions, the ECB's tasks should include supervision at the consolidated level, supplementary supervision, supervision of financial holding companies and supervision of mixed financial holding companies.
- (21) In order to preserve financial stability, the deterioration of an institution's financial and economic situation must be remedied before that institution reaches a point at which authorities have no other alternative than to resolve it *or to use tax payers' money for intervention*. The ECB should have the task to carry out early intervention actions as defined in relevant Union law. It should however coordinate its early intervention action with the relevant resolution authorities. Pending the conferral of resolution powers on a European body, the ECB should moreover coordinate appropriately with

- the national authorities concerned to ensure a common understanding about respective responsibilities in case of crises, in particular in the context of the cross border crisis management groups and the future resolution colleges established for these purposes.
- (22) Supervisory tasks not conferred on the ECB should remain with national authorities. Those tasks should include the power to receive notifications from credit institutions in relation to the right of establishment and the free provision of services, to supervise bodies which are not covered by the definition of credit institutions under Union law but which are supervised as credit institutions under national law, to supervise credit institutions from third countries establishing a branch or providing cross-border services in the Union, to supervise payments services, to carry out day-to-day verifications of credit institutions, to carry out the function of competent authorities over credit institutions in relation to markets in financial instruments and the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.
- (22a) *The ECB shall coordinate fully with the national authorities which are competent to ensure a high level of consumer protection and the fight against money laundering.***
- (23) The ECB should carry out the tasks conferred on it with a view to ensuring the safety and soundness of credit institutions and the stability of the financial system of the Union ***as well as of individual participating Member States*** and the unity and integrity of the Internal Market, thereby ensuring also the protection of depositors and improving the functioning of the Internal Market, in accordance with the single rulebook for financial services in the Union. ***In particular the ECB shall duly take into account the principles of equality and non-discrimination.***
- (23a) *When carrying out the tasks conferred on it, and without prejudice to the objective to ensure the safety and soundness of credit institutions, the ECB should have due regard to the different types of credit institutions.***
- (24) The conferral of supervisory tasks on the ECB **█** should be consistent with the framework of the European System of Financial Supervision (ESFS) set up in 2010 and its underlying objective to develop the single rulebook and enhance convergence of supervisory practices across the whole Union. Cooperation between the banking supervisors and the supervisors of insurance and securities markets is important to deal with issues of joint interest and to ensure proper supervision of credit institutions operating also in the insurance and securities sectors. The ECB should therefore be required to cooperate closely with the ***European Banking Authority***, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority, within the framework of the EFSF. ***The ECB should carry out its tasks in accordance with the provisions of this Regulation and without prejudice to the competence and the tasks of the other participants within the ESFS. The ECB should also be required to cooperate with relevant resolution authorities and facilities of European public financial assistance.***
- █**
- (26) The ECB should carry out its tasks subject to and in compliance with any Union law rule including the whole of primary and secondary Union law, Commission decisions

in the area of State aids, competition rules and merger control and the single rulebook applying to all Member States. The EBA is entrusted with developing draft technical standards and guidelines and recommendations ensuring supervisory convergence and consistency of supervisory outcomes within the Union. The ECB should not replace the exercise of these tasks by the EBA, and should therefore exercise powers to adopt regulations in accordance with Article 132 TFEU only where Union acts adopted by the European Commission upon drafts developed by the EBA or guidelines and recommendations issued by the EBA do not deal with certain aspects necessary for the proper exercise of the ECB's tasks or do not deal with them in sufficient detail.

- (26a) *Where necessary the ECB shall enter into memoranda of understanding with competent authorities responsible for markets in financial instruments describing in general terms how they will cooperate with one another in the performance of their supervisory tasks under Union law in relation to financial institutions defined in article 2. Such memorandums shall be non-discriminatory and shall be made available to the European Parliament, the European Council and competent authorities of all Member States.***
- (27) In order to ensure that supervisory rules and decisions are applied by credit institutions, financial holding companies and mixed financial holding companies, effective, proportionate and dissuasive sanctions should be imposed in case of breaches. In accordance with Article 132(3) TFEU and Council Regulation (EC) No. 2532/98 of 23 November 1998 concerning the powers of the European Central Bank to impose sanctions,¹ the ECB is entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions. Moreover, in order to enable the ECB to effectively carry out its tasks relating to the enforcement of supervisory rules set out in directly applicable Union law, the ECB should be empowered to impose pecuniary sanctions on credit institutions, financial holding companies and mixed financial holding companies for breaches of such rules. National authorities should remain able to apply sanctions in case of failure to comply with obligations stemming from national law transposing Union Directives. Where the ECB considers it appropriate for the fulfilment of its tasks that a sanction is applied for such breaches, it should be able to refer the matter to national authorities for those purposes.
- (28) National supervisors have important and long-established expertise in the supervision of credit institutions within their territory and their economic, organisational and cultural specificities. They have established a large body of dedicated and highly qualified staff for these purposes. Therefore, in order to ensure high quality European supervision national supervisors should assist the ECB in the preparation and implementation of any acts relating to the exercise of the ECB supervisory tasks.
- (28a) *In addition to ongoing reporting, national competent authorities should inform the ECB without delay of any serious concerns about the safety and/or soundness of any credit institution for which they are performing tasks on behalf of the ECB or***

¹ OJ L 318, 27.11.98, p. 4.

where the stability of the financial system is or is likely to be endangered by the situation of any credit institution for which they are performing tasks on behalf of the ECB.

(29) As regards the supervision of cross-border banks active both inside and outside the Euro area the ECB should cooperate closely with the competent authorities of Member States *whose currency is not the euro*. As a competent authority the ECB should be subject to the related obligations to cooperate and exchange information under Union law and should participate fully in the colleges of supervisors. In addition, since the exercise of supervisory tasks by a European institution brings about clear benefits in terms of financial stability and sustainable market integration, Member States not participating in the common currency should therefore also have the possibility to participate in the new mechanism. However, it is a necessary precondition for an effective exercise of supervisory tasks, that supervisory decisions are implemented fully and without delay. Member States *whose currency is not the euro* wishing to participate in the new mechanism should therefore undertake to ensure that their national competent authorities will abide by and adopt any measure in relation to credit institutions requested by the ECB. The ECB should be able to establish a close cooperation with the competent authorities of a Member State not participating in the common currency. It should be obliged to establish the cooperation where the conditions set out in this regulation are met.

(29a) The conditions under which representatives of the competent authorities of the Member States whose currency is not the euro take part in the activities of the Banking Supervisory Board should allow full and equal representation. The powers of the Banking Supervisory Board are to plan and execute the ECB's supervisory tasks. The Banking Supervisory Board should exercise its powers in full recognition that the Governing Council of the ECB is the ultimate executive authority of the ECB.

(30) In order to carry out its tasks, the ECB should have appropriate supervisory powers. Union law on the prudential supervision of credit institutions provides for certain powers to be conferred on competent authorities designated by the Member States for those purposes. To the extent that these powers fall within the scope of the supervisory tasks conferred on the ECB, for participating Member States the ECB should be considered the competent authority and should have the powers conferred on competent authorities by Union law. This includes powers conferred by those acts on the competent authorities of the home and the host Member States and the powers conferred on designated authorities.

(31) In order to carry out its tasks effectively, the ECB should be able to require all necessary information, and to conduct investigations and on-site inspections, *where appropriate in cooperation with national competent authorities*. These powers should apply to supervised entities, persons involved in the activities of those entities and related third parties, third parties to whom those entities have outsourced operational functions or activities and persons otherwise closely and substantially related or connected to the activities of those entities, including the staff of a supervised entity who are not directly involved in its activities but who, due to their function within the entity, may hold important information on a specific matter and firms which have

- provided services to those entities. The ECB should be able to require information by simple request under which the addressee is not obliged to provide the information but, in the event that it does so voluntarily, the information provided should not be incorrect or misleading and should be made available without delay. The ECB should also be able to require information by decision. ***The ECB and the national supervisory authorities will have access to the same information without credit institutions being subject to double reporting requirements.***
- (32) Where credit institutions exercise their right of establishment or to provide services in another Member State, or where several entities in a group are established in different Member States, Union law provides for specific procedures and for attribution of competences between the Member States concerned. To the extent that the ECB takes over certain supervisory tasks for all participating Member States, those procedures and attributions should not apply to the exercise of the right of establishment or to provide services in another participating Member State.
- (33) ***As an institution established by the Treaty on the Functioning of the European Union the ECB is an institution of the Union as a whole. Therefore it should be bound in its decision-making procedures by Union rules and general principles on due process and transparency. The right of the addressees of the ECB's decisions to be heard should be fully respected as well as their right to appeal ECB's decisions according to the rules set out in this Regulation.***
- (34) The conferral of supervisory tasks implies a significant responsibility for the ECB to safeguard financial stability in the Union, and to use its supervisory powers in the most effective and proportionate way. ***Any shift of supervisory powers from the Member State to the Union level should be balanced by appropriate transparency and accountability requirements. Consequently, while the ECB must remain independent in relation to monetary policy, it must be accountable for the exercise of these tasks towards the European Parliament and the Council of Ministers as democratically legitimised institutions representing the European people and the Member States. That should include regular reporting and responding to questions. Where national supervisors take action under this Regulation, accountability arrangements provided under national law should continue to apply.***
- (34a) ***At the request of the parliaments of the participating Member States, a representative of the supervisory board of the ECB, together with the national competent authority, may be heard in the competent committees of the national parliaments concerned, on the execution of its supervisory tasks. This further strengthening of democratic accountability is appropriate given the impact that supervisory measures may have on public finances, credit institutions, their customers and employees, and the markets in the participating Member States.***
- (34b) ***This Regulation is without prejudice to the right of the European Parliament to set up a temporary Committee of Inquiry to investigate alleged contraventions or maladministration in the implementation of Union law pursuant to Article 226 TFEU.***

- (34c) *Pursuant to Article 263 TFEU, the Court of Justice of the European Union must review the legality of acts of, inter alia, the ECB, other than recommendations and opinions, intended to produce legal effects vis-à-vis third parties.*
- (34d) *Regulation No 1 determining the languages to be used by the European Economic Community¹ applies to the ECB by virtue of Article 342 TFEU.*
- (35) The ECB is responsible for carrying out monetary policy functions with a view to maintaining price stability in accordance with Article 127(1) TFEU. The exercise of supervisory tasks has the objective to protect the safety and soundness of credit institutions and the stability of the financial system. In order to avoid conflicts of interests and to ensure that each function is exercised in accordance with the applicable objectives, the ECB should ensure they are carried out in full separation. *The ECB shall establish practical arrangements in its internal rules to ensure that the separation and the operational independence between the supervisory and monetary functions of the ECB is guaranteed. Staff involved in carrying out the tasks conferred on the ECB by this Regulation should be organisationally separated from other ECB staff and should be subject to separate reporting lines.*
- (36) In particular, a *Banking Supervisory Board* responsible for preparing decisions on supervisory matters should be set up with the ECB encompassing the specific expertise of national supervisors. The board should *be composed of representatives from the ECB and from national authorities from participating Member States. Due consideration should be given to both the expertise and gender of members of the Banking supervisory board.* In order to ensure full coordination with the activities of the EBA and with the prudential policies of the Union, the EBA and the Commission should be observers in the supervisory board. ■
- (36a) *When exercising its tasks, the Banking Supervisory Board shall take account of all relevant facts and circumstances in the participating Member States and shall perform its duties in the interest of the Union as a whole. The national competent authorities of the participating Member States represented in the Banking Supervisory Board shall have equal voting rights.*
- (36b) *The Banking Supervisory Board will carry out full preparatory works regarding the supervisory tasks conferred upon the ECB and propose to the Governing Council of the ECB complete draft decisions to be adopted by the latter, pursuant to a procedure to be established in the ECB's rules of procedure. A draft decision will be deemed adopted unless the Governing Council objects within a given deadline, to be defined in the rules of procedure.*
- (36c) *The Banking Supervisory Board shall be supported by a Steering committee with a more limited composition. The Steering committee shall prepare the meetings of the Banking Supervisory Board and shall perform its duties solely in the interest of the Union as a whole and shall work in full transparency with the Banking Supervisory Board. The Steering committee shall be composed on an equal basis of representatives of the ECB and individuals of high repute in the field of prudential supervision.*

