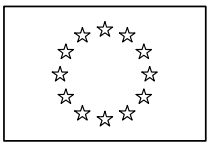

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 23.9.2009
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2009/0142 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European Banking Authority

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EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Experience of the financial crisis has exposed important failures in financial supervision, both in particular cases and in relation to the financial system as a whole. President Barroso therefore requested a group of high level experts, chaired by Mr Jacques de Larosière, to make proposals to strengthen European supervisory arrangements, with the objective of establishing a more efficient, integrated and sustainable European system of supervision. The Group presented its report on 25 February 2009. Building on its recommendations, the Commission set out proposals for a new European financial supervisory architecture in its Communication to the Spring European Council of March 2009. The Commission presented its ideas in more detail in its Communication of May 2009 which proposed:

– Establishing a *European System of Financial Supervisors (ESFS)*, consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities (ESAs), created by transforming the existing European supervisory committees[1] into a European Banking Authority (EBA), a European Insurance and Occupational Pensions Authority (EIOPA), and a European Securities and Markets Authority (ESMA), thereby combining the advantages of an overarching European framework for financial supervision with the expertise of local micro-prudential supervisory bodies that are closest to the institutions operating in their jurisdictions; and

– Establishing a European Systemic Risk Board (ESRB), to monitor and assess potential threats to financial stability that arise from macro-economic developments and from developments within the financial system as a whole. To this end, the ESRB would provide an early warning of system-wide risks that may be building up and, where necessary, issue recommendations for action to deal with these risks.[2]

2. CONSULTATION OF THE INTERESTED PARTIES

Two open consultations were conducted in the development of these proposals. Firstly, following the report of the high-level group chaired by Mr Jacques de Larosière and the publication of the 4 March 2009 Commission Communication, the Commission organised a consultation from 10 March to 10 April 2009 as input to its Communication on Financial Supervision in Europe published on 27 May 2009. A summary of the public submissions received can be found on:

http://ec.europa.eu/internal_market/consultations/docs/2009/fin_supervision/summary_en.pdf

Secondly, from 27 May to 15 July 2009, the Commission organised another consultation round, inviting all interested parties to comment on the more detailed reforms presented in the

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1 These are the Committee of European Banking Supervisors (CEBS), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) and the Committee of European Securities Regulators (CESR).

2 It should be noted that this explanatory memorandum focuses on the proposals to establish the ESFS by transforming the existing European supervisory committees into ESAs. The proposal to establish the ESRB is being discussed in a separate memorandum.

May Communication on Financial Supervision in Europe. The responses received were for the greater part supportive of the suggested reforms, with comments on detailed aspects of the proposed ESRB and ESFS. A summary of the public submissions received can be found on:

http://ec.europa.eu/internal_market/consultations/docs/2009/fin_supervision_may/replies_summary_en.pdf

3. IMPACT ASSESSMENT

The May Commission Communication on Financial Supervision in Europe was accompanied by an impact assessment analysing the main policy options for establishing the ESFS and ESRB. A second impact assessment accompanies these proposals, examining the options in more detail. The second impact assessment report is available on the Commission website.

4. LEGAL ELEMENTS OF THE PROPOSAL

The Court of Justice has acknowledged[3] that Article 95 of the Treaty relating to the adoption of measures for the approximation of legislation for the establishment and functioning of the internal market provides an appropriate legal basis for setting up a "Community body responsible for contributing to the implementation of a process of harmonisation", when the tasks conferred on such a body are closely related to the subject-matter of the acts approximating the national legislations.

The financial and economic crisis has created real and serious risks to the stability 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, and 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. Financial integration and stability are therefore mutually reinforcing. The establishment of the ESFS will be accompanied by the development of a single rule book which will ensure uniform application of rules in the EU and thus contribute to the functioning of the internal market. The task of the ESAs will be to assist the national authorities in the consistent interpretation and application of the Community rules.

As the tasks to be conferred on the Authorities are closely linked to the measures put in place as a response to the financial crisis and to those announced in the Commission Communications of 4 March and 27 May 2009, they can, in line with the Court's case law, be established on the basis of Article 95 of the Treaty.

Community action can address the weaknesses highlighted by the crisis and provide a system that is in line with the objective of a stable and single EU financial market for financial services – linking up national supervisors into a strong Community network. However, the focal point for day-to-day supervision will remain at the national level, with national supervisors remaining responsible for the supervision of individual entities. In this way, the provisions do not go beyond what is strictly necessary to achieve the objectives pursued. The

[3] See CJCE, C-217/04, pt. 44.

proposals are therefore in accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty.

5. BUDGETARY IMPLICATIONS

For the transformation of the existing European supervisory committees into effective ESAs, enhanced resources are needed - both personnel and budgetary. An overview of the budgetary implications of these proposals is presented in the impact assessment report and accompanying legislative financial statements (attached to this proposal).

6. DETAILED EXPLANATION OF THE PROPOSAL

In order to take account of sectoral specificities, three separate Regulations are needed to establish the Authorities for banking, insurance and occupational pensions, and securities. The broad thrust of these proposals is however identical. This memorandum therefore first discusses the common elements and briefly touches upon the differences between the three Regulations.

6.1. Establishment of the ESAs and their legal status

The objective of the ESAs shall be to contribute to: (i) improving the functioning of the internal market, including in particular a high, effective and consistent level of regulation and supervision, (ii) protecting depositors, investors, policyholders and other beneficiaries, (iii) ensuring the integrity, efficiency and orderly functioning of financial markets, (iv) safeguarding the stability of the financial system, and (v) strengthening international supervisory coordination. For this purpose, each ESA shall contribute to ensuring the coherent, efficient and effective application of the relevant Community law.

The ESAs will be Community bodies with a legal personality and a key element of the proposed ESFS. The latter shall function as a network of supervisors and comprise the national authorities in the Member States, a Joint Committee of European Supervisory Authorities, to cover cross-sectoral issues, and the European Commission. While the ESAs should enjoy maximum independence to objectively fulfil their mission, the Commission has to be involved where institutional reasons and the responsibilities under the Treaty so require.

The main decision-making body of each ESA will be its Board of Supervisors, consisting of the heads of the relevant national supervisors as well as the Chairperson of the respective Authority. The Chairperson will preside over meetings of the Board of Supervisors and the Management Board, and act as the head and representative of the Authority. The day-to-day management of each Authority will be in the hands of an Executive Director. As for the location of the new ESAs, it is proposed to maintain the present place of residence of the existing European committees of supervisors, as this allows for a fast and effective transition to the new regime. Section 6.3 discusses the internal organisation of the ESAs in more detail.

6.2. Tasks and powers of the ESAs

The ESAs will take on all the tasks of the existing European supervisory committees, but in addition have significantly increased responsibilities, defined legal powers and greater authority, as set-out in the Commission Communication of 27 May 2009 and agreed upon by the European Council of 18-19 June 2009.

6.2.1. Develop technical standards

The European Council endorsed the Commission's proposal that a single EU rule book should be established, applicable to all financial institutions in the Single Market. To this end, differences in the national transposition of Community law stemming from exceptions, derogations, additions or ambiguities must be identified and removed, so that one harmonised core set of standards can be defined and applied. To contribute to this, the Authorities will, in areas specified in the relevant sectoral legislation, develop draft technical standards. These standards constitute an effective instrument to strengthen Level 3 of the Lamfalussy structure, which currently is limited to the adoption of non-binding guidelines. The areas where the Authority may develop such draft standards concern issues of a highly technical nature where uniform conditions for the application of Community legislation are needed. These matters do not involve policy decisions and their content is tightly framed by the Community acts adopted at Level 1 (see the accompanying Commission Staff Working Paper for a detailed discussion on the necessary changes to the relevant Community legislation). Development of the standards by the ESAs ensures that they benefit in full from the specialised expertise of national supervisors.

The draft technical standards will be adopted by the Authority on the basis of qualified majority of the members of the Boards of Supervisors, as defined in Article 205 of the Treaty. The Community legal order requires the Commission to subsequently endorse these draft standards in the form of regulations or decisions so as to give those direct legal effects. In very exceptional cases, and only for reasons of Community interest, the Commission may decide to endorse the standards in part, or with amendments, or not at all, the reasons for which it has to make available to the Authority. The Commission's proposal is without prejudice to discussions on future procedures in the context of the transition to a new Treaty.

For the purpose of consultation with stakeholders, a Stakeholder Group will be established for each ESA, consisting of representatives of the industry, financial sector employees and users of financial services. The relative proportions of each should be balanced and no one group should dominate over the others. In those areas not covered by the technical standards, the ESAs shall, like the existing European supervisory committees, have the possibility to issue non binding guidelines and recommendations to national supervisory authorities and financial institutions and market participants. If in any specific case authorities choose not to comply with the guidelines and recommendations it should explain its decision to the Authority.

6.2.2. Powers to ensure the consistent application of Community rules

Even with a single set of harmonised rules, the application of these rules may, in occasional cases, lead to differences of opinion on the application of Community legislation. Without prejudice to the initiation of infringement proceedings by the Commission against Member States, the ESAs should therefore have a general power to contribute to ensuring coherent application of Community legislation. To this end, a mechanism should be put in place to address behaviour by national supervisory authorities who are considered to be diverging from the existing Community legislation (including the technical standards discussed in 6.2.1). This mechanism consists of three different steps:

First, the ESAs, on their own initiative or upon request from one or more national supervisors or from the Commission, would investigate these cases and, where necessary, adopt a recommendation for action addressed to the supervisory authority. Within the general duty of

compliance with Community legislation the supervisory authority would be called to comply with the recommendation within one month.

