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<u>Notice No</u>	<u>Contents</u>	<u>Page</u>
	I <i>Resolutions, recommendations and opinions</i>	
	RESOLUTIONS	
	<b>European Parliament</b>	
	2010-2011 SESSION	
	Sittings of 6 to 8 July 2010	
	The Minutes of this session have been published in OJ C 298 E, 4.11.2010.	
	TEXTS ADOPTED	
	<b>Tuesday 6 July 2010</b>	
2011/C 351 E/01	The European Union Strategy for the Baltic Sea Region and the role of macro-regions in the future cohesion policy  European Parliament resolution of 6 July 2010 on the European Union Strategy for the Baltic Sea Region and the role of macro-regions in the future cohesion policy (2009/2230(INI)) .....	1
2011/C 351 E/02	Contribution of EU regional policy towards fighting the financial and economic crisis, with a special reference to Objective 2  European Parliament resolution of 6 July 2010 on the contribution of EU regional policy towards fighting the financial and economic crisis, with a special reference to Objective 2 (2009/2234(INI)) .....	8
2011/C 351 E/03	A sustainable future for transport  European Parliament resolution of 6 July 2010 on a sustainable future for transport (2009/2096(INI)) .....	13
2011/C 351 E/04	Annual report of the Petitions Committee 2009  European Parliament resolution of 6 July 2010 on the deliberations of the Committee on Petitions during the year 2009 (2009/2139(INI)) .....	23

EN

(Continued overleaf)

<u>Notice No</u>	Contents (continued)	Page
2011/C 351 E/05	Promoting youth access to the labour market, strengthening trainee, internship and apprenticeship status European Parliament resolution of 6 July 2010 on promoting youth access to the labour market, strengthening trainee, internship and apprenticeship status (2009/2221(INI)) .....	29
2011/C 351 E/06	Atypical contracts, secured professional paths and new forms of social dialogue European Parliament resolution of 6 July 2010 on atypical contracts, secured professional paths, flexicurity and new forms of social dialogue (2009/2220(INI)) .....	39
2011/C 351 E/07	Commission Green Paper on the management of bio-waste in the European Union European Parliament resolution of 6 July 2010 on the Commission Green Paper on the management of bio-waste in the European Union (2009/2153(INI)) .....	48
<b>Wednesday 7 July 2010</b>		
2011/C 351 E/08	Remuneration of directors of listed companies and remuneration policies in the financial services sector European Parliament resolution of 7 July 2010 on remuneration of directors of listed companies and remuneration policies in the financial services sector (2010/2009(INI)) .....	56
2011/C 351 E/09	Cross-Border Crisis Management in the Banking Sector European Parliament resolution of 7 July 2010 with recommendations to the Commission on Cross-Border Crisis Management in the Banking Sector (2010/2006(INI)) .....	61
	ANNEX TO THE RESOLUTION .....	65
2011/C 351 E/10	European Financial Stability Facility and European Financial Stabilisation Mechanism and future actions European Parliament resolution of 7 July 2010 on the European Financial Stability Facility and European Financial Stabilisation Mechanism and future actions .....	69
2011/C 351 E/11	Iceland's application for membership of the European Union European Parliament resolution of 7 July 2010 on Iceland's application for membership of the European Union	73
<b>Thursday 8 July 2010</b>		
2011/C 351 E/12	Kosovo European Parliament resolution of 8 July 2010 on the European integration process of Kosovo .....	78
2011/C 351 E/13	Albania European Parliament resolution of 8 July 2010 on Albania .....	85
2011/C 351 E/14	Situation in Kyrgyzstan European Parliament resolution of 8 July 2010 on the situation in Kyrgyzstan .....	92



Tuesday 6 July 2010

## I

*(Resolutions, recommendations and opinions)*

## RESOLUTIONS

## EUROPEAN PARLIAMENT

**The European Union Strategy for the Baltic Sea Region and the role of macro-regions in the future cohesion policy**

P7\_TA(2010)0254

**European Parliament resolution of 6 July 2010 on the European Union Strategy for the Baltic Sea Region and the role of macro-regions in the future cohesion policy (2009/2230(INI))**

(2011/C 351 E/01)

*The European Parliament,*

- having regard to the communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions concerning the European Union Strategy in the Baltic Sea Region (COM(2009)0248) and the indicative action plan accompanying the Strategy,
- having regard to the Council Conclusions on the European Union Strategy for the Baltic Sea Region adopted on 26 October 2009,
- having regard to its resolution of 8 July 2008 on the environmental impact of the planned gas pipeline in the Baltic Sea to link up Russia and Germany <sup>(1)</sup>,
- having regard to its resolution of 16 November 2006 on a Baltic Sea Strategy for the Northern Dimension <sup>(2)</sup>,
- having regard to the opinions of the European Economic and Social Committee on the communication from the Commission concerning the European Union Strategy for the Baltic Sea Region (ECO/261) and on 'Macro-regional cooperation – Rolling out the Baltic Sea Strategy to other macro-regions in Europe' (ECO/251),
- having regard to the opinion of the Committee of the Regions on 'The role of local and regional authorities within the new Baltic Sea Strategy' of 21-22 April 2009,
- having regard to the Committee of the Regions' own-initiative opinion 'The Committee of the Regions' White Paper on Multilevel Governance' (CdR 89/2009 fin),
- having regard to Rule 48 of the Rules of Procedure,

<sup>(1)</sup> OJ C 294 E, 3.12.2009, p. 3.<sup>(2)</sup> OJ C 314 E, 21.12.2006, p. 330.

**Tuesday 6 July 2010**

- having regard to the report of the Committee on Regional Development and the opinions of the Committee on Foreign Affairs, the Committee on the Environment, Public Health and Food Safety and the Committee on Transport and Tourism (A7-0202/2010),
  - A. whereas, since the enlargement of the European Union in 2004, the Baltic Sea has become the EU's internal sea, which unites countries but also presents its own challenge, and whereas the countries of the Baltic Sea Region demonstrate interdependence and share the same problems,
  - B. whereas, the Strategy for the Baltic Sea Region is a pilot for future macro-regional strategies, and the Strategy's success can be a model for the way in which future strategies can be implemented,
  - C. whereas the idea of creating functional regions, focused around joint objectives and development problems, can lead to an increase in the effectiveness of EU regional policy,
  - D. whereas in order to increase the effectiveness of regional policy, in particular in terms of its post-2013 reform, the idea of an integrated approach should be supported and developed, together with the creation of strategies for macro-regions that are strategies for the whole of the European Union, the implementation of which must not, however, lead to the renationalisation of cohesion policy,
  - E. whereas the Baltic Sea remains the most polluted sea in the European Union, and its environmental status should not worsen because of the implementation of the large-scale infrastructure projects in and around the Baltic Sea (including non-EU countries),
1. Welcomes the approval of the European Commission and the support of the Council for the Strategy for the Baltic Sea Region, which Parliament has been calling for since 2006;
  2. Welcomes, in particular, the fact that the Strategy is the result of broad consultation with interested parties in the Member States, including not only national, regional and local authorities but also the academic and business communities as well as NGOs, showing that the consultation process and the inclusion of partners from the very beginning of work on the Strategy is an important factor in its success; in this regard welcomes the establishment of a civil society forum in the region such as the Baltic Sea Action Summit and calls for similar initiatives for future macro-regions that bring together public and private actors, enabling them to become involved in the development of macro-regional strategies;
  3. Recommends, in this context, increasing the local communities' involvement by setting up wider and more focused communication and consultation tools, including through the local media (local television, radio and printed and online newspapers); calls on the Commission to create a special web portal devoted to the Baltic Sea Strategy, which would act as a forum for the exchange of experiences regarding current and future projects undertaken by central and local governments, NGOs and other entities active in the Baltic Sea Region;
  4. Welcomes the EU2020 Strategy, which is consistent with the goals set on the Baltic Sea Strategy and notes that EU2020 can act as an efficient framework for the implementation and strengthening of the Baltic Sea Strategy;
  5. Believes that the establishment as part of the Strategy of a new framework for cooperation based on an integrated approach opens up the possibility for more rational and effective use of the financial resources available for environmental protection and the development of the Baltic Sea Region both from EU and national funds and from various financial institutions;

Tuesday 6 July 2010

6. Draws attention to the disproportion in terms of economic development and innovation that exists in the Baltic Sea Region and the necessity to increase the potential of all areas, including the highly developed ones, as they can help in pulling forward the least advantaged regions; points out the need to promote new areas with development and innovation potential and to take the opportunity of using the added value of the Baltic Sea Strategy and other future macro-regional strategies to reach new level of synergy which can reduce existing disparities, in order to create a permanent area of common prosperity with a high level of competitiveness, which is crucial in the face of an aging population and new patterns in globalisation;
7. Emphasises that the prompt and consistent implementation of existing EU legal acts designed to strengthen the internal market, such as the Services Directive, is necessary to increase the attractiveness of the Baltic Sea Region as an economic area;
8. Calls on the Member States and regions to take advantage of the Structural Funds available for 2007-2013 in order to ensure maximum support for the Strategy, in particular to promote job creation and economic growth in areas most affected by the economic crisis, and, at the same time, recommends, where justified, making provision for changes to the Operational Programmes in the current programming period; highlights that exploiting the particular characteristics of regions could lead to much more effective use of the Structural Funds and the creation of added value at regional level;
9. Notes the deep impact the global financial and economic crisis has had on all countries in the region, in particular the Baltic States; calls on all stakeholders not to weaken their commitment to the EU Baltic Sea Strategy because of the crisis;
10. Considers that all actions regarding sector policies with a territorial dimension are of key importance to the Strategy's success and the achievement of the ambitious goals of further macro-regional strategies, including the common agricultural policy, fisheries policy, transport policy, industrial policy, research policy, and a coherent infrastructure policy, as well as combining available funds intended for jointly defined goals in a given area; in this context a policy review should be carried out with regard to these new challenges, an appropriate framework should be put in place at EU level and it should be determined how this framework should relate to existing national and local structures;
11. Believes that the Strategy's territorial dimension will lead to the concrete development of the idea of territorial cohesion, which the Treaty of Lisbon places on an equal footing with economic and social cohesion, and with this in mind calls on the Commission to engage in active dialogue on the role and impact of EU macro-regional policies after 2013;
12. Encourages the development of specific provisions with the forthcoming general regulation on Structural Funds on the basis of territorial cooperation provisions that are clear, and take into account the different administrative culture and do not impose extra administrative burdens on the beneficiaries, in order to strengthen the cooperation between countries and regions, and the development of further joint action strategies which may enhance the region's attractiveness at the European and international levels and may subsequently constitute a model for cross-border cooperation;
13. Draws attention to the fact that the Strategy for the Baltic Sea Region should be seen as a process in which the principle of action and cooperation is constantly developed, making it necessary to update the strategy, and that the overriding goal is to find optimal mechanisms that can be transferred to future macro-regional strategies; underlines, in this respect, the importance of collecting, summarising, and promoting successful initiatives and their results; supports the Commission's plan to create a best practices database with a view to using these practices to develop future macro-regional strategies;
14. Considers that territorial cooperation developed as part of a strategy for macro-regions can lead to a significant strengthening of the integration process through the greater involvement of civil society in the decision-making process and the implementation of concrete actions; in this context the implementation particularly of social, economic, cultural, educational and tourism elements is recommended for macro-regional strategies, and, in order to strengthen local civil society participation and subsidiarity, also considers it important to promote macro-regional strategies by setting up EGTCs;

**Tuesday 6 July 2010**

15. Emphasises the importance of promoting the development of culture, education and research and innovation as well as encouraging the Member States to enter into close cooperation particularly in the last-named area; recognises that in the area of education cooperation can certainly be highly beneficial, but that competence should remain with the Member States; recommends the strengthening of the strategic approach and long-term planning in respect of macro-regions;

16. Guided by the principle of subsidiarity, and seeing the enormous potential for cooperation at local and regional level, underlines the considerable importance of creating an effective, multilevel structure for cooperation through the promotion of sectoral partnerships involving regular meetings of the policy-makers responsible, which will strengthen the responsibility shared between the various partner entities while safeguarding the organisational sovereignty of the Member States and regions; in this respect, calls for the cross-border cooperation mechanisms established at local and regional level to be improved, developed and strengthened;

17. Stresses the fact that the new 'macro-regional' framework of cooperation has a strong 'top-down' approach, with the Member States having a decisive role in its development, and creates a new level of governance; in the framework of this new model of cooperation it has to be ensured that the natural handicaps of the peripheral regions are converted into assets and opportunities, and that the development of these regions is stimulated';

18. Considers that macro-regions combine the potential to optimise the response to the challenges appearing in a given region; with that of using the particular opportunities and resources of each region in an effective and efficient way;

19. Calls on the European Commission to analyse the first results and experiences in connection with the implementation of the Strategy for the Baltic Sea Region, which will help to map out possible sources and methods for financing macro-regional strategies and help in using the example of the Strategy as a pilot project for other macro-regional strategies to demonstrate their functionality; stresses however that the development of macro-regions is essentially of a complementary nature and should not aim to replace EU financing of individual local and regional programmes as a funding priority;

20. Notes that implementation of the Baltic Sea Strategy has as yet been very slow; considers that the appropriations earmarked in the 2010 EU budget may be used to improve implementation; regrets, therefore, that these appropriations have still not been disbursed and reminds the Commission of the importance of this money being allocated as soon as possible for purposes in line with the targets of the Baltic Sea Strategy;

21. Draws attention, for the benefit of possible future macro-regional strategies, to the need for the European Commission to resolve the issue of its own resources in order to be able to anticipate such strategies on the basis of the territorial specificities of the regions concerned, providing the participating Member States with fresh ideas concerning topics of European interest and supporting them in drawing up a strategy; calls on the European Commission to supervise the implementation of these strategies by acting as a coordinator, rethinking new priorities and devoting resources according to specialised needs and expertise requirements, while avoiding duplication of work;

22. Calls on the European Commission, in the context of the need to carry out an interim analysis of the implementation of the Strategy for the Baltic Sea Region, to prepare concrete instruments and criteria for evaluating projects based on indicators that allow comparisons to be made;

23. Calls on the European Commission, the Member States and its own members to find answers to the questions concerning the nature of macro-regional policies and how they could be treated equally (separately or as part of cohesion policy), who should implement them and how, and with what sources of funding they should be financed in order not to create unnecessary multiplication and fragmentation of EU funding, in particular in the context of the EU2020 Strategy, the EU budget review and the debate on the future cohesion policy;

Tuesday 6 July 2010

24. Emphasises that the European added value of macro-regions lies in greater cooperation between states and regions, which is why the European Territorial Cooperation Programmes for cross-border, trans-national and inter-regional cooperation represents an important element in implementing the macro-regions' aims; furthermore proposes that the Strategy for the Baltic Sea Region should be regarded as a European Union strategy, based upon several EU policies, which should have a defined time frame and goals; given its horizontal nature, the strategy could be treated as macro-regional and its coordination brought under regional policy;

25. Believes that the development of large-scale strategies, such as macro-regional strategies, should contribute to enhancing the role of the local and regional level in the implementation of EU policy more generally;

#### **External dimension**

26. Calls for improvement, in the context of the Strategy for Baltic Sea Region as well as of the future macro-regional strategies, of the relations between the European Union and the non-EU states, particularly in the implementation of large-scale projects with significant environmental impact; furthermore, calls for cooperation between the EU and non-EU states to strengthen security within the region and support the fight against cross-border crime;

27. Draws attention to the need to seek greater cooperation particularly between Russia and Belarus, and the Baltic States when constructing the energy network, and to take greater advantage of the energy dialogue between the EU and Russia for this purpose, which would at the same time open up opportunities for involving Russia in the Baltic Sea Strategy; expects all actors around the Baltic Sea to join international agreements such as the Espoo Convention and the Helsinki Convention, comply with the Helsinki Commission (HELCOM) guidelines, and cooperate within this framework;

28. Calls on the Commission to ensure effective cooperation and coordination with HELCOM and the Member States of the Baltic Sea Region, in order to secure a clear delineation of tasks and responsibilities as regards the implementation of the 2007 HELCOM Baltic Sea Action Plan and the above-mentioned EU Strategy and Action Plan, and thus to ensure an effective overall strategy for the Region;

29. Specifically notes the status of the Kaliningrad Oblast enclave, which is surrounded by EU Member States; emphasises the need to stimulate social and economic development in this region, as a 'gateway' or 'pilot' region for a closer EU-Russia relationship involving NGOs, educational and cultural institutions and local and regional authorities;

30. Believes that the new Partnership and Cooperation Agreement with Russia should take account of the cooperation in the Baltic Sea Area; welcomes the efforts by the Commission and the Member States in the region to cooperate with Russia on a vast number of areas, such as transport connections, tourism, cross-border health threats, environmental protection and adaptation to climate change, the environment, customs and border controls and, in particular, energy issues; believes that the EU-Russia common spaces will provide a valuable framework in this regard, and calls on Russia to play an equal part in such cooperation;

31. Stresses the need to reduce the region's dependence on Russian energy; welcomes the European Commission's statement on the need for more interconnections between Member States in the region and greater diversification of energy supplies; calls in this regard for increased support for the creation of LNG ports;

32. Believes that in order to achieve an effective protection of the environment and of biodiversity, agreements should be reached with the non-EU states that are part of the functional areas interested by the strategies, so that they can share the same values, rights and duties contained in the relevant European Union legislation;

Tuesday 6 July 2010

33. Considers that Baltic Sea Region Cooperation should be prioritised and should take place at the highest political level of Heads of State and Government, since it is crucial in driving forward cooperation between the Baltic Sea countries and ensuring that political ambitions are realised; looks to see regular meetings between the Heads of State and Government in the Baltic Sea region seeking to achieve this;

***Environmental and energy aspects***

34. Emphasises the need for an environmental impact assessment of energy infrastructure projects (currently under construction and in the future), taking into account, in particular international conventions; calls on the Commission to design an adequate reaction plan for technical accidents and any other possible catastrophes, providing also for ways of dealing with these events from an economic point of view; underlines that the same approach must be taken for any future project, so that the security of countries around the Baltic Sea involved in other future macro-regional strategies, environment and shipping conditions is not endangered; considers it is in the interests of sustainable development and green growth to achieve strong environmental protection in all macro-regions, as well as equal consideration for environmental protection, travel and other aspects;

35. Emphasises the need to establish a Baltic Sea Environmental Monitoring Centre, an early-warning system for accidents and serious cross-border pollution, and a joint action force to deal with such situations;

36. Draws attention to the strategic significance of the Baltic Sea region for the development of joint projects on energy infrastructure that improve diversification of energy production and supply, with a special emphasis on renewable energy projects such as wind farms (onshore or offshore), geothermal energy or biogas plants using biofuels available in the region;

37. Draws attention to the effective cooperation already achieved in the energy and climate sector between the Council of the Baltic Sea States and the Nordic Council in the context of the Northern Dimension;

38. Emphasises that, in view of the intended expansion of nuclear energy in the Baltic Sea region, EU countries have to follow the strictest safety and environmental standards and the European Commission has to watch and monitor whether the same approach and international conventions are followed in the neighbouring countries, especially in those which are planning to build nuclear power plants near external EU borders;

39. Emphasises the need for the EU and its Member States surrounding the Baltic Sea Region urgently to address the serious environmental problems affecting the Region, principal among which are eutrophication, the impact of hazardous substances deposited on the seabed and threats to aquatic biodiversity, with particular regard to endangered fish populations; recalls that the Baltic Sea is one of the most polluted sea areas in the world;

40. Emphasises the need to introduce a method common to all Member States for drawing up an inventory of sources of pollution and a plan for their gradual elimination;

41. Welcomes the inclusion of environmental sustainability as a central pillar in the EU Strategy for the Baltic Sea Region and the accompanying action plan;

42. Considers that one of the most serious obstacles to realising the objectives of the Baltic Sea Strategy is the lack of consistency with other policy areas within the EU such as the CAP which exacerbates eutrophication, and the Common Fisheries Policy (CFP) which is not environmentally sustainable; considers that reforms to the CAP and the CFP must be made in such a way that they contribute to achieving the objective of an environmentally sustainable Baltic Sea area;



Tuesday 6 July 2010

**Transport and tourism aspects**

43. Emphasises that it is a priority to create an effective and environmentally friendly sea, land and inland transport and communication network (with the sea network giving a prominent role to the transport of goods) that can anticipate and respond in a timely fashion to current and future challenges, taking account of the provisions of the updated version of the Natura 2000 document and paying particular attention to links between the Baltic Sea region and other European regions through the Baltic-Adriatic Corridor and the Central European Transport Corridor;
44. Considers enhanced connections, involving all modes of transport, to represent an essential contribution to the development of a stronger, more cohesive economy in the Baltic Sea Region;
45. Stresses the specific situation of the Baltic States, which to a large extent are currently isolated from the European transport network, and takes the view that this strategy should, inter alia, help to address the lack of appropriate infrastructure and accessibility, as well as low interoperability between various national transport networks owing to different technical systems and administrative barriers, in order to develop a comprehensive multimodal transport system across the Baltic Sea Region;
46. Emphasises the importance of integrating the Baltic Sea Region more closely into the TEN-T priority axes, in particular with regard to the Motorways of the Sea (TEN-T 21), extending the rail axis from Berlin to the Baltic coast (TEN-T 1), improving the rail axis from Berlin to the Baltic coast in combination with the Rostock-Denmark Seaway connection, and making more rapid progress in upgrading and using the Rail Baltica axis (TEN-T 27); also emphasises the need to complete the interconnections between the Baltic Sea Region and other European regions via the Baltic-Adriatic corridor;
47. Stresses that it is important to enhance the Baltic Sea Region's transport capacity towards the east, in particular in order to promote transport interoperability, especially for railways, and to speed up freight transit at the borders of the European Union;
48. Believes that particular priority should be given to connections between harbours and inland regions, including by means of inland waterways, so as to ensure that all parts of the region can benefit from the growth of maritime cargo transport;
49. Stresses, in this regard, the need for effective cross-border coordination and cooperation between rail, seaports, inland ports, hinterland terminals and logistics in order to develop a more sustainable intermodal transport system;
50. Underlines the importance of short sea shipping in the Baltic Sea and its contribution to an efficient, environmentally-friendly transport network; points out that the competitiveness of short sea shipping links must be promoted in order to ensure efficient use of the sea; believes for this reason that the Commission needs to provide the European Parliament, as quickly as possible, but by the end of 2010 at the latest, with an impact assessment of the effects of the revised Annex VI to the MARPOL Convention, limiting sulphur in marine fuel oil to 0,1 % from 2015 in the areas of the North Sea and the Baltic Sea where sulphur emissions are being monitored;
51. Welcomes the inclusion in the Commission's action plan of the objective of making the Baltic Sea a model region for clean shipping and a world leader in maritime safety and security; considers these objectives to be crucial to maintaining and enhancing the region's potential for tourism;
52. Recognises the need for specific measures in support of this objective, including the appropriate use of nautical pilots or demonstrably experienced seafarers for the most challenging straits and ports and the establishment of reliable financing schemes for research and development on the sustainable operation of ships;

Tuesday 6 July 2010

53. Recognises that the geographical location of the Baltic Sea Region is exceptional, and that such a location provides opportunities to more actively develop ties with the EU and neighbouring external countries, and also stresses the importance of tourism to the regional economy and the scope for expansion; welcomes the declaration adopted at the 2nd Baltic Sea Tourism Forum, which referred to common promotional activities, efforts to find new international markets and infrastructure development;

54. Underlines the unique opportunity for sustainable tourism offered by the attractiveness of the Hanseatic cities in the Baltic Region; supports, furthermore, the promotion of cross-border cycle tourism, thereby creating win-win effects for the environment and for small and medium-sized enterprises;

55. Considers themes such as water sports, wellness and spa tourism, the cultural heritage and landscapes to offer great potential for developing the region's profile as a tourist destination; stresses, therefore, the need to protect natural coastal areas, landscapes and the cultural heritage as a resource for ensuring a sustainable economy in the Baltic Sea Region in the future;

56. Regards improvements in transport links and the elimination of bottlenecks to be of no less importance, and notes that border-crossing difficulties at checkpoints on the EU's eastern border with the Russian Federation, which cause long queues of lorries and pose threats to the environment, social harmony, traffic safety and drivers' safety, could be solved via this strategy in order to ensure the smooth flow of goods through the Baltic Sea Region;

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57. Instructs its President to forward this resolution to the Council, the Commission, national parliaments, and the governments of the Russian Federation, Belarus and Norway.

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## **Contribution of EU regional policy towards fighting the financial and economic crisis, with a special reference to Objective 2**

P7\_TA(2010)0255

**European Parliament resolution of 6 July 2010 on the contribution of EU regional policy towards fighting the financial and economic crisis, with a special reference to Objective 2 (2009/2234(INI))**

(2011/C 351 E/02)

*The European Parliament,*

- having regard to the Commission working document 'Consultation on the future "EU 2020" strategy' (COM(2009)0647),
- having regard to the Commission Communication 'Cohesion policy: Strategic Report 2010 on the implementation of the programmes 2007-2013' (COM(2010)0110),
- having regard to the Sixth progress report from the Commission on economic and social cohesion (COM(2009)0295),
- having regard to the Commission Communication 'Driving European recovery' (COM(2009)0114),
- having regard to the Commission Communication 'Cohesion Policy: investing in the real economy' (COM(2008)0876),

Tuesday 6 July 2010

- having regard to the Commission Communication 'New Skills for New Jobs: Anticipating and matching labour market and skills needs' (COM(2008)0868),
  - having regard to the Commission Communication 'A European Economic Recovery Plan' (COM(2008)0800),
  - having regard to the Commission Communication 'From financial crisis to recovery: a European framework for action' (COM(2008)0706),
  - having regard to the Council Recommendation on the 2009 update of the broad guidelines for the economic policies of the Member States and the Community and on the implementation of Member States' employment policies (COM(2009)0034),
  - having regard to the National Strategic Reports from the Member States for 2009,
  - having regard to Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1260/1999 <sup>(1)</sup>,
  - having regard to its motion for a resolution of 11 March 2009 on Cohesion Policy: investing in the real economy <sup>(2)</sup>,
  - having regard to the opinion of the Committee of the Regions on the Sixth progress report from the Commission on economic and social cohesion (COTER-IV-027),
  - having regard to the European Economic Forecast – Autumn 2009/ European Economy 10/2009 – DG Economic and Financial Affairs-European Commission,
  - having regard to the Quarterly Report on the Euro Area - Volume 8 No 4 (2009) – DG Economic and Financial Affairs – European Commission,
  - having regard to Rule 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Regional Development (A7-0206/2010),
- A. whereas between 2000 and 2006 15,2 % of Europeans (69,8 million) lived in Objective 2 areas and benefited from total financing of EUR 22,5 billion (9,6 % of total resources), with 730 000 'gross' jobs being created, and most indicators showing high performance levels (employment, innovation, research and development (R&D), human capital intensity, education and training, lifelong learning) while, on the other hand, other indicators (foreign direct investment (FDI), productivity) show lower performance levels than those of the convergence regions, and, as regards growth of per capita GDP compared with the EU average, the regions in question are quite a long way ahead (122 %) of the convergence regions (59 %) but nevertheless show a fall of 4,4 % over that period,
- B. noting that, with the 2006 reform, Objective 2 now concerns strengthening regional competitiveness and employment in a total of 168 regions in 19 Member States, i.e. 314 million inhabitants, with total financing for 2007-2013 of EUR 54,7 billion (just under 16 % of overall resources), and, it is worth pointing out, around 74 % of that amount is earmarked for improving knowledge and innovation (33,7 %) and for more and better jobs (40 %),

<sup>(1)</sup> OJ L 210, 31.7.2006, p. 25.

<sup>(2)</sup> Texts adopted, P6\_TA(2009)0124.

Tuesday 6 July 2010

- C. whereas, based on the latest Commission forecasts (2009-2011), the labour market situation will remain unfavourable and the unemployment rate will reach 10,25 % in the EU, with the loss of 2,25 % of jobs for 2009 and 1,25 % for 2010 and entailing inter alia an increase in social breakdown in the member countries; whereas the key sectors in the EU region show: (a) an increase in new orders and confidence, with an improvement in the overall EU industrial picture, although at a rate of production 20 % lower than at the start of 2008, (b) continued decline in activities in the manufacturing sector, and (c) continued difficulty for SMEs in accessing micro-credit/financing,
- D. whereas although it is true that initially the crisis affected men more, currently the rate of job loss is similar for men and women, and women's presence in the labour market is lower than that of men in most countries of the EU; whereas we have learned from other crises that women who lose their jobs are more likely to be unable to find other work; whereas equality between men and women has a positive impact on productivity and economic growth, and participation of women in the labour market has many social and economic benefits,
- E. stressing the fact that, based on the National Strategic Reports for 2009, and the Strategic Report 2010 of the Commission regarding cohesion policy and the implementation of the programmes 2007-2013, the Member States appear to have made rather different uses of the instruments, means and methods for facilitating cohesion policy proposed by the Commission to combat the crisis and increase actual expenditure, such as changes to the strategic guidelines, the axes and financing for the operational programmes and the response to the simplification of implementing procedures,
- F. stressing that from October 2008 onwards the Commission proposed a series of measures aimed at speeding up implementation of programmes under the cohesion policy 2007-2013 in order to mobilise all its resources and means to provide immediate and effective support for recovery efforts at national and regional level,
- G. whereas the Commission strategy to accelerate investment and simplify cohesion policy programmes through recommendations to the Member States and legislative or non-legislative measures is built around three axes: (a) greater flexibility for cohesion programmes, (b) giving the regions a head start, and (c) smart investment for cohesion programmes; whereas for 2010, of the EUR 64,3 billion earmarked for employment and competitiveness, EUR 49,4 billion are to be used for cohesion (an increase of 2 % over 2009) and EUR 14,9 billion for competitiveness (an increase of 7,9 % over 2009),
1. Stresses that, in the context of the global financial and economic crisis and the current economic slowdown, EU regional policy is a key delivery instrument, making a decisive contribution to the European Economic Recovery Plan, constituting the largest Community source of investment in the real economy and providing notable support for public investment, including at regional and local level; notes that it is essential to ensure a successful exit from the crisis in order to achieve long-term sustainable development by strengthening competitiveness, employment and the attractiveness of European regions;
  2. Notes that the Structural Funds are powerful instruments, designed for helping the regions in their economic and social restructuring and in promoting economic, social and territorial cohesion, as well as for implementation of the European Economic Recovery Plan and, in particular, development of competitiveness and job creation, by supporting their systematic and effective use; stresses that the aim of competitiveness cannot be attained to the detriment of cooperation and solidarity between regions;
  3. Is pleased to note the positive results with regard to most indicators observed in the period before the economic crisis in the Objective 2 regions, namely the high performance levels in employment, innovation, research and development (R&D), human capital intensity, education and training and lifelong learning; stresses that the impact of the crisis on the economy must not result in a reduction in support for more and better jobs, and calls for these comparative advantages to be sustained through a strengthening of the Objective 2 instruments;

Tuesday 6 July 2010

4. Warmly supports the key priorities of the EU 2020 strategy, particularly smart, sustainable, inclusive growth achieved, inter alia, by exploiting new ways of achieving sustainable economic growth via the digital economy, improving the regulatory framework for strengthening territorial and social cohesion and promoting better conditions and a better business environment with fair competition, job creation, entrepreneurship and innovation for all the regions, developing SMEs and supporting their growth potential; also supports the efforts towards more and better jobs, with decent working conditions for men and women and guaranteed access to basic and advanced training; calls for these policies to be strengthened further, including through measures to capitalise on the advantages offered by Europe's single market within the framework of the forthcoming deepening of the EU 2020 strategy, while ensuring that Objective 2 remains focused on delivering EU territorial cohesion;
5. Notes with concern the negative social consequences that have been brought about by the crisis in Objective 2 regions, with an increase in unemployment, poverty and social exclusion and harm to the most vulnerable social groups (the unemployed, women, the elderly), and calls on the Commission to take initiatives to support SMEs in securing the viability of existing jobs and creating, where possible, more new jobs;
6. Emphasises that economic, social and territorial cohesion is at the heart of the EU2020 Strategy; cohesion policy and the structural funds are a key tool in achieving the priorities of smart, sustainable, inclusive growth in the Member States and the regions;
7. Underlines the significant problem posed by the reduction in the contribution of national co-financing to programmes, which also has implications for Objective 2 owing to the major financial problems of many Member States, and supports Commission policy regarding the use of the Community contribution; considers it necessary, therefore, for the amendment of Regulation (EC) No 1083/2006 in its present form, as adopted by Parliament, to be speedily implemented, considers 100 % financing to be excessive, since it takes away the incentive for the Member States to ensure that the measures supported are effective and efficient through national co-financing, and concurs with the view taken by the Council in rejecting 'frontloading' as its stands;
8. Notes that, out of a total of 117 operational programmes financed by the ESF, 13 were amended (for Austria, Germany, Hungary, Ireland, Latvia, Lithuania, the Netherlands, Poland, Portugal, two for the United Kingdom, and two for Spain) with the aim of tackling specific needs resulting from the crisis, and calls on the Commission to help the Member States use this flexibility to reorient their operational programmes, and to publicise the fact widely among the relevant regional and local actors as quickly as possible with a view to providing short-term assistance to specific at-risk groups and categories;
9. Notes that the Sixth progress report on economic and social cohesion reflects the different socio-economic situations in the three types of region, particularly with regard to their capacity for creativity, innovation and entrepreneurship. Both the current economic crisis and the different variables which affect the opportunities for regional development (demography, accessibility, capacity for innovation, etc.) provide evidence of the existence of important data that must be taken into consideration when assessing the situation of local and regional economies and formulating an effective cohesion policy;
10. Supports the Council's proposal to increase advances for 2010 by 4 % in the case of the ESF and by 2 % in the case of the Cohesion Fund, but only for Member States whose GDP has fallen by more than two digits or which have received IMF balance-of-payments support; calls on the Commission to study the causes of the delays in implementation and to find flexible solutions for the n+2/n+3 rules, so that funds are not forfeited to the Member States;
11. Regrets the fact that the Sixth progress report from the Commission on economic and social cohesion does not include specific qualitative and quantitative data on the short-term and long-term impact of the financial and economic crisis in the EU regions, particularly with regard to the most significant economic and social indicators; therefore calls on the Commission to present a special report/study on the effects of the financial and economic crisis in the EU regions, in particular the Objective 2 regions and phasing-out regions, as well as on a possible widening or narrowing of regional disparities in the context of the crisis; notes that those evaluations must be carried out without delay in order to be able to counter undesirable developments and that they can be used as the basis for a proposal on the continuation of Objective 2 in those areas where it can provide added value regarding national funds;

Tuesday 6 July 2010

12. Welcomes the support measures for undertakings under the cohesion policy (approximately EUR 55 billion between 2007 and 2013), most of which relates to strengthening innovation, technology transfer and modernisation of SMEs, stresses the importance of promoting successful models in this area and understands that the proposed measures under the intervention in favour of undertakings must be targeted at their long-term restructuring outcomes and the transition to a more sustainable economy, and not at fire-fighting interventions for economic survival, which in many cases are incompatible with State aid policies;

13. Emphasises that, in order to tackle the crisis, investment is needed in research and development, innovation, education and technologies that use resources efficiently; such investment will benefit traditional sectors, rural areas and highly skilled service economies and will therefore strengthen economic, social and territorial cohesion; notes that it is necessary to provide for an affordable, accessible funding mechanism in which the structural funds play a key role;

14. Calls on the Commission and the Member States to monitor, on a continuous basis, the impact of the crisis in various structural and development fields and the use made of the opportunities offered by the financing instruments earmarked for Objective 2 primarily to support entrepreneurship and SMEs and bodies working for a social, inclusive economy, with a view to increasing their competitiveness and thus the potential for greater employment, and facilitating their access to financial engineering instruments (Jaspers, Jeremie, Jessica, Jasmine); calls on the Commission and the Member States to use this evidence to prepare and target the future Objective 2 EU Cohesion to those areas, at regional and local level, where added value of EU interventions can be demonstrated (in particular innovations in the tourism, service, IT, and industrial sectors, alongside protection and improvement of the environment and the potential development of renewable energy or technologies that would significantly improve conventional energy undertakings, targeting low emissions and minimising waste production, as well as innovations in the primary sector);

15. Calls on the Commission and the Member States to utilise and promote all synergies of tools for cohesion policy and competitiveness at a regional, national, cross-border and European level;

16. Welcomes Commission policy on (a) extending the eligibility period under the operational programmes 2000-2006 to allow maximum take-up of all cohesion policy resources, (b) simplifying the administrative requirements and procedures and the financial management of the programmes, while at the same time still ensuring the necessary checking for any instances of errors or fraud; takes the view in this connection that conditions should be created with a view to encouraging reasonable projects and preventing unlawful behaviour in advance;

17. Supports the 'pre-financing' policy for programmes under the cohesion policy 2007-2013, which produced immediate liquidity of EUR 6,25 billion for 2009 for investment within the framework of the financing packages agreed for each Member State;

18. Notes that urban regions and urban centres present, by their very nature, particular and significant social problems (high unemployment, marginalisation, social exclusion etc.), which have increased owing to the impact of the crisis and which must be studied carefully in order to take appropriate action and both short- and long-term measures;

19. Supports the assistance policy and the new financing instruments for major projects for the regions (planned total cost of EUR 50 million and above) introduced by the Commission in 2009, values the importance of financial engineering instruments and EIB/EIF cooperation, especially JASPERS, JEREMIE AND JESSICA, and calls for a further increase beyond 25 % in the financing provided through JASPERS (Joint Assistance in Supporting Projects in European Regions) that relates specifically to the regions in Objective 2, with a view to encouraging their full preparation and very rapid implementation even though, at the present stage, these projects remain few in number; hopes that the previous increase in financing for JASPERS has a medium- and long-term impact on the growth of the economic competitiveness of European regions, and advocates the regular inclusion of a comparative analysis of the results obtained and objectives pursued, and of the financing awarded and the financing required to fulfil the respective objectives;

Tuesday 6 July 2010

20. Stresses that only with genuinely integrated multi-level governance among local, regional, national, cross-border and EU public authorities can EU, national and regional policy be efficient and effective; calls on the Commission to evaluate the possibilities of innovation-related territorial cooperation, both national and international, in each cohesion policy objective, and to analyse the possibilities for reinforcing the European territorial cooperation objective with regard to fostering innovation-related cooperation between regions; in parallel with the reinforcement of the Territorial Cooperation Objective (Objective 3), the possibility of developing transnational territorial cooperation actions in the framework of Objective 2 should also be reinforced; notes that such a possibility is now made possible by Article 37(6)(b) of Regulation (EC) No 1083/2006; is of the opinion that, without changing the overall cohesion objectives' budget, the reinforcement of territorial cooperation should be accompanied by a move towards an increased budget for this extended territorial cooperation;

21. Supports the proposed changes to the implementing rules aimed at strengthening the flexibility of the Structural Funds and their adaptation to meet the need, in the exceptional economic circumstances, for immediate implementation of 455 programmes under the cohesion policy, in particular as regards Objective 2 programmes, while still taking account of the need for national and regional institutions and managing authorities to adapt to this new situation so as to prevent any mismanagement or misuse of funds and to ensure that any remaining funds are redirected to existing or upcoming projects; calls for the managing authorities to propose ways of making the implementation of Objective 2 operational programmes more efficient;

22. Insists that in special circumstances (such as the economic crisis) greater flexibility can be exceptionally required in the N+2 rule in view of the objectives pursued by the cohesion policy and the effects of cyclical economic changes on public finances and private investment;

23. Recommends that all funds that remain unspent in a region under N+2 and N+3 are allocated again to regionally based projects and community initiatives;

24. Calls on the Commission to evaluate the Small Business Act action plan/initiative for legislative proposals after a year of implementation (December 2008), primarily as regards results in strengthening small businesses' competitiveness and access to financing and operating capital, as well as promoting innovative start-ups, reducing administrative burdens, etc.;

25. Emphasises the positive effect which equality between men and women has on economic growth; notes in that regard that some studies calculate that if the rates of employment, part-time employment and productivity of women were similar to those of men, GDP would increase by 30 % in the programming period beyond 2013; therefore requests special scrutiny for those projects financed under the structural funds which promote equality and the inclusion of women in the labour market;

26. Instructs its President to forward this resolution to the Council, the Commission and the Member States.

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## **A sustainable future for transport**

P7\_TA(2010)0260

**European Parliament resolution of 6 July 2010 on a sustainable future for transport (2009/2096(INI))**

(2011/C 351 E/03)

*The European Parliament,*

— having regard to the Commission communication entitled 'A sustainable future for transport: Towards an integrated, technology-led and user friendly system' (COM(2009)0279),

**Tuesday 6 July 2010**

- having regard to the Presidency conclusions of 17 and 18 December 2009 on the Commission communication entitled 'A sustainable future for transport: Towards an integrated, technology-led and user friendly system' (17456/2009),
- having regard to the Commission White Paper entitled 'European Transport Policy for 2010: time to decide' (COM(2001)0370),
- having regard to the Commission communication entitled 'Keep Europe moving – Sustainable mobility for our continent – Mid-term review of the European Commission's 2001 Transport White Paper' (COM(2006)0314),
- having regard to the Commission Green Paper on market-based instruments for environment and related policy purposes (COM(2007)0140),
- having regard to the Commission communication entitled 'Strategy for the internalisation of external costs' (COM(2008)0435),
- having regard to the Commission communication entitled 'Greening Transport' (COM(2008)0433),
- having regard to the Commission communication entitled 'Limiting Global Climate Change to 2 degrees Celsius – The way ahead for 2020 and beyond' (COM(2007)0002),
- having regard to the Commission Green Paper entitled 'TEN-T: A policy review – Towards a better integrated trans-European transport network at the service of the common transport policy' (COM(2009)0044),
- having regard to the Commission communication entitled 'Action Plan for the Deployment of Intelligent Transport Systems in Europe' (COM(2008)0886),
- having regard to the Commission communication entitled 'The EU's freight transport agenda: Boosting the efficiency, integration and sustainability of freight transport in Europe' (COM(2007)0606),
- having regard to the Commission communication entitled 'Freight Transport Logistics Action Plan' (COM(2007)0607),
- having regard to the Commission communication entitled 'Freight Transport Logistics in Europe – the key to sustainable mobility' (COM(2006)0336),
- having regard to the Commission's second report on monitoring development of the rail market (COM(2009)0676),
- having regard to the Commission communication entitled 'Strategic goals and recommendations for the EU's maritime transport policy until 2018' (COM(2009)0008),
- having regard to the Commission's communication and action plan with a view to establishing a European maritime transport space without barriers (COM(2009)0010),
- having regard to the Commission communication on Short Sea Shipping (COM(2004)0453),
- having regard to the Commission communication on a European Ports Policy (COM(2007)0616),



Tuesday 6 July 2010

- having regard to the Commission communication entitled ‘Towards Europe-wide Safer, Cleaner and Efficient Mobility: The First Intelligent Car Report’ (COM(2007)0541),
- having regard to the Commission communication entitled ‘European Road Safety Action Programme – Halving the number of road accident victims in the European Union by 2010: A shared responsibility’ (COM(2003)0311),
- having regard to the Commission communication entitled ‘European road safety action programme mid-term review’ (COM(2006)0074),
- having regard to the Commission Green Paper entitled ‘Towards a new culture for urban mobility’ (COM(2007)0551),
- having regard to the Commission communication entitled ‘Action Plan on Urban Mobility’ (COM(2009)0490),
- having regard to its resolution of 10 March 2010 on EU 2020 <sup>(1)</sup>,
- having regard to its resolution of 12 April 2005 on short sea shipping <sup>(2)</sup>,
- having regard to its resolution of 29 September 2005 on the European Road Safety Action Programme: Halving the number of road accident victims in the European Union by 2010: A shared responsibility <sup>(3)</sup>,
- having regard to its resolution of 18 January 2007 on European Road Safety Action Programme — mid-term review <sup>(4)</sup>,
- having regard to its resolution of 12 July 2007 on keeping Europe moving – Sustainable mobility for our continent’ <sup>(5)</sup>,
- having regard to its resolution of 12 July 2007 on the implementation of the first railway package <sup>(6)</sup>,
- having regard to its resolution of 5 September 2007 on Freight Transport Logistics in Europe – the key to sustainable mobility <sup>(7)</sup>,
- having regard to its resolution of 11 March 2008 on sustainable European transport policy, taking into account European energy and environment policies <sup>(8)</sup>,
- having regard to its resolution of 19 June 2008 on the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Towards Europe-wide Safer, Cleaner and Efficient Mobility: The First Intelligent Car Report <sup>(9)</sup>,

<sup>(1)</sup> Texts adopted, P7\_TA(2010)0053.

<sup>(2)</sup> OJ C 33 E, 9.2.2006, p. 142.

<sup>(3)</sup> OJ C 227 E, 21.9.2006, p. 609.

<sup>(4)</sup> OJ C 244 E, 18.10.2007, p. 220.

<sup>(5)</sup> Texts adopted, P6\_TA(2007)0345.

<sup>(6)</sup> Texts adopted, P6\_TA(2007)0344.

<sup>(7)</sup> OJ C 187 E, 24.7.2008, p. 154.

<sup>(8)</sup> OJ C 66 E, 20.3.2009, p. 1.

<sup>(9)</sup> OJ C 286 E, 27.11.2009, p. 45.

Tuesday 6 July 2010

- having regard to its resolution of 4 September 2008 on freight transport in Europe <sup>(1)</sup>,
  - having regard to its resolution of 4 September 2008 on a European ports policy <sup>(2)</sup>,
  - having regard to its resolution of 11 March 2009 on the greening of transport and the internalisation of external costs <sup>(3)</sup>,
  - having regard to its resolution of 22 April 2009 on the Green Paper on the future TEN-T policy <sup>(4)</sup>,
  - having regard to its resolution of 23 April 2009 on the Intelligent Transport Systems Action Plan <sup>(5)</sup>,
  - having regard to its resolution of 23 April 2009 on an action plan on urban mobility <sup>(6)</sup>,
  - having regard to Regulation (EC) No 1070/2009 of the European Parliament and of the Council of 21 October 2009 amending Regulations (EC) No 549/2004, (EC) No 550/2004, (EC) No 551/2004 and (EC) No 552/2004 in order to improve the performance and sustainability of the European aviation system <sup>(7)</sup>,
  - having regard to Rule 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Transport and Tourism and the opinions of the Committee on the Environment, Public Health and Food Safety, the Committee on Industry, Research and Energy and the Committee on Regional Development (A7-0189/2010),
- A. whereas the transport sector is an important element in the development of the European Union and its regions and cities, and one which has a direct influence on the competitiveness and social cohesion of the regions and cities and thereby makes a significant contribution to achieving the European single market,
- B. whereas transport has a triple role: an economic role, a social role and a territorial cohesion role, all of which are essential for European integration,
- C. whereas the transport sector plays a key role in the economy and employment, given that it represents 10 % of the EU's prosperity (viewed in terms of gross domestic product) and provides over 10 million jobs and will therefore have a crucial role in the implementation of the EU 2020 strategy,
- D. whereas transport is an essential element of European policy, and whereas, therefore, the EU needs a financial framework that responds to the transport policy challenges in the years ahead, stimulates the economy in the short term, increases productivity in the medium and long term and strengthens Europe as a research location,
- E. whereas the transport sector has a considerable impact on the environment and on people's health and quality of life, and, whilst facilitating people's private and professional mobility, was responsible, as a whole, for 27 % of total CO<sub>2</sub> emissions in 2008, and whereas this figure has since risen even further; whereas road transport accounted for 70,9 %, aviation for 12,5 %, sea and inland waterways for 15,3 % and railways for 0,6 % of total CO<sub>2</sub> emissions from the transport sector in 2007,

<sup>(1)</sup> OJ C 295 E, 4.12.2009, p. 79.

<sup>(2)</sup> OJ C 295 E, 4.12.2009, p. 74.

<sup>(3)</sup> Texts adopted, P6\_TA(2009)0119.

<sup>(4)</sup> Texts adopted, P6\_TA(2009)0258.

<sup>(5)</sup> Texts adopted, P6\_TA(2009)0308.

<sup>(6)</sup> Texts adopted, P6\_TA(2009)0307.

<sup>(7)</sup> OJ L 300, 14.11.2009, p. 34.

Tuesday 6 July 2010

- F. whereas in Europe all modes of transport have made efforts to improve safety; whereas, however, in 2008 approximately 39 000 people died in traffic accidents and 300 000 people were seriously injured, which means that further efforts are required as regards all aspects of safety, notably road safety,
- G. whereas the EU undertook, in the climate change package, to achieve a 20 % reduction in greenhouse gas emissions by 2020 compared to 1990, which remains a binding target,
- H. whereas the goals set in the 2001 White Paper have been attained only in part, so that the question of whether they should be maintained or reformulated needs to be examined, and, where proven necessary, efforts to achieve those goals need to be strengthened,
- I. whereas problems with transposition, such as late or incorrect transposition, have a considerable impact on the effectiveness of European legislation; whereas, therefore, there is an urgent need for action in this regard,
- J. whereas Parliament's work must be consistent, particularly in areas which affect transport policy directly such as, for example, environment and social policy, urban and land use planning and employment and economic policy,
- K. whereas the financial and economic crisis has hit the transport sector hard, a situation which should, however, be taken as an opportunity to support and promote the transport industry in a forward-looking way, especially through promoting the sustainability of transport modes and investments in, among other things, rail and waterway transport; whereas this will ensure a more level playing field in the market,
- L. whereas, as part of the forthcoming review of the agencies, agencies' added value has to be analysed, as does the need to set up a European transport agency,
- M. whereas it is vital for measurable targets to be set for the transport sector, as a way of both monitoring the efficiency of transport policy more effectively and establishing social and economic planning guidelines, as well as demonstrating that the proposed measures are necessary for the implementation of the transport policy put in place,
- N. whereas significant developments in research, infrastructure and technology require adjustments to be made to financial resources and instruments,
- O. whereas developments in society and in a wide range of economic sectors are giving rise to increased demand in the transport sector, as a result of which all means of transport are vital; whereas, however, these should be measured according to their efficiency in economic, environmental, social and employment policy terms,
- P. whereas, in the future, the sustainable interworking of all modes of passenger and freight transport will be necessary in order to achieve safe, sustainable, logistically consistent and therefore efficient transport chains, including multi-modal solutions and the linking of local and long-distance transport,

### ***Social, economic and environmental challenges***

1. Is convinced that EU policy in general needs a clear and coherent vision of the future of transport as a sector at the core of the single market, guaranteeing free movement of persons and goods and ensuring territorial cohesion throughout Europe; takes the view that, while continuing to generate a significant part of Europe's sustainable growth and competitiveness, the transport sector must guarantee economic efficiency and develop within consistently high social and environmental standards;

Tuesday 6 July 2010

2. Is convinced that demographic change, in particular in urban areas, will give rise to safety and capacity challenges for transport and mobility, and that the basic right to mobility, ensured by, among other things, improved accessibility and the construction of missing infrastructure links, and the applicability of this right, are crucial in this regard; stresses that, in this context, well-integrated multimodal transport chains including walking and cycling and public transport are the way ahead for urban areas; points out in that connection that in urban areas the existing structure in particular will determine which mode is most appropriate; considers that good public transport links in rural areas will cut down on private car use; calls, in the interest of creating coherent urban and suburban transport systems and retaining the rural population, for the formation of Functional Urban Regions;
3. Asks the Commission to introduce Sustainable Urban Mobility Plans (SUMP) for cities of more than 100 000 inhabitants and, with due respect for the principle of subsidiarity, encourage cities to draw up mobility plans which propose an integrated transport concept with the objective of reducing environmental damage and making mobility healthier and more efficient;
4. Considers that increasing demand also results, inter alia, in a strain on capacity and reduced efficiency due to infrastructure problems in the field of freight transport, that, primarily, comodal use and the safety of transport users and transported goods should therefore be increased and that a fundamental improvement of the infrastructure, in particular the elimination of bottlenecks known about for years, is essential;
5. Stresses that decarbonising transport is one of the main challenges of future EU transport policy and that all available, sustainable means should be used in order to achieve this, such as an energy mix promoting the research and development of more environmentally friendly technologies and modes, price formation measures and the internalisation of the external costs of all modes of transport, provided that the revenue generated at EU level is used to improve the sustainability of mobility and measures are taken to adapt the behaviour of transport users and professionals (awareness-raising, environmentally friendly behaviour, etc.); underlines that, to this end, the priority development of financial incentives ruling out any distortions of competition between modes of transport and Member States in the process should be undertaken;
6. Recognises that, according to the International Maritime Organisation (IMO), maritime transport emits 3 to 5 times less CO<sub>2</sub> than land transport but is concerned about the expected emissions of SO<sub>x</sub> and NO<sub>x</sub> from maritime transport, which will be approximately equivalent to land-based transport by 2020, and the inconclusive attempt by the IMO to put in place a CO<sub>2</sub> emission reduction system;
7. Stresses the need for the general public to be better informed about the consequences of leisure-time travel and calls on the Commission to consider leisure-time travel in its policy approach;

### **Safety**

8. Emphasises that safety must continue to be one of the priority objectives of the future transport policy and that the safety of active and passive users of all transport modes has to be guaranteed; considers it to be of the utmost importance to reduce the health effects of transport, especially through the use of modern technologies, and to ensure the rights of passengers in all transport modes, particularly those with reduced mobility, by means of clear and transparent regulations; supports the creation of a charter of passengers' rights in the European Union;
9. Calls on the Commission to present a very brief study detailing the best practices of the Member States concerning the impact of speed limiters for all types of vehicles and roads, both urban and inter-urban, with a view to presenting legislative measures aimed at reducing emissions and improving road safety;
10. Underlines the necessity of guaranteeing both personal safety and legal certainty for workers in the transport sector by, among other things, creating a sufficient number of safe and secure parking places and harmonising the enforcement of road transport rules and the sanctions for which they provide; stresses also that the introduction of cross-border enforcement of sanctions will improve road safety for all users;

Tuesday 6 July 2010

11. Draws attention to the fact that the provision of parking areas in the trans-European road network (TERN) has not kept pace with the increase in road freight transport, which means that compliance with the permissible driving times and rest periods established for professional drivers, especially during night-time hours, and road safety more generally, will be seriously compromised unless the quality and quantity of rest facilities are improved in the EU Member States;

### ***Efficient comodality***

12. Considers that the development of passenger and freight transport as a whole is largely dependent on effective use of the various modes of transport, and that the goal of European transport policy should therefore be efficient comodality, which is closely linked to the decarbonisation, safety and economic aspects of transport; believes that this will lead to an optimal reallocation between the different transport modes and a shift towards more sustainable transport modes, and will provide for interoperability within and between the modes, promote more sustainable transport and logistics chains and modal choices and enhance seamless traffic flows across modes and nodes;

13. Stresses that efficient comodality should be measured not only in terms of cost-effectiveness but also according to criteria of environmental protection, social and employment conditions, safety and territorial cohesion, with attention also being paid to the different technical possibilities and starting levels of the different modes of transport and of the countries, regions and cities in Europe;

14. Underlines that efficient comodality means improving infrastructure – among other things by developing green corridors, reducing bottlenecks and improving rail and waterway transport –, advancing safety through new technologies and improving working conditions;

### ***Completion of the single market***

15. Calls for regular reviews of European legislation and its transposition and implementation, with a view to guaranteeing the effectiveness thereof; calls on the Commission consistently to remove the obstacles caused by incorrect or late transposition of European legislation in the Member States;

16. Proposes that in the new framework of the Lisbon Treaty, and with the Commission's consent, at least one joint meeting be held every year with representatives of the national parliaments responsible for transport, with a view to sharing and cooperating to ensure better, more effective implementation of EU transport legislation;

17. Considers that transport plays an essential role in completing the European single market and freedom of movement for persons and goods, and that regulated market opening should be achieved, primarily in the rail transport sector, in all EU Member States; takes the view that this complete market opening will benefit consumers and should be accompanied by measures safeguarding the quality of public services, as well as a long-term investment plan for infrastructure and technical interoperability in order to improve efficiency and safety and measures aimed at avoiding distortions of intra-modal and inter-modal competition, inter alia in the social, fiscal, safety and environmental fields; the internalisation of external social and environmental costs should be carried out gradually, starting with the more polluting road and air transport modes;

18. Calls on the Commission and on Member State authorities to facilitate the completion of the liberalisation of cabotage transport, to reduce the prevalence of empty mileage and to provide for a more sustainable road and rail network in the form of more freight transport hubs;

19. Believes it essential, in order to achieve an efficient maritime transport system that complements other modes, to focus once again on a clear liberalisation process enabling it to be truly competitive;

**Tuesday 6 July 2010**

20. Underlines, with regard to the economic requirements, the importance of genuinely European management of transport infrastructure (freight and passenger rail transport corridors, Single European Sky, ports and their connections with the transport network, maritime area without borders, inland waterways) with a view to eliminating the 'border effect' in all transport modes and enhancing the EU's competitiveness and appeal;

21. Calls for the establishment of a common European reservation system in order to enhance the effectiveness of the various modes of transport and to simplify and increase their interoperability;

22. Underlines that transport has an impact on social, health and security policy and that, in the context of creating a single transport area, employment and working conditions and education and training must be harmonised at a high level and must be continually improved on the basis of an effective social dialogue at European level; stresses that the creation of, inter alia, European training centres and EU centres of excellence in the relevant Member States can contribute to promoting the measurable quality of training and the status of transport sector employees, as well as to the mutual recognition of training courses;

23. Considers that, in order to achieve greater effectiveness in transport policy, there is a need to evaluate programmes (such as Galileo and ITS for all transport modes) and, depending on the results, strategy and programming should be reoriented as appropriate; sees a consequent need for, among other things, a new road traffic safety programme, further revitalisation of the TEN-Ts, a mid-term review of NAIADES, the urgent and full implementation of the Single European Sky programme, SESAR and the Eight Framework Programme for Research and the continuation of Marco Polo in a simplified form;

#### ***European agencies***

24. Is of the view that technical interoperability and its financing, European certification, standardisation and mutual recognition are essential elements of an effectively functioning single market, and that their enforcement should figure more prominently among the tasks of the various agencies; underlines that all the agencies should strive for, and swiftly attain, a similarly high level of responsibility and competence and should be evaluated regularly; encourages in particular the development of the full potential of the European Railway Agency, including the progressive assumption by the agency of responsibility for certifying all new rolling stock and railway infrastructure and for regular audits of national safety authorities or equivalent bodies in the Member States, as laid down in Directive 2004/49/EC of 29 April 2004;

25. Underlines that 75 % of transport is road-based, and asks for consideration to be given to the need for an agency for road transport, in particular to improve road safety and also to guarantee people's fundamental right to safe mobility by supporting new applications (such as Galileo or equally suitable technologies for intelligent transport systems) and conducting research programmes; considers, in addition, that this agency should be able to take regulatory action if obstacles to a sustainable single market need to be removed;

26. Points out that inland waterway transport is still confronted with a disparate institutional framework and requests the establishment of permanent and structured cooperation between the competent institutions in order to fully exploit the potential of this mode of transport;

#### ***Research and technology***

27. Calls for a research and technology agenda for the transport sector; considers that this agenda should be drawn up in cooperation with all relevant stakeholders in order to understand the needs of the sector and, accordingly, improve the allocation of EU funding; takes the view that priority should be given to projects to decarbonise transport, increase the transparency of the supply chain and transport safety and security, improve traffic management and reduce administrative burdens;

Tuesday 6 July 2010

28. Emphasises that research and development and innovation require support, since they lead to considerable environmental improvements in all transport modes due to a reduction in exhaust gases and traffic noise, improve safety by creating solutions to ensure better use of existing infrastructure capacity and to reduce traffic bottlenecks, and, not least, result in increased energy independence across the modes in the entire transport network; stresses in this respect that intelligent, interoperable and connected transport organisation and safety systems, such as ERTMS, Galileo, SESAR, ITS and equally appropriate technologies, require support in terms of research and development as well as in their application; calls on the Member States to ensure that all citizens across Europe benefit from these intelligent transport systems; notes that the necessary framework conditions and open standards must be introduced for promising technologies, without giving an undue advantage to any specific technology;

29. Underlines that within the framework of climate protection and EU energy independence, each transport mode should reduce its CO<sub>2</sub> emissions and be supported by research and development in innovative, energy-efficient and clean technologies and renewable energies which leads to, among other things, more sustainable vehicles in all transport modes; considers that this would at the same time strengthen the competitiveness of European companies;

30. Emphasises the need for a uniform definition of relevant terms relating to road safety and accident research, in order to ensure comparability of findings and of any measures that may be implemented;

31. Stresses that harmonising transport documents in line with the latest communication standards, as well as their multimodal and international applicability, can result in a considerable improvement in safety and logistics and a drastic reduction in the administrative burden;

#### ***Transport fund and a European transport network***

32. Emphasises that an efficient transport policy requires a financial framework that is appropriate to the challenges arising and that, to that end, the current resources for transport and mobility should be increased; considers the following to be necessary:

- (a) the creation of a facility to coordinate the use of different sources of transport funding, funds available under cohesion policy, PPPs or other financial instruments such as guarantees; these coordinated funding sources should be used at all levels of government to improve transport infrastructure, support TEN-T projects, ensure technical and operational interoperability, support research and promote the implementation of intelligent transport systems in all modes of transport; funding should be guided by transparent award criteria which take account of efficient modality as referred to in paragraph 5, social policy, security and social, economic and territorial cohesion;
- (b) a budget commitment for transport policy under the multiannual financial framework;
- (c) the possibility that, in the framework of the Stability and Growth Pact, and with a view to promoting sustainability in the medium and long term, the long-term nature of investments in transport infrastructure, which improves the competitiveness of the economy, is taken into account when calculating the public deficit, as long as the Commission has previously approved it;
- (d) the use of the fund to require, among other things, cofinancing from revenue generated by the internalisation of external costs;

33. Calls for a coherent and integrated transport policy promoting, inter alia, transport by rail and ship, port policy and public transport by means of financial support which is not measured by competitiveness criteria in line with EU rules on state aids;

Tuesday 6 July 2010

34. Considers that the financial and economic crisis must serve as an opportunity to give targeted support to the field of transport and to promote investment in, first and foremost, safe, environment-friendly and therefore sustainable transport through the provision of financial assistance; takes the view that EU investments in transport projects should be taken into consideration in the context of the EU 2020 strategy, since transport and mobility systems afford unique opportunities for creating stable jobs;

35. Is convinced that the definition of a European core network within the overall TEN network, which remains a priority of EU transport policy, should be evaluated according to criteria relating to sustainable development at European and also regional and local levels, and that multimodal platforms and dry ports remain an essential element of infrastructure supply, since they enable effective interconnections to be made between different modes of transport;

36. Is of the opinion that TEN-T projects should remain a priority of EU transport policy and that there is an urgent need to tackle the lack of infrastructure and to overcome the historical and geographical obstacles that remain at borders; underlines that TEN-T should be integrated into a pan-European network with links extending beyond the EU, and considers that this process can be accelerated by stepping up funding;

37. Calls for inland waterway transport infrastructure, inland ports and the multimodal linking of sea ports with the hinterland and rail connections to be given a greater role in European transport policy, as well as greater support, in order to help reduce the environmental impact and increase the safety of EU transport; considers that the environmental performance of inland waterway vessels can be radically improved if new engines equipped with the latest emission control technology are installed;

38. Highlights the need to look at short-sea-shipping and sea-highway projects in a broader context embracing the countries in Europe's immediate geographical environment; points out that this will require a better synergy to be achieved between regional policy, development policy and transport policy;

39. Recognises that regional airports play a crucial role in the development of peripheral and outermost regions by increasing their connectivity with hubs; considers it particularly useful to apply intermodal solutions where possible; takes the view that (high-speed) rail links between airports offer an ideal opportunity to sustainably link different modes of transport;

#### ***Transport in a global context***

40. Stresses that the creation of a European transport area is an important priority which depends to a large extent on international acceptance under agreements which have yet to be negotiated for all transport modes, particularly in connection with air and sea transport, and that the EU should play an increasingly formative role in the relevant international bodies;

#### ***Measurable targets for 2020***

41. Calls for compliance with clearer, more measurable targets to be achieved in 2020 with reference to 2010, and therefore proposes the following:

- a 40 % reduction in the number of deaths of and serious injuries to active and passive road transport users, with this target being laid down in both the forthcoming White Paper on Transport and the new Road Safety Action Programme;
- a 40 % increase in the provision of parking areas for heavy goods vehicles in the trans-European road network (TERN) in each Member State in order to enhance road safety and ensure compliance with rest periods established for professional drivers;



Tuesday 6 July 2010

- a doubling of the number of bus, tram and rail passengers (and, if relevant, ship passengers) and a 20 % increase in funding for pedestrian- and cycle-friendly transport concepts, ensuring respect for the rights enshrined in Community legislation, notably the rights of passengers with disabilities and reduced mobility;
  - a 20 % reduction in CO<sub>2</sub> exhaust emissions from road passenger and freight traffic to be achieved through suitable innovations, the promotion of alternative energies, and logistical optimisation of passenger and freight transport;
  - a 20 % reduction in the energy used by rail vehicles compared with the 2010 level and capacity and a 40 % reduction in diesel use in the rail sector, to be achieved through targeted investments in rail infrastructure electrification;
  - fitting an ERTMS-compatible and interoperable automatic train speed control system to all new railway rolling stock commissioned from 2011 onwards, and to all new and rehabilitated link lines starting in 2011; stepping up EU financial efforts for the implementation and extension of the ERTMS deployment plan;
  - a 30 % reduction in CO<sub>2</sub> emissions from air transport throughout EU airspace by 2020; thereafter, any growth in air transport must be carbon-neutral;
  - financial support for the optimisation, development and, where necessary, creation of multimodal connections (platforms) for inland waterway transport, inland ports and rail transport and a 20 % increase in the number of such platforms;
  - at least 10 % of TEN-T funding to be dedicated to inland waterway projects;
42. Calls on the Commission to monitor progress towards reaching these targets and to report annually to Parliament thereon;

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43. Instructs its President to forward this resolution to the Council and the Commission.