- (37) The ***Banking Supervisory Board, the steering committee*** and staff of the ECB carrying out supervisory duties should be subject to appropriate professional secrecy requirements. Similar requirements should apply to the exchange of information with the staff of the ECB not involved in supervisory activities. This should not prevent the ECB from exchanging information within the limits and under the conditions set out in the relevant Union legislation, including with the European Commission for the purposes of its tasks under Articles 107 and 108 TFEU and under Union law on enhanced economic and budgetary surveillance.
- (38) In order to carry out its supervisory tasks effectively, the ECB should exercise the supervisory tasks conferred on it in full independence, in particular from undue political influence and from industry interference which would affect its operational independence. ***A cooling-off period shall be introduced for the former members of the Banking Supervisory Board.***
- (39) In order to carry out its supervisory tasks effectively, the ECB should dispose of adequate resources. Those resources should be obtained in a way that ensures the ECB's independence from undue influences by national competent authorities and market participants, and separation between monetary policy and supervisory tasks. The costs of supervision should be primarily borne by the entities subject to it. Therefore, the exercise of supervisory tasks by the ECB should be financed at least partly by fees charged to credit institutions. In view of the transfer of significant supervisory tasks from national authorities to the ECB it is expected that any supervisory fees due at national level can be reduced as appropriate.
- (40) Highly motivated, well-trained and impartial staff is indispensable to effective supervision. In order to create a truly integrated supervisory mechanism, appropriate exchange and secondment of staff with and among ***all*** national supervisors and the ECB should be provided for. Where necessary to avoid conflicts of interest, particularly in the supervision of large banks, the ECB should be able to request that national supervisory teams involve also staff from competent authorities of other participating Member States, ***making it possible to install supervisory teams of geographical diversity with specific expertise and profile. The exchange and secondment of staff shall establish a common supervisory culture. On a regular basis the ECB will provide information how many staff members from the national competent authorities of the Member States are involved in the functioning of the SSM. As a principle no parallel European and national supervisory structures may be installed which could lead to double reporting lines.***
- (41) Given the globalisation of banking services and the increased importance of international standards, the ECB should carry out its tasks in respect of international standards and in dialogue and close cooperation with supervisors outside the Union, without duplicating the international role of the EBA. It should be empowered to develop contacts and enter into administrative arrangements with the supervisory authorities and administrations of third countries and with international organisations, subject to coordination with the EBA and while fully respecting the existing roles and respective competences of the Member States and the Union institutions.

- (42) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data² are fully applicable to the processing of personal data for the purposes of this Regulation.
- (43) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)³ applies to the ECB. The ECB has also acceded to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office.
- (44) In order to ensure that credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations and that the negative mutually reinforcing impacts of market developments concerns banks and Member States is addressed in a timely and effective way, the ECB should start carrying out specific supervisory tasks as soon as possible. However, the transfer of supervisory tasks from national supervisors to the ECB requires a certain amount of preparation. Therefore, an appropriate phasing-in period should be provided for. The phasing-in process should be completed within one year from the entry into force of this Regulation at the latest.
- (44a) In order to ensure legal continuity in the prudential surveillance, it is necessary to ensure that all decisions adopted by national competent authorities, pertaining to the tasks conferred upon the ECB by the present Regulation, before its entry into force, remain in force as long as the ECB has not modified or repealed them.***
- (45) The current framework of prudential requirements for credit institutions and the supplementary supervision of financial conglomerates is formed by Directives providing for a significant number of options and discretions for Member States when circumscribing the powers of competent authorities. Pending the adoption of new Union legislative acts which spell out the powers which competent authorities shall have directly and without reference to Member States' options or discretions, the ECB can therefore not take any decisions directly applicable to credit institutions, financial holding companies or mixed financial holding companies. In this transitional phase, the ECB should therefore exercise its tasks only by instructing national competent authorities to act.
- (46) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, notably the right to the protection of personal data, the freedom to conduct a business, the right to an effective

¹ OJ L 281, 23.11.1995, p. 31.

² OJ L 8, 12.1.2001, p. 1.

³ OJ L 136, 31.5.1999, p. 1.

remedy and to a fair trial, and has to be implemented in accordance with those rights and principles.

- (47) Since the objectives of this Regulation, namely setting up an efficient and effective framework for the exercise of specific supervisory tasks over credit institutions by a Union institution, and ensuring the consistent application of the single rulebook to credit institutions, cannot be sufficiently achieved at the Member State level and can therefore, by reason of the pan-Union structure of the banking market and the impact of bank failures on other Member States, be better achieved at the 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.

HAS ADOPTED THIS REGULATION:

Chapter I

Subject matter and definitions

Article 1

Subject matter

This Regulation confers on the ECB specific ***and clearly defined*** tasks concerning policies relating to the prudential supervision of credit institutions, with a view to promoting the safety and soundness of credit institutions and the stability of the financial system ***within the EU and within each participating Member State in the EU*** with ***full regard and duty of care*** for the unity and integrity of the internal market.

When fulfilling its tasks according to this regulation the ECB shall respect the different types and size of credit institutions.

This regulation is without prejudice to the responsibilities and related powers of the competent authorities of the participating Member States to carry out supervisory tasks not conferred on the ECB by this regulation.

Article 2

Definitions

For the purposes of this Regulation, the following definitions shall apply:

- (1) "participating Member State" means a Member State whose currency is the euro *or a Member State whose currency is not the euro which chooses to participate in the SSM in accordance with Article 6*
- (2) "national competent authority" means a national competent authority designated by participating Member States in accordance with Directive 2006/48/EC of the European Parliament and the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast)¹ and Directive 2006/49/EC of the European Parliament and the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast)²;
- (3) "credit institutions" means credit institutions as defined in Article 4(1) of Directive 2006/48/EC;
- (4) "financial holding company" means a financial holding company as defined in Article 4(19) of Directive 2006/48/EC;
- (5) "mixed financial holding company" means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate³;
- (6) "financial conglomerate" means a financial conglomerate as defined in Article 2(14) of Directive 2002/87/EC;
- (6a) ***“Single supervisory mechanism (SSM)” means a European system of financial supervision composed by the European Central Bank and national competent authorities of participating Member States as described in article 5 of this regulation.***

Article 3

Cooperation

- 1.** The ECB *in its supervisory capacity and in its role within the SSM* shall cooperate closely with the European Banking Authority, the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority and the European Systemic Risk Board, which form part of the European System of Financial Supervision (**ESFS**) established by Article 2 of Regulations (EU) No. 1093/2010, (EU) No 1094/2010, and (EU) No 1095/2010, *which ensure an adequate level of regulation and supervision in the Union.*

Where necessary the ECB shall enter into memoranda of understanding with

¹ OJ L177, 30.6.2006, p. 1.

² OJ L177, 30.6.2006, p. 277.

³ OJ L 35, 11.2.2003, p. 1–27.

competent authorities Member States responsible for markets in financial instruments. Such memorandums shall be made available to the European Parliament, the European Council and competent authorities of all Member States.

2. *The ECB shall carry out its tasks in accordance with this regulation and without prejudice to the competence and the tasks of the other participants within the SSM and within the ESFS.*

3. *The ECB shall cooperate closely with the European Financial Stability Facility (EFSF), the European Stability Mechanism (ESM) or any other future European financial assistance facility in particular where a credit institution has received or is likely to be subject to, direct or indirect European financial assistance from the EFSF, the ESM or any other facilities of public financial assistance .*

Article 4

Tasks conferred on the ECB

1. *Within the framework of article 5 the ECB shall, in accordance with the relevant provisions of Union law, and in accordance with the single rulebook and single supervisory handbook prepared by EBA be exclusively competent to carry out, for prudential supervisory purposes, the following tasks in relation to all credit institutions established in the participating Member States:*
 - (a) To authorise credit institutions and to withdraw authorisation of credit institutions *subject to the provisions of article 13*;
 - (b) To assess *applications for* the acquisition and disposal of holdings in credit institutions;
 - (c) To ensure compliance with any Union acts imposing prudential requirements on credit institutions in the areas of own funds requirements, large exposure limits, liquidity, leverage, and reporting and public disclosure of information on those matters;
 - (d) only in the cases specifically set out in Union acts, to set higher prudential requirements and apply additional measures to credit institutions;
 - (e) To impose capital buffers to be held by credit institutions in addition to own funds requirements referred to in (c), including setting countercyclical buffer rates and any other *prudential* measures aimed at addressing systemic or macro-prudential risks in the cases specifically set out in Union acts;
 - (f) To apply requirements *specifically set out in Union acts* for credit institutions to have in place robust governance arrangements, processes and mechanisms and effective internal capital adequacy assessment processes;

- (g) To determine whether the arrangements, strategies, processes and mechanisms put in place by credit institutions and the own funds held by these institutions ensure a sound management and coverage of their risks, and on the basis of that supervisory review to impose on credit institutions specific additional own funds requirements, specific publication requirements, specific liquidity requirements and other measures in the cases specifically set out in Union acts;
- (h) To carry out supervisory stress-tests on credit institutions to support the supervisory review *subject to appropriate coordination with EBA, and where appropriate publish the results of the tests*;
- (i) To carry out supervision on a consolidated basis over credit institutions' parents established in one of the participating Member States, including over financial holding companies and mixed financial holding companies, and to participate in supervision on a consolidated basis, including in colleges of supervisors, in relation to parents not established in one of the participating Member State; *national competent authorities will participate in colleges of supervisors as observers under the lead of the ECB.*
- (j) To participate in supplementary supervision of a financial conglomerate in relation to the credit institutions included in it and assume the tasks of a coordinator where the ECB is appointed as the coordinator for a financial conglomerate in accordance with the criteria set out relevant Union law;
- (k) To carry out supervisory tasks in relation to early intervention where a credit institution does not meet or is likely to breach the applicable prudential requirements, including recovery plans and intra group financial support arrangements, in coordination with the relevant resolution authorities *in a consistent way with Union law*;

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- (la) *To apply administrative sanctions subject to the provisions of Article 15.*
- 1a. *The ECB shall ensure that when performing the tasks set out in Article 4(1), (d), (e) and (g) it is guaranteed that a level-playing-field between credit institutions in the participating Member States is respected.*
- 2. For credit institutions established in a non-participating Member State, which establish a branch or provide cross-border services in a participating Member State, the ECB shall carry out the tasks referred to in paragraph 1 for which the national competent authorities of the participating Member State are competent.
- 3. Subject to and in compliance with any relevant Union law rule and in particular any legislative and non-legislative act, *including technical standards developed by EBA and adopted by the Commission* the ECB may adopt regulations and recommendations and take decisions to implement or apply Union law, to the extent necessary to carry out the tasks conferred upon it by this Regulation, *and only where those Union acts, do not deal with certain aspects necessary for the proper exercise of the ECB's tasks or do not deal with them in sufficient detail. Before adopting a*

regulation the ECB shall conduct open public consultations, including EBA and the Commission, and analyse the potential related costs and benefits.

If deemed necessary the ECB shall contribute to the development of draft regulatory technical standards or implementing technical standards by EBA or shall draw the attention of EBA to submit to the Commission draft standards amending existing regulatory or implementing technical standards.

3a. *In fulfilling its task as defined in this article the ECB shall respect a fair balance between the rights of participating Member States. In particular the ECB shall take into account the following considerations with regard to the Member States concerned:*

i) the preservation of financial stability;

ii) the stability of the supply of credit;

iii) the macro-economic conditions;

iv) the existence of a level playing field and support and facilitate productive activities for the real economy, prevent and avoid systemic and moral hazard risks as well as fiscal cost arising from failures and banking crisis.

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Article 5

Single Supervisory Mechanism

1. *The ECB shall carry out its tasks within a single supervisory mechanism composed of the ECB and national competent authorities of participating Member States. Within the SSM both the ECB and the national competent authorities shall be subject to a duty of cooperation in good faith and an obligation to exchange information.*

2. *Where appropriate and without prejudice to the responsibility and accountability of the ECB for all the tasks conferred on it by this regulation, national competent authorities shall assist the ECB under the conditions set out in this article and in the framework mentioned in paragraph 3, with the preparation and implementation of any acts relating to the tasks referred to in Article 4.*

2a. *Whilst always ensuring supervisory consistency within the SSM, the ECB shall request the national competent authorities to assist the ECB in the performance of the tasks conferred on it by Article 4 and the powers and obligations conferred on it by Article 8 in relation to all credit institutions, in particular in relation to credit institutions:*

(a) which have not received or requested direct or indirect European financial assistance from the EFSF or the ESM or any other facilities of public financial assistance; or

(b) which do not pose a systemic risk, as defined in EU law, individually or as part of a group of credit institutions, financial holding companies and mixed financial holding companies. The ECB shall carry out a regular risk assessment for the purposes of applying this provision.