Second, if the recommendation is not complied with, the European Commission may, after being informed by the ESA or on its own initiative, take a decision, requiring the national supervisory authority to either take specific action or to refrain from an action. The latter shall, within ten working days of receipt of the decision, inform the Commission and the ESA of the steps it has taken or intends to take to implement this decision.

Third, in the exceptional situation that the supervisory authority does not comply with the latter, the ESAs may as a last resort adopt a decision addressed to financial institutions in respect to Community law which is directly applicable to them (i.e. Regulations). This is without prejudice to the Commission's powers to enforce its own decision.

6.2.3. Action in emergency situations

The ESAs shall fulfil an active coordination role between national supervisory authorities, in particular in case of adverse developments which potentially jeopardise the orderly functioning and integrity of the financial system in the EU. However, in some emergency situations, coordination may not be sufficient, notably when national supervisors alone lack the tools to respond rapidly to an emerging cross-border crisis. The ESAs should therefore, in such exceptional circumstances, have the power to require national supervisors to jointly take specific action. The determination of a cross-border emergency situation involves a degree of appreciation, and should therefore be left to the European Commission. This is subject to the safeguard clause (see 6.2.11). In parallel, work should be accelerated to build a comprehensive cross-border framework to strengthen the European Union's financial crisis management/resolution systems, including guarantee schemes and burden sharing.

6.2.4. Settlement of disagreements between national supervisory authorities

A mechanism is proposed to ensure that relevant national supervisory authorities take due account of the interests of other Member States, including within colleges of supervisors. If a supervisory authority disagrees on the procedure or content of an action or inaction by another supervisory authority where the relevant legislation requires cooperation, coordination or joint decision making, the Authority, at the request of the supervisory authority concerned, may assist the authorities in reaching a common approach or settle the matter. This mechanism consists of three possible steps[4]:

First, if one or more national supervisory authorities request the ESA to assist in resolving such disagreements, it may first set a phase of conciliation between the authorities to try to reach agreement among themselves, with the involvement of the Authority as necessary in a mediatory capacity.

Second, if, after a phase of conciliation, they have not been able to reach such an agreement, the ESAs may, through a decision, settle the matter.[5] However, this would clearly be

[4] See the accompanying Staff Working Paper for additional information on the dispute settlement mechanism.

[5] The settlement competence is without prejudice to Article 9, which focuses on situations of non-compliance with Community law by a competent national supervisory authority.

exceptional as in most cases the respective national authorities should be able to come to an agreement in the preceding conciliation procedure.

Third, in case of non-compliance by a supervisory authority with the previous decision, the Authority may also decide to adopt decisions addressed to financial institutions specifying their obligations in respect of Community law which is directly applicable to financial institutions.

It should be stressed that the dispute settlement mechanism should only address material issues, e.g. cases where action or inaction by a supervisory authority has a serious detrimental impact on the ability of a supervisory authority to protect the interest of depositors, policy holders, investors, or persons to whom services are provided in one or several other Member States, or on the financial stability of these Member States. The Authority reserves the right not to launch a settlement procedure or adopt any decision where such requirements are not fulfilled. These arrangements are subject to the safeguard clause (see 6.2.11).

6.2.5. Colleges of supervisors

Colleges of supervisors are central to the EU supervisory system and play an important role in ensuring a balanced flow of information between home and host authorities. The ESAs will contribute to promoting the efficient and consistent functioning of colleges of supervisors and monitoring the coherence of the implementation of Community legislation across colleges. Against this background, the ESAs may participate as observers in colleges of supervisors and receive all relevant information shared between the members of the college.

6.2.6. Common supervisory culture, delegation of tasks and responsibilities and peer reviews

The ESAs shall play an active role in building a common European supervisory culture and ensuring uniform procedures and consistent supervisory practices throughout the Community. In combination with the mechanism to settle disagreements between national supervisory authorities, the common supervisory culture should help build trust and cooperation, and may increasingly create opportunities for supervisors to delegate certain tasks and responsibilities to one another. The ESAs shall facilitate this by identifying tasks and responsibilities which can be delegated or jointly exercised as well as by promoting best practices. In this respect, the Authority shall encourage and facilitate the set-up of joint supervisory teams. Moreover, the ESAs shall periodically conduct peer review analysis of national supervisory authorities.

6.2.7. Assessment of market developments

One of the new tasks assigned to the existing European supervisory committees in the revised Commission Decisions adopted on 23 January 2009 is the monitoring, assessing and reporting on trends, potential risks and vulnerabilities in the banking, insurance and securities sector. Although the proposed ESRB will be responsible for macro-prudential analysis of the EU financial sector, the ESAs should continue the work of the existing European supervisory committees in this area as: (i) the focus of their analysis is different, i.e., micro-prudential analysis provides a bottom-up analysis, rather than macro-prudential analysis which is top-down, and (ii) their analysis may serve as helpful input into the work carried-out by the ESRB.

6.2.8. International and advisory role

Through these proposals the Commission is clearly responding to the weaknesses identified during the crisis as well as to the G20 call to take action to build a stronger, more globally consistent, regulatory and supervisory system for financial services. The ESAs could serve as helpful contact points for supervisory authorities from third countries. In this context, they may, without prejudice to the competences of the European Institutions, enter into administrative arrangements with international organisations and the administrations of third countries. The ESAs may also assist in preparing equivalence decisions pertaining to supervisory regimes in third countries. Moreover, the ESAs may, upon request or on their own initiative, provide advice to the European Parliament, the Council and the Commission or publish opinions, including with respect to the prudential assessments of cross-border mergers and acquisitions. The latter should provide for additional safeguards to ensure a sound and objective assessment of future cross-border mergers or acquisitions.

6.2.9. Collection of information

At the request of the Authority, supervisory authorities and other public 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. Moreover, the Authority shall, in collaboration with the supervisors operating in colleges of supervisors, define and collect as appropriate all relevant information from supervisory authorities, in order to facilitate the work of colleges of supervisors. It shall establish and manage a central system to make such information accessible to the supervisory authorities in colleges of supervisors. In principle, all information should be transferred to the ESAs by the national supervisory authorities.

6.2.10. Relationship with the ESRB

The proposed framework for EU supervision can only work if the ESRB and ESFS cooperate closely. Indeed, the objective of the reform is to ensure a smoother interaction of supervision at the macro-prudential and micro-prudential levels. In fulfilling its role as macro-prudential supervisor, the ESRB would need a timely flow of micro-prudential information, while micro-prudential supervision by national authorities would benefit from the ESRB's insights on the macro-prudential environment. The Regulations also specify the procedures to be followed by the ESAs to act upon recommendations by the ESRB and how the ESAs should use their powers to ensure timely follow-up to recommendations addressed to one or more national supervisory authorities.

6.2.11. Safeguard

In line with the Ecofin and European Council conclusions of June 2009, which stress that, without prejudice to the application of Community law and recognising the potential or contingent liabilities that may be involved for Member States, decisions by the ESAs should not impinge on the fiscal responsibilities of the Member States, a safeguard clause is introduced. This clause ensures that, where a Member State considers that a decision taken under Article 10 (i.e. emergency decisions) or 11 (i.e. settlement of disagreements) of these Regulations impinges on its fiscal responsibility, it may notify the Authority and the Commission that the national supervisory authority does not intend to implement the Authority's decision, clearly demonstrating how the decision by the Authority impinges on its fiscal responsibilities. Within a period of one month the Authority shall inform the Member State as to whether it maintains its decision or whether it amends or revokes it. Where the

Authority maintains its decision, the Member State may refer the matter to the Council and the decision of the Authority is suspended. The Council shall, within two months, decide whether the decision should be maintained or revoked, acting by qualified majority. For Authority decisions adopted under Article 10, an expedited procedure applies to take into account the need for rapid decisions in emergency circumstances.

6.3. The internal organisation of the ESAs and the ESFS

Each ESA shall comprise: (i) a Board of Supervisors; (ii) a Management Board; (iii) a Chairperson; and (iv) an Executive Director. Moreover, a single Board of Appeal should be established for all three ESAs.

6.3.1. Board of Supervisors

The Board of Supervisors is the main decision making body of the ESAs and will among other things be responsible for the adoption of the draft technical standards, opinions, recommendations, and decisions described in section 6.2 of this explanatory memorandum. The Board of Supervisors shall be composed of:

– the Chairperson of the respective ESA, who will chair the meetings of the Board, but shall be non-voting;

– the Head of the relevant national supervisory authority in each Member State;

– one representative of the Commission who shall be non-voting;

– one representative of the ESRB who shall be non-voting;

– one representative of each of the other two European Supervisory Authorities who shall be non-voting, and

– where relevant, the Board may decide to admit observers.

As a rule, decisions by the Board will be taken by simple majority, except for those decisions pertaining the setting of draft technical standards and guidelines and decisions in relation to the articles on financial provisions, for which qualified majority voting will be used. The Board may set up panels for dispute settlement. However, the final decision is adopted by the Board of Supervisors on proposal from this panel.

6.3.2. Management Board

The Management Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it. In particular, it should be responsible for preparing the Authority's work programme, adopting the rules of procedure, and play a central role in the adoption of its budget. It will be composed of the ESA's Chairperson, a representative of the Commission, and four members elected by the Board of Supervisors among its members, who shall act independently and objectively in the Community interest. The Executive Director may participate in meetings of the Management Board without the right to vote.

6.3.3. Chairperson and Executive Director

The ESA shall be represented by a full-time independent Chairperson, who shall be responsible for preparing the work of the Board of Supervisors as well as chairing both the meetings of the Board of Supervisors and the Management Board. The day-to-day activities of the ESAs shall however be managed by an Executive Director, who, similarly to the Chairperson, shall be a full-time independent professional. He or she shall be responsible for the implementation of the annual work programme and take the necessary measures to ensure the functioning of the ESA. Both persons shall be selected 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. The candidate selected by the Board of Supervisors for the position of Chairperson shall be subject to confirmation by the European Parliament. The term of both offices shall be five years and may be extended once. Such extension would depend on the outcome of an evaluation executed by the Board of Supervisors.