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## Annual report of the Petitions Committee 2009

P7\_TA(2010)0261

### European Parliament resolution of 6 July 2010 on the deliberations of the Committee on Petitions during the year 2009 (2009/2139(INI))

(2011/C 351 E/04)

*The European Parliament,*

- having regard to its previous resolutions on the deliberations of the Committee on Petitions,
- having regard to Articles 24 and 227 of the Treaty on the Functioning of the European Union,
- having regard to Articles 10 and 11 of the Treaty on the European Union,

Tuesday 6 July 2010

- having regard to Rules 48 and 202(8) of its Rules of Procedure,
- having regard to the report of the Committee on Petitions (A7-0186/2010),
- A. whereas the activity of the Committee on Petitions in 2009 was marked by the transition from the sixth to the seventh parliamentary term, and membership of the Committee changed considerably, with two thirds of members sitting for the first time,
- B. whereas 2009 marked the end of the European Ombudsman's term of office and the Committee on Petitions was directly involved in the hearings of candidates for the position,
- C. whereas the Treaty of Lisbon came into force on 1 December 2009, creating the necessary premises for increased participation by citizens in the EU decision-making process, in an effort to reinforce its legitimacy and accountability,
- D. whereas citizens of the EU are directly represented by Parliament, and the right of petition as enshrined in the Treaty offers them the means to address their representatives whenever they consider that their rights have been infringed,
- E. whereas enforcement of European legislation has a direct impact on citizens, who are the best placed to assess its effectiveness and its shortcomings and to signal remaining gaps that need to be filled in order to ensure adherence to the Union's objectives,
- F. bearing in mind that European citizens, individually and collectively, turn to Parliament for redress when European law is broken,
- G. whereas Parliament, through its Committee on Petitions, has an obligation to investigate such concerns and to do its best to bring such breaches of the law to an end; whereas, in order to offer citizens the most appropriate and rapid remedies, the Committee on Petitions has continued to reinforce its cooperation with the Commission, other parliamentary committees, European bodies, agencies and networks, and Member States,
- H. whereas the number of petitions received by Parliament in 2009 was slightly higher than that recorded in 2008 (i.e. 1924 compared with 1849), and the growing trend for petitions to be submitted electronically was confirmed (about 65 % were received in this form in 2009 as against 60 % in 2008),
- I. whereas the number of inadmissible petitions received in 2009 indicates that additional emphasis should be placed on informing citizens better about the competences of the Union and the role of its various institutions,
- J. whereas, in many instances, citizens petition Parliament about decisions taken by the competent administrative or judicial authorities within Member States, and whereas citizens need mechanisms through which they can call national authorities to account for their part in both the European legislative process and in the legislative enforcement process,
- K. whereas citizens should, in particular, be made aware that – as recognised by the European Ombudsman in the decision of December 2009 closing the inquiry into complaint 822/2009/BU against the Commission – national court proceedings are part of the process of implementing European legislation in the Member States, and that the Committee on Petitions cannot deal with issues subject to national court proceedings or review the outcome of such proceedings,
- L. whereas the high costs of court procedures, particularly in some Member States, can constitute an obstacle for citizens and might actually prevent them from bringing actions before the competent national courts when they consider that national authorities have not respected their rights under EU law,

Tuesday 6 July 2010

- M. whereas Parliament faces a particular problem when petitioned on alleged failures by the national judiciary to request a preliminary ruling from the Court of Justice in disregard of Article 267 TFEU, especially if the Commission does not use its powers under Article 258 to taken action against the Member State in question,
- N. whereas the petitions process – through its working mechanisms and because the right to petition is granted to all EU citizens and residents under the terms of the Treaty – differs from other remedies available to citizens at EU level, such as the submission of complaints to the European Ombudsman or to the Commission,
- O. whereas citizens are entitled to speedy and solution-oriented redress and to a high level of transparency and clarity from all European institutions and whereas Parliament has repeatedly requested the Commission to use its prerogatives as guardian of the Treaty to act against breaches of European legislation revealed by petitioners, especially where transposition of EU legislation at national level results in its infringement,
- P. whereas many petitions continue to raise concerns about the transposition and implementation of European legislation on the internal market and the environment, and bearing in mind the previous calls made by the Committee on Petitions to the Commission to ensure that enforcement checks in these areas are strengthened and made more efficient,
- Q. whereas, although the Commission can fully check compliance with EU law only when a final decision has been taken by national authorities, it is important, particularly in relation to environmental matters and all cases in which the time aspect is especially significant, to verify at an early stage that local, regional and national authorities correctly apply all relevant procedural requirements under EU law and, when necessary, to carry out detailed studies on the application and impact of the legislation in force, in order to obtain all the requisite information,
- R. bearing in mind the importance of preventing further irreparable losses in biodiversity, especially inside Natura 2000 designated sites, and the commitment by Member States to ensure the protection of special conservation areas under the Habitats Directive (92/43/EEC) and the Birds Directive (79/409/EEC),
- S. whereas petitions highlight the impact of European legislation on the everyday lives of EU citizens, and recognising the need to take all necessary steps to consolidate the progress achieved in reinforcing citizens' EU rights,
- T. whereas, in its previous activity report and its opinion on the Commission's annual report on monitoring the application of Community law, the Committee on Petitions requested to be kept informed regularly about the stages reached in infringement procedures the subject of which is also covered by petitions,
- U. bearing in mind that Member States have the primary responsibility for correctly transposing and enforcing European legislation, and recognising that many of them have been increasingly involved in the work of the Committee on Petitions in 2009,
1. Welcomes the smooth transition to the new parliamentary term and notes that much of work of the Committee on Petitions, unlike that of other parliamentary committees, was carried over into the new term because examination of a considerable number of petitions had not been completed;
  2. Welcomes the entry into force of the Lisbon Treaty and is confident that Parliament will be closely involved in the development of the new citizens' initiative so that this instrument can fully achieve its purpose and ensure enhanced transparency and accountability in the EU decision-making process, allowing citizens to suggest improvements or additions to EU law;

Tuesday 6 July 2010

3. Welcomes the Green Paper on a European Citizens' Initiative <sup>(1)</sup>, published by the Commission at the end of 2009, as a first step towards translating the concept into practice;
4. Points out that Parliament has received campaign-type petitions bearing more than one million signatures and insists on the need to ensure that citizens are made fully aware of the distinction between this type of petition and the citizens' initiative;
5. Recalls its resolution on the citizens' initiative <sup>(2)</sup>, to which the Committee on Petitions contributed an opinion; urges the Commission establish comprehensible implementing rules which identify clearly the roles and obligations of the institutions involved in the examination and decision-making processes;
6. Welcomes the legally binding force acquired by the Charter of Fundamental Rights with the entry into force of the Lisbon Treaty and underlines the importance of the Charter in making fundamental rights clearer and more visible to all citizens;
7. Considers that both the Union and its Member States have an obligation to ensure that the fundamental rights included in the Charter are fully observed, and trusts that the Charter will help to develop the concept of citizenship of the Union;
8. Trusts that all necessary procedural steps will be taken to ensure that the institutional aspects of EU accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms are rapidly clarified, and notes the intention of the Committee on Petitions to contribute to Parliament's work on this matter;
9. Recalls its previous request that a full review of the redress procedures available to EU citizens should be carried out by the relevant services of Parliament and the Commission and underscores the importance of pursuing the negotiations on the revised Framework Agreement between the European Parliament and the Commission in order to take full account of the increased rights of EU citizens particularly with regard to the European citizens' initiative;
10. Welcomes the steps taken by the Commission to streamline the existing public assistance services, in order to inform citizens about their EU rights and the means of redress available in case of infringement, by regrouping the various relevant webpages (such as those of SOLVIT and ECC-Net) under the *Your EU Rights* chapter on the main EU website;
11. Points out that Parliament has repeatedly called on the Commission to develop a system for clearly signposting the various complaints mechanisms available to citizens and believes that further steps are needed, with the ultimate aim of converting the *Your EU Rights* webpage into a user-friendly, online one-stop shop; looks forward to initial assessments of the implementation of its 2008 Action Plan <sup>(3)</sup>, which are expected in 2010;
12. Recalls its resolution on the activities of the European Ombudsman in 2008 and encourages the newly re-elected Ombudsman to keep working to enhance the openness and accountability of European administration and to ensure that decisions are taken as openly as possible and at the closest possible level to citizens;
13. Reaffirms its determination to support the Ombudsman's office in its efforts to raise public awareness of its work and to identify and act against instances of maladministration by European institutions; believes that the Ombudsman represents a valuable source of information in the overall endeavour to improve European administration;

<sup>(1)</sup> COM(2009)0622 of 11.11.2009.

<sup>(2)</sup> European Parliament Resolution of 7 May 2009 requesting the Commission to submit a proposal for a regulation of the European Parliament and of the Council on the implementation of the citizens' initiative (Texts adopted, 7.5.2009, P6\_TA(2009)0389).

<sup>(3)</sup> Action Plan on an integrated approach for providing Single Market Assistance Services to citizens and business – Commission Staff Working Paper SEC(2008) 1882.

Tuesday 6 July 2010

14. Notes that petitions received in 2009, almost 40 % of which were deemed inadmissible, continued to focus on environment, fundamental rights, justice and the internal market; in terms of geographical focus, most of the petitions concerned the Union as a whole – followed by Germany, Spain, Italy and Romania – demonstrating that citizens do keep a watchful eye on the Union's work and turn to it for action;

15. Acknowledges the importance of the work of petitioners and of its Committee on Petitions for the protection of the Union's environment; welcomes the initiative of the committee in ordering a study on the application of the Habitats Directive, in anticipation of the International Year of Biodiversity, and considers it a useful tool for evaluating the EU biodiversity strategy to date and drafting a new strategy;

16. Observes that more and more petitions are highlighting the problems encountered by citizens who exercise their right to free movement; such petitions refer to the excessive length of time taken by host Member States in delivering residence permits to third-country family members, and to difficulties in exercising voting rights and having qualifications recognised;

17. Reiterates its previous calls on the Commission to put forward practical proposals to extend consumer protection against unfair commercial practices to small businesses, as requested in its resolution on misleading directory companies <sup>(1)</sup>, as the Committee continues to receive petitions from victims of business-directory scams;

18. Acknowledges the central role that the Commission plays in the work of the Committee on Petitions, which continues to rely on its expertise when assessing petitions, identifying breaches of European legislation and seeking redress, and recognises the efforts made by the Commission to improve its overall response time to the Committee's requests for investigations so that cases reported by citizens can be resolved as quickly as possible;

19. Encourages the Commission to intervene at an early stage whenever petitions signal potential damage to specially protected areas, by reminding the national authorities concerned of their commitments to ensure the integrity of sites classified as Natura 2000 under Directive 92/43/EEC (Habitats) and, where necessary, by taking preventive measures to ensure compliance with European legislation;

20. Welcomes the newly elected Commissioners – especially the Commissioner responsible for inter-institutional relations and administration – and trusts that they will cooperate with the Committee on Petitions as closely and effectively as possible and will respect it as one of the most important channels of communication between citizens and European institutions;

21. Regrets that the Commission has yet to address the Committee's repeated calls for official and regular updates on the progress of infringement proceedings relating to open petitions; notes that the monthly publication of Commission decisions on infringement proceedings – in accordance with Articles 258 and 260 of the Treaty – although praiseworthy in terms of transparency does not represent an adequate answer to such requests;

22. Believes that tracking down infringement proceedings by following the Commission's press releases and matching them to certain petitions would unnecessarily waste the Committee's time and resources, especially in the case of horizontal infringements, and asks that the Commission inform the Petitions Committee of any relevant infringement proceedings;

23. Reiterates its belief that EU citizens should benefit from the same level of transparency from the Commission whether they make a formal complaint or submit a petition to Parliament and calls on the Commission, once again, to ensure that greater recognition is given to the petitions process and to its role in bringing to light breaches of European legislation, in respect of which infringement proceedings are subsequently launched;

<sup>(1)</sup> European Parliament resolution of 16 December 2008 on misleading directory companies, (OJ C 45 E, 23.2.2010, p. 17).

**Tuesday 6 July 2010**

24. Recalls that, in many instances, petitions uncover problems related to the transposition and enforcement of European legislation and recognises that launching infringement proceedings does not necessarily provide citizens with immediate solutions to their problems, given the average length of such proceedings;

25. Welcomes the Commission's efforts to develop alternative means of promoting better implementation of European legislation, and the positive attitude of certain Member States which take the necessary steps to correct breaches at the early stages of the implementation process;

26. Welcomes the increased involvement of Member States in the activity of the Committee on Petitions and the presence of their representatives at meetings; believes that such cooperation should be strengthened as the national authorities are primarily responsible for enforcing European legislation once it has been transposed into their legal order;

27. Stresses that closer cooperation with the Member States is extremely important for the work of the Petitions Committee; believes that one way of achieving this could be through more intensive cooperation with the national parliaments especially in the context of the Lisbon Treaty;

28. Encourages Member States to be prepared to play a more transparent and proactive part in responding to petitions related to the implementation and enforcement of European law;

29. Considers that, in light of the Lisbon Treaty, the EP Petitions Committee should forge closer working links with similar committees in Member States' national and regional parliaments in order to promote mutual understanding of petitions on European issues and to ensure the swiftest response to citizens at the most appropriate level;

30. Draws attention to the conclusions in its resolution on the impact of extensive urbanisation in Spain and asks the Spanish authorities to continue to provide assessments of the measures taken, as they have been doing up to now;

31. Notes the increasing number of petitioners who turn to Parliament for redress on issues that fall outside the EU's area of competence, such as, for example, the calculation of retirement benefits, the enforcement of national courts' decisions and passivity on the part of national administrations; the Committee on Petitions has done its best to re-direct such complaints to the competent national authorities;

32. Believes that, while extensive use of the Internet should be encouraged as it facilitates communication with citizens, a solution should be found to prevent the Committee being burdened with 'non-petitions'; considers that a possible solution could lie in revision of the registration process in Parliament and encourages the staff responsible to re-direct the files in question to the Correspondence with Citizens Unit, rather than submitting them to the Committee on Petitions;

33. Stresses the need to keep working on increasing the transparency of petitions management: internally by constantly upgrading the E-petition application – which provides Members with direct access to petition files – and externally by establishing a user-friendly, interactive petitions portal which would enable Parliament to reach out more effectively to citizens, and would also make the Committee's voting procedures and responsibilities clearer to the public;

34. Encourages the creation of a portal offering a multi-stage interactive template for petitions, which could inform citizens about what can be achieved by submitting petitions to Parliament and about Parliament's remit, and could include links to alternative means of redress at European and national level; calls for the Union's responsibilities in various areas to be described in as much detail as possible, to eliminate confusion between EU competences and national competences;

Tuesday 6 July 2010

35. Acknowledges that implementing such an initiative would not be cost-free but urges the relevant administrative services to work with the Committee on Petitions to find the most suitable solutions, as such a portal will be of paramount importance not only in improving contact between Parliament and EU citizens but also in reducing the number of inadmissible petitions;

36. Stresses that, until the issue of resources is resolved satisfactorily, an immediate improvement of the existing website is necessary;

37. Welcomes the approval of Parliament's new Rules of Procedure and the revision of the provisions related to the management of petitions; encourages the work of the Secretariat and political group representatives on a revised guide for Members to the rules and internal procedures of the Committee on Petitions, as such a document will not only assist Members in their work, but will also further increase the transparency of the petitions process;

38. Reiterates its call to the relevant administrative departments to take the measures needed to set up an electronic register through which citizens may lend support to, or withdraw their support from, a petition in accordance with Rule 202;

39. Instructs its President to forward this resolution and the report of the Committee on Petitions to the Council, the Commission, the European Ombudsman, the governments of the Member States, their committees on petitions and their national ombudsmen or similar competent bodies.

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## **Promoting youth access to the labour market, strengthening trainee, internship and apprenticeship status**

P7\_TA(2010)0262

### **European Parliament resolution of 6 July 2010 on promoting youth access to the labour market, strengthening trainee, internship and apprenticeship status (2009/2221(INI))**

(2011/C 351 E/05)

*The European Parliament,*

- having regard to the Lisbon Strategy evaluation document (SEC(2010)0114),
- having regard to the Commission Communication on New Skills for New Jobs - Anticipating and matching labour market and skills needs (COM(2008)0868),
- having regard to the Commission Staff Working Document - Annex to Commission Communication on New Skills for New Jobs (SEC(2008)3058),
- having regard to the Commission Communication on A Shared Commitment for Employment (COM(2009)0257),
- having regard to the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426),
- having regard to the Council Conclusions on New Skills for New Jobs - Anticipating and matching labour market and skills needs, adopted in Brussels on 9 March 2009,

**Tuesday 6 July 2010**

- having regard to Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation <sup>(1)</sup>,
- having regard to the Commission Communication on Promoting young people's full participation in education, employment and society (COM(2007)0498), accompanied by the Commission Staff Working Document on Youth employment in the EU (SEC(2007)1093),
- having regard to its resolution of 20 May 2008 on progress made in equal opportunities and non-discrimination in the EU (the transposition of Directives 2000/43/EC and 2000/78/EC) <sup>(2)</sup>,
- having regard to the Commission Communication on An EU Strategy for Youth – Investing and Empowering. A renewed open method of coordination to address youth challenges and opportunities (COM(2009)0200),
- having regard to its position of 2 April 2009 on the proposal for a Council directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation <sup>(3)</sup>,
- having regard to the Commission Green Paper on Promoting the learning mobility of young people (COM(2009)0329),
- having regard to the Commission report entitled Employment in Europe 2009, November 2009,
- having regard to the independent report entitled New Skills for New Jobs: Action Now prepared for the Commission, which provides advice and key recommendations on developing the initiative further in the context of the EU's future 2020 strategy for growth and jobs, February 2010,
- having regard to the independent report entitled Pathways to Work: Current practices and future needs for the labour-market integration of young people, Young in Occupations and Unemployment: Thinking of their better integration in the labour market, commissioned by the Commission in the context of the Youth Project (Youth Final Report, September 2008),
- having regard to the Eurofound study on Youth and Work, March 2007,
- having regard to the Cedefop study on Professionalising career guidance: Practitioner competences and qualification routes in Europe, March 2009,
- having regard to the Cedefop study on Skills for Europe's future: anticipating occupational skill needs, May 2009,
- having regard to the Cedefop fourth report on vocational education and training research in Europe: synthesis report entitled Modernising vocational education and training, December 2009,
- having regard to the OECD Employment Outlook 2008 entitled Off to a Good Start? Youth Labour Market Transitions in OECD Countries, November 2008,
- having regard to the European Youth Pact aimed at promoting the participation of all young people in education, employment and society, March 2005,

<sup>(1)</sup> OJ L 303, 2.12.2000, p. 16.

<sup>(2)</sup> OJ C 279 E, 19.11.2009, p. 23.

<sup>(3)</sup> OJ C 137 E, 27.5.2010, p. 68.



Tuesday 6 July 2010

- having regard to Petition 1452/2008 by Ms Anne-Charlotte Bailly (German), on behalf of Génération Précaire, on fair internship and proper access of the young people to the European Labour Market,
  - having regard to the judgment (C-555/07) of the European Court of Justice on the principle of non-discrimination on grounds of age, January 2010,
  - having regard to its resolution of 20 May 2010 on university-business dialogue: a new partnership for the modernisation of Europe's universities <sup>(1)</sup>,
  - having regard to Article 156 of the Treaty on the Functioning of the European Union,
  - having regard to Rule 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Employment and Social Affairs and the opinion of the Committee on Culture and Education (A7-0197/2010),
- A. whereas the economic crisis has caused a massive rise in unemployment rates in the EU Member States; whereas young people have been disproportionately affected by this trend; whereas the rate of youth unemployment is rising more sharply in relation to the average unemployment rate; whereas more than 5,5 million young people in the EU under 25 were unemployed in December 2009, equivalent to 21,4 % of all young people, creating the paradox that while young people, owing to the ageing of the population, constitute a cornerstone of the social security systems, at the same time they remain on the economic margin,
- B. whereas there are few possibilities for young people to find permanent regular employment; whereas young people mainly enter the labour market via atypical, highly flexible, insecure and precarious forms of employment (marginal part-time, temporary or fixed term employment etc.), and the likelihood that this is a stepping stone to permanent employment is low,
- C. whereas employers seem to be using traineeships and internships more frequently to replace regular employment, thereby exploiting the obstacles to entering the labour market faced by young people; whereas such forms of exploitation of young people need to be addressed and effectively eradicated by Member States,
- D. whereas four out of the ten measures adopted at the Prague 2009 extraordinary EU summit on employment bear on education, vocational training, lifelong learning, apprenticeships, facilitating mobility, and better forecasting of labour market needs and the matching skills,
- E. whereas youth unemployment and underemployment impose heavy social and economic costs on society, resulting in the loss of opportunities for economic growth, erosion of the tax base which undermines investment in infrastructure and public services, increased welfare costs, underutilised investment in education and training, and the risk of long-term unemployment and social exclusion,
- F. whereas younger generations will have to reduce the gigantic public debt caused by the present generation,
- G. whereas economic and demographic projections point out that 80 million job opportunities will arise in the EU in the next decade, the majority of which will require a high skilled workforce; whereas the employment rate for people with high skill levels across the EU as a whole is approximately 85 %, for medium skill levels 70 % and for low skill levels 50 %,
- H. whereas economic growth is crucial for job creation, as more economic growth brings more employment possibilities; whereas more than 50 % of new jobs in Europe are created by SMEs,

<sup>(1)</sup> Texts adopted, P7\_TA(2010)0187.

Tuesday 6 July 2010

- I. whereas the transition from education to work and between jobs is a structural challenge for young people all over the EU; whereas apprenticeships have a largely positive impact on young people's access to employment, especially if they enable the direct in-house acquisition of work skills and expertise,
  - J. whereas education programmes should be improved significantly, while university-business partnerships, efficient apprenticeship schemes, career development loans and investment in training by employers should be encouraged,
  - K. whereas young people often face discrimination on the grounds of their age when entering the labour market and when jobs are being cut back; whereas young women are more likely to face unemployment and poverty or to be engaged in casual or undeclared employment than young men; whereas on the other hand young men have been hit hardest by unemployment during the current economic crisis; whereas disabled young people face even greater obstacles to their integration into the labour market,
  - L. whereas decent work shifts young people from social dependence to self sufficiency, helps them escape poverty and enables them to make an active contribution to society, both economically and socially; whereas legislation in some Member States introduces age discrimination through restrictions to young people's rights that are solely based on age, such as the lower minimum wage levels for young people in the UK, limited access to the Revenu de solidarité active in France and reduced unemployment benefits for young people in Denmark, all of which, although intended to get young people into work, are unacceptable and can be counterproductive preventing young people from starting an economically independent life, especially in times of crisis with high youth unemployment,
  - M. whereas the Lisbon Strategy's benchmarks on youth and the modernisation of vocational training (VET) have not been fully met,
  - N. whereas flexicurity has been the overall strategy for the EU's labour markets, aiming at flexible and reliable contracts, lifelong learning, active labour-market policies and social security; whereas, unfortunately, in many countries this strategy has been narrowly interpreted as 'flexibility', losing sight of the holistic approach and of employment security and social security,
  - O. whereas as a result of demographic change after 2020 a massive shortage in skilled labour will seriously affect the European economic area and this trend can be countered only by adequate education, training and retraining,
  - P. whereas small and medium-sized enterprises play their part in the European economic fabric owing both to their number and to their strategic role in combating unemployment,
1. Urges the Commission and the Member States to take a rights-based approach to youth and employment. The qualitative aspect of decent work for young people must not be compromised, and the core labour standards and other standards related to the quality of work, such as working time, the minimum wage, social security, and occupational health and safety, must be central considerations in the efforts that are made;

#### ***Creation of more and better jobs and labour market inclusion***

- 2. Calls on the Council and the Commission to define a job strategy for the EU that combines financial instruments and employment policies in order to avoid 'jobless growth' and that entails setting ambitious benchmarks for the employment of young people; strongly encourages having in the job strategy a special focus on developing green jobs and jobs in the social economy, whilst ensuring that Parliament is involved in the decision-making process;
- 3. Stresses how important it is for Member States to develop green jobs, for instance by providing training in environmental technologies;

Tuesday 6 July 2010

4. Invites the Member States to create efficient incentives, such as employment subsidies or insurance contributions for young people that will guarantee decent living and working conditions; in order to encourage public and private employers to hire young people, to invest both in quality job creation for young people and in continuous training and upgrading of their skills during employment, and to support entrepreneurship among youth; points to the special role and importance of small enterprises regarding expertise and traditional know-how; encourages ensuring that young people have access to the recently established European Microfinance Facility;
5. Underlines the importance of entrepreneurial education, being an integral part of the process of acquiring the skills needed for new types of employment;
6. Calls on the Member States to have ambitious policies on training young people;
7. Calls on the Commission to promote and support – taking into account the beneficial national partnerships run between schools, universities, enterprises and the social partners – pilot projects in the new strategic development sectors which provide suitable scientific, technological and employment-oriented training for young people, and especially women, in order to promote innovation and competitiveness within enterprises, using study grants, higher education-level apprenticeships and non-atypical employment contracts for that purpose;
8. Calls on universities to make contact with employers at an early stage and provide students with the opportunity to acquire skills needed for the employment market;
9. Calls on the Member States to instigate wide-ranging measures aimed at stimulating the economy, such as tax reduction and reduction of the administrative burden on SMEs, in order to bring growth and create new jobs, especially for young people;
10. Hopes for a successful take-up of microloans by young people; considers that the founders of start-ups must receive consistent and professional advice;
11. Calls on the Member States to establish inclusive and targeted labour-market policies that secure the respectful inclusion and meaningful occupation of young people, e.g. through the setting-up of inspirational networks, trainee arrangements that include financial aid enabling the trainee to relocate and live close to the place where the traineeship is held, international career centres and youth centres for individual guidance covering particularly matters such as collective organisation and knowledge of legal aspects relating to their traineeship;
12. Recognises the difficulties that young people encounter in gaining access to finance in order to set up and develop their own business; calls on the Member States and the Commission to adopt measures to facilitate young people's access to finance, and to set up in cooperation with the business community mentoring programmes for young people on the creation and development of undertakings;
13. Calls on the Member States to promote the skills of early school-leavers and prepare them for employment by means of innovative projects;
14. Calls on the Member States to include cooperation between schools and employers at an early stage in their plans to redesign training schemes; considers that local and district authorities must be included in the planning of education and training as they have the network contacts with employers and know what employers need;
15. Calls on the Commission to expand financial capacity for, and to ensure better use of, the European Social Fund, to earmark a minimum of 10 % of this fund for projects targeting young people and to ease access to the fund; urges the Commission and the Member States not to jeopardise the running of small and innovative projects through excessive control and to review the effectiveness and added value of programmes, such as 'Youth in Action', in terms of job opportunities for young people; urges the Member States to improve their targeting of youth;

Tuesday 6 July 2010

16. Urges the Member States to prioritise business-education provider co-operation as the right tool with which to combat structural unemployment;

***Education and transition from education to employment***

17. Calls on the Member States to intensify efforts to reduce early school leaving in order to achieve the goals set out in the EU 2020 Strategy of no more than 10 % of early school leavers by 2012; invites the Member States to make use of a wide range of measures to fight early school leaving and illiteracy, e.g. lowering the number of students in each class, providing assistance for pupils who cannot afford to complete their compulsory education, increasing the emphasis on practical aspects in the syllabus, introducing mentors in all schools, establishing an immediate follow-up of early school leavers; points to Finland which has succeeded in reducing the number of early school leavers by studying with them the possibility of seeking a new direction; invites the Commission to coordinate a project on best practices;

18. Calls on the Member States to improve links between the educational system and the world of work and devise means of predicting demand for skills and abilities;

19. Calls for efforts to ensure that all children receive the encouragement they need right from the start, and particularly to safeguard the targeted encouragement of children with language problems or other handicaps, so that they are afforded the greatest possible education and career opportunities;

20. Calls for more and better apprenticeships; refers to the positive experiences with the dual system within Vocational Educational and Training (VET) in countries such as Germany, Austria and Denmark where the system is seen as an important part of young people's transition from education to employment; calls on the Member States to support apprenticeship schemes and to incite companies to provide training opportunities for young people even in times of crisis; stresses the importance of adequate training to secure the high-skilled workforce companies will need in the future; stresses that apprenticeships must not replace regular jobs;

21. Calls for better and secured internships; calls on the Commission and the Council, following the commitment given in Communication COM(2007)0498 'to propose an initiative for a European quality charter on internships', to set up a European Quality Charter on Internships setting out minimum standards for internships to ensure their educational value and avoid exploitation, taking into account that internships form part of education and must not replace actual jobs. These minimum standards should include an outline of the job description or qualifications to be acquired, a time limit on internships, a minimum allowance based on standard-of-living costs in the place where the internship is performed that comply with national traditions, insurance in the area of their work, social security benefits in line with local standards and a clear connection to the educational programme in question;

22. Calls on the Commission to provide statistics on internships in each Member State which include:

- number of internships
- length of internships
- social benefits for interns
- allowances paid to interns
- age groups of interns

and to produce a comparative study on the different internship schemes existing in the EU Member States;

Tuesday 6 July 2010

23. Calls for each Member State to monitor compliance;
24. Calls on the Member States to establish a European system for the certification and recognition of knowledge and skills acquired through apprenticeships and traineeships, which will help to increase young workforce mobility;
25. Calls for young people to be protected from those employers – in the public and private sector – who, through work experience, apprenticeship and traineeship schemes, are able to cover their essential and basic needs at little or no cost, exploiting the willingness of young people to learn without any future prospect of becoming fully established as part of their workforce;
26. Highlights the importance of promoting young people's labour and training mobility across the Member States, and the need to improve the recognition and transparency of qualifications, skills and diplomas in the EU; calls for the redoubling of efforts to develop the European Qualifications Framework for lifelong learning and the European Quality Assurance Reference Framework for Vocational Education and Training, and for the Leonardo da Vinci programme to be strengthened;
27. Calls upon the Member States to speed up the harmonisation of national qualification profiles and European qualification profiles so as to further increase the mobility of young people in the fields of education and work;
28. Stresses the role of private sector education providers, as the private sector is usually more innovative in designing courses and more flexible in providing them;
29. Urges the Member States to provide young people in traineeship, work experience or apprenticeship schemes with full workplace and social security entitlements, subsidising where appropriate a part of their contributions;
30. Calls on the Commission and the Member States to incorporate apprenticeship, traineeship and work experience schemes into the social security systems;
31. Invites the Member States to strengthen their systems for educational guidance at the primary to secondary school stage, in order to help young people and their families select education and training channels that effectively correspond to actual aptitudes, abilities and aspirations, thereby reducing the risk of drop-out and failure;
32. Recognises that, in times of crisis, young people seek education and should be encouraged to do so; calls on all Member States to secure equal access to education for all by guaranteeing a minimum right to free well-funded education from nursery school to university and by securing financial support for young students; invites the Member States to invest further in education and training, even if fiscal and social constraints are present, to implement the European Qualifications Framework as fast as possible and, where necessary, to establish national skills frameworks;
33. Recalls that the aim of the Copenhagen process is to encourage individuals to make use of the wide range of vocational learning opportunities available (e.g. at school, in higher education, at the workplace, or through private courses);
34. Calls on the Commission to expand EU programmes that support education and up-skilling, such as Lifelong Learning, the European Social Fund, the Marie Curie and Erasmus Mundus Actions and the Science Education Initiative;
35. Calls for Member States to set up National Task Forces on Youth to ensure a stronger coherence between the educational system and the labour market, promoting a stronger and shared responsibility between government, employers and individuals for investing in skills; calls for the Member States to provide advisory bodies at all schools to help smooth the transition from education to the labour market and promote cooperation between public and private actors;

Tuesday 6 July 2010

36. Considers it extremely important to adapt the education and training system to the rapidly changing labour market and the demand for new professions;

37. Considers language learning crucial for facilitating young people's access to the labour market and for promoting their mobility and equal opportunities;

***Adapting to the needs of the individual and the labour market***

38. Calls on the Commission and the Member States to provide young people with information on the demands on the labour market, provided that suitable review mechanisms are introduced to monitor developments in occupations; calls on the Commission and the Member States to develop lifecycle-based policies and strategies in which education and employment are better integrated, in which safe transition is a key point and in which there is a constant up-skilling of the labour force providing them with the key competences required by the labour market;

39. Calls on the Commission to intensify its work on recognition of professional qualifications, including non-formal learning and work experience, in order to support the mobility of young people;

40. Calls upon the Member States to promote the recognition of educational achievements acquired in the framework of non-formal and informal learning so that young people can further demonstrate their education and competence as required when seeking work on the labour market;

41. Calls for greater support and prestige for vocational training;

42. Urges the Commission to revise the flexicurity strategy in conjunction with the social partners in order to place transition security at the top of the agenda while creating mobility and easier access for young people; underlines that flexibility without social security is not a sustainable way of combating the problems young people face on the labour market, but on the contrary is a way of evading young people's labour and social security rights;

43. Appeals to the Member States to include all four flexicurity components in the national designs for youth employment strategies, namely:

- a. flexible and reliable contractual arrangements,
- b. comprehensive lifelong training, traineeship or learning programmes securing the continued development of skills,
- c. effective active labour-market and workfare policies that focus on skills, quality employment and inclusion,
- d. effective labour mobility mechanisms,
- e. social-security systems that provide young people with a secure transition between various employment situations, between unemployment and employment or between training and employment, rather than forcing them to be flexible,
- f. effective monitoring mechanisms to guarantee labour rights;

44. Calls on the Member States and the social partners to secure quality work to prevent young people falling into the 'precariousness trap'; calls on the Member States and the social partners, on the basis of existing national laws and in cooperation with the Commission, to establish and implement better standards protecting those who work in insecure or low-quality jobs;

Tuesday 6 July 2010

45. Calls on the Commission to assess the long-term consequences of youth unemployment and fairness between generations;
46. Underlines the need for strong and structured social dialogue in all workplaces in order to protect young workers from exploitation and the often precarious nature of temporary work; underlines the need for the social partners to address young workers and their specific needs;
47. Calls on the Commission and the Member States to do more to ensure that the Employment Equality Directive, which outlaws discrimination on the grounds of age in employment, has been transposed correctly and is being implemented effectively; believes that much more must be done to ensure that both employees and employers are aware of their rights and obligations under this legislation;
48. Calls on the Member States and the social partners to implement strategies to inform and educate young people on their rights at work and the various alternative routes to their integration in the labour market;
49. Invites the Commission and the Member States to foster rapprochement between the worlds of work and education so that training paths such as dual training can be designed that combine theoretical notions with practical experience, in order to equip young people with the requisite general skills and specific expertise; invites the Commission and the Member States also to invest in support for an awareness campaign on vocational training (VET) and technical and entrepreneurial studies, so that these career paths are no longer perceived as a disqualifying choice, but as a chance to fill gaps in the market for technical jobs, demand for which is markedly increasing, and to rekindle the European economy;
50. Calls on the Member States and the social partners to undertake more intensive planning and implementation of programmes to increase young people's access to the labour market through active employment policies, particularly in those regions and sectors with high youth unemployment;
51. Urges the Member States to absorb the impact youth unemployment will have on the pension rights of that generation and, by taking generous account of the time spent in education, give young people an incentive to continue their education for a long period;
52. Calls on the social partners to intensify their efforts to inform young people of their right to participate in the social dialogue, and to boost participation by this large section of the economically active population in the structures of their representative bodies;

#### ***Disadvantages and discrimination***

53. Calls on the Commission and the Member States to ensure that national legislation affecting youth, and in particular national legislation based on the Employment Equality Directive (2000/78/EC), is not used to discriminate against young employees' access to social benefits; believes that much more must be done to ensure that both employees and employers are aware of their rights and obligations under this legislation;
54. Calls on the Member States to provide for initiatives likely to ensure that young immigrants can learn the language of their host country, that the qualifications they have acquired in their home country are recognised and that they have access to key skills, thereby enabling their social integration and participation in the labour market;
55. Calls on the Commission and the Member States to provide adequate and better childcare facilities, such as all-day schools, for young parents at an acceptable cost, thereby making it more possible for young parents, especially mothers, to be able to participate in the labour market;

**Tuesday 6 July 2010**

56. Calls for the assistance given by Member States to young parents in the form of either childcare or crèches to be substantial enough that it does not deter them from participating in the labour market;

57. Calls for the Member States to establish a short-term effort focused on young unemployed men in the sectors affected by the crisis, while not losing sight of the long-term problems experienced by young women in accessing the labour market;

58. Calls for the Member States to introduce affirmative action measures for young people in those areas of the labour market where youth is under-represented, so as to overcome the consequences of previous age discrimination and achieve a truly diverse workforce, making reasonable adaptations as appropriate for young people with disabilities; points to good experience as regards affirmative action in combating discrimination;

59. Stresses the need to develop specific programmes for people with disabilities aimed at increasing their chances of accessing the labour market;

60. Underlines the importance of encouraging traineeships and mobility for young people involved in schools or training for artistic activities such as the cinema, music, dance, the theatre or the circus;

61. Considers that there should be greater support for volunteer programmes in various fields, including, inter alia, the social, cultural and sporting fields;

62. Calls on the various branches of industry to set up generation partnerships in businesses and organisations and in this way generate an active exchange of know-how and combine productively the experience of different generations;

63. Recognises the importance of young people being able to be financially independent and calls for the Member States to ensure that all young people are individually entitled to a decent level of income that secures for them the possibility of creating an economically independent life;

64. Calls on the Member States to ensure that young people can, if they so wish, receive effective assistance in choosing their career, finding out about their rights and managing their minimum income;

#### ***Strategies and governance tools at EU level***

65. Suggests that the Council and the Commission come forward with a European Youth Guarantee securing the right of every young person in the EU to be offered a job, an apprenticeship, additional training or combined work and training after a maximum period of 4 months' unemployment;

66. Welcomes progress towards defining the EU 2020 Strategy but regrets that there has been no public and transparent evaluation of the Lisbon Strategy, and in particular of the European Youth Pact, including benchmarks for youth, and regrets that the social partners, civil society and youth organisations were not consulted sufficiently during the process of developing the EU 2020 Strategy;

67. Calls on the Member States to introduce and assess new binding youth benchmarks; invites the Commission to evaluate annually existing youth benchmarks and the Youth Guarantee in order to deliver results and progress based on statistical information that is better disaggregated and broken down, especially by gender and age group;



Tuesday 6 July 2010

68. Calls on the Council and the Commission to agree to and deliver on new improved governance and information tools for the work on youth employment;

69. Suggests the setting up of a permanent EU youth taskforce involving youth organisations, Member States, the Commission, Parliament and the social partners to monitor developments on youth employment, enable cross-section policies, share best practice examples and initiate new policies;

70. Highlights the importance of involving young people in the setting up of education and training policies so that their needs can be better taken into account; recommends in that regard that the Commission consult representatives of national youth councils on the priorities for young people;

71. Calls on the Member States to assess policy impacts on youth, to include youth in all processes and establish youth councils to monitor youth-related policies;

72. Calls on the European Institutions to set a good example by removing their advertisements for unpaid traineeships from their respective websites and to pay:

- a minimum allowance based on standard-of-living costs of the place where the internship is performed,
- social security benefits to all their interns;

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73. Instructs its President to forward this resolution to the Council, the Commission and the governments and parliaments of the Member States.

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### **Atypical contracts, secured professional paths and new forms of social dialogue**

P7\_TA(2010)0263

**European Parliament resolution of 6 July 2010 on atypical contracts, secured professional paths, flexicurity and new forms of social dialogue (2009/2220(INI))**

(2011/C 351 E/06)

*The European Parliament,*

- having regard to the Commission communication entitled 'A Shared Commitment for Employment' (COM(2009)0257),
- having regard to the Charter of Fundamental Rights, in particular Article 30 on protection in the event of unjustified dismissal, Article 31 on fair and just working conditions, and Article 33 on family and professional life,
- having regard to the Commission communication entitled 'A European Economic Recovery Plan' (COM(2008)0800) and Parliament's resolution thereon of 11 March 2009 <sup>(1)</sup>,
- having regard to its resolution of 9 October 2008 on stepping up the fight against undeclared work <sup>(2)</sup>,

<sup>(1)</sup> Texts adopted, P6\_TA(2009)0123.

<sup>(2)</sup> Texts adopted, P6\_TA(2008)0466.

**Tuesday 6 July 2010**

- having regard to the Commission communication entitled 'Driving European recovery' (COM(2009)0114),
  - having regard to the Commission communication entitled 'Partnership for change in an enlarged Europe – Enhancing the contribution of European social dialogue' (COM(2004)0557),
  - having regard to the Commission communication entitled 'Towards Common Principles of Flexicurity: More and better jobs through flexibility and security' (COM(2007)0359) and Parliament's resolution thereon of 29 November 2007 <sup>(1)</sup>,
  - having regard to the Commission's green paper 'Modernising labour law to meet the challenges of the 21st century' (COM(2006)0708) and Parliament's resolution thereon of 11 July 2007 <sup>(2)</sup>,
  - having regard to Council Decision 2008/618/EC of 15 July 2008 on guidelines for the employment policies of the Member States for 2008-2010,
  - having regard to the Commission Recommendation on the active inclusion of people excluded from the labour market (COM(2008)0639) and Parliament's resolution thereon of 8 April 2009 <sup>(3)</sup>,
  - having regard to the Council conclusions of 8 June 2009 (flexicurity in times of crisis),
  - having regard to the report of the Mission for Flexicurity, 'Implementation of the common principles of flexicurity within the framework of the 2008-2010 round of the Lisbon Strategy', of 12 December 2008,
  - having regard to the EPSCO Council conclusions of 5/6 December 2007,
  - having regard to the European social partners' recommendations in the report entitled 'Key challenges facing European labour markets: a joint analysis of European social partners', of 18 October 2007,
  - having regard to the conclusions of the Informal Meeting of Ministers for Employment and Social Affairs held in Berlin on 18-20 January 2007 on 'good work',
  - having regard to Rule 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Employment and Social Affairs (A7-0193/2010),
- A. whereas non-standard employment has grown significantly since 1990 and the jobs lost as a result of the present economic crisis were primarily those in the atypical sector; whereas new types of contract with one or more of the following characteristics are classified as 'atypical' employment: part-time work, casual work, temporary work, work under fixed-term contracts, home working and teleworking, part-time employment of 20 hours or less per week,
- B. whereas the need for flexible employment has been underlined on several occasions,

<sup>(1)</sup> Texts adopted, P6\_TA(2007)0574.

<sup>(2)</sup> Texts adopted, P6\_TA(2007)0339.

<sup>(3)</sup> Texts adopted, P6\_TA(2009)0371.

Tuesday 6 July 2010

- C. whereas globalisation and rapid technological developments are causing far-reaching economic restructuring, giving rise to changes in employment relationships and in the content of workers' tasks, along with successive waves of new one-person independent businesses across all sectors and age-groups, creating the need for a redefinition of employment relationships, with the aim of avoiding distortions (such as the phenomenon of 'false' self-employed persons),
- D. having regard to the financial and economic crisis, which has turned into a serious employment crisis with a huge loss of jobs and has led to unstable labour markets and rising poverty and social exclusion, in particular for already vulnerable individuals and disadvantaged groups,
- E. whereas the number of people living in in-work poverty is increasing, having reached 8 % of the European workforce, and the proportion of low-wage earners is currently about 17 %,
- F. whereas a substantial and complementary EU approach, focusing strongly on effective governance and a mutually supportive mix of policy measures in the fields of economic, environmental, employment and social policies and entrepreneurship, should be developed, in keeping with the principles of the European Employment Strategy (EES), the purpose of which is to impel Member States to pursue common objectives based on the four principles of employability, entrepreneurship, adaptability and equal opportunities,
- G. whereas the unemployment rate in the EU 27 has risen to 10 % (2009) and unemployment is unlikely to peak before the first half of 2011,
- H. whereas a breakdown of employment changes by educational level shows that the number of low-skilled persons in employment has decreased in recent years,
- I. whereas on average every year between one-fifth and one-quarter of all European workers change job,
- J. whereas the transition rate between unemployment and employment is high, with a third of the unemployed and 10 % of the inactive population finding jobs within one year, but whereas a large number of workers, especially those in atypical employment, lose their jobs without finding new ones,
- K. whereas in the EU 2 745 % of all periods of unemployment last longer than one year, compared with about 10 % in the USA,
- L. whereas labour turnover is higher among women than men (five percentage points difference) and among younger workers (aged under 24), and decreases with rising levels of education, showing that change is more often imposed than chosen and is linked to short-term, insecure contracts and that young people often fail to find employment commensurate with their academic qualifications,
- M. whereas it is estimated that one in six workers has care responsibilities for an older or dependent relative or friend,
- N. whereas in some Member States there has been an increase in the incidence of undeclared work, which could lead to serious economic (particularly fiscal), social and political problems,
- O. whereas the assessment of flexicurity is complex and a holistic approach is essential, especially in the light of the changes which the present crisis may also bring about in the behaviour of companies by encouraging them to engage in ever less protected, highly precarious employment relationships,

Tuesday 6 July 2010

- P. whereas, in the context of employment policies, equal opportunities for women and men, the reconciliation of professional, educational and family life and non-discrimination principles need to be actively promoted,
- Q. whereas, while the social dialogue has developed in different ways across Europe, overall the mounting economic and financial difficulties have led to intensified tripartite dialogue,
- R. whereas collective bargaining is the most common way of determining pay in Europe - two out of three workers are covered by a collective wage agreement, whether at company or at a higher level,
- S. whereas the Informal Meeting of EU Ministers for Employment and Social Affairs held in Berlin on 19 January 2007 concluded that 'Europe needs more and joint efforts to promote good work. Good work means employee rights and participation, fair wages, protection of safety and health at work as well as a family friendly work organisation. Good and fair working conditions as well as an appropriate social protection are indispensable for the acceptance of the European Union by its citizens',
- T. whereas the concept of good work should provide the fundamental guidance for the next phase of the EES,

#### **A. Atypical contracts**

1. Calls on the 2010 spring European Council for clear guidance and concrete measures aimed at safeguarding decent work and quality employment and creating sustainable job opportunities in the framework of an ambitious EU2020 Strategy that takes account of the impact of the crisis on the economy, society and the labour market;
2. Calls on the Commission to evaluate the efforts made by the Mission for Flexicurity, calls on the Member States to put in place a more balanced and fair implementation of flexicurity principles, and points out that mutual learning and exchanges of good practice, as well as the open method of coordination (OMC), are essential tools for coordinating Member States' differing policy approaches; notes, however, that the OMC could be improved and that, in order to raise effectiveness, the governance of the OMC needs to be strengthened;
3. Notes the wide variety of labour traditions, contractual forms and business models existing in labour markets, highlighting the need, against this background of diversity, to give priority to protecting European models and established labour rights; recommends the adoption of a bottom-up approach in developing new employment strategies so as to facilitate dialogue and the involvement of political and social authorities at all levels;
4. Calls on the Commission and the Member States to recognise and support the special position of independent freelance workers as a vital force in economic recovery, as a 'way in' or an alternative to the labour market; notes that independent working is growing in popularity, especially among young workers and women and as a transition from work to retirement; believes that independent freelancers should be treated as a unique subset of micro-businesses and calls for measures to be taken to minimise the burden of regulation and to encourage and support independent freelancers in launching/growing independent freelance businesses and to promote lifelong learning for this group;
5. Emphasises the importance of self-employment, particularly for micro- and small businesses, and highlights the importance of the liberal professions, with their particular characteristics; emphasises that the term 'liberal profession' simply denotes a particular skilled occupation which can also be pursued independently;

Tuesday 6 July 2010

6. Considers that all employees, regardless of their employment status, should be guaranteed a set of core rights; recommends that the priorities for labour law reform, where it is needed, should focus on: urgent extension of the protection of workers in atypical forms of employment; grouping atypical contracts together for the purpose of simplification; the sustainable creation of normal employment relationships; clarification of the situation of dependent employment, including preventive action with regard to the health and safety of atypical workers; action against undeclared work; support for the creation of new jobs, including under atypical contracts, and the facilitation of transitions between various types of employment and unemployment, through the promotion of policies such as special employment allowances, lifelong learning, retraining and on-the-job training; encourages steps to clarify the situation of dependent employment, and calls on the Commission to develop clear guidelines on the scope of the employment relationship, as recommended by the ILO in its 2006 Recommendations;
7. Welcomes some Member States' introduction of provisions to allow employees with care responsibilities to reconcile their responsibilities with their professional obligations by means of more flexible working arrangements; calls on the Commission and Member States actively to support carers in the workplace by providing flexible working conditions, including leave entitlements and flexi-time, part-time and home-working arrangements, which would enable more carers in all Member States to remain in or return to paid employment;
8. Notes the distinction made by the European Foundation for the Improvement of Living and Working Conditions between atypical and very atypical employment relationships; believes that many forms of atypical employment relationship represent important ways for carers, students and others who rely on short-term contracts and part-time work, for example, to earn extra income; emphasises that it is vital that workers in atypical employment relationships should have minimum rights and be protected against exploitation;
9. Encourages Member States to promote transitions into productive and rewarding high-quality jobs and to develop labour law provisions that effectively safeguard the rights of people who are employed in atypical forms of work, ensuring equal treatment with workers with full-time standard contracts on the basis of the maximum level of worker protection;
10. Recommends that workers on atypical contracts be covered by existing EU directives that cover worker categories within the EU, including the Working Time Directive(93/104/EC), the directive on temporary agency work(2008/104/EC), the directive on part-time work (97/81/EC) and the Council Directive concerning the framework agreement on fixed-term work (1999/70/EC);
11. Notes that the trend towards an increase in the proportion of non-standard or atypical contracts has a strong gender and intergenerational dimension, as women, older and younger workers are disproportionately represented in non-standard employment; notes that some sectors experience rapid structural changes; calls on the Member States and the Commission to investigate the reasons for this trend, to take appropriate, targeted measures in the relevant areas to combat this imbalance, by facilitating the transition towards permanent employment and, in particular, by promoting measures to enable both men and women to reconcile work, family and private life, through a greater focus on social dialogue with worker representatives in companies, and to monitor and publicise the success of these measures; calls, further, on the Commission and the Member States to ensure that the recourse to non-standard or atypical contracts does not serve to conceal illicit employment, but rather to promote, via the exchange of skills, the transition of young people and the unemployed towards effective integration in the labour market by providing employees and companies with a context of security and flexibility that strengthens both employability and competitiveness;
12. Calls on the Member States to ensure the more effective implementation of Directive 97/81/EC on part-time work and Directive 1999/70/EC on fixed-term work having regard in particular to the fundamental principle of non discrimination; stresses the importance of training and lifelong learning in facilitating job transitions, which is especially important for fixed term workers;
13. Stresses that recourse to atypical forms of employment should be a personal choice and not an imposition dictated by increasing barriers to labour market access for certain groups or the lack of high-quality jobs; notes that, in particular for multiply disadvantaged workers, individually tailored atypical contracts provided by work integration social enterprises may be a choice as they offer a first stepping stone into employment;

Tuesday 6 July 2010

14. Welcomes the adoption of Directive 2008/104/EC on agency work and calls for its swift implementation;
15. Notes that atypical forms of employment must contractually provide workers with a course of training, and stresses that non-standard forms of work can, if they are properly protected and include support in the area of social security, workers' rights and the transition to stable, protected employment, constitute an opportunity, but that they must go hand in hand with support for workers who find themselves in situations of transition from one job or employment status to another through targeted active employment policies; deplores the fact that this is often neglected;
16. Encourages the Member States to develop early and active intervention policies giving workers, in particular women, who re-enter the labour market an entitlement to individual support during the period necessary for them to develop their training and/or (re)qualification; unemployed people should be supported both by a solid social security system and by an efficient system of active policies, so that they can re-enter the labour market quickly even if their previous contracts were atypical, the important consideration being to keep people in the labour market and facilitate their transition to decent, stable, protected, high-quality forms of employment; if the re-entry takes place through atypical contracts, these contracts must guarantee well-regulated and secure working conditions;
17. Calls on the Commission, with the help of the social partners, to analyse and monitor the different types of instrument developed within national activation policies;
18. Calls on the Union and the Member States, with the help of the social partners, to fight effectively illicit employment, in particular by means of prevention and deterrent penalties, and believes that defining strategies, including at European level, that oppose illicit employment can help in fighting illicit employment and in reducing unsecured, especially 'atypical', employment relationships; takes the view that combating illicit employment should be accompanied by measures to create viable and sustainable employment alternatives and to support people in gaining access to the open labour market;
19. Stresses the need to create high-quality, sustainable and secure jobs, if necessary after a period of training geared towards sustainable, full-time employment, including green and 'white' (health sector) jobs, and to ensure social cohesion;
20. Emphasises that not all forms of atypical employment necessarily lead to unstable, insecure, casual labour with lower levels of social security protection, lower wages and restricted access to further training and lifelong learning; points out, however, that such insecure forms of employment are often linked to atypical contractual arrangements;
21. Points out that high unemployment and labour market segmentation need to be overcome by giving all workers equal rights and investing in job creation, skills and lifelong learning; calls on the Member States, therefore, to phase out all forms of insecure employment;
22. Points out that phasing out precarious employment needs a strong commitment from Member States to provide through their labour market policies adequate 'stepping stones' for the transition from precarious employment to regular permanent employment with enhanced workers' rights and social protection;
23. Highlights the fact that the European Union has committed itself to the goal of enabling people to reconcile work and private life; criticises, however, the fact that the Commission and the Member States have failed to take any meaningful and effective action to put this commitment into practice;
24. Points out that better reconciliation of work and private life can best be achieved by updating the standard employment model: permanent contracts with shorter full-time employment as the general norm, and the introduction of norms for part-time employment, so that only substantiated and socially protected part-time work (15-25 hours weekly) will be offered to those who wish to work part-time; stresses the need to put full-time and part-time employment on an equal footing as far as hourly wages, entitlements to education and lifelong learning, career opportunities and social protection are concerned;

Tuesday 6 July 2010

**B. Flexicurity and secured professional paths**

25. Believes it essential that current thinking on flexicurity be updated at European level in the light of the present crisis, so as to help increase both productivity and the quality of jobs by guaranteeing security and the protection of employment and workers' rights, with special support for people who are disadvantaged on the labour market, while allowing firms the organisational flexibility needed to create or reduce jobs in response to the changing needs of the market; takes the view that a fair and balanced implementation of flexicurity principles can help to make labour markets more robust in the event of structural changes; takes the view, further, that flexibility and security requirements and active labour market policies are not contradictory and can be mutually reinforcing if established by means of a fair comparison of the views of the social partners, governments and the European institutions, together with reciprocal learning and exchange of good practices; believes that these requirements have not been adequately reflected in Europe's employment growth results in recent years;

26. Points out that there is a steadily increasing problem with regard to 'false' self-employed persons, who are often forced by their employer to work under wretched conditions; employers who utilise the working capacity of 'false' self-employed persons must also have penalties imposed on them;

27. Believes that flexicurity cannot function properly without strong social protection and support for people re-entering the labour market, which are essential elements during transitions from education to employment, between jobs, and from employment to retirement;

28. Calls on the Commission to continue its efforts to achieve balanced implementation of flexicurity policies by putting forward an analysis of the situation to date regarding implementation in the Member States and by checking that flexibility measures have been properly accompanied by security measures for workers, and to assist Member States and the social partners in implementing the principles of flexicurity so that they are applied with respect for acquired social rights at European level and in accordance with the specific nature of the various labour markets and the differing traditions with regard to labour policies and collective bargaining and the structure of social security systems, and points out that reciprocal learning, exchanges of good practice and the open coordination method are essential tools for coordinating the varying strategic approaches of the Member States;

29. Believes that, especially in the context of the present economic situation, taking stock of the implementation of flexicurity in the Member States is even more necessary and that the social partners will only support labour-law and labour-market reforms if they also aim at effectively reducing differences in treatment between different types of contracts; points out that the application of flexibility principles requires adequate social protection, ensuring that people can live and develop, together with special support for job seekers and solid labour laws for all kinds of employment based on a clear institutional framework, and needs to be accompanied by increased protection mechanisms to prevent hardship;

30. Emphasises that the demand for a high degree of flexibility at work should not reach a point where it excessively restricts people's lives and development and where it makes it very difficult for them to establish and support a family, care for relatives and participate in the life of society;

31. Stresses the importance of the security aspect in flexicurity, which needs to provide support in job-seeking for workers in transition situations and guarantee them decent living conditions; that support must include adequate training measures to enable people to adapt to the necessities of the labour market;

32. Believes that companies fear a persistent mismatch between their needs and the competences offered by job-seekers, lack access to credit enabling them to recruit and invest and do not invest enough in the labour market, and stresses the importance, in the context of the current economic crisis, of the development of long-term vision by the European production system; creating a favourable business environment, adequate financial resources and the provision of good working conditions; and enhancing legal certainty and transparency for both employers and workers with regard to the scope, coverage and enforcement of labour law;

**Tuesday 6 July 2010**

33. Emphasises the importance of preventing, detecting and penalising illicit employment; calls on the Commission to draw up a set of concrete initiatives, including specific rules to tackle 'letter box companies', provisions on joint and several liability in subcontracting chains and the creation of an EU agency to prevent and detect illicit employment;
34. Believes that, because of the economic and financial crisis, in some Member States companies are not managing to find on the labour market the forms of contract that would best enable them to meet their requirements in terms of the flexibility needed to respond to unpredictable fluctuations in market demand, cost containment and the protection of workers' security;
35. Calls, in the context of modern work organisation, for the creation of flexible and secure contractual arrangements ensuring equal treatment; is firmly convinced that employment contracts of an indefinite duration must continue to be the main form of employment and considers that, in the context of modern work organisation, provision should be made for contracts that are flexible in terms of working arrangements and secure with regard to job protection and rights; recognises that the definition of the legal framework for employment contracts of an indefinite duration and how they are geared to the concept of flexicurity in national labour law is crucially important for their acceptance by businesses and employees;
36. Strongly condemns the replacement of regular employment with forms of atypical contract that contribute to poorer and more uncertain working conditions than regular employment conditions and that work to the detriment of the general public, employees and competitors; stresses that abusive practices violate and destabilise the European social model, and calls on the Member States and the Commission to use all necessary means to fight abusive practices in the long term, for example by imposing more stringent penalties;
37. Firmly believes that, taking into account the different traditions in Member States, any form of employment should be accompanied by a core of rights, which should include: living wages and the elimination of gender and ethnic pay gaps; adequate social protection; non-discrimination and equal treatment while seeking and while in employment, training and career development; workers' health and safety protection and provisions on working/rest time, pension rights, freedom of association and representation, collective bargaining, collective action, access to training and career progression, and protection in the event of loss of employment;
38. Calls for the EU and the Member States to step up their efforts to invest in skills and training to support stable and sustainable employment; therefore calls on the Member States to invest in people by vigorously implementing and financing learning strategies geared to market requirements, and the recognition of non-formal skills and competences, while respecting a life-cycle approach; calls, further, on the Member States to introduce measures at national, regional and local level to guarantee that each young person leaving school has access to a job or to higher education or receives vocational training;
39. Calls on the Member States to implement policies that enable all people, including the weakest and most disadvantaged, to have effective access to the labour market and to balance flexible work and care, private and family life better, ensuring extensive support for equal opportunities and for all the services needed for that purpose, for example through flanking measures such as maternity, paternity and parental leave, flexible working time, and affordable, accessible and available childcare facilities;
40. Calls on the Member states to come up with policies aimed at creating new job opportunities; is aware of the responsibility of and risks faced by those who create such jobs, including those under atypical contracts;
41. Calls on the Member States to implement measures to enable workers to return to work following parental leave, after first undergoing refresher training if needed;
42. Strongly recommends that the EU employment initiative should include early intervention in support of the unemployed at the moment when jobs are actually lost, not least in order to reduce the risk of people becoming excluded from the labour market and the loss of the human capital they constitute;



Tuesday 6 July 2010

43. Calls on the Member States to strengthen support schemes, particularly for the low-skilled and disabled, by means of pathway approaches, personalised counselling, intensive (re-)training of workers, subsidised employment and start-up grants for the self-employed and businesses; specifically emphasises, however, that this aid must be structured in such a way that regular jobs are not replaced;

44. Calls on the Commission and the Member States to eliminate administrative burdens, where they do not serve to protect workers' interests, in order to improve the business environment, particularly for SMEs, but stresses the importance of ensuring that any changes have no implications for the safety or health of employees; points out that SMEs are, by virtue of their large number, the main agents in the struggle against unemployment in the EU; stresses the importance of taking account, when formulating the employment policies that concern them, of their specific requirements and those of the territory in which they are located;

45. Calls on the Member States to report on the state of play regarding thinking on and implementation of flexicurity pathways;

46. Deplores the Council's and the Commission's narrow approach to flexicurity; calls on the Commission and the Council to commit themselves to the Good Work agenda and to incorporate it into the next generation of the Integrated Guidelines and the European Employment Strategy: promoting job and employment security for workers, a rights-based approach to active labour market policies and lifelong learning, comprehensive health and safety at work, universal and equal social and workers' rights for everyone, a work/life balance and reconciliation of work and non-work life, and improving the quality of employment and well-being at work;

47. Calls on the Member States not to allow redundancies on solely economic grounds until every effort has been made to (re)train workers;

### ***C. New forms of social dialogue***

48. Believes that the formal recognition of the role of the social partners in the new Treaty constitutes progress, as it recognises their autonomy and reaffirms the importance of their role in promoting social dialogue, and highlights here the particular importance of sectoral social dialogue, in which 40 sectors are now represented;

49. Is concerned, however, at the impact of the recent ECJ judgment in the Laval, Rüffert, Viking and Luxembourg case on freedom of association and freedom to action to improve working conditions;

50. Is of the opinion that acknowledgment of the Tripartite Summit for Growth and Employment as an institutional body contributes to the involvement of the social partners in EU economic policies;

51. Believes that the contribution of the European and national social partners and civil society organisations to achieving the EU2020 Strategy is particularly important with regard to reaching the employment targets and updating and implementing the flexicurity agenda;

52. Calls on the Commission and national governments to feel responsible for the situation of the 'outsiders' (employees with atypical or 'very atypical' contracts) and to ensure that their rights and social-protection requirements are balanced with those of the 'insiders';

53. Calls on the social partners at European and national level to support investment in learning strategies geared to market requirements and welcomes the 'Framework of actions for the lifelong learning development of competencies and qualifications' already negotiated by the social partners;

Tuesday 6 July 2010

54. Believes that people involved in labour market inclusion measures or measures to prepare them to (re-)enter the labour market as well as civil society organisations providing these services to them or representing them should be part of the framing, implementation and delivery of policies affecting them;

55. Notes that the involvement of the social partners and civil society organisations in policy-making and implementation varies widely across the Member States, but that generally the trend is towards the use of a wider mix of instruments to pursue policy objectives; believes that the quality of the social and institutional recognition which the social partners enjoy should at national level be further enhanced and more substantial in nature, since it is an important determinant of the quality of their contribution; stresses in particular, however, that the quality of social dialogue varies greatly from country to country and from sector to sector, and strongly urges the social partners to develop a genuine 'social partnership' at all levels;

56. Believes that collective bargaining has proven to be an effective instrument for maintaining employment and that it allows employers and employees to find efficient solutions to deal with the economic downturn; notes, in this regard, the importance of a strong consensus between the social partners in national systems where labour law protection is set to a minimum;

57. Is convinced that successful social dialogue in the workplace is largely determined by the facilities that the employee representations have with regard to quality information provision, regular training and sufficient time;

58. Is convinced that the role of governments is decisive in providing the preconditions for inclusive and effective collective bargaining and encompassing tripartite structures to involve the social partners in an institutionally formalised and substantial way, and on an equal basis, in public policy-making, in accordance with national practice and traditions;

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59. Instructs its President to forward this resolution to the Council, the Commission, the Social Protection Committee, the European Employment Committee and the governments and parliaments of the Member States and the candidate countries.

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## **Commission Green Paper on the management of bio-waste in the European Union**

P7\_TA(2010)0264

### **European Parliament resolution of 6 July 2010 on the Commission Green Paper on the management of bio-waste in the European Union (2009/2153(INI))**

(2011/C 351 E/07)

*The European Parliament,*

— having regard to Articles 191 and 192 of the Treaty on the Functioning of the European Union, which aim to promote a high level of protection for human health and the environment,

— having regard to the Commission Green Paper on the management of bio-waste in the European Union (COM(2008)0811),

— having regard to the conclusions adopted by the Council of the European Union on 25 June 2009 (11462/09 of 26 June 2009),

Tuesday 6 July 2010

- having regard to Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste <sup>(1)</sup>,
- having regard to Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste <sup>(2)</sup>,
- having regard to its position of 17 January 2002 on the Council's final common position with a view to the adoption of the decision of the European Parliament and the Council establishing the sixth Community action programme on the environment <sup>(3)</sup>,
- having regard to its resolution of 12 March 2008 on sustainable agriculture and biogas: a need for review of EU legislation <sup>(4)</sup>,
- having regard to its resolution of 4 February 2009 on '2050: The future begins today – Recommendations for the EU's future integrated policy on climate change' <sup>(5)</sup>,
- having regard to its resolution of 10 April 2008 on the mid-term review of the Sixth Community Environment Action Programme <sup>(6)</sup>,
- having regard to its position of 14 November 2007 on the proposal for a directive of the European Parliament and of the Council establishing a framework for the protection of soil and amending Directive 2004/35/EC <sup>(7)</sup>,
- having regard to its resolution of 13 November 2007 on the Thematic Strategy for Soil Protection <sup>(8)</sup>,
- having regard to its position of 25 October 2005 on the Council common position for adopting a regulation of the European Parliament and of the Council on shipments of waste <sup>(9)</sup>,
- having regard to its resolution of 29 September 2005 on the share of renewable energy in the EU and proposals for concrete actions <sup>(10)</sup>,
- having regard to its position of 17 June 2008 on the Council common position with a view to the adoption of a directive of the European Parliament and of the Council on waste and repealing certain Directives <sup>(11)</sup>,
- having regard to its resolution of 13 February 2007 on a thematic strategy on the recycling of waste <sup>(12)</sup>,
- having regard to Rule 48 of its Rules of Procedure,
- having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinions of the Committee on Industry, Research and Energy and the Committee on Agriculture and Rural Development (A7-0203/2010),

<sup>(1)</sup> OJ L 114, 27.4.2006, p. 9.

<sup>(2)</sup> OJ L 182, 16.7.1999, p. 1.

<sup>(3)</sup> OJ C 271 E, 7.11.2002, p. 154.

<sup>(4)</sup> OJ C 66 E, 20.3.2009, p. 29.

<sup>(5)</sup> OJ C 67 E, 18.3.2010, p. 44.