National competent authorities shall present draft supervisory decisions to the ECB, which shall be deemed adopted by the ECB unless it rejects them, with a written explanation, within a deadline to be set out in the framework referred to in paragraph 3, and which shall not exceed 10 working days.

2b. The ECB shall monitor national competent authorities on an ongoing basis.

To this end, the national competent authorities shall report to the ECB on a regular basis on the performance of the tasks carried out by them under paragraph 2a. The ECB may also request information from the national competent authorities on the performance of the tasks carried out by them under paragraph 2a and may at any time make use of the powers referred to in articles 8 to 12.

2c. National competent authorities shall inform the ECB without delay in the following cases:

(a) where there are serious concerns about the safety and/or soundness of any credit institution for which they are performing tasks on behalf of the ECB;

(b) where the stability of the financial system is or is likely to be endangered by the situation of any credit institution for which they are performing tasks on behalf of the ECB;

2d. The ECB may at any time and under any circumstances assume the responsibilities of the national competent authorities under paragraph 2a and carry out all or specific supervisory tasks directly.

3. The ECB shall, in consultation with the national competent authorities of the participating Member States, adopt and make public a framework to organise the practical modalities of implementation of this article. The ECB shall clearly define the framework and conditions under which the ECB and the national competent authorities shall carry out their supervisory activities under this article, whereby the national competent authorities of all participating Member States shall be treated on an equal footing.

3a. The Banking Supervisory Board of the ECB shall act as a single point of contact for all supervised credit institutions, unless this task is explicitly performed by the national competent authorities within the supervisory framework referred to in paragraph 3.

4. National competent authorities, being an integral part of the SSM, shall act in accordance with the framework of paragraph 3 and shall follow the instructions given by the ECB when performing their tasks under this article. They shall inform the ECB fully and in a timely manner about the activities carried out to assist the ECB.

Article 6

Participation in the SSM of Member States whose currency is not the euro

(close cooperation)

1. Within the limits set out in this Article, the ECB shall carry out the tasks in the areas referred to in Article 4 (1) and (2) in relation to credit institutions established in a ***participating*** Member State whose currency is not the euro, where a close cooperation has been established between the ECB and the national competent authority of such Member State in accordance with this Article. To that end, the ECB may address guidelines or requests to the national competent authority of ***that*** Member State.
2. The close cooperation between the ECB and the national competent authority of a Member State ***whose currency is not the euro choosing to participate*** shall be established, by a decision adopted by the ECB, where the following conditions are met:
 - (a) The Member State concerned notifies the other Member States, the Commission, the ECB and the EBA the request to enter into a close cooperation with the ECB in relation to the exercise of the tasks referred to in Article 4 with regards to all credit institutions established in the Member State concerned;
 - (b) In the notification, the Member State concerned undertakes:
 - to ensure that its national competent authority will abide by any guidelines or requests issued by the ECB;
 - to provide all information on the credit institutions established in that Member State that the ECB may require for the purpose of carrying out a comprehensive assessment of those credit institutions.
 - (c) The Member State concerned has adopted national legal acts to ensure that its national competent authority will be obliged to adopt any measure in relation to credit institutions requested by the ECB, in accordance with paragraph 5.
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4. The decision referred to in paragraph 2 shall be published in the Official Journal of the European Union. The decision shall apply 14 days after such publication.
5. Where the ECB considers that a measure relating to the tasks referred to in paragraph 1 should be adopted by the competent authority of a concerned Member State in relation to a credit institution, financial holding company or mixed-financial holding company, it shall make a request to that authority, specifying a relevant timeframe. That timeframe shall be no less than 48 hours unless earlier adoption is indispensable to prevent irreparable damage. The competent authority of the concerned Member

State shall take all the necessary measures in accordance with the obligation referred to in paragraph (2)(c).

6. Where the conditions set out in paragraph 2(a) to (c) are no longer met by a Member State concerned, or where its competent authority does not act in accordance with the obligation referred to in paragraph 2(c), the ECB may decide to **issue a warning to the national competent authority of the Member State concerned that the close cooperation will be suspended or terminated if no decisive corrective action is undertaken. If no such action has been undertaken 10 days after notification of such a warning, the ECB may suspend or terminate the close cooperation with that Member State on a date to be determined by the ECB.**

The decision shall be notified to the Member State concerned and shall be published in the Official Journal of the European Union. The decision shall indicate the date from which it applies, taking due consideration of supervisory effectiveness and legitimate interests of credit institutions.

Article 7

International relations

Without prejudice to the respective competences of the Member States and the other Union institutions **including the EBA**, in relation to the tasks conferred on the ECB **within the SSM** by this Regulation, the ECB may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries, subject to appropriate coordination with the EBA. Those arrangements shall not create legal obligations in respect of the Union and its Member States.

Article 8

Supervisory and investigatory powers

- 1 For the purposes of carrying out the tasks conferred upon it by Article 4(1) and (2), the ECB shall be considered the competent authority in the participating Member States in accordance with the relevant acts of Union law and have the powers and obligations which competent authorities shall have under those acts.

For the purpose of carrying out the task referred to in Article 4(1) and (2), the ECB shall be considered as the designated authority in accordance with the relevant acts of Union law and have the powers and obligations which designated authorities shall have under those acts.

- 2 For the purposes of carrying out the tasks conferred upon it by Article 4(1) and (2), the ECB shall have the investigatory powers set out in Section I.

- 2a. ***In the exercise of their investigatory powers the ECB and the national competent authorities shall cooperate closely.***

Article 9

Requests for information

1. The ECB may by simple request or by decision require the following legal or natural persons to provide all information that is necessary in order to carry out the tasks conferred upon it by this Regulation, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:
 - (a) credit institutions;
 - (b) financial holding companies;
 - (c) mixed financial holding companies;
 - (d) mixed-activity holding companies;
 - (e) persons involved in the activities of the entities referred to in (a) to (d), and related third parties;
 - (f) third parties to whom the entities referred to in (a) to (d) have outsourced operational functions or activities;
 - (g) persons otherwise closely and substantially related or connected to the activities of the entities referred to in (a) to (d);
 - (h) national competent authorities.
2. The persons referred to in paragraph 1 shall supply the information requested. ***Professional secrecy provisions do not exempt those persons from the duty to supply the information. The suppliance of the information shall not be deemed to be a breach of professional secrecy.***
- 2a. ***Where the ECB obtains information directly from the legal or natural persons referred to in paragraph 1, it shall make that information available to the national competent authorities concerned.***

Article 10

General investigations

1. In order to carry out the tasks conferred upon it by this Regulation, the ECB may conduct all necessary investigations of persons referred to in Article 9 (1) (a) to (g) ***in cooperation with national competent authorities***. To that end, the ECB shall have the right to:
 - (a) require the submission of documents;

- (b) examine the books and records of the persons referred to in Article 9 (1) (a) to (g) and take copies or extracts from such books and records;
 - (c) obtain written or oral explanations from any person referred to in Article 9(1) (a) to (g) or their representatives or staff;
 - (d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;
2. The persons referred to in Article 9 (1) (a) to (g) shall submit to investigations launched on the basis of a decision of the ECB. When a person obstructs the conduct of the investigation, the participating Member State where the relevant premises are located shall afford the necessary assistance, including access by the ECB to the business premises of the legal persons referred to in Article 9(1) (a) to (g), so that the aforementioned rights can be exercised.

Article 11

On-site inspections

1. In order to carry out the tasks conferred upon it by this Regulation, the ECB, **where appropriate in cooperation with national competent authorities**, may conduct all necessary on-site inspections at the business premises of the persons referred to in Article 9(1) (a) to (g), in accordance with Article 12. Where the proper conduct and efficiency of the inspection so require, the ECB may carry out the on-site inspection without prior announcement.
2. The officials of and other persons authorised by the ECB to conduct an on-site inspection may enter any business premises and land of the persons subject to an investigation decision adopted by the ECB and shall have all the powers stipulated in Article 10 (1). They shall also have the power to seal any business premises and books or records for the period of, and to the extent necessary for, the inspection.
3. The persons referred to in Article 9(1) (a) to (g) shall submit to on-site inspections ordered by decision of the ECB.
4. Officials of, as well as those authorised or appointed by the **national** competent authority of the Member State where the inspection is to be conducted shall, **under the supervision and coordination of the ECB**, actively assist the officials of and other persons authorised by the ECB. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the **national** competent authority of the participating Member State concerned **shall also participate in** the on-site inspections **where appropriate**.
5. Where the officials of and other accompanying persons authorised by the ECB find that a person opposes an inspection ordered pursuant to this Article, the competent authority of the participating Member State shall afford them the necessary assistance.

Article 12

Authorisation by a judicial authority

1. If an on-site inspection provided for in Article 11(1) or the assistance provided for in Article 11(5) requires authorisation by a judicial authority according to national rules, such authorisation shall be applied for.
2. Where authorisation as referred to in paragraph 1 is applied for, **and the decision to carry out an on-site inspection was taken by the ECB within the SSM**, the national judicial authority shall control that the decision of the ECB is authentic and that the coercive measures envisaged are neither arbitrary nor excessive having regard to the subject matter of the inspection. In its control of the proportionality of the coercive measures, the national judicial authority may ask the ECB for detailed explanations, in particular relating to the grounds the ECB has for suspecting that an infringement of the relevant acts of Union law has taken place and the seriousness of the suspected infringement and the nature of the involvement of the person subject to the coercive measures. However, the national judicial authority shall not review the necessity for the inspection or demand to be provided with the information on the ECB's file. The lawfulness of the ECB's decision shall be subject to review only by the Court of Justice of the European Union.

Article 13

Authorisation

1. Any application for an authorisation to take up the business of a credit institution to be established in a participating Member State shall be **submitted to** the national competent authorities of the Member State where the credit institution is to be established in accordance with the requirements set out in relevant national legislation.

If the credit institution complies with all conditions of authorisation set out in national law of that Member State, the national competent authority shall take, **within the period provided for by national law**, a decision to propose to the ECB to grant the authorisation. The decision shall be notified to the ECB and to the credit institution concerned. **If the credit institution does not comply with all conditions set out in national law of that Member State the national competent authority shall reject the application for authorisation.**

When the ECB receives the proposal from the national competent authority referred to in the second subparagraph, it shall grant the authorisation **within 30 working days of receiving that proposal, extendable once for the same period in duly justified cases**, where the conditions set out in Union law are met. The decision shall be notified **and explained** to the credit institution **and to the national competent authority** concerned.

2. The ECB may withdraw the authorisation in the cases set out in Union acts on its own initiative or on a proposal from the national competent authority of the Member State where the credit institution is established.

Where the national competent authority which has proposed the authorisation in accordance with paragraph 1 considers that the authorisation must be withdrawn in accordance with the national law, it shall submit a proposal to the ECB to that end. In that case, the ECB ***shall take a decision on the proposed withdrawal taking full account of the justification for withdrawal put forward by the national competent authority.***

Article 14

Powers of host authorities and cooperation on consolidated supervision

1. Between participating Member States the procedures set out in Union acts for credit institutions wishing to establish a branch or to exercise the freedom to provide services by carrying on their activities within the territory of another Member State and the related competences of home and host Member States shall apply only for the purposes of the tasks not conferred upon the ECB by Article 4 of this Regulation.
2. The provisions set out in Union acts in relation to the cooperation between competent authorities from different Member States for conducting supervision on a consolidated basis shall not apply to the extent that the competent authorities involved are competent authorities of participating Member States.
- 2a. ***In fulfilling its task as defined in Article 4 the ECB shall respect a fair balance between the home and host rights of participating Member States.***

Article 15

Sanctions or other administrative measures

1. For the purpose of carrying out the tasks conferred upon it by this Regulation, where credit institutions, financial holding companies, or mixed financial holding companies, intentionally or negligibly, breach a requirement under directly applicable Union acts in relation to which administrative pecuniary sanctions shall be available to competent authorities under ***directly applicable*** Union law, the ECB may impose administrative pecuniary sanctions ***as defined in Union law and in accordance with national administrative procedural law.*** 2. Where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover referred to in the first subparagraph shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

3. The sanctions applied shall be effective, proportionate and dissuasive. In determining whether to impose a sanction and in determining the appropriate sanction, the ECB shall take into account all relevant circumstances set out in Union law.
4. The ECB shall apply this Article in accordance with Articles 3 to 5 of the Council Regulation (EC) No 2532/98.
5. In the cases not covered by paragraph 1, where necessary for the purpose of carrying out the tasks conferred upon it by this Regulation, the ECB may require national competent authorities to ***open proceedings with a view to taking*** action in order to ensure that appropriate sanctions are imposed ***in accordance with the relevant national legislation and in compliance with relevant acts of Union law***. The sanctions applied by national competent authorities will be effective, proportionate and dissuasive.

