

Amendment 265**José Manuel García-Margallo y Marfil, Jean-Paul Gauzès, Burkhard Balz**

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Report**A7-0166/2010****José Manuel García-Margallo y Marfil**

European Banking Authority

COM(2009)0501 – C7-0169/2009 – 2009/0142(COD)

Proposal for a regulation

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AMENDMENTS BY PARLIAMENT*

to the Commission proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCILestablishing a European *Supervisory* Authority (*European Banking Authority*)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee¹,Having regard to the opinion of the Committee of the Regions²,Having regard to the opinion of the European Central Bank³,Acting in accordance with the ordinary legislative procedure¹,

* Amendments: new or replacement text is marked in ***bold italics*** and deletions are indicated by the symbol **■**.

¹ Opinion of 22 January 2010 (not yet published in the Official Journal).

² OJ C , , p. .

³ OJ C 13, 20.1.2010, p. 1.

Whereas:

- (1) The financial crisis in 2007/2008 exposed important shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. Nationally-based supervisory models have lagged behind the **financial globalisation and the** integrated and interconnected reality of European financial markets, in which many financial firms operate across borders. The crisis exposed shortcomings in the area of cooperation, coordination, consistent application of **Union** law and trust between national supervisors.
 - (1a) *Long before the financial crisis the European Parliament was already calling regularly for the reinforcement of a true level playing field for all actors at Union level while pointing out significant failures in the Union's supervision of ever more integrated financial markets ((in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan², of 21 November 2002 on prudential supervision rules in the European Union³, of 11 July 2007 on financial services policy (2005-2010) - White Paper⁴, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity⁵ and of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision⁶, and in its positions of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II)⁷ and of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies⁸).*
- (2) A report published on 25 February 2009 by a high-level group of experts chaired by J. de Larosière (*the de Larosière Report*), requested by the Commission, concluded that the supervisory framework needed to be strengthened to reduce the risk and severity of future financial crises. It recommended reforms to the structure of supervision of the financial sector in the **Union**. That group of experts also concluded that a European System of Financial Supervisors should be created, comprising three European Supervisory Authorities, one for the banking sector, one for the securities sector and one for the insurance and occupational pensions sector, and the creation of a European Systemic Risk Council. *The recommendations in the report represented the lowest level of change that the experts qualified as necessary to avoid a similar crisis to take place in the future.*
- (3) **█** In its Communication of 4 March 2009 entitled "Driving European Recovery" *the Commission* proposed to bring forward draft legislation creating a European System of

¹ Position of the European Parliament of 7 July 2010.

² *OJ C 40, 7.2.2001, p. 453.*

³ *OJ C 25 E, 29.1.2004, p. 394.*

⁴ *OJ C 175 E, 10.7.2008, p. xx.*

⁵ *OJ C 8 E, 14.1.2010, p. 26.*

⁶ *OJ C 9 E, 15.1.2010, p. 48.*

⁷ *Texts adopted, P6_TA(2009)0251.*

⁸ *Texts adopted, P6_TA(2009)0279.*

Financial Supervisors and a European Systemic Risk Board (*ESRB*), and in its Communication of 27 May 2009 entitled "European Financial Supervision" **■**, it provided more detail about the possible architecture of such a new supervisory framework *but did not include all the recommendations made in the de Larosière Report*.

- (4) The European Council, in its conclusions of 19 June 2009, recommended that a European System of Financial Supervisors, comprising three new European Supervisory Authorities, be established. The system should be aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross border groups and establishing a European single rule book applicable to all financial institutions in the Single Market. It emphasised that the European Supervisory Authorities should also have supervisory powers for credit rating agencies and invited the Commission to prepare concrete proposals on how the European System of Financial Supervisors could play a strong role in crisis situations, while stressing that decisions taken by the European Supervisory Authorities should not impinge on the fiscal responsibilities of Member States.
 - (4a) *The International Monetary Fund (IMF) report of 16 April 2010 entitled "A Fair and Substantial Contribution by the Financial Sector", written at the request of the G-20 Pittsburgh summit, stated that "the cost of financial sector failures should be contained and covered by a Financial Stability Contribution (FSC) linked to a credible and effective resolution mechanism. If defined properly, resolution mechanisms will avoid governments in the future being forced to bail out institutions too important, too big or too interconnected to fail".*
 - (4b) *The Commission Communication of 3 March 2010 entitled "Europe 2020" also declared that a crucial priority in the short term would be to set "to better prevent and if needed manage possible financial crises, and that -- taking into account the specific responsibility of the financial sector in the current crisis -- will look also into adequate contributions from the financial sector".*
 - (4c) *The European Council stated clearly on 25 March 2010 that "progress is particularly needed on issues such as systemic institutions financing instruments for crisis management".*
 - (4d) *The European Council finally expressed on 17 June 2010 that "Member States should introduce systems of levies on financial institutions to ensure fair burden sharing and to set incentives to contain systemic risk. Such levies should be part of a credible resolution framework".*
- (5) The financial and economic crisis has created real and serious risks to the stability of the **financial system and the functioning of the** internal market. Restoring and maintaining a stable and reliable financial system is an absolute prerequisite to preserving trust and coherence in the internal market, hence to preserve and improve the conditions for the establishment of a fully integrated and functioning internal market in the field of financial services. Moreover, deeper and more integrated financial markets offer better opportunities for financing and risk diversification, and thus help to improve the capacity of the economies to absorb shocks.

- (6) The **Union** has reached the limits of what can be done with the present status of the Committees of European Supervisors **■**. The **Union** cannot remain in a situation where there is no mechanism to ensure that national supervisors arrive at the best possible supervisory decisions for cross-border institutions; where there is insufficient cooperation and information exchange between national supervisory authorities; where joint action by national authorities requires complicated arrangements to take account of the patchwork of regulatory and supervisory requirements; where national solutions are most often the only feasible option in responding to European problems, where different interpretations of the same legal text exist. The European System *of Financial Supervision (ESFS)* should be designed to overcome these deficiencies and provide a system that is in line with the objective of a stable and single **Union** financial market for financial services, linking national supervisors into a strong **Union** network.
- (7) The *ESFS* should be **an integrated** network of national and **Union** supervisory authorities, leaving day-to-day supervision of financial institutions **to** the national level. ***A European Supervisory Authority (the Authority) should have a leading role in the colleges of supervisors supervising cross-border financial institutions, and clear supervisory norms for them should be defined. The Authority should pay special attention to financial institutions that may pose a systemic risk since their failure could jeopardise the stability of the Union financial system, where a national authority has failed to exercise its powers.*** Greater harmonisation and the coherent application of rules for financial institutions and markets across the **Union** should also be achieved. ***In addition to the Authority, a European Supervisory Authority (Insurance and Occupational Pensions) and a European Supervisory Authority (Securities and Markets) as well as a European Supervisory Authority (Joint Committee) should be established. The ESRB should form part of the EFSF.***
- (8) The European Supervisory **Authority** should replace the Committee of European Banking Supervisors established by Commission Decision 2009/78/EC¹, the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2009/79/EC² and the Committee of European Securities Regulators established by Commission Decision 2009/77/EC³, and assume all of the tasks and competences of those committees ***including the continuation of on-going work and projects, where appropriate.*** The scope of each Authority's action should be clearly defined. Where institutional reasons and the responsibilities assigned in the Treaty ***on the Functioning of the European Union (TFEU)*** so require, the Commission should also be part of the network of supervisory activities.
- (9) The **■ Authority ■** should act with a view to improving the functioning of the internal market, **■** in particular by ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States ***and the different nature of financial institutions. The Authority should protect public values like the stability of the financial system, the transparency of markets and financial products and the protection of depositors and investors. The Authority should also***

¹ OJ L 24, 29.1.2009, p.23.

² OJ L 25, 29.1.2009, p.28.

³ OJ L 25, 29.1.2009, p.18.

prevent regulatory arbitrage and guarantee a level playing field, and strengthen international supervisory coordination, for the benefit of the economy at large, including financial institutions and other stakeholders, consumers and employees. Its tasks should also include promoting supervisory convergence and providing advice to the EU institutions in the areas of banking, payments, e-money regulation and supervision, and related corporate governance, auditing and financial reporting issues. The Authority should also be entrusted with a general oversight responsibility for existing and new financial products/types of transactions.

- (9a) *The Authority shall take due account of the impact of its activities on competition and innovation within the internal market, the Union's global competitiveness, financial inclusion, and the Union's new strategy for jobs and growth.*
- (9b) *In order to fulfil its objectives, the Authority should have legal personality as well as administrative and financial autonomy. The Authority should be granted "powers to address compliance with laws in particular those related with systemic risk and cross-border risks" (Basel Committee on Banking Supervision).*
- (9c) *Systemic risk is defined by international authorities (the IMF, the Financial Stability Board (FSB) and the Bank for International Settlements (BIS)) as "a risk of disruption to financial services that is (i) caused by an impairment of all or parts of the financial system and (ii) has the potential to have serious negative consequences for the real economy. All types of financial intermediaries, markets and infrastructure can potentially be systematically important to some degree".*
- (9d) *Cross-border risk, according to those institutions, includes all risks caused by economic imbalances or financial failures in all or parts of the Union that have the potential to have significant negative consequences for the transactions between economic operators of two or more Member States, for the functioning of the internal market or for the public finances of the Union or any of its Member States.*
- (10) The Court of Justice of the European *Union* in its judgement of 2 May 2006 in Case C-217/04 (United Kingdom/European Parliament and Council) *held that: "nothing in the wording of Article 95 TEC [now Article 114 TFEU] implies that the addressees of the measures adopted by the Community legislature can only be the individual Member States. The legislature may deem it necessary to provide for the establishment of a Community body responsible for contributing to the implementation of a process of harmonization in situations where, in order to facilitate the uniform implementation and application of acts based on that provision, the adoption of non-binding supporting and framework measures seems appropriate".* The purpose and tasks of the Authority – assisting competent national supervisory authorities in the consistent interpretation and application of *Union* rules and contributing to financial stability necessary for financial integration – are closely linked to the objectives of the *Union* *acquis* concerning the internal market for financial services. The Authority should therefore be established on the basis of *Article 114 TFEU*.
- (11) The legal acts which lay down the tasks for competent authorities of Member States, including cooperating with each other and with the Commission, are the following: Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006

relating to the taking up and pursuit of the business of credit institutions¹, Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions² and Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes³.

- (12) Existing *Union* legislation regulating the field covered by this Regulation also includes 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 conglomerate⁴, ***Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds***⁵, ***Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions***⁶ and, in *relevant parts*, Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing⁷, Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services⁸ and ***Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market***⁹.
- (13) It is desirable that the Authority promote a consistent approach in the area of deposit guarantees to ensure a level playing field and the equitable treatment of depositors across the *Union*. As deposit guarantee schemes are subject to oversight in their Member States rather than regulatory supervision, it is appropriate that the Authority should be able to exercise its powers under this Regulation in relation to the deposit guarantee scheme itself and its operator. ***The role of the Authority should be reviewed once a European Deposit Guarantee fund is established.***
- (14) There is a need to introduce an effective instrument to establish harmonised ***regulatory*** technical standards in financial services to ensure, also through a single rulebook, a level playing field and an adequate protection of depositors, investors and consumers across *the Union*. As a body with highly specialised expertise, it is efficient and appropriate to entrust the Authority, in areas defined by *Union* law, with the elaboration of draft ***regulatory*** technical standards, which do not involve policy choices. ***The Commission should endorse those regulatory and implementing technical standards in accordance with Article 290 TFEU in order to give them binding legal effect.***
- (15) ***Draft regulatory technical standards should be subject to amendment only in very***

¹ OJ L 177, 30.6.2006, p. 1.

² OJ L 177, 30.6.2006, p. 201.

³ OJ L 135, 31.5.1994, p. 5.

⁴ OJ L 35, 11.2.2003, p. 1.

⁵ ***OJ L 345, 8.12.2006, p. 1.***

⁶ ***OJ L 267, 10.10.2009, p. 7.***

⁷ OJ L 309, 25.11.2005, p. 15.

⁸ OJ L 271, 9.10.2002, p. 16.

⁹ ***OJ L 319, 5.12.2007, p. 1.***

restricted and extraordinary circumstances, provided that the Authority is the one in close contact with and acknowledging the daily work of financial markets. They would be subject to amendment if, for example, the draft regulatory standards were incompatible with Union Law, would not respect the principle of proportionality or would run counter to the fundamental principles of the internal market for financial services as reflected in the acquis of Union financial services legislation. The Commission should not change the content of the technical standards prepared by the Authority without prior coordination with the Authority. To ensure a smooth and expeditious adoption process for those standards, the Commission should be subject to a time limit for its decision on the endorsement.