<sup>(6)</sup> OJ C 247 E, 15.10.2009, p. 18.

<sup>(7)</sup> OJ C 282 E, 6.11.2008, p. 281.

<sup>(8)</sup> OJ C 282 E, 6.11.2008, p. 138.

<sup>(9)</sup> OJ C 272 E, 9.11.2006, p. 59.

<sup>(10)</sup> OJ C 227 E, 21.9.2006, p. 599.

<sup>(11)</sup> OJ C 286 E, 27.11.2009, p. 81.

<sup>(12)</sup> OJ C 287 E, 29.11.2007, p. 135.

Tuesday 6 July 2010

- A. whereas the Commission initiative promoted in its Green Paper provides an opportunity for Community action on the management of bio-waste,
- B. whereas the proper management of bio-waste brings not only environmental but also social and economic advantages,
- C. whereas Article 2(4) of the Waste Framework Directive provides that specific or supplementary rules on the management of particular categories of waste may be laid down by means of individual directives,
- D. whereas Directive 1999/31/EC on the landfill of waste does not provide sufficient instruments for the sustainable management of organic waste,
- E. whereas the rules on the management of bio-waste are fragmented and the current legislative instruments are not sufficient to achieve the stated objectives of the effective management of bio-waste; whereas, consequently, a specific directive is necessary for the management of bio-waste; whereas compiling all the various rules on the management of bio-waste in a single piece of legislation would in itself be an exercise in legislative excellence and better lawmaking, whilst at the same time ensuring simplification, greater clarity and better monitoring and enforcement of implementation and legal certainty and thus guaranteeing the long-term confidence of public and private investors,
- F. whereas the conclusions of the conference on the recycling of bio-waste in Europe, held in Barcelona on 15 February 2010 with the participation of the Council, the Commission and the European Parliament <sup>(1)</sup>, stated that it is necessary to act in order to create a European legislative framework on bio-waste, since this is a key moment to promote such regulation,
- G. whereas a specific directive on bio-waste should have the necessary flexibility to cover the various management options available, bearing in mind that there are a large number of variables and local considerations that need to be taken into account,
- H. noting the unexplored potential of bio-waste managed in line with widely differing policies in each Member State; whereas improved management of this waste is necessary in order to achieve the efficient and sustainable management of resources; whereas the separate collection of bio-waste should be stepped up in order to reach the targets for recycling and renewable energies and thereby contribute to achieving the goals of the EU 2020 strategy, in particular within the framework of the flagship of resource efficiency,
- I. whereas separate collection permits, in particular, the optimal management of certain types of bio-waste, i.e. kitchen waste at consumer and catering levels and also biodegradable and compostable waste from restaurants employing single-use crockery items,
- J. whereas composting organic waste permits the recycling of the biodegradable and compostable products already covered by a Community initiative (the Lead Market Initiative),
- K. whereas EU-level quality standards need to be defined for the treatment of bio-waste and the quality of compost; whereas regulating the quality parameters for compost, including an integrated approach ensuring traceability, quality and safe use, will make it possible to build consumer confidence in this product; whereas compost should be graded in line with its quality, to the extent that the use of compost will have no detrimental effect for soil and groundwater, and in particular for the agricultural produce stemming from that soil,
- L. whereas, given their poor implementation, the objectives set for diverting bio-waste from landfills require additional legislative guidelines if they are to be achieved,

<sup>(1)</sup> Note from the Council Secretariat, 9 March 2010, Council document 7307/10.

Tuesday 6 July 2010

- M. whereas protective measures can be necessary to ensure that the use of compost does not result in pollution of soil or groundwater,
- N. whereas the possibilities for using poor-quality compost so as not to harm the environment or human health should also be considered and assessed, and whereas, at EU level, properly defining the possibilities for using poor-quality compost and establishing when compost is considered a product and when it is considered waste would make it easier for Member States to orient themselves when deciding on matters relating to compost use,
- O. whereas a resource-efficient Europe is one of the flagships of the Europe 2020 Strategy and therefore resource efficiency should be encouraged; whereas recycling of bio-waste contributes towards increasing resource efficiency,
- P. whereas moist bio-waste lowers the efficiency of incineration; whereas the incineration of bio-waste is indirectly encouraged through the Directive on Electricity Production from Renewable Energy Sources; whereas bio-waste can better contribute to combating climate change through recycling it into compost to improve soil quality and achieve carbon sequestration, which is not currently promoted by the Directive on Electricity Production from Renewable Energy Sources,
- Q. whereas anaerobic digestion for the production of biogas is an efficient means of energy recovery; while the digestate thereof can be used to produce compost,
- R. whereas the main aim of the appropriate management of bio-waste must be the result, which means that all the technological options for the management of bio-waste can be kept open to encourage innovation, scientific research and competitiveness,
- S. whereas there is a significant synergy between the transition to a recycling society developing a low carbon economy and the potential for creating green jobs in this field, and consequently a need for appropriations to be earmarked for research into the impact on the working environment of the collection and management of bio-waste,
- T. whereas the Commission and Member States should promote environmental awareness-raising activities in this field, particularly in schools, so as to foster the sustainable management of solid urban waste and raise public awareness of the advantages of separate collection; whereas municipalities and municipal undertakings play an important role in providing advice and information for the public on preventing waste,
- U. whereas bio-waste accounts for more than 30 % of solid urban waste; whereas the volume of bio-waste is rising in the European Union, representing a significant source of greenhouse gas emissions and other negative environmental effects when dumped in landfills in conditions owing to which waste management is now the fourth most important source of greenhouse gases,
- V. whereas it is not only bio-waste of household origin that is being treated sustainably in practice,
- W. whereas the management of such waste should be structured in line with the 'waste hierarchy': prevention and reduction, reuse, recycling, other types of recovery, in particular for energy purposes, and as the last option, landfilling (in accordance with Article 4 of the Waste Framework Directive), according to which the recycling of bio-waste is preferable to its incineration as it not only avoids the formation of methane gas, but also contributes to combating climate change via carbon sequestration and improving soil quality; whereas prevention is the priority objective in the management of bio-waste and makes it possible, in particular, to avoid food waste and green waste, for example through the improved planning of public parks with low-maintenance plants and trees,

Tuesday 6 July 2010

- X. whereas, if we are to move towards an environmentally effective management of bio-waste, the matter needs to be viewed from an integrated perspective in energy and soil protection policies, in line with climate change mitigation goals; whereas a further advantage is the preservation of biodiversity when treated bio-waste is used as a substitute for peat, thereby protecting wetland eco-systems,
- Y. whereas anaerobic digestion to produce biogas from bio-waste can make a valuable contribution to sustainable resource management in the EU and to meeting the EU's renewable energy targets in a sustainable way,
- Z. whereas bio-waste should be seen as a valuable natural resource that can be used to produce high-quality compost, thereby helping to combat soil degradation in Europe, maintaining soil productivity, reducing the use of chemical fertilisers in agriculture, and especially of those based on phosphorus, and boosting the soil's water retention capacity,
- AA. whereas different waste management systems are used in the Member States and landfilling is still the most widely used method of disposing of solid urban waste in the European Union, even though it is the worst option for the environment,
- AB. whereas the production of fuel for transport from bio-waste offers a significant environmental advantage;
- AC. whereas scientific research and technological innovation need to be encouraged in the field of bio-waste management,
- AD. whereas separate collection currently makes it possible to prevent contamination and help achieve the goal of obtaining high-quality compost, providing quality materials for the recycling of bio-waste and making energy recovery more efficient,
- AE. whereas the available studies and experience in the Member States show that it is important to have a separate collection which is both practicable as well as environmentally and economically sustainable and which should be made compulsory; whereas separate collection should be the prerequisite for the production of high quality compost,

### **Legislation**

1. Urges the Commission to review the existing legislation applicable to bio-waste with a view, in accordance with the subsidiarity principle, to drawing up a proposal for a specific directive by the end of 2010, including inter alia:
  - establishment of a mandatory separate collection system for the Member States, except where this is not the appropriate option from the environmental and economic point of view,
  - recycling of bio-waste,
  - a quality-based classification of the different types of compost from bio-waste;
2. Calls on the Commission to provide a quantification under the National Emissions Plan of the CO<sub>2</sub>-equivalent reductions obtained from recycling and composting;
3. Notes that a future European Union framework would provide legal guidance and clarity for many Member States and would encourage them to make investments in the field of bio-waste management; urges the Commission to support the Member States in introducing waste separation systems and to introduce binding and ambitious targets for the recycling of this waste;

Tuesday 6 July 2010

4. Recalls that the Sixth Community Environment Action Programme 2001-2010 of 22 July 2002 obliged the Commission to develop legislation on biodegradable waste in its Article 8(2)(iv) as one priority action to achieve the objective of sustainable use and management of natural resources and wastes, but that even eight years later no legislative proposal has been forthcoming, which is unacceptable,

5. Calls on the Commission to elaborate in its impact assessment an improved system for the management of bio-waste regarding the recycling of separately collected bio-waste, the use of composting for agricultural and ecological benefit, the mechanical/biological treatment options, and the use of bio-waste as a source for generating energy; considers that this impact assessment should be used as a basis for preparing a new European Union legal framework on biodegradable waste;

#### **Use**

6. Urges the Commission to lay down criteria in conjunction with Member States for the production and use of high-quality compost and to adopt minimum requirements for end products, in accordance with Article 6 of the Waste Framework Directive, which permits quality-grading covering different types of use for the various types of compost obtained through the treatment of bio-waste in the framework of a strategy based on an integrated approach ensuring not only quality but also product traceability and safe use;

#### **Energy**

7. Considers anaerobic digestion to be especially useful for bio-waste because it yields nutrient-rich soil improver, digestate, and also biogas, which is renewable energy that can be converted to biomethane or used to generate base-load electricity;

8. Believes that, in order for bio-waste incineration to become a viable alternative in the waste hierarchy, a crucial prerequisite is that it be coupled with energy recovery;

9. Stresses that, during energy recovery from bio-waste, attention must be paid to energy efficiency and sustainable development aspects and that these products should therefore primarily be used in the most efficient manner; reiterates therefore that separate refuse collections are essential in order to comply with the Landfill Directive <sup>(1)</sup>, to provide quality input to bio-waste recycling and to improve the efficiency of energy recovery;

10. Notes that in order to increase diversion, recycling and biogas generation rates, all technological tools and options that maximise resource recycling or biogas generation should be left open;

11. Considers bio-waste to be a valuable renewable resource for the production of electricity and biofuel for transport and for feeding into the gas network through conversion of biogas into biomethane (mainly methane – 50 % to 75 % – and carbon dioxide), and calls on the Commission to analyse and promote ways of using bio-waste to produce biogas;

12. Stresses that diverting bio-waste from landfills needs to be increased; notes, in this context, that bio-waste can contribute to the EU target of at least 20 % renewable energy by 2020 and also that of the EU Fuel Quality Directive; recalls that the Renewables Directive supports the use of all types of biomass, including bio-waste for energy purposes, as a renewable source of energy, and that bio-fuels from waste count double towards the 10 % renewable energy target in transport; calls, therefore, on Member States to consider energy recovery from the biodegradable parts of waste in their national legislation as part of an integrated waste hierarchy policy and urges them to share best practice ideas;

<sup>(1)</sup> Directive 1999/31/EC, Recital 17.

Tuesday 6 July 2010

### **Research and innovation**

13. Urges the Commission and Member States to encourage and support scientific research and technological innovation in the field of bio-waste management;

14. Calls on the Commission to engage further in research into bio-waste treatment methods in order to better quantify its soil-related benefits, as well as its energy recovery and the environmental impacts;

### **Awareness and information**

15. Urges the Commission and the Member States to promote environmental awareness-raising activities in the field of bio-waste, particularly in schools and higher education institutions so as to promote better waste prevention behaviour patterns, to foster the sustainable management of bio-waste and municipal solid waste and to raise public awareness of waste prevention and recycling as well as the advantages of separate collection and the biological treatment of bio-waste; stresses in this context the important role of towns, municipalities and municipal undertakings in advising and informing citizens about prevention of waste;

### **Environmental aspects**

16. Considers that treated bio-waste should be used to conserve organic matter and complete nutrient cycles, especially the phosphate cycle, by recycling it into the soil and calls therefore on the Commission to recognise that policies should be tested for their contributions to mitigating the unacceptably rapid depletion of the world's phosphate resources;

17. Stresses that bio-waste which is free of pollutants needs to be regarded as a valuable natural resource that can be used to produce quality compost;

18. Considers that the future of agriculture also depends on conservation and restoration of soil fertility; notes that the use of quality compost in farming can contribute to preserving land productivity, increasing water retention and carbon storage capacity and reducing the use of synthetic fertilisers; stresses the role of Member States in ensuring the use of quality compost on agricultural land;

19. Points out that the monitoring of gases given off by substances in landfill may be hindered during composting, which may pose a major threat to the environment and the atmosphere; recalls that correct composting – particularly of municipal bio-waste – involves protecting groundwater against leachate from the composting plant;

20. Stresses that, with a view to attaining objectives at various levels (combating climatic warming, soil degradation and soil erosion; attaining renewable energy objectives), a combination of composting and fermentation of selectively collected bio-waste, if feasible, undoubtedly possesses advantages and should be encouraged;

21. Calls therefore on the Commission to propose national bio-waste recycling targets to limit the amount of bio-waste available for the least desirable waste management solutions like landfilling and incineration;

### **Compliance with Landfill Directive**

22. Reiterates that bio-waste management must be structured in line with the waste treatment hierarchy, namely: prevention, recycling, other forms of waste recovery, including energy recovery, and, as a last option, disposal in landfills (Directive 1999/31/EC, Art. 5 and Directive 2008/98/EC<sup>(1)</sup>); calls on the Commission to make greater efforts to enforce and secure the application of the laws on landfilling throughout the the Community;

<sup>(1)</sup> OJ L 312, 22.11.2008, p. 3.



Tuesday 6 July 2010

23. Notes that the individual Member States have different existing national legislative measures and different waste management systems and that the use of landfill continues to be the most common disposal method for municipal solid waste in the European Union; calls on the Member States to increase their cooperation and their exchange of best practices in the field of bio-waste management;

24. Considers mechanical-biological treatment (MBT) to be an effective way of diverting significant quantities of putrescible waste away from landfills for use in composting, anaerobic digestion and energy recovery;

#### *Economic aspects*

25. Considers that financial incentives are needed to expand this separate collection and other bio-waste management systems that maximise resource recovery;

26. Stresses that improvements in bio-waste management and the harmonisation of quality standards for compost are needed to encourage the development of a European market for compost;

27. Considers that the 'polluter pays' principle should be taken as the basis for compensation for additional costs arising from inputs of pollutants, so that the negative externalities of spreading bio-waste are not paid for by farmers;

28. Underlines the fact that in many Member States some infrastructure is already in place but that financial incentives are required to create and establish the potential markets in compost and digestate, bioenergy and biofuel from bio-waste;

29. Underlines the environmental advantage of producing transport fuels from bio-waste; calls for Member States, in the light of the waste hierarchy, to take this into account when they implement the revised Waste Framework Directive, and for the Commission to reflect this in its implementing guidelines;

30. Urges the Commission to include in all current or additional impact studies on the matter the question of what type of economic incentives, funds or aids could be mobilised or created for the development and implantation of technologies permitting the proper management of bio-waste;

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31. Instructs its President to forward this resolution to the Council and the Commission.

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Wednesday 7 July 2010

## **Remuneration of directors of listed companies and remuneration policies in the financial services sector**

P7\_TA(2010)0265

### **European Parliament resolution of 7 July 2010 on remuneration of directors of listed companies and remuneration policies in the financial services sector (2010/2009(INI))**

(2011/C 351 E/08)

*The European Parliament,*

- having regard to the Commission Recommendation of 30 April 2009 on remuneration policies in the financial services sector (C(2009)3159),
- having regard to the Commission Recommendation of 30 April 2009 complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies (C(2009)3177),
- having regard the Commission proposal for a directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (COM(2009)0362),
- having regard to the Financial Stability Forum's (FSB) Principles for Sound Compensation Practices of 2 April 2009 and the accompanying Implementation Standards of 25 September 2009,
- having regard to the Committee of European Banking Supervisors' (CEBS) High-level Principles for Remuneration Policies of 20 April 2009,
- having regard to the CEBS report on national implementation of CEBS High-level Principles for Remuneration Policies of 11 June 2010,
- having regard to the Basel Committee on Banking Supervision's Compensation Principles and Standards Assessment Methodology of January 2010,
- having regard to the OECD's paper of February 2010 on Corporate governance and the financial crisis - conclusions and emerging good practices to enhance implementation of the Principles,
- having regard to its resolution of 18 May 2010 on deontological questions related to companies management <sup>(1)</sup>,
- having regard to the Commission Green Paper of 2 June 2010 on corporate governance in financial institutions and remuneration policies (COM(2010)0284),
- having regard to the Commission report of 2 June 2010 on the application by Member States of the EU of the Commission 2009/385/EC Recommendation (2009 Recommendation of directors' remuneration) complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for remuneration of directors of listed companies (COM(2010)0285),
- having regard to the Commission report of 2 June 2010 on the application by Member States of the EU of the Commission 2009/384/EC Recommendation on remuneration policies in the financial services sector (COM(2010)0286),

<sup>(1)</sup> Texts adopted, P7\_TA(2010)0165.

Wednesday 7 July 2010

- having regard to Rule 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Employment and Social Affairs (A7-0208/2010),
- A. whereas, in the financial sector and in some listed companies, remuneration policies for categories of staff whose professional activity has a material impact on the company's risk profile have been such as to encourage transactions seeking short-term profits, with increasingly risky business models being developed to that end, to the detriment of workers, savers and investors, and sustainable growth in general,
- B. whereas the Commission's Green Paper on corporate governance in financial institutions and remuneration policies stresses that the lack of effective control mechanisms contributed significantly to excessive risk-taking on the part of financial institutions, and that corporate governance should take account of the stability of the financial system, which depends on the actions of many players,
- C. whereas inappropriate remuneration structures of some financial institutions that incentivise excessive and imprudent risk-taking played a role in the accumulation of risks that led to the current financial, economic and social crisis, and are therefore a major issue of concern for policy-makers and regulators,
- D. whereas financial institutions must take into account, as part of their corporate social responsibility, the social environment in which the institution operates, as well as the interests of all of parties involved, such as its clients, shareholders and employees, in an integrated manner,
- E. whereas numerous initiatives have been launched at the global, European and national levels to address the issue of problematic remuneration practices, and whereas a globally coordinated approach is essential in order not only to guarantee a level playing field, but also to ensure the global competitiveness of Europe and to promote sustainable and fair competition between market places,
- F. whereas the FSB Principles for Sound Compensation Practices, which were endorsed by the G20 leaders, set out five elements for sound remuneration practices, and having regard to the importance of promoting simultaneous implementation of these principles,
- G. whereas the agreed principles and measures already taken in respect of remuneration policy should be continually reviewed and, where necessary, adapted in order to create uniform conditions throughout Europe and secure the global competitiveness of the European finance industry,
- H. whereas several scientific studies, as well as practical experience, have demonstrated the limited impact of non-binding recommendations on remuneration policies, which underlines the need to put in place a stronger instrument in order to ensure respect for the principles,
- I. whereas the Commission report states that notwithstanding the momentum towards substantial reform in the area of remuneration policies provided by the crisis, only 16 Member States have fully or partially applied the Commission Recommendation,

### **General remarks**

1. Welcomes the initiatives taken by the Commission and the FSB on remuneration policies in the financial sector and listed companies in general; takes the view, however, that the financial undertaking's size, and thus its activity's contribution to the systemic risk, should be taken proportionally into account when imposing additional regulation in matters of remuneration policy and capital requirements on financial institutions;
2. Notes the proposals in the report on the capital requirements directives for binding principles on remuneration policies in the financial sector;

Wednesday 7 July 2010

***Effective governance of compensation***

3. Stresses that supervisory authorities should decide whether a financial institution or a listed company should have a remuneration committee; they should do so in a way that is appropriate to its size, internal organisation and the nature, scope and complexity of its activities; takes the view that where the supervisor has deemed it appropriate, remuneration policy should be determined by the remuneration committee, which must be independent and accountable to shareholders and supervisors, and should work closely with the firm's risk committee in the evaluation of the incentives created by the compensation system;
4. Stresses that a remuneration committee must have access to the subject matter of contracts, with contracts under the scrutiny of this committee designed in a way that makes it possible to punish acts of gross negligence by payment deductions. Gross negligence occurs when due diligence in particular is not respected, in which case the remuneration committee must ensure that the deduction is not merely symbolic in nature, but contributes substantially to paying for the damage caused. Furthermore, financial institutions should be urged to make use of a malus, i.e. a return of performance-related compensation as a result of the discovery of poor performance;
5. Believes that the chair and the voting members of the remuneration committee must be members of the management body who do not perform any executive functions in the financial institution or the listed company concerned. Takes the view that directors and board members should avoid simultaneously sitting on the boards of other companies if there is a potential for any conflict of interest occurring;
6. Is of the opinion that, where appropriate, shareholders should be given the opportunity to contribute towards the determination of sustainable remuneration policies, and could for this purpose be given the opportunity to express their views on remuneration policies by means of a non-binding vote on the remuneration report at the company's general meeting;
7. Stresses that non-executive board members' compensation should only consist in fixed pay and should not include performance- or share-based pay;
8. Underlines that members engaged in risk control should be independent from the business units they control, have appropriate authority and be compensated independently of the performance of these business units;

***Effective alignment of compensation with prudent risk-taking***

9. Underlines that remuneration should be adjusted for all types of risks, symmetrical with risk outcomes, and sensitive to the time horizon of current and potential risks that have an impact on the overall performance and stability of the firm;
10. Points out that directors should not be driven by personal financial interest in their management of listed companies; considers that the personal financial interest of directors linked to variable remuneration is in many cases in conflict with the long-term interest of the company, including the interests of its employees and stakeholders;
11. Believes that compensation systems should be proportionate to the size, internal organisation and complexity of financial institutions and should reflect the diversity between different financial sectors such as banking, insurance and fund management;
12. Stresses that the operational risk management arrangements of senior management, risk takers and control functions should be reviewed by, and subject to thorough checks by, the supervisor; considers that such procedures should also apply to staff whose total remuneration, including pension provisions, takes them into the same bracket as these categories as staff;

Wednesday 7 July 2010

13. Considers that the levels of variable remuneration should be based on predetermined and measurable performance criteria, which should promote the long-term sustainability of the company;
14. Stresses that performance-related remuneration should link the size of the bonus pool to the overall performance and capital base of the firm, while an employee's individual performance-related remuneration should be based on a combined assessment of the performance of the individual, that of the business unit concerned and the overall results of the institution;
15. Considers that the personal financial interest of directors linked to variable remuneration is, in many cases, in conflict with the long-term interests of the company; stresses that policy on the remuneration of directors and other staff who bear responsibility for risky decisions should be consistent with a balanced and properly functioning system of risk management, and that there should be an appropriate ratio between fixed and variable pay; calls urgently for the introduction, across the board, of measures for the reduction, or indeed the withdrawal, of the variable pay of categories of staff whose performance is responsible for a deterioration in their company's results;
16. Is of the opinion that not only quantitative measures, but also quality-linked performance criteria and human judgement should be taken into consideration in order to determine the level of variable compensation;
17. Considers that guaranteed bonuses should not be part of the compensation plans;
18. Is of the opinion, not only for ethical reasons but also in the interests of social justice and economic sustainability, that the difference between the highest and the lowest remuneration in a company should be reasonable;
19. Stresses that firms should establish an internal procedure, approved by the supervisor, to address conflicts which may occur between their risk management and operational units;
20. Underlines the need to extend these principles to the remuneration of all employees whose professional activities have a material impact on the risk profile of the company they work for, including senior management, risk-takers, control functions and those staff whose total remuneration, including pension provisions, takes them into the same bracket;
21. Stresses that directors' and officers' liability insurance designed to protect companies' directors, officers and senior managers against claims arising from risky or negligent decisions and actions taken whilst managing their business are not in line with sustainable risk management in the field of remuneration;

#### ***Balanced structure of the remuneration package***

22. Stresses that there must be an appropriate balance between variable and fixed remuneration;
23. Suggests that variable remuneration should be paid only if it is sustainable in the light of the financial situation and capital base of the institution, and justified in the light of the long-term performance of the firm; considers that for financial institutions, the competent supervision authority should have the right to limit the overall amount of variable remuneration in order to strengthen equity capital;
24. Underlines that a substantial proportion of the variable remuneration component should be deferred over a sufficient period; the size of the proportion and the length of the deferral period should be established in accordance with the business cycle, the nature of the business, its risks and the activities of the staff member in question; remuneration payable under deferred arrangements should become a vested right no faster than that payable on a pro-rata basis; at least 40 % of the variable remuneration component should be deferred; in the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount should be deferred and the deferral period should be no less than 5 years;

**Wednesday 7 July 2010**

25. Believes that a substantial proportion of variable compensation should be awarded in non-cash instruments such as subordinated debt, contingent capital, shares or share-linked instruments, as long as these instruments create incentives aligned with long-term value creation and the time horizons of risk;
26. Considers that remuneration policies should apply to total remuneration, including pensions and salaries, to avoid 'bonus arbitrage'; believes, furthermore, that 'pension bonuses' should be awarded in non-cash instruments such as subordinated debt, contingent capital, shares or share-linked instruments in order to align long-term incentives;
27. Suggests setting an upper limit of the equivalent of two years of the fixed component of directors' pay on severance pay ('golden parachutes') in cases of early termination, and banning severance pay in cases of non-performance or voluntary departure;
28. Calls for equality between men and women to be taken into account in determining pay policies;
29. Reiterates the need to punish all forms of discrimination in companies, particularly in the determination of remuneration policies, in career development and in the process of recruiting directors;

***Effective supervisory oversight and involvement by stakeholders***

30. Believes that firms should disclose clear, comprehensive and timely information about their compensation practices and that supervisory authorities should have access to all the information they need to evaluate compliance with the applicable principles;
31. Calls for state enterprises, like other companies, to exercise complete transparency concerning their pay and bonus policies;
32. Calls, too, for the publication of details of companies' pension and supplementary pension arrangements, including those of state enterprises;
33. Calls on the Commission to reinforce its recommendations of 30 April 2009 on pay structure and risk alignment as required by the principles established by the Financial Stability Board and endorsed by the G20 in September 2009;
34. Calls on the Commission to adopt strong binding principles on remuneration policies in the financial sector, building on the proposals for banking in the report on the CRD, and a disclosure-driven regime based on a comply-or-explain procedure for listed companies which do not respect these principles;
35. Urges supervisors in the financial sector to implement the Compensation Principles and Standards Assessment Methodology proposed by the Basel Committee on Banking Supervision in January 2010;
36. Calls on the Commission and Member States to promote a common international structure for disclosure of the number of individuals in pay brackets from EUR 1 million upwards, to include the main elements of salary, bonus, long-term award and pension contribution;
37. Invites the Commission to consider the roles of both internal and external auditors as part of ensuring the full spectrum of effective corporate governance;
38. Calls on the Commission to investigate strengthening the roles of non-executive directors, including ensuring that firms provide on-going training and independent remuneration packages that reflect the independent role of non-executive directors, as well as providing the powers to supervisors to conduct 'approved persons' interviews;

Wednesday 7 July 2010

39. Calls on the Commission to clarify in its legislative proposals the role of the supervisory authorities in remuneration policy;
40. Stresses that variable remuneration should not be paid through vehicles or methods that facilitate the avoidance of payment of income taxes on this remuneration;
41. Calls for it to be ensured that, when remuneration is being regulated, this is not done to the detriment of the fundamental rights guaranteed by the Treaties, in particular the right of the social partners – in accordance with national laws and practices – to conclude and enforce collective agreements;
42. Calls on the Commission to set up an EU crisis management framework in order to avoid a new financial crisis, taking into account initiatives taken by international bodies such as the G20 and the IMF;
43. Calls on the Commission to encourage the Member States to remind listed companies and financial services companies of their social responsibility, their tarnished image and the need to set a good example in a prosperous international society;
44. Considers that continuing to do business or maintain branches in non-cooperative countries is contrary to the long-term interests of companies generally, and calls for the development of a European strategy to combat tax havens in order to implement the pronouncements made by the G20 in London and Pittsburgh;

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45. Instructs its President to forward this resolution to the Council, the Commission and the EU and national regulatory authorities.

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## Cross-Border Crisis Management in the Banking Sector

P7\_TA(2010)0276

### European Parliament resolution of 7 July 2010 with recommendations to the Commission on Cross-Border Crisis Management in the Banking Sector (2010/2006(INI))

(2011/C 351 E/09)

*The European Parliament,*

- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to its resolution on the Commission communication on implementing the framework for financial markets: Action Plan <sup>(1)</sup>, of 13 April 2000,
- having regard to the Commission Communication of 20 October 2009 entitled ‘An EU Framework for Cross-Border Crisis Management in the Banking Sector’ (COM(2009)0561),
- having regard to the proposal of 23 September 2009 for a regulation of the European Parliament and of the Council on Community macro prudential oversight of the financial system and establishing a European Systemic Risk Board (COM(2009)0499),

<sup>(1)</sup> OJ C 40, 7.2.2001, p. 453.

**Wednesday 7 July 2010**

- having regard to the proposal of 23 September 2009 for a Council decision entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board (COM(2009)0500),
  - having regard to the proposal of 23 September 2009 for a regulation of the European Parliament and of the Council establishing a European Banking Authority (COM(2009)0501),
  - having regard to 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 <sup>(1)</sup>,
  - having regard to Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions <sup>(2)</sup>,
  - having regard to Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes <sup>(3)</sup>,
  - having regard to Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions <sup>(4)</sup>,
  - having regard to the Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent <sup>(5)</sup>, the Third Council Directive 78/855/EEC of 9 October 1978 concerning mergers of public limited liability companies <sup>(6)</sup> and the Sixth Council Directive 82/891/EEC of 17 December 1982, concerning the division of public limited liability companies <sup>(7)</sup>,
  - having regard to the Memorandum of Understanding of 1 June 2008 on cooperation between the financial supervisory authorities, central banks and finance ministries of the European Union on cross-border financial stability,
  - having regard to Recommendation 13 of the report by the High-Level Group on Financial Supervision chaired by Jacques de Larosière submitted to President Barroso on 25 February 2009, which states, '[t]he Group calls for a coherent and workable regulatory framework for crisis management in the EU',
  - having regard to Rules 42 and 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Legal Affairs (A7-0213/2010),
- A. whereas there is an internal market for banking services in the Union, and not an amalgam of services independent of one another, and whereas that internal market is critical for the Union's global competitiveness,
- B. whereas there is at present insufficient international regulation of crisis management in the banking sector,

<sup>(1)</sup> OJ L 177, 30.6.2006, p. 1.

<sup>(2)</sup> OJ L 177, 30.6.2006, p. 201.

<sup>(3)</sup> OJ L 135, 31.5.1994, p. 5.

<sup>(4)</sup> OJ L 125, 5.5.2001, p. 15.

<sup>(5)</sup> OJ L 26, 31.1.1977, p. 1.

<sup>(6)</sup> OJ L 295, 20.10.1978, p. 36.

<sup>(7)</sup> OJ L 378, 31.12.1982, p. 47.



Wednesday 7 July 2010

- C. whereas existing EU and international supervisory mechanisms for the financial sector have proven ineffective in preventing or sufficiently containing contagion,
- D. whereas the cost of management of the crisis fell too heavily on taxpayers, growth and jobs,
- E. whereas the participation of shareholders in burden-sharing and then of creditors is crucial for reducing to a minimum the cost for taxpayers arising from any crisis of financial markets and institutions,
- F. whereas the absence or weakness of Union regulations and supervision has resulted in uncoordinated actions by national authorities and has increased the risk of protectionist behaviour and distortion of competition including through State aid and has threatened the construction of an internal market for financial services,
- G. whereas a uniform approach to preventing the failure of banking groups would be more in keeping with the concept of an internal market,
- H. whereas a strong internal market for financial services is critical for the Union's global competitiveness,
- I. whereas players in the banking sector should be made accountable and whereas that accountability should contribute to the crucial objective of rebuilding the financial markets to serve the financing of the economy,
- J. whereas, as a result of the crisis, there is a need for, and citizens expect, the EU institutions, working in dialogue with the G-20 and other international fora, urgently to create an adequate framework which, in the event of a crisis, preserves financial stability, minimises the cost to taxpayers, preserves basic banking services and protects depositors,
- K. whereas financial stability and integrated financial markets require cross-border supervision of cross-border and systemic financial institutions,
- L. whereas the purpose of a EU framework for cross-border crisis management is to empower the authorities to adopt measures that include intervention in the management of banking groups, when this is necessary (and especially, but not exclusively, in deposit-taking banks, where there is a possibility of systemic risk),
- M. whereas the purpose of an EU framework for cross-border crisis management is also to regulate cross-border banking groups and individual banks conducting cross-border operations exclusively through branches; whereas there should also be uniform regulation in regard to cross-border banking groups,
- N. whereas a robust response to crisis requires a coherent and comprehensive approach entailing better supervision (implementation of the new EU supervisory architecture), better regulations (ongoing initiatives such as those relating to Directive 2006/48/EC, Directive 2006/49/EC, Directive 94/19/EC and executive remuneration) and an effective EU crisis-management framework for financial institutions,
- O. whereas the polluter-pays principle should be extended to the financial sector because of the devastating impact of failure across countries, sectors and the entire economy at large,
- P. whereas early intervention in banking crises, and their resolution, should be initiated on the basis of clearly defined criteria, including sub-capitalisation, reduced liquidity and the deterioration of asset quality and value; whereas intervention should be tied in with deposit-guarantee schemes,

**Wednesday 7 July 2010**

- Q. whereas a strict EU code of conduct for management, as well as mechanisms to deter inappropriate behaviour, are required and should be developed in alignment with similar international initiatives,
- R. whereas it is important that the Commission carries out full impact assessments in any consideration of the question whether new guidelines for the management of companies would be appropriate,
- S. whereas within three years of a European Banking Authority (EBA), an EU banking resolution regime, an EU financial stability fund and a resolution unit becoming operational, the Commission should study the appropriateness of expanding the scope of the crisis-management framework to other non-bank financial institutions including, but not limited to, insurance companies and asset and fund managers and should also study the feasibility and appropriateness of establishing a network of national stability funds for all the institutions that do not participate in the EU financial stability fund, as proposed in recommendation 3 in the Annex,
- T. whereas moral hazard should be avoided to prevent excessive risk taking, and a framework that protects the system, not delinquent participants in that system, is called for, in particular no resolution funds should be used to bail out shareholders of banks or to reward the management for its own failure; whereas, institutions which make use of an EU banking resolution regime in this context and should face consequences such as administrative and reparation measures; whereas the elimination of moral hazard should therefore become a guiding principle in future financial supervision,
- U. whereas the present economic, financial and social problems and multiple new regulatory demands on banks, require a gradual and sensible approach but should not deter from an ambitious and urgent agenda,
- V. whereas asset transfer within a banking group should not, in any event, endanger the financial and liquidity stability of the transferor and should be effected at a fair market valuation or price; whereas clear principles should be developed for the valuation of impaired assets and for the treatment of subsidiaries and branches domiciled in host countries,
- W. whereas the Union should build a common understanding of who should do what, when and how in the event of crisis in financial institutions,
- X. whereas the measures applicable in the banking sector should promote the real economy in its short and long-term financing and investment needs,
- Y. whereas wide gaps between national regulatory and insolvency regimes should be bridged through a harmonised framework and reinforced dialogue among national supervisors and authorities within the cross-border stability groups,
- Z. whereas the increasing size, complexity and interconnectedness on both regional and global levels have shown that the failure of institutions, irrespective of their size, may have spill-over effects across the financial system, therefore calling for an effective crisis resolution framework to be put in place for all banks, in a gradual and phased process, recommending that an initial focus be put on the institutions with the highest concentration of risk; whereas such a crisis-resolution framework should take into account similar efforts of international forums to the greatest extent possible,
- AA. whereas a limited number of banks (cross-border systemic banks) represent an extremely high level of systemic risk due to their size, complexity and interconnectedness across the Union, calling for an urgent and targeted special regime, more generally equitable resolution regimes are required for other cross-border financial institutions,
- AB. whereas an EU crisis-management framework, in order to be effective in supporting interventions, requires a common set of rules, appropriate expertise and financial resources, which should therefore also be the key pillars of the proposed priority regime for cross-border systemic banks,

Wednesday 7 July 2010

- AC. whereas supervision, early intervention powers and measures related to resolution should be considered as three interlinked steps of a common framework,
- AD. whereas the fast-track special regime for cross-border systemic banks should evolve in the medium or long term towards a universal regime covering all cross-border financial institutions in the Union and this should include a harmonised EU insolvency regime,
- AE. whereas any stability fund developed on a pan-Union basis should be ring-fenced for the purposes of future crisis resolution alone and not to be used for the repayment of past interventions or problems resulting from the financial crisis of 2007/2008,
1. Requests the Commission to submit to Parliament by 31 December 2010, on the basis of Articles 50 and 114 of the Treaty on the Functioning of the European Union, one or more legislative proposals relating to an EU crisis-management framework, an EU financial stability fund (Fund), and a resolution unit following the detailed recommendations made in the Annex hereto, taking into account initiatives taken by international bodies, such as the G-20 and the International Monetary Fund, in order to ensure a global level playing field and based on a profound analysis of all alternatives available, including an impact assessment;
  2. Confirms that the recommendations respect the principle of subsidiarity and the fundamental rights of citizens;
  3. Considers that the financial implications of the requested proposal should be covered by appropriate budgetary allocations (excluding the contributions to the Fund which are to be a responsibility of participating banks);
  4. Instructs its President to forward this resolution and the accompanying detailed recommendations to the Commission, the Council, and the parliaments and governments of the Member States.

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**ANNEX TO THE RESOLUTION:**

**DETAILED RECOMMENDATIONS AS TO THE CONTENT OF THE PROPOSAL REQUESTED**

**Recommendation 1 relating to a common EU crisis-management framework**

*The European Parliament considers that the legislative act to be adopted should aim to regulate as follows:*

1. Create a European crisis-management framework with a common minimum set of rules and ultimately a common resolution and insolvency law, applicable to all banking institutions operating in the Union and with the following objectives:
  - to promote the stability of the financial system;
  - to limit or prevent financial contagion;
  - to limit the public cost of interventions;
  - to optimise the position of depositors and guarantee their equal treatment across the Union;
  - to preserve the provision of core banking services;
  - to avoid moral hazard, charge costs to industry and shareholders and internalise negative externalities created by financial markets and institutions;

**Wednesday 7 July 2010**

- to ensure equal treatment of each class of creditors in the Union including the fair treatment of all subsidiaries and branches of the same cross-border institution in all Member States;
  - to ensure respect for the rights of employees;
  - to strengthen the internal market for financial services and its competitiveness.
2. Progressively converge existing national resolution and insolvency laws and supervisory powers and, within a reasonable calendar, establishing an effective single EU regime.
  3. Once the process related to harmonisation of insolvency and supervision provisions is completed at the end of a transition period establishing a single EU resolution authority as a separated body or as a unit within the EBA.
  4. In order to improve cooperation and transparency, carry out peer reviews of supervisors on a regular basis under the leadership of the EBA building on prior self-assessment.
  5. Where the need for a resolution or the winding-up of a cross-border institution arises, carry out an in-depth investigation (via independent experts appointed by the EBA) in order to highlight the causes and responsibilities involved. Ensure that Parliament is informed of the results of those investigations.
  6. Attribute to the relevant supervisor the responsibility for crisis management (including powers of early intervention) and the approval of each bank's contingency plan, as follows:
    - for cross-border systemic banks: the EBA, in close cooperation with the college of national supervisors and the cross-border stability groups (as defined in the Memorandum of Understanding of 1 June 2008);
    - for all other cross-border non-systemic banks: the consolidated supervisor within the college (under its agreed governance), under the coordination of the EBA and in consultation with the cross-border stability groups;
    - for local banks: the local supervisor.
  7. Design a common set of rules for crisis management including common methodologies, definitions and terminology, and a set of relevant criteria for stress test for cross-border banks.
  8. Ensure that resolution plans become a mandatory regulatory requirement; the resolution plans should include an in-depth self-assessment of the institution and details of a fair distribution of assets and capital, with appropriate clawback of transfers from subsidiaries and branches to other units, and identification of cleavage planes that allow separation of stand-alone modules, especially those providing vital infrastructure such as payment services. The requirement for the content of those plans should be proportionate to the bank's size, activities and geographical spread. Ensure that those resolution plans are regularly updated.
  9. Design, before December 2011, a European supervisory rating for banks (Risk Dashboard) based on a common set of quantitative and qualitative indicators. The Risk Dashboard indicators should be evaluated according to the nature, scale and complexity of the institution in question while preserving confidentiality. The Risk Dashboard should comprise at least:
    - capital;
    - leverage;
    - liquidity;
    - mismatch of maturity, interest rate and currency;
    - liquidity of assets;
    - large exposures and risk concentrations;
    - expected losses;

Wednesday 7 July 2010

- sensitivity to market prices, interest and exchange rates;
  - access to funding;
  - outcomes of stress tests;
  - effectiveness of internal controls;
  - quality of management and corporate governance;
  - complexity and opacity;
  - risk outlook;
  - compliance with law or regulatory requirements.
10. Empower supervisors to intervene on the basis of thresholds of the supervisory rating, in full accordance with the principle of proportionality, and provide for reasonable remedy periods for the institutions to address the weaknesses by themselves.
11. Provide supervisors with appropriate legal tools for intervention by amending the relevant sectoral legislation or by introducing new sectoral legislation to:
- require adjustments of capital (above the minimum regulatory requirements) or liquidity and changes in the business mix and internal process;
  - recommend or impose changes of management;
  - impose dividend retention and restrictions in order to consolidate capital requirements; limit the terms of banking licences;
  - allow supervisors to trigger separation of stand-alone modules, whether failing or successful, from the institution to ensure core functions can continue to operate;
  - impose a total or partial sale;
  - transfer assets and liabilities to other institutions with the objective to ensure continuity of systemically important operations;
  - create a bridge bank or good bank/bad bank;
  - require swaps of debt into equity, or other convertible capital, depending on the nature of the institution, with appropriate haircuts;
  - take temporary public control;
  - impose a temporary suspension (moratorium) of certain types of claims against the bank;
  - control the process of intra-group asset transfers;
  - appoint a special administrator at group level;
  - regulate winding-up;
  - allow the EBA to authorise the intervention of the EU financial stability fund including for the provision of emergency medium-term funding, capital injections and guarantees;
  - impose administrative and reparation measures for those institutions using the Fund.

**Wednesday 7 July 2010**

12. All the tools referred to in point 11 shall be applied in full compliance with the EU competition rules and ensuring equal treatment of creditors and depositors across the Member States.

**Recommendation 2 relating to cross-border systemic banks**

*The European Parliament considers that the legislative act to be adopted should aim to regulate the following:*

1. Cross-border systemic banks, due to their special role in the internal market of financial services, need to be addressed urgently by way of a new special regime to be known as European Bank Company Law, to be designed by the end of 2011. A more general regime for all the other cross-border banks shall also be proposed.
2. Cross-border systemic banks shall adhere to the new reinforced special regime; that regime shall overcome legal impediments to effective action across borders while ensuring the clear, equal and predictable treatment of shareholders, depositors, creditors, employees and other stakeholders, in particular after intra-group asset transfers. This shall include a special '28th' regime for insolvency procedures for cross-border systemic banks, which may later be extended to all cross-border banks;
3. The Commission shall adopt a measure setting up, before April 2011, criteria for definition of cross-border systemic banks. On the basis of such criteria; such banks will be identified on a regular basis by the board of supervisors, after consultation of the European Systemic Risk Board, (Article 12b of the Economic and Monetary Affairs Committee's report of 17 May 2010 on the proposal for a regulation of the European Parliament and of the Council establishing a European Banking Authority (the 'EBA Report');
4. For each of the cross-border systemic banks, the EBA shall exert supervision and act through the competent national authorities (in accordance with the EBA Report);
5. The Commission shall adopt a measure proposing a mechanism of asset transfers within Cross-Border Systemic Banks taking due regard of the need to protect the rights of host countries.
6. An EU financial stability fund and a resolution unit shall support interventions led by the EBA relating to crisis management, resolution or insolvency, as regards cross-border systemic banks.

**Recommendation 3 relating to an EU financial stability fund**

*The European Parliament considers that the legislative act to be adopted should aim to regulate the following:*

1. An EU Financial Stability Fund (Fund) shall be created, under the responsibility of the EBA, to finance interventions (rehabilitation or orderly winding-up) aimed at preserving the system's stability and limiting contagion from failing banks. The Commission shall present to Parliament, by April 2011, a proposal with details of the Fund's charter, structure, governance, size, operating model as well as a precise calendar for implementation (in accordance with points 2 and 3 below).
2. The Fund shall be:
  - pan-European;
  - funded *ex-ante* by the cross-border systemic banks on risk-based, countercyclical criteria and taking into account the systemic risk posed by an individual bank. Banks contributing to the Fund shall not be obliged to contribute to similar stability funds or resolution units in their own countries;
  - separate and independent from deposit-guarantee schemes;
  - adequately sized to support temporary interventions (such as loans, asset purchases and capital injections) and cover costs of resolution or insolvency procedures;
  - gradually built, recognising the present economic environment;
  - designed in a way that does not create moral hazard: the Fund shall not be used to bail out bank shareholders or to reward the management for its own failure;

Wednesday 7 July 2010

3. The Commission shall also address:

- investment guidelines for the Fund's assets (risk, liquidity, alignment with EU targets);
- selection criteria for the Fund's asset manager (internal or via a private or public third party such as the European Investment Bank);
- the possibility of contributions qualifying for calculation of regulatory capital ratios;
- administrative measures (penalties or compensation schemes) for those cross-border systemic banks which make use of the Fund;
- conditions for eventual expansion of the scope of the Fund to include all cross-border banks beyond cross-border systemic banks;
- scope (and appropriateness) of the creation of a network of national funds to cater for all institutions that do not participate in the Fund. An EU framework should then be established to regulate the existing and future national funds which will comply with a uniform and binding set of common rules.

#### **Recommendation 4 relating to a resolution unit**

*The European Parliament considers that the legislative act to be adopted should aim to regulate the following:*

An independent resolution unit shall be established within the EBA to lead the resolution and insolvency procedures for cross-border systemic banks. That unit shall:

- operate within the strict boundaries defined by the legal framework and the EBA's competencies;
- comprise a pool of legal and financial expertise specially skilled in bank restructurings, turnarounds and liquidation;
- cooperate closely with national authorities on implementation, technical assistance and sharing of staff;
- propose disbursements from the Fund;
- where the need for a resolution or winding-up of a cross-border institution arises, an in-depth investigation should be carried out by independent experts appointed by the EBA in order to analyse and highlight the causes and responsibilities involved. Parliament should be informed of the results of the investigations.

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## **European Financial Stability Facility and European Financial Stabilisation Mechanism and future actions**

P7\_TA(2010)0277

### **European Parliament resolution of 7 July 2010 on the European Financial Stability Facility and European Financial Stabilisation Mechanism and future actions**

(2011/C 351 E/10)

*The European Parliament,*

- having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Articles 122 and 143 thereof,
- having regard to the Euro Group's terms of reference of 7 June 2010 on a European Financial Stability Facility,

**Wednesday 7 July 2010**

- having regard to the decision of 7 June 2010 of the 16 euro area Member States,
  - having regard to the Commission communication of 12 May 2010 on reinforcing economic policy coordination (COM(2010)0250),
  - having regard to Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism,
  - having regard to Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments,
  - having regard to the statement of 7 May 2010 of the Heads of State and Government of the euro area,
  - having regard to the conclusions of the ECOFIN Council of 9-10 May 2010,
  - having regard to the statement of 25 March 2010 by the Heads of State and Government of the euro area,
  - having regard to the conclusions of the European Council of 25-26 March 2010,
  - having regard to the statement by the Member States of the euro area of 11 April 2010 on the support to Greece by euro area Member States,
  - having regard to the question of 24 June 2010 to the Commission on the European Financial Stability Facility and European Financial Stabilisation Mechanism and future actions (O-0095/2010 – B7-0318/2010),
  - having regard to Rules 115(5) and 110(2) of its Rules of Procedure,
- A. whereas the authors of the Maastricht Treaty had not foreseen the possibility of a sovereign debt crisis inside the euro area,
- B. whereas the spreads of sovereign debt issued by Member States of the euro area widened more rapidly during autumn 2009,
- C. whereas the situation in the sovereign debt market for certain Member States worsened considerably during spring 2010 and reached a critical stage in May 2010,
- D. whereas there have been developments in the sovereign debt markets that need to be better understood,
- E. whereas European Union financial assistance for the purposes of Council Regulation (EU) No 407/2010 of 11 May 2010 shall, according to Article 2.2 of the regulation, be limited to the margin available under the own resources ceiling for payment appropriations; whereas Article 3.5 provides that the Commission and the beneficiary Member States shall conclude a memorandum of understanding, detailing the economic policy conditions attached to Union financial assistance, which the Commission shall communicate to Parliament and the Council,
- F. whereas, on 7 June 2010, the euro area Member States – in line with the conclusions of the ECOFIN Council of 9-10 May 2010 – established the European Financial Stability Facility (EFSF) as a limited liability company (*société anonyme*) under Luxembourg law, with euro area Member States providing guarantees for EFSF issuance up to a total of EUR 440 billion on a pro-rata basis,



Wednesday 7 July 2010

1. Welcomes the recent actions taken at EU level and at national level to safeguard the stability of the euro; regrets that European policymakers did not take decisive action earlier, despite the steady worsening of the financial crisis;
2. Stresses, however, that these actions are merely of a temporary nature and that real progress will have to be made on fiscal and structural policies in the individual Member States, and on establishing a new, stronger framework for economic governance, geared to preventing future occurrences of similar crises, as well as increasing growth potential and sustainable macroeconomic rebalancing in the EU;
3. Considers that the current crises cannot be resolved in the long run by simply pouring new debt into highly indebted countries;
4. Takes the view that all Member States, in particular those that are part of the economic and monetary union (EMU), should, when developing their economic policies, take into account both the effects of those policies domestically and their implications for the Union, in particular the EMU Member States. Considers that economic policies are a matter of common concern and should be coordinated within the Council in accordance with the procedures in the Treaty;
5. Believes that, notwithstanding Council Regulation (EU) No 407/2010 of 11 May 2010 and Council Regulation (EC) No 332/2002 of 18 February 2002, the rules governing the special purpose vehicle (SPV) should provide for the possibility of countries not in the euro area opting in to the SPV facility;
6. Takes note of Commission communication COM(2010)0250 on reinforcing economic policy coordination as an important contribution to stronger economic policy coordination in the EU; considers that legislative proposals on enhanced economic surveillance should include new secondary legislation on the basis of Article 121(6) of the Treaty; considers that the future surveillance framework should aim to achieve sustainable public finances and economic growth, competitiveness, social cohesion and a lessening of trade imbalances;
7. Considers that, when establishing new EU instruments and procedures, account needs to be taken of the respective roles of the European institutions, including the legislative and budgetary role of Parliament and the independent role of the ECB in decision making on monetary policy;
8. Asks the Commission to provide an assessment of the impact of the European Financial Stabilisation Mechanism, in particular on the EU budget and other EU financial instruments and loans by the EIB;
9. Asks the Commission to provide an assessment of the impact of the European Financial Stability Facility, in particular on the functioning of the euro bond markets and their spreads; asks the Commission to assess, in addition, the practicability and accountability of the decision-making procedure for this special purpose vehicle (SPV), with a view to a longer-term solution;
10. Asks for more detail about how the coordination between the EFSF and the IMF will work, including whether the allocation between funds will be determined on a parallel basis maintaining the 2:1 ratio; whether the interest rate will be coordinated with the IMF rate in any way, presuming that the IMF rate will be fixed according to standard practice; what the projected interest rate will be, over and above German bunds, and whether it is likely to be around 1 %; asks whether the IMF and EFSF loans will rank *pari passu*, as this would automatically give the EFSF the privilege of non-inclusion in any restructuring of borrowers' obligations – as otherwise the EFSF would, in effect, have first-loss exposure;

**Wednesday 7 July 2010**

11. Asks if any measures are envisaged to ensure equal treatment; notes, for instance, in this regard that the interest rate for the EFSF appears different from the package agreed for Greece because EFSF borrowers will pay the net all-in cost to the SPV for raising the funds; asks, furthermore, how fairness can be assured for non-EMU members if the EFSF operates only after the EUR 60 billion facility has been used up;
  12. Observes that the sovereign debt in the euro area does not necessarily have zero nominal credit risk as presumed by the Capital Requirements Directive and that current developments have increased the credit risk of long-term debt issued by Member States; takes the view that the European Banking Authority and the European Systemic Risk Board should address this problem;
  13. Notes that the Capital Requirements Directive has zero risk weighting for sovereign bonds;
  14. Asks the ECB to give a detailed explanation of its recent decisions to buy government bonds on the secondary market, and considers that the ECB should prepare an exit strategy with a clear timetable for ceasing this practice;
  15. Believes that a longer-term solution requires tackling the problem of internal imbalances and unsustainable debt and, therefore, the structural roots of the current crisis; considers that such a longer-term vision involves correcting internal macroeconomic imbalances within the euro area and the EU, and hence tackling substantial differences of competitiveness between Member States;
  16. Takes the view that a stronger EU framework for economic governance should encompass a permanent EU sovereign debt crisis-resolution mechanism, such as a European Monetary Fund, a coordinated approach for macroeconomic rebalancing, and enhanced synergies between the EU budget and Member States' budgets, complementing sustainable fiscal consolidation;
  17. Takes note that, despite the potentially significant impact of this mechanism on the EU budget, Parliament is given no role in the decision-making process, as the facility has been established by Council regulation under Article 122(2) TFEU; deems it necessary to ensure that Parliament, as budgetary authority, is involved in an issue with such potentially far-reaching budgetary consequences;
  18. Invites the Commission to undertake an independent feasibility study by the end of 2010 on the question of innovative financing instruments, such as the joint issuance of Eurobonds as a means of reducing spreads and increasing liquidity in euro-dominated debt markets;
  19. Observes that the issuance of Eurobonds for EU-relevant infrastructure could be consistent with adherence to the Stability and Growth Pact;
  20. Asks the Commission to analyse a range of options for a long-term system to prevent and resolve potential sovereign debt problems in an efficient and sustainable way, while reaping the full benefit of the single currency; considers that this analysis should take account of the fact that the credit risk of government bonds may differ between Member States and may need to be better reflected in credit institutions' capital ratios;
  21. Instructs its President to forward this resolution to the Commission, the Council, the European Council, the President of the Euro Group and the ECB.
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Wednesday 7 July 2010

## Iceland's application for membership of the European Union

P7\_TA(2010)0278

### European Parliament resolution of 7 July 2010 on Iceland's application for membership of the European Union

(2011/C 351 E/11)

The European Parliament,

- having regard to the Regulation (EU) No 540/2010 of the European Parliament and the Council of 16 June 2010 adding Iceland to the list of countries eligible for EU pre-accession aid to help applicant countries come into line with the body of European law,
  - having regard to the Commission Opinion on Iceland's application for membership of the European Union (SEC(2010)0153),
  - having regard to the decision of the European Council of 17 June 2010 to open accession negotiations with Iceland,
  - having regard to its resolution of 26 November 2009 on the Commission's 2009 enlargement strategy paper concerning the Western Balkan countries, Iceland and Turkey <sup>(1)</sup>,
  - having regard to its resolution of 11 February 2010 on the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) (COM(2009)0588 – C7-0279/2009 – 2009/0163(COD)) <sup>(2)</sup>,
  - having regard to statements by the Council and Commission on Iceland's application for membership of the European Union,
  - having regard to Rule 110(2) of its Rules of Procedure,
- A. whereas, according to Article 49 of the Treaty on European Union, 'Any European State [...] may apply to become a member of the Union',
- B. whereas each country's progress towards membership of the EU is a merit-based one and depends on its efforts to comply with the accession criteria, while the Union's capacity for integration must also be respected,
- C. whereas on 17 July 2009 Iceland presented its application for membership of the European Union,
- D. whereas, on 24 February 2010, the Commission presented its opinion recommending that negotiations for accession should be opened with Iceland,
- E. whereas, since previous enlargements have undoubtedly been a success both for the EU and for the Member States which joined it, and have contributed to the stability, development and prosperity of Europe as a whole, it is essential to create the conditions needed to complete the accession process with Iceland and ensure that its accession, too, will be a success, in accordance with the Copenhagen criteria,

<sup>(1)</sup> Texts adopted, P7\_TA(2009)0097.

<sup>(2)</sup> Texts adopted, P7\_TA(2010)0026.

**Wednesday 7 July 2010**

- F. whereas relations between Iceland and the EU date back to 1973 when they signed a bilateral free-trade agreement,
- G. whereas Iceland is already cooperating closely with the EU as a member of the European Economic Area (EEA) and a signatory to the Schengen Agreements and the Dublin Regulation, and therefore has already adopted a significant part of the *acquis communautaire*,
- H. whereas Iceland has a well-established democratic tradition and a high degree of alignment with the *acquis*,
- I. whereas since 1994 Iceland has been making an important contribution to European cohesion and solidarity through the Financial Mechanism under the EEA,
- J. whereas Iceland, as a country with a non-military tradition, is contributing to EU peacekeeping missions with civilian capacity and aligns itself regularly with the EU's Common Foreign and Security Policy,
- K. whereas Iceland and its population have been severely hit by the global financial and economic crisis leading to the collapse of the Icelandic banking system in 2008,
- L. whereas the United Kingdom and Netherlands Governments signed two agreements with the Icelandic Government, in June and October 2009, on terms for the repayment of a loan of EUR 1,3 billion from the Netherlands and a loan of GBP 2,4 billion from the United Kingdom; whereas, following a referendum on 6 March 2010, the October agreement was rejected and the parties involved are expected to reach a new agreement in relation to pay-outs that were within the responsibility of the Icelandic deposit guarantee scheme,
- M. whereas the EFTA Surveillance Authority (ESA) has stated, in its letter of formal notice of 26 May 2010, that Iceland is obliged to ensure payment of the minimum compensation to Icesave depositors in the United Kingdom and the Netherlands,
- N. whereas public opinion and political parties in Iceland are divided on the question of EU membership; whereas public opinion towards EU membership has, in the light of the political and economic crisis, clearly shifted in a negative direction since summer 2009,

**Political criteria**

1. Welcomes the decision of the European Council to open accession negotiations with Iceland;
2. Welcomes the prospect of having as a new EU Member State a country with a strong democratic culture; emphasises, in this context, that Iceland's accession can benefit both the country and the EU and will further enhance the Union's role as a worldwide promoter and defender of human rights and fundamental freedoms;
3. Highlights the excellent cooperation between the Members of the European Parliament and the members of the Althingi in the framework of the EEA Joint Parliamentary Committee and expects an equally fruitful collaboration in the new EP-Iceland Joint Parliamentary Committee;
4. Particularly welcomes the Icelandic Modern Media Initiative, enabling both Iceland and the EU to position themselves strongly with regard to legal protection of the freedoms of expression and information;

Wednesday 7 July 2010

5. Invites the Icelandic authorities to tackle the current distinction made between EU citizens concerning their right to vote and stand as candidates in local elections in Iceland;
6. Points out that, under the new EU enlargement strategy, the applicant country's judicial system is one of the areas to which the EU pays particular attention even at the early pre-accession stage; is of the opinion that the Government of Iceland should adopt the measures necessary to ensure the independence of the judiciary, in line with Venice Commission recommendations, adequately addressing the issue of the predominant role given to the Minister of Justice and Human Rights in the appointment of judges, prosecutors and supreme judicial authorities; trusts that the Icelandic authorities will adopt the necessary changes;
7. Encourages Iceland to ratify the UN Convention against Corruption and the Council of Europe Civil Law Convention on Corruption;
8. Commends Iceland for its good human rights record; invites the Icelandic authorities, however, to ratify the Council of Europe Framework Convention for the Protection of National Minorities, as well as the UN Convention on the Rights of Persons with Disabilities;
9. Encourages Iceland to follow the 2008 OSCE-ODIHR recommendations on hate crime;

#### ***Economic criteria***

10. Notes that Iceland has a generally satisfactory track record in implementing its EEA obligations and in its ability to withstand competitive pressure and market forces within the EU; notes, however, that further efforts are needed in relation to alignment with general principles and ensuring full compliance with the *acquis* in the fields of conformity assessment, accreditation and market surveillance; takes note of the ESA letter of formal notice dated 26 May 2010 to the Government of Iceland – the first step in an infringement procedure against it for failure to comply with its obligations under the EEA agreement to implement the EU Deposit Guarantee Directive (94/19/EC) – and welcomes the Icelandic Government's reaction of readiness to conclude the Icesave negotiations as soon as possible;
11. Welcomes policies to further diversify Iceland's economy as a necessary step for the country's long-term economic well-being;
12. Points out that the environment is a priority for the EU and welcomes Iceland's strong involvement in environmental policies;
13. Notes that, while fiscal consolidation remains a key challenge, Iceland shows encouraging signs of economic stabilisation; regards monetary measures taken so far as steps in the right direction for improved financial and economic stability;
14. Welcomes the report of the Special Investigation Commission, which may contribute to rebuilding national confidence; encourages follow-up measures to the work of this Commission in order to address the pressing political, economic and institutional shortcomings described in the report;
15. Welcomes the fact that the Icelandic Pension Funds Association (IPFA) has agreed to organise an independent investigation into the working methods and investment policies of pension schemes in the period before the economic collapse;

**Wednesday 7 July 2010**

16. Calls for a bilateral agreement to be concluded on arrangements for the repayment of loans totalling EUR 3,9 billion to the Governments of the UK and the Netherlands; stresses that reaching an agreement acceptable to all parties will restore confidence in Iceland's ability to honour its commitments, including compliance with all obligations under the EEA agreement, and will strengthen the public support, both in Iceland and in the EU, for the Icelandic accession process;

17. Takes note of Iceland's desire to become part of the euro zone, an ambition that can be achieved after it becomes a member of the EU and once all the necessary conditions have been met;

18. Welcomes the approval of the second review of the IMF stand-by agreement aimed at currency stabilisation, bank restructuring and fiscal consolidation;

19. Is concerned about Iceland's high levels of unemployment and inflation, while noting recent signs of improvement;

20. Commends Iceland for its high rates of investment in education, research and development;

***Capacity to assume the obligations of membership***

21. Notes that, as an EEA member, Iceland is at an advanced stage of compliance with the requirements of 10 of the negotiating chapters and partly fulfils the requirements of 11 chapters, leaving only 12 chapters not covered by the EEA that need to be negotiated in full; stresses that the Commission has underlined the need for Iceland to pursue serious efforts to align its legislation with the *acquis* in a number of areas and to implement and enforce it effectively in the medium term in order to meet the accession criteria; emphasises that the fulfilment of Iceland's obligations under the EEA, as well as the agreement associating Iceland with the implementation, application and development of the Schengen *acquis*, are important requirements in the accession negotiations;

22. Invites the Icelandic authorities to address the key institutional weaknesses of the country's economy, notably the organisation and functioning of the financial supervisory system and the deposit guarantee system;

23. Encourages Iceland to adopt an agricultural and rural development policy in line with EU policies, and to put in place the administrative structures needed to implement these policies; stresses, in this regard, that EU policies must take into account the specific nature of Iceland's environment, flora and fauna, as well as its geographical distance from the European continental mainland;

24. Calls on the Commission to involve the Icelandic authorities in the current debates on reform of the Common Agricultural Policy;

25. Recognises the responsible and sustainable manner in which Iceland has managed its marine resources and expects both the EU and the Icelandic authorities to adopt a constructive attitude in negotiations on the requirement for Iceland to adopt the European Common Fisheries Policy (CFP), so that the outcome may be a mutually satisfactory solution based on best practices and protecting the interest of both fishermen and consumers in the EU, as well as in Iceland;

26. Encourages Iceland to adopt fisheries-policy measures that will allow it to make the transition towards introduction of the CFP;

27. Insists that Iceland cease all whaling and drop all the reservations it has lodged with the International Whaling Commission;

Wednesday 7 July 2010

28. Notes that Iceland can make a valuable contribution to EU environment and energy policies through its experience in the field of renewable energies, particularly geothermic energy, the protection of the environment and the fight against climate change;

#### ***Regional cooperation***

29. Considers Iceland's accession to the EU – inasmuch as it will further anchor the European presence in the Arctic Council – as a strategic opportunity for the EU to play a more active and constructive role, and also to contribute to multilateral governance, in the Arctic Region; points out that this will help in tackling environmental issues of common concern and could heighten EU interest in the Arctic and its protection at regional and international level;

30. Welcomes the fact that Iceland's accession to the EU would reinforce the North Atlantic dimension of the Union's external policies;

#### ***Public opinion and support for enlargement***

31. Encourages the Icelandic authorities to initiate a broad public debate about EU accession, involving civil society in the process from the outset, addressing Icelandic citizens' concerns about EU membership and taking into account the need for a firm commitment in order to have successful negotiations; calls on the Commission to provide material and technical support, if requested to do so by the Icelandic authorities, in order to help them improve transparency and accountability in relation to the accession process and to organise a thorough and extensive country-wide campaign of information on the implications of EU membership, so that Icelandic citizens can make an informed choice in the future referendum on accession;

32. Is of the view that it is crucial to give EU citizens clear and comprehensive information on the implications of Iceland's accession; calls on the Commission and the Member States to make efforts to that end, and considers it to be equally important to listen to and address citizens' concerns and questions and to respond to their views and interests;

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33. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the governments and parliaments of the Member States, the President of the Althingi and the Government of Iceland.