The first subparagraph shall be applicable in particular to pecuniary sanctions to be imposed on credit institutions, financial holding companies or mixed financial holding companies for breaches of national law transposing relevant EU Directives, and to any administrative sanctions or measures to be imposed on members of the management board ***of a credit institution, financial holding company or mixed financial holding company*** or any other individuals who under national law are responsible for a breach by a credit institution, financial holding company or mixed financial holding company.

6. The ECB shall publish any sanction referred to paragraph 1 without undue delay including information on the type and nature of the breach and the identity of persons responsible for it, unless such publication would seriously jeopardise the stability of the financial markets.
7. Without prejudice to paragraphs 1 to 6, for the purposes of carrying out the tasks conferred on it by this Regulation, in case of breaches of ECB regulations or decisions the ECB may impose sanctions in accordance with Council Regulation (EC) No 2532/98.

Article 15a

Board of Appeal

1. ***The ECB shall establish an Administrative Board of Appeal for the purposes of settling appeals against decisions by the ECB acting as a single supervisor under this Regulation. The Board of Appeal shall be composed of five individuals of high repute, with a proven record of relevant knowledge and professional experience, including supervisory experience, to a sufficiently high level in the fields of banking or other financial services, excluding current staff of the ECB, competent authorities or other national or Union institutions. The Board of Appeal shall have access to sufficient legal expertise to provide expert legal advice on the legality of the exercise of powers of the ECB under this Regulation.***

2. *Members of the Board of Appeal and two alternates shall be appointed by the ECB for a term of five years, which may be extended once, following a public call for expressions of interest published in the Official Journal of the European Union, and after consultation of the Banking Supervisory Board. The Board of Appeal shall establish and make public the modalities for decision making. They shall not be bound by any instructions.*
3. *The members of the Board of Appeal shall undertake to act independently and in the public interest. For that purpose, they shall make a declaration of commitments and a public declaration of interests indicating any direct or indirect interest which might be considered prejudicial to their independence.*
4. *Any natural or legal person, including competent authorities, may appeal against a decision of the ECB under this Regulation which is addressed to that person, or is of a direct and individual concern to that person. The Board of Appeal shall decide upon the appeal within a period appropriate to the urgency of the matter and no later than three weeks after the appeal has been lodged. An appeal lodged pursuant to paragraph 1 shall not have suspensive effect. However, the Board of Appeal may, if it considers that circumstances so require, suspend the application of the contested decision. The Board of Appeal may confirm the decision taken by the ECB, or remit the case to the ECB who shall comply with the decision or explain the reasons for not complying.*
5. *The Board of Appeal shall adopt and make public its rules of procedure.*
6. *The decisions taken by the Board of Appeal shall be reasoned and shall be made public.*

Article 15 b

Actions before the Court of Justice of the European Union

1. *Proceedings may be brought before the Court of Justice of the European Union, in accordance with Article 263 TFEU, contesting a decision taken by the Board of Appeal or, in cases where there is no right of appeal before the Board of Appeal, by the ECB within the SSM.*
2. *Member States and the Union institutions, as well as any natural or legal person, may institute proceedings before the Court of Justice of the European Union against decisions of the ECB, in accordance with Article 263 TFEU.*
3. *In the event that the ECB within the SSM has an obligation to act and fails to take a decision, proceedings for failure to act may be brought before the Court of Justice of the European Union in accordance with Article 265 TFEU.*
4. *The ECB shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.*

Article 16

Independence

1. When carrying out the tasks conferred upon it by this Regulation the ECB **and the national competent authorities acting within the SSM** shall act independently. **The members of the Banking Supervisory Board and the steering committee shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from the Union's institutions or bodies, from any government of a Member State or from any other public or private body.**
2. Union institutions, bodies, offices and agencies and the governments **and institutions** of the Member States shall respect that independence **as referred to in paragraph 1.**
- 2a. **The Banking Supervisory Board of the ECB shall put in place a Code of Conduct including rules of conflict of interest that applies to its staff and management involved in banking supervision.**

Article 17

Accountability and reporting

1. The ECB shall be accountable to the European Parliament and to the Council for the implementation of this Regulation, in accordance with this Chapter.
2. The ECB shall submit **an annual report** to the European Parliament, the Council, the Commission, the Eurogroup **and the national parliaments of participating Member States** on the execution of the tasks conferred upon it by this Regulation.
3. The Chair of the **Banking** Supervisory Board of the ECB shall present this report **in public** to the European Parliament and to the Eurogroup in the presence of representatives from **all** Member States **participating in the SSM.**
4. **At the request** of the **European Parliament, the Chair of the Supervisory Board shall participate in a hearing** on the execution of its supervisory tasks, **including the fees levied and the expenditure incurred,** by the competent committees of the Parliament.
5. The ECB shall reply orally or in writing to questions put to it by the European Parliament, **the Eurogroup and the Council.**
6. **Upon request the Chair of the Banking Supervisory Board shall provide the Economic and Monetary Affairs Committee of the European Parliament in camera any confidential information concerning its tasks which are required for the exercise of the European Parliament's powers under the Treaty and under this regulation.**
7. **At the request of a national parliament of a participating Member State, a representative of the Banking Supervisory Board, together with a representative of**

the competent national authority, shall appear before that parliament and answer questions about the performance of supervisory tasks.

8. *This Regulation is without prejudice to the right of the European Parliament to set up a temporary Committee of Inquiry to investigate alleged contraventions or maladministration in the implementation of Union law pursuant to Article 226 TFEU, or to the right of the European Parliament to require the setting up of an independent inquiry into actions or failure to act of the ECB that have or may have led to a significant event in relation to financial stability, confidence or failure of a credit institution.*

Article 17a

Due process and decision making procedure for adopting supervisory decisions

1. *Before taking supervisory decisions in accordance with Article 4 and Section 2, the ECB shall give the persons which are the subject of the proceedings the opportunity of being heard. This shall not apply if urgent action is needed in order to prevent significant damage to the financial system. In such a case, the ECB may adopt an interim decision and shall give the persons concerned the opportunity to be heard as soon as possible after having taken its decision.*
2. *Where applicable, the rights of defence of the persons concerned shall be fully respected in the proceedings. They shall be entitled to have access to the ECB's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information.*
3. *The decisions of the ECB shall state the reasons on which they are based.*

Article 17b

Reporting of Violations

The ECB shall ensure that effective mechanisms are put in place for reporting of breaches of this Regulation, including specific procedures for the receipt of reports of breaches and their follow-up. Such procedures shall be consistent with relevant EU legislation and ensure that the following principles are applied with: appropriate protection, including full anonymity, for persons who report breaches, protection of personal data, appropriate protection for the accused person, appropriate protection from adverse treatment at work.

Article 18

Separation from monetary policy function

1. When carrying out the tasks conferred on it by this Regulation, the ECB shall pursue only the objectives set by this Regulation.

2. The ECB shall carry out the tasks conferred upon it by this Regulation separately from its tasks relating to monetary policy and from any other tasks. The tasks conferred upon the ECB by this regulation **and the ECB's tasks relating to monetary policy** shall not interfere with **each other. Nor shall the tasks conferred upon the ECB by this regulation interfere with the tasks in relation to the European Systemic Risk Board** and any other tasks. **The ECB shall report to the European Parliament and the Council as to how it has complied with this provision. The tasks conferred by this regulation to the ECB do not alter the ongoing monitoring of the solvency of its borrowers.**

The staff involved in carrying out the tasks conferred on the ECB by this regulation shall be organisationally separated and subject to separate reporting lines.

3. For the purposes of paragraphs 1 and 2, the ECB shall adopt any necessary internal rules, including rules regarding professional secrecy, **as well as rules establishing the practical arrangements to ensure the separation of the functions as well as the operational independence between the supervisory functions and the other functions of the ECB. The rules and procedures adopted shall be made public and provided to the European Parliament and Council.**

Article 19

Banking Supervisory Board

1. The planning and **preparation** of the **supervisory** tasks conferred upon the ECB **under this regulation**, shall be undertaken by an internal body composed of four representatives of the ECB appointed by the Executive Board of the ECB and one representative of the national authority competent for the supervision of credit institutions in each participating Member State (hereinafter "**Banking Supervisory Board**").
2. In addition, the **Banking Supervisory Board** shall include a **Chairman or Chairwoman**, appointed by the **Governing Council after an open selection procedure on the basis of merit, skills and thorough knowledge of financial institutions and financial supervision and after approval by the European Parliament. The Vice-Chair** of the **Banking Supervisory Board** shall be elected by and from the members of the Governing Council of the ECB **and needs approval by the European Parliament.**
3. The **Banking Supervisory Board** will carry out full preparatory works regarding the supervisory tasks conferred upon the ECB and propose to the **Governing Council of the ECB complete draft decisions to be adopted by the latter, pursuant to a procedure to be established in the ECB's rules of procedure. A draft decision will be deemed adopted unless the Governing Council objects within a given deadline, stating the reasons for doing so.**
- 3a. **When exercising its tasks pursuant to this Article, the Banking Supervisory Board**

shall take account of all relevant facts and circumstances in the participating Member States and shall perform its duties in the interest of the Union as a whole. All members of the Banking Supervisory Board shall have equal voting rights.

4. The **Banking Supervisory Board** shall appoint **■** a steering committee with a more limited composition which supports its activities. The steering committee *shall prepare the meetings of the Banking Supervisory Board. The steering committee shall be chaired by the chair of the Banking Supervisory Board and shall be composed of six members, excluding the Chair. Those six members shall include three representatives of the ECB and three individuals of high repute, appointed by the Banking Supervisory Board, with a proven record of relevant knowledge and professional supervisory experience. The steering committee shall execute its preparatory tasks solely in the interest of the Union as a whole and shall work in full transparency with the Banking Supervisory Board.*

6. The Chair of the European Banking Authority and a member of the European Commission may participate as observers in the meetings of the **Banking Supervisory Board**.
7. The Governing Council shall adopt *and make public* the rules of procedure of the **Banking Supervisory Board** including rules on the term of office of the Chair and the Vice-Chair. The term of office *of the Chair shall be five years and shall be renewable once. The term of office of the Vice-Chair shall not exceed five years and shall be not renewable. The rules of procedure shall ensure equal treatment of all participating Member States. The composition of the Banking Supervisory Board shall respect the principles of balance of gender and experience.*

Article 20

Professional secrecy and exchange of information

1. Members of the **Banking Supervisory Board**, staff of the ECB *and staff seconded by national competent authorities of participating Member States* carrying out supervisory duties, *as well as individuals who provide any service, directly or indirectly, permanently or occasionally, related to the discharge of those duties* even after their duties are ceased, shall be subject to the professional secrecy requirements set out in Article 37 of Protocol No. 4 and in the relevant acts of Union law.
2. For the purpose of carrying out the tasks conferred upon it by this Regulation, the ECB shall be authorised, within the limits and under the conditions set out in the relevant acts of Union law, to exchange information with national or European authorities and bodies in the cases where Union law allows national competent authorities to disclose information to those entities or where Member States may provide for such disclosure under Union law.



Article 22

Resources

The ECB shall devote the necessary resources to the exercise of the tasks conferred upon it by this Regulation.