- (15a) *The Commission should also be empowered to implement legally binding Union acts as stated in Article 291 TFEU. Regulatory and implementing technical standards have to take into account the principle of proportionality, i. e. the requirements laid down in these standards should be proportionate to the nature, scale and complexity of the risks inherent in the business of the financial institution concerned.*
- (16) In areas not covered by **regulatory** technical standards, the Authority should have the power to issue guidelines and recommendations on the application of **Union** legislation. In order to ensure transparency and strengthen compliance by national supervisory authorities with those guidelines and recommendations, national authorities should be obliged to **publish the** reasons where they do not comply with those guidelines and recommendations **in order to ensure full transparency towards market participants.**
- (17) Ensuring the correct and full application of **Union** law is a core prerequisite for the integrity, **transparency**, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial institutions in the **Union**. A mechanism should therefore be established whereby the Authority addresses instances of **non-application or** incorrect application **and thus a breach of Union** law. This mechanism should apply in areas where **Union** legislation defines clear and unconditional obligations.
- (18) To allow for a proportionate response to instances of incorrect or insufficient application of **Union** law, a three-step mechanism should apply. At a first level, the Authority should be empowered to investigate alleged incorrect or insufficient application of **Union** law obligations by national authorities in their supervisory practice, concluded by a recommendation. **Where the competent national authority does not follow the recommendation, the Commission should be empowered to issue a formal opinion taking into account the Authority's recommendation, requiring the competent authority to take the actions necessary to ensure compliance with Union law.**
- (19) Where the national authority does not comply with the recommendation **within a deadline fixed by the Authority**, the **Authority** should address a Decision **without delay** to the national supervisory authority concerned in order to ensure compliance with **Union** law, creating direct legal effects which can be invoked before national courts and authorities and enforced under **Article 258 TFEU**.
- (20) To overcome exceptional situations of persistent inaction by the competent authority

concerned, the Authority should be empowered, as a last resort, to adopt decisions addressed to individual financial institutions. This power should be limited to exceptional circumstances in which a competent authority does not comply with the *formal opinion* addressed to it and in which *Union* law is directly applicable to financial institutions by virtue of existing or future EU Regulations. *In this regard, the European Parliament and the Council are looking forward to the implementation of the programme of the Commission for 2010, in particular as regards the proposal on the reform of the Capital Requirements Directive.*

- (21) Serious threats to the orderly functioning and integrity of financial markets or the stability of the financial system in the *European Union* require a swift and concerted response at *Union* level. The Authority should therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. *Bearing in mind the sensitivity of the issue, the power to determine the existence of an emergency situation should be conferred on the Commission at its own initiative or at the request of the European Parliament, the Council, the ESRB or the Authority. Where the European Parliament, the Council, the ESRB or the European Supervisory Authority (ESA) deem that the existence of an emergency situation is likely to arise, they should contact the Commission. In this process, due care of confidentiality is of the outmost importance. If the Commission determines the existence of an emergency situation, it should duly inform the European Parliament and the Council.*
- (22) In order to ensure efficient and effective supervision and a balanced consideration of the positions of the competent authorities in different Member States, the Authority should be able to settle disagreements between those competent authorities with binding effect, including within colleges of supervisors. A conciliation phase should be provided for, during which the competent authorities may reach an agreement. *Where such an agreement is not reached, the Authority should require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter in order to ensure compliance with EU legislation, with binding effects for the competent authorities concerned. In cases where the relevant EU legislation confers discretion on Member States' competent authorities, decisions taken by the ESA cannot replace the exercise in compliance with Union law of that discretion. In the event of inaction by the national supervisory authorities concerned, the Authority should be empowered to adopt, as a last resort, decisions directly addressed to financial institutions in areas of Community law directly applicable to them.*
- (22a) *The crisis has proven that the mere cooperation between national authorities whose jurisdiction ends at the national border is clearly inadequate to supervise financial institutions that operate cross border.*
- (22b) *Furthermore, "the current arrangements, combining branch passporting rights, home country supervision, and purely national deposit insurance, are not a sound basis for the future regulation and supervision of European cross-border retail banks" (Turner Review).*
- (22c) *As the Turner Review concluded, "sounder arrangements require either increased national powers, implying a less open single market, or a greater degree of European*

integration". The "national" solution implies giving the host country the right to oblige foreign institutions to act only through the subsidiaries and not through branches and to oversee the capital and liquidity of banks operating in their country, which would amount to more protectionism. The "European" solution calls for the reinforcement of the Authority in the College of Supervisors and for a strengthening in supervision of financial institutions that pose systemic risk.

(23) Colleges of supervisors play an important role in the efficient, effective and consistent supervision of financial institutions operating across borders. The Authority should *play a leading role and* have full participation rights in colleges of supervisors with a view to streamlining the functioning of and the information exchange process in colleges and to foster convergence and consistency across colleges in the application of *Union* law. *As the de Larosière Report states "competition distortions and regulatory arbitrage stemming from different supervisory practices must be avoided, because they have the potential of undermining financial stability – inter alia by encouraging a shift of financial activity to countries with lax supervision. The supervisory system has to be perceived as fair and balanced".*

(23a) The Authority and national supervisors should strengthen supervision of financial institutions meeting the systemic risk criteria since their failure may jeopardise the stability of the Union Financial System and damage the real economy.

(23b) The systemic risk should be identified, taking into account international standards, in particular those established by the FSB, the IMF, the International Association of Insurance Association and the G-20. Interconnectedness, substitutability and timing are the most commonly used criteria for the identification of systemic risk.

(23c) A framework for dealing with distressed institutions should be established in order to stabilise or wind them down since "it has been clearly demonstrated that the stakes in a banking crisis are high for government and society at large because such a situation has the potential to jeopardise financial stability and the real economy"(de Larosière Report). The Commission should make appropriate proposals for the establishment of a new framework for financial crisis management. The key elements of crisis management are a common set of rules and financial resolution vehicles (execution and funding to deal with the crisis of large, cross-border and/or interconnected institutions).

(23d) A European Deposit Guarantee Fund should be established to ensure the co-responsibility of cross-border financial institutions, protect Union depositors' interests and reduce the cost to tax payers of a systemic financial crisis. An EU-level fund seems to be the most efficient way to protect depositors' interests and the best defence against competitive distortions. It is obvious however that EU approaches are inevitably more complex and that some Member States have already started to design or even to run such schemes. At the very minimum therefore, the Authority should ensure that there is harmonisation of the most important features of national schemes. It should also be able to ensure that financial institutions are required to pay in to only one scheme.

(23e) The European Banking Stability Fund should finance the orderly winding-up or

rescue interventions of financial institutions facing difficulties where those could menace the financial stability of the Union's internal financial market. The Fund should be financed through adequate contributions from the financial sector. The contributions to the Fund should replace those made to the national funds of similar nature.

- (24) The delegation of tasks and responsibilities can be a useful instrument in the functioning of the network of supervisors in order to reduce the duplication of supervisory tasks, foster cooperation and thereby streamline the supervisory process as well as reduce the burden imposed on financial institutions, **particularly those financial institutions that do not have a Union dimension**. This Regulation should therefore provide a clear legal basis for such delegation. Delegation of tasks means that tasks are carried out by another supervisory authority instead of the responsible authority, while the responsibility for supervisory decisions remains with the delegating authority. By delegation of responsibilities one national supervisory authority, the delegatee, **should** be able to decide upon a certain supervisory matter in **the** name of **the Authority or of** another national supervisory authority. Delegations should be governed by the principle of allocating supervisory competence to a supervisor which is well placed to take action in the subject matter. A reallocation of responsibilities **would** be appropriate, for example, for reasons of economies of scale or scope, of coherence in group supervision, and of optimal use of technical expertise among national supervisory authorities. Relevant **Union** legislation may further specify the principles for reallocation of responsibilities upon agreement. The Authority should facilitate **and monitor** delegation agreements between national supervisory authorities by all appropriate means. It should be informed in advance of intended delegation agreements to be able to express an opinion where appropriate. It should centralise the publication of such agreements to ensure timely, transparent and easily accessible information about agreements for all parties concerned. **It should identify and disseminate best practices regarding delegation and delegation agreements.**
- (25) The Authority should actively foster supervisory convergence across the **European Union** with the aim of establishing a common supervisory culture.
- (26) Peer reviews are an efficient and effective tool for fostering consistency within the network of financial supervisors. The Authority should therefore develop the methodological framework for such reviews and conduct them on a regular basis. Reviews should focus not only on convergence of supervisory practices but also on the capacity of supervisors to achieve high quality supervisory outcomes as well as the independence of competent authorities. **The outcome of peer reviews should be made public and best practices should be identified and also made public.**
- (27) The Authority should actively promote a coordinated **Union** supervisory response, in particular **to ensure** the orderly functioning and integrity of financial markets or the stability of the financial system in the **European Union**. In addition to its powers for action in emergency situations, it should therefore be entrusted with a general coordination function within the **ESFS**. The smooth flow of all relevant information between competent authorities should be a particular focus of the Authority's actions.
- (28) In order to safeguard financial stability it is necessary to identify, at an early stage,

trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors. The Authority should monitor and assess such developments in the area of its competence and, where necessary, inform the European Parliament, the Council, the Commission, the other European Supervisory Authorities and the **ESRB** on a regular and, as necessary, ad hoc basis. The Authority should also **initiate and coordinate Union-wide** stress tests to assess the resilience of financial institutions to adverse market developments, ensuring an as consistent as possible methodology is applied at the national level to such tests. ***In order to properly to perform its functions, the Authority should conduct economic analyses of the markets and the impact of potential market developments.***

- (29) Given the globalisation of financial services and the increased importance of international standards, the Authority should ***represent the European Union in relation to*** dialogue and cooperation with supervisors ***in third countries.***
- (30) The Authority should serve as an independent advisory body to the European Parliament, the Council, and the Commission in the area of its competence. It should be able to provide its opinion on the prudential assessment of mergers and acquisitions under Directive 2006/48/EC.
- (31) In order to effectively carry out its duties, the Authority should have the right to request all necessary information ***relating to prudential supervision.*** To avoid duplication of reporting obligations for financial institutions, that information should normally be provided by the national supervisory authorities who are closest to financial markets and institutions ***and take into account already existing statistics.*** However, ***as a last resort,*** the Authority should ***be able to address a duly justified and reasoned request for*** information directly ***to a*** financial institution ***where a national competent authority does not or cannot provide such information in a timely fashion. Member States' authorities should be obliged to assist the Authority in enforcing such direct requests. In this context, work on common reporting formats is essential.***
- (31a) The measures for the collection of information should be without prejudice to the legal framework of the European Statistical System (ESS) and the European System of Central Banks (ESCB) in the field of statistics. This Regulation should therefore be without prejudice to Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics¹ or to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank².***
- (32) Close cooperation between the Authority and the **ESRB** is essential to give full effectiveness to the functioning of the **ESRB** and the follow-up to its warnings and recommendations. The Authority ***and the ESRB*** should share any relevant information ***among each other.*** Data related to individual undertakings should be provided only upon reasoned request. Upon receipt of warnings or recommendations addressed by the **ESRB** to the Authority or a national supervisory authority, the Authority should ensure follow-up ***as appropriate.***

¹ OJ L 87, 31.3.2009, p. 164.

² OJ L 318, 27.11.1998, p. 8.

- (33) **█** The Authority should consult interested parties on *regulatory* standards, guidelines and recommendations and provide them with a reasonable opportunity to comment on proposed measures. ***Before adopting draft regulatory standards, guidelines or recommendations the Authority should carry out an impact study.*** For reasons of efficiency, a Banking Stakeholder Group should be established for that purpose, representing in balanced proportions *Union* credit and investment institutions (***representing the diverse models and sizes of financial institutions and businesses,*** including as appropriate institutional investors and other financial institutions which themselves use financial services), *SMEs, trade unions, academics* and consumers and other retail users of banking services. The Banking Stakeholder Group should actively work as an interface with other user groups in the financial services area established by the Commission or *by Union* legislation.
- (33a) ***Non-profit organisations are marginalised in the debate on the future of financial services and in the corresponding decision making process in comparison to well-funded and well-connected industry representatives. That disadvantage should be compensated for by adequate funding of their representatives in the Banking Stakeholder group.***
- (34) Member States have a core responsibility ***for ensuring coordinated crisis management and*** preserving financial stability in crisis *situations*, in particular with regard to stabilising and resolving individual ailing financial institutions. ***Their actions should be closely coordinated with the framework and the principles of the Economic and Monetary Union.*** Measures by the Authority in emergency or settlement situations affecting the stability of a financial institution should not impinge on the fiscal responsibilities of Member States. A mechanism should be established whereby Member States may invoke this safeguard and ultimately bring the matter before the Council for a decision. It is appropriate to confer on the Council a role in this matter given the particular responsibilities of the Member States in this respect.
- (34a) ***Within three years from the entry into force of a regulation establishing such a mechanism, clear and sound guidance on when the safeguard is triggered by Member States should be laid down at Union level by the Commission on the basis of the experience acquired. Member States' use of the safeguard clause should be assessed against that guidance.***
- (34b) ***Without prejudice to the particular responsibilities of the Member States in crisis situations, if a Member State chooses to invoke the safeguard it should inform the European Parliament at the same time as the Authority, the Council and the Commission. Furthermore, the Member State should explain its reasons for invoking the safeguard. The Authority should, in cooperation with the Commission, set out the next steps to be taken.***
- (35) In its decision-making procedures, the Authority should be bound by Community rules and general principles on due process and transparency. The right to be heard of the addressees of the Authority's decisions should be fully respected. The Authority's acts form an integral part of *Union* law.