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Thursday 8 July 2010

## Kosovo

P7\_TA(2010)0281

### European Parliament resolution of 8 July 2010 on the European integration process of Kosovo

(2011/C 351 E/12)

The European Parliament,

- having regard to the Presidency Conclusions issued following the Thessaloniki European Council of 19 and 20 June 2003, at which a promise was made to all the Western Balkan States that they would join the European Union,
- having regard to the conclusions of the General Affairs Council meeting of 7 December 2009 stressing that Kosovo, without prejudice to Members States' position on its status, should also benefit from the perspective of eventual visa liberalisation once all conditions are met and inviting the Commission to move forward with a structured approach to bring the people of Kosovo closer to the EU,
- having regard to Council Joint Action 2008/124/CFSP of 4 February 2008 on the European Union Rule of Law Mission in Kosovo, EULEX KOSOVO, amended by Council Joint Action 2009/445/CFSP of 9 June 2009,
- having regard to Council Joint Action 2008/123/CFSP of 4 February 2008 appointing a European Union Special Representative in Kosovo and Council Decision 2010/118/CFSP of 25 February 2010 extending the mandate of the European Union Special Representative in Kosovo,
- having regard to the Commission communication of 14 October 2009 entitled 'Enlargement Strategy and Main Challenges 2009-2010' (COM(2009)0533) and the Commission's accompanying 2009 Progress Report on Kosovo and study entitled 'Kosovo<sup>(1)</sup> - Fulfilling its European Perspective' (COM(2009)0534),
- having regard to the recommendations of the 2nd EP-Kosovo Inter-Parliamentary Meeting of 7 April 2009 and of the 3rd EP-Kosovo Inter-Parliamentary Meeting of 23 June 2010,
- having regard to its resolution of 29 March 2007 on the future of Kosovo and the role of the EU<sup>(2)</sup> and its resolution of 5 February 2009 on Kosovo and the role of the EU<sup>(3)</sup>,
- having regard to United Nations Security Council Resolution 1244(1999),
- having regard to Council Regulation (EC) No 1244/2009 of 30 November 2009 amending Regulation (EC) No 539/2001 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement<sup>(4)</sup> and in particular its Annex I in which a reference to persons residing in Kosovo (UNSCR 1244) was made for reasons of legal clarity and security,
- having regard to the resolution of the United Nations General Assembly of 8 October 2008 (A/RES/63/3) requesting an advisory opinion of the International Court of Justice on the accordance with international law of the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo,
- having regard to its resolution of 26 November 2009 on the Commission's 2009 enlargement strategy paper concerning the Western Balkan countries, Iceland and Turkey<sup>(5)</sup>,

<sup>(1)</sup> Under UNSCR 1244/1999.

<sup>(2)</sup> OJ C 27 E, 31.01.2008, p. 207.

<sup>(3)</sup> OJ C 67 E, 18.03.2010, p. 126.

<sup>(4)</sup> OJ L 336, 18.12.2009, p. 1.

<sup>(5)</sup> Texts Adopted, P7\_TA(2009)0097.



Thursday 8 July 2010

- having regard to the UN Special Envoy's final report on Kosovo's future status and the Comprehensive Status Proposal for the Kosovo Status Settlement of 26 March 2007,
  - having regard to Rule 110(2) of its Rules of Procedure,
- A. whereas regional stability in the Western Balkans and the integration of these countries into the EU are priorities for the European Union; whereas these priorities can only be sustained if EU membership is a tangible prospect for all the countries in the region,
- B. whereas the international community has always defended the sustainability of multiethnic and pluri-religious states in the Western Balkans, based on the values of democracy, tolerance and multiculturalism,
- C. whereas the citizens of Serbia, the Former Yugoslav Republic of Macedonia and Montenegro have been able to travel to the EU without visas since 19 December 2009 and the same is expected to become possible for citizens of Albania and Bosnia and Herzegovina shortly; whereas Kosovo citizens cannot be left behind and isolated from the citizens of other countries in the region and therefore the visa liberalisation process with Kosovo should start without delay, providing that all the necessary criteria are met,
- D. whereas the International Court of Justice has been asked for an advisory opinion on the accordance with international law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo and whereas its conclusions are pending,
- E. whereas the decision not to include Kosovo in the visa liberalisation demonstrates a profound contradiction in the EU's Kosovo strategy which lies in the discrepancy between an enormous aid effort in terms of resources and personnel on the one hand and keeping the borders closed to all those whose labour could contribute to development on the other hand,
1. Notes the declaration of independence of Kosovo of 17 February 2008, which has been recognised by 69 countries; notes that 22 EU Member States have recognised Kosovo as an independent country and five have not; encourages Member States, in order to make EU policies more effective for all the people in Kosovo, to step up their common approach towards Kosovo with the objective of Kosovo's accession to the EU; welcomes the constructive attitude towards Kosovo emphasised by the Spanish Presidency in spite of its non-recognition of the country; would welcome the recognition by all Member States of the independence of Kosovo;
2. Stresses the utmost importance of the EU integration processes of all countries in the region for regional stabilisation; underlines that the prospect of accession to the EU is a powerful incentive for the necessary reforms in Kosovo and calls for practical steps to make this prospect more tangible both to the government and to citizens; to this end, calls on the Commission to include Kosovo in the screening process starting in early 2011 with a view to preparing the country for the launch of negotiations on the Stabilisation and Association Agreement and to communicate to the Kosovo authorities which steps need to be taken before the Commission prepares the road map for visa liberalisation and to define the road map immediately after these steps are taken;
3. Notes the recognition of Kosovo's independence by most of its neighbouring countries and good-neighbourly relations with them; notes the fact that Kosovo has been admitted as a member of the World Bank, International Monetary Fund and other international organisations;
4. Reiterates its view expressed in its resolutions of 29 March 2007 and 5 February 2009 that rejects the possibility of the partitioning of Kosovo;

Thursday 8 July 2010

5. Is concerned about the state of relations with Serbia and underlines that good-neighbourly relations are an essential criterion for the aspirations of Serbia as well as of Kosovo and all the other countries in the region to join the EU; while understanding the emotional implications of the aftermath of the 1999 war and understanding that the official recognition of Kosovo is not a feasible political option at the moment for the Belgrade leadership, nevertheless calls on Serbia to be pragmatic on the status issue; to this end, welcomes the signing of the police protocol with EULEX and calls for increased cooperation with the mission; moreover, calls on Serbia to refrain from blocking Kosovo's membership of international organisations and in particular its recent application to join the World Health Organisation; underlines that the conflict also affects regional trade and cooperation under the Central European Free Trade Agreement (CEFTA), harming the economies of the countries in the region; calls on all sides to show a pragmatic approach to allow Kosovo's regional integration; underlines in this regard that the expected advisory opinion of the International Court of Justice on the accordance with international law of the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo should not hinder all parties involved from clearly committing themselves to effective cross-border, regional and local cooperation in the best interests of the whole population in and around Kosovo;
6. Recalls that any country wishing to join the EU must meet the accession criteria and that in the case of the Western Balkans the stabilisation and association process is the framework for EU negotiations; emphasises that one of the three important aims of the stabilisation and association process is regional cooperation;
7. Stresses that regional integration and cooperation are crucial for European security and stability as well as for creating a favourable context for the normalisation of relations between Serbia and Kosovo; is of the opinion that a package deal concerning security and cooperation in the Western Balkans would be desirable;
8. Calls for strengthening of the cross-border cooperation between Serbia and Kosovo, particularly at the local level, on the issues which are important to citizens, such as the environment, infrastructure and trade;
9. Notes that some Member States apply visa facilitation measures unilaterally while eight Member States continue to charge full visa fees; calls on EU Member States and the Commission to make every effort to adopt quickly uniform provisional facilitated procedures in order to ease travel for Kosovo citizens, especially in the light of the possibilities offered under the new visa code;
10. Welcomes the local elections conducted on 15 November 2009 as the first elections organised under the political responsibility of the Government of Kosovo; welcomes the fact that in general they passed calmly and in a good atmosphere; underlines however that a series of irregularities were reported; calls on the authorities to swiftly implement the recommendations of the international community, including the necessary changes to electoral law in order to clarify the levels of jurisdiction for dealing with complaints and to clearly divide competencies between the Central Election Commission and the Complaints and Appeals Commission, update the electoral roll and ensure consistent voter education; underlines the utmost importance of the political will to advance these reforms and to hold to account those responsible for electoral fraud with a view to the upcoming general elections;
11. Regrets that Belgrade is still supporting parallel structures in Serbian enclaves, challenging and weakening the powers of the newly established municipalities; calls on Serbia to adopt a more constructive attitude and to dismantle these structures;
12. Reiterates the importance of effective implementation of the decentralisation process and warmly welcomes the high participation of Kosovo Serbs south of the Ibar river in the last elections – a step towards building their sustainable future in the country; urges the Government to fully support the newly elected leadership in these municipalities with sufficient financial and political assistance so that they can quickly establish the necessary structures in order to start delivering important services, with the assistance of the Commission; sees efficiently functioning municipal structures as essential for participation by Kosovo Serbs in the political processes and administrative structures of Kosovo; encourages the international community to support development and infrastructure projects coming from the newly established municipalities; in order to avoid a clash with the parallel structures, in particular in the field of education and health, encourages the Government, with the aid of EUSR/ICR, to come up with a strategy on how to deal with such structures;

Thursday 8 July 2010

13. Welcomes the establishment of the EU House in northern Kosovo but is concerned about the situation in the north of Kosovo, which continues to suffer from severe shortcomings in the rule of law, increasing pressure on and intimidation of civil society by radical groups and organised crime; therefore stresses the need for the Council to make the rule of law mission functional in the entire territory of Kosovo and asks the Commission to raise the profile of its work on behalf of the Serbian community in the north, while underlining to all stakeholders on the ground that local, regional and cross-border cooperation is valuable to the population as a whole; to this end, welcomes the registration of commercial goods at Gates 1 and 31, which has helped to reduce smuggling in the region, and calls for further steps to restore the collection of customs duties; expresses concern about the problems in the current functioning of the judiciary in the Mitrovica region and calls on Serbia and Kosovo to finalise the agreement on staffing the court in Mitrovica North with Kosovo Serbian judges and a prosecutor; supports the plan to reintegrate the north into the political and administrative structures of Kosovo and calls for it to be implemented with due attention to the Serbian minority's sensitivities with a view to improving and increasing government services to the region and improving living conditions for the citizens there in a way which permits wide-ranging self-government; calls on EULEX to make efforts to increase its activities in the north, particularly in order to foster good inter-ethnic relations, while informing the population on the ground about EU action and the ongoing rule of law mission;

14. Expresses its deep concern at the fatal blast that killed one person and injured ten others that took place in Mitrovica North on 2 July 2010 during the demonstrations against the opening of the civil services centre and at the attack of 5 July 2010 on an ethnic Serb member of the Kosovo Assembly; strongly condemns all acts of violence and calls on the parties to act responsibly; urges EULEX to make every effort to defuse tension and prevent further violence and calls on the Kosovo Police, with the assistance of EULEX, to start, immediately, thorough and impartial investigations into the events in order to bring the perpetrators to justice;

15. Underlines the importance of the success of the EU rule of law mission EULEX, both for sustainable development, the consolidation of the institutions and the stability of Kosovo, and for the EU's ambitions as a global player in peace-building; stresses EULEX's responsibility regarding its executive powers as well as its mandate to monitor, mentor and advise; in this regard, encourages EULEX to take concrete actions to make progress with high-level corruption cases; acknowledges the good progress made in some fields such as police and customs but stresses that the work should be accelerated so that the mission finally starts delivering tangible results in other fields, particularly high-level corruption cases, organised crime and war crimes; therefore welcomes the latest approach of EULEX to address possible cases of corruption also on the highest government and administration level and stresses the need to continue on this path in order to ensure credibility for and visibility of EULEX actions; stresses that in this regard a particular focus on the area of public procurement is of high importance and that in the area of organised crime EULEX must continue to achieve concrete results on the ground; in this regard, is concerned about the large backlog of cases caused by the unexpectedly high number of cases transferred to EULEX by the UN Interim Administration Mission in Kosovo; stresses that an insufficient number of judges and prosecutors have been made available to EULEX and calls on Member States to second the required number of experts or to make provision for contracting them; underlines the importance of streamlining the bureaucracy within EULEX; in this regard stresses the necessity for competent internal management, coordination and cooperation to make the mission work efficiently; stresses the need for transparency and accountability in the work of EULEX as well as to display sensitivity to the political context of its activities in order to increase its legitimacy in the eyes of citizens; moreover, underlines the importance of maintaining close communication with the Government, citizens and media of Kosovo; encourages EULEX to communicate the accomplishments of the mission to Kosovo's citizens and, in addition, work to increase trust in the mission and be alert to the expectations of citizens; welcomes the recent setting-up of the Human Rights Review Panel that will be in charge of reviewing complaints from persons claiming to be victims of human rights violations by EULEX in the conduct of its executive mandate;

16. Calls on its competent bodies, particularly the Subcommittee on Security and Defence, to step up scrutiny and oversight of EULEX, possibly in cooperation with Kosovo civil society; to this end, calls upon the Council to forward all regular and exceptional evaluations and review reports on EULEX to Parliament;

Thursday 8 July 2010

17. Notes the efforts of both Serbia and Kosovo to locate persons missing since the 1998-1999 conflict through the 'Working Group on Persons Who Are Unaccounted For In Connection With Events In Kosovo'; underlines the significance of the resolution of this issue in moving forward from the 1998-1999 conflict; further notes the approximately 1 862 cases of persons still missing and calls on both Kosovo and Serbia to extend all possible cooperation to each other, the ICRC, EULEX and other entities in searching for these persons;

18. Stresses that 2010 is a crucial year for both the Kosovo Government and all levels of the administration in order to make progress on key reforms such as the fight against corruption and organised crime, decentralisation and public administration reform; underlines that the reform process, in order to be successful, must be based on a thorough debate on draft legislation in consultation with all stakeholders, including all parts of civil society; moreover, reminds the Government that particular attention should be paid to the swift and efficient implementation of laws, without which the adoption of legislation will not have any real impact on the situation in Kosovo;

19. Is extremely concerned about the widespread corruption which remains one of the biggest problems in Kosovo, another being organised crime, and calls for urgent action to combat it by improving the legal framework for tackling corruption, adopting an anti-corruption strategy and action plan and stepping up cooperation with the police and judicial authorities of all the countries of the region; is deeply concerned at the recent bloodshed caused by a violent incident near the borders of Kosovo and calls for immediate measures to be taken to prevent such incidents in future and to put an end to the arms trafficking which contributes to the destabilisation of the Western Balkan region; welcomes the establishment of a special anti-corruption department within the Special Prosecution Office of Kosovo but underlines that the commitment of all the line ministries is necessary in order for the department to be effective and that staffing in all cases must be with people who are irreproachable; calls for swift adoption of a law regulating the financing of political parties, which would effectively and transparently regulate party finances, ensuring full disclosure of their financial reports;

20. Stresses the utmost importance of the reform of the judiciary and prosecution service, which is still at an early stage, in order to ensure the independence and professionalism of judges and prosecutors and to allow citizens to regain trust in the rule of law; to this end, welcomes the appointment of the Ombudsman, the judges of the Supreme Court, the prosecutors of the State Prosecutor's Office and the prosecutors of the Kosovo Special Prosecution Office; is concerned that shortcomings in witness protection continue to impede justice for the most serious crimes; calls for the adoption and rapid implementation of the Law on Courts and for the establishment of an effective protection system for witnesses and judges; in that sense urges the EULEX representatives to continue to report publicly on the remaining challenges with regard to the rule of law in Kosovo;

21. Calls for more efforts to speed up the public administration reform in order to create a professional and independent civil service respecting gender balance and fully reflecting the diverse ethnic composition of the Kosovo population; underlines the need for the legislative framework to be adopted and implemented to this end and for appropriate attention to be paid to, and finance provided for, the building of human resources; is concerned about political interference in appointments to key civil service positions and calls for this practice, which seriously undermines the functioning of the administration, to be halted;

22. Urges the Government to ensure media pluralism and financial and editorial independence of the media, without political pressures, and transparency of ownership and funding; calls for working rights for journalists as well as efficient procedures for protecting investigative journalists from threats; underlines the importance of the public broadcaster for providing high-quality independent information to the entire population and is concerned about the lack of a sustainable financing system to ensure it; welcomes the investments made by the Government in providing internet access; urges the Government to make internet access even more widely available to its citizens; stresses the important role of uncensored access to the internet for business and politics, especially in order to increase youth participation at the time of elections;

Thursday 8 July 2010

23. Calls for support to strengthen the Assembly of Kosovo so that it can effectively fulfil its legislative functions and carry out democratic oversight of the Government's political and budgetary activities; calls, in this regard, for the setting-up of an ad hoc twinning programme in order to provide the administrative staff of the Kosovo Assembly with the opportunity of internships in the European Parliament and calls on Member States' parliaments to set up twinning programmes in order to provide MPs and administrative staff of the Kosovo Assembly with the opportunity for exchanges and capacity-building in relation to parliamentary legislative and control procedures, especially for parliamentary minority and opposition groups;
24. Commends the Government for its progress in the adoption of the legislation protecting human rights, and encourages it to swiftly adopt the remaining laws; notes, however, that the implementation of the legislative framework remains unsatisfactory and overall progress slow; calls for more active policies to fight discrimination on all grounds (ethnicity, religion, sexual orientation, disability and others) and to ensure gender balance as well as active participation by minorities in political life and administrative structures, both at national and local level; stresses the importance of education in this process; calls on the Government to provide schooling for minorities in their own languages, including the curricula and textbooks, enabling them to preserve their culture and identity, as well as to assist them with building human resources;
25. Is concerned about high levels of domestic violence, discrimination against women and the phenomenon of trafficking in persons, particularly girls and women for sexual exploitation; calls for active steps to ensure gender equality and to effectively protect women's and children's rights;
26. Underlines the very difficult legacy of the armed conflict, which has eroded public trust in the possibility of a peaceful resolution of conflicts, both among social groups and in private life;
27. Underlines that the fragile political situation, the occurrence of inter-ethnic incidents in some areas and poor economic conditions have hampered the sustainable return of refugees, and calls for more efforts to be made to improve their situation;
28. Underlines the difficult situation and the discrimination faced by minorities and in particular Roma in access to education, housing, social services and employment; welcomes the Commission's initiative to close the lead-contaminated camps in the north of Mitrovica and to resettle the families living in them and calls for its swift implementation; shares the concern expressed by the Council of Europe's Commissioner for Human Rights that Kosovo is not yet in a position to provide proper conditions to reintegrate forcefully repatriated Roma and urges the Member States to stop carrying out this practice; takes note, in this regard, of the agreement reached between German and Kosovo authorities to repatriate gradually 14 000 refugees to Kosovo, of whom about 10 000 are Roma, and urges the Commission to step up ad hoc assistance programmes; calls on the countries participating in the Roma Decade to facilitate Kosovo's involvement in the programmes;
29. Stresses the crucial importance of education, both in providing young people with the necessary skills in the labour market and in contributing to reconciliation between ethnic groups; to this end, encourages the gradual introduction of common classes, teaching of minority languages, particularly Serbian, to pupils of Albanian ethnicity, and of the Albanian language to all the minorities; welcomes the recent establishment of the International Business College in Mitrovica, which, while representing a significant international investment in the local economy, attracts students from all communities, aims to create prospects for young people by promoting entrepreneurship, and introduces them to European professional standards in business, environmental and public management;
30. Emphasises that respect for cultural diversity is always at the heart of the European project and that the religious and cultural heritage is a necessary condition for peace and security in the region; stresses that adequate cultural heritage protection is of importance to all communities in Kosovo; calls on the Government to proceed with the planned institutional reform of the cultural heritage sector; emphasises that the adoption of the List of Cultural Heritage Sites is an important precondition for implementation of the cultural heritage legislation; welcomes the activities of the Facilitator for the Protection of the Religious and Cultural Heritage or the Serbian Orthodox Church and encourages all stakeholders to actively cooperate with him;

Thursday 8 July 2010

31. Emphasises that academic exchanges must be supported and promoted through programmes such as Erasmus Mundus in order to allow Kosovo citizens to obtain qualifications and experience within the EU and to reinforce their interaction with the citizens of the EU;
32. Calls on the authorities to actively support civil society and its involvement in the formulation of social and economic policies in full support of freedom of expression and association, underlines the important role that civil society and international NGOs play in reconciliation between ethnic groups and calls on the Commission to step up its financial assistance to their work; emphasises in this respect the need for an effective framing of these issues in the Annual Programmes for Kosovo under the Instrument for Pre-accession Assistance; notes that good interpersonal and especially business cooperation exists between individuals from different ethnic communities and that more efforts should be undertaken by the Kosovo authorities, civil society and the international community to support local projects which enhance this kind of cooperation;
33. Is seriously concerned about the fact that Kosovo continues to be one of the poorest countries in Europe, with unemployment exceeding 40 %; stresses that this situation is unsustainable and that difficult living conditions have resulted in growing discontent in society; calls for urgent action to improve the efficiency of social systems to provide a safety net for the vulnerable parts of society and to pursue active labour policies to decrease unemployment; calls, in this regard, on the Commission to make full use of the Instrument for Pre-Accession Assistance to foster Kosovo's socioeconomic development, in particular for young people; appeals to the EU and Member States to accept as many Kosovo citizens as possible as seasonal workers and in sectors with labour shortages;
34. Considers economic development to be the key to solving important problems of the country, which includes its vital contribution to improving the situation of women and minorities and facilitating inter-ethnic relations; underlines the importance of the agricultural sector to this end; welcomes a number of laws in preparation in this field and calls for their swift adoption; underlines however that the efficient implementation of the legal framework already adopted is a precondition for conditions on the ground to improve;
35. Stresses that Kosovo should choose the appropriate economic policies that will ensure sustainable economic growth, environmental protection, job creation and diminishing social exclusion; calls on the Kosovo authorities to improve the economic climate for foreign investment and transparency in trade relationships;
36. Calls for active steps to be taken in the field of energy in order to ensure the energy security necessary for the development of Kosovo; underlines that huge infrastructure needs in this field constitute an opportunity to diversify the energy supply to include more ecological sources, to modernise and step up the energy efficiency of the electricity grid and to implement the best available technologies, including in the planned coal-fired plants; calls for the closure of Kosovo A power plant without delay and Kosovo B as soon as possible without compromising the energy needs of the country;
37. Calls on the Kosovo authorities to continue investing in renewable energy and seeking regional cooperation in that field;
38. Points out that the transport policy of Kosovo has been focused so far on road-building; regrets the poor condition of public transport with regard, in particular, to railways; calls on the Kosovo Government to make full use of the IPA funds in order to develop, upgrade and modernise the railway network and improve interconnections with neighbouring countries for both people and freight with a view to making mobility sustainable;
39. Expresses its concern at the widespread environmental problems affecting land, air and water and calls on the Government to amend and implement the legislative framework in order to bring it into line with EU standards and to make environmental education a key element of education;

Thursday 8 July 2010

40. Underlines the need to streamline the EU presence in Kosovo in line with the development of the European External Action Service and the creation of EU Delegations in the world and to change the Commission Liaison Office into an EU Delegation so as to improve the effectiveness and coordination of EU action in Kosovo; takes note of the opening of the new EU Office in Belgrade in the framework of the EU SR Kosovo mandate, operating separately from the existing EU Delegation to Serbia;

41. Deplores the lack of transparency with regard to the latest extension of the mandate for the EU SR to Kosovo, including a substantial increase in appropriations; recalls that the adoption of the new interinstitutional agreement on budgetary matters will have to address properly the EP's information requirements by taking into account the Lisbon Treaty;

42. Instructs its President to forward this resolution to the High Representative of the Union for Foreign Affairs and Security Policy/Vice-President of the Commission, to the Council and Commission, to the EU Special Representative/International Civilian Representative for Kosovo, to the Government and Assembly of Kosovo, to the Government of Serbia, to the members of the International Steering Group for Kosovo and to the United Nations Security Council.

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## Albania

P7\_TA(2010)0282

### European Parliament resolution of 8 July 2010 on Albania

(2011/C 351 E/13)

*The European Parliament,*

- having regard to the Presidency conclusions issued following the Thessaloniki European Council of 19 and 20 June 2003, concerning the prospect of the Western Balkan countries joining the European Union,
- having regard to the Commission communication entitled 'Enlargement Strategy and Main Challenges 2009-2010' (COM(2009)0533) and the accompanying Albania 2009 Progress Report (SEC(2009)1337) of 14 October 2009,
- having regard to Council Decision 2008/210/EC of 18 February 2008 on the principles, priorities and conditions contained in the European Partnership with Albania and repealing Decision 2006/54/EC <sup>(1)</sup>,
- having regard to the first meeting of the EU-Albania Stabilisation and Association Parliamentary Committee, which took place on 3 and 4 May 2010,
- having regard to the conclusions of the meeting of the Stabilisation and Association Council between Albania and the EU of 18 May 2009,
- having regard to Council Decision 2007/821/EC of 8 November 2007 on the conclusion of the Agreement between the European Community and the Republic of Albania on the facilitation of the issuance of visas <sup>(2)</sup>,
- having regard to the recommendations of the 16th EP-Albania Inter-parliamentary Meeting of 19 and 20 March 2009,

<sup>(1)</sup> OJ L 80, 19.3.2008, p. 1.

<sup>(2)</sup> OJ L 334, 19.12.2007, p. 84.

Thursday 8 July 2010

- having regard to its decision to increase the frequency of political dialogue with Albania at parliamentary level to reflect the entry into force of the Stabilisation and Association Agreement,
  - having regard to Resolution 1709(2010) of the Council of Europe on the functioning of democratic institutions in Albania,
  - having regard to Rule 110(2) of its Rules of Procedure,
- A. whereas the renewed consensus on enlargement, as expressed in the conclusions of the European Council of 14 and 15 December 2006, reaffirms that the future of the Western Balkans lies in the EU,
- B. whereas the prospect of EU integration is giving impetus to several reforms in the Western Balkans and should play a constructive role in enhancing the region's capacity for peace, stability and conflict prevention, improving good neighbourly relations and addressing economic and social needs through sustainable development; whereas any realistic prospect of membership involves more than simply completing an administrative or technical procedure, also requiring a genuine political commitment on the part of relevant decision-makers in the Member States,
- C. whereas the Stabilisation and Association Agreement with Albania entered into force on 1 April 2009; whereas the country applied for EU membership on 28 April 2009 and submitted its answers to the Commission's pre-accession questionnaire on 14 April 2010; whereas the Commission is preparing its opinion on the subject,
- D. whereas each country's progress towards EU membership depends on its efforts to meet the Copenhagen criteria and comply with the conditions attached to the stabilisation and association process,
1. Confirms – in line with the conclusions of the Thessaloniki European Council of 19 and 20 June 2003, the Salzburg Declaration of 11 March 2006 and the relevant subsequent Council conclusions – its full support for Albania's application for EU membership (and for future EU membership for all the other Western Balkan countries), once it has achieved a certain level of political stability and reliability and fully meets the Copenhagen criteria;
  2. Acknowledges the progress achieved by Albania in the context of the reform process, but underlines the need for further substantial efforts, which are necessary both to consolidate democracy and the rule of law and to ensure the country's sustainable development;
  3. Notes with satisfaction that Albania replied on 14 April 2010 to the Commission's questionnaire on the preparation of its opinion on the country's application for EU membership, and at the same time stresses that a candidate country's progress towards EU membership depends on its ability to meet the Copenhagen criteria, including the existence of stable institutions guaranteeing democracy;
  4. Expresses the hope that the Albanian Government and opposition clearly understand that overcoming the current political controversies is crucial for the country's progress towards EU integration and for furthering Albanians' European aspirations; reiterates the conclusion reached at the Foreign Affairs Council meeting of 14 June 2010 that it is high time to find a solution to the current political crisis on a basis which will stand the test of time, and that it is the responsibility of the Government of Albania together with the opposition to promptly find, in a transparent manner and in full respect of the Albanian constitution, solutions and ways forward which will be required for the country on its EU path;



Thursday 8 July 2010

5. Deplores the political crisis following the June 2009 parliamentary elections in Albania, and underlines that fully functioning, representative institutions (especially parliament) are the backbone of a consolidated democratic system and, as a key priority for the European Partnership, an important political criterion for EU integration; welcomes the opposition's decision actively to participate in the Albanian Parliament's work, but deplores the fact that – in spite of the recent talks facilitated by the EU – a consensus has still not been reached regarding the 2009 elections; strongly urges all political sides to assume their responsibilities and engage in constructive political dialogue, including discussions on a new electoral law ensuring a fully transparent electoral process for future elections; emphasises that a solution to the stalemate can be found only by complying fully with the Constitution and the principles of transparency;
6. Takes the view that the basic agreement on setting up a parliamentary committee of inquiry to investigate the conduct of the 2009 parliamentary elections – with the Chair and the majority of members to be selected from the opposition, and having a mandate to investigate the electoral material – should be implemented as soon as possible; emphasises that this committee of inquiry should present its conclusions in time to enable parliament to adopt new legislation well before the next local and regional elections on the basis of the committee's findings and of the proposals made by the OSCE/ODIHR;
7. Calls on the government and opposition, if a solution cannot be found without outside help, to agree to mediation, for example by jointly inviting Council of Europe and/or European Parliament representatives;
8. Urges the Albanian authorities to draft and implement as soon as possible a consensus-based reform of parliament's rules of procedure, which will ensure transparency in relation to administrative and financial resources, high-quality legislation based on extensive expertise, improved supervisory capacities for parliament and adequate rights and representation for the opposition in parliamentary committees and parliamentary activities; calls on both sides – majority and opposition – to develop constructive dialogue in order to ensure an open and transparent legislative process, in consultation with relevant stakeholders and civil society actors, in order to adopt and approve crucial legislation without further delay, including laws requiring a 3/5 majority;
9. Welcomes the improvements made to the legal and administrative framework for the election process, and notes the Venice Commission's overall positive assessment in its Joint Opinion on the Electoral Code of the Republic of Albania; notes, furthermore, that according to the OSCE/ODIHR's assessment the June 2009 parliamentary elections met most international standards, but failed to enhance confidence in the electoral process; draws attention to the need for full implementation of the recommendations set out in the OSCE/ODIHR's final report on the 2009 parliamentary elections, and calls on both the majority and opposition in the Albanian Parliament to begin work immediately with a view to implementing those recommendations fully;
10. Expresses disappointment that, at the Parliamentary Law Committee meetings ahead of the Albanian Parliament's plenary session of 18 March 2010, the majority and opposition did not reach agreement on proposals concerning the committee of inquiry into the 2009 elections;
11. Underlines the urgent need to establish a cross-party consensus on economic, political and social reforms in order to improve the well-being of Albanian citizens and allow the country to make progress towards EU membership;
12. Welcomes the adoption on 27 May 2010 of the Commission's legislative proposal on visa liberalisation, and calls on the Commission to check that the remaining benchmarks are met in the coming months, with the aim of clearing the way for the Council and Parliament to approve the introduction of a visa waiver for Albanian citizens by the end of 2010;

Thursday 8 July 2010

13. Welcomes the cross-party political support for visa liberalisation expressed in the resolution adopted by the Albanian Parliament on 11 March 2010;
14. Underlines the importance of respecting and protecting human and minority rights as the top priority;
15. Recalls that the protection of personal data should always be ensured and must not be arbitrarily disregarded, and calls on all authorities to legislate and act in accordance with that rule;
16. Welcomes the progress made in respect of the judicial system, but underlines that implementation of the reforms is still at an early stage; takes the view that judicial reform, including the enforcement of court decisions, is a key prerequisite for Albania's EU membership application process, and underlines the importance of the separation of powers in a democratic society; stresses that a transparent, impartial and efficient judiciary, independent of all political or other pressure or control, is fundamental to the rule of law, and calls for the urgent adoption of a comprehensive long-term strategy in this field, including a roadmap for adopting the necessary legislation and implementing measures; calls on the opposition to be involved in the drafting process and to give full support to the reform of the judiciary; stresses, moreover, that the judiciary needs to be provided with sufficient funding to enable it to operate effectively throughout the country; looks forward, therefore, to new assistance initiatives from the Commission and welcomes, in this regard, the recent inauguration of a Serious Crimes Court in Tirana;
17. Welcomes the fact that the Constitutional Court has suspended implementation of the lustration law and the fact that this law is currently under review; asks for wider consultation and consensus – especially with the Venice Commission – should a new draft law be prepared, and stresses the importance of safeguarding the independence of constitutional institutions;
18. Welcomes the measures taken to fight petty corruption, and in particular the adoption of the integrated Anti-Corruption Action Plan for 2010; notes that the fight against corruption remains a major political challenge, that law enforcement and prosecution are still weak, and that further vigorous steps need to be taken to remedy the situation whereby people guilty of corruption enjoy impunity; underlines the need to establish a track record of investigations and convictions, including in cases of high-level corruption, and to continue implementing the latest GRECO recommendations, especially as regards reducing the number of officials enjoying immunity; welcomes the fact that strategic documents have been made public in order to allow monitoring of the progress made in implementing them; calls, furthermore, for the adoption of a legislative framework for fully transparent political party financing;
19. Welcomes plans for the establishment of a Public Administration Institute, and calls for further action to implement the public administration reform strategy and ensure full enforcement of the law on the civil service, including an adequate human resources management system; draws attention to the risks of politicising public administration through the use of non-transparent recruitment procedures, and to the practice of hiring temporary staff outside the scope of the law, and calls on the authorities to put an end to these practices and to create a depoliticised civil service based on merit, which would also help to enhance citizens' trust in public administration;
20. Underlines the crucial importance of professional, independent and pluralist media – both public and private – as a cornerstone of democracy; is concerned that little progress has been made in completing the legal framework for the media; urges the authorities to make every effort to adopt and implement the legal framework in line with EU standards, and to ensure media freedom from political or any other interference, including that of the executive; is concerned about political pressure on the National Council for Radio and Television (NCRT), and calls on the relevant authorities to secure its independence; calls for steps to be taken to ensure transparent media ownership and funding; deplores the absence of established working rights for journalists, which undermines their ability to work objectively and independently, and urges the authorities to take adequate steps to address this situation; calls, in particular, for the legislation on electronic broadcasting to be adopted and for the civil codes to be adjusted in order to decriminalise libel and defamation; welcomes the lack of government restrictions on internet access, and urges the government to make it more widely available to all citizens;

Thursday 8 July 2010

21. Welcomes the establishment of a legal framework designed to address and prevent forms of organised crime, including money laundering and trafficking in drugs and human beings; takes note of efforts to fight organised crime, but notes that further action is needed in respect of implementation and that all the necessary human and financial resources must be provided in order to achieve concrete results; underlines the importance of effective investigation, prosecution and punishment of offenders; welcomes the decision to establish an interinstitutional committee chaired by the Prime Minister on measures to combat organised crime and trafficking; stresses that, given the regional ramifications of organised crime, greater efforts must be made to step up police and judicial cooperation with adjoining countries, including joint border patrols;

22. Underlines the importance it attaches to civil society organisations, and acknowledges the government's small steps forward in terms of consulting such organisations about draft laws and the reforms in progress; calls for further steps to be taken to formalise and increase civil society involvement in formulating policy and monitoring its implementation and effectiveness at all levels, including the transparency of civil society organisations and of their financing;

23. Underlines the importance of mobility programmes, especially those aimed at youth, teachers and researchers, and takes the view that the number of participants in such programmes should be increased; welcomes, in this connection, initiatives designed to provide Albanian students with study opportunities in EU countries;

24. Acknowledges that, although basic trade union rights are recognised in the Constitution, union activities are frequently blocked, and that restrictions on strikes within the civil service and public utilities are too broad by international standards; deplores the Albanian Government's recent acquisition of trade union assets; welcomes the Constitutional Court's decision of 22 April 2010 to rule this law unconstitutional, and calls on the government to return the assets immediately; asks the government fully to respect trade unions' rights and to take all the necessary legal steps to ensure that all workers, in both the public and private sectors, have the right to participate in trade unions;

25. Welcomes the measures taken to increase the participation of women in political life; takes the view, however, that the State Committee on Equal Opportunities remains weak, and the Gender Equality Act largely unimplemented; takes the view, therefore, that further action is needed to facilitate the inclusion of women in the labour market and their participation in the decision-making process;

26. Welcomes the legal reforms in recent years with regard to the protection of victims of domestic violence and trafficking; recognises, however, that these are inadequate and that further steps should be taken, and remains seriously concerned about widespread domestic violence and trafficking in women and children for the purposes of sexual exploitation and forced labour; expresses concern that a significant increase in the reporting of incidents in this field is not always followed by proper police investigations or court protection orders; calls for full implementation of the existing legislation protecting women and children against all forms of violence and for the adoption and implementation of a comprehensive system for their protection and rehabilitation, including mandatory, efficient registration of all children and newborns, comprehensive provision of free legal, social and psychological aid to victims, public awareness-raising campaigns, adequate training for law enforcement agencies and the creation of a network of shelters (which should be of sufficient quantity and quality and able to meet the different needs of victims of domestic violence and trafficking); calls on the Commission to strengthen its support for the Albanian authorities in this regard;

27. Acknowledges the progress made in respect of protection of minorities, and that an adequate institutional and legislative framework for the protection of minorities is largely in place; notes, however, that discrimination continues to be a problem in Albania, particularly with regard to people vulnerable to discrimination and respect for gender identity and sexual orientation, and that more efforts are needed to combat discrimination, including raising awareness; notes with concern, in this connection, the recent anti-gay demonstration in Albania; underlines that more efforts are needed to tackle the European Partnership priorities with regard to minorities, and more specifically the use of minority languages and provision for minority-language education and non-discriminatory treatment for members of all minorities;

Thursday 8 July 2010

28. Welcomes the changes to the Criminal Code aimed at addressing racist crimes; commends the recent adoption of the anti-discrimination law drafted in cooperation with civil society organisations, and calls for its swift and effective implementation; welcomes in particular the establishment of an independent commissioner for protection against discrimination, with responsibility for monitoring the implementation of the law and investigating complaints; stresses, moreover, the urgent need for accurate and reliable statistical data, which are essential for the effective implementation of anti-discrimination measures, and, to this end, draws attention to the importance of the national census planned for 2011 in line with internationally recognised standards ensuring full respect for the principle of free self-identification;

29. Calls for further efforts to improve the situation of Roma, who continue to face difficult living conditions and to suffer discrimination in the areas of access to education, social protection, health care, employment and adequate housing; welcomes, in this connection, the government's action plan for the Decade of Roma Inclusion, but notes that local authorities and communities should play a key role in implementing it and be provided with an adequate budget for this purpose; encourages the relevant authorities to implement the action plan and publish regular progress reports;

30. Acknowledges the significant reduction in poverty in recent years as a result of high real GDP growth; points out, however, that despite the economic progress made, a considerable proportion of the population still lives in poverty, and that continued efforts are consequently necessary to reduce poverty further, particularly in rural and mountain areas;

31. Welcomes the progress made with regard to the prevention of torture and ill-treatment, including in the prison system; calls for improvements to living conditions in prisons in order to bring them up to a standard commensurate with human dignity and to fight the high levels of corruption in the prison service; underlines that progress needs to be made in improving conditions at detention facilities following the recommendations along these lines made by the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishment (CPT) in 2008, and recalls the Ombudsman's conclusions that conditions are below national and international human rights standards for the detention of prisoners and efforts to fight high levels of corruption in the prison service;

32. Underlines that most courts do not carry out ex officio judicial reviews for psychiatric patients, preventing those patients hospitalised involuntarily from being seen by a judge; recalls the judgment of the European Court of Human Rights in the case of *Dybeku v Albania*, and asks for an assurance that prisoners suffering from mental illnesses are not placed in the same facilities as prisoners not suffering from such conditions;

33. Expresses concern about the unnecessary placement of children in orphanages as a result of poverty, and about the long-term consequences for, and unequal treatment of, adult orphans as regards equal access to social facilities such as housing;

34. Acknowledges Albania's good relations with its neighbours as making a vital contribution to regional stability, and welcomes the recent positive trend in relations between Albania and Serbia, along with the country's active participation in regional initiatives such as the South-East European Cooperation Process, the Regional Cooperation Council, the Energy Community and the Central European Free Trade Agreement (CEFTA), the South East Europe Transport Observatory (SEETO) and the negotiations on the establishment of a Transport Community Treaty; emphasises that regional cross-border cooperation is essential in dealing with issues such as human trafficking;

35. Notes with satisfaction Albanian initiatives to waive visa requirements for neighbouring countries, which are a positive step that facilitates people-to-people contacts and enhances regional reconciliation; is of the opinion that such initiatives should be undertaken in parallel to the visa liberalisation process involving the Schengen countries and Western Balkan countries;

Thursday 8 July 2010

36. Commends Albania on its economic growth even during the global economic recession; points, however, to its large informal economy, high unemployment rate and unregulated labour market, which lead to job insecurity and substantially undermine workers' rights; notes its rising fiscal and public debt;
37. Expects the Instrument for Pre-Accession Assistance (IPA) to help improve Albania's economic situation; notes, however, that IPA financing programmes must be accompanied by an effective evaluation system;
38. Is of the opinion that Albania must continue to work on implementing the necessary economic policies to ensure sustainable economic growth, environmental protection and job creation; underlines the importance of sustaining macroeconomic stability;
39. Notes that little progress has been made in terms of consolidating property rights, thereby hampering the development of a functional land market; points out that the process of property registration, inventory of state land and possible compensation still lacks transparency and has yet to be completed in a fair manner, without discrimination against people belonging to minorities; calls for further efforts as regards registration of real estate, property restitution, legalisation of unlawful construction and compensation;
40. Welcomes the Albanian authorities' efforts to improve the business climate by simplifying procedures for registering businesses and obtaining licences and permits; stresses, however, that further improvement is needed, since Albania's business climate is still regarded as one of the toughest in the Western Balkans; calls on the authorities to address numerous shortcomings, for example in relation to procedures for acquiring land ownership titles, enforcement of contracts, weak public administration and high levels of corruption;
41. Underlines the need – bearing in mind that a significant proportion of Albania's economy relies on remittances from emigrants living in neighbouring countries – for continued work on public policies and investments with a view to upgrading infrastructure in fields crucial to sustainable economic development and social cohesion, including education, health, justice, transport and agriculture;
42. Underlines that particular attention should be paid to ensuring security of energy supply and diversifying energy sources, while at the same time improving energy efficiency, and reiterates the need for further progress in implementing the 2005 Energy Efficiency Law; draws particular attention to Albania's considerable potential as regards renewable energy sources, and calls for more efforts to develop them further, bearing in mind that most of the country's energy supply framework is in the process of being developed; welcomes, in this regard, new projects in the hydro-power sector, and calls for more efforts to be made with regard to the development of solar and wind energy projects; points out that investment in energy from renewable sources creates opportunities for growth and employment at local and regional level;
43. Underlines, in relation to the project announced in 2007 for the construction of a nuclear power plant in Albania, the paramount importance of nuclear safety and radiation protection; notes, in this regard, that Albania has not yet signed the Convention on Nuclear Safety or the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management;
44. Urges the Albanian Government to develop renewable energy sources, improve the implementation of waste management policy and further build up environmentally sustainable tourism in order to preserve the country's beautiful natural and architectural heritage;
45. Expresses concern about the poor condition of public transport, particularly the railways; calls on the Albanian Government to make full use of the IPA funds in order to develop, upgrade and modernise the railway network and improve connections with adjoining countries for both people and freight;

Thursday 8 July 2010

46. Calls for further progress in the field of environmental protection, in both urban areas and the countryside, full implementation of environmental legislation and stronger regional cooperation with a view to promoting environmental sustainability; welcomes, in this connection, the agreement on the protection and sustainable development of Prespa Park signed by Albania, the former Yugoslav Republic of Macedonia and Greece, along with the Commission;

47. Instructs its President to forward this resolution to the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the Council, the Commission, the governments and parliaments of the Member States and the Government and Parliament of Albania.

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## Situation in Kyrgyzstan

P7\_TA(2010)0283

### European Parliament resolution of 8 July 2010 on the situation in Kyrgyzstan

(2011/C 351 E/14)

*The European Parliament,*

- having regard to its previous resolutions on Kyrgyzstan and Central Asia, in particular those of 12 May 2005 and 6 May 2010,
- having regard to its resolution of 20 February 2008 on an EU Strategy for Central Asia <sup>(1)</sup>,
- having regard to the EU Programme for the Prevention of Violent Conflict adopted by the European Council in Göteborg in 2001,
- having regard to the statements made by the Vice-President/High Representative Catherine Ashton on the fresh clashes which took place in Kyrgyzstan on 11 June 2010 and on the constitutional referendum of 28 June 2010,
- having regard to the conclusions of the Foreign Affairs Council of 14 June 2010,
- having regard to the joint statement on the situation in Kyrgyzstan issued by the Special Envoy of the OSCE Chairperson-in-Office, the UN Special Representative and the EU Special Representative in Kyrgyzstan on 16 June 2010,
- having regard to the EU Strategy for a New Partnership with Central Asia adopted at the European Council meeting of 21/22 June 2007,
- having regard to the Joint Progress Report of 14 June 2010 by the Council and the Commission to the European Council on the implementation of the EU Strategy for Central Asia,
- having regard to the Partnership and Cooperation Agreement (PCA) between the EU and Kyrgyzstan, which entered into force in 1999,
- having regard to the European Community Regional Strategy Paper for Assistance to Central Asia for the period 2007-2013,
- having regard to Rule 110(4) of its Rules of Procedure,

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<sup>(1)</sup> OJ C 184 E, 6.8.2009, p. 49.

Thursday 8 July 2010

- A. whereas on 11 June 2010 violent clashes erupted in the southern Kyrgyzstan cities of Osh and Jalal-Abad and continued to escalate until 14 June 2010, with hundreds of armed men reportedly storming the city streets, shooting civilians and setting fire to shops, choosing their targets on the basis of ethnicity,
- B. whereas according to the Kyrgyz authorities around 300 people died in the clashes, although fears have been expressed, including by the head of the interim government Rosa Otunbayeva, that the real figure could be much higher; whereas more than 2 000 people were injured or hospitalised and many are still missing,
- C. whereas it has been estimated that as a result of the violence 300 000 people have been internally displaced and 100 000 have sought refuge in nearby Uzbekistan; whereas the Tashkent government provided humanitarian assistance to the refugees with the help of international organisations, but closed its border with Kyrgyzstan on 14 June 2010, citing a lack of capacity to take in more people,
- D. whereas the interim government declared a state of emergency in the area and security forces were unable to take control; whereas appeals issued by interim president Roza Otunbayeva to Russian President Medvedev and to the Collective Security Treaty Organisation for military support in restoring order were turned down; whereas a request to send an international police force has been made and is currently being considered by the OSCE,
- E. whereas the EU has a clear interest in a peaceful, democratic and economically prosperous Kyrgyzstan; whereas the EU has committed itself, in particular through its Central Asia Strategy, to act as a partner of the countries in the region; whereas a much greater international commitment is now urgently needed and the EU's response will have an impact on its credibility as a partner,
- F. whereas the Commission has allocated EUR 5 million to provide emergency medical support, humanitarian aid, non-food items, protection and psychological assistance for persons affected by the crisis; whereas this should be set against the UN's flash appeal for USD 71 million in emergency aid,
- G. whereas, through the Göteborg Programme adopted in 2001 and subsequent documents, the EU has recognised the importance of conflict prevention, and whereas the current situation in Kyrgyzstan calls for theoretical ideas to be transformed into practical action,
- H. whereas a referendum which was conducted in fairly peaceful circumstances on 27 June 2010 and which saw a high turnout resulted in the approval by more than 90 % of the voters of a new constitution that strikes a balance between presidential and parliamentary powers, the confirmation of Rosa Otunbayeva as interim president until 31 December 2011 and the dismissal of the Constitutional Court; whereas parliamentary elections are scheduled to be held on 10 October 2010,
- I. whereas the countries of Central Asia face a number of common challenges, such as poverty and serious threats to human security and the need to strengthen democracy, good governance and the rule of law; whereas there is a need to revive and step up regional cooperation in order to develop a common approach to the problems and challenges facing the region; whereas regional and international actors must pursue a more common approach to the problems and challenges facing the region,
- J. whereas the EU must always honour its commitment to mainstream human rights, democracy and the rule of law in its agreements with third states and to promote democratic reforms through coherent policies which enhance its credibility as a regional player,
1. Expresses grave concern at the tragic, violent clashes which broke out in southern Kyrgyzstan and extends its condolences to the families of all the victims;

Thursday 8 July 2010

2. Condemns the recent violence in southern Kyrgyzstan; deplores the loss of human lives and expresses the hope that a peaceful solution can be found to the conflict in Kyrgyzstan, on the basis of democratic principles, the rule of law and respect for human rights;
3. Calls on the interim government to conduct a credible, impartial and independent investigation into the violence, with the possible assistance of international actors, with a view to bringing the perpetrators to justice;
4. Calls on the interim authorities to make every effort to secure a return to normality and to put in place all the necessary conditions so that refugees and internally displaced persons (IDPs) can voluntarily return to their homes in safety and dignity; urges the local authorities to take effective confidence-building measures and to open a genuine dialogue with all the ethnic communities living in southern Kyrgyzstan with the aim of developing a credible reconciliation process;
5. Calls, in that connection, on the Commission to step up humanitarian assistance, in cooperation with international organisations, and to start short- and medium-term reconstruction programmes to rebuild destroyed homes and replace lost assets and to carry out rehabilitation projects in conjunction with the Kyrgyz authorities and other donors in order to create conditions conducive to the return of refugees and IDPs; draws attention, in this regard, to the importance of local development projects;
6. Draws attention to the need for a major international effort to assist in reconstruction, stabilisation and reconciliation in southern Kyrgyzstan and to the opportunity to lay the groundwork for such an effort which a planned meeting of donors in Bishkek on 27 July 2010 offers;
7. Emphasises that the humanitarian response must be accompanied by efforts to stabilise the situation and reduce and prevent the considerable risk of renewed violence, which could threaten also peace and security in other parts of the Ferghana Valley, which runs through Uzbekistan, Kyrgyzstan and Tajikistan;
8. Calls for a substantial increase in EU humanitarian aid to the people affected by the recent violence in southern Kyrgyzstan, as well as for comprehensive use of the Instrument for Stability;
9. Believes that a new level of EU engagement in southern Kyrgyzstan will be necessary in the longer term as well; reiterates its call to the Commission to prepare proposals for a reallocation of funds under the Development Cooperation Instrument designed to put the EU in a better position to give a sustained response to the new situation in Kyrgyzstan; maintains that a focus on human security is essential in the EU's Central Asia policy;
10. Calls on the Vice-President/High Representative and the Member States to support and contribute actively to the prompt deployment of an OSCE police mission with the aim of preventing any fresh outbreak of violence, stabilising the situation in the cities affected by the clashes, protecting the victims and the most vulnerable people and facilitating the return of refugees and IDPs;
11. Takes note of the fairly peaceful conduct of the constitutional referendum in Kyrgyzstan on 27 June 2010; stresses that the return to constitutional order and the rule of law is crucial with a view to the long-term stabilisation of the situation in the country; emphasises that the next parliamentary elections (provisionally scheduled for October 2010) should provide the constitutional basis for a government enjoying both strong legitimacy and widespread popular support; calls, therefore, on the authorities to take immediate and resolute measures to remedy the significant shortcomings identified by OSCE/ODIHR in time for the forthcoming parliamentary elections; looks forward to establishing strong interparliamentary links with the future Parliament of Kyrgyzstan;



Thursday 8 July 2010

12. Expresses concern at reports of arrests of some human rights defenders in Kyrgyzstan and calls for their immediate release; calls on the Kyrgyz authorities to take all the measures needed to ensure that human rights defenders can carry on their work to promote and protect human rights without hindrance;
13. Stresses the common interest of and the common responsibility borne by Kyrgyzstan, its neighbours, Russia, China, the EU, the US, the OSCE and the rest of the international community in preventing destabilisation, and calls on all the actors involved to identify synergies;
14. Expresses concern at the difficulties besetting the democratisation process in Kyrgyzstan, which seem to stem from the weak position of Kyrgyzstan's interim government and the strength of criminal networks in the country, including drug-smugglers in southern Kyrgyzstan;
15. Believes that establishing a pluralist political system which allows for representation of a range of interests and arbitration is fundamental to reducing tensions and preventing new eruptions of violence and that the EU and its Member States must actively support democratisation and strive to reduce the differences in the attitudes of international actors, so as to improve the prospects for the reform process in Kyrgyzstan;
16. Instructs its President to forward this resolution to the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the Council, the Commission, the parliaments and governments of the Member States, the interim government of Kyrgyzstan, the Secretary-General of the United Nations, the Secretary-General of the OSCE and the Secretary-General of the Council of Europe.

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### **AIDS/HIV in view of the XVIII International AIDS Conference (Vienna July 18-23, 2010)**

P7\_TA(2010)0284

#### **European Parliament resolution of 8 July 2010 on a rights-based approach to the EU's response to HIV/AIDS**

(2011/C 351 E/15)

*The European Parliament,*

- having regard to the upcoming XVIII International AIDS Conference: 'Right Here, Right Now', to be held in Vienna on 18-23 July 2010,
- having regard to the UN Declaration of Commitment on HIV/AIDS, 'Global Crisis – Global Action', adopted by the United Nations General Assembly on 27 June 2001 during its 26th Special Session,
- having regard to the United Nations General Assembly Special Session (UNGASS) High-Level Meeting on HIV/AIDS of 2 June 2006 and the political declaration adopted at that meeting,
- having regard to UNAIDS International Guidelines on HIV/AIDS and Human Rights, of 2006, based on the Second International Consultation on HIV/AIDS and Human Rights, held in Geneva on 23-25 September 1996 and the Third International Consultation on HIV/AIDS and Human Rights, held in Geneva on 25-26 July 2002,
- having regard to the WHO report, 'Towards Universal Access: Scaling up Priority HIV/AIDS Interventions in the Health Sector',

Thursday 8 July 2010

- having regard to the Abuja Declaration of 27 April 2001 on HIV/AIDS, Tuberculosis and Other Related Infectious Diseases, to Africa's Common Position to the UNGASS 2006 High-Level Meeting and to the Call for Accelerated Action Towards Universal Access to HIV and AIDS, Tuberculosis and Malaria Services in Africa, signed in Abuja on 4 May 2006 by the African Union,
  - having regard to its resolutions of 6 July 2006 on HIV/AIDS: Time to Deliver; of 24 April 2007 on combating HIV/AIDS within the EU and in the neighbouring countries, 2006-2009; and of 20 November 2008 on HIV/AIDS: early diagnosis and early care,
  - having regard to the Council conclusions on Progress on the European Programme for Action to confront HIV/AIDS, Malaria and Tuberculosis through External Action (2007-2011), November 2009,
  - having regard to the Commission communication on 'Combating HIV/AIDS in the European Union and neighbouring countries' and the strategy for combating HIV/AIDS in the EU and neighbouring countries 2009-2013,
  - having regard to the 2009 UNAIDS Report on the Global AIDS Epidemic,
  - having regard to the UNAIDS Outcome Framework 2009-2011,
  - having regard to the United Nations 2010 Millennium Development Goals Report,
  - having regard to its resolution of 15 June 2010 on progress towards the achievement of the Millennium Development Goals: mid-term review in preparation of the UN high-level meeting in September 2010,
  - having regard to Rule 110(4) of its Rules of Procedure,
- A. whereas the number of people living with HIV/AIDS continues to grow, with an estimated 33,4 million people living with HIV/AIDS globally and, particularly worrying, 2,7 million newly infected in 2008, which means that HIV/AIDS constitutes a global emergency requiring an exceptional and comprehensive global response,
- B. whereas HIV/AIDS is still one of the leading causes of death globally, accounting for 2 million deaths in 2008, and is projected to remain a significant global cause of premature mortality in the coming decades,
- C. whereas, by the end of 2009, an estimated 5 million people in low-income and middle-income countries were receiving antiretroviral therapy – a tenfold increase over five years and an unprecedented scale-up in the history of public health,
- D. whereas the number of new infections continues to outstrip the expansion of treatment, and two-thirds of the people in need of treatment in 2009 were still not receiving it, which means that 10 million people in need did not have access to the necessary effective treatment,
- E. whereas Sub-Saharan Africa, with 22,4 million people living with HIV/AIDS, remains the most heavily affected region, accounting for 71 % of all new HIV/AIDS infections in 2008,
- F. whereas there is strong evidence that HIV/AIDS prevention measures are an effective means of reducing new infections,
- G. whereas there is a major gap in programming with regard to involving people living with HIV/AIDS in prevention efforts – particularly those targeting people living with HIV/AIDS – and in efforts to reduce stigmatisation and discrimination,

Thursday 8 July 2010

- H. whereas women and girls continue to be affected disproportionately by HIV/AIDS, with women accounting for approximately 60 % of HIV/AIDS infections in sub-Saharan Africa and HIV/AIDS still the leading cause of death and illness in women of reproductive age,
- I. whereas current HIV prevention options are not sufficiently effective in protecting women, and prevention methods such as condoms and abstinence are not realistic options for many women, especially those who are married, who want to have children or who are at risk of sexual violence, and whereas a safe and effective vaccine or microbicide could provide women with powerful new tools to protect themselves from HIV without limiting reproductive choice,
- J. whereas there is increased evidence of higher levels of infection and risk among key populations, including sex workers, men who have sex with men, transgender people, prisoners, injecting drug users, migrant populations, refugees and mobile workers in nearly all regions, and also in countries with generalised epidemics, and HIV/AIDS prevention programmes for those populations are commonly under-prioritised and under-financed,
- K. whereas, due to stigma associated with HIV/AIDS, about 30 % of the people in the EU who are infected are unaware of their HIV/AIDS-positive status, and studies suggest that undiagnosed infection facilitates ongoing HIV/AIDS transmission and increases susceptibility to early mortality among people living with HIV/AIDS,
- L. whereas, according to the 2009 WHO report, 'Towards Universal Access-Progress: Scaling up priority HIV/AIDS Interventions in the Health Sector', it is estimated that the level of antiretroviral-treatment coverage is only 23 % in Europe and Central Asia, which is considered poor, given the situation in Russia and Ukraine,
- M. whereas same-sex behaviour is still heavily stigmatised, most notably in sub-Saharan Africa, where 31 countries criminalise same-sex activity between consenting adults, four punish it with the death penalty, and others provide for criminal penalties in excess of 10 years' imprisonment, such stigmatisation impeding HIV/AIDS prevention work,
- N. whereas criminalisation of illicit drug users in many countries prevents their access to HIV/AIDS prevention, treatment, care and support, and has the effect of increasing the transmission of HIV/AIDS related to injected drug use,
- O. whereas 106 countries report that they still have laws and policies which present significant obstacles to effective HIV/AIDS responses,
- P. whereas an estimated 17,5 million children lost one or both parents to HIV/AIDS in 2008 – the vast majority of these children living in sub-Saharan Africa – and such children frequently suffer stigmatisation and discrimination and may be denied access to basic services such as education and shelter, while at the same time having an increased level of vulnerability to HIV/AIDS infection,
- Q. whereas the relationship between HIV/AIDS and disability has not received due attention, although persons with disabilities are found among all key populations at higher risk of exposure to HIV/AIDS, and face disadvantages in accessing prevention, treatment and care services,
- R. whereas a rights-based approach in response to HIV/AIDS is crucial in efforts to end the epidemic,
1. Reaffirms that access to health care is part of the Universal Declaration of Human Rights and that governments have a duty to fulfil their obligation by providing a public health service to all;

Thursday 8 July 2010

2. Considers, at the same time, that the EU must give high priority to the protection and promotion of human-rights defenders, inside and outside the EU, including those who focus their action mainly on educating communities on HIV/AIDS; calls, in this respect, on the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy to ensure that all practical actions and measures provided for in the EU Guidelines on Human Rights Defenders be duly implemented in respect of civil-society representatives active in the field of HIV/AIDS;
3. Requests the Commission and the Council to meet their commitments and step up efforts to address HIV/AIDS as a global public health priority, with human rights as a central aspect of HIV/AIDS prevention, treatment, care and support, including in EU development cooperation;
4. Calls on the Commission and the Council to promote efforts towards the decriminalisation of unintentional HIV/AIDS transmission and exposure <sup>(1)</sup>, including by encouraging the recognition of HIV/AIDS as a disability for the purposes of existing and future non-discrimination legislation;
5. Calls on the Baltic States, Russia and Ukraine to put in place policies for vigorously combating HIV/AIDS in their respective countries;
6. Calls on the Commission and the Council, in political dialogue at both global and country level, to promote best policies and practices regarding rights-based responses to HIV/AIDS:
  - in ensuring the promotion, protection and observance of the human rights – including the sexual and reproductive health rights <sup>(2)</sup> – of people living with HIV/AIDS and other key populations,
  - in addressing the major economic, legal, social and technical barriers, as well as punitive laws and practices, which impede effective responses to HIV, in particular for key populations,
  - in supporting the review and amendment of laws that constitute a barrier to effective, evidence-based HIV/AIDS programmes and services, especially for key populations,
  - in fighting any legislation or decisions that criminalise unintentional HIV transmission, or fuel discrimination against people living with HIV/AIDS, and in condemning and taking action against legal barriers which hinder effective HIV measures for women and girls, such as restrictive sexual and reproductive health laws and policies, inheritance and property laws, child marriage laws, etc.,
  - in placing human rights at the centre of decisions on the allocation of funding for responses to HIV/AIDS within and outside the EU,
  - in HIV/AIDS programming targeted at people living with HIV/AIDS and other key populations and aimed at empowering individuals and communities to respond to HIV/AIDS, at reducing risk and vulnerability to HIV/AIDS infection and at mitigating the impact of HIV/AIDS,
  - in facilitating and promoting meaningful participation by key populations in the design, implementation, monitoring and evaluation of HIV/AIDS prevention, treatment, care and support programming, and in reducing stigmatisation and discrimination,

<sup>(1)</sup> According to the UNAIDS Policy Brief on Criminalisation of HIV Transmission, governments should limit criminalisation to cases of intentional transmission, i.e. where a person knows his or her HIV positive status, acts with the intention to transmit HIV, and does in fact transmit it.

<sup>(2)</sup> Promoting and addressing the sexual and reproductive health and rights of people living with HIV/AIDS is a key element in a human-rights based approach to HIV. Such an approach should reflect the right of people living with HIV/AIDS to have a full and satisfying sexual life, and respect the fertility choices and wishes of HIV-positive people.

Thursday 8 July 2010

- in facilitating universal access to health care, whether with respect to HIV/AIDS-related prevention, treatment, care and support, or to other non-HIV/AIDS-related medical provision,
  - in facilitating access by people living with HIV/AIDS, and other key populations, to education and employment,
  - in ensuring that future monitoring of progress in the fight against HIV/AIDS incorporates indicators that directly address and assess human-rights issues in relation to HIV/AIDS,
  - in respecting the '3C' (informed consent, confidentiality and counselling) principles in HIV/AIDS testing and other HIV/AIDS-related services,
  - in fighting the stigmatisation of, and discrimination against, people living with HIV/AIDS and other key populations, and in protecting their rights to safety and protection from abuse and violence,
  - in promoting and facilitating greater participation by people living with HIV/AIDS and other key populations in responses to HIV/AIDS,
  - in providing objective and non-judgmental information on the disease,
  - in providing people with the power, skills, knowledge and resources to protect them from contracting HIV/AIDS;
7. Calls on the Commission and the Member States to address women's needs for HIV/AIDS prevention, treatment and care as an essential measure for curbing the epidemic, notably by expanding access to sexual and reproductive health-care programmes – with HIV/AIDS testing, counselling and prevention services fully integrated into such programmes – and by reversing the underlying socioeconomic factors contributing to women's HIV/AIDS risk, such as gender inequality, poverty, lack of economic and educational opportunity, and lack of legal and human-rights protection;
8. Calls on the EU and the Member States to provide fair and flexible funding for research into new preventive technologies including vaccines and microbicides;
9. Expresses grave concern at the fact that half of all new HIV infections occur among children and young people; calls, therefore, on the Commission and the Member States to address children's and young people's needs for HIV/AIDS prevention, treatment, care and support and to ensure that they have access to HIV/AIDS services, particularly early-infancy diagnosis, appropriate and affordable antiretroviral formulations, psycho-social support, social protection and legal protection;
10. Asks the Commission and the Member States to support participation by people with disabilities in the HIV/AIDS response, to incorporate observance of their human rights into national HIV/AIDS strategic plans and policies, and to ensure they have access to HIV/AIDS services which are both tailored to their needs and equal to the services available to other communities;
11. Calls on the Commission and the Member States to support harm-reduction programmes for prisoners and injecting drug users;

Thursday 8 July 2010

12. Calls on the Commission and the Council to urge countries most affected by HIV and AIDS to establish coordinated, transparent and accountable national HIV policy frameworks guaranteeing the accessibility and effectiveness of HIV-related measures for prevention and care; in this context, asks the Commission to support national governments, and engage civil society, in improving the poor level of coverage of programmes to reduce stigmatisation and discrimination and in increasing access to justice in national HIV/AIDS responses;

13. Calls on the Commission and the Council to work with UNAIDS and other partners to improve indicators for measuring progress and sharing knowledge at global, national and programme level in order to reduce HIV/AIDS-related stigmatisation and discrimination, including indicators specific to key populations and HIV-related human-rights issues and protection mechanisms at international level;

14. Asks the Commission and the Council to support the work of the recently established Global Commission on HIV and the Law to ensure that legislation works for an effective response to HIV/AIDS;

15. Calls on the Commission and the Council to engage the European Union Agency for Fundamental Rights to gather further evidence on the human-rights situation of people living with HIV/AIDS and other key populations in Europe, taking particular account of their vulnerability to multiple and inter-sectional discrimination;

16. Calls on all the Member States and the Commission to allocate at least 20 % of all development spending to basic health and education, to increase their contributions to the Global Fund to Fight AIDS, Tuberculosis and Malaria and to increase their funding for other programmes designed to strengthen health systems and community systems; calls, too, on developing countries to prioritise health spending in general and combating HIV/AIDS in particular; and calls on the Commission to provide incentives to partner countries in order to encourage the prioritisation of health as a key sector in Country Strategy Papers;

17. Calls on all the Member States and the Commission to reverse the worrying decline in funding for the promotion of sexual and reproductive health and rights in developing countries and to support policies for the treatment of sexually transmitted infections and the provision of reproductive-health supplies consisting of life-saving drugs and contraceptives, including condoms;

18. Calls on the EU to continue to work through a mix of financial instruments at global and country level, in addition to budget support, and through relevant organisations and mechanisms which have proved successful in addressing the human-rights dimension of HIV/AIDS, in particular civil-society organisations and community-based organisations;

19. Calls on the Commission, the Member States and the international community to enact legislation to provide for affordable HIV-effective medications, including antiretroviral and other safe and effective medicines, diagnostics and related technologies for the preventive, curative and palliative care of HIV and related opportunistic infections and conditions;

20. Criticises bilateral and regional trade agreements that include provisions which go beyond the WTO's TRIPS Agreement ('TRIPS-plus'), thus effectively hindering, if not actually limiting, the safeguards established by the 2001 Doha Declaration on TRIPS which asserts the primacy of health over commercial interests; points out the responsibility borne by those countries that put pressure on developing countries to sign such free-trade agreements;

21. Emphasises that compulsory licensing and differential prices have not fully solved the problem, and calls on the Commission to propose new solutions to ensure genuine access to HIV/AIDS treatments at affordable prices;

Thursday 8 July 2010

22. Commends the adoption by the Council's Working Party on Human Rights of the Toolkit to Promote and Protect the Enjoyment of all Human Rights by Lesbian, Gay, Bisexual and Transgender People, and calls on the Council and Commission to implement its recommendations;
23. Calls on those EU institutions which, under their terms of reference, prepare annual reports on the human-rights situation, to incorporate into such reports a focus on HIV-related human rights, in such a way as to give a voice to people living with HIV and those vulnerable to infection;
24. Calls on the Commission and the Member States to reiterate their support for Paragraph 16 of the Council's Conclusions on the Programme for Action of November 2009: to initiate a broad consultative process with Member States and other stakeholders for the preparation of a European Programme for Action to Confront HIV/AIDS, Malaria and Tuberculosis through External Action for 2012 and beyond; and to put their weight behind the establishment of EU Action Teams as a vehicle for joint action by the Commission and Member States in established priority areas;
25. Instructs its President to forward this resolution to the Council, the Commission, the parliaments of the Member States, the United Nations Secretary-General, the Joint United Nations Programme on HIV/AIDS, the World Health Organization and the organisers of the XVIII International AIDS Conference.