Article 23

Budget

1. The ECB's expenditure for carrying out the tasks conferred upon it by this Regulation shall be entered into a separate section of the budget of the ECB.
2. The ECB shall, as part of the report referred to in Article 17, report in detail on **the budget for** its supervisory **tasks**. It shall publish the detailed annual accounts **of that budget**.
- 2a. ***In line with article 27.1 of Protocol Nr 4 on the statute of the European system of Central Banks and of the European Central Bank the annual accounts for the supervisory section of the budget shall be subjected to an audit.***

Article 24

Supervisory fees

1. The ECB ***in its capacity as supervisor*** shall levy fees on credit institutions ***of participating Member States*** which shall cover expenditures relating to its tasks.
2. The amount of a fee levied on a credit institution shall be proportionate to the importance and risk profile of the credit institution concerned.
- 2a. ***The ECB shall publish a policy statement which may be regularly updated with respect to the amount of fees to be levied in accordance with this Article.***

Article 25

Staff and staff exchange

1. The ECB shall ensure an appropriate exchange and secondment of staff with and among ***all*** national competent authorities ***of participating Member States, taking into account the division of operational responsibilities between the ECB and the national competent authorities.***

2. The ECB shall require where appropriate that supervisory teams of national competent authorities taking supervisory actions regarding a credit institution, financial holding company or mixed financial holding company located in one participating Member State in accordance with this regulation involve also staff from national competent authorities of other participating Member States.
 - 2a. *The ECB shall create a standing ethics committee to assess possible conflicts of interest resulting from post-office employment of ECB staff members engaged in supervisory activities. The committee will be responsible for elaborating comprehensive and formal procedures for assessment. The results of such assessments shall be publicly disclosed.*
 - 2b. *Former ECB staff members who have been engaged in supervisory activities, and who intend to engage in an occupation during the two years after they have ceased to hold office, shall inform the ethics committee in good time. The committee shall make a decision by one month since receiving the information on the compatibility of the employment offer with the need to ensure the integrity and independence of staff. Former ECB staff members can engage in the occupation only after approval of the ethics committee.*
 - 2c. *Members of the Banking Supervisory Board shall be prohibited from taking paid work in private sector institutions for which the ECB has supervisory responsibility during two years after they have ceased to hold office.*

Article 26

Review

No later than 31 December 2015, the Commission shall publish a report on the application of this Regulation. That report shall evaluate, inter alia:

- (a) the functioning *and the impact of the supervisory activities of the ECB on the interests of the Union as a whole and on the coherence and integrity of the single market in financial services, and the functioning of the SSM within* the European System of Financial Supervision;
 - (aa) *the division of tasks between the ECB and the national competent authorities within the SSM;*
- (b) the effectiveness of independence and accountability arrangements;
- (c) the interaction between *the SSM, the ESRB* and the European Banking Authority;
- (d) the appropriateness of governance arrangements, including the composition *and the voting modalities* of the Banking Supervisory Board *and its relation with the governing council, as well as the collaboration in the Banking Supervisory Board between euro area Member States and the other participating Member States in the SSM;*

(da) the interaction between the ECB and the national competent authorities of non-participating Member States and the effects of the SSM on these Member States;

(db) the effectiveness of the internal appeal procedures against decisions of the ECB;

(dc) the effectiveness of the separation between the supervisory and the monetary policy function within the ECB as well as the possibility to separate the financial resources of the supervisory tasks from the budget of the ECB and integrate them in the general budget of the Union;;

(dd) the fiscal effects that supervisory decisions taken by the SSM have on participating Member States and the possibility of offering participating Member States whose currency is not the euro a form of fiscal backstop;

(de) the possibilities of developing further the SSM on the basis of any provision in the existing Treaties or the Treaty changes potentially required in order to make the SSM work more efficient, including the possibility of merging EBA with the SSM and including the possibility to bring insurance undertakings under the scope of the SSM or under the scope of EIOPA by reinforcing the role of the latter.

The report shall be forwarded to the European Parliament and to the Council. The Commission shall make accompanying proposals, as appropriate.

Article 27

Transitional provisions and entry into force

1. This Regulation shall enter into force on 1 January 2013.
2. ***By the 1st of January 2014 the ECB shall carry out in full the supervisory tasks conferred on it by this Regulation. █***
3. Before ***the 1st of January 2014*** the ECB may, by a decision addressed to the credit institution, financial holding company or mixed financial holding company and the national competent authority of the participating Member States concerned, start carrying out the tasks conferred on it by this Regulation, ***in particular in relation to the credit institutions which have received or requested direct or indirect European financial assistance from the EFSF or the ESM or any other facilities of public financial assistance and credit institutions which pose a systemic risk, as defined in EU law, individually or as part of a group of credit institutions, financial holding companies and mixed financial holding companies.***
4. From the entry into force of this Regulation, in view of the assumption of its tasks in accordance with the ***paragraphs above***, the ECB may require the competent authorities of the participating Member States and the persons referred to in Article 9 to provide all relevant information for the ECB to carry out a comprehensive assessment of the credit institutions of the participating Member State. The credit institution and the competent authority shall supply the information requested.

5. By derogation from Article 4 (3), from the entry into force of this regulation and until the repeal of Directives 2006/48/EC and 2006/49/EC and their replacement by new Union acts, the ECB shall exercise the tasks conferred on it by this regulation by addressing instructions to national competent authorities on the exercise of any relevant powers conferred on them.

By derogation from Article 4 (3), from the entry into force of this regulation and until the entry into force of legislative acts on supplementary supervision over credit institutions, insurance undertakings and investment firms in a financial conglomerate enabling the ECB to exercise the powers of competent authorities, the ECB shall exercise the tasks conferred on it by Article 4(2)(j) by addressing instructions to national competent authorities on the exercise of any relevant powers conferred on them.

6. Credit institutions authorised by participating Member States on the date referred to in **paragraph 1** or where relevant on the dates referred to in paragraphs 2 and 3, shall be deemed to be authorised in accordance with Article 13 and may continue to carry on their business. National competent authorities shall communicate to the ECB before the date of application of this Regulation or where relevant before the dates referred to in paragraphs 2 and 3 the identity of these credit institutions together with a report indicating the supervisory history and the risk profile of the institutions concerned, and any further information requested by the ECB. The information shall be submitted in the format requested by the ECB.

- 6a. *Any decision and/or measure adopted by national competent authorities before the entry into force of this Regulation in the domains where the ECB is conferred prudential surveillance tasks as defined in Article 4 remain in force until the ECB modifies or repeals it in accordance with the provisions of this Regulation.***

27.11.2012

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS

for the Committee on Economic and Monetary Affairs

on the proposal for a Council regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (COM(2012)0511 – C7-0314/2012 – 2012/0242(CNS))

Rapporteur: Andrew Duff

SHORT JUSTIFICATION

The establishment of a banking union with a single supervisory mechanism centred on the European Central Bank (ECB) poses very important constitutional questions which need to be drawn to the attention of the Parliament.

The legal base chosen by the European Council and the European Commission is Article 127(6) TFEU, as follows:-

6. The Council, acting by means of regulations in accordance with a special legislative procedure, may unanimously, and after consulting the European Parliament and the European Central Bank, confer specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings.

The aim of the Rapporteur is to ensure the overall cohesion of the European Union and full respect for EU law while establishing an efficient, effective single supervisory mechanism. To this end, he tables 41 amendments to the Commission's draft Council Regulation which he summarises below.

<i>Amendments</i>	<i>Content</i>
1	Sets the political context
4	Brings up to date
5, 24, 33	Participation must not be optional for the eurozone; participation by non-eurozone states ('pre-ins') is presumed to be the norm. Only the UK has an opt-out from the euro (Protocol No 15).
6	ECB used because it already has implementing powers
7	Scope widened to include all banks without exception

12	Contractual arrangements with participating non-eurozone states
8, 9, 10, 26, 28	Need to respect the European Banking Authority and the integrity of single market
13, , 36, 42, 43	Equal status for all states within the single supervisory mechanism
13, 21, 39	Relationship between the new Supervisory Board and the Governing Council of the ECB
14, 29, 43, 44	Transparency
15, 16,17, 20, 40, 42, 45, 46,47, 48	Election of chair by the European Parliament and accountability of the Supervisory Board
18	Judicial review and appeal process
2, 30, 32, 34, 35, 46, 48	Drafting improvements

The Rapporteur would draw attention to the need for Parliament to achieve a close harmony between the position it takes to this legislation (Thyssen Report) and the position it takes to the draft Regulation on the EBA (Giegold Report).

AMENDMENTS

The Committee on Constitutional Affairs calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1
Proposal for a regulation
Recital -1 (new)

Text proposed by the Commission

Amendment

(-1) The present financial and economic crisis has seen Europe's banking system brought close to collapse. The integrity of the single currency and the single market is threatened by the fragmentation of the financial sector. It is now essential to intensify the integration of the banking sector in order to bolster European unity, restore financial stability and lay the basis for economic recovery.

Amendment 2
Proposal for a regulation
Recital 6

Text proposed by the Commission

Amendment

(6) The European Banking Authority (EBA), established in 2011 by Regulation (EU) No. 1093/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), and the European System of Financial Supervision established by Article 2 of that Regulation and of Regulation (EU) No 1094/2010 of 24 November 2010 establishing a European Supervisory Authority (EIOPA), and Regulation (EU) No 1095/2010 of 24 November 2010 establishing a European Supervisory Authority (ESMA) have

(6) The European Banking Authority (EBA), established in 2011 by Regulation (EU) No. 1093/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), and the European System of Financial Supervision established by Article 2 of that Regulation and of Regulation (EU) No 1094/2010 of 24 November 2010 establishing a European Supervisory Authority (EIOPA), and Regulation (EU) No 1095/2010 of 24 November 2010 establishing a European Supervisory Authority (ESMA) have

significantly improved cooperation between banking supervisors within the Union. EBA is making important contributions to the creation of a single rulebook for financial services *in* the Union, and has been crucial in implementing in a consistent way the recapitalisation of major Union credit institutions agreed by the European Council in October 2011.

significantly improved cooperation between banking supervisors within the Union. EBA is making important contributions to the creation of a single rulebook for financial services *across* the Union, and has been crucial in implementing in a consistent way the recapitalisation of major Union credit institutions agreed by the European Council in October 2011.

Amendment 3

Proposal for a regulation Recital 7 a (new)

Text proposed by the Commission

Amendment

(7 a) The principle of sincere cooperation between the European institutions is enshrined in the Treaties, specifically in Article 13(2) TEU,

Amendment 4

Proposal for a regulation Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) On 18 October 2012 the European Council concluded that the process towards deeper economic and monetary union should build on the Union's institutional and legal framework and be characterised by openness and transparency towards non-euro area Member States and by respect for the integrity of the single market. The integrated financial framework will have a Single Supervisory Mechanism (SSM) which will be open to the extent possible to all Member States wishing to participate.

Amendment 5
Proposal for a regulation
Recital 9

Text proposed by the Commission

(9) A European banking union should therefore be set up, underpinned by a **true** single rulebook for financial services for the Single Market as a whole and composed of a single supervisory mechanism, and a common deposit insurance and resolution framework. In view of the **close links and interactions between** Member States participating in the common currency, the banking union should apply at least to all Euro area Member States. With a view to maintaining and deepening the internal market, and to the extent that this is institutionally possible, the banking union should also be open to the participation of other Member **States**.

Amendment

(9) A European banking union should therefore be set up, underpinned by a **comprehensive and detailed** single rulebook for financial services for the Single Market as a whole, **drawn up by EBA**, and composed of a single supervisory mechanism, and a common deposit insurance and resolution framework. In view of the **interdependence of the** Member States participating in the common currency, the banking union should apply at least to all euro area Member States **and should be extended to include all other States intending and preparing to join the euro**. With a view to maintaining and deepening the internal market, and to the extent that this is institutionally possible, the banking union should also be open to the **eventual** participation of **any** other Member **State**.

Amendment 6
Proposal for a regulation
Recital 11

Text proposed by the Commission

(11) As the Euro area's central bank with extensive expertise in macroeconomic and financial stability issues, the ECB is well placed to carry out supervisory tasks with a focus on protecting the stability of Europe's financial system. Indeed in **many** Member States Central Banks are already responsible for banking supervision. The ECB should therefore be conferred specific tasks concerning policies relating to the supervision of credit institutions within the Euro area.

Amendment

(11) As the Euro area's central bank with extensive expertise in macroeconomic and financial stability issues, **enjoying implementing powers of its own**, the ECB is well placed to carry out supervisory tasks with a focus on protecting the stability of Europe's financial system. Indeed, **the involvement of the ECB in supervision of the banking sector would reflect the current practice** in most Member States **whose** Central Banks are already responsible for banking supervision. The ECB should therefore be

conferred specific tasks concerning policies relating to the *prudential* supervision of credit institutions within the Euro area.

Amendment 7
Proposal for a regulation
Recital 13

Text proposed by the Commission

(13) Safety and soundness of large banks is essential to ensure the stability of the financial system. However, recent experience shows that smaller banks can also pose a threat to financial stability. Therefore, the ECB should be able to exercise supervisory tasks in relation to all banks of participating Member States.

Amendment

(13) Safety and soundness of large banks is essential to ensure the stability of the financial system. However, recent experience shows that smaller banks can also pose a threat to financial stability. Therefore, the ECB should be able to exercise supervisory tasks in relation to all banks of participating Member States *without exception*.