6.3.4. Joint Committee of European Supervisory Authorities

Within the proposed structure, cross-sectoral cooperation will be fundamental so as to reflect the relevant market trends and realities. A Joint Committee of European Supervisory Authorities will ensure mutual understanding, cooperation and consistent supervisory approaches between the three new ESAs. A Subcommittee to the Joint Committee shall be established to specifically address cross-sectoral issues, including financial conglomerates, and ensuring a level playing field. While the actual decisions on, for example the Financial Conglomerates Directive, are being taken by the individual ESAs, the Joint Committee should ensure that common decisions are taken by the ESAs in parallel.

6.3.5. Board of Appeal

An appeal system will ensure that any natural or legal person, including national supervisory authorities, may in first instance appeal to a Board of appeal against a decision by the ESAs to ensure the coherent application of Community rules (Article 9), action in emergency situations (Article 10), and the settlement of disagreements (Article 11). The Board of Appeal shall be a joint body of three ESAs, i.e., it will deal with issues related to banking, insurance and securities. The Board of Appeal will have six members and six alternates with relevant knowledge and experience, excluding current staff of the national supervisory authorities or other national or Community institutions involved in the activities of the Authority. Two members of the Board of Appeal and two alternates shall be appointed by the Management Board of each ESA from a short-list proposed by the European Commission.

6.4. Financial provisions

These provisions deal with the budgetary aspects of the ESAs and stress that the revenues of the Authorities may stem from different sources, e.g. obligatory contributions from the national supervisory authorities , a subsidy from the Community or fees paid by the industry to the Authority. It also specifies the procedures for the annual establishment, the implementation and control of the budget. The Framework Financial Regulation for bodies established under Article 158 of the Financial Regulation shall apply.

6.5. General and final provisions

The general provisions set out practical issues related to staffing, liability of the ESAs, professional secrecy obligations, data protection, access to documents, language arrangements, headquarter agreements and participation of third countries. Within three years from the effective start of operations and every three years thereafter, the Commission shall publish a report on the functioning of the ESAs and the procedures laid down in the Regulation. This report will also evaluate progress achieved towards regulatory and supervisory convergence in the fields of crisis management and resolution in the EU.

6.6. Key differences between the three Regulations

The main differences between the three proposed Regulations concern the objectives of the Authorities, the scope of action, and the definitions, which are adapted to the specificities of the relevant sector and existing Community legislation. Moreover, the European Council concluded that the ESAs should also have supervisory powers for credit rating agencies. ESMA would be responsible to register credit rating agencies. ESMA would also be empowered to take supervisory measures such as withdrawing the registration or suspending the use for regulatory purposes of credit ratings. Supervisory powers could include the power to request information and to conduct investigations or on-site inspections. The responsibilities and powers of ESMA with regard to credit rating agencies will be defined in an amendment to the Regulation on Credit Rating Agencies.

2009/0142 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European Banking Authority

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission[6],

Having regard to the opinion of the European Economic and Social Committee[7],

Having regard to the opinion of the Committee of the Regions[8],

Having regard to the opinion of the ECB,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[9],

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 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 Community law and trust between national supervisors.

(2) A report published on 25 February 2009 by a high-level group of experts chaired by J. de Larosière, 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 far-reaching reforms to the structure of supervision of the financial sector in the Community. 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.

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6 OJ C , , p. .
7 OJ C , , p. .
8 OJ C , , p. .
9 OJ C , , p. .

(3) The Commission in its Communication of 4 March 2009 entitled "Driving European Recovery"[10] proposed to bring forward draft legislation creating a European System of Financial Supervisors and a European Systemic Risk Board, and in its Communication of 27 May 2009 entitled "European Financial Supervision"[11] provided more detail about the possible architecture of such a new supervisory framework.

(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.

(5) The financial and economic crisis has created real and serious risks to the stability 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 Community has reached the limits of what can be done with the present status of the Committees of European Supervisors, which remain advisory bodies to the Commission. The Community 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 Supervisors should be designed to overcome these deficiencies and provide a system that is in line with the objective of a stable and single Community financial market for financial services, linking national supervisors into a strong Community network.

(7) The European System of Financial Supervisors should be a network of national and Community supervisory authorities, leaving day-to-day supervision of financial institutions at the national level, and according a central role in the supervision of cross-border groups to colleges of supervisors. Greater harmonisation and the coherent application of rules for financial institutions and markets across the Community should also be achieved. A European Banking Authority should be established, along

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[10] COM(2009) 114.

[11] COM(2009) 252.

with a European Insurance and Occupational Pensions Authority and a European Securities and Markets Authority (the European Supervisory Authorities).

(8) The European Supervisory Authorities should replace the Committee of European Banking Supervisors established by Commission Decision 2009/78/EC[12], the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2009/79/EC[13] and the Committee of European Securities Regulators established by Commission Decision 2009/77/EC[14] , and assume all of the tasks and competences of those committees. The scope of each Authority's action should be clearly defined. Where institutional reasons and the responsibilities assigned in the Treaty so require, the Commission should also be part of the network of supervisory activities.

(9) The European Banking Authority ("the Authority") should act with a view to improving the functioning of the internal market, including in particular by ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States, to protect depositors and investors, to ensure the integrity, efficiency and orderly functioning of financial markets, to safeguard the stability of the financial system, and to strengthen international supervisory coordination, for the benefit of the economy at large, including financial institutions and other stakeholders, consumers and employees. In order to be able to fulfil its objectives, it is necessary and appropriate that the Authority should be a Community body having legal personality and it should have legal, administrative and financial autonomy.

(10) The Court of Justice of the European communities in its judgement of 2 May 2006 in Case C-217/04 (United Kingdom/European Parliament and Council)[15] has acknowledged that Article 95 of the Treaty relating to the adoption of measures for the approximation of legislation for the establishment and functioning of the internal market provides an appropriate legal basis for setting up a "Community body responsible for contributing to the implementation of a process of harmonisation", when the tasks conferred on such a body are closely related to the subject-matter of the acts approximating the national legislations. The purpose and tasks of the Authority - assisting competent national supervisory authorities in the consistent interpretation and application of Community rules and contributing to financial stability necessary for financial integration - are closely linked to the objectives of the Community acquis concerning the internal market for financial services. The Authority should therefore be established on the basis of Article 95 of the Treaty.

(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 institutions[16], Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the

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12 OJ L 24, 29.1.2009, p.23.
13 OJ L 25, 29.1.2009, p.28.
14 OJ L 25, 29.1.2009, p.18.
15 pt. 44 –not yet published.
16 OJ L 177, 30.6.2006, p. 1.

capital adequacy of investment firms and credit institutions[17] and Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes[18].

(12) Existing Community 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 conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC and 93/22/EEC, and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council[19], 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 financing[20], and Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services[21].

(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 Community. 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.

(14) There is a need to introduce an effective instrument to establish harmonised 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 Europe. As a body with highly specialised expertise, it is efficient and appropriate to entrust the Authority, in areas defined by Community law, with the elaboration of draft technical standards, which do not involve policy choices. The Commission should endorse those draft technical standards in accordance with Community law in order to give them binding legal effect. The draft technical standards have to be adopted by the Commission. They would be subject to amendment if, for example, the draft technical standards were incompatible with Community 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 Community financial services legislation. To ensure a smooth and expedited adoption process for those standards, the Commission should be subject to a time limit for its decision on the endorsement.

(15) The process for the development of technical standards in this regulation is without prejudice to the Commission's powers to adopt on its own initiative implementing measures under comitology procedures at level 2 of the Lamfalussy structure as laid out in the relevant Community legislation. The matters concerned by the technical standards do not involve policy decisions, and their content is framed by the Community acts adopted at Level 1. Development of the draft standards by the

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17 OJ L 177, 30.6.2006, p. 201.
18 OJ L 135, 31.5.1994, p. 5.
19 OJ L 35, 11.2.2003, p. 1.
20 OJ L 309, 25.11.2005, p. 15.
21 OJ L L 271, 9.10.2002, p. 16

Authority ensures that they fully benefit from the specialised expertise of national supervisory authorities.

(16) In areas not covered by technical standards, the Authority should have the power to issue non-binding guidelines and recommendations on the application of Community legislation. In order to ensure transparency and strengthen compliance by national supervisory authorities with those guidelines and recommendations, national authorities should be obliged to state their reasons where they do not comply with those guidelines and recommendations.

(17) Ensuring the correct and full application of Community law is a core prerequisite for the integrity, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial institutions in the Community. A mechanism should therefore be established whereby the Authority addresses instances of incorrect or insufficient application of Community law. This mechanism should apply in areas where Community legislation defines clear and unconditional obligations

(18) To allow for a proportionate response to instances of incorrect or insufficient application of Community law, a three-step mechanism should apply. At a first level, the Authority should be empowered to investigate alleged incorrect or insufficient application of Community law obligations by national authorities in their supervisory practice, concluded by a recommendation.

(19) Where the national authority does not comply with the recommendation, the Commission should be empowered to address a Decision to the national supervisory authority concerned in order to ensure compliance with Community law, creating direct legal effects which can be invoked before national courts and authorities and enforced under Article 226 of the Treaty.

(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 decisions addressed to it and in which Community law is directly applicable to financial institutions by virtue of existing or future EU Regulations.

(21) Serious threats to the orderly functioning and integrity of financial markets or the stability of the financial system in the Community require a swift and concerted response at Community level. The Authority should therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. As the determination of an emergency situation involves a significant degree of discretion, this power should be conferred on the Commission. To ensure an effective response to the emergency situation, in the event of inaction by the competent national supervisory authorities, 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 aimed at mitigating the effects of the crisis and restoring confidence in the markets.