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### **Entry into force on 1 August 2010 of the Convention on Cluster Munitions (CCM) and the role of the EU**

P7\_TA(2010)0285

#### **European Parliament resolution of 8 July 2010 on the entry into force of the Convention on Cluster Munitions (CCM) and the role of the EU**

(2011/C 351 E/16)

*The European Parliament,*

- having regard to the Convention on Cluster Munitions (CCM) adopted by 107 countries at the diplomatic conference held in Dublin from 19 to 30 May 2008,
  - having regard to the message of 30 May 2008 from the United Nations Secretary-General encouraging 'States to sign and ratify this important agreement without delay' and stating that he looked forward 'to its rapid entry into force',
  - having regard to its resolution of 20 November 2008 on the Convention on cluster munitions <sup>(1)</sup>,
  - having regard to its resolution of 10 March 2010 on the Implementation of the European Security Strategy and the Common Security and Defence Policy <sup>(2)</sup>,
  - having regard to Rule 110(4) of its Rules of Procedure,
- A. whereas the CCM has been open for signature since 3 December 2008, first in Oslo and subsequently at the United Nations in New York, and will enter into force on the first day of the sixth month after the thirtieth ratification, namely 1 August 2010,
- B. whereas the CCM defines cluster munitions as munitions designed to disperse or release explosive submunitions, each weighing less than 20 kilograms, and includes those explosive submunitions,

<sup>(1)</sup> OJ C 16 E, 22.1.2010, p. 61.

<sup>(2)</sup> Texts adopted, P7\_TA(2010)0061.

**Thursday 8 July 2010**

- C. whereas the CCM will prohibit the use, production, stockpiling and transfer of cluster munitions as a category of weapons,
  - D. whereas the CCM will require States Parties to destroy stockpiles of such munitions,
  - E. whereas the CCM will establish a new humanitarian standard for the assistance of victims and will require the States concerned to clear unexploded cluster munition remnants that are left behind after conflicts,
  - F. whereas cluster munitions pose serious risks to civilians when used around populated areas, owing to their typically large lethal footprint, and whereas in post-conflict settings the use of these munitions has caused many tragic injuries to and deaths of civilians, as unexploded submunitions left behind are often found by children and other unsuspecting innocents,
  - G. whereas to date 20 EU Member States have signed, 11 have ratified, and seven have neither signed nor ratified the CCM,
  - H. whereas, following the entry into force of the CCM on 1 August 2010, the process of acceding to the convention will become more demanding, because States will need to accede to the Convention in a one-step process,
  - I. whereas the support of most EU Member States, inter-parliamentary initiatives and a huge number of civil society organisations has been decisive in the successful conclusion of the 'Oslo Process' resulting in the CCM,
  - J. whereas the signing and ratification of the CCM by all 27 EU Member States prior to its entry into force on 1 August 2010 would be a strong political signal in support of a world without cluster munitions and the EU's objectives with regard to the fight against the proliferation of weapons that kill indiscriminately,
1. Welcomes the forthcoming entry into force of the Convention on Cluster Munitions (CCM) on 1 August 2010;
  2. Calls on all EU Member States and candidate countries to sign and ratify the CCM as a matter of urgency before the end of 2010, including the non-signatory States Estonia, Finland, Greece, Latvia, Poland, Romania, Slovakia and Turkey and the States that have signed but not yet ratified the Convention, namely Bulgaria, Cyprus, the Czech Republic, Hungary, Italy, Lithuania, the Netherlands, Portugal and Sweden;
  3. Commends all States that have signed and ratified the CCM and have also adopted moratoriums on the use, production and transfer of cluster munitions and completed the destruction of their stockpiles of such munitions;
  4. Urges all EU Member States that have signed the CCM to take every opportunity to encourage States not party to the CCM to sign and ratify or accede to the Convention as soon as possible, including through bilateral meetings, military-to-military dialogue and multilateral fora, and, in accordance with their obligations under Article 21 of the CCM, to make their best efforts to discourage States not party to the Convention from using cluster munitions;
  5. Calls on EU Member States not to take any action that might circumvent or jeopardise the CCM and its provisions; calls, in particular, on all EU Member States not to adopt, endorse or subsequently ratify any Convention on Conventional Weapons (CCW) protocol allowing for the use of cluster munitions which would not be compatible with the prohibition of such munitions under Articles 1 and 2 of the CCM; calls on the Council and EU Member States to act accordingly at the next CCW meeting from 30 August to 3 September 2010 in Geneva;



Thursday 8 July 2010

6. Urges EU Member States that are not yet party to the CCM to take interim steps pending accession, including adoption of a moratorium on the use, production and transfer of cluster munitions and making a start on destroying cluster munitions stockpiles as a matter of urgency;
7. Urges all States to take part in the upcoming First Meeting of States Parties (1MSP) that will be held from 8 to 12 November 2010 in Vientiane, Laos, the most cluster munitions-contaminated country in the world;
8. Urges EU Member States to take steps to begin to implement the Convention, including by destroying stockpiles, undertaking clearance and providing victim assistance, and to contribute to the provision of funding or various forms of assistance to other States wishing to implement the Convention;
9. Urges the EU Member States that have signed the Convention to pass legislation to implement it at national level;
10. Calls on the High Representative of the Union for Foreign Affairs and Security Policy to make every effort to secure the Union's accession to the CCM, which is possible following the entry into force of the Lisbon Treaty, and, in addition, to develop a strategy for the first review conference in the form of a Council decision on a common position;
11. Calls on the Council and Commission to include the ban on cluster munitions as a standard clause in agreements with third countries, alongside the standard clause on non-proliferation of weapons of mass destruction;
12. Calls on the Council and Commission to make the fight against cluster munitions an integral part of Community external assistance programmes in order to support third countries in destroying stockpiles and providing humanitarian assistance;
13. Calls on EU Member States, the Council and the Commission to take steps to prevent third countries from providing cluster munitions to non-state actors;
14. Urges EU Member States to be transparent about the efforts they make in response to this resolution and to report publicly on their activities under the Convention;
15. Instructs its President to forward this resolution to the Vice-President of the Commission/ High Representative of the Union for Foreign Affairs and Security Policy, the Council, the Commission, the governments and parliaments of the EU Member States and the candidate countries, the UN Secretary-General and the Cluster Munition Coalition.

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### **Future of the CAP after 2013**

P7\_TA(2010)0286

#### **European Parliament resolution of 8 July 2010 on the future of the Common Agricultural Policy after 2013 (2009/2236(INI))**

(2011/C 351 E/17)

*The European Parliament,*

- having regard to Part Three, Title III, of the Treaty on the Functioning of the European Union,
- having regard to the Health Check of the Common Agricultural Policy,

**Thursday 8 July 2010**

- having regard to the Commission document 'Europe 2020: A strategy for smart, sustainable and inclusive growth' (COM(2010)2020),
  - having regard to its study on 'The Single Payment Scheme after 2013: New Approach, New Target',
  - having regard to the International Assessment of Agricultural Science and Technology (IAASTD) report drawn up by the United Nations Food and Agriculture Organisation and the World Bank and signed by 58 countries,
  - having regard to the Commission publication on the 'Prospects for agricultural markets and income 2008-2015',
  - having regard to the Commission document 'The CAP in perspective: from market intervention to policy innovation',
  - having regard to the study 'Provision of public goods through agriculture in the European Union' by the Institute for European Environmental Policy,
  - having regard to the Commission White Paper 'Adapting to climate change: Towards a European framework for action' (COM(2009)0147), as well as to the staff working documents entitled 'Adapting to climate change: the challenge for European agriculture and rural areas' (SEC(2009)0417) and 'The role of European agriculture in climate change mitigation' (SEC(2009)1093),
  - having regard to the study 'CAP reform beyond 2013: An idea for a longer view', conducted by Notre Europe,
  - having regard to the Working Document on the future of the Common Agricultural Policy after 2013 <sup>(1)</sup>,
  - having regard to its resolution of 29 March 2007 on the integration of the new Member States into the CAP <sup>(2)</sup>,
  - having regard to its resolution of 5 May 2010 on EU agriculture and climate change <sup>(3)</sup>,
  - having regard to its resolution of 25 March 2010 on agricultural product quality policy: what strategy to follow? <sup>(4)</sup>,
  - having regard to Rule 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Agriculture and Rural Development and the opinion of the Committee on Budgets (A7-0204/2010),
- A. whereas the EU must continue to ensure food security for its citizens and participate in global food supply, while cooperating in a better and more coherent manner with the rest of the world, especially with the developing countries in order to help the long-term development of their agricultural sectors in a sustainable way that maximises local know-how; whereas in the current situation where the global number of hungry people exceeds 1 billion and in the European Union there are over 40 million poor people who do not have enough to eat, scientific developments should be used if they can provide appropriate solutions to alleviating world hunger, notably through better resource efficiency,

<sup>(1)</sup> AGRI\_DT (2010)439305.

<sup>(2)</sup> Texts adopted, P6\_TA(2007)0101.

<sup>(3)</sup> Texts adopted, P7\_TA(2010)0131.

<sup>(4)</sup> Texts adopted, P7\_TA(2010)0088.

Thursday 8 July 2010

- B. whereas global food demand is expected to double and world population is predicted to grow from 7 billion today to 9 billion by 2050 according to the FAO, and global food production will need to increase accordingly against a background of pressure on natural resources, meaning that the world will need to produce more food whilst using less water, less land, less energy, fewer fertilisers and fewer pesticides,
- C. whereas the objectives of the CAP, as listed in Article 39 of the Treaty on the functioning of the European Union (TFUE), aim at increasing agricultural productivity, ensuring a fair standard of living for the agricultural community, stabilising markets, guaranteeing availability of supplies, and ensuring that supplies reach consumers at reasonable prices; whereas, to date, the CAP has met its goals to a large extent, and has participated in the efforts to foster EU integration, territorial cohesion in Europe and the functioning of the single market; it has, however, only partially contributed to a fair standard of living for the agricultural community, and has not yet achieved agricultural market stabilisation, as markets have become extremely volatile, putting food security at risk; whereas further efforts are needed if the CAP is to fulfil its goals while preserving the environment and rural employment,
- D. whereas agriculture and forestry remain important sectors of the economy and at the same time provide essential public goods by maintaining natural resources and cultural landscapes, a precondition for all human activities in rural areas, whereas these sectors are already making the largest contribution in the EU to the achievement of the European climate and energy targets, particularly the targets for renewable energies from agriculture- and forestry-derived biomass, whereas this contribution must continue to grow in the future, and whereas these bio-energy sources also help to reduce the EU's energy dependency and, in the context of increasing energy prices, to create new jobs and improve incomes in the sector,
- E. whereas EU citizens receive significant benefits from the CAP in terms of availability and choice of safe, high-quality food at reasonable prices, food security, protection of the environment, creation of employment and measures for combating climate change,
- F. whereas there are currently 13,6 million people employed directly in the agricultural, forestry and fishery sectors, with an additional 5 million people working in the agri-food industry, where the EU is the world's largest producer of food and beverages; whereas this represents 8,6 % of total EU employment and accounts for 4 % of the EU's GDP,
- G. whereas as a result of the last EU enlargements (2004 and 2007), an additional 7 million farmers were added to the total agricultural labour force and the area of agricultural land increased by 40 %; whereas real agricultural per capita income has fallen by 12,2 % in the EU-27 for the past 10 years, gradually falling back to 1995 levels, whereas the average agricultural income in the EU-27 is less than 50 % of the average income in the rest of the economy, while production costs for commodities such as fertilisers, electricity and fuel are at their highest level in the last 15 years, making the continuation of agricultural production in the EU very difficult,
- H. whereas, since 7 % of farmers in Europe are under 35 years old, while four and a half million farmers who are over 65 years old will have stopped working by 2020, the future of the agricultural sector may be at risk if the number of farmers continues to decline,
- I. whereas agriculture provides the main land cover in the EU, occupying 47 % of the entire territory of the European Union; whereas across the EU there are 13,7 million agricultural holdings, generating over EUR 337 billion in production, whereas 15 % of agricultural land in the EU (some 26 million hectares) is in mountainous areas, and whereas the natural handicaps in those areas make farming difficult,
- J. whereas the average physical size of agricultural holdings has increased as a result of the restructuring of the sector, but small farms still remain predominant in the EU, with an average farm size of 12.6 hectares; whereas subsistence farms remain a critical challenge, especially in new Member States, where subsistence farming accounts for half of the total labour force, and whereas small farms and the farmers who run them are particularly important in the delivery of non-production public goods,

Thursday 8 July 2010

- K. whereas the economic crisis has had a serious negative effect on agriculture, with farm income decreasing by 12,2 % on average between 2008 and 2009 and unemployment in rural areas increasing in the last year; whereas as a direct effect of the economic crisis, consumption in Europe decreased on average by 10,55 % between 2008 and 2009, and in some Member States this reduction exceeded 20 %; whereas other effects of the economic crisis have been a lack of access to credit for farmers and a strain on the public finances of the Member States, weakening their ability to provide co-financing,
- L. whereas price volatility in agricultural markets is a permanent feature, but has recently increased dramatically owing to a combination of factors – including extreme weather conditions, energy prices, speculation and demand changes – and is expected to increase further, as predicted by both the OECD and the FAO, leading to extreme booms and busts in agricultural commodity prices on European markets, whereas between 2006 and 2008, the prices of several commodities rose considerably, some by as much as 180 %, as was the case for grains; whereas dairy prices collapsed in 2009, falling on average by 40 %, and whereas other products such as cereals, fruit and vegetables, olive oil have also been affected, and extreme fluctuations in prices have had detrimental consequences for producers and have not always benefited consumers,
- M. whereas agri-environmental indicators show an important potential for the agricultural sector in the effort to mitigate the effects of climate change, particularly with regard to carbon sequestration, direct reductions in net greenhouse gas emissions and the production of renewable energy, which secure genuine emission savings; whereas sustainably practised agricultural activity is essential for the preservation of biodiversity, water management and combating soil erosion and can be a key factor in addressing climate change,
- N. whereas greenhouse gas emissions caused by agricultural activity (including rearing of livestock) decreased by 20 % between 1990 and 2007 in the 27 Member States; whereas the proportion of these emissions produced by agriculture dropped from 11 % in 1990 to 9,3 % in 2007, inter alia as a result of more effective use of fertilisers and liquid manure, the recent structural reforms of the CAP and the gradual implementation of agricultural and environmental initiatives,
- O. whereas the EU has become a net importer of agricultural goods with over EUR 87,6 billion worth of products being imported each year (around 20 % of world agricultural imports); whereas in some cases the balance of trade has steadily shifted in favour of third countries (the EU now imports EUR 19 billion worth of agricultural products from Mercosur countries and only exports under EUR 1 billion worth to the region); whereas the EU continues to experience a widening trade deficit in agricultural products,
- P. whereas the EU remains the world's leading exporter of agricultural goods (roughly 17 % of total global trade); whereas the EU has lost a significant market share in the last 10 years (in 2000 the EU contributed about 19 % of world trade); whereas the EU exports mainly high added-value and processed products (67 % of all its agricultural exports),
- Q. whereas high-quality products are essential to the production and export potential of the European Union and represent a very large share of its international trade, whereas the EU is exporting high-profile products with considerable economic value, and in the case of products with protected origin and geographical indications the net value of these products and foodstuffs is EUR 14 billion a year (excluding wines and spirits, which also account for a significant share of EU exports), whereas, in order to continue developing high-quality production to meet consumers' expectations, account should be taken of the specific needs of these sectors to ensure their competitiveness, including the need for more effective protection of EU geographical indications and protected origin labels by third-country trading partners,
- R. whereas producer support estimates (PSEs) show that total farm support in the EU has been gradually decreasing since 2000 and is now comparable on a per capita basis with the level of support in the EU's major trading partners, while other trading partners have maintained and increased trade-distorting subsidies over the last few years,

Thursday 8 July 2010

- S. whereas the current distribution and level of support to Member States and farmers results from the distribution and level of that support in the past, when it was coupled with the type and scale of production and represented compensation for the fall in farmers' incomes resulting from the substantial drop in guaranteed prices; whereas that method of distribution gives rise to an understandable sense of injustice on the part of some EU farmers, and maintaining it is, moreover, inconsistent with the future goals of the CAP,
- T. whereas, since 2007, voluntary modulation mechanisms have allowed the redeployment of financial aid between direct payments and rural development, without however improving the transparency, legitimacy and simplification of the financial resources allocated to agriculture,
- U. whereas the share of CAP expenditure in the EU budget has steadily decreased from nearly 75 % in 1985 to a projected 39,3 % in 2013; whereas this represents less than 0,45 % of the EU's GDP; whereas the decline in budgetary expenditure on market measures is even more significant – from 74 % of all CAP expenditure in 1992 to less than 10 % at present; whereas CAP expenditure has constantly moved away from market support and export subsidies to decoupled payments and rural development,
- V. whereas these reforms have substantially altered farm support instruments, while maintaining the CAP's three founding principles, namely:
- a unified market,
  - Community preference,
  - financial solidarity,
- W. whereas, since the CAP will have to confront many challenges and pursue broader objectives after 2013, it is essential that the budget the EU allocates to the CAP is at least maintained at current levels,
- X. whereas the Treaty on the functioning of the European Union renders the multiannual financial framework (MFF) a legally binding act with which the annual budget has to comply,
- Y. whereas expenditure in the form of direct aid accounts for 0,38 % of EU GDP (2008 figure), whereas expenditure linked to the rural development policy accounts for 0,11 % of EU GDP,
- Z. whereas the current small margins available under Heading 2 as from the 2011 budget year make it very difficult for the Union to respond appropriately to market crises and unexpected global events and may deprive the annual budgetary procedure of its substance,
- AA. whereas, with the entry into force of the Lisbon Treaty, the European Parliament has gained the power to shape the Union's agricultural policy, not only as regards multiannual agricultural programmes but also by amending the annual budget for agriculture, thus giving Parliament responsibility for ensuring a fair and sustainable common agricultural policy,
- AB. whereas with the entry into force of the Lisbon Treaty, the Common Agricultural Policy is subject to the ordinary legislative procedure and the European Parliament has an important responsibility to help adopt sound and efficient legislation in this area,
- AC. whereas according to the latest Eurobarometer, 90 % of EU citizens surveyed consider agriculture and rural areas to be important for Europe's future, 83 % of EU citizens surveyed are in favour of financial support to farmers and, on average, they believe that agricultural policy should continue to be decided upon at European level,

Thursday 8 July 2010

- AD. whereas the objectives and substance of the future Common Agricultural Policy must be subject to broad public discussion in order to increase public knowledge of the CAP, and whereas the Commission's initiative on the public debate on the future of the CAP after 2013 is therefore to be welcomed,
- AE. whereas the CAP must be geared to the maintenance and development of multifunctional, area-wide, sustainable agriculture in Europe,

***The evolution of the CAP: from market distortion to market orientation***

1. Recalls that the CAP has undergone radical reforms over the last 25 years, in particular bringing about a fundamental shift from production support to producer support <sup>(1)</sup>, reducing regular intervention buying and the dumping of European surpluses on world markets <sup>(2)</sup> and making the CAP and EU farmers more market-oriented;
2. Recalls that the CAP played a crucial role in increasing production and feeding Europe's population after the Second World War; recalls furthermore that the CAP was the first common EEC policy, which paved the way for European cooperation and integration in other policy areas;
3. Points out that CAP market instruments specific to each sector play a fundamental role and are now used as safety nets to help reduce market volatility in order to guarantee farmers a certain degree of stability; (stresses that the changed market policy has not led to a reduction in farmers' dependence on purchasers; notes, moreover, that since the adoption of decoupled Single Farm Payments there has been a resolute move away from trade-distorting measures in line with WTO requirements;
4. Notes that the CAP reforms initiated in 1992 and 1999 and, in particular, the 2003 reform, which was reviewed during the Health Check and introduced the principle of decoupling, as well as the various sectoral reforms, were all intended to allow EU farmers to better respond and react to market signals and conditions; wishes this trend to continue in further reforms, while some market measures are still needed in view of the specific features of agricultural production;
5. Points out that rural development is now an integral part of the CAP architecture, and should remain an important element of the future CAP through a well-equipped rural development strategy with its focus on rural communities, improving the environment, modernising and restructuring agriculture, strengthening cohesion in EU rural areas, revitalising disadvantaged areas and areas at risk of abandonment, improving product marketing and competitiveness and maintaining employment and creating new jobs in rural areas, as well as on the new challenges addressed in the Health Check, namely climate change, renewable energies, water management and biodiversity;
6. Recalls that agriculture has always been a producer of public goods, or of what in today's context may be called 'first-generation' public goods, the reference here being to food security and food safety, and to the high nutritional value of agricultural produce, which should continue to constitute the primary *raison d'être* for the CAP, corresponding to its essence and representing the first concern of Europe's citizens; the more recently identified or 'second-generation' public goods, e.g. the environment, land management or animal welfare, while also objectives of the CAP, are complementary to the first-generation goods and should therefore not replace them;
7. Welcomes the recognition of the multi-functional role of farmers in delivering public goods such as preserving our environment, high-quality food production, good animal husbandry, shaping and improving the diversity and quality of valued landscapes in the EU, and the move to more sustainable farming practices by not only meeting the basic requirements for maintenance of the land in a Good Agricultural and Environmental Condition (GAEC) but also achieving even higher standards through agri-environmental schemes, precision farming, organic production and all other forms of sustainable agricultural practice;

<sup>(1)</sup> See graph 1 annexed to report A7-0204/2010.

<sup>(2)</sup> See graph 2 annexed to report A7-0204/2010.

Thursday 8 July 2010

8. Recalls that the CAP is the most integrated of all EU policies and therefore logically accounts for the largest share of the EU budget; recognises that its share of the budget has steadily decreased from about 75 % of the total EU budget in 1985 to 39,3 % by 2013 <sup>(1)</sup>, representing less than 0,45 % of total EU GDP <sup>(2)</sup>, whilst at the same time support is more thinly spread today with 12 new Member States joining the EU;

9. Is of the opinion, therefore, that the CAP has evolved, becoming greener and more market-orientated, and has dramatically reduced its impact on developing countries, whilst at the same time supporting farmers to produce high-quality food for European consumers;

***The challenges that the CAP post-2013 must respond to***

10. Points out that food security remains the central challenge for agriculture not only in the EU but globally, in particular in developing countries, as the world population is predicted to grow from 7 to 9 billion by 2050 and demand for food is projected to double by 2050 according to the FAO (especially in emerging economies such as China and India);

11. Affirms that Europe must continue to contribute to global food supplies in order to make a contribution to meeting that need against a background of increasing discontinuation of farming, less water and reduced energy inputs owing to the impact of climate change, which will act as a serious constraint on European capacity to increase supply;

12. Notes that the global energy crisis and increasing energy prices will drive agricultural production costs up, leading to rising food prices and increasing market price volatility for both farmers and consumers, which will have a detrimental effect on the stability of food supply and will seriously constrain the ability to maintain and increase current production levels; considers, however, that energy self-sufficiency for the agriculture and forestry sectors could increase its sustainability;

13. Believes that agriculture is well placed to make a significant contribution to the fight against climate change by continuing to reduce its Greenhouse Gas (GHG) emissions and increasing carbon sequestration;

14. Recognises that farming has already made considerable progress in cutting its greenhouse gas emissions and, in general, addressing environmental problems (management of water resources, soil, biodiversity, biomass, etc.), but maintains that those efforts need to be continued in order to gear production methods to a more sustainable form of development that is efficient in environmental and social, as well as economic, terms;

15. Recalls that consumers' expectations of guaranteed food safety must be met, as well as their demands for higher quality standards, better animal welfare and good value for money;

16. Considers that the CAP must continue to provide solutions to, and tangible assistance in combating, the threat of land abandonment, rural depopulation and the ageing of the rural population in the EU by establishing appropriate funding and assistance for that purpose, in order to ensure the long-term sustainability of rural communities in the EU; believes, therefore, that it is also necessary to continue with target-oriented rural development within the CAP;

17. Believes that the CAP must provide immediate responses to the effects of the economic crisis on farming businesses such as the lack of access to credit for farmers, constraints on farm incomes <sup>(3)</sup>, and increasing rural unemployment;

<sup>(1)</sup> See graph 3 annexed to report A7-0204/2010.

<sup>(2)</sup> See graph 4 annexed to report A7-0204/2010.

<sup>(3)</sup> See graph 5 annexed to report A7-0204/2010.

Thursday 8 July 2010

18. Points out, therefore, that differences in the capacity of Member States to deal with the economic crisis might result in increasing inequalities among rural regions in the EU;
19. Recognises that the CAP must take into account the differences in structure and modernisation needs of agriculture in the enlarged EU, with the aim of achieving equal levels of development and cohesion;
20. Believes that, in the light of these challenges, the CAP priorities post-2013 should be embedded in a strong, sustainable, well supported and credible multifunctional food and agricultural policy which sends strong signals to support farmers efficiently in a targeted manner and provide answers to the concerns of the rural community whilst benefiting the wider society;

### ***The need for a strong CAP post-2013***

#### *Meeting socio-economic needs*

21. Is of the opinion that, in the light of the Europe 2020 Strategy, a strong and sustainable European Common Agricultural Policy is needed to serve the interests of all European farmers and deliver wider benefits to society; takes the view that it should enable agriculture to play its part in the European economy and ensure it has the tools to compete on world markets; believes that, for strategic reasons, the EU cannot afford to rely on other parts of the world to provide for European food security in the context of climate change, political instability in certain regions of the world and potential outbreaks of disease or other events potentially detrimental to production capacity;
22. Recalls that EU agriculture remains a central sector of the EU economy, making an important contribution to EU GDP and jobs both directly and indirectly through the multiplier effect on both the upstream and downstream food and drink industry market; believes, therefore, that a strong agriculture and a strong food and drink industry are inextricably linked, with each contributing to the other's success, in particular on export markets;
23. Recalls that one of the main reasons why the EU needs a strong CAP is to contribute to the maintenance and development of viable and dynamic rural communities, at the heart of European cultural diversity, and that they are the key to sustainable, balanced socio-economic development across all European territory; takes the view that this calls for the socio-economic gap between rural and urban communities to be narrowed, in order to avoid the growing land abandonment and rural depopulation which are further isolating rural areas;
24. Points out that there is an urgent need to attract younger generations and women to rural areas through long-term policies and to provide new and alternative economic opportunities for them to ensure a sustainable rural population; considers that new ways of attracting young people should be explored, such as availability of favourable loans and credit for investments and recognition of their professional skills in order to ensure they are able to enter the rural economy with relative ease; recognises the obstacles young farmers face when willing to enter the sector, such as high start-up costs, the sometimes prohibitive cost of land and difficulty in accessing credit opportunities, especially in difficult times;
25. Believes that the increase in rural unemployment should be tackled by preserving existing jobs, encouraging high-quality jobs and fostering additional opportunities for diversification and new income sources;
26. Recalls, as Article 39 of the Lisbon Treaty rightly suggests, that agriculture is a specific sector which suffers from a long-term production cycle and several types of market failure such as high market volatility, great exposure to natural disasters, a high level of risk, lack of demand elasticity, and the fact that farmers are 'price-takers' rather than 'price-makers' in the food supply-chain;



Thursday 8 July 2010

27. Considers that, in the case of some agricultural sectors which require substantial capital investment over the course of multiannual cycles of production (of milk, citrus fruits, wine, olives and fruit in general), new supply management methods need to be introduced;

28. Points out, most importantly, that in the future European agricultural policy must remain a common policy and that only a balanced and fair system of support across the EU with a common set of objectives and rules – albeit acknowledging the specific features of certain sectors and regions – can deliver the appropriate conditions for farmers and a properly functioning single market with fair competitive conditions for agricultural products and farmers within the EU, thus achieving greater value for money than could be delivered by renationalised, and possibly conflicting, agricultural policies in individual Member States;

29. Considers that the CAP should ensure the coexistence of:

- high-added-value farming with high-quality primary and processed products, giving it a strong position on world markets;
- farming open to regional markets;
- farming geared to local markets, bearing in mind that some of the farmers involved are small farmers with limited incomes who, were they to abandon farming, would, owing to their age, qualifications or lifestyle choices, have great difficulty in finding work outside farming, particularly at a time of recession and high unemployment;

*Delivering benefits in terms of public goods*

30. Stresses that food is the most important public good produced by agriculture; recognises that farmers deliver a range of public goods which the market does not reward them for; therefore insists that they must be fairly rewarded and further incentivised to continue delivering safe and higher-quality products, better animal welfare conditions and additional environmental benefits, in addition to creating more jobs, in order to preserve the countryside throughout Europe;

31. Recalls, therefore, that unless sustainable (economically, socially and environmentally viable in the long term) farming activity continues across the EU, the provision of public goods will be at risk;

32. Recognises that generations of farmers have shaped the valued EU landscapes and, therefore, should be rewarded for continuing to do so in a sustainable way, especially in mountain regions and naturally disadvantaged areas; believes that they are actively contributing to the great cultural value and attractiveness of Europe, providing the backdrop for successful rural tourism; points out that this should, however, be complemented by European regional policy and national instruments to ensure, by means of suitable synergetic effects, the creation of stable regional conditions, which are an essential precondition for properly functioning agriculture;

33. Points out that farmers have the potential to deliver additional environmental benefits that match societal demands, in particular soil preservation and restoration, sound water management and quality improvement and farmland biodiversity preservation, and that they must be encouraged to do so and that investment support must be provided to this end;

34. Points out that the cross-compliance system makes the granting of direct aid subject to compliance with statutory requirements and the maintenance of farmland in good agricultural and environmental condition, and remains one of the appropriate means of optimising the provision of eco-system services by farmers and meeting new environmental challenges by securing the provision of basic public goods; notes, however, that the introduction of cross-compliance has raised a whole range of problems relating to administrative issues and acceptance by farmers, who had the impression that they were losing a degree of freedom in their work; calls therefore for the administrative burden on farmers to be reduced through a simplified implementation system for cross-compliance requirements;

Thursday 8 July 2010

35. Believes that the climate impact of agriculture can be considerably mitigated by means of improved education and training of people working in agriculture, better use of innovations stemming from research and development and improving the efficiency of agricultural production;

36. Believes, in line with the latest research available, that without a common agricultural policy and Good Agricultural Practice, unsustainable modes of production would develop across the EU (extreme intensification on the best land and widespread land abandonment in disadvantaged areas), causing serious damage to the environment; insists that the cost of support through a strong CAP is nothing compared to the costs of no action and its negative unintended consequences;

#### ***The new CAP priorities for the 21st century***

37. Believes that agriculture is well placed to make a major contribution to delivering the new EU 2020 Strategy priorities of tackling climate change and creating new jobs through green growth and supplying renewable energy whilst at the same time continuing to provide food security for European consumers by producing safe and high-quality food products;

#### ***A fair CAP***

38. Insists that EU agriculture must remain competitive against fierce competition and trade-distorting measures on the part of trading partners and/or countries where producers are not subject to standards as high as in the EU as regards, in particular, product quality, food safety, the environment, social legislation and animal welfare; therefore believes that improving competitiveness at different levels (local, regional, internal market and world markets) should still be a fundamental objective of the CAP post-2013 in order to ensure that the EU has a wide range of diversified high-value food and other agricultural products which continue to win a greater share of the world market, as well as ensuring fair trade and remunerative prices for farmers;

39. Recalls that EU farmers produce food to the highest safety, quality and animal welfare standards and should be rewarded for doing so; believes that imports from third countries should, respecting WTO rights and obligations, meet the same requirements to ensure fair competition and guarantee that consumers can make an informed choice regarding the products they buy, based inter alia on reliable traceability; calls on the Commission to uphold the interests of European farmers in the context of multilateral and bilateral trade agreements negotiated on behalf of the EU;

40. Insists that the maintenance of farming activity across the whole of Europe is fundamental in order to maintain diverse and local food production, secure rural socio-economic dynamism and jobs, particularly in the context of the current economic crisis, and prevent the threat of land abandonment across EU rural territory through continuous preservation of the environment and landscape management; believes, therefore, that disadvantaged regions should be given the opportunity to overcome additional obstacles caused by their specific situation and to take the measures needed to adapt; considers that the specific challenge of subsistence farming must be addressed;

41. Stresses that farmers require long-term investment prospects and adequate incomes in order to carry out their tasks; calls therefore for the guarantee of a fair and stable return for the farming community to remain a primary goal for the new CAP, whilst providing good value for money and fair treatment for consumers, not least through increasing competitiveness in the agricultural sector and allowing farmers to cover their real costs and respond to market signals;

42. Calls for measures to be taken to strengthen primary producers' and producer organisations' management capacity and bargaining power vis-à-vis other economic operators in the food chain, and encourage the formation of organisations that strengthen the links between the various stakeholders within branches, given that they can improve information sharing and help bring supply into line with consumers' demands; takes the view that such developments could improve the functioning of the food supply-chain with greater transparency of food prices and action to address unfair commercial practices, enabling farmers to obtain the added value they deserve; believes that these objectives may call for an adjustment or clarification of EU competition rules to take account of the specific features of the agricultural markets, provided they do not hinder the proper functioning of the single market;

Thursday 8 July 2010

43. Believes that there have to be flexible and efficient market measures to ensure an adequate safety net within the future framework of the CAP in order to avoid extreme market price volatility, provide a greater degree of stability, and provide rapid and efficient responses to economic crises arising in the sector; takes the view that this should be complemented by a risk management system that helps minimise the consequences of natural and health disasters;

44. Takes the view, also, that, in order to enable the market to be managed more efficiently and to avoid overproduction crises, the specific instruments for the management of production potential which are available in some sectors should be retained, based on the principles of fairness and non-discrimination;

45. Calls for a fair distribution of CAP payments and insists that it should be fair to farmers in both new and old Member States;

46. Considers that reducing direct payments under the first pillar would have devastating consequences, not only for farmers but, to an equal extent, for the countryside, for agriculture-linked public services, for consumers and for society, given that the latter is a beneficiary as a whole; direct payments are, therefore, essential and must be maintained; draws attention to the possibly unfavourable impact of any reduction in CAP funding on the value of farms, with serious repercussions especially for farmers with bank loans, particularly in the context of the economic crisis which has seriously affected European agriculture;

47. Believes that viable farming businesses are fundamental to sustaining thriving rural communities as they generate employment and services at local level; considers therefore that the CAP should involve local communities in order to provide the necessary conditions for their socio-economic viability, including through the preservation of family farms and the continuous restructuring and modernisation of farms where it is needed; recalls that diversification measures and rural infrastructure development are also important in this respect;

#### *A sustainable CAP*

48. Believes that agriculture has a leading role to play in tackling climate change by reducing GHG emissions, increasing carbon sequestration capacity and developing and using more renewable energy sources and bio-based materials; believes that climate considerations should be integrated across CAP measures where appropriate;

49. Considers that production efficiency is fundamental to more sustainable management of scarce resources and that farmers should innovate in their technical production methods by using the most efficient financial, scientific and technical management tools to help meet the growing demand for food and for renewable agricultural materials in a more economically, socially and environmentally sustainable manner;

50. Emphasises in the context of the EU 2020 Strategy that research and development, the use of new technologies and good agricultural practices are important in order to improve competitiveness and increase production while reducing the use of pesticides, fertilisers and scarce resources such as water and energy; takes the view that investment in agricultural innovation should be further encouraged, inter alia through the CAP and EU research and development framework programmes, in order to address new challenges;

51. Recommends to this end the active presence of agronomic advisors in the regions to guide farmers in their attempts to deliver environmental public goods;

52. Believes that safeguards need to be introduced to ensure that biotechnology can continue to be used in agriculture without impacting on existing production methods;

Thursday 8 July 2010

*A green CAP*

53. Notes that the market has failed, to date, to properly reward farmers for protecting the environment and other public goods; therefore believes that the CAP must place a greater emphasis on sustainability by providing proper economic incentives for farmers to optimise the delivery of eco-system services and further improve the sound environmental resource management of EU farmland; emphasises that this should be achieved without creating an extra financial or bureaucratic burden for farmers;

54. Believes that, thanks to improvements in production factors linked to advances in knowledge, farmers are well placed to contribute to green growth and respond to the energy crisis through the development of green energy in such forms as biomass, biowaste, biogas, second-generation biofuels and small-scale wind, solar and hydro energy, which will also help create new green job opportunities;

*A common and simple policy*

55. Insists that a common agricultural policy is more relevant than ever before to ensure that the cross-border dimension of food supply, climate change, high common standards of environmental protection, product safety and quality and animal welfare is guaranteed in a properly functioning Single Market;

56. Believes that the new CAP, through a simplified support system, must be easy to administer, transparent, and reduce red tape and administrative burdens on farmers, particularly for smaller producers, in order to allow farmers to concentrate on their main task of providing high-quality agricultural products; believes that this could be achieved inter alia by moving towards the use of delivery tools that set the goals and empower farmers to choose their own farming systems to meet these objectives, such as outcome agreements, simple contracts and multiannual payments;

57. Calls for appropriate measures to be taken to explain what the CAP consists of, not only to farmers but to all Europe's citizens, while providing transparently clear information about the objectives being pursued, the means available and the anticipated beneficial effects of implementing the CAP;

58. Considers that there needs to be a more proportionate and risk-based approach by the Commission to the application of regulatory controls, the conduct of compliance audits and the imposition of financial corrections;

59. Calls for the European Parliament to be provided with prompt, up-to-date information on the current state of the agriculture budget;

***Delivering a fair, green and sustainable CAP***

60. Expects the re-design of the CAP in line with the spring European Council conclusion on Europe 2020, with a view to providing instruments that deliver smart, inclusive, green growth;

61. Recognises the wide range of existing and new priorities for the CAP and notes that the new Member States' justified expectation when they joined the European Union was that CAP support would, over time, be comparable with old Member States; in order to fully respond to the new challenges and deliver the priorities of a reformed CAP, calls for the amounts allocated to the CAP in the 2013 budget to be at least maintained during the next financial programming period;

62. Calls for the CAP budget to have an end-of-year flexibility mechanism in order to carry over and reallocate under-spends in the following year;

63. Insists that the CAP should not be renationalised and therefore believes that direct support should remain fully financed by the EU budget, hence rejecting any further co-financing which could harm fair competition within the EU Single Market;

Thursday 8 July 2010

64. Calls for a fair distribution of CAP funds to farmers across the EU; recalls that to respect the diversity of farming in the EU, objective criteria must be found in order to define a fair system of distribution; points out that direct payments contribute to the provision of public goods, help stabilise farmers' incomes and ensure against risks, partially offsetting the socially desirable high standards in the EU and the continuing reduction in tariff barriers, as well as rewarding basic public goods provision, which receives no market compensation;

— Believes that in order to reduce the disparities in the distribution of direct support funds between Member States and to reflect the wide diversity characterising European agriculture, the hectare basis alone will not be sufficient, and therefore calls on the Commission to propose additional objective criteria and to evaluate their potential impact, taking into account the complexity of the agricultural sector and the differences between Member States, in order to achieve a more balanced distribution;

— Calls for fair and objective criteria to be clearly defined for the allocation of funds for rural development objectives;

65. Believes that direct support should move to an area basis in all Member States within the next financial programming period; this would constitute a sufficient transition period allowing farmers and agricultural structures that are still using the historical payments system the flexibility to adapt to the changes, and to avoid too radical a redistribution of support, without prejudice to promptly achieving a balanced distribution of support amongst Member States; notes that the move away from the historical basis may create particular challenges for Member States or regions with a relatively large amount of 'naked land' (unclaimed eligible land); calls for the specific needs of such regions to be given full consideration when designing future support; also believes that Member States and regions must continue to have the flexibility to regionalise their area payments system in such a way as to reflect their specific priorities while respecting fair competition in the internal market;

66. Considers that there should be no return to coupled payments as a guiding principle of the CAP; takes the view, however, given the move from a historical to an area support model in the wake of the decisions following the Health Check, that an adequate margin for flexibility should be left to Member States; believes that this flexibility will enable Member States to respond to the specific needs of their territory and to prevent production from stopping completely or the diversity of farming from being reduced; takes the view that this margin for manoeuvre would take the form of capped coupled payments for vulnerable agriculture sectors and territories and environmentally sensitive areas, in compliance with WTO requirements, whilst ensuring fair market conditions for farmers across the EU;

67. Identifies the need for central key building blocks – Food Security and Fair Trade, Sustainability, Agriculture across Europe, Food Quality, Biodiversity and Environmental Protection, and Green Growth – to achieve a fair and more sustainable CAP; considers that the two-pillar structure should be maintained, but that it should avoid duplication of policy objectives and instruments as well as reflecting the content of the building blocks identified here;

68. Believes that, in the interest of simplification, clarity and a common approach, funding for each of the priorities of the CAP must be agreed from the start of the reform;

#### *Food security and fair trade*

69. Maintains that farm viability and quality of life for farmers are a sine qua non if farming activity is to continue; believes therefore that there should be a basic EU-funded direct area payment to all EU farmers in order to ensure the social and economic sustainability of the European agricultural production model, which should provide basic food security for European consumers, allow farmers to produce high-quality food competitively, ensure that farming activity and jobs in rural areas are encouraged across the EU and provide baseline public goods through cross-compliance requirements for Good Agricultural and Environmental Conditions, as well as high quality and animal welfare standards;

Thursday 8 July 2010

70. Calls for an absolute requirement that only active agricultural production be rewarded, whereby minimum activity requirements would be included in the cross-compliance rules as a precondition for payments, and for proportionality to be the key principle applied when enforcing the rules;

#### *Sustainability*

71. Believes that an EU-funded top-up payment should be made available to farmers through simple multiannual contracts rewarding them for reducing their carbon emissions per unit of production and/or increasing their sequestration of carbon in the soil through sustainable production methods and through the production of biomass that can be used in the production of long-lasting agro-materials;

72. Notes that this would have the double benefit of making EU agriculture more environmentally and economically sustainable through lower carbon emissions and/or improved efficiency and would also ensure that farmers can financially benefit from increased carbon sequestration on their land and put them on the same footing as other industries which are in the EU ETS; calls for clear and measurable criteria and targets to be defined appropriately to allow these payments to be implemented as soon as possible in every Member State;

#### *Agriculture across Europe*

73. Calls for the continuation of specific measures to compensate farmers producing in disadvantaged areas such as areas with natural handicaps, including e.g. mountainous regions, environmentally sensitive areas and/or regions which are the most affected by climate change, and outermost regions, in order to ensure that agricultural activity takes place so that land continues to be managed and local food is produced across the EU, reducing the threat of land abandonment and ensuring balanced territorial management across the EU and a rational development of agricultural production;

74. Believes that any reform to the less-favoured areas (LFA) scheme, particularly regarding how LFAs are designated and classified, should take into consideration the difficulties experienced by farmers in all parts of the EU, as these vary greatly with different biophysical and climatic conditions; takes the view that areas which may be excluded under any new rules should be granted an adequate phasing-out period;

75. Draws attention to the particular role played by farmers in peri-urban areas, where there can be intensive pressures on rural and agricultural resources; stresses that this production of food and public goods near urban populations should be maintained;

#### *Food Quality*

76. Stresses that the development of food quality policy, including in terms of geographical indication (PDO/PGI/TSG), must be a priority aspect of the CAP and be deepened and strengthened so that the EU can maintain its leadership position in this area; takes the view that, in the case of these high-quality products, the use of original management, protection and promotion instruments should be allowed, enabling them to develop in a harmonious fashion and to continue to make their major contribution to the sustainable growth and competitiveness of European agriculture;

#### *Biodiversity and environmental protection*

77. Believes that farmers can contribute to biodiversity and environmental protection, as well as climate change adaptation and mitigation, in a cost-effective way; this therefore needs to be further incentivised; calls for the CAP to provide the opportunity for the vast bulk of agricultural land to be covered by agri-environmental schemes to reward farmers for the delivery of additional eco-system services while encouraging more sustainable, lower-input production models such as organic farming, integrated agriculture, the development of high-nature-value farming and sustainable intensive agricultural practices; considers that all these rural development measures should continue to be co-financed, with an increased budget if necessary;

Thursday 8 July 2010

*Green growth*

78. Believes that 'green growth' should be at the heart of a new rural development strategy that focuses on creating new green jobs through:

- the development of local dynamic tools such as local marketing, local processing, and support for projects involving all stakeholders from the local farming sector,
- the development of biomass, bio-waste, bio-gas and small-scale renewable energy production, as well as encouraging the production of second-generation biofuels, agro-materials and green-chemistry products,
- investing in modernisation and innovation, as well as new research and development techniques for adaptation to, and mitigation of, climate change,
- providing training and advice to farmers in applying new techniques and to assist young farmers entering the industry;

79. Believes that to underpin the key building blocks of the CAP, an adequate safety net should still be available; takes the view that this safety net should be sufficiently flexible to take account of market developments, and include tools such as public and private storage, intervention and market clearance, which should be activated when required to combat extreme volatility and as a rapid reaction tool in the event of crises; to that end, considers that a special reserve budget line should be made available in the EU budget which could be activated rapidly to respond to crises which arise;

80. Calls for these measures to be backed by instruments designed to help reduce volatility and provide stable conditions for agricultural business and planning; in this context, takes the view that new innovative economic and financial tools such as across-the-board harvest risk insurance policies, futures markets and mutualisation funds should also be considered as a way of dealing with extreme market or climate conditions, without disturbing any private schemes that are being developed;

81. Takes the view that regulating the expansion in production capacity can play a vital role in securing sustainable growth in a number of farming sectors;

82. Insists that, to complement market measures, there is an urgent need to strengthen the position of primary producers within the food-supply chain through a range of actions to address transparency, contractual relationships and unfair commercial practices; takes the view that possible adjustments to competition rules should also be investigated to allow primary producer organisations to become more efficient and grow in size where needed, equipping them with improved negotiating power to stand up to major retailers and processors; in this context, believes that the appointment of national Ombudsmen and/or a European Ombudsman should be considered with a view to solving disputes within the food-supply chain;

83. Recalls that, amongst the current set of market tools and in the context of WTO commitments, export refunds should continue to be phased out in the EU, in parallel with similar measures being taken by WTO partners;

84. Believes that the competitiveness of European agriculture needs to be promoted within and beyond Community borders in order to find ways of meeting the main challenges of the future, including food security in the EU, supplying food to a growing world population, an environmentally sound approach, biodiversity and tackling climate change;

Thursday 8 July 2010

85. Recalls that the EU can fund measures in European and third countries that provide information on, or promote the advantages of, European agricultural and food products in Europe and around the world; believes that the budget for these funds should be reviewed so as to enhance the visibility of EU agricultural and food products on the markets within the EU and in third countries; believes that these promotional schemes should be more widely implemented and have a greater and more effective application under the new CAP;

86. Takes the view that the common agricultural policy must enable a healthier diet to be made available to all consumers, particularly the poorest among them, on the basis of a more varied, accessibly priced range of products; in order to combat poverty and improve health, aid programmes for the poorest in society must be continued, and programmes to boost consumption of fruit and vegetables in schools extended;

87. Believes that the design and implementation of the new CAP should have simplicity, proportionality and the reduction of bureaucracy and of administrative costs at its heart;

*The CAP in the multi-annual financial framework and annual budgetary procedure*

88. Stresses the need, given the new Common Agricultural Policy objectives, to provide adequate funding in the new MFF, in order to be able to better support the policy in accordance with the major challenges this crucial sector for EU food security will have to face in the coming years;

89. Recalls that over the last four years of the current MFF, it was only possible to agree the annual budgets either by using up the existing margins in the different headings of the MFF or through recourse to the revision provided for by paragraph 23 of the Interinstitutional Agreement (IIA) of 17 May 2006 by using the margins available below the ceilings of Heading 2 to finance other EU priorities; points out that, from the 2011 budget year until the expiry of the current MFF (2013), the margins below the ceiling of Heading 2 will be extremely limited;

90. Emphasises that the legally binding nature of the MFF necessitates the introduction of more flexible implementing arrangements so that the Union can respond sufficiently flexibly and effectively to unforeseen events;

91. Draws attention to the fact that, according to Article 314(3) TFEU, the Commission may no longer amend its draft budget once the Conciliation Committee has been convened; recalls that the Commission must present an Amending Letter to update the agriculture forecast in the autumn; insists that the Amending Letter should be available before the EP vote; invites its competent committees to set up an internal procedure in order to define Parliament's position with a view to the Conciliation Committee meeting;

92. Recalls that Pilot Projects (PP) and Preparatory Actions (PA) introduced by the European Parliament have evolved into important tools for the formulation of political priorities and the introduction of new initiatives that often turned into EU activities and programmes, including in the field of agriculture and rural development; believes that pilot projects and preparatory actions could also in the future be a platform for testing new ideas for reforms;

93. Calls on the Commission to give full consideration to the European Parliament's recommendations when working on its communication and drawing up its legislative proposals;

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94. Instructs its President to forward this resolution to the Council and Commission.

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Thursday 8 July 2010

## Arrangements for importing fishery and aquaculture products into the EU with a view to the future reform of the CFP

P7\_TA(2010)0287

### European Parliament resolution of 8 July 2010 on the arrangements for importing fishery and aquaculture products into the EU with a view to the future reform of the CFP (2009/2238(INI))

(2011/C 351 E/18)

The European Parliament,

- having regard to the United Nations Convention on the Law of the Sea of 10 December 1982,
- having regard to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the 'New York Agreement'), signed on 4 August 1995,
- having regard to the FAO Code of Conduct for Responsible Fisheries, adopted on 31 October 1995,
- having regard to the final declaration issued at the World Summit on Sustainable Development held in Johannesburg from 26 August to 4 September 2002,
- having regard to Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy <sup>(1)</sup>,
- having regard to Council Regulation (EC) No 104/2000 of 17 December 1999 on the common organisation of the markets in fishery and aquaculture products <sup>(2)</sup>,
- having regard to its resolution of 12 December 2007 on the common organisation of the market in the fisheries and aquaculture products sector <sup>(3)</sup>,
- having regard to Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing <sup>(4)</sup>,
- having regard to Regulation (EC) No 66/2010 of the European Parliament and of the Council of 25 November 2009 on the EU Ecolabel <sup>(5)</sup>,
- having regard to the Commission Green Paper entitled 'Reform of the Common Fisheries Policy' (COM(2009)0163),
- having regard to its resolution of 25 February 2010 on the Green Paper on the reform of the Common Fisheries Policy <sup>(6)</sup>,
- having regard to the Commission communication entitled 'Building a sustainable future for aquaculture – A new impetus for the Strategy for the Sustainable Development of European Aquaculture' (COM(2009)0162),

<sup>(1)</sup> OJ L 358, 31.12.2002, p. 59.

<sup>(2)</sup> OJ L 17, 21.1.2000, p. 22.

<sup>(3)</sup> OJ C 323 E, 18.12.2008, p. 271.

<sup>(4)</sup> OJ L 286, 29.10.2008, p. 1.

<sup>(5)</sup> OJ L 27, 30.1.2010, p. 1.

<sup>(6)</sup> Texts adopted, P7\_TA(2010)0039.

Thursday 8 July 2010

- having regard to its resolution of 17 June 2010 on a new impetus for the Strategy for the Sustainable Development of European Aquaculture <sup>(1)</sup>,
  - having regard to the Marrakesh Agreement Establishing the World Trade Organization (WTO), signed on 15 April 1994,
  - having regard to the WTO ministerial declaration adopted in Doha on 14 November 2001,
  - having regard to the Commission communication entitled 'Global Europe: competing in the world' (COM(2006)0567),
  - having regard to its resolution of 7 May 2009 on Parliament's new role and responsibilities in implementing the Treaty of Lisbon <sup>(2)</sup>,
  - having regard to the Treaty on the Functioning of the European Union (TFEU),
  - having regard to Rule 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Fisheries and the opinion of the Committee on International Trade (A7-0207/2010),
- A. having regard to the strategic importance of the fisheries and aquaculture sector for supplying the population and for the food balance of both the Member States and the EU as a whole, as well as its considerable contribution to the social and economic wellbeing of coastal communities, local development, employment and the preservation of cultural traditions,
- B. whereas fish is a natural resource that, under proper management, can be renewable and provide both food and jobs within the EU and around the world, and needs to be sustained in order to avoid depletion of fish stocks and subsequent hardship in coastal communities in the EU and abroad; whereas, in this respect, there is a need to strengthen effective fisheries management, including the dimension and impact of international trade on fish resources worldwide,
- C. in the light of the ambitious reform of the Common Fisheries Policy launched by the Commission with the adoption of the Green Paper of 22 April 2009 with a view to reviewing most aspects of that policy,
- D. also in the light of the new Strategy for the Sustainable Development of European Aquaculture set out by the Commission in its communication of 8 April 2009 (COM(2009)0162),
- E. having regard to the specific objectives set for fisheries management at the World Sustainable Development Summit held in Johannesburg in 2002, among them that of, by 2015, bringing down the exploitation of fish stocks to a level compatible with maximum sustainable yield (MSY),
- F. whereas EU fishery and aquaculture production has dropped by about 30 % over the last 10 years,
- G. whereas this drop is a result of both declining fish stocks in EU waters and the measures (rightly) put in place to limit fishing and ensure sustainable management of fish stocks under the CFP, both within and outside EU waters, notably where EU fisheries are conducted by virtue of fisheries partnership agreements,

<sup>(1)</sup> Texts adopted, P7\_TA(2010)0243.

<sup>(2)</sup> Texts adopted, P6\_TA(2009)0373.

Thursday 8 July 2010

- H. whereas EU fisheries represent less than 6 % of world catches,
- I. whereas, although the Green Paper on the reform of the CFP suggests that it may be possible to reverse the trend towards declining catches in the long term, the drastic measures envisaged to promote the regeneration of stocks (such as reduced fleet capacity, more stringent management measures and closer monitoring) will inevitably exacerbate the problem in the short and medium term,
- J. whereas, furthermore, despite the new strategy defined for the area, the multiple constraints on the development of aquaculture in the Community are such that it is unlikely to be able to compensate significantly, in the short or medium term, for the general trend of lower production in the extractive sector,
- K. whereas this makes it essential to encourage additional European production, especially in the new EU Member States with proven aquaculture potential,
- L. whereas, by contrast, demand for fishery and aquaculture products is generally rising in the European Union, with growth especially buoyant in the markets of the new Member States in central and eastern Europe, and whereas various factors are expected to lead to sustained growth in consumption over the next 20 years,
- M. whereas the European Union is now the world's largest market for fishery and aquaculture products (12 million tonnes in 2007, worth EUR 55 billion), ahead of Japan and the USA, whereas it depends very heavily on imports from non-EU countries to meet more than 60 % of demand, and whereas its dependence on imports is likely to be further exacerbated,
- N. whereas it is now clear that the issue of fishery and aquaculture imports into the EU and the conditions under which such imports are produced is absolutely crucial to any analysis of EU policies on fisheries and aquaculture, and whereas particular consideration must be given to this issue in the light of the reforms under way,
- O. whereas all aspects of this issue must be addressed, including commercial, environmental, social, health and quality considerations,
- P. whereas unselective fishing and high levels of discards in some fisheries that export to the EU market mean that significant amounts of fish that would be suitable for human consumption is wasted,
- Q. whereas particular thought must be given to the common organisation of the market (COM) for fishery and aquaculture products, since the current rules are obsolete in a number of respects and must be revised as a matter of urgency,
- R. whereas this reflection also calls for a critical examination of the common commercial policy as applied to this sector in particular, and also of the consistency of the decisions taken in that framework with the need to preserve a viable and responsible European fisheries sector,
- S. whereas, although fishery and aquaculture products continue to receive a level of theoretical customs protection under the Common Customs Tariff (CCT) which is slightly above average for non-agricultural products, in practice this protection is significantly diminished by various exemptions and reductions, applied autonomously or on the basis of agreements, meaning that imports actually subject to MFN tariffs (applicable by default) account for about 5 % of the total,
- T. whereas the policy to open up EU markets for fishery and aquaculture imports is likely to continue, both at multilateral level, in the context of WTO negotiations, especially the Doha Round talks on non-agricultural market access (NAMA), and in the context of a raft of preferential talks currently under way with all kinds of trading partners in Asia, Latin America, North America and the Mediterranean basin and with various groups in the ACP countries,

Thursday 8 July 2010

- U. whereas the conclusion of the Doha Round NAMA talks on the basis of the 'Swiss formula' as currently envisaged (with a coefficient of 8) would reduce the maximum customs tariff applicable to fishery and aquaculture products in the EU from 26 % to about 6 % and the average tariff from 12 % to about 5 %,
- V. whereas such a decision, as well as almost completely negating the protective effect of the tariffs still in place, would seriously erode the preferences already granted to developing countries and those currently being negotiated, rendering them utterly meaningless, and whereas it would undermine the very foundations of the COM mechanisms allowing access to the EU market to be adjusted according to the needs of the European fishery and aquaculture processing industry (tariff suspensions and tariff quotas),
- W. whereas the EU's requirement for coherence between its development policy objectives (eliminating poverty, development of sustainable local fisheries) and its trade policy implies that developing countries should be encouraged to export fisheries products with a greater added value, provided that the fish comes from well-managed and sustainable fisheries and meets the necessary sanitary conditions,
- X. whereas, moreover, in recent years EU trade negotiators have tended to agree more easily to derogations from the rules on preferential origin traditionally applied to fishery and aquaculture products, including both raw products (criteria for determining vessels' nationality) and processed products (possibility to keep preferential status despite the use of non-originating raw materials),
- Y. whereas an FAO study has demonstrated that, even if international trade in fish products can lead to increased food security in developing countries, it has also led to increased fishing in order to supply the export market, which can exacerbate stock depletion, meaning that it is necessary to ensure that fisheries are properly managed and controlled to prevent depletion of stocks,
- Z. having regard to the partially divergent interests of European fishermen and fish farmers, processing industries, distributors, importers and consumers, which the policies pursued at European level should endeavour to reconcile in an effective and balanced manner,
- AA. having regard to the need to ensure acceptable outlets for Community producers (fishermen and aquaculture enterprises) on a basis of sufficiently remunerative prices, taking account of the costs, constraints and imponderables related to their activity,
- AB. having regard to the need to ensure that Community processors can benefit from raw materials of uniform quality, in sufficient quantities and at stable prices all year long,
- AC. having regard to the need to satisfy the demand from consumers in the Community for high-quality products at competitive prices and to take account of their increasing desire for information on those products' characteristics and origin and the conditions under which they were caught or produced,
- AD. having regard to the differentiated impact of imports on the EU market depending on the species concerned, the degree of processing and the distribution circuits used,
- AE. whereas, for example, a depressive effect on prices at the initial point of sale caused by competition from imports would appear to be a more sensitive issue for 'industrial' species (those destined for the processing industry) than for non-industrial species,

Thursday 8 July 2010

**General considerations**

1. Deplores the fact that the Green Paper on the reform of the Common Fisheries Policy devotes only a few lines to the issue of imports, and clearly underestimates the importance of addressing this issue properly for the credibility and success of the reform;
2. Notes that the liberalisation of access to the EU market for fishery and aquaculture imports is already very advanced as a result of the commercial policy pursued by the EU over the last 20 years;
3. Notes that EU fishery and aquaculture production falls well short of the needs of the processing industry and growing consumer demand, and will continue to do so; acknowledges, therefore, the need to promote responsible consumption, based upon quality and sustainability rather than quantity, the need to reinforce fisheries management to promote stock recovery and the fact that imports will continue to play an important role in supplying the EU market;
4. Recognises that there is an upper limit on the amount of fish that can be caught on a sustainable basis, either for human consumption or for industrial purposes, which means that supplies of fish to the EU market cannot increase ad infinitum;
5. Emphasises, however, the overriding need to ensure that the EU retains environmentally sustainable and economically viable fishery and aquaculture sectors – including small-scale operations – that are spread harmoniously along its coastline, help to preserve the cultural identity of the regions concerned, provide jobs at all stages of production, and supply safe, good-quality food, which implies that fishers receive a fair price for their product; stresses also that employees in the fishing industry should work under reasonable conditions and in accordance with the ILO's conventions on health and safety at work;
6. Notes that the current openness of the Community market to exports of fishery and aquaculture products can - under certain circumstances - have a negative impact on the local economy in certain regions, especially the most remote regions in relation to selling their local products;

**Specific considerations***Trade and customs policy*

7. Considers that the EU, as the world's largest importer of fisheries products, shares political responsibility with other major fish importing countries for ensuring that the WTO trade rules respect the highest possible global standards of fisheries management and conservation; to this end, calls on the Commission to ensure that fair, transparent and sustainable trade in fish is strengthened in the EU's bilateral and multilateral trade agreements;
8. Takes the view that tariff protection is reasonable and should continue to be an important and legitimate instrument enabling the authorities to regulate imports; points out that erga omnes tariff protection is the key aspect of the preferences granted by the EU to certain countries, in particular developing countries; points out that abolishing that protection would deprive countries benefiting from preferences of all the advantages they currently have; also points out that this tariff protection is adjustable, which is useful, and can be suspended by the EU where commodity production in the Community is insufficient for properly supplying its processing industry;
9. Cannot, therefore, accept the idea – promoted through the commercial policy currently being pursued – that all tariff protection in the fishery and aquaculture production sector must eventually be abolished, and that European producers (fishermen, fish farmers and processors) have no other choice than to resign themselves to this situation;

Thursday 8 July 2010

10. Takes the view that, like agriculture, fisheries and aquaculture are strategic sectors with multiple functions, which depend on the conservation and sustainable use of natural resources and include extremely vulnerable segments that do not lend themselves to a purely free-trade approach based on the free play of the comparative advantages;
11. Deplores the fact that unlike trade talks on agricultural products, which are headed up by the Agriculture Commissioner, talks on fishery and aquaculture products are considered to be 'non-agricultural' negotiations and responsibility for them lies with the Trade Commissioner, to whom they are simply an adjustment variable within a wider body of issues;
12. Calls for responsibility for heading up trade talks on fishery and aquaculture products to be transferred from the Trade Commissioner to the Commissioner for Maritime Affairs and Fisheries;
13. Calls for the development, through a series of studies and consultations, of a clear and complete picture of the Community market in fishery and aquaculture products, species by species, as well as of likely trends in demand and production in the Community and of the outlets expected to be maintained for production in a context of fair competition;
14. Calls also for the Commission to make efforts to assess more reliably and more accurately the impact of imports of fishery and aquaculture products on the Community market, in particular as regards prices, and work on introducing a data collection and exchange system so as to facilitate that assessment process;
15. Demands that fishery and aquaculture products be treated as sensitive products for the purposes of applying the 'Swiss formula' in the WTO's Doha Round NAMA talks, to prevent the erosion of tariff protection which still applies to some products under the CCT, thereby preserving the value of the preferences granted to some partners and the effectiveness of COM mechanisms;
16. Recalls that, in accordance with paragraph 47 of the Doha ministerial declaration of 14 November 2001, the current round of talks is based on the 'single undertaking' principle, and that until the entire round has been concluded the European Union is still entitled to review its position on particular chapters;
17. Also encourages the Union's WTO negotiators to continue categorically to refuse to involve the EU in any initiative aimed at multilateral sectoral liberalisation of the fishery and aquaculture sector;
18. Calls on the Commission to insist that any agreement now under negotiation at the WTO that is concluded on subsidies in the fisheries sector, in particular as regards market regulation measures, must not put European producers at a competitive disadvantage vis-à-vis third-country suppliers; is opposed on principle to any separate and early implementation ('early harvest') of such an agreement, which must remain inextricably linked to the other components of the Doha Round;
19. Asks the EU representatives negotiating bilateral and regional agreements to require more systematically a real quid pro quo in exchange for trade concessions to non-EU countries on imports of fishery and aquaculture products, resolutely defending any offensive interests of the EU in this sector;
20. Emphasises that the EU needs to retain control over the trade preferences that it grants to certain partners by insisting on the application of strict rules of origin based on the concept of 'wholly obtained' products; urges caution, in respect of raw products, with regard to granting any derogations from the traditional criteria for determining vessels' nationality, and demands that any new requests for derogations in respect of processed products be rejected; considers that the 'no-drawback' rule should be applied systematically and origin cumulation possibilities should be limited;

Thursday 8 July 2010

21. Urges the Commission to improve, quantitatively and qualitatively, the analysis of the impact on the fisheries and aquaculture sectors of tariff preferences granted to certain countries, in particular as regards business profitability and employment, both in the EU and in the beneficiary countries, particularly the ACP countries; also stresses that those assessments must provide duly quantified results and take particular account of vulnerable fish species;

22. Draws attention to the option for the Community industry of making use of the EU's commercial defence instruments in the event of dumping, subsidisation or increase on a large scale and without warning of imports for certain categories of fishery and aquaculture products;

*Environmental, social, health and quality aspects*

23. Believes that it should be one of the key aims of EU policy on fishery and aquaculture imports to ensure that imported products meet the same requirements that apply to EU production in every respect; believes that this aim reflects basic concerns in relation to the fairness, consistency and effectiveness of the measures currently applied in the sector or envisaged as part of the reform; further notes that compliance by non-EU countries with EU requirements will help create more equal competition between production in the EU and production in non-EU countries as a result of the higher costs involved for non-EU countries in producing fish in accordance with EU standards;

24. Is concerned that the massive influx of fishery and aquaculture products onto the Community market from third countries could influence consumers' buying habits;

25. Considers that EU efforts to conserve fish stocks and make fishing sustainable, pursued through the CFP, are incompatible with importing fishery and aquaculture products from countries which are stepping up their fishing efforts without concern for sustainability and are only interested in short-term profitability;

26. Stresses that, via the recovery and management plans in particular, Community policy on conserving resources is helping to encourage imports of fishery and aquaculture products from third countries and to make it possible for them to supplant Community production in what is in many instances an irreversible process; calls on the Commission to take that risk duly into account when drawing up those plans;

27. Fears that – in the absence of an established policy in that regard – the powerful attraction of a very largely open and fast-growing EU market for fishery and aquaculture products constitutes a permanent incentive to over-fishing on the part of the countries concerned;

28. Welcomes the recent entry into force of rules to combat illegal, unreported and unregulated fishing by requiring that all products placed on the EU market carry certification; encourages rigorous and effective application of those rules, while acknowledging the need of many developing countries for help with implementing the rules properly and combating illegal fishing; points out, however, that they constitute the bare minimum necessary and are insufficient to guarantee the sustainability of the fisheries from which the products in question come;

29. Believes that, in addition to applying the Community rules on IUU fishing, it is necessary to exercise stricter downstream controls on the marketing of such fish, notably by means of more rigorous audits of the Member States and of enterprises suspected of supplying products originating in illegal fishing;

30. Asks the Commission to use all the tools available to it to ensure that the main countries exporting fishery and aquaculture products to the EU fulfil the undertakings given in Johannesburg and apply rigorous policies to conserve stocks; encourages it to cooperate with these countries in all appropriate forums and especially in regional fisheries management organisations (RFMOs);

Thursday 8 July 2010

31. Takes the view that the Union must also enforce those undertakings in order to ensure that all products exported to the European Union, without exception, are from countries that have ratified the main international agreements in the field of maritime law, in particular the United Nations Convention on the Law of the Sea and the Convention on Straddling and Highly Migratory Fish Stocks, and, where exports are from waters managed by an RFMO, that they are contracting parties to the relevant RFMO agreement;

32. Highlights the serious disadvantages suffered by EU fishermen, fish farmers and fish processors in competing with certain non-EU countries, as a result of the much lower labour costs in those countries and the less stringent social standards applied there;

33. Believes that the problem of social dumping, although not confined to the fishery and aquaculture sector, is particularly acute there and especially in processing activities, which are highly labour-intensive;

34. Asks the Commission to use all the tools available to it to ensure, at least, that the main countries exporting fishery and aquaculture products to the EU comply with the eight ILO conventions on basic workers' rights;

35. Demands that all the trade preferences granted by the EU in respect of fishery and aquaculture products be made strictly conditional upon the fulfilment of stringent environmental and social requirements; further demands that provisions to this effect in agreements concluded should include credible mechanisms for monitoring compliance with the undertakings given and for suspending the preferences, or simply withdrawing them, if the undertakings are breached; calls, in the case of developing countries, for the implementation of programmes specifically designed to grant technical support, and financial support if necessary, in order to help the affected States to respect their social and environmental commitments;

36. Emphasises the importance of rigorously applying all aspects of EU law in relation to health standards and inspections (including food safety, traceability and prevention), which are crucial aspects for consumer protection, to fishery and aquaculture imports, including feedstuffs and feed materials; urges the Commission, in this respect, to enhance its programme of third country inspections by fine-tuning Food and Veterinary Office missions, primarily by increasing the number of establishments inspected on each mission, in order to obtain results that better reflect the real situation in third countries;

37. Urges the utmost caution with regard to recognising the requirements in force in certain non-EU countries as equivalent to those of the EU for the purposes of applying the above-mentioned legislation and in relation to approving lists of countries and establishments authorised to export fishery and aquaculture products to the EU; considers that DG SANCO should be able to remove individual vessels or processing plants from such approved lists where they fail to meet minimum standards;

38. Advocates an extremely vigilant approach to products from new, particularly intensive, types of aquaculture practised in certain regions of the world and calls for a critical study of the productivity-boosting techniques and procedures used in the plants in question and of their possible health implications as well as their local social and environmental impact;

39. Demands that the checks carried out at all levels – and especially in the context of effectively harmonised and transparent border controls – should be of a thoroughness and regularity commensurate with the risks inherent in the products concerned, particularly with regard to their nature and provenance; asks the Member States to make available all the financial and human resources required for that purpose;

#### *Revision of the COM*

40. Draws attention to the various resolutions that it adopted during the 6thth parliamentary term asking the Commission, as a matter of urgency, to carry out a far-reaching revision of the COM in fishery products to enable it to contribute better to guaranteeing earnings in the sector, ensuring market stability, improving the marketing of fishery products and increasing the added value generated; deplores the fact that this work has been delayed; points to the resolutions as a reference for determining the main aims of such revision;



Thursday 8 July 2010

41. Emphasises that it is absolutely essential for the new mechanisms introduced under the revision to address the reality of fierce competition from low-cost imports resulting from practices that are damaging to the environment or equivalent to a form of social dumping, and to endeavour, nonetheless, to ensure that EU production can be marketed normally and sufficiently profitably;

#### *Consumer information*

42. Expresses its conviction that European consumers would often make different choices if they were better informed about the true nature of products on sale, their geographical origins, the conditions under which they were produced or caught and their quality;

43. Emphasises the urgent need to introduce stringent and transparent criteria for certifying and labelling in respect of the quality and traceability of European fishery and aquaculture products and to promote the introduction, as soon as possible, of specific EU ecolabelling for such products in order to put an end to the uncontrolled proliferation of private certification systems;

44. Believes that the ecocertification and ecolabelling of fishery and aquaculture products should be a process that is transparent and easily understandable by the consumer, and should be available to the whole sector without exception, subject to strict compliance with the basic award criteria;

#### *Aquaculture*

45. Highlights the fact that aquaculture products account for a growing proportion of fishery and aquaculture imports into the EU;

46. Attributes this phenomenon to the marked expansion of fish farming in certain regions of the world over the past 10 years – a period of stagnation for EU aquaculture, which accounts for just 2 % of the sector's global output;

47. Notes the existence of significant substitution effects, in terms of consumer habits and demand on the part of distributors in the EU, as between fresh products of Community origin and certain types of imported aquaculture products;

48. Sees a determined policy of supporting and developing sustainable aquaculture, with a reduced environmental impact, in the EU as one of the key aspects of a strategy to reduce dependence on fishery and aquaculture imports, stimulate economic activity in the EU and offer a more plentiful and varied supply in response to the rapidly rising demand; stresses, in this connection, the need to aggressively pursue R&D concerning European aquaculture products;

49. Points, in this regard, to its resolution of 17 June 2010 on a new impetus for the Strategy for the Sustainable Development of European Aquaculture;

50. Calls on the Commission and the Member States to take due account of the main recommendations contained in this report in their proposals and decisions related to the reform of the Common Fisheries Policy;

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51. Instructs its President to forward this resolution to the Council and the Commission.