- (36) A Board of Supervisors composed of the heads of the relevant competent authority in each Member State, and chaired by the Chairperson of the Authority, should be the principal decision-making organ of the Authority. Representatives of the Commission, the *ESRB*, the European Central Bank, the European Supervisory *Authority (Insurance and Pensions)* and the *European Supervisory Authority (Securities and Markets)* should participate as observers. Members of the Board of Supervisors should act independently and only in the *Union's* interest. For acts of a general nature, including those related to the adoption of *regulatory* standards, guidelines and recommendations as well as budgetary matters, it *would be* appropriate to apply the rules on qualified majority as laid down in *Article 16 TFEU*, whereas for all other decisions simple majority of members should apply. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted panel.
- (36a) As a general rule, the Board of Supervisors should take its decisions by simple majority according to the principle of one man-one vote. However for acts relating to the adoption of technical standards, guidelines and recommendations as well as budgetary matters, it is appropriate to apply the rules of qualified majority as laid down in the Treaty on European Union, in the TFEU and in the Protocol (No. 36) on transitional provisions attached to them. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted, objective panel, composed of members who are not representatives of the competent authorities which are party to the disagreement or have any interest in the conflict or direct links to the competent authorities concerned. The composition of the panel should be appropriately balanced. The decision taken by the panel should be approved by the Board of Supervisors by simple majority according to the principle where each member has one vote. However, with regard to decisions taken by the consolidating supervisor, the decision proposed by the panel could be rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union and to the TFEU.*
- (37) A Management Board composed of the Chairperson of the Authority, representatives of national supervisory authorities and the Commission should ensure that the Authority carries out its mission and performs the tasks assigned to it. The Management Board should be entrusted with the necessary powers to, inter alia, propose the annual and multi-annual work programme, exercise certain budgetary powers, adopt the Authorities staff policy plan, adopt special provisions on the right to access to documents and adopt the annual report.
- (38) A full time Chairperson, selected by the *European Parliament following* an open competition *managed by the Commission and the subsequent drawing up of a short list for the Commission*, should represent the Authority. The management of the Authority should be entrusted to an Executive Director, who should have the right to participate in meetings of the Board of Supervisors and the Management Board without the right to vote.
- (39) In order to ensure cross-sectoral consistency in the activities of the European Supervisory Authorities, those authorities should coordinate closely *through the* European Supervisory Authorities (*Joint Committee*) (*the "Joint Committee"*) and

reach common positions where appropriate. The Joint Committee **█** should *coordinate the functions of the three European Supervisory Authorities in relation to financial conglomerates*. Where relevant, acts also falling within the area of competence of the *European Supervisory Authority (Insurance and Occupational Pensions)* or the *European Supervisory Authority (Securities and Markets)* should be adopted in parallel by the European Supervisory Authorities concerned. ***The Joint Committee should be chaired for a 12-month term on a rotating basis by the Chairpersons of the three European Supervisory Authorities. The Chairperson of the Joint Committee should be a Vice-Chair of the ESRB. The Joint Committee should have a permanent secretariat, staffed on secondment from the three European Supervisory Authorities to allow for informal information sharing and the development of a common cultural approach across the three European Supervisory Authorities.***

- (40) It is necessary to ensure that the parties affected by decisions adopted by the Authority may exercise the necessary remedies. To effectively protect the rights of parties and for reasons of procedural economy, where the Authority has decision-making powers, parties should be granted a right of appeal to a Board of Appeal. For reasons of efficiency and consistency, the Board of Appeal should be a joint body of the three European Supervisory Authorities, independent from their administrative and regulatory structures. The decision of the Board of Appeal should be subject to appeal before the Court of First Instance and the Court of Justice of the European Communities.
- (41) In order to guarantee its full autonomy and independence, the Authority should be granted an autonomous budget with revenues mainly from obligatory contributions from national supervisory authorities and from the General Budget of the European Union. ***Union financing of the Authority should be subject to an agreement by the budgetary authority in accordance with Point 47 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management¹ (IIA).*** The *Union* budgetary procedure should be applicable **█**. The auditing of accounts should be undertaken by the Court of Auditors. ***The overall budget should be subject to the discharge procedure.***
- (42) 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)² should apply to the Authority. The Authority should also accede to the Inter-institutional 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 (OLAF)³.
- (43) In order to ensure open and transparent employment conditions and equal treatment of staff, the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities⁴ should apply to the staff of the Authority.

1 OJ C 139, 14.6.2006, p. 1.

2 OJ L 136, 31.5.1999, p. 1.

3 OJ L 136, 31.5.1999, p. 15.

4 O.J. L 56, 4.3.1968, p.1

- (44) It is essential that business secrets and other confidential information are protected. The confidentiality of information *made available to the Authority and* exchanged in the network should *be subject to stringent and effective confidentiality rules*.
- (45) The protection of individuals with regard to the processing of personal data is governed by 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 by 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, which are fully applicable to the processing of personal data for the purposes of this Regulation.
- (46) In order to ensure the transparent operation of the Authority, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents³ should apply to the Authority.
- (47) Countries which are not members of the European Union should be allowed to participate in the work of the Authority in accordance with appropriate agreements to be concluded by the *Union*.
- (48) Since the objectives of this Regulation, namely improving the functioning of the internal market by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting depositors and investors, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability of the financial system, and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of scale of the action, be better achieved at *Union* level, the *European 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.
- (49) The Authority assumes all current tasks and powers of the Committee of European Banking Supervisors. Commission Decision 2009/78/EC of 23 January 2009 establishing the Committee of European Banking Supervisors should therefore be repealed, and Decision No 716/2009/EC of the European Parliament and of the Council of 16 September 2009 establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing⁴, should be amended accordingly.
- (50) It is appropriate to set a time limit for the application of this Regulation in order to

1 OJ L 281, 23.11.1995, p. 31.

2 OJ L 8, 12.1.2001, p. 1.

3 OJ L 145, 31.5.2001, p. 43.

4 OJ L 253, 25.9.2009, p. 8.

ensure that the Authority is adequately prepared to begin operations and to ensure a smooth transition from the Committee of European Banking Supervisors,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

ESTABLISHMENT AND LEGAL STATUS

Article 1

Establishment and scope of action

1. This Regulation establishes a European **Supervisory** Authority (European **Banking** Authority, "the Authority").
2. The Authority shall act ***within the powers conferred by this Regulation and*** within the scope of Directive 2006/48/EC, Directive 2006/49/EC, Directive 2002/87/EC, ***Regulation (EC) No 1781/2006, Directive 94/19/EC and, to the extent that these acts apply to credit and financial institutions and the competent authorities that supervise them, within the relevant parts of*** Directive 2005/60/EC, Directive 2002/65/EC, ***Directive 2007/64/EC and Directive 2009/110/EC***, including all directives, regulations, and decisions based on these acts, and of any further ***Union legislative*** act which confers tasks on the Authority.
 - 2a. ***The Authority shall also act in the field of activities of credit institutions, financial conglomerates, investment firms, payment institutions and e-money institutions, including matters of corporate governance, auditing and financial reporting, provided that such actions by the Authority are necessary to ensure the effective and consistent application of the legislation referred to in paragraph 2.***
3. The provisions of this Regulation are without prejudice to the powers of the Commission, in particular under ***Article 258 TFEU*** to ensure compliance with ***Union*** law.
4. The objective of the Authority shall be to ***protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The Authority shall*** contribute to:
 - (i) improving the functioning of the internal market, including in particular a ***sound***, effective and consistent level of regulation and supervision,
I
 - (iii) ensuring the integrity, ***transparency***, efficiency and orderly functioning of financial markets,
I

- (v) strengthening international supervisory coordination,
- (va) preventing regulatory arbitrage and contributing to equal conditions of competition,*
- (vb) ensuring the taking of credit and other risks are appropriately regulated and supervised, and*
- (vc) contribute to enhance customer protection.*

For *those purposes*, the Authority shall contribute to ensuring the consistent, efficient and effective application of the *Union legislative acts* referred to in *paragraph 2*, fostering supervisory convergence and providing opinions to the European Parliament, the Council, and the Commission *and undertaking economic analyses of the markets to promote the achievement of the Authority's objective.*

In the exercise of the tasks conferred upon it by this Regulation, the Authority shall pay particular attention to any systemic risk posed by financial institutions, failure of which may impair the operation of the financial system or the real economy.

When carrying out its tasks, the Authority shall act independently and objectively and in the interest of the Union alone.

Article 1a

The European System of Financial Supervision

- 1. The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented, to preserve financial stability and to ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services.*
- 2. The ESFS shall comprise the following:*
 - (a) the European Systemic Risk Board (ESRB), for the purposes of the tasks as specified in Regulation (EC) No .../2010 (ESRB) and this Regulation;*
 - (b) the Authority;*
 - (c) the European Supervisory Authority (Securities and Markets) established by Regulation (EU) No .../2010 [ESMA];*
 - (d) the European Supervisory Authority (Insurance and Occupational Pensions) established by Regulation (EU) No .../2010 [EIOPA];*
 - (e) the European Supervisory Authority (Joint Committee) for the purposes of carrying out the tasks as specified in Articles 40 to 43 (the "Joint Committee");*

- (f) *the authorities in the Member States referred to in Article 2(2) of Regulation (EU) No .../2010 [ESMA], Regulation (EU) No .../2010 [EIOPA] and in this Regulation;*
- (g) *the Commission, for the purposes of carrying out the tasks referred to in Articles 7 and 9;*
3. *The Authority shall cooperate regularly and closely with the ESRB as well as with the EIOPA and ESMA through the Joint Committee, ensuring cross-sectoral consistency of work and reaching joint positions in the area of supervision of financial conglomerates and on other cross-sectoral issues.*
4. *In accordance with the principle of sincere cooperation under Article 4(3) of the Treaty on European Union, the parties to the ESFS shall cooperate with trust and full mutual respect, in particular in ensuring the flow of appropriate and reliable information between them.*
5. *Those supervisory authorities that are party to the ESFS shall be obliged to supervise financial institutions operating in the Union in accordance with the legislative acts referred to in Article 1(2).*

Article 1b

Accountability to the European Parliament

The Authorities referred to in Article 1a(2) shall be accountable to the European Parliament.

Article 2

Definitions

For the purposes of this Regulation the following definitions apply:

- (1) "financial institutions" means "credit institutions" as defined in *Article 4(1) of Directive 2006/48/EC*, "investment firms" as defined in *Article 3(1)(b) of Directive 2006/49/EC*, and "financial conglomerates" as defined in *Article 2(14) of Directive 2002/87/EC*, *save that with regard to Directive 2005/60/EC, "financial institutions" means credit institutions and financial institutions as defined in Article 3(1) and (2) of that Directive;*
- (2) "competent authorities" means:
- (i) competent authorities as defined in Directives 2006/48/EC, 2006/49/EC and 2007/64/EC and as referred to in Directive 2009/110/EC;*
 - (ii) with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by credit and financial institutions;*

- (iii) *with regard to* deposit guarantee schemes, bodies which administer deposit-guarantee schemes pursuant to Directive 94/19/EC, *or, where the operation of the deposit guarantee scheme is administered by a private company, the public authority supervising those schemes pursuant to Directive 94/19/EC.*

Article 3

Legal status

1. The Authority shall be a *Union* body with legal personality.
2. In each Member State, the Authority shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.
3. The Authority shall be represented by its Chairperson.

Article 4

Composition

The Authority shall comprise the following:

- (1) a Board of Supervisors, which shall exercise the tasks set out in Article 28;
- (2) a Management Board, which shall exercise the tasks set out in Article 32;
- (3) a Chairperson, who shall exercise the tasks set out in Article 33;
- (4) an Executive Director, who shall exercise the tasks set out in Article 38;
- (5) a Board of Appeal, as referred to in Article 44, which shall exercise the tasks set out in Article 46.

Article 5

Headquarters and seat

The Authority shall have its headquarters in Frankfurt.

It may have representations in the most important financial centres of the European Union

CHAPTER II

TASKS AND POWERS OF THE AUTHORITY

Article 6

Tasks and Powers of the Authority

1. The Authority shall have the following tasks:
 - (a) **contributing** to the establishment of high-quality common regulatory and supervisory standards and practices, in particular by providing opinions to the *Union* institutions and by developing guidelines, recommendations, and draft **regulatory technical and implementing** technical standards which shall be based on the **legislative acts** referred to in Article 1(2);
 - (b) **contributing** to a consistent application of **Union legislative acts**, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the **legislative acts** referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, **ensuring effective and consistent supervision of financial institutions**, **ensuring** a coherent functioning of colleges of supervisors and taking actions, **inter alia**, in emergency situations;
 - (c) **stimulating and facilitating** the delegation of tasks and responsibilities between competent authorities;
 - (d) **cooperating** closely with the ESRB, in particular by providing the ESRB with the necessary information for the achievement of its tasks and by ensuring a proper follow up to the warnings and recommendations of the ESRB;
 - (e) **organising and conducting** peer review analyses of competent authorities, **including issuing advice, in order** to strengthen consistency in supervisory outcomes;
 - (f) monitor and assess market developments in the area of its competence;
 - (fa) **undertaking economic analyses of markets to inform the discharge of the Authority's functions**;
 - (fb) **fostering depositor and investor protection**;
 - (fc) **contributing to managing crisis of cross-border institutions that have the potential to pose a systemic risk referred to in Article 12b, leading and executing all early interventions, resolution or insolvency procedures for such institutions through its Banking Resolution Unit as set out in Article 12c**;
 - (g) fulfilling any other specific tasks set out in this Regulation or in the **legislative acts** referred to in Article 1(2);
 - (ga) **supervising those financial institutions that are not subject to the supervision of competent authorities**;

- (gb) publishing on its website and regularly updating information relating to its field of activities, in particular, within the area of its competence, on registered financial institutions, in order to ensure easily accessible information to the public;**
- (gc) taking over, as appropriate, all existing and ongoing tasks from the Committee of European Banking Supervisors (CEBS).**
2. To achieve the tasks set out in paragraph 1, the Authority shall have the powers set out in this Regulation, in particular the power to:
- (a) develop draft **regulatory** technical standards in the specific cases referred to in Article 7;
- (aa) develop draft implementing technical standards in the specific cases referred to in Article 7e;**
- (b) issue guidelines and recommendations, as laid down in Article 8;
- (c) issue recommendations in specific cases, as referred to in Article 9(3);
- (d) take individual decisions addressed to competent authorities in the specific cases referred to in Articles 10 and 11;
- (e) take individual decisions addressed to financial institutions, in the specific cases referred to in Article 9(6), Article 10(3), and Article 11(4);
- (f) issue opinions to the European Parliament, the Council or the Commission as provided for in Article 19;
- (fa) collect the necessary information concerning financial institutions as provided for in Article 20;**
- (fb) developing common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of institutions and on customer protection;**
- (fc) provide a database of registered financial institutions in the area of its competence and, where specified in the legislative acts referred to in Article 1(2), at a central level;**
- (fd) develop a regulatory technical standard setting out the minimum information that shall be made available to the Authority about transactions and market participants and how coordination of collection shall be carried out as well as outlining how existing national databases shall be linked in order to ensure that the Authority always can access the relevant and necessary information concerning transactions and market.**
3. The Authority shall execute any exclusive supervisory powers over entities with **Union-**

wide reach or economic activities with *Union-wide* reach entrusted to it in the *legislative acts* referred to in Article 1(2).