(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. The Authority's competence should cover disagreements on procedural obligations in the cooperation process as well as on the interpretation and application of Community law in supervisory decisions. Existing conciliation mechanisms provided for in sectoral legislation have to be respected. 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.

(23) Colleges of supervisors play an important role in the efficient, effective and consistent supervision of financial institutions operating across borders. The Authority should 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 Community law.

(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. The 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, shall be able to decide upon a certain supervisory matter in its name in lieu 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 can 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 Community legislation may further specify the principles for reallocation of responsibilities upon agreement. The Authority should facilitate 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.

(25) The Authority should actively foster supervisory convergence across the Community 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.

(27) The Authority should actively promote a coordinated Community supervisory response, in particular where adverse developments could potentially jeopardise the

orderly functioning and integrity of financial markets or the stability of the financial system in the Community. In addition to its powers for action in emergency situations, it should therefore be entrusted with a general coordination function within the European System of Financial Supervisors. 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 European Systemic Risk Board on a regular and, as necessary, ad hoc basis. The Authority should also coordinate Community-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

(29) Given the globalisation of financial services and the increased importance of international standards, the Authority should foster the dialogue and cooperation with supervisors outside the Community. It shall fully respect the existing roles and competences of the European Institutions in relations with authorities outside the Community and in international forums.

(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, amended by 2007/44/EC[22].

(31) In order to effectively carry out its duties, the Authority should have the right to request all necessary information. 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. However, the Authority should have the power to request information directly from financial institutions and other parties 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.

(32) Close cooperation between the Authority and the European Systemic Risk Board is essential to give full effectiveness to the functioning of the European Systemic Risk Board and the follow-up to its warnings and recommendations. The Authority should share any relevant information with the European Systemic Risk Board. Data related to individual undertakings should be provided only upon reasoned request. Upon receipt of warnings or recommendations addressed by the European Systemic Risk Board to the Authority or a national supervisory authority, the Authority should ensure follow-up.

(33) Where appropriate, the Authority should consult interested parties on technical standards, guidelines and recommendations and provide them with a reasonable opportunity to comment on proposed measures. For reasons of efficiency, a Banking

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[22] OJ L 247, 21.9.2007, p.1.

Stakeholder Group should be established for that purpose, representing in balanced proportions Community credit and investment institutions (including as appropriate institutional investors and other financial institutions which themselves use financial services), their employees, and consumers and other retail users of banking services, including SMEs. The Banking Stakeholder Group should actively work as an interface with other user groups in the financial services area established by the Commission or Community legislation.

(34) Member States have a core responsibility in preserving financial stability in crisis management, in particular with regard to stabilising and resolving individual ailing financial institutions. 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.

(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 Community 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 European Systemic Risk Board, the European Central Bank and the other two European Supervisory Authorities should participate as observers. Members of the Board of Supervisors should act independently and only in the Community's interest. For acts of a general nature, including those related to the adoption of technical standards, guidelines and recommendations as well as budgetary matters, it is appropriate to apply the rules on qualified majority as laid down in the Treaty, 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.

(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 Board of Supervisors through an open competition, 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 in a Joint

Committee of European Supervisory Authorities and reach common positions where appropriate. The Joint Committee of European Supervisory Authorities should assume all of the functions of the Joint Committee on Financial Conglomerates. Where relevant, acts also falling within the area of competence of the European Insurance and Occupational Pensions Authority or the European Securities and Markets Authority should be adopted in parallel by the European Supervisory Authorities concerned.

(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. The Community budgetary procedure should be applicable as far as the Community contribution is concerned. The auditing of accounts should be undertaken by the Court of Auditors.

(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)[23] 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)[24].

(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 Communities[25] should apply to the staff of the Authority.

(44) It is essential that business secrets and other confidential information are protected. The confidentiality of information exchanged in the network should likewise be safeguarded.

(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 data[26] 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

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23 OJ L 136, 31.5.1999, p. 1.
24 OJ L 136, 31.5.1999, p. 15.
25 O.J. L 56, 04.03.1968, p.1
26 OJ L 281, 23.11.1995, p. 31.

Community institutions and bodies and on the free movement of such data[27], 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 documents[28] 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 Community.

(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 Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 …/…/EC of the European Parliament and of the Council establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing, should be amended accordingly.

(50) It is appropriate to set a time limit for the application of this Regulation in order to 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 Banking Authority ("the Authority").

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[27] OJ L 8, 12.1.2001, p. 1.
[28] OJ L 145, 31.5.2001, p. 43.

2. The Authority shall act within the scope of Directive 2006/48/EC, Directive 2006/49/EC, Directive 2002/87/EC, Directive 2005/60/EC, Directive 2002/65/EC and Directive 94/19/EC, including all directives, regulations, and decisions based on these acts, and of any further Community act which confers tasks on the Authority.

3. The provisions of this Regulation are without prejudice to the powers of the Commission, in particular under Article 226 of the Treaty to ensure compliance with Community law.

4. The objective of the Authority shall be to contribute to: (i) improving the functioning of the internal market, including in particular a high, effective and consistent level of regulation and supervision, (ii) protecting depositors and investors, (iii) ensuring the integrity, efficiency and orderly functioning of financial markets, (iv) safeguarding the stability of the financial system, and (v) strengthening international supervisory coordination. For this purpose, the Authority shall contribute to ensuring the consistent, efficient and effective application of the Community law referred to in Article 1(2) above, fostering supervisory convergence and providing opinions to the European Parliament, the Council, and the Commission.

5. The Authority shall form part of a European System of Financial Supervisors, hereinafter referred to as 'ESFS', which shall function as a network of supervisors, as further specified in Article 39.

6. The European Banking Authority shall co-operate with the European Systemic Risk Board, hereinafter referred to as 'ESRB' as laid down in Article 21 of this Regulation

Article 2
Definitions

For the purposes of this Regulation the following definitions apply:

(1) 'financial institutions' means 'credit institutions' as defined in Directive 2006/48/EC, 'investment firms' as defined in Directive 2006/49/EC, and 'financial conglomerates' as defined in Directive 2002/87/EC;

(2) 'competent authorities' means competent authorities as defined in Directives 2006/48/EC and 2006/49/EC and, where deposit guarantee schemes are concerned, bodies which administer deposit-guarantee schemes pursuant to Directive 94/19/EC.

Article 3
Legal status

1. The Authority shall be a Community 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
Seat

The Authority shall have its seat in London.

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) contribute to the establishment of high quality common regulatory and supervisory standards and practices, in particular by providing opinions to the Community institutions and by developing guidelines, recommendations, and draft technical standards which shall be based on the legislation referred to in Article 1(2);

(b) contribute to a consistent application of Community legislation, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the legislation referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, promoting a coherent functioning of colleges of supervisors and taking actions in emergency situations;

(c) facilitate the delegation of tasks and responsibilities between competent authorities;

(d) cooperate closely with the ESRB, in particular by providing the ESRB with the necessary information for the achievement of its tasks and by ensuring a proper follow up to the warnings and recommendations of the ESRB;

(e) conduct peer review analysis of competent authorities, to strengthen consistency in supervisory outcomes;

(f) monitor and assess market developments in the area of its competence;

(g) fulfil any other specific tasks set out in this Regulation or in the Community legislation referred to in Article 1(2).

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 technical standards in the specific cases referred to in Article 7;

(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 Article 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 in Article 19.

3. The Authority shall execute any exclusive supervisory powers over entities with Community-wide reach or economic activities with Community-wide reach entrusted to it in the legislation referred to in Article 1(2).

For that purpose, the Authority shall have appropriate powers of investigation and enforcement as specified in the relevant legislation, as well as the possibility of charging fees.

Article 7
Technical standards

1. The Authority may develop technical standards in the areas specifically set out in the legislation referred to in Article 1(2). The Authority shall submit its draft standards to the Commission for endorsement.

Before submitting them to the Commission, the Authority shall, where appropriate, conduct open public consultations on technical standards and analyse the potential related costs and benefits.

Within three months of receipt of the draft standards, the Commission shall decide whether to endorse the draft 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 Community interest so requires.

Where the Commission does not endorse the standards or endorses them in part or with amendments, it shall inform the Authority of its reasons.

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

Article 8
Guidelines and recommendations

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 Community legislation, issue guidelines and recommendations addressed to competent authorities or financial institutions.

The competent authorities shall make every effort to comply with those guidelines and recommendations.

Where the competent authority does not apply those guidelines or recommendations it shall inform the Authority of its reasons.

Article 9
Consistent application of Community rules

1. Where a competent authority has not correctly applied the legislation referred to in Article 1(2), in particular by failing to ensure that a financial institution satisfies the requirements laid down in that legislation, the Authority shall have the powers set out in paragraphs 2, 3 and 6 of this Article.

2. Upon request from one or more competent authorities, from the Commission or on its own initiative and after having informed the competent authority concerned, the Authority may investigate the alleged incorrect application of Community law.

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

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 Community law.

   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 Community law.

4. Where the competent authority has not complied with Community 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, take a decision requiring the competent authority to take the action necessary to comply with Community law.

   The Commission shall take such a decision no later than three months from the adoption of the recommendation. The Commission may extend this period by one month.

The Commission shall ensure that the right to be heard of the addressees of the decision is respected.

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 decision referred to in paragraph 4, inform the Commission and the Authority of the steps it has taken or intends to take to implement the Commission's decision.

6. Without prejudice to the powers of the Commission under Article 226 of the Treaty, where a competent authority does not comply with the decision referred to in paragraph 4 of this Article within the period of time specified therein, and where it is necessary to remedy in a timely manner the non compliance by the competent authority 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 legislation 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 Community law including the cessation of any practice.