Amendment 8
Proposal for a regulation
Recital 24

Text proposed by the Commission

(24) The conferral of supervisory tasks on the ECB *for some of the Member States* should be consistent with the framework of the European System of Financial Supervision (ESFS) set up in 2010 and its underlying objective to develop the single rulebook and enhance convergence of supervisory practices across the whole Union. Cooperation between the banking supervisors and the supervisors of insurance and securities markets is important to deal with issues of joint interest and to ensure proper supervision of credit institutions operating also in the insurance and securities sectors. The ECB should therefore be required to cooperate closely with the EBA, the European Securities and Markets Authority and the

Amendment

(24) The conferral of supervisory tasks on the ECB should be consistent with the framework of the European System of Financial Supervision (ESFS) set up in 2010 and its underlying objective to develop the single rulebook and enhance convergence of supervisory practices across the whole Union. Cooperation between the banking supervisors and the supervisors of insurance and securities markets is important to deal with issues of joint interest and to ensure proper supervision of credit institutions operating also in the insurance and securities sectors. The ECB should therefore be required to cooperate closely with the EBA, the European Securities and Markets Authority and the European Insurance and

European Insurance and Occupational Pensions Authority, *within the framework of the EFSF*.

Occupational Pensions Authority, *without prejudice to their competences*.

Amendment 9

Proposal for a regulation Recital 24 a (new)

Text proposed by the Commission

Amendment

(24 a) In order to preserve the integrity of the single financial market, the EBA should maintain its role and retain all its existing powers and tasks: it should continue developing and ensuring the implementation of the single rulebook applicable to all Member States and enhance convergence of supervisory practices across the whole Union. In addition, EBA should now be tasked with the preparation of a single supervisory handbook to complement the EU's single rulebook and ensure consistency in bank supervision.

Amendment 10

Proposal for a regulation Recital 25

Text proposed by the Commission

Amendment

(25) In order to ***ensure consistency between supervisory responsibilities conferred on the ECB and decision making within the EBA***, the ECB should coordinate a ***common*** position amongst representatives of the ***national authorities of the*** participating Member States in relation to matters falling within its competence.

(25) In order to ***maintain the integrity of the single market***, the ECB should ***only*** coordinate a position amongst representatives of the participating Member States in relation to matters falling within its competence ***and where participating Member States are directly involved in the matter in question. The ECB must fully respect the role of the EBA both in establishing the single rule book for Europe's banking sector and in monitoring the application of the rules across the Union as a whole.***

Amendment 11

Proposal for a regulation

Recital 26

Text proposed by the Commission

(26) The ECB should carry out its tasks subject to and in compliance with any Union law rule including the whole of primary and secondary Union law, Commission decisions in the area of State aids, competition rules and merger control **and** the single rulebook applying to all Member States. The EBA is entrusted with developing draft technical standards and guidelines and recommendations ensuring supervisory convergence and consistency of supervisory outcomes within the Union. The ECB should not replace the exercise of these tasks by the EBA, and should therefore exercise powers to adopt regulations in accordance with Article 132 TFEU only where Union acts adopted by the European Commission upon drafts developed by the EBA or guidelines and recommendations issued by the EBA do not deal with certain aspects necessary for the proper exercise of the ECB's tasks or do not deal with them in sufficient detail.

Amendment

(26) The ECB should carry out its tasks subject to and in compliance with any Union law rule including the whole of primary and secondary Union law, Commission decisions in the area of State aids, competition rules and merger control, the single rulebook applying to all Member States **and the single supervisory handbook to be developed by the EBA**. The EBA is entrusted with developing draft technical standards and guidelines and recommendations ensuring supervisory convergence and consistency of supervisory outcomes within the Union. The ECB should not replace the exercise of these tasks by the EBA, and should therefore exercise powers to adopt regulations in accordance with Article 132 TFEU only where Union acts adopted by the European Commission upon drafts developed by the EBA or guidelines and recommendations issued by the EBA do not deal with certain aspects necessary for the proper exercise of the ECB's tasks or do not deal with them in sufficient detail.

Amendment 12

Proposal for a regulation

Recital 29

Text proposed by the Commission

(29) As regards the supervision of cross-border banks active both inside and outside the Euro area the ECB should cooperate closely with the competent authorities of non participating Member States. As a competent authority the ECB should be subject to the related obligations to

Amendment

(29) As regards the supervision of cross-border banks active both inside and outside the Euro area the ECB should cooperate closely with the competent authorities of non participating Member States. As a competent authority the ECB should be subject to the related obligations to

cooperate and exchange information under Union law and should participate fully in the colleges of supervisors. In addition, since the exercise of supervisory tasks by a European institution brings about clear benefits in terms of financial stability and sustainable market integration, Member States not participating in the common currency should therefore also have the possibility to participate in the new mechanism. However, it is a necessary precondition for an effective exercise of supervisory tasks, that supervisory decisions are implemented fully and without delay. Member States wishing to participate in the new mechanism should therefore undertake to ensure that their national competent authorities will abide by and adopt any measure in relation to credit institutions requested by the ECB. The ECB should be able to establish a close cooperation with the competent authorities of a Member State not participating in the common currency. It should be obliged to establish the cooperation where the conditions set out in this regulation are met. ***The conditions under which representatives of the competent authorities of the Member States which established a close co-operation take part to the activities of the Supervisory Board should allow the greatest possible involvement of those representatives taking into account the limits following from the Statute of ESCB and of the ECB, in particular as regards the integrity of its decision making process.***

Amendment 13
Proposal for a regulation
Recital 29 a (new)

Text proposed by the Commission

cooperate and exchange information under Union law and should participate fully in the colleges of supervisors. In addition, since the exercise of supervisory tasks by a European institution brings about clear benefits in terms of financial stability and sustainable market integration, Member States not participating in the common currency should therefore also have the possibility to participate in the new mechanism. However, it is a necessary precondition for an effective exercise of supervisory tasks, that supervisory decisions are implemented fully and without delay. Member States wishing to participate in the new mechanism should therefore undertake to ensure that their national competent authorities will abide by and adopt any measure in relation to credit institutions requested by the ECB. The ECB should be able to establish a close cooperation with the competent authorities of a Member State not participating in the common currency. It should be obliged to establish the cooperation where the conditions set out in this regulation are met. ***These include that those Member States undertake to ensure that their national competent authorities will abide by and adopt any measure in relation to credit institutions requested by the ECB and the obligation to adopt national legal acts to ensure that their national competent authorities will be obliged to adopt any measure in relation to credit institutions requested by the ECB.***

Amendment

(29a) The conditions under which representatives of the competent

authorities of the non-euro area Member States take part in the activities of the Supervisory Board should be such that they are fully represented on the Supervisory Board and enjoy a status equal to that of the competent authorities of the euro area Member States, including voting rights. The Supervisory Board should be empowered to plan and execute the ECB's supervisory tasks. The Supervisory Board should exercise its powers in full recognition that the Governing Council of the ECB is the ultimate executive authority of the ECB.

Amendment 14
Proposal for a regulation
Recital 33

Text proposed by the Commission

(33) In its decision-making procedures, the ECB should be bound by Union rules and general principles on due process and transparency. The right of the addressees of the ECB's decisions to be heard should be fully respected.

Amendment

(33) In its decision-making procedures, the ECB should be bound by Union rules and general principles on due process and transparency. The right of the addressees of the ECB's decisions to be heard should be fully respected. ***The Supervisory Board should publish its minutes.***

Amendment 15
Proposal for a regulation
Recital 34

Text proposed by the Commission

(34) The conferral of supervisory tasks implies a significant responsibility for the ECB to safeguard financial stability in the Union, and to use its supervisory powers in the most effective and proportionate way. The ECB ***should therefore be accountable for the exercise of these tasks towards the European Parliament and the Council of Ministers respectively the Eurogroup as democratically legitimised institutions***

Amendment

(34) The conferral of supervisory tasks implies a significant responsibility for the ECB to safeguard financial stability in the Union, and to use its supervisory powers in the most effective and proportionate way. ***While the ECB must remain independent in relation to monetary policy, it must be subject to new forms of democratic accountability with respect to its supervisory powers.*** That should include

representing the European people and the Member States. That should include regular reporting and responding to questions. Where national supervisors take action under this Regulation, accountability arrangements provided under national law should continue to apply.

regular reporting and responding to questions. Where national supervisors take action under this Regulation, accountability arrangements provided under national law should continue to apply.

Amendment 16
Proposal for a regulation
Recital 34 a (new)

Text proposed by the Commission

Amendment

(34a) The Supervisory Board should present an annual report to the European Parliament and the Council. Representatives of the Supervisory Board might be invited to appear before relevant committees of the European Parliament. The right of the European Parliament to establish a temporary committee of enquiry should apply to the activities of the Supervisory Board.

Amendment 17

Proposal for a regulation
Recital 34 b (new)

Text proposed by the Commission

Amendment

(34b) At the request of the parliaments of the participating Member States, a representative of the Supervisory Board may be heard in the relevant committees of those parliaments.

Amendment 18
Proposal for a regulation
Recital 34 c (new)

Text proposed by the Commission

Amendment

(34c) Without prejudice to Article 263 TFEU, the Court of Justice should be enabled to review the legality of acts of the ECB, acting in its supervisory capacity, that are intended to produce legal effects vis-à-vis third parties.

Amendment 19

Proposal for a regulation

Recital 35

Text proposed by the Commission

Amendment

(35) The ECB is responsible for carrying out monetary policy functions with a view to maintaining price stability in accordance with Article 127(1) TFEU. The exercise of supervisory tasks has the objective to protect the safety and soundness of credit institutions and the stability of the financial system. In order to avoid conflicts of interests and to ensure that each function is exercised in accordance with the applicable objectives, the ECB should ensure they are carried out in full separation.

(35) The ECB is responsible for carrying out monetary policy functions with a view to maintaining price stability in accordance with Article 127(1) TFEU. The exercise of supervisory tasks has the objective to protect the safety and soundness of credit institutions and the stability of the financial system. In order to avoid conflicts of interests and to ensure that each function is exercised in accordance with the applicable objectives, the ECB should ensure they are carried out in full separation. ***Staff involved in carrying out the tasks conferred on the ECB by this Regulation should be organisationally separated from other ECB staff and should be subject to separate reporting lines.***

Amendment 20

Proposal for a regulation

Recital 36

Text proposed by the Commission

Amendment

(36) In particular, a supervisory board responsible for preparing decisions on supervisory matters should be set up with the ECB encompassing the specific

(36) In particular, a supervisory board responsible for preparing decisions on supervisory matters should be set up with the ECB encompassing the specific

expertise of national supervisors. The board should therefore be chaired by a Chair *and a Vice-Chair* elected by the ECB Governing Council *and* composed, in addition, of representatives from the ECB and from national authorities. In order to allow for an appropriate rotation while ensuring the full independence of the Chair and the Vice-Chair, their term should not exceed five years and should not be renewable. In order to ensure full coordination with the activities of the EBA and with the prudential policies of the Union, the EBA and the European Commission should be observers in the supervisory board. The performance of the supervisory tasks conferred upon the ECB requires the adoption of a large number of technically complex acts and decisions, including decisions on individual credit institutions. In order to effectively carry out those tasks in accordance with the principle of separation from tasks relating to monetary policy, the ECB Governing Council of the ECB should be able to delegate certain clearly defined supervisory tasks *and related decisions* to the supervisory board, subject to the oversight and responsibility of the Governing Council, which can give instructions and directions to that body. The supervisory board may be supported by a steering committee with a more limited composition.

expertise of national supervisors. The board should therefore be chaired by a Chair elected by the ECB Governing Council *after approval by the European Parliament. The board should be* composed, in addition, of representatives from the ECB and from national authorities. In order to allow for an appropriate rotation while ensuring the full independence of the Chair and the Vice-Chair, their term should not exceed five years and should not be renewable. In order to ensure full coordination with the activities of the EBA and with the prudential policies of the Union, the EBA and the European Commission should be observers in the supervisory board. *The supervisory board should exercise its tasks in full recognition that the Governing Council of the ECB remains the ultimate responsible for its decisions.* The performance of the supervisory tasks conferred upon the ECB requires the adoption of a large number of technically complex acts and decisions, including decisions on individual credit institutions. In order to effectively carry out those tasks in accordance with the principle of separation from tasks relating to monetary policy, the ECB Governing Council of the ECB should be able to delegate certain clearly defined supervisory tasks to the supervisory board, subject to the oversight and responsibility of the Governing Council, which can give instructions and directions to that body. The supervisory board may be supported by a steering committee with a more limited composition.