4. For *the purpose of exercising its exclusive supervisory powers under paragraph 3*, the Authority shall have appropriate powers of investigation and enforcement as specified in the relevant legislation, as well as the possibility of charging fees. *The Authority shall work in close cooperation with the competent authorities and build on their expertise, facilities and powers to carry out its tasks.*

Article 6a

Tasks related to consumer protection and financial activities

1 *In order to foster depositors and investors protection the Authority shall take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the single market, including by:*

- (i) collecting, analysing and reporting on consumer trends,*
- (ii) reviewing and coordinating financial literacy and education initiatives,*
- (iii) developing training standards for the industry,*
- (iv) contributing to the development of common disclosure rules, and*
- (v) assess, in particular, the accessibility, availability and credit cost for households and enterprises, in particular SMEs.*

2. *The Authority shall monitor new and existing financial activities and may adopt guidelines and recommendations with a view to promote the safety and soundness of markets and convergence of regulatory practice.*

3. *The Authority may also issue warnings in case a financial activity poses a serious threat to the objectives laid down in Article 1(4).*

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

5. *The Authority may temporarily prohibit or restrict certain types of financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or if so required in the case of an emergency situation in accordance with and under the conditions laid down in Article 10.*

The Authority shall review this decision at regular, timely intervals.

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

Article 7

Regulatory technical standards

1. *The European Parliament and the Council may delegate powers to the Commission to adopt regulatory technical standards under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts referred to in Article 1(2). Those regulatory standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based. Draft regulatory technical standards shall be developed by the Authority and submitted to the Commission for endorsement. Where the Authority does not submit a draft to the Commission within the time limits set out in the legislative acts referred to in Article 1(2), the Commission may adopt a regulatory technical standard.*
2. *The Authority shall conduct open public consultations on regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the regulatory technical standards concerned or in relation to the particular urgency of the matter before submitting them to the Commission. The Authority shall also request the opinion or advice of the Banking Stakeholder Group referred to in Article 22.*
3. *The Commission shall upon receipt of a draft regulatory technical standard from the Authority forward it immediately to the European Parliament and the Council.*
4. *The Commission shall decide within three months of receipt whether to adopt a draft regulatory technical standard. The regulatory technical standard shall be adopted by means of regulations or decisions. If the Commission does not intend to adopt the standard it shall inform the European Parliament and Council of this and of the reasons for this.*

Article 7a

Non-endorsement or amendment of draft regulatory standards

1. *Where the Commission intends not to endorse the draft regulatory technical standards or to endorse them in part or with amendments, it shall send the draft regulatory technical standards back to the Authority, proposing reasoned amendments.*
2. *Within a period of 6 weeks, the Authority may amend the draft regulatory technical standards on the basis of the Commission's proposed amendments and resubmit them to the Commission for endorsement. The Authority shall inform the European Parliament, the Council and the Commission on its decision.*
3. *When the Authority does not agree with the Commission's decision to reject or amend*

its initial proposals, the European Parliament or Council may convene the responsible Commissioner, together with the Chairman of the Authority, within one month for an ad hoc meeting of the competent committee of the European Parliament or Council to present and explain their differences.

Article 7b

Exercise of the delegation

- 1. The powers to adopt regulatory standards referred to in Article 7 shall be conferred on the Commission for a period of four years following the entry into force of this Regulation. The Commission shall make a report in respect of the delegated powers at the latest 6 months before the end of the four-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revoke it in accordance with Article 7c.*
- 2. As soon as it adopts a regulatory standard, the Commission shall notify it simultaneously to the European Parliament and to the Council.*
- 3. In the report referred to in Article 35(2), the Chairperson of the Authority shall inform the European Parliament and the Council of the regulatory standards that have been approved and that the competent authorities have not complied with*

Article 7c

Objections to regulatory standards

- 1. Where the Commission adopts a delegated act in the areas specifically set out in the legislative acts referred to in Article 1(2), the following shall apply:*
 - (a) the European Parliament or the Council may object to the delegated act within a period of three months from the date of notification of the regulatory standard adopted by the Commission. At the initiative of the European Parliament or the Council that period shall be extended by a further three months;*
 - (b) the delegated act shall be published in the Official Journal of the European Union and shall enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the Official Journal of the European Union;*
 - (c) if the European Parliament or the Council objects to a delegated act it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the delegated act.*
- 2. Where the Commission adopts a regulatory standard which is the same as the draft*

regulatory standard submitted by the Authority, paragraphs 1(a), (b) and (c) shall apply save that the period during which the European Parliament and the Council may object is one month from the expiry of the three month period referred to in Article 7(4). At the initiative of the European Parliament or the Council that period shall be extended by a further month.

3. The European Parliament and the Council, as soon as the draft has been forwarded by the Commission, may adopt an anticipated and conditioned declaration of non objection that shall enter into force when the Commission adopts the regulatory technical standard without modifying the draft.

4. If the European Parliament or the Council objects to a regulatory standard, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the regulatory technical standard.

Article 7d

Revocation of the delegation

1. The delegation of power referred to in Article 7 may be revoked by the European Parliament or by the Council.

2. The decision of revocation shall put an end to the delegation.

3. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the regulatory technical standard powers which could be subject to revocation.

Article 7e

Implementing technical standards

1. Where the European Parliament and the Council confer powers on the Commission to adopt implementing technical standards under Article 291 TFEU where uniform conditions for implementing legally binding Union acts are needed in the areas specifically set out in legislative acts referred to in Article 1(2), the following shall apply:

(a) where in accordance with the legislative acts referred to in Article 1(2) the Authority drafts implementing technical standards for submission to the Commission, those standards shall be technical, shall not include policy choices and shall be limited to determining the conditions of application of legally binding Union acts.

(b) where the Authority does not submit a draft to the Commission within the time limits set out in the legislative acts referred to in Article 1(2), or indicated in a request addressed to the Authority by the Commission in accordance with Article 19, the

Commission may adopt an implementing technical standard by means of an implementing act.

2. Before submitting them to the Commission, the Authority shall conduct open public consultations on implementing technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the technical standards concerned or in relation to the particular urgency of the matter.

The Authority shall also request the opinion or advice of the Banking Stakeholder Group referred to in Article 22.

3. The Authority shall submit its draft implementing technical standards to the Commission for endorsement in accordance with Article 291 TFEU and, at the same time, to the European Parliament and the Council.

4. Within three months of receipt of the draft implementing technical standards, the Commission shall decide whether to endorse the draft implementing standards. The Commission may extend that period by one month. The Commission may endorse the draft standards only in part or with amendments where the Union interest so requires.

In all cases where the Commission adopts implementing technical standards amending the draft implementing standard submitted by the Authority, it shall inform the European Parliament and the Council.

5. The standards shall be adopted by the Commission by means of Regulations or Decisions and shall be published in the Official Journal of the European Union.

Article 8

Guidelines and recommendations

1. The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of *Union* legislation, issue guidelines and recommendations addressed to competent authorities or financial institutions.

1a. The Authority shall, where appropriate, conduct open public consultations regarding the guidelines and recommendations and analyse the potentially related costs and benefits. The Authority shall, where appropriate, also request the opinion or advice from the Banking Stakeholder Group referred to in Article 22. Such consultations, analyses and opinions and that advice shall be proportionate in relation to scope, nature and impact of the guidelines or recommendations.

2. The competent authorities and financial institutions shall make every effort to comply with those guidelines and recommendations. Within two months of the issuance of a guideline or recommendation, each competent authority shall confirm that it intends to comply with that guideline or recommendation. In the event that a competent authority

does not intend to comply, it shall inform the Authority, stating reasons. The Authority shall publish those reasons.

Where *a* competent authority does not apply a guideline or *a recommendation*, the Authority *shall make this public*.

The Authority may decide, on a case by case basis, to publish the reasons provided by a competent authority for not complying with a guideline or a recommendation. The competent authority shall receive advanced notice about such a publication.

If so required by that guideline or recommendation, financial institutions shall report annually, in a clear and detailed way, if they comply with that guideline or recommendation.

2a. In the report referred to in Article 28(4a) the Authority shall inform the European Parliament, the Council and the Commission of the guidelines and recommendations that are issued, stating which competent authority has not complied with them and outlining how the Authority intends to ensure that it follow its recommendations and guidelines in the future.

Article 9

Breach of Union law

1. Where a competent authority has not **■** applied *or has applied the legislative acts* referred to in Article 1(2) *in a way which appears to be a breach of Union law, including the regulatory technical standards and implementing technical standards established in accordance with Articles 7 and 7e*, in particular by failing to ensure that a financial institution satisfies the requirements laid down in that legislation, the Authority shall *act according to* the powers set out in paragraphs 2, 3 and 6 of this Article.

2. Upon request from one or more competent authorities, *the European Parliament, the Council, the Commission or the Banking Stakeholder Group*, or on its own initiative and after having informed the competent authority concerned, the Authority may investigate the alleged breach or non-application of *Union* law.

2a. Without prejudice to the powers laid down in Article 20, the competent authority shall, *without delay*, provide the Authority with all information which the Authority considers necessary for its investigation **■** .

3. The Authority may, at the latest within two months from initiating its investigation, address to the competent authority concerned a recommendation setting out the action necessary to comply with *Union* law.

3a. The competent authority shall, within ten working days of the receipt of the recommendation, inform the Authority of the steps it has taken or intends to take to ensure compliance with *Union* law.

4. Where the competent authority has not complied with Union law within one month from receipt of the Authority's recommendation, the Commission may, after having been informed by the Authority or on its own initiative, **issue a formal opinion** requiring the competent authority to take the action necessary to comply with **Union law**. **The Commission's formal opinion shall take into account the Authority's recommendation.**

The Commission shall **issue** such a **formal opinion** no later than three months from the adoption of the recommendation. The Commission may extend this period by one month.

■

The Authority and the competent authorities shall provide the Commission with all necessary information.

5. The competent authority shall, within ten working days of receipt of the **formal opinion** referred to in paragraph 4, inform the Commission and the Authority of the steps it has taken or intends to take to **comply with** the Commission's **formal opinion**.

6. Without prejudice to the powers of the Commission under **Article 258 TFEU**, where a competent authority does not comply with the **formal opinion** referred to in paragraph 4 ■ within the period of time specified therein, and where it is necessary to remedy in a timely manner the non compliance ■ in order to maintain or restore neutral conditions of competition in the market or ensure the orderly functioning and integrity of the financial system, the Authority may, where the relevant requirements of the **legislative acts** referred to in Article 1(2) are directly applicable to financial institutions **pursuant to the legislative acts** referred to in Article 1(2), adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under **Union law** including the cessation of any practice.

The decision of the Authority shall be in conformity with the **formal opinion issued** by the Commission pursuant to paragraph 4.

7. Decisions adopted under paragraph 6 shall prevail over any previous decision adopted by the competent authorities on the same matter.

When taking action ■ in relation to **issues** which are subject to a **formal opinion** pursuant to paragraph 4 or **a decision pursuant to paragraph 6**, **competent authorities** shall **comply with the formal opinion or the decision, as the case may be.**

7a. In the Report referred to in Article 28(4a) the Authority shall set out which competent authorities and financial institutions have not complied with the decisions referred to in paragraphs 4 and 6.

Article 10

Action in emergency situations

1. In the case of adverse developments which may seriously jeopardise the orderly

functioning and integrity of financial markets or the stability of the whole or part of the financial system in the *European Union, the Authority shall actively facilitate and, where deemed necessary, coordinate any actions undertaken by the relevant national competent supervisory authorities.*

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

1a. The Commission may, on its own initiative or at the request of the European Parliament, the Council, the ESRB or the Authority, adopt a decision addressed to the Authority, determining the existence of an emergency situation for the purposes of this Regulation. The Commission shall review that decision at monthly intervals and shall declare the discontinuation of the emergency situation as soon as appropriate.

If the Commission determines the existence of an emergency situation, it shall duly inform the European Parliament and the Council without delay.

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

3. Without prejudice to the powers of the Commission under *Article 258 TFEU*, where a competent authority does not comply with the decision of the Authority referred to in paragraph 2 within the period laid down therein, the Authority may, where the relevant requirements laid down in the *legislative acts* referred to in Article 1(2) are directly applicable to financial institutions, adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under that legislation, including the cessation of any practice.

4. Decisions adopted under paragraph 3 shall prevail over any previous decision adopted by the competent authorities on the same matter.

Any action by the competent authorities in relation to facts which are subject to a decision pursuant to paragraph 2 or 3 shall be compatible with those decisions.

Article 11

Settlement of disagreements between competent authorities

1. Without prejudice to the powers laid down in Article 9, where a competent authority disagrees on the procedure or content of an action or inaction by another competent authority

in areas where the *legislative acts* referred to in Article 1(2) require cooperation, coordination or joint decision making by competent authorities from more than one Member State, the Authority *on its own initiative or at the request of one or more of the competent authorities concerned, shall take the lead in assisting* the competent authorities in reaching an agreement in accordance with the procedure set out in *paragraphs 2 to 4*.

2. The Authority shall set a time limit for conciliation between the competent authorities taking into account any relevant time periods specified in *the legislative acts* referred to in Article 1(2) and the complexity and urgency of the matter. *At that stage the Authority shall act as a mediator.*

3. If, at the end of the conciliation phase, the competent authorities concerned have failed to reach an agreement, the Authority *shall, in accordance with the procedure set out in the third subparagraph of Article 29(1), take a decision requiring to settle the disagreement and to require* them to take specific action in compliance with *Union law, with binding effects on the competent authorities concerned.*

4. Without prejudice to the powers of the Commission under *Article 258 TFEU*, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial institution complies with requirements directly applicable to it by virtue of the *legislative acts* referred to in Article 1(2), the Authority may adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under Community law, including the cessation of any practice.

4a. Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter. Any action by the competent authorities in relation to facts which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.

4b. In the Report referred to in Article 28(4a), the Chairperson shall set out the disagreements between competent authorities, the agreements reached and the decision taken to settle such disagreements.