The decision of the Authority shall be in conformity with the decision adopted 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.

Any action by the competent authorities in relation to facts which are subject to a decision pursuant to paragraph 4 or 6 shall be compatible with those decisions.

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 Community, the Commission, upon its own initiative or following a request by the Authority, the Council, or the ESRB, may adopt a decision addressed to the Authority, determining the existence of an emergency situation for the purposes of this regulation.

2. Where the Commission has adopted a decision pursuant to paragraph 1, the Authority may adopt individual decisions requiring competent authorities to take the necessary action in accordance with the legislation referred to in Article 1(2) to address any risks that may jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system 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 226 of the Treaty, 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 legislation 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 legislation referred to in Article 1(2) requires cooperation, coordination or joint decision making by competent authorities from more than one Member State, the Authority, at the request of one or more of the competent authorities concerned, may assist the authorities in reaching an agreement in accordance with the procedure set out in paragraph 2.

2. The Authority shall set a time limit for conciliation between the competent authorities taking into account any relevant time periods specified in the legislation referred to in Article 1(2) and the complexity and urgency of the matter.

3. If, at the end of the conciliation phase, the competent authorities concerned have failed to reach an agreement, the Authority may take a decision requiring them to take specific action or to refrain from action in order to settle the matter, in compliance with Community law.

4. Without prejudice to the powers of the Commission under Article 226 of the Treaty, 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 legislation 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.

Article 12
Colleges of supervisors

1. The Authority shall contribute to promote the efficient and consistent functioning of colleges of supervisors referred to in Directive 2006/48/EC and foster the coherence of the application of Community legislation across colleges.

2. The Authority shall participate as an observer in colleges of supervisors as it deems appropriate. For the purpose of that participation, it shall be considered a 'competent authority' within the meaning of the relevant legislation and, at its request, shall receive all relevant information shared with any member of the college.

3. The Authority shall, in cooperation with the supervisors operating in colleges of supervisors, determine and collect as appropriate all relevant information from competent authorities, in order to facilitate the work of those colleges.

It shall establish and manage a central system to make such information accessible to the competent authorities in colleges of supervisors.

Article 13
Delegation of tasks and responsibilities

1. Competent authorities may, by bilateral agreement, delegate tasks and responsibilities to other competent authorities supervisory.

2. The Authority shall 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.

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 Community 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;

(d) review the application of the relevant technical 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 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.

2. The peer review shall include an assessment of, but not be limited to:

(a) the adequacy of institutional arrangements, resourcing and staff expertise of the competent authority, with particular regard to the effective application of the legislation 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 Community law and in supervisory practice, including 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 Community law;

(c) good practices developed by some competent authorities which might be of benefit for other competent authorities to adopt.

3. On the basis of the peer review the Authority may issue recommendations to the competent authorities concerned.

Article 16
Coordination function

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 Community.

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

(1) facilitating the exchange of information between the competent authorities;

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

(3) without prejudice to Article 11, acting as mediator on the request of competent authorities or on its own initiative;

(4) notifying the ESRB of any potential emergency situations without delay.

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 European Insurance and Occupational Pensions Authority, the European Securities and Markets Authority, the ESRB and the European Parliament, the Council and the Commission about the relevant micro-prudential trends, potential risks and vulnerabilities.

   In particular, the Authority shall, in cooperation with the ESRB, initiate and coordinate Community-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.

2. Without prejudice to the tasks of the ESRB set out in Regulation (EC) No …/… [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 preventative or remedial actions.

3. The Authority shall ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities by closely cooperating with the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.

Article 18
International relations

Without prejudice to the competences of the Community Institutions, the Authority may develop contacts with supervisory authorities from third countries. It may enter into administrative arrangements with international organisations and the administrations of third countries.

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

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.

2. With regard to prudential assessments of mergers and acquisitions falling under the terms of Directive 2007/44/EC, the Authority may, on its own initiative or on application of any competent authorities, issue and publish an opinion on a prudential assessment to be carried out by any authority of a Member State. Article 20 shall apply.

Article 20
Collection of information

1. At the request of the Authority, competent authorities and other public 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.

   The Authority may also request information to be provided at recurring intervals.

2. Where information is not available or is not made available in a timely fashion by the competent authorities and other public authorities of the Member States, the Authority may address a reasoned request directly to relevant financial institutions and other parties. It shall inform the relevant competent authorities of such requests.

   At the request of the Authority, the competent authorities and other public authorities of the Member States shall assist the Authority in collecting such information.

3. The Authority may use confidential information received from competent authorities and other public authorities or from financial institutions and other parties only for the purposes of carrying out the duties assigned to it by this Regulation.

Article 21
Relationship with the ESRB

1. The European Banking Authority shall co-operate with the ESRB.

2 The Authority shall cooperate closely with the ESRB. It 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 (EC) No …./… [ESRB].

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 (EC) No …/… [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 the 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 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 ESRB in accordance with Article [17] of Regulation (EC) no …/…[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. For the purpose of consultation with stakeholders in areas relevant to the tasks of the Authority, a Banking Stakeholder Group shall be established.

2. The Banking Stakeholder Group shall be composed of 30 members, representing in balanced proportions Community credit and investment institutions, their employees as well as consumers and users of banking services.

The Banking Stakeholder Group shall meet at least twice a year.

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 balance and representation of stakeholders across the Community.

The Authority shall ensure adequate secretarial support for the Banking Stakeholder Group.

4. 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 specified in Articles 7 and 8.

6. The Banking Stakeholder Group shall adopt its rules of procedure

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

Article 23
Safeguards

1. The Authority shall ensure that no decision adopted under Articles 10 or 11 impinges in any way on the fiscal responsibilities of Member States.

2. Where a Member State considers that a decision taken under Article 11 impinges on its fiscal responsibilities, it may notify the Authority and the Commission within one month after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority.

In its notification, the Member State shall justify why and clearly demonstrate how the decision impinges on its fiscal responsibilities.

In that case, the decision of the Authority shall be suspended.

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.

Where the Authority maintains its decision, the Council, acting by qualified majority as defined in Article 205 of the Treaty, shall, within two months, decide whether the Authority's decision is maintained or revoked.

Where the Council decides to maintain the Authority's decision, or where it does not take a decision within two months, the suspension of that decision shall be immediately terminated.

3. Where a Member State considers that a decision taken under Article 10(2) impinges on its fiscal responsibilities, it may notify the Authority, the Commission and the Council within three working days after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority.

In its notification, the Member State shall justify why and clearly demonstrate how the decision impinges on its fiscal responsibilities.

The Council, acting by qualified majority as defined in Article 205 of the Treaty, shall, within ten working days, decide whether the Authority's decision is maintained or revoked.

Where the Council does not take a decision within ten working days, the Authority's decision shall be deemed to be maintained.

Article 24
Decision-making procedures

1. Before taking the decisions provided for in Article 9(6), Article 10(2) and(3) and Article 11(3) and (4), the Authority shall inform the 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 of the matter.

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, having regard to the legitimate interest of financial institutions in the protection of their business secrets.

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;

   (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;

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 be accompanied by a representative from the Member States' central bank, 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 administers 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 a panel to facilitate the 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.

A Decision pursuant to Article 11 shall be adopted by the Board of Supervisors on proposal from the panel.

Article 27
Independence

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 Community interest and shall neither seek nor take instructions from Community institutions or bodies, from a Government of a Member State or from any other public or private body.

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.

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 approve the draft 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. The Board of Supervisors shall act on the basis of qualified majority of its members, as defined in Article 205 of the Treaty, for acts specified in Articles 7, 8 and all measures and decisions adopted under Chapter VI.

All other decisions of the Board of Supervisors shall be taken by simple majority of members.

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 legislation referred to in Article 1(2).

SECTION 2
MANAGEMENT BOARD

Article 30
Composition

1. The Management Board shall be composed of the Chairperson, a representative of the Commission, and four members elected by the Board of Supervisors from among its members.

   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.

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 shall participate in meetings of the Management Board without the right to vote.

   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.

   It shall meet at least bi-annually in ordinary session.

4. The members of the Management Board may, subject to the rules of procedure, be assisted by advisers or experts.

Article 31
Independence

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

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 (hereinafter '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.

6. The Management Board shall, after consulting the Board of Supervisors, adopt the annual report on the activities of the Authority 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, the European Economic and Social Committee by 15 June. The report shall be made public.

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.

   Before appointment, the candidate selected by the Board of Supervisors shall be subject to confirmation by the European Parliament.

   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.

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 upon Decision of the Board of Supervisors subject to confirmation by the European Parliament.

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.

Article 35
Report

1. The European Parliament may invite the Chairperson or his alternate, while fully respecting his or her independence, to make a statement regularly before its competent committee and answer questions put by members of that committee.

2. The European Parliament may also call upon the Chairperson to submit a report on the performance of his duties.

SECTION 4
EXECUTIVE DIRECTOR

Article 36
Appointment

1. The Authority shall be managed by the Executive Director, who shall be a full-time independent professional.

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

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.

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 annual 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 1
GENERAL PROVISIONS

Article 39
Composition

1. The Authority shall form part of the ESFS, which shall function as a network of supervisors.

2. The ESFS shall comprise the following:

   (a) the authorities in the Member States as specified in Article 1(2) of this Regulation, Article 1(2) of Regulation (EC) No …/… [EIOPA] and Article 1(2) of Regulation (EC) No …/… [ESMA];

   (b) the Authority,

   (c) the European Insurance and Occupational Pensions Authority set up under Article 1 of Regulation (EC) No …/…[EIOPA];

   (d) the European Securities and Markets Authority set up under Article 1 of Regulation (EC) No …/… [ESMA];

   (e) the Joint Committee of European Supervisory Authorities provided for in Article 40;

   (f) the Commission for the purposes of carrying out the tasks referred to in Articles 7, 9 and 10.