Amendment 21
Proposal for a regulation
Recital 36 a (new)

Text proposed by the Commission

Amendment

(36a) The Supervisory Board should be responsible for preparing and executing the decisions of the Governing Council of the ECB. Proposals of the Supervisory Board should be accepted by the Governing Council unless a qualified majority of its members rejects them. The Governing Council should justify deviations from the proposals and draft decisions prepared by the Supervisory Board.

Amendment 22

Proposal for a regulation

Recital 41

Text proposed by the Commission

Amendment

(41) Given the globalisation of banking services and the increased importance of international standards, the ECB should carry out its tasks in respect of international standards and in dialogue and close cooperation with supervisors outside the Union, without duplicating the international role of the EBA. It should be empowered to develop contacts and enter into administrative arrangements with the supervisory authorities and administrations of third countries and with international organisations, subject to coordination with the EBA and while fully respecting the existing roles and respective competences of the Member States and the Union institutions

(41) Given the globalisation of banking services and the increased importance of international standards, the ECB should carry out its tasks in respect of international standards and in dialogue and close cooperation with supervisors outside the Union, without duplicating ***or restricting*** the international role of the EBA. It should be empowered to develop contacts and enter into administrative arrangements with the supervisory authorities and administrations of third countries and with international organisations, subject to coordination with the EBA and while fully respecting the existing roles and respective competences of the Member States and the Union institutions.

Amendment 23

Proposal for a regulation
Recital 47 a (new)

Text proposed by the Commission

Amendment

(47 a) Whereas the pending financial crisis contributed immensely to the fragmentation of European financial markets, it is indispensable to enhance the common integrated financial framework. However, it should be borne in mind that the deepening of integration in the EMU cannot give rise to new, not outlined in the Treaties, convergence criteria, which can create additional barriers to entry for countries under a temporary derogation

Amendment 24
Proposal for a regulation
Article 2 – paragraph 1 – point 1

Text proposed by the Commission

Amendment

(1) ‘participating Member State’ means a Member State whose currency is the euro;

(1) ‘participating Member State’ means a Member State whose currency is the euro ***and any other Member State which chooses to participate in the single supervisory mechanism;***

Amendment 25
Proposal for a regulation
Article 2 – paragraph 1 – point 1 a (new)

Text proposed by the Commission

Amendment

(1a) ‘non-participating Member State’ means a Member State whose currency is not the euro which chooses not to participate in the single supervisory mechanism;

Amendment 26
Proposal for a regulation
Article 3 – paragraph 1

Text proposed by the Commission

The ECB shall cooperate closely with the European Banking Authority, the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority and the European Systemic Risk Board, which form part of the European System of Financial Supervision established by Article 2 of Regulations (EU) No. 1093/2010, (EU) No 1094/2010, and (EU) No 1095/2010.

Amendment

The ECB ***in its supervisory capacity*** shall cooperate closely with the European Banking Authority, the European Securities and Markets Authority, the European Insurance and Occupational Pensions Authority and the European Systemic Risk Board, which form part of the European System of Financial Supervision established by Article 2 of Regulations (EU) No. 1093/2010, (EU) No 1094/2010, and (EU) No 1095/2010. ***The ECB shall carry out its tasks without prejudice to the competences of the other participants in the ESFS.***

Amendment 27

Proposal for a regulation
Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

The ECB shall co-operate closely with the European Stability Mechanism (ESM) or any other similar facility for participating Member States whose currency is not the Euro where a credit institution has received or applied for financial assistance from that facility.

Amendment 28
Proposal for a regulation
Article 4 – paragraph 1 – introductory wording

Text proposed by the Commission

1. The ECB shall, in accordance with the relevant provisions of Union law, be exclusively competent to carry out, for

Amendment

1. The ECB shall, ***without prejudice to the powers of the EBA and*** in accordance with the relevant provisions of Union law, ***as***

prudential supervisory purposes, the following tasks in relation to all credit institutions established in the participating Member States:

well as in accordance with the single rulebook and the single supervisory handbook developed by EBA, be exclusively competent to carry out, for prudential supervisory purposes, the following tasks in relation to all credit institutions established in the participating Member States:

Amendment 29
Proposal for a regulation
Article 4 – paragraph 1 – point h

Text proposed by the Commission

(h) To carry out supervisory stress-tests on credit institutions to support the supervisory review;

Amendment

(h) To carry out supervisory stress-tests on credit institutions to support the supervisory review, **and to publish the results of those tests**;

Amendment 30
Proposal for a regulation
Article 4 – paragraph 1 – point l

Text proposed by the Commission

(l) To **coordinate and express** a common position of representatives from competent authorities of the participating Member States when participating in the Board of Supervisors and the Management Board of the European Banking Authority, for issues relating to the tasks conferred on the ECB by this Regulation.

Amendment

(l) To **formulate** a common position of representatives from competent authorities of the participating Member States when participating in the Board of Supervisors and the Management Board of the European Banking Authority, for issues relating **directly** to the tasks conferred on the ECB by this Regulation.

Amendment 31
Proposal for a regulation
Article 4 – paragraph 3

Text proposed by the Commission

3. Subject to and in compliance with any relevant Union law rule and in particular any legislative and non-legislative act, the

Amendment

3. Subject to and in compliance with any relevant Union law rule and in particular any legislative and non-legislative act,

ECB may adopt regulations and recommendations and take decisions to implement or apply Union law, to the extent necessary to carry out the tasks conferred upon it by this Regulation.

including the single rulebook and the single supervisory handbook developed by EBA as well as the technical standards developed by EBA and adopted by the Commission, the ECB may adopt regulations and recommendations and take decisions to implement or apply Union law, to the extent necessary to carry out the tasks conferred upon it by this Regulation, ***and only where those Union acts do not deal with certain aspects necessary for the proper exercise of the ECB's tasks or do not deal with them in sufficient detail.***

Amendment 32
Proposal for a regulation
Article 4 – paragraph 4

Text proposed by the Commission

4. This regulation is without prejudice to the responsibilities and related powers of the competent authorities of the participating Member States to carry out supervisory tasks not ***referred to*** in this Regulation.

Amendment

4. This Regulation is without prejudice to the responsibilities and related powers of the competent authorities of the participating Member States to carry out supervisory tasks not ***conferred*** in this Regulation.

Amendment 33
Proposal for a regulation
Article 6 – title

Text proposed by the Commission

Close cooperation with the competent authorities of non participating Member States

Amendment

Participation in the single supervisory mechanism of Member States ***whose currency is not the euro***

Amendment 34
Proposal for a regulation
Article 6 – paragraph 1 – subparagraph 2

Text proposed by the Commission

To that end, the ECB may address

Amendment

To that end, the ECB may address

guidelines or requests to the national competent authority of *the non participating* Member State.

guidelines or requests to the national competent authority of *that* Member State.

Amendment 35
Proposal for a regulation
Article 6 – paragraph 2 – introductory wording

Text proposed by the Commission

Amendment

2. The close cooperation between the ECB and the national competent authority of a *non participating* Member State shall be established, by a decision adopted by the ECB, where the following conditions are met:

2. The close cooperation between the ECB and the national competent authority of a Member State *whose currency is not the euro but which chooses to participate* shall be established, by a decision adopted by the ECB, where the following conditions are met:

Amendment 36
Proposal for a regulation
Article 6 – paragraph 3

Text proposed by the Commission

Amendment

3. The decision referred to in paragraph 2 shall determine, in compliance with the Statute of ESCB and of the ECB, the conditions under which representatives of the competent authorities of the Member States *which established a close cooperation in accordance with this Article shall take part to* the activities of the Supervisory Board.

3. The decision referred to in paragraph 2 shall determine, in compliance with the Statute of ESCB and of the ECB, the conditions under which representatives of the competent authorities of the *participating* Member States *whose currency is not the euro are to take part, fully and on equal terms with the representatives of the Member States whose currency is the euro, in* the activities of the Supervisory Board.

Amendment 37
Proposal for a regulation
Article 18 – paragraph 2

Text proposed by the Commission

Amendment

2. The ECB shall carry out the tasks

2. The ECB shall carry out the tasks

conferred upon it by this Regulation separately from its tasks relating to monetary policy and from any other tasks. The tasks conferred upon the ECB by this regulation shall not interfere with the ECB's tasks relating to monetary policy and any other tasks.

conferred upon it by this Regulation separately from its tasks relating to monetary policy and from any other tasks. The tasks conferred upon the ECB by this regulation shall not interfere with the ECB's tasks relating to monetary policy and any other tasks. ***The staff involved in carrying out the tasks conferred on the ECB by this Regulation shall be organisationally separated from other ECB staff and shall be subject to separate reporting lines.***

Amendment 38

Proposal for a regulation Article 18 – paragraph 3

Text proposed by the Commission

3. For the purposes of paragraphs 1 and 2, the ECB shall adopt any necessary internal rules, including rules regarding professional secrecy.

Amendment

3. For the purposes of paragraphs 1 and 2, the ECB shall adopt any necessary internal rules, including rules regarding professional secrecy ***and rules to ensure the establishment of 'Chinese walls'.***

Amendment 39

Proposal for a regulation Article 19 – paragraph 2

Text proposed by the Commission

2. In addition, the supervisory board shall include a Chair ***elected by the members of the Governing Council from the members, with the exception of the President, of the Executive Board, and*** a Vice-Chair elected by and from the members of the Governing Council of the ECB.

Amendment

2. In addition, the supervisory board shall include a Chair ***who shall be approved by the Council, on the nomination of the Governing Council of the ECB, after having obtained the consent of the European Parliament following a hearing of the candidate in the responsible committee. The Chair shall be chosen on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open selection procedure.*** A Vice-Chair ***shall be*** elected by and from the members

of the Governing Council of the ECB.

Amendment 40

Proposal for a regulation Article 19 – paragraph 3

Text proposed by the Commission

3. The Governing Council of the ECB may delegate clearly defined supervisory tasks **and related decisions** regarding individual or a set of identifiable credit institutions, financial holding companies or mixed financial holding companies to the supervisory board, subject to the oversight and responsibility of the Governing Council.

Amendment

3. The Governing Council of the ECB may delegate clearly defined supervisory tasks regarding individual or a set of identifiable credit institutions, financial holding companies or mixed financial holding companies to the supervisory board, subject to the oversight and responsibility of the Governing Council.

Amendment 41

Proposal for a regulation Article 19 – paragraph 5

Text proposed by the Commission

5. The representatives of the competent authority of the **Member States which established a close cooperation in accordance with Article 6** shall take part **to** the activities of the supervisory board in accordance with the conditions set out in the decision adopted in accordance with paragraphs 2 and 3 of Article 6, in compliance with the Statute of ESCB and of the ECB.

Amendment

5. The representatives of the competent authority of the **participating States** shall take part **in** the activities of the supervisory board **on an equal basis** in accordance with the conditions set out in the decision adopted in accordance with paragraphs 2 and 3 of Article 6, in compliance with the Statute of ESCB and of the ECB.

Amendment 42

Proposal for a regulation Article 19 – paragraph 7

Text proposed by the Commission

7. The Governing Council shall adopt **the**

Amendment

7. The Governing Council shall adopt rules

rules of procedure *of* the supervisory board *including rules on the term of office of the Chair and the Vice-Chair*. The term of office shall not exceed five years and shall not be renewable.

of procedure *for itself and* the Supervisory Board, *and shall make them public*. *The rules of procedure of the Supervisory Board shall ensure equal and balanced treatment of all its members. They shall establish rules prescribing the term of office of the Chair, which* shall not exceed five years and shall not be renewable.

Amendment 43
Proposal for a regulation
Article 19 – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. The Supervisory Board shall make its minutes public.

Amendment 44
Proposal for a regulation
Article 19 a (new)

Text proposed by the Commission

Amendment

Article 19a

Decision-making procedure

The Supervisory Board, acting by a simple majority, shall make proposals to the Governing Council of the ECB in the form of draft decisions. The Governing Council may accept those draft decisions, refer them back to the Supervisory Board, or reject them. In the event that the Governing Council rejects the draft decisions of the Supervisory Board, it will act by a two-thirds majority of its members having a voting right, as defined in Article 10 of the Statute of the European System of Central Banks and of the European Central Bank. The Governing Council shall justify referral back or rejection of the draft decisions prepared by the Supervisory Board. A draft decision will be deemed adopted unless the Governing Council acts within

three weeks.