Article 11a

Settlement of disagreements between competent authorities across sectors

The Joint Committee shall, in accordance with the procedure laid down in Article 11 and Article 42, settle cross sectoral disagreements that may arise between one or more competent authorities as defined in Article 2(2) of this Regulation and of Regulation (EU) No .../2010 [ESMA] and Regulation (EU) No .../2010 [EIOPA].

Article 12

Colleges of supervisors

1. The Authority shall contribute to promote *and monitor* the efficient, *effective* and

consistent functioning of *the* colleges of supervisors referred to in Directive 2006/48/EC and foster the coherence of the application of *Union law among the colleges of supervisors*. *Staff from the Authority shall be able to participate in any activities, including on-site examinations, carried out jointly by two or more competent authorities.*

2. The Authority shall *lead the colleges of supervisors as it deems appropriate.*

For *that* purpose *the Authority* shall be considered a "competent authority" within the meaning of the relevant legislation.

The Authority shall, at least:

- (a) *collect and share all relevant information in going concern and emergency situations in order to facilitate the work of the colleges of supervisors and establish and manage a central system to make such information accessible to the competent authorities in the colleges of supervisors;*
- (b) *initiate and coordinate Union-wide stress tests to assess the resilience of financial institutions, in particular of those identified in Article 12b, to adverse market developments, ensuring an as consistent as possible methodology is applied at the national level to such tests;*
- (c) *plan and lead supervisory activities in going concern as well as in emergency situations, including evaluating the risks to which financial institutions are or might be exposed; and*
- (d) *oversee the tasks carried out by the competent authorities.*

3a. The Authority may issue regulatory and implementing standards, guidelines and recommendations adopted under Articles 7, 7e and 8 to harmonise supervisory functioning and best practices adopted by the colleges of supervisors. The authorities shall approve written arrangements for the functioning of each college in order to ensure convergent functioning between all of them.

3b. A legally binding mediation role should allow the Authority to solve disputes between competent authorities following the procedure set up on Article 11. Where no agreement can be reached within the relevant college of supervisors, the Authority may take supervisory decisions directly applicable to the institution concerned.

Article 12a

General provisions

1. The Authority shall pay special attention to and address risks of disruption in financial services that (i) is caused by an impairment of all or parts of the financial system and (ii) has the potential to have serious negative consequences for internal market and the real economy (systemic risk). All types of financial intermediaries, markets and infrastructure

can potentially be systematically important to some degree.

2. The Authority, in collaboration with the European Systemic Risk Board, shall develop a common set of quantitative and qualitative indicators (risk dashboard), which will serve as the basis to assign a supervisory rating to cross-border institutions identified in Article 12b. That rating shall be reviewed on a regular basis, to take into account material changes of the risk profile of an institution. The supervisory rating shall be a critical element for the decision to directly supervise or intervene in an ailing institution.

3. Without prejudice to the legislative acts referred to in Article 1(2), the Authority shall propose, as necessary, additional draft regulatory and implementing standards as well as guidelines and recommendations for institutions identified in Article 12b.

4. The Authority shall exert supervision of cross-border institutions that may pose a systemic risk as established in Article 12b. In those cases, the Authority shall act through the competent authorities.

5. The Authority shall establish a Banking Resolution Unit with a mandate to put in practice the clearly defined governance and modus operandi of crisis management from early intervention to resolution and insolvency and lead such procedures.

Article 12b

Identification of cross border institutions that potentially could pose a systemic risk

1. The Board of Supervisors, following consultation of the ESRB, may, in accordance with the procedure set out in Article 29(1), identify cross-border institutions that, due to the systemic risk they may pose need to be subject to direct supervision by the Authority or placed under the Banking Resolution Unit referred to in Article 12c.

2. The criteria for identifying such financial institutions shall be consistent with the criteria established by the FSB, the IMF and the BIS.

Article 12c

Banking Resolution Unit

1. The Banking Resolution Unit shall preserve financial stability and minimise the contagion effect of distressed institutions identified in Article 12b to the rest of the system and the economy at large and limit the cost to taxpayers respecting the principle of proportionality, creditors' hierarchy and guaranteeing equal treatment across borders.

2. The Banking Resolution Unit shall be empowered to fulfil the tasks set out in paragraph 1, in order to rehabilitate distressed institutions or to decide on a winding-up on non-viable institutions (critical to limit moral hazard). Among other actions it could require adjustments in capital or liquidity, adapt the business mix, improve processes, appoint or replace management, recommend guarantees, loans and liquidity assistance, total or partial sales, create a good bank / bad bank or a bridge bank, swap debt into equity (with appropriate haircuts) or take the institution into temporary public ownership.

3. The Banking Resolution Unit shall comprise experts appointed by the Board of

Supervisors of the Authority with knowledge and expertise in restructuring, turn-a-rounds and liquidation of financial institutions.

Article 12d

European Deposit Guarantee Schemes

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

2. Article 8 concerning the Authority's powers to adopt guidelines and recommendations shall apply to deposit guarantee schemes.

3. The Commission may adopt regulatory and implementing technical standards as specified in the legislative acts referred to in Article 1(2) in accordance with the procedure laid down in Articles 7 to 7d of this Regulation.

Article 12f

European Banking Stability Fund

1. A European Banking Stability Fund (Fund) shall be established in order to strengthen the internalisation of the costs of the financial system and to assist in crisis resolution for failing cross border financial institutions. Financial institutions operating in only one Member State shall have the option to join the Fund. The Fund shall adopt appropriate measures to avoid that the availability of aid generates a moral hazard.

2. The European Banking Stability Fund shall be financed through direct contributions from all financial institutions identified in Article 12b(1). Those contributions shall be proportionate to the level of risk and contributions to systemic risk that each of them poses and variations in overall risk over time, as identified through their risk dashboard. Levels of contributions required shall take into account broader economic conditions and the need for financial institutions to maintain capital for other regulatory and business requirements.

3. The European Banking Stability Fund shall be managed by a Board appointed by the Authority for a period of five years. The members of the Board shall be selected from staff proposed by the national authorities. The Fund shall also create a Consultative Board involving non-voting representation of the financial institutions participating in the Fund. The Board of the Fund may propose that the Authority outsource the management of its

liquidity to reputable institutions (such as the EIB), which shall be invested in safe and liquid instruments.

4. When the accumulated resources from the contributions made by banks are not sufficient to face the difficulties, the Fund shall have the capacity to increase its resources through debt issuance or other financial means.

Article 13

Delegation of tasks and responsibilities

1. Competent authorities may, ***with consent of the delegatee***, delegate tasks and responsibilities ***to the Authority*** or other competent authorities ***subject to the conditions set out in this Article. Member States may set out specific arrangements regarding the delegation of responsibilities that have to be complied with before their competent authorities enter into such agreements and may limit the scope of delegation to what is necessary for effective supervision of cross-border financial institutions or groups.***

2. The Authority shall ***stimulate and*** facilitate the delegation of tasks and responsibilities between competent authorities by identifying those tasks and responsibilities that can be delegated or jointly exercised and by promoting best practices.

2a. The delegation of responsibilities shall result in the reallocation of competences laid down in the legislative acts referred to in Article 1(2). The law of the delegatee authority shall govern the procedure, enforcement and administrative and judicial review relating to the delegated responsibilities.

3. Competent authorities shall inform the Authority of delegation agreements they intend to enter into. They shall put the agreements into effect at the earliest one month after informing the Authority.

The Authority may give an opinion on the intended agreement within one month of being informed.

The Authority shall publish any delegation agreement as concluded by the competent authorities by appropriate means, in order to ensure that all parties concerned are informed appropriately.

Article 14

Common supervisory culture

1. The Authority shall play an active role in building a common European supervisory culture and consistent supervisory practices, and ensuring uniform procedures and consistent approaches throughout the ***European Union*** and shall carry out, at a minimum, the following activities:

- (a) provide opinions to competent authorities;
 - (b) promote an effective bilateral and multilateral exchange of information between competent authorities, with full respect of the applicable confidentiality and data protection provisions provided for in the relevant Community legislation;
 - (c) contribute to developing high quality and uniform supervisory standards, including reporting standards, *and international accounting standards in accordance with Article 1(2a)*;
 - (d) review the application of the relevant *regulatory and implementing* standards adopted by the Commission, guidelines and recommendations issued by the Authority and propose amendments where appropriate;
 - (e) establish sectoral and cross-sectoral training programmes, facilitate personnel exchanges and encourage competent authorities to intensify the use of secondment schemes and other tools.
2. The Authority may, as appropriate, develop new practical instruments and convergence tools to promote common supervisory approaches and practices.

Article 15

Peer review of competent authorities

1. The Authority shall periodically *organise and* conduct peer review analyses of some or all of the activities of competent authorities, to further enhance consistency in supervisory outcomes. To this end, the Authority shall develop methods to allow for objective assessment and comparison between the authorities reviewed. *When conducting peer reviews, existing information and evaluations already made with regard to the competent authority concerned shall be taken into account.*
2. The peer review shall include an assessment of, but not be limited to:
- (a) the adequacy of *resources and governance* arrangements **■** of the competent authority, with particular regard to the effective application of the *regulatory technical and implementing technical standards referred to in Articles 7 to 7e and of the legislative acts* referred to in Article 1(2) and to the capacity to respond to market developments;
 - (b) the degree of convergence reached in the application of *Union* law and in supervisory practice, including *regulatory technical and implementing* technical standards, guidelines and recommendations adopted under Articles 7 and 8, and the extent to which the supervisory practice achieves the objectives set out in *Union* law;
 - (c) good practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;
- (ca) the effectiveness and the degree of convergence reached with regard to the*

enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where these provisions have not been complied with.

3. On the basis of the peer review the Authority may issue *guidelines and recommendations pursuant to Article 8 addressed* to competent authorities. *The Authority shall take into account the outcome of the peer review when developing draft regulatory technical or implementing technical standards in accordance with Articles 7 to 7e. Competent authorities shall endeavour to follow the advice given by the Authority. Where a competent authority does not follow this advice, it shall inform the Authority of its reasons.*

The Authority shall make the best practices that can be identified from those peer reviews publicly available. In addition, all other results of peer reviews may be disclosed publicly, subject to the agreement of the competent authority being the subject of the peer review.

Article 16

Coordination function

*1. The Authority shall fulfil a general coordination role between competent authorities, including where adverse developments could potentially jeopardise the orderly functioning and integrity of financial markets or the stability of the financial system in the **Union**.*

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

- (1) facilitating the exchange of information between the competent authorities;
- (2) determining the scope and, *where possible and appropriate*, verifying the reliability of information that should be made available to all competent authorities concerned;
- (3) without prejudice to Article 11, *carrying out non-binding mediation* on the request of competent authorities or on its own initiative;
- (4) notifying the ESRB of any potential emergency situations without delay;
- (4a) taking all appropriate measures in case of developments which may jeopardise the functioning of the financial markets with a view to facilitating the coordination of actions undertaken by relevant competent authorities;*
- (4b) centralising information received from competent authorities in accordance with Articles 12 and 20 as the result of the regulatory reporting obligations for institutions active in more than one Member State. The Authority shall share that information with the other competent authorities concerned.*

Article 17

Assessment of market developments

1. The Authority shall monitor and assess market developments in the area of its competence and, where necessary, inform the *EIOPA*, the *ESMA*, the ESRB and the European Parliament, the Council and the Commission about the relevant micro-prudential trends, potential risks and vulnerabilities. ***The Authority shall include in its assessments an economic analysis of the markets in which financial institutions operate, and an assessment of the impact of potential market developments on them.***

1a. The Authority shall, in cooperation with the ESRB, initiate and coordinate *Union*-wide assessments of the resilience of financial institutions to adverse market developments. To that end, it shall develop the following, for application by the competent authorities:

- (a) common methodologies for assessing the effect of economic scenarios on an institution's financial positions;
- (b) common approaches to communication on the outcomes of these assessments of the resilience of financial institutions;

(ba) common methodologies for assessing the effect of particular products or distribution processes on an institution's financial position and on depositors, investors and customer information.

2. Without prejudice to the tasks of the ESRB set out in Regulation (EC) No .../2010 (ESRB), the Authority shall, at least once a year, and more frequently as necessary, provide assessments to the European Parliament, the Council, the Commission and the ESRB of trends, potential risks and vulnerabilities in the area of its competence.

The Authority shall include a classification of the main risks and vulnerabilities in these assessments and, where necessary, recommend preventive or remedial actions.

3. The Authority shall ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities by closely cooperating with *EIOPA* and *ESMA through the Joint Committee*.

Article 18

International relations

1. Without prejudice to the competences of the *Union* institutions *and Member States*, the Authority may develop contacts *and* enter into administrative arrangements with *supervisory authorities*, international organisations and the administrations of third countries. ***These arrangements shall not create legal obligations in respect of the European Union and its Member States, nor shall they prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with third countries.***

2. The Authority shall assist in preparing equivalence decisions pertaining to supervisory regimes in third countries in accordance with the *legislative acts* referred to in Article 1(2).

3. ***In the report referred to in Article 28(4a), the Authority shall set out the administrative arrangements agreed upon with international organisations or administrations in third countries and the assistance provided in preparing equivalence decisions.***

Article 19

Other tasks

1. The Authority may, upon a request from the European Parliament, the Council, the Commission or on its own initiative provide opinions to the European Parliament, the Council and the Commission on all issues related to its area of competence.

1a. In cases where the Authority has not submitted a draft regulatory or implementing technical standard within the time limit set out in the legislative acts referred to in Article 1(2) or where no time limit has been set, the Commission may request such a draft and set a time limit for its submission.

The Commission may, given the urgency of the matter, request that a draft regulatory or implementing technical standard be submitted before the time limit set out in the legislative acts referred to in Article 1(2). In such a case the Commission shall state appropriate justification.