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Thursday 8 July 2010

## Zimbabwe, in particular the case of Farai Maguwu

P7\_TA(2010)0288

### European Parliament resolution of 8 July 2010 on Zimbabwe, notably the case of Farai Maguwu

(2011/C 351 E/19)

The European Parliament,

- having regard to its numerous previous resolutions on Zimbabwe, most recently that of 17 December 2008 <sup>(1)</sup>,
- having regard to Council Common Position 2010/92/CFSP of 15 February 2010 <sup>(2)</sup> renewing until 20 February 2011 the restrictive measures against Zimbabwe imposed under Common Position 2004/161/CFSP <sup>(3)</sup>, and to Commission Regulation (EC) No 1226/2008 of 8 December 2008 <sup>(4)</sup>, amending the Common Position,
- having regard to the Foreign Affairs Council conclusions of 22 February 2010 on Zimbabwe, and to the conclusions of the 10th EU-South Africa Ministerial Political Dialogue of 11 May 2010 on Zimbabwe,
- having regard to previous UN resolutions on blood diamonds, and in particular to UN Security Council resolution 1459 (2003) on the Kimberley Process Certification Scheme,
- having regard to the Kimberley Process Certification Scheme (KPCS), which requires its members to certify that rough diamonds are not used to finance armed conflicts,
- having regard to the African Charter on Human and Peoples' Rights, which Zimbabwe has ratified,
- having regard to the communiqué of the Seventh Plenary Session of the Kimberley Process Certification Scheme (KPCS), held at Swakopmund, Namibia, on 5 November 2009, in particular paragraphs 13, 14 and 22 thereof,
- having regard to the Intersessional Meeting of the Kimberley Process, held in Tel Aviv, Israel, on 21-24 June 2010,
- having regard to the EU-ACP Cotonou Partnership Agreement, signed on 23 June 2000,
- having regard to Rule 122(5) of its Rules of Procedure,
- A. whereas Zimbabwe is a voluntary member of the Kimberley Process Certification Scheme, which enables members to sell rough diamonds on the legitimate international market provided that their trade does not finance armed conflicts,
- B. whereas the Kimberley Process does not currently address human rights abuses,
- C. whereas it is estimated that Zimbabwe could become one of the largest diamond producers in the world within the next few years should the Marange (Chiadzwa) diamond field in Manicaland province be fully developed, potentially generating billions of euros in revenue,

<sup>(1)</sup> Texts adopted, P6\_TA(2008)0640.

<sup>(2)</sup> OJ L 41, 16.2.2010, p. 6.

<sup>(3)</sup> OJ L 50, 20.2.2004, p. 66.

<sup>(4)</sup> OJ L 331, 10.12.2008, p. 11.

Thursday 8 July 2010

- D. whereas in November 2009, in Swakopmund (Namibia), Zimbabwe undertook to carry out a series of actions to bring diamond mining in Marange into compliance with the Kimberley Process Certification System,
- E. whereas the Intersessional Meeting of the Kimberley Process held in Tel Aviv from 21 to 23 June 2010 was not able to reach consensus regarding possible inclusion of human rights considerations in the Kimberley Process,
- F. whereas numerous international NGOs (including Human Rights Watch, Global Witness and Partnership for Africa-Canada) have raised serious concerns about the human rights situation in Chiadzwa, particularly in relation to human rights abuses by members of the Zimbabwean security forces,
- G. whereas Farai Maguwu, a Zimbabwean citizen and founder/director of the Centre for Research and Development (CRD), a human rights NGO based in Manicaland, has identified serious human rights violations by the Zimbabwean state security forces in several Zimbabwean diamond fields, most notably in Chiadzwa,
- H. whereas Farai Maguwu was arrested by the Zimbabwean authorities on 3 June 2010 on charges of publishing information prejudicial to the Zimbabwean State and has since been detained in poor conditions and denied his essential medication, the right to have his case heard by a judge within 48 hours of arrest and the right to bail,
1. Demands the immediate and unconditional release of Farai Maguwu and condemns the conditions of his arrest and detention;
  2. Insists that the Zimbabwean authorities honour their Kimberley Process commitments made at the Swakopmund meeting, fully demilitarise the Marange diamond fields, and institute proper measures to maintain law and order in a way which is respectful of the rights of the local people;
  3. Calls for the revision of the Kimberley Process to take proper account of human rights principles;
  4. Insists that the Zimbabwe Government use the substantial revenue that diamond mining in Chiadzwa is likely to generate as the basis for the regeneration of the Zimbabwean economy as a whole, and as a means of providing the health, education and social funding currently provided by international donors, and to that end urges the government to establish a sovereign Diamond Trust Fund that would be placed at the service of the people of Zimbabwe;
  5. Calls on the Zimbabwean Government to guarantee and uphold the unrestricted right to free speech in Zimbabwe, so that NGOs (such as Farai Maguwu's Centre for Research and Development) can freely express opinions without fear of persecution or imprisonment;
  6. Calls for the Kimberley Process to ensure that the Monitor for Zimbabwe acts with complete independence, integrity and regard for human rights;
  7. Calls on South Africa and the Southern Africa Development Community (SADC), in their own interests as well as those of Zimbabwe and the wider southern African region, to take active steps to encourage a return to full democracy in Zimbabwe and respect for the rule of law and the human rights of the people of Zimbabwe; recognises that Mugabe and his close supporters remain a continuing stumbling block in the process of political and economic reconstruction and reconciliation in Zimbabwe, plundering as they do its economic resources for their own benefit;

Thursday 8 July 2010

8. Welcomes the recent renewal (February 2010) of the EU's list of banned individuals and entities with links to the Mugabe regime; emphasises that these restrictive measures are aimed solely at elements of the Zimbabwean regime and will in no way impact on the Zimbabwean people as a whole;

9. Emphasises the importance of dialogue between the European Union and Zimbabwe and welcomes the progress that has been made in this direction;

10. Instructs its President to forward this resolution to the Council, the Commission, the governments of the Member States and candidate countries, the High Representative of the Union for Foreign Affairs and Security Policy / Vice-President of the European Commission, the Governments and Parliaments of Zimbabwe and South Africa, the Co-Presidents of the EU-ACP Joint Parliamentary Assembly, the African Union institutions including the Pan-African Parliament, the UN Secretary-General, the Secretary General of the SADC, the rotating Chairman of the Kimberley Process (Israel) and the Commonwealth Secretary-General.

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### Venezuela, in particular the case of Maria Lourdes Afiuni

P7\_TA(2010)0289

#### European Parliament resolution of 8 July 2010 on Venezuela, in particular the case of Maria Lourdes Afiuni

(2011/C 351 E/20)

*The European Parliament,*

— having regard to its previous resolutions on the situation in Venezuela, in particular those of 11 February 2010, 7 May 2009, 23 October 2008 and 24 May 2007,

— having regard to Rule 122(5) of its Rules of Procedure,

A. whereas the separation and independence of powers form the basis of any democratic and constitutional State,

B. whereas, on 10 December 2009, Maria Lourdes Afiuni, 'Judge of Control' of Caracas, acting under Venezuelan laws and following an opinion of the UN Working Group on Arbitrary Detention, granted parole (under severe restrictions, including passport withdrawal) to Eligio Cedeño, who had been in pre-trial detention since February 2007,

C. whereas the pre-trial detention period is limited to two years under Venezuelan law, and whereas Judge Afiuni, in issuing the decision, upheld fundamental rights protected under Venezuelan and international law,

D. whereas Judge Afiuni was immediately arrested without charge at the court by officials of the DISIP (Directorate of Intelligence and Prevention) and was transferred on 12 December 2009 to the INOF (Instituto Nacional de Orientación Femenina), a maximum security prison, where she is still being held more than six months later, under conditions which continue to endanger her physical and mental well-being as up to 24 inmates were convicted by her for crimes such as homicide, drug trafficking and kidnapping; whereas, during her detention, she has been subjected to insults, threats, verbal and physical attacks and attempts on her life,

E. whereas on 11 December 2009, President Hugo Chávez, in a speech broadcast on TV, called her a bandit, asking the Attorney General to apply the maximum penalty and even urging the National Assembly to pass a new law to aggravate sentences for this type of behaviour, to be enforced retroactively,

Thursday 8 July 2010

- F. whereas Article 26 of the Venezuelan Constitution states that the judiciary should be autonomous and independent and that the President of the Republic of Venezuela is responsible for guaranteeing the independence of the judiciary,
- G. whereas, following the President's statements against Judge Afiuni, she was charged with abuse of authority, corruption, conspiracy and being accessory to an escape, and whereas, although the prosecutor has shown that she had not received money and that there was therefore no evidence of corruption, she is still in prison,
- H. whereas Judge Afiuni's case has prompted a string of reports, resolutions and statements condemning the Venezuelan authorities and voicing solidarity with her, as lawyers and magistrates from around the world, NGOs such as Amnesty International and Human Rights Watch, and the United Nations High Commissioner for Human Rights have expressed their concern regarding her situation, stating that she is jailed because of her integrity and fight for the independence of the judiciary, and the Inter-American Commission on Human Rights has requested precautionary measures to ensure her personal safety,
- I. whereas Judge Afiuni's case is not an isolated attack by the political authorities on the judiciary, with some judges having been dismissed and others having chosen to go into exile,
- J. whereas the deterioration of democracy in Venezuela is manifest in other areas as well, particularly with regard to freedom of press, including on the internet, which has been constantly attacked by the government and against which a wide range of measures have been taken, including the shutting down of newspapers, radio stations, websites and television channels,
- K. whereas freedom of the media is of vital importance to democracy and respect for basic freedoms, given the media's fundamental role in guaranteeing the freedom to express one's opinions and ideas, duly respecting the rights of minorities, including political opposition groups, and contributing to effectively involving individuals in the democratic processes, thereby enabling free and fair elections to take place,
- L. whereas, with a view to the parliamentary elections due to be held on 26 September 2010, the National Electoral Council has, at the request of the government, modified the constituency boundaries for the election of the 167 Members of the National Assembly, changes that affect up to 80 % of the states governed by the opposition,
- M. whereas measures such as arbitrary confiscation and expropriation, involving more than 760 enterprises since 2005, some of them affecting EU interests, undermine the basic social and economic rights of citizens,
- N. having regard to the tense political situation in Venezuela, reflected in the harassment, threats, intimidation and political and criminal persecution directed at the democratic opposition, its representatives, its democratically elected mayors and governors, the student movement, members of the army and the judiciary, opponents of Chavez official policy, journalists and the media, which has led to the imprisonment of many of them for political reasons,
1. Deplores the attacks on the independence of the judiciary; voices its concern at the arrest of Judge Afiuni and considers it a violation of her basic personal rights and a very serious threat to the independence of the judiciary, which is the basic pillar of the rule of law;
  2. Calls for her release and calls on the Venezuelan Government to be committed to the values of the rule of law, facilitating a fair and rapid trial, with all the necessary legal guarantees;
  3. Expresses its concern at the conditions of detention of Judge Afiuni, which pose a threat to her physical and psychological integrity, and calls on the prison authorities strictly and immediately to apply the measures and recommendations advocated by the Inter-American Commission on Human Rights on 11 January 2010 regarding Ms Afiuni's conditions of detention;

Thursday 8 July 2010

4. Condemns the public statements made by the President of the Republic of Venezuela, insulting and denigrating the judge, demanding a maximum sentence and requesting a modification of the law to enable a more severe penalty to be imposed; considers that these statements are aggravating the circumstances of her detention and constitute an attack on the independence of the judiciary by the President of a nation, who should be its first guarantor;
5. Reminds the Government of the Bolivarian Republic of Venezuela of its obligation to respect freedom of expression and opinion and freedom of the press and to respect the independence of the judiciary as it is bound to do under its own Constitution and under the different international and regional conventions and charters to which Venezuela is a signatory; believes that the Venezuelan media should guarantee pluralistic coverage of Venezuelan political and social life;
6. Calls on the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy to make representations to the Venezuelan authorities with a view to expressing the EU's concern regarding respect for human rights, democracy and the rule of law in this South American country and to firmly upholding the interests and property of citizens and companies from EU Member States;
7. Points out that, under the Organisation of American States' Inter-American Democratic Charter, in a democracy, in addition to clear and necessary legitimacy of origin, grounded in and obtained at the polls, legitimacy of exercise must also be complied with, and this must be founded on respect for pluralism, the established rules, the constitution in force, the laws and the rule of law as a guarantee of a fully functioning democracy, and this must of necessity include respect for peaceful and democratic political opposition, especially where that opposition has been elected in the polls and enjoys a popular mandate;
8. Calls on the Venezuelan Government, with a view to the parliamentary elections on 26 September 2010, to respect the rules of democracy and the principles of freedom of expression, assembly, association and election, as well as to invite the European Union and international bodies to observe these elections;
9. Instructs its President to forward this resolution to the Council, the Commission, the High Representative of the Union for Foreign Affairs and Security Policy, the Government and National Assembly of the Bolivarian Republic of Venezuela, the Euro-Latin American Parliamentary Assembly and the Secretary-General of the Organisation of American States.

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## North Korea

P7\_TA(2010)0290

### European Parliament resolution of 8 July 2010 on North Korea

(2011/C 351 E/21)

*The European Parliament,*

- having regard to its previous resolutions on the Korean Peninsula,
- having regard to the Charter of the United Nations, the Universal Declaration of Human Rights, the International Covenants on Human Rights and other human rights instruments,
- having regard to the United Nations Human Rights Council Resolution 'Situation of human rights in the Democratic People's Republic of Korea' adopted on 25 March 2010 and supported by the EU Member States, which condemned the 'systematic, widespread and grave violations of civil, political, economic, social and cultural rights' and 'grave, widespread and systematic human rights abuses' by the DPRK,
- having regard to United Nations Security Council Resolutions 1718 (2006) and 1874 (2009),

Thursday 8 July 2010

- having regard to the United Nations General Assembly Third Committee Resolution on the ‘Situation of human rights in the Democratic People’s Republic of Korea’ adopted at the 64th Session on 19 November 2009,
  - having regard to Council Decision 2009/1002/CFSP of 22 December 2009,
  - having regard to the Universal Peer Report on the Democratic People’s Republic of Korea of 7 November 2009, and to the agreement on the part of the DPRK to examine 117 recommendations contained in the Report of the Working Group on Universal Periodic Review, Human Rights Council, adopted on 18 March 2010,
  - having regard to the Report of the Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea, Vitit Muntarbhorn, of 17 February 2010,
  - having regard to the 29th round of the EU-China Dialogue on Human Rights of 29 June 2010 in Madrid, where the issue of North Korean refugees was discussed,
  - having regard to Rule 122(5) of its Rules of Procedure,
- A. whereas the human rights situation in the DPRK remains deeply preoccupying, while the humanitarian situation gives serious reasons for concern,
- B. whereas the United Nations Human Rights Council Resolution of 25 March 2010 on the ‘Situation of human rights in the Democratic People’s Republic of Korea’ expressed deep concern about the continuing reports of systematic, widespread and grave violations of civil, political, economic, social and cultural rights in the DPRK,
- C. whereas the United Nations Special Rapporteur on the Situation of Human Rights in the DPRK described the human rights situation as ‘abysmal’ in his annual report to the UN Human Rights Council,
- D. whereas the Government of the DPRK rejects the mandate of the Special Rapporteur on the situation of human rights in North Korea, has refused him access to the country and resists cooperation with the UN human rights mechanisms,
- E. whereas the report of the UN Special Rapporteur stated that the resumption of Six-Party Talks on denuclearisation would also be an opportunity to provide space for an improved human rights environment,
- F. whereas the UN Special Rapporteur has suggested that the Security Council consider the human rights violations in the DPRK and that a Commission of Inquiry should be established to investigate alleged crimes against humanity by the DPRK Government,
- G. whereas numerous international nongovernmental human rights organisations have called on the European Union to concern itself more with North Korean human rights issues,
- H. whereas the United Nations Human Rights Council Resolution deplores the grave, widespread and systematic human rights abuses in the DPRK, in particular the use of torture and labour camps against political prisoners and repatriated citizens of the DPRK,

Thursday 8 July 2010

- I. whereas the DPRK state authorities systematically carry out extrajudicial killings, arbitrary detentions and disappearances,
- J. whereas the justice system is subservient to the State and the death penalty is applied for a broad range of crimes against the State and is extended periodically by the Criminal Code, while citizens, including children, are forced to attend public executions,
- K. whereas the DPRK Government does not allow organised political opposition, free and fair elections, free media, religious freedom, freedom of association or collective bargaining,
- L. whereas the kidnapping and abduction of third-country citizens from Japan, the Republic of Korea and other countries, allegedly including EU citizens, remains unresolved and requires decisive action by the international community,
- M. whereas a significant number of North Koreans flee to the People's Republic of China, where many women are reportedly subjected to human trafficking and forced marriages, whereas the PRC reportedly forcibly returns North Korean refugees to the DPRK in violation of international norms on the prohibition on refoulement and allegedly also prohibits DPRK citizens from accessing UNHCR asylum procedures, in violation of the 1951 UN Convention on Refugees and its 1967 Protocol, to which the PRC has acceded, and whereas there are disturbing reports as to the fate of those citizens forcibly returned,
- N. whereas the state practice of guilt by association results in entire families being imprisoned, including children and grandparents; whereas these prisoners are exposed to gross human rights violations, torture, starvation, slave labour and, according to reports, an estimated 100 000 may have already have perished, often of exhaustion or untreated diseases,
- O. whereas satellite images and various accounts by North Korean defectors substantiate allegations that the DPRK operates at least six concentration camps, with over 150 000 political prisoners, and that, if the figures for all the other categories of prisoners are added, such as those forcibly repatriated from the PRC, an estimated 200 000 people are incarcerated in detention centres,
- P. whereas large parts of the population are suffering from starvation and are to a large extent dependent on international food aid, and whereas the World Food Program reported in September 2009 that a third of North Korean women and children were malnourished,
- Q. whereas the society is governed by a 'military first' policy and the *juche* ideology, which requires veneration of the country's leader,
- R. whereas according to credible reports by defectors, the population is subjected to forced labour mobilisation campaigns, while people's access to education and employment opportunities are based on their *songbun* (social class status), which is determined by their or their family's loyalty to the regime,
- S. whereas the 'currency reform' of 30 November 2009 has resulted in severe damage to the already failing economy and has led to the further impoverishment of non-privileged sections of society, resulting in serious social discontent,
- T. whereas no foreign journalist is allowed unrestricted access to the DPRK and whereas the Korean Central News Agency is the only source of information for all media outlets in North Korea, while radios and TVs can only receive signals from government stations and the reception of foreign broadcasts is strictly prohibited, with severe sanctions applied; whereas the general population of the country has no access to the internet,



Thursday 8 July 2010

1. Calls on the DPRK to put an immediate end to the ongoing grave, widespread and systematic human rights violations perpetrated against its own people, which may amount to crimes against humanity and thus be subject to international criminal jurisdiction;
2. Calls on the DPRK to immediately and permanently stop public executions and abolish the death penalty in the DPRK;
3. Calls on the DPRK to put an end to extrajudicial killings and enforced disappearances, to stop the use of torture and forced labour, to release political prisoners and to allow its citizens freedom of travel;
4. Calls on the DPRK authorities to ensure access to food and humanitarian assistance for all citizens on the basis of need;
5. Calls on the DPRK to allow free expression and press freedom, as well as uncensored access to the internet for its citizens;
6. Calls on the EU to support the establishment of a UN Commission of Inquiry to assess past and current human rights violations in the DPRK in order to determine to what extent such violations and impunity associated with the abuses may constitute crimes against humanity, and calls on EU Member States to sponsor a UN resolution at the General Assembly to that end;
7. In view of the gravity of the situation, calls on the EU to appoint an EU special representative on the DPRK to ensure persistent attention and coordination both within the European Union and with key partners such as the United States and the RoK;
8. Calls on the DPRK authorities to follow the recommendations of the Report of the Working Group on the Universal Periodic Review by the Human Rights Council, and, as a first step, to allow inspection of all types of detention facilities by the International Committee of the Red Cross and other independent international experts, and to allow UN Special Rapporteurs to visit the country;
9. Calls on the Government of the DPRK to ensure a comprehensive investigation with a transparent and satisfactory outcome, to hand over finally and completely all information on the EU citizens and third-country nationals who are suspected to have been abducted by North Korean state agents during past decades, and to release immediately those abductees still being held in the country;
10. Urges EU Member States to continue granting North Korean refugees asylum and to adopt a more systematic approach to organising European and international protection for North Koreans fleeing the desperate situation at home, and calls on the Commission to continue to support civil-society organisations helping North Korean refugees;
11. Calls on the PRC to stop arresting and returning North Korean refugees to the DPRK, to fulfil its obligations under the 1951 Refugee Convention and its 1967 Protocol, to allow the UNHCR access to North Korean refugees to determine their status and assist their safe resettlement, and to grant North Korean women married to PRC citizens legal resident status;
12. Calls on the PRC to use its close relations with the DPRK to promote economic and social reform in the country, with a view to improving the living conditions and social rights of the North Korean population;

**Thursday 8 July 2010**

13. Calls on the Commission to raise the human rights situation in the DPRK and the issue of North Korean refugees in the PRC in all EU-China high-level talks and in the EU-China Dialogue on Human Rights;
  14. Calls on the Commission to maintain existing humanitarian aid programmes and channels of communication with the DPRK, and to rigorously monitor the distribution of food aid and humanitarian assistance in North Korea to meet international standards of transparency and accountability;
  15. Calls on the Commission and EU Member States to continue active dialogue and support for NGOs and civil-society actors working to establish contacts within the DPRK, with a view to encouraging changes leading to a better environment for human rights;
  16. Calls on the Commission to include a clause on monitoring of the rights of workers working in the Kaesong Industrial Complex in the DPRK in the EU-Republic of Korea Free Trade Agreement;
  17. Instructs its President to forward this resolution to the Member States and candidate countries, the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy, the Council, the Commission, the Governments of the Republic of Korea and the Democratic People's Republic of Korea, the Government of the People's Republic of China and the United Nations Secretary-General.
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Tuesday 6 July 2010

## II

*(Information)*INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES  
AND AGENCIES

## EUROPEAN PARLIAMENT

**Request for defence of Mr Valdemar Tomaševski's parliamentary immunity**

P7\_TA(2010)0252

**European Parliament decision of 6 July 2010 on the request for defence of the immunity and  
privileges of Valdemar Tomaševski (2010/2047(IMM))**

(2011/C 351 E/22)

*The European Parliament,*

- having regard to the request by Valdemar Tomaševski for defence of his immunity, forwarded to the President of the European Parliament on 2 February 2010 and announced in plenary sitting on 24 March 2010,
  - having heard Valdemar Tomaševski in accordance with Rule 7(3) of its Rules of Procedure,
  - having regard to Articles 8 and 9 of the Protocol (No 7) on the Privileges and Immunities of the European Union, and Article 6(2) of the Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage,
  - having regard to the Statute for Members of the European Parliament adopted on 28 September 2005,
  - having regard to Rules 6(3) and 7 of its Rules of Procedure,
  - having regard to the report of the Committee on Legal Affairs (A7-0214/2010),
- A. whereas Valdemar Tomaševski is a Member of the European Parliament,
- B. whereas Valdemar Tomaševski is not facing legal proceedings within the meaning of Article 8 of the Protocol, so that this case does not concern parliamentary immunity,
- C. whereas the Code of Conduct for State Politicians (hereinafter 'the Code of Conduct'), introduced by Law No X-816 of 19 September 2006, which is enforced by the Chief Official Ethics Commission of the Republic of Lithuania, a political body established by Law No X-1777 of 1 July 2008, states explicitly that it is also applicable to Members of the European Parliament elected in Lithuania,
- D. whereas, on 22 January 2010, the Lithuanian Chief Official Ethics Commission adopted a decision publicly admonishing Valdemar Tomaševski on the basis of the Code of Conduct in relation to political activities conducted as a Member of the European Parliament,

**Tuesday 6 July 2010**

- E. whereas, in accordance with Article 2 of the Statute for Members of the European Parliament <sup>(1)</sup>, 'Members shall be free and independent',
  - F. having regard to the principle of the precedence of Union law,
  - G. whereas the decision in question and the legislation of the Republic of Lithuania on which it is based breach European Union law by not observing the principles of the freedom and independence of Members of the European Parliament established by Article 2 of the Statute for Members of the European Parliament,
  - H. whereas the Commission, as guardian of the Treaties, should now initiate infringement proceedings against the Republic of Lithuania under Article 258 of the Treaty on the Functioning of the European Union,
    - 1. Calls on the Commission to intervene with the Lithuanian authorities in order to enforce European Union law and, if necessary, to initiate a Union law infringement procedure under Article 258 of the Treaty on the Functioning of the European Union;
    - 2. Instructs its President to forward this decision and the report of its committee responsible immediately to the Commission and to the relevant authorities of the Republic of Lithuania.
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<sup>(1)</sup> OJ L 262, 7.10.2005, p. 1.

Tuesday 6 July 2010

## III

*(Preparatory acts)*

## EUROPEAN PARLIAMENT

**Accession of the Member States to the Convention relating to international exhibitions signed at Paris on 22 November 1928 \*\*\***

P7\_TA(2010)0248

**European Parliament legislative resolution of 6 July 2010 on the draft Council decision authorising Member States to accede to the Convention relating to international exhibitions signed at Paris on 22 November 1928 and supplemented by the Protocols of 10 May 1948, 16 November 1966, 30 November 1972 and the Amendment of 24 June 1982 and the Amendment of 31 May 1988 (08100/2010 – C7-0105/2010 – 2010/0015(NLE))**

(2011/C 351 E/23)

(Consent)

*The European Parliament,*

- having regard to the draft Council decision (08100/2010),
  - having regard to the request for consent submitted by the Council pursuant to Article 207(4), first subparagraph, and Article 218(6), subparagraph 2, point (a) of the Treaty on the Functioning of the European Union (C7-0105/2010),
  - having regard to Rules 81 and 90 of its Rules of Procedure,
  - having regard to the recommendation of the Committee on International Trade (A7-0201/2010),
1. Consents to the draft Council decision;
  2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States.

Tuesday 6 July 2010

**Conclusion of the Protocol on Integrated Coastal Zone Management to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean \*\*\***

P7\_TA(2010)0249

**European Parliament legislative resolution of 6 July 2010 on the draft Council decision concerning the conclusion, on behalf of the European Union, of the Protocol on Integrated Coastal Zone Management in the Mediterranean to the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (09132/2010 – C7-0128/2010 – 2010/0016(NLE))**

(2011/C 351 E/24)

(Consent)

*The European Parliament,*

- having regard to draft Council decision (09132/2010),
  - having regard to the request for consent submitted by the Council pursuant to Article 192(1) and Article 218(6), second subparagraph, point (a) of the Treaty on the Functioning of the European Union,
  - having regard to Rules 81 and 90(8) of its Rules of Procedure,
  - having regard to the recommendation of the Committee on the Environment, Public Health and Food Safety (A7-0191/2010),
1. Consents to conclusion of the protocol;
  2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States.

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**Agreement between the EU and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA and 2008/616/JHA \*\*\***

P7\_TA(2010)0250

**European Parliament legislative resolution of 6 July 2010 on the draft Council decision on the conclusion of the Agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto (05309/2010 – C7-0031/2010 – 2009/0191(NLE))**

(2011/C 351 E/25)

(Consent)

*The European Parliament,*

- having regard to the draft agreement between the European Union and Iceland and Norway on the application of certain provisions of Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime, and the Annex thereto (05060/2009),

Tuesday 6 July 2010

- having regard to the draft Council decision (05309/2010),
  - having regard to the request for consent submitted by the Council pursuant to Article 218(6), second subparagraph, point (a) in conjunction with Article 82(1), second subparagraph, point (d) and Article 87(2)(a) of the Treaty on the functioning of the European Union (C7-0031/2010),
  - having regard to Rules 81 and 90(8) of its Rules of Procedure,
  - having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs (A7-0173/2010),
1. Consents to conclusion of the agreement;
  2. Instructs its President to forward its position to the Council, the Commission, and the governments and parliaments of the Member States, Iceland and Norway.

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### **Participation by Switzerland and Liechtenstein in Frontex activities \*\*\***

P7\_TA(2010)0251

**European Parliament legislative resolution of 6 July 2010 on the draft Council decision on the conclusion, on behalf of the Union, of the Arrangement between the European Union, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (05707/2010 – C7-0217/2009 – 2009/0073(NLE))**

(2011/C 351 E/26)

(Consent)

*The European Parliament,*

- having regard to the draft arrangement between the European Community, of the one part, and the Swiss Confederation and the Principality of Liechtenstein, of the other part, on the modalities of the participation by those States in the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (10701/2009),
- having regard to the proposal for a Council decision (COM(2009)0255),
- having regard to the draft Council decision (05707/2010),
- having regard to Article 62(2)(a) and Article 66 in conjunction with Article 300(2), first subparagraph, first sentence and Article 300(3), first subparagraph, of the EC Treaty, pursuant to which the Council consulted Parliament (C7-0217/2009),
- having regard to the Commission Communication to Parliament and the Council entitled ‘Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures’ (COM(2009)0665),
- having regard to Article 77(2)(b) and Article 74 in conjunction with Article 218(6), second subparagraph, point (a), point (v), of the Treaty on the Functioning of the European Union,

Tuesday 6 July 2010

- having regard to Rules 81 and 90(8) of its Rules of Procedure,
  - having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs (A7-0172/2010),
1. Consents to conclusion of the arrangement;
  2. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States, the Swiss Confederation and the Principality of Liechtenstein.

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### **Quality of statistical data in the context of the excessive deficit procedure \***

P7\_TA(2010)0253

**European Parliament legislative resolution of 6 July 2010 on the proposal for a Council regulation amending Regulation (EC) No 479/2009 as regards the quality of statistical data in the context of the excessive deficit procedure (COM(2010)0053 – C7-0064/2010 – 2010/0035(NLE))**

(2011/C 351 E/27)

(Consultation)

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2010)0053),
  - having regard to Article 126(14), third subparagraph, of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0064/2010),
  - having regard to the opinion of the European Central Bank of 31 March 2010 <sup>(1)</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0220/2010),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
  5. Instructs its President to forward its position to the Council and the Commission.

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<sup>(1)</sup> OJ C 103, 22.4.2010, p. 1.



Tuesday 6 July 2010

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

**Amendment 1****Proposal for a regulation – amending act  
Recital 1 a (new)**

*(1a) Unfortunately, neither the Commission (Eurostat)'s warning, issued as long ago as 2004, nor the Commission's initiatives in this area, set out in its communication of 22 December 2004 entitled 'Towards a European governance strategy for fiscal statistics' <sup>(1)</sup>, led to reforms by the Council of the governance framework for financial statistics, which were overdue even then. Had timely action been taken, the errors in reporting the relevant data on public deficit could have been identified much sooner and the resulting crisis could at least have been contained. It is therefore of critical importance that the Commission (Eurostat) receive an appropriate competence framework, adequate staffing and as much independence as possible.*

<sup>(1)</sup> COM(2004)0832.

**Amendment 2****Proposal for a regulation – amending act  
Recital 1 b (new)**

*(1b) The Commission should assess and draw conclusions about how the collection and evaluation of financial statistics from Member States was conducted in the past. Those conclusions should be reported to the European Parliament.*

**Amendment 3****Proposal for a regulation – amending act  
Recital 3**

(3) The revised governance framework for fiscal statistics has overall functioned well and, in general, has produced a satisfactory outcome in terms of reporting of relevant fiscal data on government deficit and debt. **In particular, the** Member States have **predominantly** demonstrated a solid record of co-operation in good faith and an operational ability to report fiscal data of high quality.

(3) **While** the revised governance framework for fiscal statistics has overall functioned well and, in general, has produced a satisfactory outcome in terms of reporting of relevant fiscal data on government deficit and debt, **and most** Member States have demonstrated a solid record of co-operation in good faith and an operational ability to report fiscal data of high quality, **previous opportunities should have been taken to enhance the quality and scope of data provided to the Commission (Eurostat).**

**Amendment 4****Proposal for a regulation – amending act  
Recital 4**

(4) However, recent developments have also clearly demonstrated that the current governance framework for fiscal statistics still does not mitigate, to the extent necessary, the risk of incorrect or inaccurate data being deliberately notified to the Commission.

(4) However, recent developments **in the Union** have also clearly demonstrated that the current governance framework for fiscal statistics still does not mitigate, to the extent necessary, the risk of incorrect or inaccurate data being deliberately notified to the Commission.

Tuesday 6 July 2010

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

**Amendment 5****Proposal for a regulation – amending act  
Recital 4 a (new)**

*(4a) The reliability of statistics made available by the Commission (Eurostat) at Union level directly depends on the reliability of statistical data collected by Member States at national level.*

**Amendment 6****Proposal for a regulation – amending act  
Recital 4 b (new)**

*(4b) Ensuring institutional independence of all national statutory statistical bodies is crucial to avoid any undue pressure on them from their respective governments.*

**Amendment 7****Proposal for a regulation – amending act  
Recital 5**

(5) In this connection, the Commission (Eurostat) should have additional rights of access to a widened scope of information for the needs of data quality assessment.

*(5) In this connection, the Commission (Eurostat) should have additional rights of access to a widened scope of information for the needs of data quality assessment. **It is essential that the data received from the Member States is shared in due time with the European Central Bank's Directorate General for Statistics.***

**Amendment 8****Proposal for a regulation – amending act  
Recital 5 a (new)**

*(5a) The comparability of economic data requires a uniform methodology. The Commission should therefore promote the harmonisation of statistical data collection.*

**Amendment 9****Proposal for a regulation – amending act  
Recital 6**

(6) In carrying out monitoring visits to a Member State whose statistical information is under scrutiny the Commission (Eurostat) should be entitled to have access to the accounts of government entities at central, state, local and social security levels, including the provision of underlying detailed accounting information, relevant statistical surveys and questionnaires and further related information, respecting the legislation on data protection as well as statistical confidentiality.

*(6) In carrying out monitoring visits to a Member State whose statistical information is under scrutiny the Commission (Eurostat) should be entitled to have access to the accounts of government entities at central, state, local and social security levels, including the provision of underlying detailed accounting information, relevant statistical surveys and questionnaires and further related information, **including off-balance sheet transactions**, respecting the legislation on data protection as well as statistical confidentiality.*

Tuesday 6 July 2010

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

**Amendment 10****Proposal for a regulation – amending act  
Recital 6 a (new)**

*(6a) To enable the Commission (Eurostat) to fulfil its extended supervisory duties responsibly, an increase in qualified staff in the relevant departments is needed. The additional outlay for staff and costs should be covered by budget and staff transfers within the Commission.*

**Amendment 11****Proposal for a regulation – amending act  
Recital 7**

(7) Public accounts of individual general government units, as well as of public units classified outside general government sector, should be the main object of the controls, and the public accounts should be assessed in terms of their statistical use.

(7) Public accounts of individual general government units, as well as of public units classified outside general government sector, should be the main object of the controls, and the public accounts should be assessed in terms of their statistical use. ***Both mid-term analysis and multiannual frameworks should be used to assist budgetary evaluation.***

**Amendment 12****Proposal for a regulation – amending act  
Recital 8 a (new)**

*(8a) The Member States should provide the Commission (Eurostat) with all statistical and budgetary information on the basis of a standardised and internationally accepted method of accounting.*

**Amendment 13****Proposal for a regulation – amending act  
Recital 8 b (new)**

*(8b) The Commission should consider elaborating sanctions within the framework of the Stability and Growth Pact in relation to the submission of misrepresented macro-economic statistics by Member States. The Commission should consider enforcing such sanctions against Member States that falsify the macroeconomic statistics relating to their budget deficit and government debt.*

Tuesday 6 July 2010

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

**Amendment 14****Proposal for a regulation – amending act****Article 1 – point -1 (new)**

Regulation (EC) No 479/2009

Article 2 – paragraph 1

(-1) *In Article 2, paragraph 1 is replaced by the following:*

**‘1. “Planned government deficit and government debt level figures” means the figures established for the current year by the Member States. They shall be the most recent official forecasts, taking into account the most recent budgetary decisions and economic developments and prospects *and monthly and quarterly outturns*. They shall be produced in as short a time as possible before the reporting deadline.’**

**Amendment 15****Proposal for a regulation – amending act****Article 1 – point 2**

Regulation (EC) No 479/2009

Article 8 – paragraph 2 – subparagraph 1

2. Member States shall as promptly as possible provide the Commission (Eurostat) with access to all the information requested for the needs of the data quality assessment, **including** statistical information **such as** data from national accounts, inventories, excessive deficit procedure notification tables, additional questionnaires and clarification related to **the** notifications.

2. Member States shall as promptly as possible provide the Commission (Eurostat) with access to all the **statistical and budgetary** information requested for the needs of the data quality assessment. **That information shall be based on a standardised and internationally accepted method of accounting agreed with the Commission (Eurostat).** Statistical **and budgetary** information **shall include, in particular:**

- (a) data from national accounts;
- (b) inventories;
- (c) excessive deficit procedure (EDP) notification tables;
- (d) additional questionnaires and clarifications related to EDP notifications;
- (e) **information from the General Audit Office, Ministry of Finance or relevant regional authority on the execution of the Member State’s national and regional budgets;**
- (f) **the accounts of extra-budgetary bodies or non-profit organisations and similar bodies that are part of the general government sector in national accounts;**
- (g) **exhaustive information on any type of off-balance sheet body;**
- (h) **the accounts of social security funds; and**
- (i) **local government surveys.**

Tuesday 6 July 2010

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

**Amendment 16****Proposal for a regulation – amending act****Article 1 – point 3**

Regulation (EC) No 479/2009

Article 11 – paragraph 3 – subparagraph 1

3. The methodological visits are designed to monitor the processes and verify the accounts which justify the reported actual data and to draw detailed conclusions as to the quality of reported data, as defined in Article 8(1).

3. The methodological visits **may be unannounced and** are designed to monitor the processes **including the independence of the national statistical authority from the government** and verify the accounts which justify the reported actual data and to draw detailed conclusions as to the quality of reported data, as defined in Article 8(1).

**Amendment 17****Proposal for a regulation – amending act****Article 1 – point 3**

Regulation (EC) No 479/2009

Article 11 – paragraph 3 – subparagraph 2

The methodological visits shall only be undertaken in **exceptional** cases where **significant** risks or problems with the quality of the data **have been clearly identified**.

The methodological visits, **announced or unannounced**, shall only be undertaken in cases where **serious** risks or problems with the quality of the data **are suspected**. **The Commission shall establish a list of cases to be considered as a significant risk or problem relating to the quality of the data. That list shall be established after consulting the CMFB.**

**Amendment 18****Proposal for a regulation – amending act****Article 1 – point 4**

Regulation (EC) No 479/2009

Article 12 – paragraph 1 – subparagraph 1

1. Member States shall, at the request of the Commission (Eurostat), provide the assistance of experts in national accounting, including for the preparation and undertaking of the methodological visits. In the exercise of their duties, these experts shall provide an independent expertise. A list of those experts in national accounting shall be constituted on the basis of proposals sent to the Commission (Eurostat) by the national authorities responsible for the excessive deficit reporting.

1. Member States shall, at the request of the Commission (Eurostat), provide the assistance of experts in national accounting, including for the preparation and undertaking of the methodological visits, **which may also be unannounced**. In the exercise of their duties, these experts shall provide an independent expertise **and shall undergo special training so as to ensure a high level of expertise and impartiality**. A list of those experts in national accounting shall be constituted on the basis of proposals sent to the Commission (Eurostat) by the national authorities responsible for the excessive deficit reporting.

Tuesday 6 July 2010

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

**Amendment 19****Proposal for a regulation – amending act****Article 1 – point 5**

Regulation (EC) No 479/2009

Article 12 – paragraph 2 – subparagraph 1

2. In the framework of the methodological visits, the Commission (Eurostat) shall have the right to access the accounts of all government entities at central, state, local and social security levels, including the provision of underlying detailed accounting information, such as transactions and balance sheets, relevant statistical surveys and questionnaires and further related information, such as analytical documents and the accounting data of other public bodies.

2. In the framework of the methodological visits, **which may also be unannounced**, the Commission (Eurostat) shall have the right to access the accounts of all government entities at central, state, local and social security **(including state pension fund)** levels, including the provision of underlying detailed accounting information, such as transactions and balance sheets, relevant statistical surveys and questionnaires and further related information, such as analytical documents and the accounting data of other public bodies.

**Amendment 20****Proposal for a regulation – amending act****Article 1 – point 5**

Regulation (EC) No 479/2009

Article 12 – paragraph 2 – subparagraph 1 a (new)

***Representatives of the European Central Bank may take part and assist the officials of the Commission (Eurostat) during the methodological visits.***

**Amendment 21****Proposal for a regulation – amending act****Article 1 – point 5**

Regulation (EC) No 479/2009

Article 12 – paragraph 2 – subparagraph 1 b (new)

***The Commission (Eurostat) may make on-site inspections and be permitted to hold interviews with any organisation it deems relevant to its work.***

**Amendment 22****Proposal for a regulation – amending act****Article 1 – point 5**

Regulation (EC) No 479/2009

Article 12 – paragraph 2 – subparagraph 2

Member States shall take all necessary measures to facilitate the methodological visits. Those visits may be carried out in national authorities involved in the excessive deficit procedure reporting, as well as in all services directly or indirectly involved in the production of government accounts and debt. Member States shall ensure that those national authorities and services, and where necessary, their national authorities who have a functional responsibility for the control of the public accounts, provide the Commission officials or other experts referred to in paragraph 1 with the assistance necessary to carry out their duties, including making documents available to justify the reported actual deficit and debt data and the underlying government accounts. Confidential records of the national statistical system should only be provided to the Commission (Eurostat).

Member States shall take all necessary measures to facilitate the methodological visits, **which may also be unannounced**. Those visits may be carried out in national authorities involved in the excessive deficit procedure reporting, as well as in all services directly or indirectly involved in the production of government accounts and debt. Member States shall ensure that those national authorities and services, and where necessary, their national authorities who have a functional responsibility for the control of the public accounts, provide the Commission officials or other experts referred to in paragraph 1 with the assistance necessary to carry out their duties, including making documents available to justify the reported actual deficit and debt data and the underlying government accounts. Confidential records of the national statistical system should only be provided to the Commission (Eurostat).

Tuesday 6 July 2010

TEXT PROPOSED BY THE COMMISSION

AMENDMENT

**Amendment 23****Proposal for a regulation – amending act****Article 1 – point 5 a (new)**

Regulation (EC) No 479/2009

Article 16 – paragraph 1

*(5a) In Article 16, paragraph 1 is replaced by the following:*

**‘1. Member States shall ensure that the actual data reported to the Commission (Eurostat) are provided in accordance with the principles established by Articles 2 and 12 of Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics<sup>(1)</sup>. In this regard, the responsibility of the national statistical authorities is to ensure the compliance of reported data with Article 1 of this Regulation and the underlying ESA 95 accounting rules. Member States shall ensure that the national statistical authorities are provided with access to all relevant information necessary to perform this task.**

<sup>(1)</sup> OJ L 87, 31.3.2009, p. 164.’

**Rights of passengers in bus and coach transport \*\*\*II**

P7\_TA(2010)0256

**European Parliament legislative resolution of 6 July 2010 on the Council position at first reading for adopting a regulation of the European Parliament and of the Council concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004 (05218/3/2010 – C7-0077/2010 – 2008/0237(COD))**

(2011/C 351 E/28)

(Ordinary legislative procedure: second reading)

*The European Parliament,*

- having regard to the Council position at first reading (05218/3/2010 – C7-0077/2010),
- having regard to the Commission proposal to Parliament and the Council (COM(2008)0817),
- having regard to Article 251(2) and Article 71(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0469/2008),
- having regard to its position at first reading<sup>(1)</sup>,

<sup>(1)</sup> Texts adopted of 23 April 2009, P6\_TA(2009)0281.

Tuesday 6 July 2010

- having regard to the Commission Communication to Parliament and the Council entitled ‘Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures’ (COM(2009)0665),
  - having regard to Article 294(7) and Article 91(1) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 16 July 2009 <sup>(1)</sup>,
  - after consulting the Committee of the Regions,
  - having regard to Rule 66 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Transport and Tourism (A7-0174/2010),
1. Adopts its position at second reading hereinafter set out;
  2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

<sup>(1)</sup> OJ C 317, 23.12.2009, p. 99.

## **P7\_TC2-COD(2008)0237**

**Position of the European Parliament adopted at second reading on 6 July 2010 with a view to the adoption of Regulation (EU) No .../2010 of the European Parliament and of the Council concerning the rights of passengers in bus and coach transport and amending Regulation (EC) No 2006/2004**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 91(1) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) Action by the Union in the field of bus and coach transport should aim, among other things, at ensuring a high level of protection for passengers, that is comparable with other modes of transport, wherever they travel. Moreover, full account should be taken of the requirements of consumer protection in general.

<sup>(1)</sup> OJ C 317, 23.12.2009, p. 99.

<sup>(2)</sup> Position of the European Parliament of 23 April 2009 (OJ C 184 E, 8.7.2010, p. 312), position of the Council of 11 March 2010 (OJ C 122 E, 11.5.2010, p. 1) and position of the European Parliament of 6 July 2010.



Tuesday 6 July 2010

- (2) Since the bus or coach passenger is the weaker party to the transport contract, all passengers should be granted a minimum level of protection.
- (3) Union measures to improve passengers' rights in the bus and coach transport sector should take account of the specific characteristics of this sector, which consists largely of small -and medium-sized undertakings.
- (4) Taking into account the specific characteristics of special regular services and own-account transport operations, these types of transport should be left outside the scope of this Regulation. Special regular services should include dedicated services for the carriage of disabled persons and persons with reduced mobility, carriage of workers between home and work, carriage to and from the educational institution for school pupils and students.
- (5) Taking into account the specific characteristics of urban, suburban and regional regular services **which form part of services integrated with urban or suburban services**, Member States should be granted the right to exempt these types of transport from the application of **II** part of this Regulation. In order to identify **these** urban, suburban and regional regular services, Member States should take into account criteria such as **the administrative division, geographical situation**, distance, frequency of services, number of scheduled stops, type of buses or coaches employed, ticketing schemes, fluctuations in passenger numbers between services in peak and off-peak periods, bus codes and time-tables.
- (6) Passengers **should enjoy liability rules comparable to those applicable to other modes of transport in the event of accidents resulting in death or injury.**
- (7) **Carriers should be liable for loss or damage of passengers' luggage on terms comparable to those applicable to other modes of transport.**
- (8) Passengers should, in addition to compensation in accordance with applicable national law in the event of death or personal injury or loss of or damage to luggage due to accidents arising out of the use of the bus or coach, be entitled to assistance with regard to their immediate practical **and economic** needs following an accident. Such assistance **should** include, **where necessary**, first aid, accommodation, food, clothes, transport **and funeral expenses. In the event of death or personal injury, the carrier shall in addition make advance payments to cover immediate economic needs on a basis proportional to the damage suffered, provided that there is prima facie evidence of causality attributable to the carrier.**
- (9) Bus and coach passenger services should benefit citizens in general. Consequently, disabled persons and persons with reduced mobility, whether caused by disability, age or any other factor, should have opportunities for using bus and coach services that are comparable to those of other citizens. Disabled persons and persons with reduced mobility have the same rights as all other citizens with regard to free movement, freedom of choice and non-discrimination.
- (10) In the light of Article 9 of the United Nations Convention on the Rights of Persons with Disabilities and in order to give disabled persons and persons with reduced mobility opportunities for bus and coach travel comparable to those of other citizens, rules for non-discrimination and assistance during their journey should be established. Those persons should therefore be accepted for carriage and not refused transport on the grounds of their disability or reduced mobility, except for reasons which are justified on the grounds of safety or of the design of vehicles or infrastructure. Within the framework of relevant legislation for the protection of workers, disabled persons and persons with reduced mobility should enjoy the right to assistance at terminals and on board vehicles. In the interest of social inclusion, the persons concerned should receive the assistance free of charge. Carriers should establish access conditions, preferably using the European Standardisation system.

Tuesday 6 July 2010

- (11) In deciding on the design of new terminals, and as part of major refurbishments, terminal managing bodies should, **without exception and as an essential condition**, take into account the needs of disabled persons and persons with reduced mobility, **in accordance with 'design for all' requirements**. In any case, terminal managing bodies should designate points where such persons can notify their arrival and need for assistance.
- (12) **Similarly, carriers should take those needs into account when deciding on the design of new and newly refurbished vehicles.**
- (13) **Member States should improve existing infrastructure, where this is necessary to enable carriers to ensure access for disabled persons and persons with reduced mobility as well as to provide appropriate assistance.**
- (14) In order to respond to the needs of disabled persons and persons with reduced mobility, staff should be adequately trained. With a view to facilitating the mutual recognition of national qualifications of drivers, disability awareness training could be provided as a part of the initial qualification or periodic training as referred to in Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers <sup>(1)</sup>. In order to ensure coherence between the introduction of the training requirements and the time-limits set out in that Directive, a possibility for exemption during a limited period of time should be allowed.
- (15) **Organisations representative of disabled persons or persons with reduced mobility should be consulted or involved in preparing the content** of the disability-related training.
- (16) Rights of bus and coach passengers should include the receipt of information regarding the service before and during the journey. All essential information provided to bus and coach passengers should also be provided in alternative formats accessible to disabled persons and persons with reduced mobility, **such as large print, plain language, Braille, electronic communications that can be accessed with adaptive technology, and audio tapes.**
- (17) This Regulation should not restrict the rights of carriers to seek compensation from any person, including third parties, in accordance with the applicable national law.
- (18) Inconvenience experienced by passengers due to cancellation or **significant** delay of their journey should be reduced. To this end, passengers departing from terminals should be adequately looked after and informed **in a way which is accessible to everyone**. Passengers should also be able to cancel their journey and have their tickets reimbursed or to continue their journey or to obtain re-routing under satisfactory conditions. **If carriers fail to provide passengers with the necessary assistance, passengers should have a right to obtain financial compensation.**
- (19) Through their professional associations, carriers should cooperate in order to adopt arrangements at **regional**, national or European level with the involvement of stakeholders, professional associations and associations of customers, passengers and disabled persons, aiming to improve **provision of information and** care for passengers, especially in the event of cancellations and long delays.
- (20) This Regulation should not affect the rights of passengers established by Council Directive 90/314/EEC of 13 June 1990 on package travel, package holidays and package tours <sup>(2)</sup>. This Regulation should not apply in cases where a package tour is cancelled for reasons other than cancellation of the bus or coach transport service.

<sup>(1)</sup> OJ L 226, 10.9.2003, p. 4.

<sup>(2)</sup> OJ L 158, 23.6.1990, p. 59.

Tuesday 6 July 2010

- (21) Passengers should be fully informed of their rights under this Regulation, so that they can effectively exercise those rights.
- (22) Passengers should be able to exercise their rights by means of appropriate complaint procedures implemented by carriers or, as the case may be, by submission of complaints to the body or bodies designated to that end by the relevant Member State.
- (23) Member States should ensure compliance with this Regulation and designate a competent body or bodies to carry out supervision and enforcement tasks. This does not affect the rights of passengers to seek legal redress from courts under national law.
- (24) Taking into account the procedures established by Member States for the submission of complaints, a complaint concerning assistance should preferably be addressed to the body or bodies designated for the enforcement of this Regulation in the Member State where the boarding point or alighting point is situated.
- (25) Member States should lay down penalties applicable to infringements of this Regulation and ensure that those penalties are applied. Those penalties should be effective, proportionate and dissuasive.
- (26) Since the objectives of this Regulation, namely to ensure an equivalent level of protection of and assistance to passengers in bus and coach transport throughout the Member States, cannot sufficiently be achieved by the Member States and can therefore by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (27) This Regulation should be without prejudice to 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 <sup>(1)</sup>.
- (28) The enforcement of this Regulation should be based on Regulation (EC) No 2006/2004 of the European Parliament and of the Council of 27 October 2004 on cooperation between national authorities responsible for the enforcement of consumer protection law (the Regulation on consumer protection cooperation) <sup>(2)</sup>. That Regulation should therefore be amended accordingly.
- (29) Member States should promote the use of public transport and introduce interoperable, intermodal information systems thereby facilitating the provision of timetable information and integrated pricing and ticketing in order to optimise the use and interoperability of the various transport modes. These services must be accessible to disabled persons and persons with reduced mobility.**
- (30) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, as referred to in Article 6 of the Treaty on European Union, bearing in mind also Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin <sup>(3)</sup> and Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services <sup>(4)</sup>,

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(2)</sup> OJ L 364, 9.12.2004, p. 1.

<sup>(3)</sup> OJ L 180, 19.7.2000, p. 22.

<sup>(4)</sup> OJ L 373, 21.12.2004, p. 37.

Tuesday 6 July 2010

HAVE ADOPTED THIS REGULATION:

## Chapter I

### General provisions

#### Article 1

##### Subject matter

This Regulation establishes rules for bus and coach transport as regards the following:

- (a) non-discrimination between passengers with regard to transport conditions offered by carriers;
- (b) rights of passengers in the event of accidents arising out of the use of the bus or coach resulting in death or personal injury or loss of or damage to luggage;
- (c) non-discrimination and mandatory assistance for disabled persons and persons with reduced mobility;
- (d) rights of passengers in cases of cancellation or delay;
- (e) minimum information to be provided to passengers;
- (f) handling of complaints;
- (g) general rules on enforcement.

#### Article 2

##### Scope

1. This Regulation shall apply to passengers travelling with regular services:
  - (a) where the boarding point of the passenger is situated in the territory of a Member State; or
  - (b) where the boarding point of the passenger is situated outside the territory of a Member State and the alighting point of the passenger is situated in the territory of a Member State.
2. In addition, with the exception of **Articles 11 to 18 and** Chapters **IV** to **VI**, this Regulation shall apply to passengers travelling with occasional services where the initial boarding point or the final alighting point of the passenger is situated in the territory of a Member State.
3. This Regulation shall not apply to special regular services and own-account transport operations.
4. With the exception of Articles 4(2), 7, 9, 11, 12(1), **13(1), 15(1), 18, 19(1), 19(2), 21, 25, 27, 28 and 29**, Member States may exempt urban **and** suburban **■** regular services, **as well as regional regular services, if they are part of services integrated with urban or suburban services**, including cross-border services of that type, from the application of this Regulation.

■

Tuesday 6 July 2010

5. Member States shall inform the Commission of exemptions of different types of services granted pursuant to **paragraph 4 within ... (\*)**. The Commission shall take appropriate action if such an exemption is deemed not to be in accordance with the provisions of this Article. By ... (\*\*), the Commission shall submit to the European Parliament and the Council a report on exemptions granted pursuant to **paragraph 4**.

6. Nothing in this Regulation shall be understood as **conflicting with existing legislation on** technical requirements **for** buses or coaches or infrastructure **■** at bus stops and terminals.

### Article 3

#### Definitions

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

- (a) 'regular services' means services which provide for the carriage of passengers by bus or coach at specified intervals along specified routes, passengers being picked up and set down at predetermined stopping points;
- (b) 'special regular services' means regular services, by whomsoever organised, which provide for the carriage by bus or coach of specified categories of passengers to the exclusion of other passengers;
- (c) 'own-account transport operations' means operations carried out by bus or coach for non-commercial and non-profit-making purposes by a natural or legal person, whereby:
  - the transport activity is only an ancillary activity for that natural or legal person, and
  - the vehicles used are the property of that natural or legal person or have been obtained by that person on deferred terms or have been the subject of a long-term leasing contract and are driven by a member of the staff of the natural or legal person or by the natural person himself or by personnel employed by, or put at the disposal of, the undertaking under a contractual obligation;
- (d) 'occasional services' means services which do not fall within the definition of regular services and the main characteristic of which is the carriage by bus or coach of groups of passengers constituted on the initiative of the customer or the carrier himself;
- (e) 'transport contract' means a contract of carriage between a carrier and a passenger for the provision of one or more regular or occasional services;
- (f) 'ticket' means a valid document or other evidence of a transport contract;
- (g) 'carrier' means a natural or legal person, other than a tour operator, **travel agent** or ticket vendor, offering regular or occasional services to the general public;
- (h) 'performing carrier' means a natural or legal person other than the carrier, who actually performs the carriage wholly or partially;
- (i) 'ticket vendor' means any intermediary concluding transport contracts on behalf of a carrier;

(\*) OJ: Please insert date three months from the date of application of this Regulation.

(\*\*) OJ: Please insert date five years after the date of application of this Regulation.

Tuesday 6 July 2010

- (j) 'travel agent' means any intermediary acting on behalf of a passenger for the conclusion of transport contracts;
- (k) 'tour operator' means an organiser **■**, other than a carrier, within the meaning of Article 2(2) **■** of Directive 90/314/EEC;
- (l) 'disabled person' or 'person with reduced mobility' means any person whose mobility when using transport is reduced as a result of any physical disability (sensory or locomotor, permanent or temporary), intellectual disability or impairment, or any other cause of disability, or as a result of age, and whose situation needs appropriate attention and adaptation to his particular needs of the services made available to all passengers;
- (m) 'access conditions' means relevant standards, guidelines and information on the accessibility of buses and/or of designated terminals including their facilities for disabled persons or persons with reduced mobility;
- (n) 'reservation' means a booking of a seat on board a bus or coach for a regular service at a specific departure time;
- (o) 'terminal' means a staffed terminal where according to the specified route a regular service is scheduled to stop for passengers to board or alight, equipped with facilities such as a check-in counter, waiting room or ticket office;
- (p) 'bus stop' means any point other than a terminal where according to the specified route a regular service is scheduled to stop for passengers to board or alight;
- (q) 'terminal managing body' means an organisational entity in a Member State responsible for the management of a designated terminal;
- (r) 'cancellation' means the non-operation of a regular service which was previously scheduled;
- (s) 'delay' means a difference between the time the regular service was scheduled to depart in accordance with the published timetable and the time of its actual departure.

#### Article 4

##### Tickets and non-discriminatory contract conditions

1. Carriers shall provide a ticket to the passenger, unless other documents give entitlement to transport. A ticket may be issued in an electronic format.
2. Without prejudice to social tariffs, the contract conditions and tariffs applied by carriers shall be offered to the general public without any direct or indirect discrimination based on the nationality of the final customer or on the place of establishment of the carriers, or ticket vendors within the Union.

#### Article 5

##### Other performing parties

1. If the performance of the obligations under this Regulation has been entrusted to a performing carrier, ticket vendor or any other person, the carrier, travel agent, tour operator or terminal managing body, who has entrusted such obligations, shall nevertheless be liable for the acts and omissions of that performing party.

Tuesday 6 July 2010

2. In addition, the party to whom the performance of an obligation has been entrusted by the carrier, travel agent, tour operator or terminal managing body shall be subject to the provisions of this Regulation with regard to the obligation entrusted.

#### Article 6

##### Exclusion of waiver

1. Rights and obligations pursuant to this Regulation shall not be waived or limited, in particular by a derogation or restrictive clause in the transport contract.

2. Carriers may offer contract conditions that are more favourable to the passenger than the conditions laid down in this Regulation.