3. The Authority shall cooperate regularly and closely, ensure cross-sectoral consistency of work and arrive at joint positions in the area of supervision of financial conglomerates and on other cross-sectoral issues with the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority through the Joint Committee of European Supervisory Authorities set up in Article 40.

SECTION 2
JOINT COMMITTEE OF EUROPEAN SUPERVISORY AUTHORITIES

Article 40
Establishment

1. A Joint Committee of the European Supervisory Authorities is hereby established.

2. The Joint Committee shall serve as a forum in which the Authority shall cooperate regularly and closely and ensure cross-sectoral consistency with the European

Insurance and Occupational Pensions Authority and the European Securities and Markets Authority.

3. The Authority shall contribute adequate resources to the administrative support of the Joint Committee of European Supervisory Authorities. This includes staff, administrative, infrastructure, and operational expenses.

Article 41
Composition

1. The Joint Committee shall be composed of the Chairperson and the Chairpersons of the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority, and, where applicable, the Chairperson of a Sub-Committee established under Article 43.

2. The Executive Director, the Commission and the ESRB shall be invited to the meetings of the Joint Committee of European Supervisory Authorities as well as the Sub-Committees mentioned in Article 43 as observers.

3. The chair of the Joint Committee of European Supervisory Authorities 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.

4. The Joint Committee of European Supervisory Authorities 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 of European Supervisory Authorities 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 legislation 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

For the purposes of Article 42, a Sub-Committee on Financial Conglomerates to the Joint Committee of European Supervisory Authorities shall be established.

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.

The Sub-Committee shall elect a Chairperson from amongst its members, who shall also be a member of the Joint Committee of European Supervisory Authorities.

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 European Banking Authority, the European Insurance and Occupational Pensions Authority, and the European Securities and Markets Authority.

2. The Board of Appeal shall be composed of six members and six alternates, who shall be individuals with relevant knowledge and experience, excluding current staff of the competent authorities or other national or Community institutions involved in the activities of the Authority.

   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.

   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 (EC) No …/…[EIOPA] and Regulation (EC) No …/…[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 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.

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 legislation 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 as often as necessary 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, within the provisions of this Article, exercise any power which lies within the competence of the Authority, or it may remit the case to the competent body of the Authority. That body shall be bound by the decision of the Board of Appeal.

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 Court of First Instance and the Court of Justice

1. An action may be brought before the Court of First Instance or the Court of Justice, in accordance with Article 230 of the Treaty, 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.

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 Court of First Instance or the Court of Justice in accordance with Article 232 of the Treaty.

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

CHAPTER VI
FINANCIAL PROVISIONS

Article 48
Budget of the Authority

1. The revenues of the Authority shall consist, in particular, of:

   (a) obligatory contributions from the national public authorities competent for the supervision of financial institutions;

   (b) a subsidy from the Community, entered in the General Budget of the European Union (Commission Section);

   (c) any fees paid to the Authority in the cases specified in the relevant instruments of Community law.

2. The expenditure of the Authority shall include, at least, staff, remuneration, administrative, infrastructure 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, together with the establishment plan. Each year, the Management Board shall, on the basis of the preliminary draft drawn up by the Executive Director, 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 Management Board 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 Board of Supervisors.

2. The statement of estimates shall be transmitted by the Commission to the European Parliament and to the Council (hereinafter referred to as the 'budgetary authority'), together with the preliminary draft General Budget of the European Union.

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 Article 272 of the Treaty.

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 Management Board. 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.

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 1605/2002[29], (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, 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.

[29] OJ L 248, 16.9.2002, p. 1.

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 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 2343/2002[30] 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 (OLAF)[31] 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

[30] OJ L 357, 31.12.2002, p.72.
[31] OJ L 136, 31.5.1999, p. 15.

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 European Community institutions for the purpose of applying these shall apply to the staff of the Authority, including its Executive Director.

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 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 shall be subject to the requirements of

professional secrecy pursuant to Article 287 of the Treaty and the relevant provisions in the relevant community legislation, even after their duties have ceased.

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 legislation 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, Euratom[32].

Article 57
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 195 and 230 of the Treaty respectively.

[32] OJ L 317, 3.12.2001, p.1.

Article 59
Language arrangements

1. The provisions of Council Regulation No 1[33] 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.

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

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 Community whereby they have adopted and are applying Community law in the area of competence of the Authority as referred to in Article 1(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.

[33] OJ 17, 6.10.1958, p. 385.

CHAPTER VIII
TRANSITIONAL AND FINAL PROVISIONS

Article 62
Preparatory actions

1. 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 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.

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.

Article 63
Transitional Staff provisions

1. By way of derogation from Article 54, all employment contracts concluded by the Committee of European Banking Supervisors 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 who have contracts with the Committee of European Banking Supervisors or its Secretariat 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.

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 64
Amendments

Council and Parliament Decision n° … of … establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing, is hereby amended insofar as the Committee of European Banking Supervisors 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 the Committee of European Banking Supervisors, is hereby repealed.

Article 66
Evaluation

1. Within three years from the date set out in the second paragraph of Article 67 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 also evaluate progress achieved towards regulatory and supervisory convergence in the fields of crisis management and resolution in the Community. The evaluation shall be based on extensive consultation, including with the Banking Stakeholder Group.

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.

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*
[…]	*[…]*

LEGISLATIVE FINANCIAL STATEMENT

This document is intended to accompany and complement the Explanatory Memorandum. As such, when completing this Legislative Financial Statement, and without prejudice to its legibility, an attempt should be made to avoid repeating information contained in the Explanatory Memorandum. Before filling in this template, please refer to the specific Guidelines that have been drafted to provide guidance and clarification for the items below.

1. NAME OF THE PROPOSAL:

Regulation (EC) No xxx of the European Parliament and of the Council establishing a European Banking Authority

2. ABM / ABB FRAMEWORK

Policy Area(s) concerned and associated Activity/Activities:

Internal Market – Financial markets

3. BUDGET LINES

3.1. Budget lines (operational lines and related technical and administrative assistance lines (ex- B..A lines)) including headings:

New lines need to be created (the names and numbers are only indicative):

Headings:

12 Internal Market

12.04 Financial Markets

12.0402 European Banking Authority

Budget lines:

12.0402.01 EBA – Subsidy under Titles 1 an 2 (Staff and administrative expenditure)

12.0402.02 EBA – Subsidy under Title 3 (Operating expenditure)

3.2. Duration of the action and of the financial impact:

Indeterminate

3.3. Budgetary characteristics :

Budget line	Type of expenditure		New	EFTA contribution	Contributions from applicant countries	Heading in financial perspective
120401 0101	Non-comp	Diff[34]	YES	YES	NO	**No 1a**
120401 0102	Non-comp	Diff	YES	YES	NO	**No 1a**

4. SUMMARY OF RESOURCES

4.1. Financial Resources

4.1.1. Summary of commitment appropriations (CA) and payment appropriations (PA)

EUR million (to 3 decimal places)

Expenditure type	Section no.		2011	2012	2013	Total
Operational expenditure[35]						
Commitment Appropriations (CA)	8.1	a	5, 206	7, 355	8, 965	21, 527
Payment Appropriations (PA)		b	5, 206	7, 355	8, 965	21, 527
Administrative expenditure within reference amount[36]						
Technical & administrative assistance (NDA)	8.2.4	c	--	--	--	--
TOTAL REFERENCE AMOUNT						
Commitment Appropriations		**a+c**	5, 206	7, 355	8, 965	21, 527
Payment Appropriations		**b+c**	5, 206	7, 355	8, 965	21, 527

[34] Differentiated appropriations

[35] Expenditure that does not fall under Chapter 12 01 of the Title 12 concerned.

[36] Expenditure within article 12 01 04 of Title 12.

Human resources and associated expenditure (NDA)	8.2.5	d	--	--	--	--
Administrative costs, other than human resources and associated costs, not included in reference amount (NDA)	8.2.6	e	--	--	--	--

Total indicative financial cost of intervention

TOTAL CA including cost of Human Resources		a+c +d+ e	5, 206	7, 355	8, 965	21, 527
TOTAL PA including cost of Human Resources		b+c +d+ e	5, 206	7, 355	8, 965	21, 527

Co-financing details

EUR million (to 3 decimal places)

Co-financing body:		**2011**	**2012**	**2013**	**Total**
Member States (national supervisory authorities or ministries of finance)	f	7, 809	11, 033	13, 448	32, 290
TOTAL CA including co-financing	a+c +d +e +f	13, 015	18, 388	22, 413	53, 816

4.1.2. Compatibility with Financial Programming

☐ Proposal is compatible with existing financial programming.

× Proposal will entail reprogramming of the relevant heading in the financial perspective.

× Proposal may require application of the provisions of the Interinstitutional Agreement[37] (i.e. flexibility instrument or revision of the financial perspective).

[37] See points 19 and 24 of the Interinstitutional agreement.

4.1.3. Financial impact on Revenue

× Proposal has no financial implications on revenue

4.2. Human Resources FTE (including officials, temporary and external staff) – see detail under point 8.2.1.

Annual requirements	2011	2012	2013			
Total number of human resources	2,4	2,4	2,4	--	--	--

5. CHARACTERISTICS AND OBJECTIVES

5.1. Need to be met in the short or long term

In the short term, create the European Banking Authority as a part of the new European System of Financial Supervisors, consisting of a network of European and national supervisory authorities and aiming at a more effective and efficient organisation of financial supervision in the EU. In the longer term, the EBA should enhance coordination of supervision of the EU banking sector reducing the risk or incidence of future episodes of financial disruption and contribute to developing a European dimension of financial supervision to complete the EU single market for financial services.