2. With regard to prudential assessments of mergers and acquisitions falling ***within the scope*** of Directive 2007/44/EC ***and which according to that Directive require consultation between competent authorities from two or more Member States***, the Authority may, ***on application of one of the competent authorities concerned***, issue and publish an opinion on a prudential assessment, ***except in relation to the criteria in Article 19a(1)(e) of Directive 2006/48/EC. The opinion shall be issued promptly and in any event before the end of the assessment period according to Directive 2007/44/EC.*** Article 20 shall apply ***to the areas about which the Authority may issue an opinion.***

Article 20

Collection of information

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

1a. The Authority may also request information to be provided at recurring intervals. Those requests shall, where possible, use common reporting formats.

1b. On a duly justified request from a competent authority of a Member State, the Authority may provide any information that is necessary to enable the competent authority

to carry out its duties, in accordance with the professional secrecy obligations laid down in sectoral legislation and Article 56.

1c. Before requesting information in accordance with this Article and in order to avoid duplication of reporting obligations, the Authority shall first take account of any relevant existing statistics produced, disseminated and developed by the European Statistical System and the European System of Central Banks.

2. Where information is not available or is not made available in a timely fashion by the competent authorities **█**, the Authority may address a *duly justified and reasoned request to other supervisory authorities, the Ministry of finance where the latter has at its disposal prudential information, the central bank or statistical office of the Member State concerned.*

2a. Where information is not available or is not made available under paragraphs 1 or 2 in a timely fashion, the Authority may address a duly justified and reasoned request directly to the relevant financial institutions. The reasoned request shall explain why the data concerning the respective individual financial institutions is necessary.

The Authority shall inform the relevant competent authorities of requests in accordance with paragraph 2 and this paragraph.

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

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

Article 21

Relationship with the ESRB

1. The Authority shall co-operate *closely and on a regular basis* with the ESRB.

2. The Authority shall **█** provide the ESRB with regular and up-to-date information necessary for the achievement of its tasks. Any data necessary for the achievement of its tasks that are not in summary or collective form shall be provided without delay to the ESRB upon a reasoned request, as specified in Article [15] of Regulation (EU) No .../2010 (ESRB). *The Authority, in cooperation with the ESRB, shall have in place adequate internal procedures for the transmission of confidential information, in particular regarding individual financial institutions.*

3. The Authority shall, in accordance with paragraphs 4 and 5, ensure a proper follow-up to ESRB warnings and recommendations referred to in Article [16] of Regulation (EU) No .../2010 (ESRB).

4. On receipt of a warning or recommendation from the ESRB addressed to the Authority, it shall convene a meeting of the Board of Supervisors without delay and assess the

implications of such a warning or recommendation for the fulfilment of its tasks.

It shall decide, by the relevant decision-making procedure, on **any** actions to be taken in accordance with the powers conferred upon it by this Regulation for addressing the issues identified in the warnings and recommendations.

If the Authority does not act further to a recommendation, it shall explain to **the European Parliament, the Council** the ESRB its reasons for not doing so.

5. On receipt of a warning or recommendation from the ESRB addressed to a competent national supervisory authority, the Authority shall, where relevant, use the powers conferred upon it by this Regulation to ensure a timely follow-up.

Where the addressee intends not to follow the recommendation of the ESRB, it shall inform and discuss with the Board of Supervisors its reasons for not acting.

The competent authority shall take due account of the views of the Board of Supervisors when informing **the European Parliament, the Council and** the ESRB in accordance with Article [17] of Regulation (EU) no .../2010 (ESRB).

6. In discharging its tasks set out in this Regulation, the Authority shall take the utmost account of the warnings and recommendations of the ESRB.

Article 22

Banking Stakeholder Group

1. **To help facilitate** consultation with stakeholders in areas relevant to the tasks of the Authority, a Banking Stakeholder Group shall be established. **The Banking Stakeholder Group shall be consulted on actions taken in accordance with Article 7 concerning regulatory technical standards and implementing technical standards, and, to the extent that these do not concern individual financial institutions, Article 8 concerning guidelines and recommendations. If actions must urgently be taken and consultation becomes impossible, the Banking Stakeholder Group shall be informed as soon as possible.**

The Banking Stakeholder Group shall meet at least four times a year.

2. The Banking Stakeholder Group shall be composed of 30 members, representing in balanced proportions credit and investment institutions **operating in the Union**, their employee **representatives** as well as consumers, users of banking services **and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial institutions and three of those shall represent cooperative and saving banks**

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3. The members of the Banking Stakeholder Group shall be appointed by the Board of Supervisors of the Authority, following proposals from the relevant stakeholders. In making

its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical *and gender* balance and representation of stakeholders across the *European Union*.

4. *The Authority shall provide all necessary information and ensure adequate secretarial support for the Banking Stakeholder Group. Adequate compensation of travel expenses shall be provided for members of the stakeholder group representing non-profit organisations. The Group may establish working groups on technical issues.* Members of the Banking Stakeholder Group shall serve for a period of two and a half years, following which a new selection procedure shall take place.

The members may serve two successive terms.

5. The Banking Stakeholder Group may submit opinions and advice to the Authority on any issue related to the tasks of the Authority *with particular focus on the tasks set out in Articles 7 to 7f, 8, 14, 15 and 17.*

6. The Banking Stakeholder Group shall adopt its rules of procedure *on the basis of the agreement of a two-thirds majority of members.*

7. The Authority shall make public the opinions and advice of the Banking Stakeholder Group and the results of its consultations.

Article 23

Safeguards

2. Where a Member State considers that *a* decision *taken* under Article 10(2) or Article 11 impinges *directly and in a significant manner* on *its* fiscal responsibilities, *it shall* notify the Authority, *the European Parliament and* the Commission *within ten working days* after notification of the Authority's decision to the competent authority **█**.

In its notification, the Member State shall *justify why and provide an impact assessment on* how *much* the decision impinges on its fiscal responsibilities.

2a. Within a period of one month from the notification by the Member State, the Authority shall inform the Member State as to whether it maintains its decision or whether it amends or revokes it.

3. Where the Authority maintains or amends its decision, the Council shall take a decision whether the Authority's decision is maintained or revoked. The decision to maintain the Authority's decision shall be taken by simple majority of members. The decision to revoke the Authority's decision shall be taken by a qualified majority of its members. In neither of these cases the vote of the Members concerned shall be taken into account.

3a. Where the Council does not take a decision within ten working days in the case of Article 10 and one month in the case of Article 11, the Authority's decision shall be deemed to be maintained.

3b. If a decision adopted under Article 10 leads to use of the funds set up according to Article 12d or 12e Member States shall not call on the Council to maintain or revoke a decision taken by the Authority.

Article 24

Decision-making procedures

1. Before taking the decisions provided for in **this Regulation**, the Authority shall inform **any named** addressee of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the matter, taking full account of the urgency, **complexity and potential consequences** of the matter. **This applies mutatis mutandis to recommendations as referred to in Article 9(4).**
2. The decisions of the Authority shall state the reasons on which they are based.
3. The addressees of decisions of the Authority shall be informed of the legal remedies available under this Regulation.
4. Where the Authority has taken a decision pursuant to Article 10(2) or (3), it shall review that decision at appropriate intervals.
5. The decisions which the Authority takes pursuant to Articles 9, 10 and 11 shall be made public and shall state the identity of the competent authority or financial institution concerned and the main content of the decision, **unless such publication is in conflict with** the legitimate interest of financial institutions in the protection of their business secrets **or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the European Union.**

CHAPTER III

ORGANISATION

Section 1

BOARD OF SUPERVISORS

Article 25

Composition

1. The Board of Supervisors shall be composed of:

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

1a. The Board of Supervisors shall convene meetings with the Banking Stakeholder Group regularly, at least twice a year.

2. Each competent authority shall be responsible for nominating a high-level alternate from its authority, who may replace the member of the Board of Supervisors referred to in paragraph 1(b), in case this person is prevented from attending.

3. Where the authority referred to in paragraph 1(b) is not a central bank, the member of the Board of Supervisors referred to in paragraph 1(b) may ***decide to bring*** a representative from the Member States' central bank, who shall be non-voting.

3a. In Member States where there is more than one authority responsible for supervision according to this Regulation, those authorities shall agree on a common representative. Nevertheless, when an item to be discussed by the Board of Supervisors does not fall within the competence of the national authority being represented by the member referred to in paragraph 1(b), that member may bring a representative from the relevant national authority, who shall be non-voting.

4. For the purpose of acting within the scope of Directive 94/19/EC the member of the Board of Supervisors referred to in paragraph 1(b) may, where appropriate, be accompanied by a representative from the relevant bodies which administer deposit-guarantee schemes in each Member State, who shall be non-voting.

5. The Board of Supervisors may decide to admit observers.

The Executive Director may participate in meetings of the Board of Supervisors without the right to vote.

Article 26

Internal committees and Panels

1. The Board of Supervisors may establish internal committees or panels for specific tasks

attributed to the Board of Supervisors, and may provide for the delegation of certain clearly defined tasks and decisions to internal committees or panels, to the Management Board or to the Chairperson.

2. For the purposes of Article 11, the Board of Supervisors shall convoke ***an independent panel which has a balanced composition of members*** to facilitate ***an impartial*** settlement of the disagreement, consisting of the Chairperson and two of its members, who are not representatives of the competent authorities which are parties to the disagreement ***and who do not have any interest in the conflict nor direct links to the competent authorities concerned.***

2a. Subject to Article 11(2), the panel shall propose a decision for final adoption by the Board of Supervisors, ***in accordance with the procedure set out in the third subparagraph of Article 29(1).***

2b. The Board of Supervisors shall adopt rules of procedure for the panel referred to in paragraph 2.

Article 27

Independence

1. When carrying out the tasks conferred upon it by this Regulation, the Chairperson and the voting members of the Board of Supervisors shall act independently and objectively in the ***sole interest of the Union as a whole*** and shall neither seek nor take instructions from ***Union*** institutions or bodies, from a Government of a Member State or from any other public or private body.

2 ***Member States, the Union institutions and any other public or private body shall not seek to influence the members of the Board of Supervisors in the performance of their tasks.***

Article 28

Tasks

1. The Board of Supervisors shall give guidance to the work of the Authority and shall be in charge of taking the decisions referred to in Chapter II.

2. The Board of Supervisors shall adopt the opinions, recommendations, and decisions, and issue the advice referred to in Chapter II.

3. The Board of Supervisors shall appoint the Chairperson.

4. The Board of Supervisors shall adopt, before 30 September each year, on the basis of a proposal by the Management Board, the work programme of the Authority for the coming year, and shall transmit it for information to the European Parliament, the Council and the Commission.

The work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

4a. The Board of Supervisors shall, on the basis of a proposal by the Management Board, adopt the annual report on the activities of the Authority, including on the performance of the Chairperson's duties, on the basis of the draft report referred to in Article 38(7) and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June every year. The report shall be made public.

5. The Board of Supervisors shall adopt the multi-annual work programme of the Authority, and shall transmit it for information to the European Parliament, the Council and the Commission.

The multi-annual work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

6. The Board of Supervisors shall **adopt** the ■ budget in accordance with Article 49.

7. The Board of Supervisors shall exercise disciplinary authority over the Chairperson and the Executive Director and may remove them from office in accordance with Article 33(5) or Article 36(5) respectively.

Article 29

Decision making

1. **Decisions of** the Board of Supervisors shall **be taken by simple** majority of its members, **according to the principle where each member has one vote.**

With regard to acts specified in Articles 7 and 8 and measures and decisions adopted under Chapter VI and by way of derogation from the first subparagraph, the Board of Supervisors shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union and to the TFEU.

With regard to decisions in accordance with Article 11(3), for decisions taken by the consolidating supervisor, the decision proposed by the panel shall be considered as adopted if approved by a simple majority, unless it is rejected by members representing a blocking minority of the votes as defined in Article 16(4) TFEU and in Article 3 of the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union and to the TFEU.

For all other decisions in accordance with Article 11(3), the decision proposed by the panel shall be adopted by a simple majority of the members of the Board of Supervisors according to the principle where each member has one vote.

2. Meetings of the Board of Supervisors shall be convened by the Chairperson at his or her

own initiative or at the request of one third of its members, and shall be chaired by the Chairperson.

3. The Board of Supervisors shall adopt and make public its rules of procedure.
4. The rules of procedure shall set out in detail the arrangements governing voting, including, where appropriate, the rules governing quorums. The non-voting members and the observers, with the exception of the Chairperson and the Executive Director, shall not attend any discussions within the Board of Supervisors relating to individual financial institutions, unless otherwise provided for in Article 61 or in the *legislative acts* referred to in Article 1(2).

Section 2

MANAGEMENT BOARD

Article 30

Composition

1. The Management Board shall be composed of the Chairperson ***and six other*** members ***of*** the Board of Supervisors, ***elected by and*** from ***the voting*** members ***of the Board of Supervisors***.

Each member other than the Chairperson shall have an alternate, who may replace the member of the Management Board if that person is prevented from attending.

The term of office of the members elected by the Board of Supervisors shall be two and a half years. It may be extended once. ***The composition of the Management Board shall be balanced and proportionate and reflect the European Union as a whole. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.***

2. Decisions by the Management Board shall be adopted on the basis of a majority of the members present. Each member shall have one vote.

The Executive Director ***and a representative of the Commission*** shall participate in meetings of the Management Board without the right to vote.

The representative of the Commission shall have the right to vote on matters referred to in Article 49.

The Management Board shall adopt and make public its rules of procedure.

3. Meetings of the Management Board shall be convened by the Chairperson on its own initiative or at the request of at least a third of its members, and chaired by the Chairperson.

The Management Board shall meet preceding every meeting of the Board of Supervisors and as often as it deems necessary. It shall meet at least ***five times a year*** in ***1*** session.

4. The members of the Management Board may, subject to the rules of procedure, be assisted by advisers or experts. ***The non-voting members, with the exception of the Executive Director, shall not attend any discussions within the Management Board relating to individual financial institutions.***

Article 31

Independence

The members of the Management Board shall act independently and objectively in the ***sole interest of the Union as a whole***, without seeking or taking any instructions from ***Union*** institutions or bodies, from any government of a Member State or from any other public or private body.