### Chapter II

#### Compensation and assistance in the event of accidents

#### Article 7

##### Liability for death and injury of passengers

1. *In accordance with this Chapter, carriers shall be liable for the loss or damage resulting from the death of, or personal injury to, passengers, caused by accidents arising out of the operation of bus and coach transport services and occurring while the passenger is entering, in or leaving the vehicle.*

2. *The non-contractual liability of carriers for damages shall not be subject to any financial limit, be it defined by law, convention or contract.*

3. *For any claim up to the amount of EUR 220 000 per passenger, a carrier shall not exclude or limit its liability by proving that it has taken the care required pursuant to paragraph 4(a), unless the total amount of the resulting claim exceeds the amount for which compulsory insurance is, in conformity with Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 relating to insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability<sup>(1)</sup>, required under the national legislation of the Member state in which the bus or coach is normally based. In such a situation, liability shall be limited to that amount.*

4. *A carrier shall not be liable pursuant to paragraph 1:*

*(a) if the accident has been caused by circumstances not connected with the operation of bus and coach transport services or which the carrier could not have avoided, in spite of having taken the care required in the particular circumstances of the case, or the consequences of which it was unable to prevent;*

*(b) to the extent that the accident is the fault of the passenger or caused by his negligence.*

*Nothing in this Regulation shall:*

*(a) imply that a carrier is the sole party liable to pay damages; or*

*(b) restrict any rights of a carrier to seek redress from any other party in accordance with the applicable law of a Member State.*

<sup>(1)</sup> OJ L 263, 7.10.2009, p. 11.

Tuesday 6 July 2010

## Article 8

### Damages

1. *In the event of the death of a passenger, the damages in respect of the liability provided for in Article 7 shall comprise:*

(a) *any necessary costs following the passenger's death, in particular the cost of transporting the body and the funeral expenses;*

(b) *if the death does not occur at once, the damages provided for in paragraph 2.*

2. *In the event of personal injury or any other physical or mental harm to a passenger, the damages shall comprise:*

(a) *any necessary costs, in particular those for treatment and for transport;*

(b) *compensation for financial loss, due to total or partial incapacity to work, or to increased needs.*

3. *If, through the death of the passenger, a person whom the passenger had, or would have had, a legal duty to maintain is deprived of support, such persons shall also be compensated for that loss.*

## Article 9

### Immediate practical *and economic* needs of passengers

In the event of an accident arising out of the use of the bus or coach, the carrier shall provide assistance with regard to the passengers' immediate practical needs following the accident. **Such assistance shall include, where necessary, first aid, accommodation, food, clothes, transport and funeral expenses. In the event of death or personal injury, the carrier shall in addition make advance payments to cover immediate economic needs on a basis proportional to the damage suffered, provided that there is prima facie evidence of causality attributable to the carrier.** Any payments made, or assistance provided shall not constitute recognition of liability.

## Article 10

### Liability for lost and damaged luggage

1. *Carriers shall be liable for the loss of or damage to luggage placed under their responsibility. The maximum compensation shall amount to EUR 1 800 per passenger.*

2. *In the event of accidents arising out of the operation of bus and coach transport services, carriers shall be liable for loss of or damage to the personal effects which passengers had on them or with them as hand luggage. The maximum compensation shall amount to EUR 1 300 per passenger.*

3. *A carrier shall not be held liable for loss or damage pursuant to paragraphs 1 and 2:*

(a) *if the loss or damage has been caused by circumstances not connected with the operation of bus and coach transport services or which the carrier could not have avoided, in spite of having taken the care required in the particular circumstances of the case, and the consequences of which it was unable to prevent;*

(b) *to the extent that the loss or damage is the fault of the passenger or caused by his negligence.*



Tuesday 6 July 2010

## Chapter III

## Rights of disabled persons and persons with reduced mobility

## Article 11

## Right to transport

1. Carriers, travel agents and tour operators shall not refuse to accept a reservation from, to issue or otherwise provide a ticket to or to take on board a person on the grounds of disability or of reduced mobility.
2. Reservations and tickets shall be offered to disabled persons and persons with reduced mobility at no additional cost.

## Article 12

## Exceptions and special conditions

1. Notwithstanding Article 11(1), carriers, travel agents and tour operators may refuse to accept a reservation from, to issue or otherwise provide a ticket to or to take on board a person on the grounds of disability or of reduced mobility:
  - (a) in order to meet applicable safety requirements established by international, Union or national law, or in order to meet health and safety requirements established by the competent authorities;
  - (b) where the design of the vehicle or the infrastructure, including bus stops and terminals, makes it physically impossible to take on board, alight or carry the disabled person or person with reduced mobility in a safe and operationally feasible manner.
2. In the event of a refusal to accept a reservation or to issue or otherwise provide a ticket on the grounds referred to in paragraph 1, carriers, travel agents and tour operators shall ■ inform the person concerned about an acceptable alternative service operated by the carrier.
3. If a disabled person or a person with reduced mobility, who holds a reservation or has a ticket and has complied with the requirements of Article 16(1)(a), is nonetheless refused permission to board on the grounds of his disability or reduced mobility, that person and any accompanying person pursuant to paragraph 4 of this Article shall be offered the choice between:
  - (a) the right to reimbursement, and where relevant a return service free of charge to the first point of departure, as set out in the transport contract, at the earliest opportunity; and
  - (b) except where not feasible, continuation of the journey or re-routing by reasonable alternative transport services to the place of destination set out in the transport contract.

The right to reimbursement of the money paid for the ticket shall not be affected by the failure to notify in accordance with Article 16(1) (a).

4. ***If a carrier, travel agent or tour operator refuses to accept a reservation from, to issue or otherwise provide a ticket to or to take on board a person on the grounds of disability or of reduced mobility for the reasons set out in paragraph 1 of this Article or if the crew of the vehicle concerned consists only of one person who drives the vehicle and who is not in a position to provide the disabled person or the person with reduced mobility with all the assistance as specified in Annex I part b), a disabled person or person with reduced mobility may request to be accompanied by another person who is capable of providing the assistance required by the disabled person or person with reduced mobility ■. Such an accompanying person shall be transported free of charge and, where feasible, seated next to the disabled person or person with reduced mobility.***

Tuesday 6 July 2010

5. When carriers, travel agents or tour operators have recourse to paragraph 1, they shall immediately inform the disabled person or person with reduced mobility of the reasons therefor, and, upon request, inform the person in question in writing within five working days of the request.

#### Article 13

##### Accessibility and information

1. In cooperation with organisations representative of disabled persons or persons with reduced mobility, carriers and terminal managing bodies shall, where appropriate through their organisations, establish, or have in place, non-discriminatory access conditions for the transport of disabled persons and persons with reduced mobility.

2. The access conditions provided for in paragraph 1 shall be made publicly available by carriers and terminal managing bodies **in accessible formats, and** in the same languages as those in which information is generally made available to all passengers. **When providing this information particular attention shall be paid to the needs of disabled persons and persons with reduced mobility.**

3. **Upon request the carriers shall immediately make available copies of the international, Union or national laws establishing the safety requirements, on which non-discriminatory access rules are based. These must be provided in accessible formats.**

4. Tour operators shall make available the access conditions provided for in paragraph 1 which apply to journeys included in package travel, package holidays and package tours which they organise, sell or offer for sale.

5. The information on access conditions referred to in paragraphs 2 and 4 shall be physically distributed at the request of the passenger.

6. Carriers, travel agents and tour operators shall ensure that all relevant general information concerning the journey and the conditions of carriage is available in appropriate and accessible formats for disabled persons and persons with reduced mobility including, where applicable, online booking and information. The information shall be physically distributed at the request of the passenger.

#### Article 14

##### Designation of terminals

Member States shall designate bus and coach terminals where assistance for disabled persons and persons with reduced mobility shall be provided. Member States shall inform the Commission thereof. The Commission shall make available a list of the designated bus and coach terminals on the Internet.

#### Article 15

##### Right to assistance at designated terminals and on board buses and coaches

1. ■ Carriers and terminal managing bodies shall, within their respective areas of competence, at terminals designated by Member States, provide assistance free of charge to disabled persons and persons with reduced mobility, **at least to the extent** specified in part (a) of Annex I.

2. ■ Carriers shall, on board buses and coaches, provide assistance free of charge to disabled persons and persons with reduced mobility, **at least to the extent** specified in part (b) of Annex I.

Tuesday 6 July 2010

## Article 16

## Conditions under which assistance is provided

1. Carriers and terminal managing bodies shall cooperate in order to provide assistance to disabled persons and persons with reduced mobility on condition that:
  - (a) the person's need for such assistance is notified to carriers, terminal managing bodies, travel agents or tour operators at the latest **24 hours** before the assistance is needed; and
  - (b) the persons concerned present themselves at the designated point:
    - i) at the time stipulated in advance by the carrier which shall be no more than 60 minutes before the published departure time ***unless a shorter period is agreed between the carrier and the passenger;*** or
    - ii) if no time is stipulated, no later than 30 minutes before the published departure time.
2. In addition to paragraph 1, disabled persons or persons with reduced mobility shall notify the carrier, travel agent or tour operator at the time of reservation or advance purchase of the ticket of their specific seating needs, provided that the need is known at that time.
3. Carriers, terminal managing bodies, travel agents and tour operators shall take all measures necessary to facilitate the receipt of notifications of the need for assistance made by disabled persons or persons with reduced mobility. This obligation shall apply at all designated terminals and their points of sale including sale by telephone and via the Internet.
4. If no notification is made in accordance with paragraphs 1(a) and 2, carriers, terminal managing bodies, travel agents and tour operators shall make every reasonable effort to ensure that the assistance is provided in such a way that the disabled person or person with reduced mobility is able to board the departing service, to change to the corresponding service or to alight from the arriving service for which he has purchased a ticket.
5. The terminal managing body shall designate a point inside or outside the terminal at which disabled persons or persons with reduced mobility can announce their arrival and request assistance. The point shall be clearly signposted and shall offer basic information about the terminal and assistance provided, in accessible formats.

## Article 17

## Transmission of information to a third party

If travel agents or tour operators receive a notification referred to in Article 16(1)(a) they shall, within their normal office hours, transfer the information to the carrier or terminal managing body as soon as possible.

## Article 18

## Training

1. Carriers and, where appropriate, terminal managing bodies shall establish disability-related training procedures, including instructions, and ensure that:
  - (a) their personnel, other than drivers, including those employed by any other performing party, providing direct assistance to disabled persons and persons with reduced mobility are trained or instructed as described in Annex II, part a) and b);and
  - (b) their personnel, including drivers, who deal directly with the travelling public or with issues related to the travelling public, are trained or instructed as described in Annex II, part a).

Tuesday 6 July 2010

2. A Member State may for a maximum period of two years from ... (\*) grant an exemption from the application of paragraph(1)(b) with regard to training of drivers.

#### Article 19

##### Compensation in respect of wheelchairs and other mobility equipment

1. Carriers and terminal managing bodies shall be liable where they have caused loss of or damage to wheelchairs, other mobility equipment or assistive devices **■**. The loss or damage shall be compensated by the carrier or terminal managing body liable for that loss or damage.
2. The compensation referred to in paragraph 1 shall be equal to the cost of replacement or repair of the equipment or devices lost or damaged.
3. Where necessary, every effort shall be undertaken to rapidly provide temporary replacement equipment or devices. The wheelchairs, other mobility equipment or assistive devices shall, where possible, have technical and functional features similar to those lost or damaged.

**■**

#### Chapter IV

##### Passenger Rights in the event of cancellation or delay

#### Article 20

##### Continuation, re-routing and reimbursement

1. Where a carrier reasonably expects a regular service to be cancelled or delayed in departure from a terminal for more than 120 minutes **or in the case of overbooking**, the passenger shall immediately be offered the choice between:
  - (a) continuation or re-routing to the final destination, **at no additional cost and** under comparable conditions as set out in the transport contract, at the earliest opportunity;
  - (b) reimbursement of the ticket price, and, where relevant, a return service by bus or coach free of charge to the first point of departure, as set out in the transport contract, at the earliest opportunity;
  - (c) **in addition to the reimbursement referred to in point (b), the right to compensation amounting to 50 % of the ticket price if the carrier fails to offer continuation or re-routing to the final destination as referred to in point (a). The compensation shall be paid within one month after the submission of the request for compensation.**
2. **Where the bus or coach becomes inoperable, passengers shall be offered transport from the location of the inoperable vehicle to a suitable waiting point or terminal from where continuation of the journey becomes possible.**
3. Where a regular service is cancelled or delayed in departure from a bus stop for more than 120 minutes, passengers shall have the right to such continuation or re-routing or reimbursement of the ticket price from the carrier.

(\*) OJ: Please insert the date of application of this Regulation.

Tuesday 6 July 2010

4. The payment of reimbursement provided for in paragraphs 1(b) and 3 shall be made within 14 days after the offer has been made or request has been received. The payment shall cover the full cost of the ticket at the price at which it was purchased, for the part or parts of the journey not made, and for the part or parts already made if the journey no longer serves any purpose in relation to the passenger's original travel plan. In case of travel passes or season tickets the payment shall be equal to its proportional part of the full cost of the pass or ticket. The reimbursement shall be paid in money, unless the passenger accepts another form of reimbursement.

#### Article 21

##### Information

1. In the event of cancellation or delay in departure of a regular service, passengers departing from terminals shall be informed by the carrier or, where appropriate, the terminal managing body, of the situation as soon as possible and in any event no later than 30 minutes after the scheduled departure time, and of the estimated departure time as soon as this information is available.

2. If passengers miss, according to the timetable, a connecting service due to a cancellation or delay, the carrier or, where appropriate, the terminal managing body, shall make reasonable efforts to inform the passengers concerned of alternative connections.

3. The carrier or, where appropriate, the terminal managing body, shall ensure that disabled persons and persons with reduced mobility receive the information required under paragraphs 1 and 2 in accessible formats.

#### Article 22

##### Assistance in case of cancelled or delayed departures

1. For a journey of a scheduled duration of more than three hours the carrier shall, in case of cancellation or delay in departure from a terminal of more than **one hour**, offer the passenger free of charge:

- (a) snacks, meals or refreshments in reasonable relation to the waiting time or delay, provided they are available on the bus or in the terminal, or can reasonably be supplied;
- (b) a hotel room or other accommodation as well as assistance to arrange transport between the terminal and the place of accommodation in cases where a stay of one or more nights becomes necessary.

2. In applying this Article the carrier shall pay particular attention to the needs of disabled persons and persons with reduced mobility and any accompanying persons.

#### Article 23

##### Further claims

Nothing in this Chapter shall preclude passengers from seeking damages in accordance with national law before national courts in respect of loss resulting from the cancellation or delay of regular services.

#### Article 24

##### *Additional measures in favour of passengers*

*Carriers shall cooperate in order to adopt arrangements at national or European level with the involvement of stakeholders, professional associations and associations of customers, passengers and disabled persons. These measures shall be aimed at improving care for passengers, especially in the event of long delays and interruption or cancellation of travel with a particular focus on passengers with special needs due to disability, reduced mobility, illness, elderly age and pregnancy and including accompanying passengers and passengers travelling with young children.*

Tuesday 6 July 2010

## Chapter V

### General rules on information and complaints

#### Article 25

##### Right to travel information

Carriers and terminal managing bodies shall, within their respective areas of competence, provide passengers with adequate information **from the moment of reservation and** throughout their travel **in accessible formats and according to a common conceptual model for public transport data and systems**.

#### Article 26

##### Information on passenger rights

1. Carriers and terminal managing bodies shall, within their respective areas of competence, ensure that passengers are provided with appropriate and comprehensible information regarding their rights under this Regulation **upon reservation and** at the latest on departure. The information shall be provided **in accessible formats, and according to a common conceptual model for public transport data and systems**, at terminals and where applicable, on the Internet. ¶ This information shall include contact details of the enforcement body or bodies designated by the Member State pursuant to Article 29(1).

2. In order to comply with the information requirement referred to in paragraph 1, carriers and terminal managing bodies may use a summary of the provisions of this Regulation prepared by the Commission in all the official languages of the institutions of the European Union and made available to them.

#### Article 27

##### Complaints

Carriers shall set up or have in place a complaint handling mechanism for the rights and obligations set out in **this Regulation**.

#### Article 28

##### Submission of complaints

If a passenger covered by this Regulation wants to make a complaint to the carrier ¶, he shall submit it within three months from the date on which the regular service was performed or when a regular service should have been performed. Within one month of receiving the complaint, the carrier shall give notice to the passenger that his complaint has been substantiated, rejected or is still being considered. The time taken to provide the final reply shall not be longer than **two** months from the receipt of the complaint.

## Chapter VI

### Enforcement and national enforcement bodies

#### Article 29

##### National enforcement bodies

1. Each Member State shall designate **an** existing body or bodies, **or, if there is no existing body, a new body** responsible for the enforcement of this Regulation ¶. Each body shall take the measures necessary to ensure compliance with this Regulation.

Tuesday 6 July 2010

Each body shall, in its organisation, funding decisions, legal structure and decision-making, be independent of carriers, tour operators and terminal managing bodies.

2. Member States shall inform the Commission of the body or bodies designated in accordance with this Article.

3. Any passenger may submit a complaint ■ to the appropriate body designated under paragraph 1, or to any other appropriate body designated by a Member State, about an alleged infringement of this Regulation.

A Member State may decide ■ that the passenger as a first step shall submit a complaint ■ to the carrier *in which case* the national enforcement body or any other appropriate body designated by the Member State shall act as an appeal body for complaints not resolved under Article 28.

#### Article 30

##### Report on enforcement

By 1 June ... (\*) and every two years thereafter, the enforcement bodies designated pursuant to Article 29(1) shall publish a report on their activity in the previous two calendar years, containing in particular a description of actions taken in order to implement this Regulation and statistics on complaints and sanctions applied.

#### Article 31

##### Cooperation between enforcement bodies

National enforcement bodies as referred to in Article 29(1) shall, whenever appropriate, exchange information on their work and decision-making principles and practices. The Commission shall support them in this task.

#### Article 32

##### Penalties

Member States shall lay down rules on penalties applicable to infringements of the provisions of this Regulation and shall take all the measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive. Member States shall notify those rules and measures to the Commission by ... (\*\*) and shall notify it without delay of any subsequent amendment affecting them.

#### Chapter VII

##### Final provisions

#### Article 33

##### Report

The Commission shall report to the European Parliament and the Council by ... (\*\*), on the operation and effects of this Regulation. The report shall be accompanied, where necessary, by legislative proposals implementing in further detail the provisions of this Regulation, or amending it.

(\*) OJ: Please insert date two years after the date of the application of this Regulation.

(\*\*) OJ: Please insert date of the application of this Regulation.

(\*\*\*) OJ: Please insert date three years after the date of application of this Regulation.

Tuesday 6 July 2010

Article 34

Amendment to Regulation (EC) No 2006/2004

In the Annex to Regulation (EC) No 2006/2004 the following point is added:

‘18. Regulation (EU) No: .../2010 of the European Parliament and of the Council of ... on the rights of passengers in bus and coach transport (\*) (+).

\_\_\_\_\_

(\*) OJ ... (++)

(+) OJ: Please insert number and date of adoption of this Regulation.

(++) OJ: Please insert the publication references of this Regulation.’

Article 35

Entry into force

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

It shall apply from ... (\*\*).

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

Done at,

For the European Parliament  
The President

For the Council  
The President

\_\_\_\_\_

(\*\*) OJ: Please insert date two years after the date of publication.

\_\_\_\_\_

ANNEX I

Assistance provided to disabled persons and persons with reduced mobility

a) Assistance at designated terminals

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

- communicate their arrival at the terminal and their request for assistance at designated points;
- move from the designated point to the check-in counter, waiting room and embarkation area;
- board the vehicle, with the provision of lifts, wheelchairs or other assistance needed, as appropriate;
- load their luggage;
- retrieve their luggage;
- alight from the vehicle;
- carry a recognised assistance dog on board a bus or coach;
- proceed to the seat.



Tuesday 6 July 2010

## b) Assistance on board

Assistance and arrangements necessary to enable disabled persons and persons with reduced mobility to:

- be provided with essential information on a journey in accessible formats subject to request made by the passenger;
- **move to toilet facilities on board, if there are personnel other than the driver on board;**
- board/alight during pauses in a journey, if there are personnel other than the driver on board.

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ANNEX II

## Disability-related training

## a) Disability-awareness training

Training of staff that deal directly with the travelling public includes:

- awareness of and appropriate responses to passengers with physical, sensory (hearing and visual), hidden or learning disabilities, including how to distinguish between the different abilities of persons whose mobility, orientation, or communication may be reduced;
- barriers faced by disabled persons and persons with reduced mobility, including attitudinal, environmental/physical and organisational barriers;
- recognised assistance dogs, including the role and the needs of an assistance dog;
- dealing with unexpected occurrences;
- interpersonal skills and methods of communication with deaf people and people with hearing impairments, people with visual impairments, people with speech impairments, and people with a learning disability;
- how to handle wheelchairs and other mobility aids carefully so as to avoid damage (for all staff who are responsible for luggage handling, if any).

## b) Disability-assistance training

Training of staff directly assisting disabled persons and persons with reduced mobility includes:

- how to help wheelchair users make transfers into and out of a wheelchair;
- skills for providing assistance to disabled persons and persons with reduced mobility travelling with a recognised assistance dog, including the role and the needs of those dogs;
- techniques for escorting passengers with visual impairments and for the handling and carriage of recognised assistance dogs;
- an understanding of the types of equipment which can assist disabled persons and persons with reduced mobility and a knowledge of how to handle such an equipment;
- the use of boarding and alighting assistance equipment used and knowledge of the appropriate boarding and alighting assistance procedures that safeguard the safety and dignity of disabled persons and persons with reduced mobility;

Tuesday 6 July 2010

- understanding of the need for reliable and professional assistance. Also awareness of the potential of certain disabled passengers to experience feelings of vulnerability during travel because of their dependence on the assistance provided;
- a knowledge of first aid.

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## Rights of passengers when travelling by sea and inland waterway \*\*\*II

P7\_TA(2010)0257

**European Parliament legislative resolution of 6 July 2010 on the Council position at first reading for adopting a regulation of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (14849/3/2009 – C7-0076/2010 – 2008/0246(COD))**

(2011/C 351 E/29)

(Ordinary legislative procedure: second reading)

*The European Parliament,*

- having regard to the Council position at first reading (14849/3/2009 – C7-0076/2010),
- having regard to the Commission proposal to Parliament and the Council (COM(2008)0816),
- having regard to Article 251(2) and Articles 71(1) and 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0476/2008),
- having regard to its position at first reading <sup>(1)</sup>,
- having regard to the Commission Communication to Parliament and the Council entitled ‘Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures’ (COM(2009)0665),
- having regard to Article 294(7) and Articles 91(1) and 100(2) of the Treaty on the Functioning of the European Union,
- having regard to the opinion of the European Economic and Social Committee of 16 July 2009 <sup>(2)</sup>,
- after consulting the Committee of Regions,
- having regard to Rule 66 of its Rules of Procedure,
- having regard to the recommendation for second reading of the Committee on Transport and Tourism (A7-0177/2010),

1. Adopts its position at second reading hereinafter set out;
2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>(1)</sup> Texts adopted of 23.4.2009, P6\_TA(2009)0280.

<sup>(2)</sup> OJ C 317, 23.12.2009, p. 89.

Tuesday 6 July 2010

**P7\_TC2-COD(2008)0246**

**Position of the European Parliament adopted at second reading on 6 July 2010 with a view to the adoption of Regulation (EU) No .../2010 of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004**

*(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 1177/2010)*

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**Intelligent Transport Systems in the field of road transport and interfaces with other transport modes \*\*\*II**

P7\_TA(2010)0258

**European Parliament legislative resolution of 6 July 2010 on the Council position at first reading with a view to the adoption of a directive of the European Parliament and of the Council on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport (06103/4/2010 – C7-0119/2010 – 2008/0263(COD))**

(2011/C 351 E/30)

(Ordinary legislative procedure: second reading)

*The European Parliament,*

- having regard to the Council position at first reading (06103/4/2010-C7-0119/2010),
- having regard to the Commission proposal to Parliament and the Council (COM(2008)0887),
- having regard to Article 251(2) and Article 71(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0512/2008),
- having regard to the Commission Communication to Parliament and the Council entitled 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665),
- having regard to Article 294(7) and Article 91(1) of the Treaty on the Functioning of the European Union;
- having regard to its position at first reading <sup>(1)</sup>,
- having regard to the opinion of the European Economic and Social Committee of 13 May 2009 <sup>(2)</sup>,
- after consulting the Committee of the Regions,

<sup>(1)</sup> Texts adopted of 23.4.2009, P6\_TA(2009)0283.

<sup>(2)</sup> OJ C 277, 17.11.2009, p. 85.

Tuesday 6 July 2010

- having regard to Rules 70 and 72 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on Transport and Tourism (A7-0211/2010),
1. Approves the Council position;
  2. Approves the joint statement by Parliament, the Council and the Commission annexed to this resolution;
  3. Takes note of the Commission statements annexed to this resolution;
  4. Notes that the act is adopted in accordance with the Council position;
  5. Instructs its President to sign the act with the President of the Council pursuant to Article 297(1) of the Treaty on the Functioning of the European Union;
  6. Instructs its Secretary-General to sign the act, once it has been verified that all the procedures have been duly completed, and, in agreement with the Secretary-General of the Council, to arrange for its publication in the *Official Journal of the European Union*;
  7. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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ANNEX

**Statements**

**concerning Directive 2010/40/EU of the European Parliament and of the Council of 7 July 2010 on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport**

**Statement by the European Parliament, the Council and the Commission on Article 290 TFEU**

'The European Parliament, the Council and the Commission declare that the provisions of this Directive shall be without prejudice to any future position of the institutions as regards the implementation of Article 290 TFEU or individual legislative acts containing such provisions.'

**Commission statement on the deployment of ITS priority actions**

'1. Article 6(2) of the text of the Council position at first reading is worded as follows:

2. The Commission shall aim at adopting specifications for one or more of the priority actions by ... (\*).

At the latest 12 months after the adoption of the necessary specifications for a priority action, the Commission shall, where appropriate, after conducting an impact assessment including a cost-benefit analysis, present a proposal to the European Parliament and the Council in accordance with Article 294 of the TFEU on the deployment of that priority action.

2. On the basis of the information currently available, the Commission takes the view that for the adoption of the necessary specifications for the priority actions as referred to in Article 3, the following indicative time table could be envisaged:

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(\*). Please insert the date: 30 months following the date of entry into force of this Directive.

Tuesday 6 July 2010

**Table 1: Indicative time-table for the adoption of specifications for priority actions**

Specifications for:	No later than end of:
the provision of EU-wide multimodal travel information services as set out in Article 3(a)	2014
the provision of EU-wide real-time traffic information services as set out in Article 3(b)	2013
the data and procedures for the provision, where possible, of road safety related minimum universal traffic information free of charge to users as set out in Article 3(c)	2012
the harmonised provision for an interoperable EU-wide eCall as set out in Article 3(d)	2012
the provision of information services concerning safe and secure parking places for trucks and commercial vehicles as set out in Article 3(e)	2012
the provision of reservation services concerning safe and secure parking places for trucks and commercial vehicles as set out in Article 3(f)	2013

This indicative timetable is based upon the assumption that agreement on the ITS Directive between the EP and the Council is reached through early second reading at the beginning of 2010.'

#### **Commission statement on liability**

The deployment and use of ITS applications and services may raise a number of liability issues that can be a major barrier to wide market penetration of some ITS services. Addressing these issues constitutes one of the priority actions put forward by the Commission in its ITS Action Plan.

Taking into account existing national and Community legislation on liability, and notably Directive 1999/34/EC, the Commission will carefully monitor the developments in the Member States concerning the deployment and use of ITS applications and services. If necessary and appropriate, the Commission will elaborate guidelines on liability, notably describing the stakeholders' obligations in relation to the implementation and use of ITS applications and services.'

#### **Commission statement concerning the notification on delegated acts**

The European Commission takes note that except in cases where the legislative act provides for an urgency procedure, the European Parliament and the Council consider that the notification of delegated acts shall take into account the periods of recess of the institutions (winter, summer and European elections), in order to ensure that the European Parliament and the Council are able to exercise their prerogatives within the time limits laid down in the relevant legislative acts, and is ready to act accordingly.'

### **Reporting formalities for ships arriving in or departing from ports \*\*\*I**

P7\_TA(2010)0259

**European Parliament legislative resolution of 6 July 2010 on the proposal for a directive of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the Member States of the Community and repealing Directive 2002/6/EC (COM(2009)0011 – C6-0030/2009 – 2009/0005(COD))**

(2011/C 351 E/31)

(Ordinary legislative procedure: first reading)

*The European Parliament,*

— having regard to the Commission proposal to Parliament and the Council (COM(2009)0011),

Tuesday 6 July 2010

- having regard to Article 251(2) and Article 80(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0030/2009),
  - having regard to the Commission Communication to Parliament and the Council entitled 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665),
  - having regard to Article 294(3) and Article 100(2) of the Treaty on the functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 4 November 2009 <sup>(1)</sup>,
  - having regard to the opinion of the Committee of Regions of 17 June 2009 <sup>(2)</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Transport and Tourism (A7-0064/2010),
1. Adopts its position at first reading hereinafter set out;
  2. Approves the joint statements by Parliament, the Council and the Commission annexed to this resolution;
  3. Takes note of the Commission statement annexed to this resolution;
  4. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

<sup>(1)</sup> OJ C 128, 18.5.2010., p. 131.

<sup>(2)</sup> OJ C 211, 4.9.2009, p. 65.

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#### **P7\_TC1-COD(2009)0005**

**Position of the European Parliament adopted at first reading on 6 July 2010 with a view to the adoption of Directive 2010/.../EU of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC**

*(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Directive 2010/65/EU)*

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Tuesday 6 July 2010

## ANNEX

**Joint Statement by the European Parliament, the Council and the Commission on the granting of Pilotage Exemption Certificates**

With a view to facilitating short sea shipping and bearing in mind the standards of pilotage services already established in many Member States and the role maritime pilots play in promoting maritime safety and the protection of the marine environment, the European Parliament, the Council and the Commission see a need to examine a clear framework for the granting of Pilotage Exemption Certificates in European seaports in line with the objective of the Commission communication with a view to establishing a European maritime transport space without barriers as well as the Commission communication on a European Ports Policy (COM(2007)0616) and bearing in mind that each pilotage area needs highly specialised experience and local knowledge. The Commission will shortly examine this issue with consideration of the importance of safety at sea and the protection of the marine environment, in co-operation with the interested parties, in particular with regard to the application of conditions which are relevant, transparent and proportionate. It will communicate the result of its assessment to the other Institutions and, if appropriate, will propose further actions.

**Statement of the European Parliament, the Council and the Commission on Article 290 TFEU**

The European Parliament, Council and Commission declare that the provisions of this Directive shall be without prejudice to any future position of the institutions as regards the implementation of Article 290 TFEU or individual legislative acts containing such provisions.

**Statement by the Commission concerning the notification of delegated acts**

The European Commission takes note that except in cases where the legislative act provides for an urgency procedure, the European Parliament and the Council consider that the notification of delegated acts, shall take into account the periods of recess of the institutions (winter, summer and European elections), in order to ensure that the European Parliament and the Council are able to exercise their prerogatives within the time limits laid down in the relevant legislative acts, and is ready to act accordingly.

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Wednesday 7 July 2010

## Novel foods \*\*\*II

P7\_TA(2010)0266

**European Parliament legislative resolution of 7 July 2010 on the Council position at first reading for adopting a regulation of the European Parliament and of the Council on novel foods, amending Regulation (EC) No 1331/2008 and repealing Regulation (EC) No 258/97 and Commission Regulation (EC) No 1852/2001 (11261/3/2009 – C7-0078/2010 – 2008/0002(COD))**

(2011/C 351 E/32)

(Ordinary legislative procedure: second reading)

*The European Parliament,*

- having regard to the Council position at first reading (11261/3/2009 – C7-0078/2010),
  - having regard to the Commission proposal to European Parliament and the Council (COM(2007)0872),
  - having regard to Article 251(2) and Article 95(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0027/2008),
  - having regard to its position at first reading <sup>(1)</sup>,
  - having regard to the Communication from the Commission to the European Parliament and the Council entitled ‘Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures’ (COM(2009)0665),
  - having regard to Article 294(7) and Article 114(1) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 29 May 2008 <sup>(2)</sup>,
  - having regard to Rule 66 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on the Environment, Public Health and Food Safety (A7-0152/2010),
1. Adopts the position at second reading hereinafter set out;
  2. Instructs its President to forward its position to the Council, to the Commission and to the national parliaments.

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<sup>(1)</sup> OJ C 117 E, 6.5.2010, p. 236.

<sup>(2)</sup> OJ C 224, 30.8.2008, p. 81.



Wednesday 7 July 2010

**P7\_TC2-COD(2008)0002**

**Position of the European Parliament adopted at second reading on 7 July 2010 with a view to the adoption of Regulation (EU) No .../2010 of the European Parliament and of the Council on novel foods, amending Regulation (EC) No 1331/2008 and repealing Regulation (EC) No 258/97 and Commission Regulation (EC) No 1852/2001**

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

Whereas:

- (1) *In implementing Union policy and having regard to the Treaty on the Functioning of the European Union (TFEU), a high level of protection of human health and consumer protection should be guaranteed and also a high level of animal welfare and environmental protection. At all times, moreover, the precautionary principle as laid down in Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety <sup>(3)</sup>, should be applied.*
- (2) A high level of human health protection should be assured in the pursuit of Union policies **and** should be given **priority over the functioning of the internal market**.
- (3) *Article 13 TFEU clarifies that the Union and the Member States are to pay full regard to the welfare requirements of animals when formulating and implementing policies, since animals are sentient beings.*
- (4) *The standards laid down in Union legislation must be applied to all foods placed on the market within the Union, including foods imported from third countries.*
- (5) *The European Parliament called on the Commission, in its resolution of 3 September 2008 on the cloning of animals for food supply <sup>(4)</sup>, to submit proposals prohibiting for food supply purposes (i) the cloning of animals, (ii) the farming of cloned animals or their offspring, (iii) the placing on the market of meat or dairy products derived from cloned animals or their offspring and (iv) the importing of cloned animals, their offspring, semen and embryos from cloned animals or their offspring, and meat or dairy products derived from cloned animals or their offspring.*

<sup>(1)</sup> OJ C 224, 30.8.2008, p. 81.

<sup>(2)</sup> Position of the European Parliament of 25 March 2009 (OJ C 117 E, 6.5.2010, p. 236) and Council Position at first reading of 15 March 2010 (OJ C 122 E, 11.5.2010, p. 38), position of the European Parliament of 7 July 2010.

<sup>(3)</sup> OJ L 31, 1.2.2002, p. 1.

<sup>(4)</sup> OJ C 295 E, 4.12.2009, p. 42.

Wednesday 7 July 2010

- (6) *The Commission's Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) adopted on 28–29 September 2005 an opinion which concluded that there were 'major gaps in the knowledge necessary for risk assessment. These include nanoparticle characterisation, the detection and measurement of nanoparticles, the dose-response, fate, and persistence of nanoparticles in humans and in the environment, and all aspects of toxicology and environmental toxicology related to nanoparticles'. Furthermore, the SCENIHR opinion concluded that 'existing toxicological and eco-toxicological methods may not be sufficient to address all of the issues arising in relation to nanoparticles'.*
- (7) The Union's rules on novel foods were established by Regulation (EC) No 258/97 of the European Parliament and of the Council of 27 January 1997 concerning novel foods and novel food ingredients <sup>(1)</sup> and by Commission Regulation (EC) No 1852/2001 of 20 September 2001 laying down detailed rules for making certain information available to the public and for the protection of information submitted pursuant to European Parliament and Council Regulation (EC) No 258/97 <sup>(2)</sup>. For the sake of clarity, Regulation (EC) No 258/97 and Regulation (EC) No 1852/2001 should be repealed and Regulation (EC) No 258/97 should be replaced by this Regulation. Commission Recommendation 97/618/EC of 29 July 1997 concerning the scientific aspects and the presentation of information necessary to support applications for the placing on the market of novel foods and novel food ingredients and the preparation of initial assessment reports under Regulation (EC) No 258/97 of the European Parliament and of the Council <sup>(3)</sup> should therefore become obsolete as regards novel foods.
- (8) In order to ensure continuity with Regulation (EC) No 258/97, the absence of a use for human consumption to a significant degree within the Union before the date of application of Regulation (EC) No 258/97, namely 15 May 1997, should be kept as the criterion for a food to be considered as novel. A use within the Union refers to a use in the Member States irrespective of the date of their accession to the European Union.
- (9) **█** The existing definition of novel food should be clarified, **with an explanation of the criteria for novelty**, and updated by replacing the existing categories with a reference to the general definition of food in **█ Regulation (EC) No 178/2002**.
- (10) **Foods with a new or intentionally modified primary molecular structure, foods consisting of, or isolated from, micro-organisms, fungi or algae, new strains of micro-organism with no history of safe use and concentrates of substances that naturally occur in plants should be considered as novel foods as defined in this Regulation.**
- (11) It should also be clarified that a food **should** be considered as novel when a production technology which was not previously used for **the production of foods to be marketed and consumed** is applied to that food. In particular, emerging technologies in breeding and food production processes, which have an impact on food and thus might have an impact on food safety, should be covered by this Regulation. Novel food should therefore include foods derived from **plants and** animals, produced by non-traditional breeding techniques, and **█** foods **modified** by new production processes, **such as nanotechnology and nanoscience**, which might have an impact on food **█**. Foods derived from new plant varieties, or from animal breeds produced by traditional breeding techniques, should not be considered as novel foods. **█**
- (12) **The cloning of animals is incompatible with Council Directive 98/58/EC of 20 July 1998 concerning the protection of animals kept for farming purposes <sup>(4)</sup>, point 20 of the Annex of which states that natural or artificial breeding procedures which cause, or are likely to cause, suffering or injury to any of the animals concerned must not be practised. Food from cloned animals or their descendants must therefore not be placed on the Union list.**

<sup>(1)</sup> OJ L 43, 14.2.1997, p. 1.

<sup>(2)</sup> OJ L 253, 21.9.2001, p. 17.

<sup>(3)</sup> OJ L 253, 16.9.1997, p. 1.

<sup>(4)</sup> OJ L 221, 8.8.1998, p. 23.

Wednesday 7 July 2010

- (13) **█** The European Group on Ethics in Science and New Technologies, established by Commission Decision of 16 December 1997, **stated in its Opinion (No. 23) of 16 January 2008 on ethical aspects of animal cloning for food supply that it ‘does not see convincing arguments to justify the production of food from clones and their offspring’.** **The Scientific Committee of the European Food Safety Authority (the ‘Authority’) concluded in its Opinion of 15 July 2008 on animal cloning <sup>(1)</sup> that ‘the health and welfare of a significant proportion of clones ... have been found to be adversely affected, often severely and with a fatal outcome’.**
- (14) **Foods derived from cloned animals and their descendants should, however, be excluded from the scope of this Regulation. They should be dealt with in a specific regulation, adopted under the ordinary legislative procedure, and should not be subject to the common authorisation procedure. Before the date of application of this Regulation, the Commission should present a corresponding legislative proposal. Pending the entry into force of a regulation on cloned animals, a moratorium should be imposed on the placing on the market of foods manufactured from cloned animals or their descendants.**
- (15) Implementing measures should be adopted to provide for **further** criteria **in order** to facilitate the assessment of whether a food was used for human consumption to a significant degree within the Union before 15 May 1997. If **█** a food was used exclusively as, or in, a food supplement, as defined in Directive 2002/46/EC **of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements <sup>(2)</sup>, prior to that date,** it **can** be placed on the market **█** after that date for the same use without being considered as a novel food. However, that use as, or in, a food supplement should not be taken into account for the assessment of whether **it** was used for human consumption to a significant degree within the Union before 15 May 1997. Therefore, **other** uses of the food concerned, **namely** other than **█** food supplement **uses, have to** be authorised in accordance with this Regulation.
- (16) The use of engineered nanomaterials in food production might increase with the further development of technology. In order to ensure a high level of protection of human health, **█** it is necessary to develop a uniform definition for engineered **nanomaterials**.
- (17) **Test methods currently available are not adequate for assessing** the risks associated with **█** nanomaterials. **Non-animal test methods for testing nanomaterials should be developed as a matter of urgency.**
- (18) **Only nanomaterials entered in a list of approved substances should be present in food packaging, accompanied by a limit on migration into or onto the food products contained in such packaging.**
- (19) **Reformulated** food products produced from **existing** food ingredients **available on the market within the Union,** in particular **those reformulated** by changing **the** composition or **amounts of those food ingredients,** should not be considered as novel food. **█**
- (20) The provisions of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use <sup>(3)</sup> should apply where, taking into account all its characteristics, a product may fall both within the definition of ‘medicinal product’ and within the definition of a product covered by other Union legislation. In this respect, a Member State, if it establishes in accordance with Directive 2001/83/EC that a product is a medicinal product, should be able to restrict the placing on the market of such product in accordance with Union law. Moreover, medicinal products are excluded from the definition of food as established by Regulation (EC) No 178/2002 and should not be subject to this Regulation.

<sup>(1)</sup> *The EFSA Journal* (2008)767, p. 32.

<sup>(2)</sup> *OJ L 183, 12.7.2002, p. 51.*

<sup>(3)</sup> *OJ L 311, 28.11.2001, p. 67.*

**Wednesday 7 July 2010**

- (21) Novel foods authorised under Regulation (EC) No 258/97 should maintain their novel food status but authorisation should be required for any new uses of such foods.
- (22) Foods which are intended for technological uses or which are genetically modified should not fall within the scope of this Regulation. Therefore, genetically modified food falling within the scope of Regulation (EC) No 1829/2003 <sup>(1)</sup>, food used solely as additives falling within the scope of Regulation (EC) No 1333/2008 <sup>(2)</sup>, flavourings falling within the scope of Regulation (EC) No 1334/2008 <sup>(3)</sup>, enzymes falling within the scope of Regulation (EC) No 1332/2008 <sup>(4)</sup> and extraction solvents falling within the scope of Directive 2009/32/EC <sup>(5)</sup> should not be covered by this Regulation.
- (23) The use of vitamins and minerals is governed by specific sectoral food laws. The vitamins and minerals falling within the scope of Directive 2002/46/EC, Regulation (EC) No 1925/2006 of the European Parliament and of the Council of 20 December 2006 on the addition of vitamins and minerals and of certain other substances to foods <sup>(6)</sup> and Directive 2009/39/EC of the European Parliament and of the Council of 6 May 2009 on foodstuffs intended for particular nutritional uses (recast) <sup>(7)</sup> should therefore be excluded from the scope of this Regulation. However, those specific legal acts do not deal with cases where authorised vitamins and mineral substances are obtained by production methods or using new sources that were not taken into account when they were authorised. Therefore, pending the amendment of those specific legal acts, such vitamins and mineral substances should not be excluded from the scope of this Regulation when the production methods or new sources give rise to significant changes in the composition or structure of the vitamins or minerals which affect their nutritional value, how they are metabolised or the level of undesirable substances.
- (24) Novel foods, other than vitamins and minerals, intended for particular nutritional uses, for food fortification or as food supplements, should be assessed in conformity with this Regulation. They should also remain subject to the rules provided for in Directive 2002/46/EC, in Regulation (EC) No 1925/2006, in Directive 2009/39/EC, and in the specific Directives referred to in Directive 2009/39/EC and in Annex I thereto.
- (25) ***The Commission should establish a simple and transparent procedure for cases in which it does not have information ■ on human consumption before 15 May 1997. The Member States should be involved in this procedure. The procedure should be adopted no later than ... (\*)***.
- (26) Novel foods should be placed on the market within the Union only if they are safe and do not mislead the consumer. ***The assessment of their safety should be based on the precautionary principle as laid down in Article 7 of Regulation (EC) No 178/2002.*** In addition, ***they*** should not differ from ***the food that they are to replace*** in any way that would be nutritionally disadvantageous for the consumer.

<sup>(1)</sup> Regulation (EC) No 1829/2003 of the European Parliament and of the Council of 22 September 2003 on genetically modified food and feed (OJ L 268, 18.10.2003, p. 1).

<sup>(2)</sup> Regulation (EC) No 1333/2008 of the European Parliament and of the Council of 16 December 2008 on food additives (OJ L 354, 31.12.2008, p. 16).

<sup>(3)</sup> Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods (OJ L 354, 31.12.2008, p. 34).

<sup>(4)</sup> Regulation (EC) No 1332/2008 of the European Parliament and of the Council of 16 December 2008 on food enzymes (OJ L 354, 31.12.2008, p. 7).

<sup>(5)</sup> Directive 2009/32/EC of the European Parliament and of the Council of 23 April 2009 on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (recast) (OJ L 141, 6.6.2009, p. 3).

<sup>(6)</sup> OJ L 404, 30.12.2006, p. 26.

<sup>(7)</sup> OJ L 124, 20.5.2009, p. 21.

**(\*) OJ: Please insert date: Six months after the entry into force of this Regulation.**

Wednesday 7 July 2010

- (27) It is necessary to apply a harmonised centralised procedure for safety assessment and authorisation that is efficient, time-limited and transparent. With a view to further harmonising different procedures for the authorisation of food, the safety assessment of novel foods and their inclusion in the Union list should be carried out in accordance with the procedure laid down in Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes and food flavourings <sup>(1)</sup>, which should be applicable whenever it is not specifically derogated from by this Regulation. Upon receipt of an application for authorisation of a product as a novel food, the Commission should assess the validity and applicability of the application. The authorisation of a novel food should also take into account other factors relevant to the matter under consideration, including ethical, environmental, animal welfare factors and the precautionary principle.
- (28) Criteria for the evaluation of the potential risks arising from novel foods should also be laid down. In order to ensure the harmonised scientific assessment of novel foods, such assessments should be carried out by the Authority.
- (29) ***Ethical and environmental aspects must be considered as part of the risk assessment during the authorisation procedure. Those aspects should be assessed by the European Group on Ethics in Science and New Technologies and the European Environment Agency respectively.***
- (30) In order to simplify procedures, applicants should be allowed to present a single application for foods regulated under different sectoral food laws. Regulation (EC) No 1331/2008 should therefore be amended accordingly. As a consequence of the entry into force of the Treaty of Lisbon on 1 December 2009, the European Union has replaced and succeeded the European Community, and the word 'Community' should be replaced by 'Union' throughout that Regulation.
- (31) If traditional foods from third countries are included in the list of traditional foods from third countries, they should be allowed to be placed on the market within the Union, under conditions that correspond to those for which the history of safe food use has been demonstrated. As regards the safety assessment and management of traditional food from third countries, their history of safe food use in their country of origin should be taken into account. The history of safe food use should not include non-food uses or uses not related to normal diets.
- (32) Where appropriate and based on the conclusions of the safety assessment, post-market monitoring requirements for the use of novel foods for human consumption should be introduced.
- (33) The inclusion of a novel food in the Union list of novel foods **■** should be without prejudice to the possibility of evaluating the effects of the overall consumption of a substance which is added to, or used for, the manufacture of that food, or of a comparable product in accordance with **Article 8 of Regulation (EC) No 1925/2006**.
- (34) In specific circumstances, in order to stimulate research and development within the agri-food industry, and thus innovation, ***it is appropriate to protect the investment made by innovators in gathering the information and data provided in support of an application under this Regulation.*** The newly developed scientific evidence and proprietary data provided in support of an application for inclusion of a novel food in the Union list **■** should not be used to the benefit of ***another*** applicant during a limited period of time, without the agreement of the ***first*** applicant. The protection of scientific data provided by one applicant should not prevent other applicants from seeking the inclusion in the Union list of novel foods on the basis of their own scientific data. ***In addition, the protection of scientific data should not prevent transparency and access to information relating to the data used in the safety assessment of novel foods. Intellectual property rights should, nevertheless, be respected.***

<sup>(1)</sup> OJ L 354, 31.12.2008, p. 1.

Wednesday 7 July 2010

- (35) Novel foods are subject to the general labelling requirements laid down in Directive 2000/13/EC of the European Parliament and of the Council of 20 March 2000 on the approximation of the laws of the Member States relating to labelling, presentation and advertising of foodstuffs<sup>(1)</sup>. In certain cases it might be necessary to provide for additional labelling information, in particular regarding the description of the food, its source, or its conditions of use. Therefore, **the inclusion of a novel food in the Union list may be subject to specific conditions of use or labelling obligations.**
- (36) Regulation (EC) No 1924/2006 of the European Parliament and of the Council of 20 December 2006 on nutrition and health claims made on foods<sup>(2)</sup> harmonises the provisions in the Member States which relate to nutrition and health claims. Therefore, claims regarding novel foods should only be made in accordance with that Regulation. **Where an applicant wishes a novel food to carry a health claim that needs to be authorised in accordance with Article 17 or 18 of Regulation (EC) No 1924/2006 and the novel food and health claim applications both include requests for the protection of proprietary data, the periods of data protection should start together and run concurrently, where the applicant so requests.**
- (37) The European Group on Ethics in Science and New Technologies **should** be consulted **in specific cases** with a view to obtaining advice on ethical issues regarding **the use of new technologies and** the placing on the market **■** of novel foods.
- (38) Novel foods placed on the market within the Union under Regulation (EC) No 258/97 should continue to be placed on the market. Novel foods authorised in accordance with Regulation (EC) No 258/97 should be included in the Union list of novel foods established by this Regulation. In addition, applications submitted under Regulation (EC) No 258/97, **in relation to which** the initial assessment report provided for under **Article 6(3) of that Regulation ■** has not yet been forwarded to the Commission **and in relation to which** an additional assessment report is required in accordance with **Article 6(3) or 6(4) of that Regulation before the date of application of this Regulation, should be considered as applications under this Regulation. When required to give an opinion, the Authority and the Member States should take into account the outcome of the initial assessment.** Other **■** requests submitted under Article 4 of Regulation (EC) No 258/97 before the date of application of this Regulation should be processed under the provisions of Regulation (EC) No 258/97.
- (39) Regulation (EC) 882/2004<sup>(3)</sup> lays down general rules for the performance of official controls to verify compliance with food law. The Member States should be requested to carry out official controls in accordance with that Regulation, in order to enforce compliance with this Regulation.
- (40) Requirements in respect of the hygiene of foodstuffs as laid down in Regulation (EC) No 852/2004<sup>(4)</sup> apply.
- (41) Since the objective of this Regulation, namely laying down harmonised rules for the placing of novel foods on the market within the Union, cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (42) The Member States should lay down the rules on penalties applicable to infringements of the provisions of this Regulation and should take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.

<sup>(1)</sup> **■** OJ L 109, 6.5.2000, p. 29 **■**.

<sup>(2)</sup> **■** OJ L 404, 30.12.2006, p. 9 **■**.

<sup>(3)</sup> Regulation (EC) No 882/2004 of the European Parliament and of the Council of 29 April 2004 on official controls performed to ensure the verification of compliance with feed and food law, animal health and animal welfare rules (OJ L 165, 30.4.2004, p. 1).

<sup>(4)</sup> Regulation (EC) No 852/2004 of the European Parliament and of the Council of 29 April 2004 on the hygiene of foodstuffs (OJ L 139, 30.4.2004, p. 1).

Wednesday 7 July 2010

- (43) **■** The Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU in respect of the criteria according to which foods may be considered as having been used for human consumption to a significant degree within the Union before 15 May 1997, **in respect of the determination of whether a type of food falls within the scope of this Regulation, the adjustment and adaptation of the definition of 'engineered nanomaterial' to technical and scientific progress and in line with definitions subsequently agreed at international level, rules on how to proceed in cases in which the Commission has no information about use of a food for human consumption before 15 May 1997, as well as in respect of rules for the application of Article 4(1) and Article 9 and the update of the Union list.** It is of particular importance that the Commission **carry out appropriate consultations during its preparatory work, including at expert level,**

HAVE ADOPTED THIS REGULATION:

## Chapter I

### Introductory provisions

#### Article 1

##### Subject matter

This Regulation lays down harmonised rules for the placing of novel foods on the market within the Union with a view to ensuring a high level of protection of human **life and health, animal health and welfare, the environment and the interests of consumers** whilst ensuring **transparency and** the effective functioning of the internal market **and stimulating innovation within the agri-food industry.**

#### Article 2

##### Scope

1. This Regulation shall apply to the placing of novel foods on the market within the Union.
2. This Regulation shall not apply to:
  - (a) foods when and in so far as they are used as:
    - (i) food additives falling within the scope of Regulation (EC) No 1333/2008;
    - (ii) food flavourings falling within the scope of Regulation (EC) No 1334/2008;
    - (iii) extraction solvents used in the production of foodstuffs and falling within the scope of Directive 2009/32/EC;
    - (iv) food enzymes falling within the scope of Regulation (EC) No 1332/2008;
    - (v) vitamins and minerals falling within the respective scope of Directive 2002/46/EC, Regulation (EC) No 1925/2006 or Directive 2009/39/EC, except for vitamin and mineral substances already authorised which are obtained by production methods or using new sources that were not taken into account when they were authorised under specific legislation, where such production methods or new sources give rise to significant changes referred to in point (iii) of Article 3(2)(a) of this Regulation;
  - (b) foods falling within the scope of Regulation (EC) No 1829/2003;

Wednesday 7 July 2010

(c) *foods derived from cloned animals and their descendants. Before ... (\*), the Commission shall present a legislative proposal to prohibit the placing on the market in the Union of foods derived from cloned animals and their descendants. The proposal shall be forwarded to the European Parliament and the Council.*

3. *Where necessary and taking into account the scope defined in this Article, the Commission may determine, by means of delegated acts in accordance with Article 20 and subject to the conditions of Articles 21 and 22, whether a type of food falls within the scope of this Regulation.*

#### Article 3

#### Definitions

1. For the purposes of this Regulation, the definitions laid down in Regulation (EC) No 178/2002 shall apply.

2. The following definitions shall also apply:

(a) 'novel food' means **■**:

(i) food **that was not used for human consumption to a significant degree within the** Union before 15 May 1997 **■**;

(ii) food of plant **or animal** origin when a non-traditional breeding technique not used **■** before 15 May 1997 **is applied to the plant or animal, with the exception of foods derived from cloned animals and their descendants;**

(iii) food to which a new production process not used for food production within the Union before 15 May 1997 is applied, if that production process gives rise to significant changes in the composition or structure of the food which affect its nutritional value, how it is metabolised or the level of undesirable substances;

(iv) food containing or consisting of engineered nanomaterials;

**■**

(b) 'engineered nanomaterial' means any intentionally produced material that has one or more dimensions of the order of 100 nm or less or that is composed of discrete functional parts, either internally or at the surface, many of which have one or more dimensions of the order of 100 nm or less, including structures, agglomerates or aggregates, which may have a size above the order of 100 nm but retain properties that are characteristic of the nanoscale.

Properties that are characteristic of the nanoscale include:

(i) those properties related to the large specific surface area of the materials considered; and/or

(ii) specific physico-chemical properties that are different from those of the non-nanoform of the same material;

(\* ) **OJ: Please insert date: Six months after the date of entry into force of this Regulation.**



Wednesday 7 July 2010

- (c) **'cloned animals'** means animals produced by means of a method of asexual, artificial reproduction with the aim of producing a genetically identical or nearly identical copy of an individual animal;
- (d) **'descendants of cloned animals'** means animals produced by means of sexual reproduction, in cases in which at least one of the progenitors is a cloned animal;
- (e) **'traditional food from a third country'** means **a natural non-engineered** novel food **■** with a history of food use in **a** third country, **meaning** that the food in question **was, for at least 25 years before ... (\*)**, and continues to be, part of the **normal** diet **■** in a large part of the population of the country;
- (f) **'history of safe food use in a third country'** means that the safety of the food in question is confirmed with compositional data and from experience of use and continued use for at least 25 years in the customary diet of a large part of the population of a country.

3. **In view of the various definitions of nanomaterials published by different bodies at international level and the constant technical and scientific developments in the field of nanotechnologies, the Commission shall adjust and adapt point (b) of paragraph 2 of this Article to technical and scientific progress, and in line with definitions subsequently agreed at international level, by means of delegated acts in accordance with Article 20 and subject to the conditions of Articles 21 and 22.**

#### Article 4

##### **Collection of information regarding the classification of a novel food ■**

1. **The Commission shall collect information from the Member States and/or from food business operators or any other interested party to determine whether a food falls within the scope of this Regulation. Member States, business operators and other interested parties shall transmit to the Commission information on the extent to which a food was used for human consumption within the Union before 15 May 1997.**
2. **The Commission shall publish those data and the conclusions drawn from the data collection and the non-confidential data supporting it.**
3. **In order to ensure the completeness of information regarding the classification of novel foods, the Commission shall, not later than ... (\*), adopt rules on how to proceed in cases in which the Commission has no information about the use of a food for human consumption before 15 May 1997 by means of delegated acts in accordance with Article 20 and subject to the conditions of Articles 21 and 22.**
4. **The Commission may adopt detailed rules on the application of paragraph 1, in particular as regards the type of information to be collected from Member States and/or from food business operators, by means of delegated acts in accordance with Article 20 and subject to the conditions of Articles 21 and 22.**

#### Article 5

##### **Union list of novel foods**

**Only novel foods included in the Union list of novel foods ('the Union list') may be placed on the market. The Commission shall keep and publish the Union list on a publicly accessible page intended for that purpose on the website of the Commission.**

(\*) OJ: Please insert date: Six months after the date of entry into force of this Regulation.

Wednesday 7 July 2010

## Chapter II

### Requirements for placing novel foods on the market within the Union

#### Article 6

##### Prohibition of non-compliant novel foods

**Novel foods** shall **not be placed on the market if they do** not comply with **the provisions of** this Regulation.

#### I

#### Article 7

##### General conditions for inclusion of novel foods in the Union list

1. A novel food may be included in the Union list only if it meets the following conditions:
  - (a) it does not, on the basis of the scientific evidence available, pose a safety concern to the health of the consumer **and of animals, which implies that cumulative and synergistic effects as well as possible adverse effects on particular groups of the population will be taken into account in the risk assessment;**
  - (b) it does not mislead the consumer;
  - (c) if it is intended to replace another food, it does not differ from that food in such a way that its normal consumption would be nutritionally disadvantageous for the consumer;
  - (d) **the opinion of the European Environment Agency, which shall be published no later than the day of the publication of the Authority's assessment, concerning the extent to which the production process and normal consumption have a harmful impact on the environment, is taken into account in the risk assessment;**
  - (e) **the opinion of the European Group on Ethics in Science and New Technologies, which shall be published no later than the day of the publication of the Authority's assessment, concerning the extent to which there are ethical objections, is taken into account in the risk assessment;**
  - (f) **a novel food that may have any adverse effects on particular groups of the population will be authorised only where specific measures preventing such adverse effects have been implemented;**
  - (g) **it is not derived from a cloned animal or its descendants;**
  - (h) **maximum intake levels of the novel food as such or as part of another foodstuff or categories of foodstuffs will be laid down, where required in the interests of safe use;**
  - (i) **cumulative effects of novel foods that are used in different foodstuffs or categories of foodstuffs have been assessed.**
2. **Foods to which production processes have been applied that require specific risk assessment methods (for example, foods produced using nanotechnologies) may not be included in the Union list until such specific methods have been approved by the Authority for use, and an adequate safety assessment on the basis of those methods has shown that the use of the respective foods is safe.**
3. A novel food may be included in the Union list only if the competent authority has submitted an opinion establishing that the food is not harmful to health.

Wednesday 7 July 2010

4. *In the event of doubt, due, for example, to insufficient scientific certainty or lack of data, the precautionary principle shall be applied and the food in question shall not be included in the Union list.*

#### Article 8

##### Content of the Union list

1. *The Commission shall update the Union list, inter alia in cases of data protection referred to in Article 14, in accordance with the procedure laid down in Regulation (EC) No 1331/2008. By way of derogation from paragraphs 4 to 6 of Article 7 of Regulation (EC) No 1331/2008, the Regulation updating the Union list shall be adopted by means of delegated acts in accordance with Article 20 and subject to the conditions of Articles 21 and 22. The Commission shall publish the Union list on a dedicated page of its website.*

2. The entry of a novel food in the Union list shall include:

- (a) a specification of the food;
- (b) *the intended use of the food;*
- (c) the conditions of use;
- (d) *where appropriate, additional specific labelling requirements to inform the final consumer;*
- (e) *the date of entry of the novel food in the Union list and the date of receipt of the application;*
- (f) *the name and address of the applicant;*
- (g) *the date and results of the last inspection according to the monitoring requirements laid down in Article 12;*
- (h) *the fact that the entry is based on newly developed scientific evidence and/or proprietary data protected in accordance with Article 14;*
- (i) *the fact that the novel food may only be placed on the market by the applicant specified in point (f), unless a subsequent applicant obtains authorisation for the food without prejudice to the proprietary data of the original applicant.*

3. *Post-marketing monitoring shall be required for all novel foods. All novel foods which have been allowed onto the market shall be reviewed after five years and whenever more scientific evidence becomes available. In the context of the monitoring, special attention should be paid to the categories of the population with the highest dietary intakes.*

4. *Where a novel food contains a substance which may pose a risk to human health in the event of excessive consumption, it shall require approval for use within maximum limits in certain foods or food categories.*

5. *All ingredients present in the form of nanomaterials shall be clearly indicated in the list of ingredients. The names of such ingredients shall be followed by the word 'nano' in brackets.*

6. *Before the expiry of the period referred to in Article 14(1), the Union list shall be updated in accordance with paragraph 1 of this Article so that, provided that the authorised food still meets the conditions laid down in this Regulation, the specific indications referred to in point (h) of paragraph 2 of this Article are no longer included.*

Wednesday 7 July 2010

7. For the purposes of updating the Union list through inclusion of a novel food, where the novel food does not consist of or contain food subject to data protection according to Article 14 and:

- (a) the novel food is equivalent to existing foods, in terms of composition, how it is metabolised and level of undesirable substances, or
- (b) the novel food consists of, or contains, food previously approved for food use in the Union, and the new intended use can be expected not to significantly increase the intake of consumers, including consumers in vulnerable groups,

then the notification procedure referred to in Article 9 shall apply *mutatis mutandis*, by way of derogation from paragraph 1 of this Article.

#### Article 9

##### Traditional food from a third country

1. A food business operator intending to place a traditional food from a third country on the market in the Union shall notify this to the Commission, indicating the name of the food, its composition and country of origin.

The notification shall be accompanied by documented data demonstrating the history of safe food use in any third country.

2. The Commission shall forward the notification including the demonstration of history of safe food use referred to in paragraph 1 without delay to the Member States and the Authority and make it publicly available on its website.

3. Within four months from the date on which the notification provided for in paragraph 1 is forwarded by the Commission according to paragraph 2, a Member State and the Authority may inform the Commission that they have justified safety objections, based on scientific evidence, to the placing on the market of the traditional food concerned.

In that case, the food shall not be placed on the market in the Union and Articles 5 - 8 shall apply. The notification as referred to in paragraph 1 of this Article shall be considered as an application referred to in Article 3(1) of Regulation (EC) No 1331/2008. Alternatively, the applicant may choose to withdraw the notification.

The Commission shall inform the food business operator concerned accordingly without undue delay and in a demonstrable manner not later than five months from the date of the notification provided for in paragraph 1.

4. If no justified safety objections based on scientific evidence have been raised and no such information has been communicated to the food business operator concerned in accordance with paragraph 3, the traditional food may be placed on the market in the Union after five months from the date of the notification provided for in paragraph 1.

5. The Commission shall publish a list of traditional foods from third countries that may be placed on the market in the Union in accordance with paragraph 4 on a dedicated page of the Commission's website. This page shall be accessible from and linked to the page on the Union list referred to in Article 5.

Wednesday 7 July 2010

6. **In order to ensure the smooth functioning of the notification procedure provided for in this Article, the Commission shall, before ... (\*), adopt detailed rules on the application of this Article by means of delegated acts in accordance with Article 20 and subject to the conditions of Articles 21 and 22.**

## Article 10

## Technical guidance

Without prejudice to the **provisions of Article 9(1)(a)** of Regulation (EC) No 1331/2008 and **before ... (\*)**, the Commission shall, where appropriate, in close cooperation with the Authority, **the food business operators and small and medium-sized enterprises** make available technical guidance and tools to assist **food business operators and especially small and medium-sized enterprises** in preparing and submitting applications under this Regulation. **Recommendation 97/618/EC shall be available for use by applicants until replaced by revised technical guidance issued in accordance with this Article.**

**The technical guidance and tools shall be published, not later than ... (\*), on a publicly accessible page intended for that purpose on the website of the Commission.**

## Article 11

## Opinion of the Authority

In assessing the safety of novel foods, where appropriate, the Authority shall, in particular:

- (a) consider whether the **novel food, irrespective of whether or not it is intended to replace a food** **█** already existing on the market, **poses any risk of harmful or toxic effects to human health, while also taking into account the implications of any new characteristics;**
- (b) take into account, **for traditional food from a third country**, the history of safe food use.

## Article 12

**█** Obligations on **the** food business operators

1. The Commission **shall impose**, for food safety reasons and following the opinion of the Authority, **█** a requirement for post-market monitoring. **This monitoring shall take place five years after the date of inclusion of a novel food in the Union list.**

2. **The monitoring requirements shall also apply to novel foods already on the market, including those approved under the simplified procedure of notification laid down in Article 5 of Regulation (EC) No 258/97.**

3. **Member States shall appoint competent authorities that will be responsible for the post-marketing monitoring.**

4. The producer **and food business operator or the authority** shall forthwith inform the Commission of:

- (a) any new scientific or technical information which might influence the evaluation of the safety in use of the novel food;
- (b) any prohibition or restriction imposed by the competent authority of any third country in which the novel food is placed on the market.

(\*) OJ: Please insert date: **Six months** after the entry into force of this Regulation.

Wednesday 7 July 2010

**All food business operators shall notify the Commission and the competent authorities of the Member State in which they operate of any health problem of which they have been informed by consumers or consumer protection organisations.**

**The Member State's competent authority shall report to the Commission within three months of the completion of an inspection. The Commission shall submit a report to the European Parliament and the Council no later than a year after the expiry of the five-year period referred to in paragraph 1.**

#### Article 13

##### European Group on Ethics in Science and New Technologies

**Where appropriate**, the Commission **may**, on its own initiative or at the request of a Member State, **consult the European Group on Ethics in Science and new Technologies**, with a view to obtaining its opinion on ethical questions relating to science and new technologies of major ethical importance.