5.2. Value-added of Community involvement and coherence of the proposal with other financial instruments and possible synergy

The financial crisis has highlighted several substantial weaknesses of the current EU framework for financial supervision. The following problems, which underpin the need of the Community involvement, have been identified:

- There is no mechanism to ensure that national supervisors arrive at the best possible supervisory decisions for cross-border institutions;
- Co-operation and information exchange between national supervisory authorities is insufficient;
- All the technical details of and updates to financial regulation cannot be adapted or amended rapidly;
- Joint action by national authorities needs to take account of the patchwork of regulatory and supervisory requirements;

- Only national solutions are available and can be implemented in the face of pan-European problems.

The current EU Committees of Supervisors[38] have limited powers to deal with such issues.

5.3. Objectives, expected results and related indicators of the proposal in the context of the ABM framework

The following general objectives have been identified for the European System of Financial Supervisors, and in particular for the European Banking Authority:

1. Balance home and host supervisor interests, i.e., reinforce processes and practices for challenging the decisions of national supervisors on a cross-border basis;

2. Ensure a level playing field for financial institutions operating in various Member States;

3. Improve crisis prevention and crisis management on the European scale, and

4. Improve effectiveness and cost efficiency of supervision for supervised companies.

Flowing from the general objectives, a number of specific tasks for the ESFS have been defined:

1. All of the current tasks of the current EU Committees of supervisors;

2. The development of technical standards to build a single rulebook in the EU

3. Ensure consistent application of EU rules and mediate on and Settle disagreements between national supervisors;

4. Ensure coordinated decision making in emergencies;

5. The supervision of certain entities with a pan European reach

6. Ensure a common supervisory culture.

The following table presents the specific objectives of the European Banking Authority and matches them with related indicators:

[38] Committee of European Banking Supervisors, Committee of European Insurance and Occupational Pensions Supervisors and Committee of European Securities Regulators.

Objective	Proposed indicator
The development of technical standards to build a single rulebook in the EU	• Number of adopted technical standards relative to those required to be developed • Number of standards proposed by EBA and rejected by the Commission • Number of adopted non-binding recommendations
Ensure consistent application of EU rules	• Number of successful mediations without binding settlement • Number of warnings on manifest breach of the Community law
Ensure a common supervisory culture: participation in colleges of supervisors	• Number of colleges with EBA participation • Average number of meetings per college attended by EBA representatives
Ensure a common supervisory culture: other activities	• Number of hours training for supervisors • Number of staff participating in exchanges / secondments • Number of peer reviews conducted • Number of obstacles to convergence identified and removed • New practical tools and instruments to promote convergence
Carry out direct supervision of pan-European financial institutions	[Relevant only for the European Securities and Markets Authority at present]
Ensure coordinated decision making in emergencies	• Effectiveness mediation, decisions and coordination in crisis situations
Ensure a common supervisory culture: Collect and manage micro-prudential information	• Progress in development of the central databases: completeness and timeliness of information

5.4. Method of Implementation (indicative)

☐ ***Centralised Management***

☐ directly by the Commission

☐ indirectly by delegation to:

☐ executive Agencies

× bodies set up by the Communities as referred to in art. 185 of the Financial Regulation

☐ national public-sector bodies/bodies with public-service mission

☐ ***Shared or decentralised management***

☐ with Member states

☐ with Third countries

☐ ***Joint management with international organisations (please specify)***

Relevant comments:

6. MONITORING AND EVALUATION

6.1. Monitoring system

The Regulation establishing the European Banking Authority provides for evaluation of the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation every three years from the effective start of its operation. To this end, the Commission shall publish a general report, which will also evaluate progress achieved towards regulatory and supervisory convergence. The report and any accompanying proposals shall be forwarded to the European Parliament and to the Council.

6.2. Evaluation

6.2.1. Ex-ante evaluation

Two impact assessments have been carried out for the proposal to reform the financial supervision system in the EU:

(1) The first general impact assessment (SEC(2009) 715) accompanied the Communication 'European financial supervision' of 27 May (COM(2009) 252). The analysis in that report led to selecting the creation of the European System of Financial Supervisors as the best option for the reform of micro-prudential supervision framework in the EU.

(2) The second, more specific impact assessment has been carried out to accompany the draft Regulations establishing the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities Markets Authority. In this IA a number of options for particular tasks and governance aspects of the new Authorities have been considered. It also

includes budgetary estimates which have been used in this Legislative Financial Statement.

6.2.2. Measures taken following an intermediate/ex-post evaluation (lessons learned from similar experiences in the past)

Not applicable.

6.2.3. Terms and frequency of future evaluation

The final set of indicators to assess the performance of the European Banking Authority will be decided by the Commission at the time of conducting the first required evaluation. For the final assessment, the quantitative indicators will be as important as the qualitative evidence gathered in the consultations, including the input from the specially designed banking stakeholders' group. The evaluation will be repeated every three years.

7. ANTI-FRAUD MEASURES

For the purposes of combating fraud, corruption and any other illegal activity, the provisions of 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) shall apply to the Authority without any restriction.

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

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.

8. DETAILS OF RESOURCES

8.1. Objectives of the proposal in terms of their financial cost

Please refer to Annex 1 for a detailed breakdown of the Authority's costs and to Annex 2 for the main underlying assumptions, and Annex 3 for a detailed establishment plan.

8.2. Administrative Expenditure

8.2.1. Number and type of human resources

Types of post		Staff to be assigned to management of the action using existing and/or additional resources (**number of posts/FTEs**)					
		2011	2012	2013	Year n+3	Year n+4	Year n+5
Officials or temporary staff[39] (XX 01 01)	A*/AD	1,2	1,2	1,2	--	--	--
	B*, C*/AST	1,2	1,2	1,2	--	--	--
Staff financed[40] by art. XX 01 02		--	--	--	--	--	--
Other staff[41] financed by art. XX 01 04/05		--	--	--	--	--	--
TOTAL		2,4	2,4	2,4	--	--	--

8.2.2. Description of tasks deriving from the action

- Operational management of the Commission relations with the Authority (equivalent of time of one AD in an operational unit)
- Financial management of the subsidy from the Community budget to the Authority (equivalent of time of one AST in an operational unit and 20% of one AST time in the financial unit)
- Monitoring and auditing (20% of one AD time in Internal Audit Capability of DG Markt)

8.2.3. Sources of human resources (statutory)

× Posts to be redeployed using existing resources within the managing service (internal redeployment)

12 posts have been already requested in the Legislative Financial Statement annexed to a draft decision establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing (COM(2009)14 final). In total about **8** out of those posts will be redeployed within DG MARKT to deal with the new European Supervisory Authorities (full or part time): 6 in operational units; 1 in the financial unit and 1 in the IAC.

[39] Cost of which is NOT covered by the reference amount.
[40] Cost of which is NOT covered by the reference amount.
[41] Cost of which is included within the reference amount.

8.2.4. Other Administrative expenditure included in reference amount (XX 01 04/05 – Expenditure on administrative management)

Not applicable

8.2.5. Financial cost of human resources and associated costs not included in the reference amount

EUR million (to 3 decimal places)

Type of human resources	2011	2012	2013	Year n+3	Year n+4	Year n+5 and later
Officials and temporary staff (XX 01 01)	0,293	0,293	0,293	--	--	--
Staff financed by Art XX 01 02 (auxiliary, END, contract staff, etc.) (specify budget line)	0	0	0	--	--	--
Total cost of Human Resources and associated costs (NOT in reference amount)	0,293	0,293	0,293	--	--	--

Calculation– ***Officials and Temporary agents***

2 officials in an operational unit

0,2 of one official's time in the financial unit

0,2 of one official's time in Internal Audit Capability of DG Markt

2,4 x 0,122 = 0,293

Calculation– ***Staff financed under art. XX 01 02***

Not applicable

8.2.6. Other administrative expenditure not included in reference amount

Not applicable

Calculation - ***Other administrative expenditure not included in reference amount***

Not applicable

ANNEX 1

Draft budget for the European Banking Authority

In thousands €

	2011	2012	2013	2014	2015	2016
Title 1 - Staff costs	**6 694**	**10 454**	**13 332**	**14 666**	**14 642**	**14 642**
Management	468	1 169	1 169	1 169	1 169	1 169
Senior / expert staff:	0	0	0	0	0	0
Temporary agents	2 380	3 360	4 480	4 760	4 760	4 760
Seconded national experts	2 380	3 360	4 480	4 760	4 760	4 760
Administrative and other support staff:	0	0	0	0	0	0
Temporary agents	280	700	840	1 260	1 260	1 260
Contract agents	118	235	294	470	470	470
Staff benefits	844	1 324	1 689	1 863	1 863	1 863
Staff training: general	24	37	48	54	54	54
Staff training: enhancing supervisory skills	153	216	288	306	306	306
Expenditure relating to staff recruitment	48	53	43	24	0	0
Title 2 - Building, equipment and administrative expenditure	**2, 226**	**3 340**	**4 187**	**4 854**	**4 854**	**4 854**
Rental of buildings and associated costs	1 326	1 945	2 387	2 829	2 829	2 829