Member States, Union institutions or bodies or any other public or private body shall not seek to influence the members of the Management Board.

Article 32

Tasks

1. The Management Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with this Regulation.
2. The Management Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme.
3. The Management Board shall exercise its budgetary powers in accordance with Articles 49 and 50.
4. The Management Board shall adopt the Authority's staff policy plan and, pursuant to Article 54(2), the necessary implementing measures of the Staff Regulations of Officials of the European Communities ('the Staff Regulations').
5. The Management Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 58.

6a. The Management Board shall propose an annual report on the activities of the Authority, including on the Chairperson's duties, on the basis of the draft report referred to in Article 38(7) to the Board of Supervisors for approval and submission to the European Parliament.

7. The Management Board shall adopt and make public its rules of procedure.
8. The Management Board shall appoint and remove the members of the Board of Appeal

in accordance with Article 44(3) and 44(5).

Section 3

CHAIRPERSON

Article 33

Appointment and tasks

1. The Authority shall be represented by a Chairperson, who shall be a full-time independent professional.

The Chairperson shall be responsible for preparing the work of the Board of Supervisors and shall chair the meetings of the Board of Supervisors and the Management Board.

2. The Chairperson shall be appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation, following an open selection procedure ***organised and managed by the Board of Supervisors.***

The Commission shall present a shortlist of three candidates to the European Parliament. After conducting hearings of those candidates, the European Parliament shall select one of those candidates. The candidate so selected shall be appointed by the Board of Supervisors.

The Board of Supervisors shall also elect from among its members an alternate who shall carry out the functions of the Chairperson in his absence. ***That alternate shall not be elected from among the members of the Management Board.***

3. The Chairperson's term of office shall be five years and may be extended once.

4. In the course of the nine months preceding the end of the five-year term of office of the Chairperson, the Board of Supervisors shall evaluate:

- (a) the results achieved in the first term of Office and the way they were achieved;
- (b) the Authority's duties and requirement in the coming years.

The Board of Supervisors taking into account the evaluation may extend the term of office of the Chairperson once subject to confirmation by the European Parliament.

5. The Chairperson may be removed from office only **■** by the European Parliament ***following a decision of the Board of Supervisors.***

The Chairperson may not prevent the Board of Supervisors from discussing matters relating to the Chairman, in particular the need for his or her removal and shall not be involved in deliberations concerning such a matter.

Article 34

Independence

Without prejudice to the role of the Board of Supervisors in relation to the tasks of the Chairperson, the Chairperson shall neither seek nor take instructions from Community institutions or bodies, from any government of a Member State or from any other public or private body.

Member States, Union institutions and any other public or private bodies shall not seek to influence the Chairman in the performance of his or her tasks.

In accordance with the Staff Regulations referred to in Article 54, the Chairperson shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Article 35

Report

1. The European Parliament ***and the Council*** may invite the Chairperson or his ***or her*** alternate, while fully respecting his or her independence to make a statement. ***The Chairperson shall make a statement before the European Parliament*** and answer ***any*** questions put by ***its*** members, ***whenever so requested.***
2. **■** The Chairperson ***shall*** report ***in writing*** on the ***main activities of the Authority to the European Parliament when requested and at least 15 days before making the statement referred to in paragraph 1.***
- 2a. ***In addition to the information referred to in Articles 7a-7f, 8, 9, 10, 11a and 18, the Report shall also include any relevant information requested by the European Parliament on an ad-hoc basis.***

Section 4

EXECUTIVE DIRECTOR

Article 36

Appointment

1. The Executive Director shall be appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation and managerial experience, following an open selection procedure ***after the confirmation of the European Parliament.***

2. The Executive Director shall be appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation and managerial experience, following an open selection procedure.
3. The Executive Director's term of office shall be five years and may be extended once.
4. In the course of the nine months preceding the end of the five-year term of office of the Executive Director, the Board of Supervisors shall undertake an evaluation.

In that evaluation, the Board of Supervisors shall assess in particular:

- (a) the results achieved in the first term of Office and the way they were achieved;
- (b) the Authority's duties and requirement in the coming years.

The Board of Supervisors taking into account the evaluation may extend the term of office of the Executive Director once.

5. The Executive Director may be removed from office only upon Decision of the Board of Supervisors.

Article 37

Independence

1. Without prejudice to the respective roles of the Management Board and the Board of Supervisors in relation to the tasks of the Executive Director, the Executive Director shall neither seek nor take instructions from any government, authority, organisation or person outside the Authority.

1a. Member States, the Union institutions and any other public or private body shall not seek to influence the Executive Director in the performance of his tasks.

In accordance with the Staff Regulations referred to in Article 54, the Executive Director shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Article 38

Tasks

1. The Executive Director shall be in charge of the management of the Authority and shall prepare the work of the Management Board.
2. The Executive Director shall be responsible for implementing the annual work programme of the Authority under the guidance of the Board of Supervisors and under the

control of the Management Board.

3. The Executive Director shall take the necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation.
4. The Executive Director shall prepare a multi-annual work programme, as referred to in Article 32(2).
5. Each year by 30 June, the Executive Director shall prepare a work programme for the following year, as referred to in Article 32(2).
6. The Executive Director shall draw up a preliminary draft budget of the Authority pursuant to Article 49 and shall implement the budget of the Authority pursuant to Article 50.
7. Each year the Executive Director shall prepare a draft **■** report with a section on the regulatory and supervisory activities of the Authority and a section on financial and administrative matters.
8. The Executive Director shall exercise in respect to the Authority's staff the powers laid down in Article 54 and manage staff matters.

CHAPTER IV

EUROPEAN SYSTEM OF FINANCIAL SUPERVISORS



Section 2

■ EUROPEAN SUPERVISORY AUTHORITIES (*JOINT COMMITTEE*)

Article 40

Establishment

1. **■** The European Supervisory Authorities *Joint Committee* is hereby established
2. The Joint Committee shall serve as a forum in which the Authority *cooperates* regularly and closely and ensure cross-sectoral consistency with the *other ESAs, in particular regarding:*
 - *financial conglomerates;*
 - *accounting and auditing;*
 - *micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for*

- financial stability;*
- *retail investment products;*
 - *anti-money laundering measures; and*
 - *information exchange with the ESRB and developing the relationship between the ESRB and the European Supervisory Authorities.*
3. *The Joint Committee shall have a dedicated staff provided by the three European Supervisory Authorities that shall act as a secretariat.* The Authority shall contribute adequate resources to administrative, infrastructure and operational expenses.

Article 40a

Supervision

In the event that a financial institution reaches across different sectors, the Joint Committee shall resolve disagreements in accordance with Article 42.

Article 41

Composition

1. The Joint Committee shall be composed of the Chairpersons of the European *Supervisory Authorities*, and, where applicable, the Chairperson of a Sub-Committee established under Article 43.
2. The Executive Director, *a representative of* the Commission and the ESRB shall be invited to the meetings of the Joint Committee as well as the Sub-Committees mentioned in Article 43 as observers.
3. The chair of the Joint Committee shall be appointed on an annual rotational basis from among the Chairpersons of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority. *The chair of the Joint Committee appointed in accordance with this paragraph shall also be appointed Vice-Chair of the ESRB.*
4. The Joint Committee shall adopt and publish its own rules of procedure. The rules may specify further participants of the meetings of the Joint Committee.

The Joint Committee shall meet at least once every two months.

Article 42

Joint positions and common acts

Within the scope of its tasks in Chapter II, and notably with respect to the implementation of Directive 2002/87/EC, where relevant, the Authority shall reach joint positions with the European Insurance and Occupational Pensions Authority and with the European Securities and Markets Authority as appropriate.

Acts under Articles 7, 9, 10, or 11 of this Regulation in relation to the application of Directive 2002/87/EC and of any other **legislative acts** referred to in Article 1(2) that also falls within the area of competence of the European Insurance and Occupational Pensions Authority or the European Securities and Markets Authority shall be adopted by the Authority, the European Insurance and Occupational Pensions Authority, and the European Securities and Markets Authority, as appropriate, in parallel.

Article 43

Sub-committees

1. For the purposes of Article 42, a Sub-Committee on Financial Conglomerates to the Joint Committee shall be established.
2. That Sub-Committee shall be composed of the individuals mentioned in Article 41(1), and one high-level representative from the current staff of the relevant competent authority from each Member State.
3. The Sub-Committee shall elect a Chairperson from amongst its members, who shall also be a member of the Joint Committee.
4. The Joint Committee may establish further Sub Committees.

Section 3

BOARD OF APPEAL

Article 44

Composition

1. The Board of Appeal shall be a joint body of the **three** European **Supervisory Authorities**.
2. The Board of Appeal shall be composed of six members and six alternates, who shall be individuals **of a high repute** with **a proven record of** relevant knowledge and **professional, including supervisory, experience on a sufficiently high level in the field of banking, insurance, securities markets or other financial services**, excluding current staff of the competent authorities or other national or **Union** institutions involved in the activities of the Authority. **A significant number of members of the Board of Appeal shall have sufficient legal expertise to provide expert legal advice on the legality of Authority's exercise of its**

powers.

The Board of Appeal designates its President.

The decisions of the Board of Appeal shall be adopted on the basis of a majority of at least four of its six members. ***Where the appealed decision falls within the scope of this Regulation, this majority of four members shall include at least one of the two members of the Board of Appeal appointed by the Authority.***

The Board of Appeal shall be convened by its President when necessary.

3. Two members of the Board of Appeal and two alternates shall be appointed by the Management Board of the Authority from a short-list proposed by the Commission, following a public call for expression of interest published in the Official Journal of the European Union, and after consultation of the Board of Supervisors.

The other Members shall be appointed in accordance with Regulation (EU) No .../2010 [EIOPA] and Regulation (EU) No .../2010 [ESMA].

4. The term of office of the members of the Board of Appeal shall be five years. This term may be extended once.

5. A member of the Board of Appeal, who was appointed by the Management Board of the Authority, may not be removed during his term of office, unless he has been found guilty of serious misconduct, and the Management Board takes a decision to that effect after consulting the Board of Supervisors.

6. ***The European Banking Authority***, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority shall ensure adequate operational and secretarial support for the Board of Appeal ***through the Joint Committee.***

Article 45

Independence and impartiality

1. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They may not perform any other duties in the Authority, in its Management Board or in its Board of Supervisors.

2. Members of the Board of Appeal may not take part in any appeal proceedings if they have any personal interest therein, or if they have previously been involved as representatives of one of the parties to the proceedings, or if they have participated in the decision under appeal.

3. If, for one of the reasons referred to in paragraph 1 and 2 or for any other reason, a member of a Board of Appeal considers that a fellow member should not take part in any appeal proceedings, the member shall inform the Board of Appeal accordingly.

4. Any party to the appeal proceedings may object to the participation of a member of the Board of Appeal on any of the grounds referred to in paragraph 1 and 2, or if suspected of bias.

An objection may not be based on the nationality of members nor shall it be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has nonetheless taken a procedural step other than objecting to the composition of the Board of Appeal.

5. The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs 1 and 2 without the participation of the member concerned.

For the purpose of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate, unless the alternate finds himself in a similar situation. Should this be the case, the Chairperson shall designate a replacement from among the available alternates.

6. 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 declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence.

Those declarations shall be made public, annually and in writing.

CHAPTER V

REMEDIES

Article 46

Appeals

1. Any natural or legal person, including competent authorities, may appeal against a decision of the Authority referred to in Articles 9, 10 and 11 and any other decision taken by the Authority according to *legislative acts* as referred to in Article 1(2) which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.

2. The appeal, together with the statement of grounds thereof, shall be filed in writing at the Authority within two months of the day of notification of the decision to the person concerned, or, in the absence thereof, of the day on which the Authority has published its decision.

The Board of Appeal shall decide upon the appeal within two months after the appeal has been lodged.

3. An appeal lodged pursuant to paragraph 1 shall not have suspensive effect.

The Board of Appeal may, however, if it considers that circumstances so require, suspend the application of the contested decision.

4. If the appeal is admissible, the Board of Appeal shall examine whether it is well-founded. It shall invite the parties to the appeal proceedings to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make an oral presentation.

5. The Board of Appeal may **confirm the decision taken by the competent body** of the Authority, or remit the case to the competent body of the Authority. That body shall be bound by the decision of the Board of Appeal **and that body shall adopt an amended decision regarding the case concerned.**

6. The Board of Appeal shall adopt and make public its rules of procedure.

7. The decisions taken by the Board of Appeal shall be reasoned and made public by the Authority.

Article 47

Actions before the **General Court** and the Court of Justice

1. An action may be brought before the **General Court** or the Court of Justice, 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 Authority.

1a. Member States and the Union institutions, as well as any natural or legal person, may lodge a direct appeal before the Court of Justice against decisions of the Authority, in accordance with Article 263 TFEU.

2. In the event that the Authority has an obligation to act and fails to take a decision, proceedings for failure to act may be brought before the **General Court** or the Court of Justice in accordance with **Article 265 TFEU**.

3. The Authority shall be required to take the necessary measures to comply with the judgment of the **General Court** or the Court of Justice.

CHAPTER VI

FINANCIAL PROVISIONS

Article 48

Budget of the Authority

1. The revenues of the Authority, *a European body in accordance with Article 185 of Council Regulation No 1605/2002*, shall consist, in particular, of *any combination of the following*:
 - (a) obligatory contributions from the national *public* authorities *competent for the supervision of financial institutions, which shall be made in accordance with a formula based on the weighting of votes set out in Article 3(3) of the Protocol (N° 36) on transitional provisions annexed to the Treaty on European Union and to the TFEU*;
 - (b) a subsidy from the *Union*, entered in the General Budget of the European Union (Commission Section); *the financing of the Authority by the European Union is subject to an agreement by the budgetary authority as provided for in Point 47 of the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management*;
 - (c) any fees paid to the Authority in the cases specified in the relevant instruments of *Union* law.
2. The expenditure of the Authority shall include, at least, staff, remuneration, administrative, infrastructure *professional training* and operational expenses.
3. Revenue and expenditure shall be in balance.
4. Estimates of all Authority revenue and expenditure shall be prepared for each financial year, corresponding to the calendar year, and shall be presented in the budget of the Authority.