Amendment 45
Proposal for a regulation
Article 21 – paragraph 1

Text proposed by the Commission

1. The ECB shall submit *each year* to the European Parliament, the Council, the Commission and the *Eurogroup a report* on the execution of the tasks conferred upon it by this Regulation.

Amendment

1. The ECB shall submit *an annual report* to the European Parliament, the Council, the Commission, *the Eurogroup* and the *national parliaments of participating Member States* on the execution of the tasks conferred upon it by this Regulation.

Amendment 46
Proposal for a regulation
Article 21 – paragraph 2

Text proposed by the Commission

2. The Chair of the supervisory board of the ECB shall present *this* report to the European Parliament and to the Eurogroup in the presence of representatives from *any non* participating Member *State in relation to which a close cooperation in accordance with Article 6 is in place.*

Amendment

2. The Chair of the Supervisory Board of the ECB shall present *that* report to the European Parliament and to the Eurogroup in the presence of representatives from *other* participating Member *States.*

Amendment 47
Proposal for a regulation
Article 21 – paragraph 3

Text proposed by the Commission

3. *The Chair* of the *supervisory board may, at the request* of the *European Parliament, be heard* on the execution of its supervisory tasks *by* the competent committees of the European Parliament.

Amendment

3. *At the request* of the *European Parliament, the Chair* of the *Supervisory Board shall participate in a hearing* on the execution of its supervisory tasks *before* the competent committees of the European Parliament.

Amendment 48
Proposal for a regulation
Article 21 – paragraph 4

Text proposed by the Commission

4. The ECB shall reply orally or in writing to questions put to it by the European Parliament or by the *Eurogroup*.

Amendment

4. The ECB shall reply orally or in writing to questions put to it by the European Parliament or by the **Council**.

Amendment 49

Proposal for a regulation
Article 26 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(d a) the division of responsibilities between the ECB and the national competent authorities of participating Member States;

PROCEDURE

Title	Conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions		
References	COM(2012)0511 – C7-0314/2012 – 2012/0242(CNS)		
Committee responsible Date announced in plenary	ECON 22.10.2012		
Opinion by Date announced in plenary	AFCO 22.10.2012		
Rapporteur Date appointed	Andrew Duff 19.11.2012		
Discussed in committee	9.10.2012	19.11.2012	26.11.2012
Date adopted	27.11.2012		
Result of final vote	+: -: 0:	18 2 1	
Members present for the final vote	Andrew Henry William Brons, Andrew Duff, Ashley Fox, Roberto Gualtieri, Enrique Guerrero Salom, Gerald Häfner, Stanimir Ilchev, Constance Le Grip, Paulo Rangel, Algirdas Saudargas, József Szájer, Indrek Tarand, Rafał Trzaskowski, Manfred Weber, Luis Yáñez-Barnuevo García		
Substitute(s) present for the final vote	Elmar Brok, Sylvie Guillaume, Helmut Scholz, György Schöpflin, Rainer Wieland		
Substitute(s) under Rule 187(2) present for the final vote	Alexander Mirsky, Ramon Tremosa i Balcells		

ANNEX I

IPOL-COM-LIBE D (2012) 57338

Ms Sharon BOWLES
Chairwoman
Committee on Economic and Monetary affairs
BRUSSELS

Subject: Proposal for a Council Regulation conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions COM(2012) 511 final - 2012/0242(CNS)

Dear Ms Bowles,

I would like to inform you that the Committee on Civil Liberties, Justice and Home Affairs (LIBE) decided on 11 October 2012 to deliver an opinion to the Committee on Economic and Monetary affairs on the above-mentioned legislative proposal in the form of a letter due to the tight time schedule for the adoption of the corresponding report in your Committee.

The present opinion was adopted by the LIBE Committee on 6 November 2012 with 42 votes in favour, 1 vote against and 3 abstentions.

The Committee on Civil Liberties, Justice and Home Affairs calls on your Committee, as the Committee responsible, to consider the following suggestions when examining the Commission' proposal and to modify it accordingly.

With a view to enabling the ECB to carry out its supervisory tasks, the Commission's proposal confers on it extensive investigatory powers. In particular, the ECB is entitled to request information, to require the submission of documents, to examine books and records and take copies or extracts thereof, to obtain written or oral explanation and to interview natural or legal persons who consent to be interviewed (*Article 10 - General investigations*).

The ECB is also entitled to conduct on-site inspections at the business premises of the supervised entities, including inspections without prior announcement. In the context of an inspection, the ECB has the power to seal any business premises and books or records and to request the assistance of national competent authorities in cases of opposition to the inspections (*Article 11 - On-site inspections*).

Although the draft Regulation refers to the authorisation by a judicial authority for conducting on-site inspections, it imposes the obligation to apply for such authorisation only if this is required by national rules (*Article 12 - Authorisation by a judicial authority*). It follows that

the decision on the need for judicial authorisation as a condition for the adoption of coercive measures by the ECB is ultimately left to the Member States. Furthermore, considering that national rules vary from one Member State to another the reference to national law does not ensure that the inspections are carried out under equivalent conditions in the Member States.

Therefore, in the interest of legal certainty and in full compliance with the principle of due process the LIBE Committee suggests deleting the reference to national law and inserting in the draft Regulation a provision subjecting the adoption of any coercive measure by the ECB to judicial overview and prior authorisation.

In addition, the LIBE Committee suggests adding specific rules governing the possible interaction between administrative investigations and criminal proceedings. More specifically, where the facts discovered during the investigations or inspections could constitute a criminal offence, the Regulation should impose on the ECB the obligation to immediately inform the competent judicial authority thereof. Taking account of the administrative nature of the investigatory powers of the ECB, to which the safeguards for suspects and accused persons in criminal proceedings do not apply, the Regulation should also stipulate that information and documents obtained by the ECB as a result of its investigations or inspections shall not be treated as evidence in the context of criminal proceedings.

On behalf of the Committee on Civil Liberties, Justice and Home Affairs, I would be grateful if your Committee could support and integrate these suggestions in its final report.

Yours sincerely,

Juan Fernando LÓPEZ AGUILAR

ANNEX II

ref. D(2012)57330

Ms Sharon Bowles
Chair
Committee on Economic and Monetary Affairs
BRUSSELS

Subject: **Proposal for a regulation of the Council conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (COM(2012)0511 - 2012/0242(CNS)) and 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)0512-2012/0244(COD))**

Dear Chair,

On account of the tight schedule in your Committee, and following a proposal by the JURI rapporteur, Mr Sergio Cofferati, the Committee on Legal Affairs decided at its meeting of 10 October 2012 to issue an opinion to your Committee on the above proposals in letter form in order to draw attention to some of the key aspects of the Commission's proposals concerning new specific tasks of the European Central Bank relating to the supervision of credit institutions, and the modified tasks of the European Banking Authority as regards its interaction with the new functions of the European Central Bank.

The present opinion in letter form was drafted by Mr Sergio Cofferati and was adopted (*unanimously by the Committee with 00 votes in favour and no abstentions*¹) on 6 November 2012.

The Committee on Legal Affairs calls on the Committee on Economic and Monetary Affairs,

¹ The following Members were present: Raffaele Baldassarre, Luigi Berlinguer, Françoise Castex, Marielle Gallo, Giuseppe Gargani, Lidia Joanna Geringer de Oedenberg, Antonio López-Istúriz White, Antonio Masip Hidalgo, Alajos Mészáros, Evelyn Regner, Rebecca Taylor, Alexandra Thein, Rainer Wieland, Cecilia Wikström, Tadeusz Zwiefka, Christian Engström, Sylvie Guillaume, Sajjad Karim, Eva Lichtenberger, Jiří Maštálka, Francesco Enrico Speroni, József Szájer, Axel Voss, Zbigniew Ziobro,

as the Committee responsible, to pay particular attention to the following points when drawing up its report on the Commission proposals:

- **The Legal Basis**
Following a cursory examination, the rapporteur is satisfied with the choice of the legal basis. Regarding the Proposal for a regulation of the Council conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, Article 127 TFEU was chosen as legal basis. It defines the legislative procedure for conferring "specific tasks upon the European Central Bank concerning policies relating to the prudential supervision of credit institutions and other financial institutions with the exception of insurance undertakings"; 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) is based on Article 114 TFEU, since it amends Regulation (EU) No 1093/2010 which was adopted under that same legal basis.
- **The Single Supervisory Mechanism (SSM)**
The Commission assigns the role of head of the Single Supervisory Mechanism to the ECB. However, clarification is required concerning the nature of the relationship between the ECB and national supervisors. In particular, the role of national supervisors in micro-supervision in their respective Member States should be defined in greater detail. A mechanism for the resolution of internal disputes between the European supervisory authority and the national supervisor should be established.
- **Geographical Scope of the Proposals**
It is important to encourage those Member States whose currency is not the Euro to join the new SSM with the same duties and rights as those Member States whose currency is the Euro. In that regard, it is necessary to move beyond mere '*association status*', derived from a close cooperation with the ECB, and to allow for '*full membership*' for Member States whose currency is not the Euro and who wish to join the SSM and the Banking Union framework.
- **The Practical Scope of the Proposals**
The Regulation should clearly identify the tasks to be carried out by the ECB and those to be carried out by the national supervisors. It must be highlighted that, the Commission is proposing that, to be effective, the SSM should ensure universal coverage, and that the ECB should be ultimately responsible for all aspects of the supervision of all banks. A system must be established which would allow for differentiation of the tasks of the ECB and of the national supervisors on the basis of the risk profile and market impact of the banks in question. This could take into account factors such as cross-border activities, structure and governance, business model and interconnectivity as well as the relative size and dimension of an institution to a market.
- **Governance**
Given its new role as Supervisory Authority, the governance of the ECB needs to be clarified. The ECB's decision-making and administrative procedures relating to its

monetary tasks must be clearly separated from those procedures relating to its new supervisory tasks. The membership of the Supervisory Board should reflect, faithfully and in a balanced manner, both those Member States whose currency is the Euro and those Member States whose currency is not the Euro.

- **Accountability and Transparency**

The ECB has to play its role in maintaining independence and transparency in its actions, with complete accountability to democratic institutions. When carrying out supervisory tasks, the ECB must be fully accountable, though a system of regular reporting, to the European Parliament. Consideration should be given to involving the European Parliament in the appointment of the supervisory board.

On behalf of the Committee on Legal Affairs, I would be grateful if your Committee would take these points into account in its further work.

Furthermore, the Committee on Legal Affairs decided at its meeting of 10 October 2012 that, should your Committee decide to postpone the vote scheduled on 28 November 2012, the Committee on Legal Affairs would then deliver an ordinary legislative opinion on the above proposals.

Yours sincerely,

Klaus-Heiner Lehne

PROCEDURE

Title	Conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions		
References	COM(2012)0511 – C7-0314/2012 – 2012/0242(CNS)		
Date of consulting Parliament	27.9.2012		
Committee responsible Date announced in plenary	ECON 22.10.2012		
Committee(s) asked for opinion(s) Date announced in plenary	JURI 22.10.2012	LIBE 22.10.2012	AFCO 22.10.2012
Not delivering opinions Date of decision	JURI 10.10.2012	LIBE 5.11.2012	
Rapporteur(s) Date appointed	Marianne Thyssen 11.9.2012		
Discussed in committee	26.9.2012	22.10.2012	19.11.2012
Date adopted	28.11.2012		
Result of final vote	+: -: 0:	32 11 4	
Members present for the final vote	Burkhard Balz, Jean-Paul Basset, Sharon Bowles, Udo Bullmann, Rachida Dati, Leonardo Domenici, Diogo Feio, Markus Ferber, Elisa Ferreira, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Othmar Karas, Jürgen Klute, Philippe Lamberts, Werner Langen, Hans-Peter Martin, Arlene McCarthy, Ivari Padar, Alfredo Pallone, Anni Podimata, Antolín Sánchez Presedo, Peter Simon, Theodor Dumitru Stolojan, Kay Swinburne, Sampo Terho, Marianne Thyssen, Corien Wortmann-Kool, Pablo Zalba Bidegain		
Substitute(s) present for the final vote	Marta Andreasen, Jean-Pierre Audy, Lajos Bokros, Philippe De Backer, Vicky Ford, Ashley Fox, Roberto Gualtieri, Sophia in 't Veld, Mojca Kleva, Thomas Mann, Marisa Matias, Gianni Pittella, Nils Torvalds		
Substitute(s) under Rule 187(2) present for the final vote	Pilar Ayuso, Georges Bach, Birgit Collin-Langen, Jan Kozłowski		
Date tabled	3.12.2012		