Information and communication technology	245	380	491	552	552	552
Movable property and associated costs	54	83	108	121	121	121
Current administrative expenditure	53	81	105	118	118	118
Postage / Telecommunications	19	30	38	43	43	43
Travel and meeting expenses	529	820	1 058	1 190	1 190	1 190
Title 3 - Operations	**4 095**	**4 595**	**4 895**	**5 095**	**5 095**	**5 095**
Powers						
Consultations: stakeholder group	216	216	216	216	216	216
Common supervisory culture: participation in colleges of supervisors	64	64	64	64	64	64
Common supervisory culture: training for national supervisors and staff exchanges & secondments	500	1 000	1 300	1 500	1 500	1 500
Collection of information: development and maintenance of a central European database	3 000	3 000	3 000	3 000	3 000	3 000
International relations: observers in international supervisory committees	50	50	50	50	50	50
International relations: cooperation with 3rd countries on equivalence decisions	60	60	60	60	60	60
Supervision of pan-European entities	0	0	0	0	0	0
Governance						
Board of Supervisors	83	83	83	83	83	83
Management Board	26	26	26	26	26	26
Joint Steering Committee	10	10	10	10	10	10
Board of Appeal	86	86	86	86	86	86

TOTAL	**13 015**	**18 388**	**22 413**	**24 615**	**24 591**	**24 591**
Of which Community contribution	**5 206**	**7 355**	**8 965**	**9 846**	**9 836**	**9 836**
Of which Member States contribution (national supervisory authorities or ministries of finance)	**7 809**	**11 033**	**13 448**	**14 769**	**14 755**	**14 755**

Source: Commission and the L3 Committees estimates and calculations

ANNEX 2

Applied methodology and main underlying assumptions for the financial model of the Authority

The cost of setting up the European Banking Authority has been estimated according to three cost categories: the staff costs, the infrastructure costs and the operations costs, in line with the general cost classification used in accounts of the existing EU regulatory agencies. The total costs of creating the European Banking Authority has been estimated at about 13.015 million Euro in the first year of operations (2011), reaching 22.413 million Euro after two years (2013) – see Annex 1.

It is proposed that the Community budget funds 40% of the costs and Member States fund 60%. The reasons for this proposal are the following:

- a well-balanced and mixed financing is the best way to ensure that the Authorities act (and are perceived to be doing so) independently from Member States and from the Community institutions. If one particular source of funding were to be overly dominant, this could cast a shadow on the credibility of the decisions made by the Authorities and thus undermine the new framework proposed to safeguard financial stability;

- given that national supervisors will continue, in this new framework, to carry-out the bulk of supervisory activities on the ground, it seems appropriate to reflect this in a slightly higher contribution from Member States. In doing so, we would also allow for a smooth evolution from the present situation where the level 3 committees are almost exclusively funded by Member States;

- however, it is of the essence that a significant part of the funding comes from the Community budget. Indeed, the new Authorities will serve objectives which have a clear Community dimension: preserving financial stability in the Internal Market as well as sustainable growth in the EU. Moreover, one of the Authorities' core tasks and powers is to ensure a consistent, efficient and effective application of Community rules in the sector. This justifies, at least, a 40% funding from the Community budget (as most of these entities are normally fully funded through the Community budget). Furthermore, one can doubt whether all Member States will be able to cope with the sharp increase in their contributions that would be required under the new framework, which will be much more costly than the present level 3 arrangements.

- the need for Community funding is also particularly important to ensure that the Authorities are truly independent from Member States. The choice has been made, in order to limit as much as possible interferences in the technical work of supervisors, to limit the Commission's participation to the minimum in the supervisory boards (with one non-voting member) and the management boards (with one voting member) of the Authorities. If there were to be in addition an excessive reliance on Member States' contributions, the credibility of the Authorities' independence would be seriously put at risk. A significant Community contribution is needed to compensate for the limited role which is being given to the Commission in the decision-making bodies of the Authorities;

- this approach is the most conducive to a stable funding, with no over reliance on one source or on contributions from big Member States who could threaten the continued operation of the Authorities by putting an end to their financial contributions. Finally, this approach is also fairer than a full or very large funding from Member States: national supervisors use a variety of funding models at national level - some from general taxation, some from levies on the industry. Were the Authority to be predominantly funded by Member States there would be a risk of an unlevel playing field across the EU.

The staff cost estimates are based on the assumption that the EBA will aim to double its staff as compared to the staff numbers in the existing Level 3 Committee in the first year of its operation. This means an increase from around 20 to 40. It has been also assumed that the number of staff would increase relatively fast in the start-up phase. The authority would hire on average 15 new employees per year. It would reach the "cruising speed" with about 90 staff.

The need for increased staffing numbers reflects the significant number of new tasks which the authority will need to undertake in addition to its previous responsibilities. These new tasks are outlined in detailed in the explanatory memorandum which accompanies the proposed regulations. They include, but are not limited to, developing new technical standards in a number of areas of financial services legislation, ensuring consistent application of Community rules, settling disagreements between national competent authorities, attending colleges of supervisors and facilitating peer reviews. Each of these activities will require significant new resource. The detailed breakdown of estimated staff numbers by various categories is presented in Annex 3.

Another assumption adopted for estimation of the staff costs is that the Staff Regulation of EU institutions would be applied in all the Authorities. This is reflected – with some modifications – in per head rates used under Title 1 (see Annex 1 for details). The impact of the locations of the L3 Committees has also been taken into account (through the cost-of-living multipliers).

The figures under Title 2 relating to the cost of infrastructure have been based on the input from the existing Level 3 Committees. The CEBS provided estimates of costs in this category, based on extrapolation of their real costs linked with running offices and administration in their current location. Given that London is a financial centre and among the most expensive business locations in the world, the estimated costs naturally exceed the average levels for the EU regulatory agencies.

The operation costs are specific to the competencies and the governance model of the European Supervisory Authorities. Regarding powers, various types of activities foreseen for the ESFS have been considered in terms of generating extra operational costs apart from the general staff costs. It has been possible to attribute such costs to a number of activities, e.g. running the stakeholder groups, developing the European supervisory databases, participating in the colleges of supervisors, organising training for supervisors from the Member States or carrying out on-site inspections of directly supervised companies. The specific costs for these operations are very often linked with missions and meetings, but can also include substantial expense on outsourced services, e.g. to create and maintain a database or organise trainings.

On the other hand, it has been judged that many of the ESFS activities are not linked with extra operational costs and are fully reflected in the general staff costs. These are for example

the development of technical standards, guidelines and recommendations, ensuring consistent application of the Community law or the coordination in crisis situations.

Regarding the governance, the operational costs will stem from activities of various bodies foreseen to ensure proper functioning of the European System of Financial Supervisors in general and the Authorities in particular: the Board of Supervisors, the Management Board, the Joint Steering Committee and the Board of Appeals.

The methods of calculating the budget of EBA are presented in Table 1.

Table 1. Estimated budget of EBA in the first year of operation (2011)

In thousands €

Title 1 - Staff costs			**6 694**
Total staff:	**40**	Average annual cost per head (based on DG BUDG guidelines and 3L3 advice)	
Multiplier cost-of-living	London	1,4	
Management	2	233,8	468
Senior / expert staff:			
Temporary agents	17	140,0	2 380
Seconded national experts	17	140,0	2 380
Administrative and other support staff:			
Temporary agents	2	140,0	280
Contract agents	2	58,8	118
Staff benefits	15% of total staff costs		844
Staff training: general	Average amount per person (COM data)	0,6	24
Staff training: enhancing supervisory skills	Advice from 3L3	4,5	153
Expenditure relating to staff recruitment	3 candidates interviewed per post on average	0,8	48
Title 2 - Building, equipment and administrative expenditure			**2 226**
Rental of buildings and	CEBS data and		1 326

associated costs	estimates		
Information and communication technology	CEBS data and estimates		245
Movable property and associated costs	CEBS data and estimates		54
Current administrative expenditure	CEBS data and estimates		53
Postage / Telecommunications	CEBS data and estimates		19
Travel and meeting expenses	CEBS data and estimates		529
Title 3 - Operations		-	**4 095**
Powers	Costed activity	Assumptions	Total cost
Consultations	Financial Services Stakeholder Group	One FSSG per each ESA. 30 members meeting 4 times a year. Annual remuneration 6000€ per person. Industry representatives to be reimbursed for travel but not remunerated.	216
Common supervisory culture	Participation in colleges of supervisors	Approximately 40 colleges in the sector. Participating in 1 two day meeting per year, one EBA rep. per meeting on average.	64
Common supervisory culture	Common training for supervisors and staff exchanges & secondments	Based on the amount foreseen for action grants to the L3C for 2010-2015	500
Collection of information	Developing and managing the central European database	CEBS estimate	3 000
International relations	Contacts with third country authorities and other international bodies e.g. for equivalence advice	11 missions outside EU per year for 2 persons.	110
Supervision of pan-European entities	On site inspections		0
Governance	Costed activity	Assumptions	Total cost

Board of Supervisors	Decision making	26 members to be reimbursed - 4 meetings per year.	83
Management Board	Management	6 members including 4 representatives of national supervisors. Meeting every month, when possible back to back with meetings of Board of Supervisors.	26
Joint Steering Committee	Cross-sector cooperation	Period meetings for chairperson from each ESA	10
Board of Appeal	Appeals	6 members, assuming 8 meetings per year, and annual remuneration 8000€ per person	86
TOTAL			**13 015**

Source: Commission and the L3 Committees, estimates and calculations

ANNEX 3

Establishment Plan (preliminary)

Function group and grade	Posts (temporary)			
	2011	2012	2013	2014
AD 16				
AD 15	1			1
AD 14	1			1
AD 13	1			1
AD 12	3			5
AD 11	4			7
AD 10	7			15
AD 9	9			21
AD 8	6			13
AD 7	4			9
AD 6				
AD 5				
AD total	**36**	**53**	**69**	**73**
AST 11				
AST 10	1			1
AST 9	1			2
AST 8				
AST 7	0			5
AST 6	1			4
AST 5	1			5
AST 4				
AST 3				
AST 2				
AST 1				
AST total	**4**	**9**	**11**	**17**
Total	**40**	**62**	**80**	**90**

Source: Commission