Article 49

Establishment of the budget

1. By 15 February each year, the Executive Director shall draw up a draft statement of estimates of revenue and expenditure for the following financial year, and shall forward this preliminary draft budget to the Management Board *and the Board of Supervisors*, together with the establishment plan. Each year, the *Board of Supervisor* shall, on the basis of the preliminary draft drawn up by the Executive Director *and approved of the Management Board*, produce a statement of estimates of revenue and expenditure of the Authority for the following financial year. That statement of estimates, including a draft establishment plan, shall be transmitted by the *Board of Supervisors* to the Commission by 31 March. Prior to adoption of the statement of estimates, the draft prepared by the Executive Director shall be approved by the *Management Board*.
2. The statement of estimates shall be transmitted by the Commission to the European Parliament and to the Council (the 'budgetary authority'), together with the preliminary draft General Budget of the European Union.

3. 3. On the basis of the statement of estimates, the Commission shall enter in the preliminary draft General Budget of the European Union the estimates it deems necessary in respect of the establishment plan and the amount of the subsidy to be charged to the general budget of the European Union in accordance with *Articles 313 and 314 TFEU*.

4. The budgetary authority shall adopt the establishment plan for the Authority. The budgetary authority shall authorise the appropriations for the subsidy to the Authority.

5. The budget of the Authority shall be adopted by the *Board of Supervisors*. It shall become final after the final adoption of the general budget of the European Union. Where necessary, it shall be adjusted accordingly.

6. The Management Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof. If either branch of the budget authority intends to issue an opinion, it shall, within two weeks of receipt of the information on the project, notify the Authority of its intention to issue such an opinion. In the absence of a reply, the Authority may proceed with the planned operation.

6a For the first year of operation of the Authority, ending on 31 December 2011, the budget shall be approved by the Members of the Level 3 Committee, following consultation with the Commission and then transmitted to the European Parliament and the Council for endorsement.

Article 50

Implementation and control of the budget

1. The Executive Director shall act as authorising officer and shall implement the Authority's budget.

2. By 1 March following the completion of each financial year, the Authority accounting officer shall forward to the Commission's accounting officer and to the Court of Auditors the provisional accounts, accompanied by the report on budgetary and financial management during the financial year. The Authority accounting officer shall also send the report on budgetary and financial management to the members of the Board of Supervisors, the European Parliament and the Council by 31 March of the following year.

The Commission's accounting officer shall then consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002¹, (hereinafter referred to as the "Financial Regulation").

3. After receiving the observations of the Court of Auditors on the provisional accounts of the Authority in accordance with the provisions of Article 129 of the Financial Regulation,

¹ OJ L 248, 16.9.2002, p. 1.

the Executive Director, acting on his own responsibility, shall draw up the final accounts of the Authority and transmit them, for opinion, to the Management Board.

4. The Management Board shall deliver an opinion on the final accounts of the Authority.
5. The Executive Director shall transmit those final accounts, accompanied by the opinion of the Management Board, by 1 July following the completion of the financial year, to the Members of the Board of Supervisors, the European Parliament, the Council, the Commission and the Court of Auditors.
6. The final accounts shall be published.
7. The Executive Director shall send the Court of Auditors a reply to the latter's observations by 30 September. He or she shall also send a copy of this reply to the Management Board and the Commission.
8. The Executive Director shall submit to the European Parliament, at the latter's request and as provided for in Article 146(3) of the Financial Regulation, any information necessary for the smooth application of the discharge procedure for the financial year in question.
9. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget (*including all costs and revenues of the Authority*) for the financial year N.

Article 51

Financial rules

The financial rules applicable to the Authority shall be adopted by the Management Board after the Commission has been consulted. Those rules may not depart from Commission Regulation (EC, Euratom) No 2343/2002¹ unless the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission.

Article 52

Anti-fraud measures

1. For the purposes of combating fraud, corruption and any other illegal activity, the provisions of Regulation (EC) No 1073/1999 shall apply to the Authority without any restriction.
2. The Authority shall accede 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

¹ OJ L 357, 31.12.2002, p.72.

(OLAF)¹ and shall immediately adopt appropriate provisions for all staff of the Authority.

3. The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks on the beneficiaries of monies disbursed by the Authority as well as on the staff responsible for allocating these monies.

CHAPTER VII

GENERAL PROVISIONS

Article 53

Privileges and immunities

The Protocol on Privileges and Immunities of the European Communities shall apply to the Authority and its staff.

Article 54

Staff

1. The Staff Regulations, the Conditions of employment of other servants and the rules adopted jointly by the *Union* institutions for the purpose of applying these shall apply to the staff of the Authority, including its Executive Director *and its Chairperson*.

2. The Management Board, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations.

3. In respect of its staff, the Authority shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of employment of other servants.

4. The Management Board shall adopt provisions to allow national experts from Member States to be seconded to the Authority.

Article 55

Liability of the Authority

1. In the case of non-contractual liability, the Authority shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its staff in the performance of their duties. The Court of Justice shall have

¹ OJ L 136, 31.5.1999, p. 15.

jurisdiction in any dispute over the remedying of such damage.

2. The personal financial liability and disciplinary liability of Authority staff towards the Authority shall be governed by the relevant provisions applying to the staff of the Authority.

Article 56

Obligation of Professional Secrecy

1. Members of the Board of Supervisors and the Management Board, the Executive Director, and members of the staff of the Authority including officials seconded by Member States on a temporary basis **and all other persons carrying out tasks for the Authority on a contractual basis** shall be subject to the requirements of professional secrecy pursuant to **Article 339 TFEU** and the relevant provisions in **Union** legislation, even after their duties have ceased.

In accordance with the Staff Regulations referred to in Article 54, the staff shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Member States, Union institutions or bodies, or any other public or private body shall not seek to influence staff members of the Authority.

2. Without prejudice to cases covered by criminal law, any confidential information received by persons referred to in paragraph 1 whilst performing their duties may not be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual financial institutions cannot be identified.

Moreover, the obligation under paragraphs 1 and the first subparagraph of this paragraph shall not prevent the Authority and the national supervisory authorities from using the information for the enforcement of the **legislative acts** referred to in Article 1(2), and in particular for legal proceedings for the adoption of decisions.

3. Paragraphs 1 and 2 shall not prevent the Authority from exchanging information with national supervisory authorities in accordance with this Regulation and other community legislation applicable to financial institutions.

That information shall be subject to the conditions of professional secrecy indicated in paragraphs 1 and 2. The Authority shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

4. The Authority shall apply Commission Decision 2001/844/EC, ECSC, Euratom¹.

Article 57

¹ OJ L 317, 3.12.2001, p.1.

Data protection

This regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Directive 95/46/EC or the obligations of the Authority relating to its processing of personal data under Regulation (EC) No 45/2001 when fulfilling its responsibilities.

Article 58

Access to documents

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Authority.
2. The Management Board shall adopt practical measures for applying Regulation (EC) No 1049/2001 by 31 May 2011.
3. Decisions taken by the Authority pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice, following appeal to the Board of Appeal, as appropriate, in accordance with the conditions laid down in *Articles 228 and 263 TFEU* respectively.

Article 59

Language arrangements

1. The provisions of Council Regulation No 1¹ shall apply to the Authority.
2. The Management Board shall decide on the internal language arrangements for the Authority.
3. The translation services required for the functioning of the Authority shall be provided by the Translation Centre for the Bodies of the European Union.

Article 60

Headquarters Agreement

The necessary arrangements concerning the accommodation to be provided for the Authority in the Member State where its seat is located and the facilities to be made available by that Member State, as well as the specific rules applicable in that Member State to the Executive Director, the members of the Management Board, staff of the Authority and members of their families shall be laid down in a Headquarters Agreement between the Authority and that Member State concluded after obtaining the approval of the Management Board.

¹ OJ L7, 6.10.1958, p. 385.

That Member State shall provide the best possible conditions to ensure proper functioning of the Authority, including multilingual, European-oriented schooling and appropriate transport connections

Article 61

Participation of third countries

1. Participation in the work of the Authority shall be open to countries which are not members of the European Union and which have concluded agreements with the **European Union** whereby they have adopted and are applying **Union** law in the area of competence of the Authority as referred to in Article 1(2).

1a. The Authority may allow participation of third countries applying legislation which has been recognised as equivalent in the areas of competence of the Authority referred to in Article 1(2), as provided for in international agreements concluded by the Union in accordance with Article 216 TFEU.

2. Under the relevant provisions of these agreements, arrangements shall be made specifying, in particular, the nature, scope and procedural aspects of the involvement of these countries in the work of the Authority, including provisions relating to financial contributions and to staff. They may provide for representation, as an observer, on the Board of Supervisors, but shall ensure that these countries do not attend any discussions relating to individual financial institutions, except where there is a direct interest.

CHAPTER VIII

TRANSITIONAL AND FINAL PROVISIONS

Article 62

Preparatory actions

-1. During the period after the entry into force of this Regulation, and before the establishment of the Authority, CEBS shall act in close cooperation with the Commission to prepare for the replacement of CEBS by the Authority.

1. **Once the Authority has been established**, the Commission shall be responsible for the administrative establishment and initial administrative operation of the Authority until the Authority has the operational capacity to implement its own budget.

For that purpose, until such time as the Executive Director takes up **his/her** duties following his appointment by the Board of Supervisors in accordance with Article 36, the Commission may assign one official on an interim basis in order to fulfil the functions of the Executive Directors. **This period shall be limited to the time until the Authority has the**

operational capacity to implement its own budget.

2. The interim Executive Director may authorise all payments covered by credits provided in the budget of the Authority, once approved by the Management Board and may conclude contracts, including staff contracts following the adoption of the Authority's establishment plan.

3. Paragraphs 1 and 2 are without prejudice to the powers of the Board of Supervisors and the Management Board.

3a. The Authority shall be considered the legal successor of CEBS. All eligible assets and liabilities and all pending operations of CEBS may be transferred to the Authority. An independent auditor shall establish a statement showing the closing asset and liability situation of CEBS. This statement shall be audited and approved by members of CEBS and by the Commission before any transfer of assets or liabilities takes place.

Article 63

Transitional Staff provisions

1. By way of derogation from Article 54, all employment contracts ***and secondment agreements*** concluded by ***CEBS*** or its Secretariat and in force on the date of application of this Regulation shall be honoured until their expiry date. They may not be extended.

2. All members of staff under contracts referred to in paragraph 1 shall be offered the possibility of concluding temporary agent contracts under Article 2(a) of the Conditions of Employment of Other Servants at the various grades as set out in the Authority's establishment plan.

An internal selection limited to staff ***of CEBS*** or its Secretariat, ***referred to in paragraph 1***, shall be carried out after the entry into force of this Regulation by the authority authorised to conclude contracts in order to check the ability, efficiency and integrity of those to be engaged. ***The internal selection procedure shall take full account of the skills and experience demonstrated by the individual's performance prior to the engagement.***

3 Depending on the type and level of functions to be performed, successful applicants shall be offered temporary agents' contracts of a duration corresponding at least to the time remaining under the prior contract.

4. The relevant national law relating to labour contracts and other relevant instruments shall continue to apply to staff members with prior contracts who choose not to apply for temporary agent's contracts or who are not offered temporary agents contracts in accordance with paragraph 2.

Article 63a

National provisions

The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

Article 64

Amendments

Decision No **716/2009/EC** is hereby amended insofar as **CEBS** is removed from the list of beneficiaries set out in Section B of the Annex to that Decision

Article 65

Repeal

Commission Decision 2009/78/EC, establishing **CEBS**, is hereby repealed ***with effect from 1 January 2011.***

Article 66

Review clause

-1. By ...¹, the Commission shall submit to the European Parliament and the Council the necessary proposals to strengthen supervision of institutions that may pose a systemic risk referred to in Article 12b and the establishment of a new framework for financial crisis management including funding arrangements.

1. ***By ...^{*} and every three years thereafter,*** the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation. That report shall **■** evaluate, ***inter alia:***

- (a) the convergence in supervisory practices reached by competent authorities;***
- (b) the functioning of the colleges of supervisors;***
- (c) progress achieved towards convergence in the fields of crisis prevention, management and resolution, including European funding mechanisms;***

¹ **** OJ please insert date: six months from the date of entry into force of this Regulation.***

**** OJ please insert date: three years after the date of application of this Regulation.***

- (d) *whether, in particular in light of the progress achieved with regard to the issues referred to in point (c), the role of the Authority in the supervision of financial institutions posing a potential systemic risk should be strengthened and whether it should exercise enhanced supervisory powers over those institutions;*
- (e) *the application of the safeguard clause established in Article 23.*
- 1a. *The report referred to in paragraph 1 shall also examine whether:*
 - (a) *it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets;*
 - (b) *it is appropriate to supervise prudential supervision and the conduct of business separately or by the same supervisor;*
 - (c) *it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the European Supervisory Authorities;*
 - (d) *the evolution of the ESFS is consistent with that of the global evolution;*
 - (e) *there is sufficient diversity and excellence within the ESFS;*
 - (f) *accountability and transparency in relation to publication requirements are adequate;*
 - (g) *it is appropriate to maintain the seat of the Authority in Frankfurt.*
- 2. The report and any accompanying proposals, as appropriate, shall be forwarded to the European Parliament and to the Council.

Article 67

Entry into force

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

It shall apply from 1 January 2011 *with the exception of Article 62 and Article 63(1) and (2), which shall apply as from the date of its entry into force. The Authority shall be established on the date of application of this Regulation.*

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

Done at

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PE441.898v01-00

For the European Parliament

The President

For the Council

The President

Or. en