The Commission shall make **any such opinion of the European Group on Ethics in Science and new Technologies** available to the public.

#### Article 14

##### **■** Data protection

1. **At the request of the applicant**, supported by appropriate and verifiable information included in the application dossier, newly developed scientific evidence and **proprietary scientific data provided to support the applications may not be used for the benefit of another application for a period of five years from the date of the inclusion of the novel food in the Union list unless the subsequent applicant has agreed with the prior applicant that such data and information may be used, and where:**

- (a) newly developed scientific evidence and/or scientific data was designated as proprietary by the applicant at the time the first application was made (proprietary scientific data);
- (b) the prior applicant had exclusive right of reference to the proprietary **■** data at the time the **prior** application was made;
- (c) the novel food could not have been authorised without the submission of the proprietary **■** data by the prior applicant; and
- (d) **the scientific data and other information was designated as proprietary by the prior applicant at the time the prior application was made.**

However, a prior applicant may agree with a subsequent applicant that such data and information may be used.

2. **Data from research projects partly or completely paid by the Union and/or public institutions shall be published together with the application and shall be freely available for use by other applicants.**

3. **In order to avoid the repetition of studies involving vertebrates, reference by a subsequent applicant to studies on vertebrates and other studies that may prevent animal testing shall be allowed. The owner of the data may claim adequate compensation for the use of the data.**

4. The Commission shall determine, in consultation with the applicant, which information should be granted the protection referred to in paragraph 1, and shall inform the applicant, the Authority and the Member States of its decision.

Wednesday 7 July 2010

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## Article 15

### *Harmonised data protection*

**Notwithstanding the authorisation of a novel food pursuant to Articles 7 and 14 of Regulation (EC) No 1331/2008 or authorisation of a health claim pursuant to Articles 17, 18 and 25 of Regulation (EC) No 1924/2006, the data concerning the authorisation and the publication of the authorisation in the Official Journal of the European Union shall be identical and the data protection periods shall run concurrently where authorisation is sought for a novel food and for a health claim relating to that food, and where data protection pursuant to the provisions of both Regulations is warranted and requested by the applicant.**

## Article 16

### *Inspection and control measures*

**In order to enforce compliance with this Regulation, official controls are to be carried out in accordance with Regulation (EC) No 882/2004.**

## Chapter III

### General provisions

## Article 17

### Penalties

**The Member States shall lay down the rules on penalties applicable to infringements of the provision of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by ... (\*) and shall, without delay, **notify it** of any subsequent amendment affecting them.**

## Article 18

### *Privileges of Member States*

**1. Where a Member State, as a result of new information or a reassessment of existing information, has detailed grounds for considering that the use of a food or a food ingredient complying with this Regulation endangers human health or the environment, that Member State may either temporarily restrict or suspend the trade in and use of the food or food ingredient in question in its territory. It shall immediately inform the other Member States and the Commission thereof, giving grounds for its decision.**

**2. The Commission, in close cooperation with the Authority, shall examine the grounds referred to in paragraph 1 as soon as possible and shall take the appropriate measures. The Member State which took the decision referred to in paragraph 1 may maintain it until those measures have entered into force.**

## Article 19

### Delegated acts

For the purposes of achieving the objectives of this Regulation as set out in Article 1, the Commission shall, no later than ... (\*\*), adopt further criteria for assessing whether a food was used for human consumption to a significant degree within the Union before 15 May 1997, as referred to in Article 3(2)(a), by means of delegated acts in accordance with Article 20 and subject to the conditions of Articles 21 and 22.

(\*) OJ: please insert date: 12 months after the entry into force of this Regulation.

(\*\*) OJ: Please insert date: 24 months after the entry into force of this Regulation.

Wednesday 7 July 2010

## Article 20

### Exercise of the delegation

1. The power to adopt the delegated acts referred to in **Articles 2(3), 3(3), 4(3), 4(4), 8(1), 9(6) and 19** shall be conferred on the Commission for a period of five years following the entry into force of this Regulation. The Commission shall make a report in respect of the delegated powers at the latest six months before the end of the five-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 21.
2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
3. The power to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 21 and 22.

## Article 21

### Revocation of the delegation

1. The delegation of power referred to in **Articles 2(3), 3(3), 4(3), 4(4), 8(1), 9(6) and 19** may be revoked at any time by the European Parliament or by the Council.
2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall **endeavour to** inform the other institution and the Commission **within a reasonable time** before the final decision is taken, **indicating** the delegated powers which could be subject to revocation and **possible** reasons for a revocation.
3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

## Article 22

### Objections to delegated acts

1. The European Parliament or the Council may object to **a** delegated act within a period of **two** months from the date of notification.

***At the initiative of the European Parliament or the Council this period shall be extended by two months.***

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act **it shall be published in the Official Journal of the European Union and** shall enter into force **at** the date started therein.

***The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.***

3. If the European Parliament or the Council objects to **a** delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.



Wednesday 7 July 2010

## Article 23

## Review

1. By ... (\*) and in the light of experience gained, the Commission shall submit to the European Parliament and to the Council a report on the implementation of this Regulation and in particular of Articles 3, 9 and 14, accompanied, where appropriate, by any legislative proposals.
2. **No later than ...** (\*\*) the Commission shall **forward** to the European Parliament and to the Council a report on all aspects of food produced from animals obtained by using a cloning technique and from their **descendants**, followed, where appropriate, by any legislative proposals.
3. The reports and any proposals shall be made accessible to the public.

## Chapter IV

## Transitional and final provisions

## Article 24

## Repeal

Regulation (EC) No 258/97 and Regulation (EC) No 1852/2001 shall be repealed with effect from ... (\*\*), except with respect to those pending requests governed by Article 26 of this Regulation.

## Article 25

## Establishment of the Union list

No later than ... (\*\*\*) the Commission shall establish the Union list by entering novel foods authorised and/or notified under Articles 4, 5 and 7 of Regulation (EC) No 258/97 in the Union list, including any existing authorisation conditions, as appropriate.

## Article 26

## Transitional measures

1. Any request for placing a novel food on the market ■ submitted to a Member State under Article 4 of Regulation (EC) No 258/97 **in relation to which the initial assessment report provided for under Article 6(3) of that Regulation is not forwarded to the Commission** before ... (\*\*\*) shall be **considered as** an application under this Regulation ■.
2. Other ■ requests submitted under **Articles 3(4), 4 and 5** of Regulation (EC) No 258/97 before ... (\*\*\*) shall be processed under the provisions of ■ Regulation (EC) **No 258/97**.

■

## Article 27

## Amendments to Regulation (EC) No 1331/2008

Regulation (EC) No 1331/2008 is hereby amended as follows:

- 1) The title is replaced by the following:

(\*) OJ: please insert date: 5 years after the entry into force of this Regulation.

(\*\*) OJ: Please insert date: **Three years and six months** after the date of entry into force of this Regulation.

(\*\*\*) OJ: please insert date: 24 months after the entry into force of this Regulation.

Wednesday 7 July 2010

'Regulation (EC) No 1331/2008 of the European Parliament and of the Council of 16 December 2008 establishing a common authorisation procedure for food additives, food enzymes, food flavourings and novel foods'.

2) In Article 1, paragraphs 1 and 2 are replaced by the following:

1. This Regulation lays down **an** assessment and authorisation **procedure** (hereinafter the "common procedure") **for** food additives, food enzymes, food flavourings and **sources** of food flavourings **used** or intended for use in or on foodstuffs and novel foods (hereinafter the "substances or products") which contributes to the free movement of **foods** within the Union and to a high level of protection of human health and **protection** of **consumer** interests. **■**

2. The common procedure shall lay down the procedural arrangements for updating the lists of substances and products the marketing of which is authorised in the Union pursuant to Regulation (EC) No 1333/2008, Regulation (EC) No 1332/2008, Regulation (EC) No 1334/2008 and Regulation (EU) No .../... of the European Parliament and of the Council of ... on novel foods ... (\*) (†) (hereinafter the "sectoral food laws").

**■**

(\*) OJ L ... (\*\*)

(†) OJ: Please insert number and date of adoption of this Regulation.

(\*\*) OJ: Please insert the publication references of this Regulation.'

3) In Article 1(3), Article 2(1) and (2), Article 9(2), Article 12(1) and Article 13 the **word** 'substance' **or** 'substances' **is** replaced by 'substance or product' or 'substances or products' **■**.

4) The title of Article 2 is replaced by the following:

'Union list of substances or products'.

5) The following paragraph is added to Article 4:

'3. A single application relating to a substance or product may be made to update the different Union lists regulated under the different sectoral food laws in so far as the application complies with the requirements of each of the sectoral food laws.'

6) The following sentence is inserted at the beginning of Article 6(1):

'In the case of scientific grounds for safety concerns, additional information concerning risk assessment shall be identified and requested from the applicant.'

**■**

7) The term 'Community' shall be replaced by 'Union' throughout the text.

Article 28

Entry into force

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

It shall apply from ... (\*).

(\*) OJ: please insert date: 24 months after the entry into force of this Regulation.

Wednesday 7 July 2010

However, Articles 25, 26 and 27 shall apply from ... (\*). Furthermore, by way of derogation from the second paragraph of this Article and by way of derogation from the second paragraph of Article 16 of Regulation (EC) No 1331/2008, applications may be made in accordance with this Regulation as from ... (\*) for the authorisation of food referred to in point (iv) of Article 3(2)(a) of this Regulation, where such food is already on the market within the Union at that date.

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

Done at,

For the European Parliament  
The President

For the Council  
The President

(\*) OJ: please insert date: the entry into force of this Regulation.

## **Industrial emissions (integrated pollution prevention and control) (recast) \*\*\*II**

P7\_TA(2010)0267

**European Parliament legislative resolution of 7 July 2010 on the Council position at first reading for adopting a directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (recast) (11962/2/2009 – C7-0034/2010 – 2007/0286(COD))**

(2011/C 351 E/33)

(Ordinary legislative procedure: second reading)

*The European Parliament,*

- having regard to the Council position at first reading (11962/2/2009 – C7-0034/2010),
- having regard to the Commission proposal to Parliament and the Council (COM(2007)0844),
- having regard to Article 251(2) and Article 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0002/2008),
- having regard to the Commission Communication to Parliament and the Council entitled ‘Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures’ (COM(2009)0665),
- having regard to Article 294(7) and Article 192(1) of the Treaty on the Functioning of the European Union,
- having regard to its position at first reading <sup>(1)</sup>,
- having regard to the opinion of the European Economic and Social Committee of 14 January 2009 <sup>(2)</sup>,

<sup>(1)</sup> OJ C 87 E, 1.4.2010, p. 191.

<sup>(2)</sup> OJ C 182, 4.8.2009, p. 46.

Wednesday 7 July 2010

- having regard to the opinion of the Committee of the Regions of 9 October 2008 <sup>(1)</sup>,
  - having regard to Rule 66 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on the Environment, Public Health and Food Safety (A7-0145/2010),
1. Adopts its position at second reading hereinafter set out;
  2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

<sup>(1)</sup> OJ C 325, 19.12.2008, p. 60.

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#### **P7\_TC2-COD(2007)0286**

**Position of the European Parliament adopted at second reading on 7 July 2010 with a view to the adoption of Directive 2010/.../EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast)**

*(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Directive 2010/75/EU)*

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#### **Obligations of operators who place timber and timber products on the market \*\*\*II**

P7\_TA(2010)0268

**European Parliament legislative resolution of 7 July 2010 on the Council position at first reading for adopting a regulation of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market (05885/4/2010 – C7-0053/2010 – 2008/0198(COD))**

(2011/C 351 E/34)

(Ordinary legislative procedure: second reading)

*The European Parliament,*

- having regard to the Council position at first reading (05885/4/2010 – C7-0053/2010),
- having regard to the Commission proposal to Parliament and the Council (COM(2008)0644),
- having regard to Article 251(2) and Article 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0373/2008),
- having regard to the Commission Communication to Parliament and the Council entitled 'Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures' (COM(2009)0665),

Wednesday 7 July 2010

- having regard to Article 294(7) and Article 192(1) of the Treaty on the Functioning of the European Union,
  - having regard to its position at first reading <sup>(1)</sup>,
  - having regard to the opinion of the Economic and Social Committee of 1 October 2009 <sup>(2)</sup>,
  - after consulting the Committee of the Regions,
  - having regard to Rule 66 of its Rules of Procedure,
  - having regard to the recommendation for second reading of the Committee on the Environment, Public Health and Food Safety (A7-0149/2010),
1. Adopts its position at second reading hereinafter set out;
  2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

<sup>(1)</sup> Texts adopted, 22.4.2009, P6\_TA(2009)0225.

<sup>(2)</sup> OJ C 318, 23.12.2009, p. 88.

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## **P7\_TC2-COD(2008)0198**

**Position of the European Parliament adopted at second reading on 7 July 2010 with a view to the adoption of Regulation (EU) No .../2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market**

*(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Regulation (EU) No 995/2010)*

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## **Powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority \*\*\*I**

P7\_TA(2010)0269

**Proposal for a directive of the European Parliament and of the Council amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (COM(2009)0576 – C7-0251/2009 – 2009/0161(COD))**

(2011/C 351 E/35)

(Ordinary legislative procedure: first reading)

The proposal was amended on 7 July 2010 as follows <sup>(1)</sup>:

<sup>(1)</sup> The matter was then referred back to committee pursuant to Rule 57(2), second subparagraph (A7-0163/2010).

Wednesday 7 July 2010

AMENDMENTS BY PARLIAMENT (\*)

to the Commission proposal

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50, Article 53(1) and Articles 62 and 114 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the European Central Bank <sup>(1)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(2)</sup>,

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 **Union** law and trust between national supervisors.

(1a) ***The European Parliament has called regularly for the reinforcement of a more level playing-field for all actors at the Union level while pointing out failures in the Union's supervision of ever more integrated financial markets.***

(2) A report published on 25 February 2009 by a high-level group of experts chaired by **Jacques de Larosière (the de Larosière Report)**, requested by the Commission, concluded that the supervisory framework **should** be strengthened to reduce the risk and severity of future financial crises. Accordingly, it recommended far-reaching reforms to the supervisory structure of the financial sector within the **European Union. The de La Rosière Report** also concluded that a European System of Financial Supervisors (**ESFS**) should be created, comprising three European Supervisory Authorities (**ESA**) – one for **each of** the banking **█**, the securities **█** and **█** the insurance and occupational pensions sectors – and the creation of a European Systemic Risk Board.

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

<sup>(1)</sup> Opinion of 18 March 2010 (not yet published in the Official Journal).

<sup>(2)</sup> Position of the European Parliament of ....

Wednesday 7 July 2010

- (3) The Commission in its Communication of 4 March 2009 entitled 'Driving European Recovery' <sup>(1)</sup> proposed to **put** forward draft legislation creating **the ESFS** and in its Communication of 27 May 2009 entitled 'European Financial Supervision' <sup>(2)</sup> provided more details **of** the possible architecture of **that** 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 **ESA**, be established. The system should be aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross-border groups, establishing a European single rule book applicable to all financial institutions in the internal market **and ensuring adequate harmonisation of criteria and methodology to be applicable by the competent authorities to assess the risk of credit institutions**. It emphasised that the **ESA** should also have supervisory powers for credit rating agencies and invited the Commission to prepare concrete proposals on how the **ESFS** could play a strong role in crisis situations.
- (5) On 23 September 2009, the Commission adopted proposals for three Regulations establishing the **ESFS** including the creation of the three **ESA**.
- (6) In order for the **ESFS** to work effectively, changes to **Union** legislation in the field of **the** operation of the three **ESA** are necessary. These changes concern the definition of the scope of certain powers of the **ESA**, the integration of certain powers **■** established in **Union** legislation and amendments to ensure a smooth and effective functioning in the context of the **ESFS**.
- (7) The establishment of the three **■** **ESA** should be accompanied by the development of a single **rule book** to ensure **consistent harmonisation and** uniform application and thus contribute to a more effective functioning of the internal market. **■**
- (7a) *The Regulations establishing the ESFS provide that, in the areas specifically set out in the relevant legislation, the ESA may develop draft technical standards, to be submitted to the Commission for adoption in accordance with Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU) by means of delegated or implementing acts. This Directive identifies a first set of such areas and should be without prejudice to inclusion of other areas in the future.*
- (7b) *The relevant legislation should define those areas where the ESA are empowered to develop draft technical standards and how they should be adopted. While the relevant legislation should lay down the elements, conditions and specifications as detailed in Article 290 TFEU in the case of delegated acts, the rules and general principles concerning mechanisms for control of implementing acts should be based on Decision 1999/468/EC until the Regulation provided for in Article 291 TFEU is adopted.*
- (8) The identification of areas for technical standards should strike an appropriate balance between building a single set of harmonised rules **and avoiding** unduly **complicated** regulation **and enforcement**. The only **■** areas **■** selected **should be those in which** consistent technical rules will contribute significantly **and effectively** to the achievement of the objectives of the relevant legislation, while ensuring that policy decisions are taken by the European Parliament, the Council and the Commission in accordance with their usual procedures.

<sup>(1)</sup> COM(2009)0114.

<sup>(2)</sup> COM(2009)0252.

Wednesday 7 July 2010

- (9) Matters subject to technical standards should be genuinely technical, where their development requires the expertise of supervisory experts. The technical standards **adopted as delegated acts** should **further develop, specify and** determine the conditions **for consistent harmonisation** of the rules included in basic instruments adopted by the European Parliament and the Council, **supplementing or amending certain non-essential elements of the legislative act. On the other hand, technical standards adopted as implementing acts should set conditions for the uniform application of legally binding EU acts.** Technical standards should not **give rise to** policy choices. █
- (9a) *In the case of delegated acts it is appropriate to introduce the procedure for adoption of technical standards provided for in Article 7 to 7d of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA], and of Regulation (EU) No .../2010 [EIOPA]. Implementing standards should be adopted in accordance with the procedure provided for in Article 7e of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA], and of Regulation (EU) No .../2010 [EIOPA]. The European Council endorsed the four-level 'Lamfalussy' approach to make the regulatory process for Union financial legislation more efficient and transparent. The Commission is empowered to adopt implementing acts in many areas, and a wide set of level-2 Commission Regulations and Directives is in force. In cases where the technical standards are designed to further develop, specify or determine the conditions of application of such level-2 measures, they should be adopted only once those level-2 measures have been adopted and should respect the content of the level-2 measure*
- (9b) *Binding technical standards contribute to a single rulebook for financial services legislation as endorsed by the European Council in its conclusions of June 2009. To the extent that certain requirements in EU legislative acts are not fully harmonised, and in accordance with the precautionary principle on supervision, binding technical standards developing, specifying or determining the conditions of application for those requirements should not prevent Member States from requiring additional information or imposing more stringent requirements. Technical standards should therefore allow Member States to do so in specific areas, when these legislative acts provide for such prudential discretion.*
- (10) As set out in the Regulations establishing the ESFS, before submitting the technical standards to the Commission, the European Supervisory Authorities should, where appropriate, conduct open public consultations on them and analyse the potential related costs and benefits.
- (11) The Regulations establishing the ESFS provide for a mechanism to settle disagreements between competent national authorities. Where a competent authority disagrees **with** the procedure or content of an action or inaction by another competent authority in areas **specified in Union legislation in accordance with Regulation (EU) No .../ 2010 [EBA], Regulation (EU) No .../ 2010 [ESMA] and Regulation (EU) No .../ 2010 [EIOPA]**, where the relevant legislation requires cooperation, coordination or joint decision making by competent national authorities from more than one Member State, the **ESA**, at the request of one of the competent authorities concerned, **should be able to** assist the authorities in reaching an agreement within the time limit set by the **ESA** which takes into account any relevant time limits in the relevant legislation, and the urgency and complexity of the disagreement. In the event that such disagreement persists, the **ESA should be able to** settle the matter.
- (12) In general, **Article 11(1) of Regulation (EU) No .../ 2010 [EBA], of Regulation (EU) No .../ 2010 [ESMA] and of Regulation (EU) No .../ 2010 [EIOPA]** that provides the possibility for disputes to be resolved in the Regulations establishing the ESFS does not require consequential changes to the relevant legislation. However, in those areas where some form of non-binding mediation is already established in the relevant legislation, or where there are time limits for joint decisions to be taken by one or more competent national authorities, amendments are needed to ensure clarity and minimum disruption to the process for reaching a joint decision, but also that where necessary, the **ESA** are able to resolve disagreements. **The binding procedure for the settlement of disagreements is designed to solve situations where competent supervisors cannot resolve among themselves procedural or substantive issues relating to compliance with Union law.**



Wednesday 7 July 2010

- (12a) *This Directive should therefore identify situations where a procedural or a substantive issue of compliance with Union law may need to be resolved and the supervisors may not be able to resolve the matter on their own. In such a situation, one of the supervisors involved should be able to raise the issue with the competent European Supervisory Authority. That European Supervisory Authority should act in accordance with the procedure set out in its establishing Regulation and in this Directive. It should be able to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter and to ensure compliance with Union law, with binding effects on the competent authorities concerned. In cases where the relevant Union legislation confers discretion on Member States, decisions taken by the European Supervisory Authority should not replace the exercise of discretion by the competent authorities in compliance with Union law.*
- (13) 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 <sup>(1)</sup> provides for mediation or joint decisions as regards the determination of significant branches for the purposes of supervisory college membership, model validation and group risk assessment. In all of these areas, an amendment should clearly state that in the event of disagreement during the specified time period, the European Banking Authority may resolve the disagreement using the process outlined in Regulation (EU) No .../2010 [EBA]. This approach makes it clear that, **while the European Banking Authority should not replace the exercise of discretion by the competent authorities in compliance with Union law**, disagreements can be resolved and cooperation strengthened before a final decision is made or issued to an institution.
- (14) In order to ensure **for a smooth transition of** the current tasks of 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) **to the new ESAs, references to these Committees** should be replaced in all the relevant legislation with references to the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA) or the European Securities and Markets Authority (ESMA), respectively.
- (14a) *The alignment of comitology procedures to the TFEU and, in particular, Articles 290 and 291 thereof, should be effected case by case and be fully completed within three years. In order to take account of the technical developments in the financial markets and to specify the requirements laid down in the amended directives, the Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU.*
- (14b) *The European Parliament and the Council should have three months from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, that period should be able to be prolonged by three months in regard to significant areas of concern. The European Parliament and the Council may inform the other institutions of their intention not to raise objections. Such early approval of delegated acts is particularly appropriate when deadlines need to be met, for example to meet timetables set in the basic act for the Commission to adopt delegated acts.*
- (14c) *In Declaration 39 on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, the Conference took note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated acts in the financial services area, in accordance with its established practice.*
- (15) The new supervisory architecture established by the ESFS will require national supervisory authorities to cooperate closely with the **ESA**. Amendments to the relevant legislation should ensure there are no legal obstacles to the information sharing obligations included in the Regulations █ establishing the **ESA**.

<sup>(1)</sup> OJ L 177, 30.6.2006, p. 1.

Wednesday 7 July 2010

- (15a) **Confidential information transmitted to or exchanged between competent authorities and the European Securities and Markets Authority or the European Systemic Risk Board should be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.**
- (16) The Regulations establishing the ESFS **█** provide that the **ESA** may develop contacts with supervisory authorities from third countries and shall assist in preparing equivalence decisions pertaining to supervisory regimes in third countries. Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments <sup>(1)</sup> and Directive 2006/48/EC should be amended to allow the **ESA** to establish cooperation agreements with third countries and exchange information where those third countries can provide guarantees of professional secrecy.
- (17) Having a single consolidated list or register for each category of financial **firms in the European Union**, which is currently the duty of each national competent authority, will improve transparency and better reflects the single financial market. The **ESA** should be given the duty to establish, publish and regularly update registers and lists of financial actors within the **European Union**. This concerns the list of authorisations of credit institutions granted by national supervisors. It also concerns the register of all investment firms and the list of regulated markets under Directive 2004/39/EC. Similarly, **ESMA** should be given the duty to establish, publish and regularly update the list of approved prospectuses and the certificates of approval under Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading **█** <sup>(2)</sup>.
- (18) In those areas where the **ESA** are under an obligation to develop draft technical standards, those draft technical standards should be submitted to the Commission within three years of the creation of the **ESA unless another deadline is established by the relevant regulation**.
- (18a) **The tasks of the ESMA in relation to Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems <sup>(3)</sup> should be without prejudice to the competence of the European System of Central Banks to promote the smooth operation of payment systems, in line with the fourth indent of Article 127(2) TFEU.**
- (18b) **The technical standards to be drafted by the EIOPA in accordance with this Directive and in relation to Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision <sup>(4)</sup> should be without prejudice to the competences of Member States with regard to prudential requirements on such institutions as provided for in Directive 2003/41/EC.**
- (18c) **According to Article 13(5) of Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, the competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State, subject to the agreement of that authority. Article 13(3) of Regulation (EU) No .../2010 [ESMA] requires that, in general, such delegation agreements be notified to the Authority at least one month before they are put into effect. However, given the experience in transfer of approval under Directive 2003/71/EC, which includes shorter deadlines, it is appropriate not to apply Article 13(3) of Regulation (EU) No .../2010 [ESMA] to this situation.**

<sup>(1)</sup> OJ L 145, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 345, 31.12.2003, p. 64.

<sup>(3)</sup> OJ L 166, 11.6.1998, p. 45.

<sup>(4)</sup> OJ L 235, 23.9.2003, p. 10.

Wednesday 7 July 2010

- (18d) *The ESA should not at this stage develop draft technical standards on the existing requirements that the persons who effectively direct the business of investment firms, credit institutions, UCITS and their management companies be of sufficiently good repute and sufficiently experienced as to ensure their sound and prudent management. However, given the importance of these requirements, the ESA should give priority to identify the best practices in guidelines and to ensure the convergence of supervisory and prudential practices towards these best practices. They should do the same with respect to prudential requirements relative to the head office of these institutions.*
- (18e) *The purpose of developing draft technical standards in relation to the Internal Ratings Based approach, the Advanced Measurement Approach and the internal model for market risk approach, as provided for by this Directive, should be to ensure the quality and robustness of such approaches, as well as the consistency of their review by competent authorities. These standards should allow competent authorities to permit institutions to develop different approaches based on their experience and specificities, within the requirements of Directives 2006/48/EC and 2006/49/EC and subject to the requirements of the technical standards.*
- (19) Since the objectives of this Directive, 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, investors and beneficiaries and thereby businesses and consumers, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability **and sustainability** of the financial system, **preserving the real economy, safeguarding public finances** and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of scale of the action, be better achieved at **Union** level, the **Union** 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 Directive does not go beyond what is necessary in order to achieve those objectives.
- (19a) *The Commission should, by 1 January 2014, report to the European Parliament and the Council on the submission by the ESA of the draft technical standards provided for in this Directive and present any appropriate proposals.*
- (20) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems <sup>(1)</sup>, 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 <sup>(2)</sup>, Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) <sup>(3)</sup>, Directive 2003/41/EC <sup>(4)</sup>, Directive 2003/71/EC, Directive 2004/39/EC, Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market <sup>(5)</sup>, 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 <sup>(6)</sup>, Directive 2006/48/EC <sup>(7)</sup>, Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions <sup>(8)</sup>, and Directive 2009/65/EC of the European Parliament and of the Council of **13 July 2009** on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) <sup>(9)</sup> should therefore be amended accordingly,

<sup>(1)</sup> OJ L 166, 11.6.1998, p. 45.

<sup>(2)</sup> OJ L 35, 11.2.2003, p. 1.

<sup>(3)</sup> OJ L 96, 12.4.2003, p. 16.

<sup>(4)</sup> OJ L 235, 23.9.2003, p. 10.

<sup>(5)</sup> OJ L 390, 31.12.2004, p. 38.

<sup>(6)</sup> OJ L 309, 25.11.2005, p. 15.

<sup>(7)</sup> OJ L 177, 30.6.2006, p. 1.

<sup>(8)</sup> OJ L 177, 30.6.2006, p. 201.

<sup>(9)</sup> OJ L 302, 17.11.2009, p. 32.

Wednesday 7 July 2010

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 98/26/EC

Directive 98/26/EC is amended as follows:

(1) Article 6(3) is replaced by the following:

‘3. The Member State referred to in paragraph 2 shall immediately notify **the European Systemic Risk Board**, other Member States and the European Securities and Markets Authority established by Regulation (EU) No .../2010 of the European Parliament and of the Council <sup>(1)</sup> (ESMA).

<sup>(1)</sup> OJ L ’.

(2) In Article 10(1) the first subparagraph is replaced by the following:

‘Member States shall specify the systems, and the respective system operators, which are to be included in the scope of this Directive and shall notify them to ESMA and inform it of the authorities chosen in accordance with Article 6(2). ESMA shall publish that information on its website.’.

(2a) **The following Article 10a is inserted:**

**‘Article 10a**

**1. Competent authorities shall cooperate with the European Securities and Markets Authority for the purposes of this Directive, in accordance with Regulation (EU) No .../2010 [ESMA].**

**2. Competent authorities shall provide, without delay, ESMA with all the information necessary to carry out its duties, in accordance with Article 20 of Regulation (EU) No .../2010 [ESMA].’.**

Article 2

Amendments to Directive 2002/87/EC

Directive 2002/87/EC is amended as follows:

(1) Article 4 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. The coordinator appointed in accordance with Article 10 shall inform the parent undertaking at the head of a group or, in the absence of a parent undertaking, the regulated entity with the largest balance sheet total in the most important financial sector in a group, that the group has been identified as a financial conglomerate and of the appointment of the coordinator. The coordinator shall also inform the competent authorities which have authorised regulated entities in the group and the competent authorities of the Member State in which the mixed financial holding company has its head office, and the Joint Committee of the European Supervisory Authorities established by Articles 40 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [EIOPA] and of Regulation (EU) No .../2010 [ESMA] of the European Parliament and of the Council <sup>(1)</sup> (hereinafter “Joint Committee”).

<sup>(1)</sup> OJ L ’;

Wednesday 7 July 2010

(b) the following paragraph **■** is added:

**‘3. The JCESA shall publish on its website and keep up-to-date the list of identified financial conglomerates. That information shall be available by hyperlink on each of the European Supervisory Authority’s websites.’**

(1a) In Article 9(2), the following point is added:

**‘(ca) the development of a detailed resolution regime, to be updated regularly and reviewed at least annually, comprising a structured early intervention mechanism, prompt corrective actions and a bankruptcy contingency plan.’**

(1b) The title of Section III is replaced by the following:

**‘MEASURES TO FACILITATE SUPPLEMENTARY AND EUROPEAN SUPERVISION’.**

(1c) The following article is inserted in Section 3:

**‘Article -10**

**The Joint Committee shall, in accordance with Article 42 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [EIOPA] and of Regulation (EU) No .../2010 [ESMA], ensure coherent cross-sectoral and cross-border supervision and compliance with EU legislation.’**

(1d) Article 10(1) is replaced by the following:

**‘1. In order to ensure adequate supplementary supervision of the regulated entities in a financial conglomerate, a single coordinator, responsible for coordination and exercise of supplementary supervision, shall be appointed from among the competent authorities of the Member States concerned, including those of the Member State in which the mixed financial holding company has its head office. The identity of the coordinator shall be published on the website of the JCESA.’**

(1e) In Article 11(1), the second subparagraph is replaced by the following:

**‘In order to facilitate and establish supplementary and European supervision on a broad legal basis, the coordinator, and the other relevant competent authorities, and where necessary other competent authorities concerned, shall have coordination arrangements in place. The coordination arrangements may entrust additional tasks to the coordinator and may specify the procedures for the decision-making process among the relevant competent authorities as referred to in Articles 3 and 4, Article 5(4), Article 6, Article 12(2) and Articles 16 and 18, and for cooperation with other competent authorities.**

**In accordance with Article 8 and the procedure set out in Article 42 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [EIOPA] and of Regulation (EU) No .../2010 [ESMA], the JCESA shall develop guidelines aimed at the convergence of supervisory practices with regard to the consistency of supervisory coordination arrangements in accordance with Article 131a of Directive 2006/48/EC and Article 248(4) of Directive 2009/138/EC.’**

Wednesday 7 July 2010

(1f) In Article 12(1), the third subparagraph is replaced by the following:

*‘The competent authorities may also exchange with the following authorities such information as may be needed for the performance of their respective tasks, regarding regulated entities in a financial conglomerate, in line with the provisions laid down in the sectoral rules: central banks, the European System of Central Banks, the European Central Bank and the European Systemic Risk Board in accordance with Article 21 of Regulation (EU) No .../2010 [ESRB].’*

(1g) The following article is inserted:

*‘Article 12a*

*1. The competent authorities shall cooperate with the JCESA for the purposes of this Directive, in accordance with Regulation (EU) No .../2010 [EBA], Regulation (EU) No .../2010 [EIOPA], and Regulation (EU) No .../2010 [ESMA].*

*2. The competent authorities shall without delay provide the JCESA with all information necessary to carry out its duties, in accordance with Article 20 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [EIOPA], and of Regulation (EU) No .../2010 [ESMA].’*

(1h) Article 14(1) is replaced by the following:

*‘1. Member States shall ensure that there are no legal impediments within their jurisdiction preventing the natural and legal persons included within the scope of supplementary and European supervision, whether or not a regulated entity, from exchanging amongst themselves any information which would be relevant for the purposes of supplementary and European supervision and from exchanging information in accordance with this Directive and with the European Supervisory Authorities in accordance with Article 20 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [EIOPA] and of Regulation (EU) No .../2010 [ESMA], where necessary through the JCESA.’*

(1i) The second paragraph of Article 16 is replaced by the following:

*‘Without prejudice to Article 17(2), the JCESA and Member States may determine what measures may be taken by the competent authorities with respect to mixed financial holding companies. In accordance with Article 8 and the procedure set out in Article 42 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [EIOPA] and of Regulation (EU) No .../2010 [ESMA], the JCESA may develop guidelines for measures in relation to mixed financial holding companies.’*

(2) Article 18(1) is replaced by the following:

*‘Without prejudice to the sectoral rules, **where** Article 5(3) **applies, the** competent authorities shall verify whether the regulated entities, the parent undertaking of which has its head office **in a third country** are subject to supervision by **that third country’s** competent authority, which is equivalent to that provided for by the provisions of this Directive on the supplementary supervision of regulated entities referred to in Article 5(2). The verification shall be carried out by the competent authority which would be the coordinator if the criteria set out in Article 10(2) were to apply, on the request of the parent undertaking or of any of the regulated entities authorised in the **Union** or on its own initiative.*

*That competent authority shall consult the other relevant competent authorities, and **any** applicable **guidelines** prepared through the JCESA in accordance with **Articles 8 and 42 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [EIOPA] and of Regulation (EU) No .../2010 [ESMA]**. For this purpose the competent authority shall consult the JCESA before taking a decision.’*

Wednesday 7 July 2010

(2a) In Article 18 the following paragraph is inserted:

*'1a. Where a competent authority decides that a third country has equivalent supervision contrary to the opinion of another relevant competent authority, the latter may bring the matter to the attention of JCESA, which may act in accordance with Article 11 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [EIOPA] and of Regulation (EU) No .../2010 [ESMA].'*

(2b) Article 19(2) is replaced by the following:

*'2. Without prejudice to Article 218(1) and (2) TFEU, the Commission shall, with the assistance of the JCESA, the European Banking Committee, the European Insurance and Occupational Pensions Committee and the Financial Conglomerates Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.'*

(3) The title of Chapter III before Article 20 is replaced by the following:

**'DELEGATED POWERS I'**

(4) In Article 20(1), the first subparagraph is replaced by the following:

*'1. The Commission shall adopt by means of delegated acts in accordance with Articles 21, 21a and 21b, the adaptations to be made to this Directive in the following areas:*

- (a) a more precise formulation of the definitions referred to in Article 2 in order to take account of developments in financial markets in the application of this Directive;*
- (b) a more precise formulation of the definitions referred to in Article 2 in order to ensure consistent harmonisation and uniform application of this Directive in the Union;*
- (c) the alignment of terminology and the framing of definitions in the Directive in accordance with subsequent Union acts on regulated entities and related matters;*
- (d) a more precise definition of the calculation methods set out in Annex I in order to take account of developments on financial markets and prudential techniques;*
- (e) coordination of the provisions adopted pursuant to Articles 7 and 8 and Annex II with a view to encouraging consistent harmonisation and uniform application within the Union.'*

(5) Article 21 is amended as follows:

(a) paragraph 2 is replaced by the following:

*'2. The power to adopt delegated acts as referred to in Article 20(1) shall be conferred on the Commission for a period of four years following the entry into force of this Directive. The Commission shall make a report in respect of delegated powers at the latest six months before the end of the four-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 21b.'*

Wednesday 7 July 2010

(b) the following paragraphs are inserted:

*'2a. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*

*2b. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Article 21a and 21b.'*

(c) paragraph 3 is deleted.

(d) paragraph 4 is replaced by the following:

*'4. The JCESA may give general guidelines as to whether the supplementary supervision arrangements of competent authorities in third countries are likely to achieve the objectives of the supplementary supervision as defined in this Directive, in relation to the regulated entities in a financial conglomerate, the head of which has its head office outside the Union. The JCESA shall keep any such guidelines under review and take into account any changes to the supplementary supervision carried out by such competent authorities.'*

(e) paragraph 5 is deleted.

(6) The following articles are inserted:

#### *'Article 21a*

##### *Revocation of the delegation*

*1. The delegation of powers referred to in Article 20(1) may be revoked at any time by the European Parliament or by the Council.*

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

*3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.*

#### *Article 21b*

##### *Objections to delegated acts*

*1. The European Parliament or the Council may object to a delegated act within a period of three months from the date of notification. At the initiative of the European Parliament or the Council this period may be extended by three months.*

*2. If, on the expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.*



Wednesday 7 July 2010

*The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.*

**3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the delegated act.**

Article 21c

Technical Standards

1. In order to ensure **consistent harmonisation and** uniform application of this Directive, the European Supervisory Authorities, in accordance with Articles 42 of Regulation (EU) No .../2010 [EBA], Regulation (EU) No .../2010 [EIOPA], and Regulation (EU) No .../2010 [ESMA] may develop **■**:

- (a) **draft regulatory standards with regard to** Article 2(11) in order to **specify** the **■** application of Article 17 of Council Directive 78/660/EEC <sup>(22)</sup> in the context of this Directive;
- (b) **draft regulatory standards with regard to** Article 2(17) in order to **establish** procedures **or specify criteria** for the determination of “relevant competent authorities”;
- (c) **draft regulatory standards with regard to** Article 3(5) in order to **specify** the alternative parameters for the identification of a financial conglomerate;
- (d) **draft implementing standards with regard to** Article 6(2) in order to **ensure uniform** application of the calculation methods listed in Annex I part II, but without prejudice to Article 6(4);
- (e) **draft implementing standards with regard to** Article 7(2) in order to **ensure uniform application of the procedures** for including the items within the scope of the definition of “risk concentrations” in the supervisory overview referred to in the second subparagraph **of that Article**;
- (f) **draft implementing standards with regard to** Article 8(2) in order to **ensure uniform application of the procedures** for including the items within the scope of the definition of “intra group transactions” in the supervisory overview referred to in the third subparagraph **of that Article**.

2. **Power is delegated to the Commission to adopt the draft regulatory standards referred to in points (a), (b) and (c) of paragraph 1 in accordance with the procedure laid down in Articles 7 to 7d of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [EIOPA], and of Regulation (EU) No .../2010 [ESMA]. Power is conferred on the Commission to adopt the draft implementing technical standards referred to in points (d), (e) and (f) of paragraph 1 in accordance with Article 7e of Regulation (EU) No .../2010 [EIOPA], and of Regulation (EU) No .../2010 [ESMA].:**

Wednesday 7 July 2010

Article 3

Amendments to Directive 2003/6/EC

Directive 2003/6/EC is amended as follows:

(-1) Article 1 is amended as follows:

(a) point 5 is replaced by the following:

*‘5. “Accepted market practices” shall mean practices that are reasonably expected in one or more financial markets and are accepted by the competent authority in accordance with standards adopted by the Commission in accordance with the delegated acts procedure laid down in Articles 17, 17 a and 17b.*

*The European Securities and Markets Authority (ESMA), established by Regulation (EU) No .../2010 of the European Parliament and of the Council may develop draft implementing technical standards to ensure uniform conditions of application of delegated acts adopted by the Commission in accordance with the first and third subparagraphs in relation to accepted market practices.*

*Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the second subparagraph in accordance with Article 7e of Regulation (EU) No .../2010 [ESMA].’.*

(b) the second paragraph, is replaced by the following:

*‘In order to take account of developments on financial markets and to ensure uniform application of this Directive in the Union, the Commission shall lay down, by means of delegated acts, measures concerning points 1, 2 and 3 of this Article. Those measures shall be adopted in accordance with the delegated acts procedure referred to in Articles 17, 17a and 17b.’.*

(-1a) Article 6 is amended as follows:

(a) in paragraph 10, the second subparagraph is replaced by the following:

*‘Those measures shall be adopted in accordance with the delegated acts procedure referred to in Articles 17, 17a and 17b.’.*

(b) the following paragraph is added:

*‘10a. ESMA may develop draft implementing technical standards to ensure consistent harmonisation and uniform conditions of application of the legally binding Union acts adopted by the Commission in accordance with the sixth indent of the first subparagraph of paragraph 10.*

*Power is are conferred on the Commission to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with Article 7e of Regulation (EU) No .../2010 [ESMA].’.*

Wednesday 7 July 2010

(-1b) Article 8 is amended as follows:

(a) the existing text is numbered as paragraph 1 and is replaced by the following:

**'1. The prohibitions provided for in this Directive shall not apply to trading in own shares in "buy-back" programmes or to the stabilisation of a financial instrument provided such trading is carried out in accordance with implementing measures. Those measures shall be adopted in accordance with the delegated acts procedure referred to in Article 17, 17a and 17b.'**

(b) the following paragraph is added:

**'1a. ESMA may develop draft implementing technical standards to ensure uniform conditions of application of delegated acts adopted by the Commission in accordance with paragraph 1.**

**Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with Article 7e of Regulation (EU) No .../2010 [ESMA].'**

(-1c) Article 14(4) is replaced by the following:

**'(4) Member States shall provide ESMA annually with aggregated information regarding all administrative measures and sanctions imposed in accordance with paragraphs 1 and 2.**

**The competent authority shall report to ESMA at the same time all sanctions which are disclosed to the public in accordance with the first subparagraph. Where a published sanction relates to an investment firm authorised in accordance with Directive 2004/39/EC, ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3) of Directive 2004/39/EC.'**

(-1d) The following article is inserted:

**'Article 15a**

**1. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No .../2010 [ESMA].**

**2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 20 of Regulation (EU) No .../2010 [ESMA].'**

(1) ■ Article 16 is amended as follows:

(a) in paragraph 2, the fourth subparagraph is replaced by the following:

**'Without prejudice to the provisions of Article 258 TFEU, a competent authority whose request for information is not acted upon within a reasonable time or whose request for information is rejected may bring that rejection or absence of action within a reasonable timeframe to the attention of ESMA. In such a case, ESMA may act in accordance with Article 11 of Regulation (EU) No .../2010 [ESMA], without prejudice to the possibilities for refusing to act on a request for information foreseen in the second subparagraph and to the possibility of ESMA acting in accordance with Article 9 of that Regulation in these cases.'**

Wednesday 7 July 2010

(b) in **paragraph 4**, the fifth subparagraph is replaced by the following:

‘Without prejudice **to the provisions of Article 258 TFEU**, a competent authority whose application to open an inquiry or whose request for authorisation for its officials to accompany those of the other Member State’s competent authority is not acted upon within a reasonable time or is rejected may bring that rejection or absence of action within a reasonable timeframe to the attention of **ESMA**. **In such a case, ESMA may act in accordance with Article 11 of Regulation (EU) No .../2010 [ESMA], without prejudice to the possibilities for refusing to act on a request for information provided in the fourth subparagraph of Article 16(4) and to the possibility of ESMA acting in accordance with Article 9 of that Regulation in these cases.**’;

(c) paragraph 5 is replaced by the following:

‘5. In order to ensure uniform **conditions of** application of paragraphs 2 and 4, **ESMA** may develop draft **implementing** technical standards **on the procedures and forms** for exchange of information and **for** cross-border inspections **as referred to in this Article**.

**Power is conferred on** the Commission **to** adopt **the** draft **implementing** technical standards referred to in the first subparagraph in accordance with **Article 7e of Regulation (EU) No .../2010 [ESMA]**.’.

(1a) **Article 17 is amended as follows:**

(a) **paragraph 2a is replaced by the following:**

‘2a. **The power to adopt delegated acts referred to in Articles 1, Article 6(10), Article 8, Article 14(2) and Article 16(5) shall be conferred on the Commission for a period of four years following the entry into force of this Directive. The Commission shall make a report in respect of delegated powers at the latest 6 months before the end of the four-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 17a.**’;

(b) **the following paragraphs are inserted:**

‘2aa. **As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.**

2ab. **The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 17a and 17b.**’;

(c) **paragraph 3 is deleted.**

(1b) **The following articles are inserted:**

‘**Article 17a**

**Revocation of the delegation**

1. **The delegation of powers referred to in Article 1, Article 6(10), Article 8, Article 14(2) and Article 16(5) may be revoked at any time by the European Parliament or by the Council.**

Wednesday 7 July 2010

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

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

#### Article 17b

##### Objections to delegated acts

1. The European Parliament or the Council may object to a delegated act within a period of three months from the date of notification. At the initiative of the European Parliament or the Council this period may be extended by three months.

2. If, on the expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.

The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. In accordance with Article 296 TFEU, the institutions which objects shall state the reasons for objecting to the delegated act.’.

#### Article 4

##### Amendments to Directive 2003/41/EC

Directive 2003/41/EC is amended as follows:

(-1) Article 9 is amended as follows:

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

‘(a) the institution is registered in a national register by the competent supervisory authority or authorised; in the case of cross-border activities referred to in Article 20, the register shall also indicate the Member States in which the institution is operating; that information shall be communicated to the European Insurance and Occupational Pension Authority (EIOPA), which shall publish it on its website;’;

(b) paragraph 5 is replaced by the following:

‘5. In the case of cross-border activity as referred to in Article 20, the conditions of operation of the institution shall be subject to a prior authorisation by the competent authorities of the home Member State. When giving such authorisation, Member States shall immediately inform EIOPA.’.

Wednesday 7 July 2010

(1) Article 13 is amended as follows:

(a) the existing text is numbered as paragraph 1;

(b) the following paragraph **■** is added:

**‘2. EIOPA, established by Regulation (EU) No .../2010, may develop draft implementing standards on the forms and formats for the documents listed in paragraph 1(c)(i) to (vi).**

**Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with Article 7e of Regulation (EU) No .../2010.’**

(1a) In Article 14(4), the second subparagraph is replaced by the following:

**‘Any decision to prohibit the activities of an institution shall contain detailed reasons and be notified to the institution in question. It shall also be notified to EIOPA.’**

(1b) In Article 15(6), the first subparagraph is replaced by the following:

**‘6. With a view to further harmonisation of the rules regarding the calculation of technical provisions which may be justified – in particular the interest rates and other assumptions influencing the level of technical provisions – the Commission, drawing on advice from EIOPA, shall every two years or at the request of a Member State, issue a report on the situation concerning the development in cross-border activities.’**

(2) In Article 20, the following paragraph **■** is added:

**‘11. ■ Member States shall report to EIOPA their national provisions of prudential nature relevant to the field of occupational pension schemes, which are not covered by the reference to national social and labour law in paragraph 1. ■**

**Member States shall update that information on a regular basis and at least every two years and EIOPA shall make this information available on its website.**

**In order to ensure uniform application of this paragraph, EIOPA shall develop draft implementing technical standards on the procedures to be followed and formats and templates to be used by competent authorities of the Member States when transmitting and updating the relevant information to the EIOPA. The Authority shall submit those draft implementing technical standards to the Commission by 1 January 2014.**

**Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the third subparagraph in accordance with Article 7e of Regulation (EU) No .../2010 [EIOPA].’**

(2a) Article 21 is amended as follows:

(a) the title is replaced by the following:

**‘Cooperation between Member States, the European Insurance and Occupational Pensions Authority and the Commission’;**

Wednesday 7 July 2010

(b) the following paragraph is inserted:

*'2a. The competent authorities shall cooperate with EIOPA for the purposes of this Directive, in accordance with Regulation (EU) No .../2010 [EIOPA].*

*The competent authorities shall without delay provide EIOPA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No .../2010 [EIOPA], in accordance with Article 20 of that Regulation.'*

(c) paragraph 3 is replaced by the following:

*'3. Each Member State shall inform the Commission and EIOPA of any major difficulties to which the application of this Directive gives rise.*

*The Commission, the EIOPA and the competent authorities of the Member States concerned shall examine such difficulties as quickly as possible in order to find an appropriate solution.'*

#### Article 5

#### Amendments to Directive 2003/71/EC

Directive 2003/71/EC is amended as follows:

(-1) In Article 4 the following paragraph is inserted:

*'3a. In order to ensure consistent harmonisation of this Directive, the European Securities and Markets Authority (ESMA) may develop draft regulatory technical standards to specify the exemptions concerning the points (a), (d) and (e) of paragraph 1 and points (a), (b), (e), (f), (g), and (h) of paragraph 2.*

*Power is conferred on the Commission to adopt the draft regulatory technical standards referred to in the first subparagraph in accordance with Article 7a to 7 d of Regulation (EU) No .../2010 [ESMA].'*

(-1a) In Article 5(2), the following subparagraphs are added:

*'In order to ensure uniform conditions of application of this Directive, ESMA shall develop draft implementing technical standards in order to ensure uniform application of the delegated acts adopted by the Commission in accordance with paragraph 5 in relation to a uniform template for the presentation of the summary and to allow investors to compare the security concerned with other relevant products.*

*Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with Article 7e of Regulation (EU) No .../2010 [ESMA].'*

(-1b) In Article 7, the following paragraph is added:

*'3a. ESMA may develop draft implementing technical standards in order to ensure uniform application of delegated acts adopted by the Commission in accordance with paragraph 1.*

*Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with Article 7e of Regulation (EU) No .../2010 [ESMA].'*

Wednesday 7 July 2010

- (1) In Article 8, the following paragraph **■** is added:

‘5. **ESMA may** develop draft **implementing** technical standards to **ensure uniform** conditions of application of **delegated acts** adopted by the Commission **in accordance with** paragraph 4. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

**Power is conferred on** the Commission **to** adopt the draft **implementing** technical standards referred to in the first subparagraph in accordance with **Article 7e** of Regulation (EU) No .../2010 [ESMA].’.

- (2) Article 13 is amended as follows:

- (a) in paragraph 2, the following subparagraph is added:

‘The competent authority shall notify **ESMA** of the approval of the prospectus **and the supplement thereto** at the same time as **that** approval is notified to the issuer, the offeror or the person asking for admission to trading on a regulated market, as the case may be. **The competent authorities shall notify ESMA at the same time and provide it with a copy of the said prospectus and the supplement thereto.**’;

- (b) paragraph 5 is replaced by the following:

‘5. The competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State, subject to prior notification to **ESMA** and the agreement of the competent authority. This transfer shall be notified to the issuer, the offeror or the person asking for admission to trading on a regulated market within three working days from the date of the decision taken by the competent authority of the home Member State. The time limit referred to in paragraph 2 shall apply from that date. **Article 13(3) of Regulation (EU) No .../2010 [ESMA] shall not apply to the transfer of the approval of the prospectus in accordance with this paragraph.**

**In order to ensure uniform conditions of application of this Directive and to facilitate communications between supervisors and with ESMA, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the notifications provided for in this paragraph.**

**Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the second subparagraph in accordance with Article 7e of Regulation (EU) No .../2010 [ESMA].’.**

- (3) **■** Article 14 is amended as follows:

- (a) **paragraph 1** is replaced by the following:

‘1. **Once approved, the prospectus shall be filed with the competent authority of the home Member State and shall be accessible to ESMA through the competent authority and shall be made available to the public by the issuer, offeror or person asking for admission to trading on a regulated market as soon as practicable and in any case, at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved. In addition, in the case of an initial public offer of a class of shares not already admitted to trading on a regulated market that is to be admitted to trading for the first time, the prospectus shall be available at least six working days before the end of the offer.**’;



Wednesday 7 July 2010

(b) the following paragraph **■** is inserted:

‘4a. **ESMA** shall publish on its website the list of prospectuses approved in accordance with Article 13, including, if applicable, a hyperlink to the prospectus published on the website of the competent authority of the home Member State, or on the website of the issuer, or on the website of the regulated market. The published list shall be kept up-to-date and **each item** shall remain on the website for a period of at least 12 months.’

(4) In Article 16, the following paragraph **■** is added:

‘3. In order to ensure **consistent harmonisation, to specify the requirements laid down in this Article** and to take account of technical developments on financial markets, **ESMA** shall develop draft **regulatory** standards to **specify situations where a significant new factor, material mistake or inaccuracy relating to the information included in the prospectus requires** a supplement to the prospectus **to be published**, **ESMA** shall submit those draft **regulatory** standards to the Commission by 1 January 2014.

**Power is delegated to the Commission to** adopt the draft **regulatory** standards referred to in the first subparagraph in accordance with the procedure laid down in **Articles 7 to 7d** of Regulation (EU) No .../2010 [ESMA].’

(5) **■** Article 17 **is amended as follows:**

(a) paragraph 1 is replaced by the following:

‘1. Without prejudice to Article 23, where an offer to the public or admission to trading on a regulated market is provided for in one or more Member States, or in a Member State other than the home Member State, the prospectus approved by the home Member State and any supplements thereto shall be valid for the public offer or the admission to trading in any number of host Member States, provided that **ESMA** and the competent authority of each host Member State **are** notified in accordance with Article 18. Competent authorities of host Member States shall not undertake any approval or administrative procedures relating to prospectuses.’

(b) **paragraph 2 is replaced by the following:**

‘2. **If significant new factors, material mistakes or inaccuracies come to light after approval of the prospectus, as referred to in Article 16, the competent authority of the home Member State shall require the publication of a supplement to be approved in accordance with Article 13(1). ESMA and the competent authority of the host Member State may inform the competent authority of the home Member State of the need for new information.**’

(6) In Article 18, the following paragraphs **■** are added:

‘3. The competent authority of the home Member State shall notify **ESMA of** the certificate of approval of the prospectus at the same time as it is notified to the competent authority of the host Member State.

**ESMA** and the competent authority of the host Member State shall publish on their websites the list of certificates of approval **of prospectuses (including, if applicable, supplements thereto) which are** notified in accordance with this Article, including, if applicable, a hyperlink to **these items** published on the website of the competent authority of the home Member State, or on the website of the **issuer**, or on the website of the regulated market. The published list shall be kept up-to-date and **each item** shall remain on the websites for a period of at least 12 months.

Wednesday 7 July 2010

4. In order to ensure uniform application of this Directive and to take account of technical developments on financial markets, **ESMA** may develop draft **implementing** standards to **establish standard forms, templates and procedures** for the notification of the certificate of approval, the copy of the prospectus, the translation of the summary and any supplement to the prospectus.

**Power is conferred on** the Commission **to** adopt the draft **implementing** technical standards referred to in the first subparagraph in accordance with **Article 7e** of Regulation (EU) No .../2010 [ESMA].'

(7) **Article 21 is amended as follows:**

(a) **the following paragraphs are inserted:**

**'1a. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No .../2010 [ESMA].**

**1b. The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties, in accordance with Article 20 of Regulation (EU) No .../2010 [ESMA].'**

(b) **in paragraph 2**, the third subparagraph is replaced by the following:

'Member States shall inform the Commission, **ESMA** and the competent authorities of other Member States of any arrangements entered into with regard to delegation of tasks, including the precise conditions regulating such delegation.'

(c) **in paragraph 4**, the following subparagraph is added:

**'The Authority shall be able to participate in on-site inspections under point (d) carried out jointly by two or more competent authorities'.**

(8) Article 22 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information or from transmitting confidential information to **ESMA** or the European Systemic Risk Board, **subject to constraints relating to firm-specific information and effects on third countries as provided for in Regulation (EU) No .../2010 [ESMA] and Regulation (EU) No .../2010 [ESRB] respectively.** Information exchanged between competent authorities and **ESMA** or the European Systemic Risk Board shall be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.'

(b) the following paragraph **4** is added:

'4. In order to ensure **consistent harmonisation of this Article and** to take account of technical developments on financial markets, **ESMA shall** develop draft **regulatory** standards to **specify the information required in paragraph 2.**

**Power is conferred on** the Commission **to** adopt the draft **regulatory** standards referred to in the first subparagraph in accordance with **the procedure laid down in Articles 7 to 7d of Regulation (EU) No .../2010 [ESMA].'**

Wednesday 7 July 2010

(8a) Article 23 is replaced by the following:

**‘Article 23**

**Precautionary measures**

1. *Where the competent authority of the host Member State finds that irregularities have been committed by the issuer or by the financial institutions in charge of the public offer or that the issuer has breached its obligations by reason of the fact that securities are admitted to trading on a regulated market, it shall refer those findings to the competent authority of the home Member State and to ESMA.*

2. *If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the issuer or the financial institution in charge of the public offer persists in breaching the relevant legal or regulatory provisions, the competent authority of the host Member State, after informing the competent authority of the home Member State and ESMA, shall take all appropriate measures in order to protect investors and shall inform the Commission and ESMA thereof at the earliest opportunity.’.*

Article 6

Amendments to Directive 2004/39/EC

Directive 2004/39/EC is amended as follows:

(-1) Article 2(3) is replaced by the following:

*‘3. In order to take account of developments on financial markets and to ensure uniform application of this Directive, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, in respect of the exemptions provided for in points (c)(i) and (k), define the criteria for determining when an activity is to be considered as ancillary to the main business on a group level as well as for determining when an activity is provided in an incidental manner.’.*

(-1a) Article 4(2) is replaced by the following:

*‘2. In order to take account of developments on financial markets and to ensure uniform application of this Directive, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, clarify the definitions laid down in paragraph 1 of this Article.’.*

(1) Article 5(3) is replaced by the following:

*‘3. Member States shall register all investment firms. The register shall be publicly accessible and shall contain information on the services or activities for which the investment firm is authorised. It shall be updated on a regular basis. Every authorisation shall be notified to the European Securities and Markets Authority (ESMA).*

*ESMA shall establish a list of all investment firms in the Union. The list shall contain information on the services or activities for which the investment firm is authorised and it shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.*

*Where a competent authority has withdrawn an authorisation in accordance with Article 8(b) to (d), the withdrawal shall be published on the list for a period of five years.’.*

Wednesday 7 July 2010

(2) In Article 7, the following paragraph **■** is added:

‘4. In order to ensure **consistent harmonisation** of this Article and of **Article 9(2) to (4), Article 10(1) and (2), and Article 12**, ESMA shall develop draft **regulatory** standards to:

- (a) *specify the information to be provided to the competent authorities under Article 7(2) including the programme of operations;*
- (b) *specify the requirements applicable to the management of investment firms under Article 9(4), and the information for the notifications foreseen in Article 9(2);*
- (c) *specify the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as foreseen in Article 10(1) and (2).*

*The Authority shall submit the draft technical regulatory standards referred to in points (a) and (b) to the Commission by 1 January 2014.*

*Power is delegated to the Commission to adopt the draft regulatory technical standards referred to in points a, b, c in accordance with Articles 7 to 7d of Regulation (EU) No .../2010.*

*In order to ensure uniform conditions of application of Article 7(2) and Article 9(2), ESMA may develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in those Articles.*

*The Authority shall submit the draft implementing technical regulatory standards referred to in subparagraph 4 the Commission by 1 January 2014.*

*Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the fourth subparagraph in accordance with Article 7e of Regulation (EU) No .../2010.’*

(2a) In Article 8 the following paragraph is added:

*‘Every withdrawal of authorisation shall be notified to ESMA.’*

(3) In Article 10a, the following paragraph **■** is added:

‘8. In order to ensure **consistent harmonisation** of this Article, ESMA shall develop draft **regulatory** standards to **establish an exhaustive list of information, referred to in paragraph 4, to be included by proposed acquirers in their notification, without prejudice to Article 10a(2).**

*The Authority shall submit those draft regulatory technical standards to the Commission by 1 January 2014.*

*Power is delegated to the Commission to adopt the draft regulatory standards referred to in the first subparagraph in accordance with Articles 7 to 7d of Regulation (EU) No .../2010.*

*In order to ensure uniform conditions of application of Articles 10, 10a and 10b, ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities as referred to in Article 10(4).*

Wednesday 7 July 2010

*The Authority shall submit those draft technical standards to the Commission by 1 January 2014.*

*Power is conferred on the Commission to adopt the draft **implementing** technical standards referred to in the **third** subparagraph in accordance with **Article 7e** of Regulation (EU) No .../2010 [ESMA].'*

(3a) *In Article 10b(1), the second subparagraph is replaced by the following:*

*'In order to take account of developments on financial markets, and to ensure the uniform application of this Directive, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, adopt measures which adjust the criteria set out in the first subparagraph of this paragraph.'*

(3b) *Article 13(10) is replaced by the following:*

*'In order to take account of developments on financial markets, and to ensure the uniform application of paragraph 2 to 9, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, adopt implementing measures which specify the concrete organisational requirements to be imposed on investment firms performing different investment services and/or activities and ancillary services or combination thereof.'*

(3c) *Article 15 is amended as follows*

(a) *paragraph 1 is replaced by the following:*

*'1. Member States shall inform the Commission and ESMA of any general difficulties which their investment firms encounter in establishing themselves or providing investment services and/or performing investment activities in any third country.'*

(b) *paragraph 2 is replaced by the following:*

*'2. Whenever it appears to the Commission, on the basis of information submitted to it under paragraph 1, that a third country does not grant Union investment firms effective market access comparable to that granted by the Union to investment firms from that third country, the Commission, taking into account guidance issued by the European Securities and Markets Authority, shall submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Union investment firms. The Council shall act by qualified majority.'*

*The European Parliament shall be immediately and fully informed at all stages of the procedure in accordance with Article 217 TFEU.*

*The Authority shall assist the Commission for the purposes of this Article.'*

(3d) *In Article 16(2), the following subparagraph is added:*

*'The European Securities and Markets Authority may develop guidelines regarding the monitoring methods referred to in this Article.'*

Wednesday 7 July 2010

(3e) In Article 18(3), the introductory part of the first subparagraph is replaced by the following:

*'3. In order to take account of developments on financial markets, and to ensure consistent harmonisation and the uniform application of paragraphs 1 and 2, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b:'.*

(3f) In Article 19(6), the first indent is replaced by the following:

*'— the above services relate to shares admitted to trading on a regulated market or in an equivalent third country market, money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a derivative), UCITS and other non-complex financial instruments. A third country market shall be considered as equivalent to a regulated market if it complies with equivalent requirements to those established under Title III. The Commission and ESMA shall publish on their website a list of those markets that are to be considered as equivalent. This list shall be updated periodically. ESMA shall assist the Commission in this assessment of third country markets.'*

(3g) In Article 19(10), the introductory part of the first subparagraph is replaced by the following:

*'10. In order to ensure the necessary protection of investors and the uniform application of paragraphs 1 to 8, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, adopt measures to ensure that investment firms comply with the principles set out therein when providing investment or ancillary services to their clients. Those measures shall take into account:'.*

(3h) In Article 21(6), the introductory part of the first subparagraph is replaced by the following:

*'6. In order to ensure the protection necessary to investors, the fair and orderly functioning of markets, and to ensure the uniform application of paragraphs 1, 3 and 4, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, adopt measures concerning:'.*

(3i) In Article 22(3), the introductory part of the first subparagraph is replaced by the following:

*'3. In order to ensure that measures for the protection of investors and fair and orderly functioning of markets take account of technical developments in financial markets, and to ensure the uniform application of paragraphs 1 and 2, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, adopt measures which define:'.*

(3j) In Article 23(3), the first subparagraph is replaced by the following:

*'3. Member States that decide to allow investment firms to appoint tied agents shall establish a public register. Tied agents shall be registered in the public register in the Member State where they are established. ESMA shall publish on its website references/hyperlinks to the public registers established under this Article by the Member States that decide to allow investment firms to appoint tied agents.'*

(3k) In Article 24(5), the introductory part of the first subparagraph is replaced by the following:

*'5. In order to ensure consistent harmonisation and the uniform application of paragraphs 2, 3 and 4 in the light of changing market practice and to facilitate the effective operation of the single market, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, define:'.*

Wednesday 7 July 2010

(3l) Article 25 is amended as follows:

(a) paragraph 1 is replaced by the following:

*'1. Without prejudice to the allocation of responsibilities for enforcing the provisions of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), Member States coordinated by ESMA in accordance with Article 16 of Regulation (EU) No .../2010 [ESMA] shall ensure that appropriate measures are in place to enable the competent authority to monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market.'*

(b) paragraph 2 is replaced by the following:

*'2. Member States shall require investment firms to keep at the disposal of the competent authority, for at least five years, the relevant data relating to all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.'*

*ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 20 of Regulation (EU) No .../2010'.*

(c) paragraph 7 is replaced by the following:

*'7. In order to ensure that measures for the protection of market integrity are modified to take account of technical developments in financial markets, and to ensure consistent harmonisation and the uniform application of paragraphs 1 to 5, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, define the methods and arrangements for reporting financial transactions, the form and content of these reports and the criteria for defining a relevant market in accordance with paragraph 3.'*

(3m) Article 27 is amended as follows:

(a) paragraph 2 is replaced by the following:

*'2. The competent authority of the most relevant market in terms of liquidity as defined in Article 25 for each share shall determine at least annually, on the basis of the arithmetic average value of the orders executed in the market in respect of that share, the class of shares to which it belongs. That information shall be made public to all market participants and transmitted to the European Securities and Markets Authority. The European Securities and Markets Authority shall publish this information on its website.'*

(b) in paragraph 7, the introductory part of the first subparagraph is replaced by the following:

*'7. In order to ensure the uniform application of paragraphs 1 to 6, in a manner which supports the efficient valuation of shares and maximises the possibility of investments firms of obtaining the best deal for their client, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, adopt measures which.'*

Wednesday 7 July 2010

(3n) In Article 28(3), the introductory part of the first subparagraph is replaced by the following:

*'3. In order to ensure the transparent and orderly functioning of markets and the uniform application of paragraph 1, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, adopt measures which:'.*

(3o) In Article 29(3), the introductory part of the first subparagraph is replaced by the following:

*'3. In order to ensure the uniform application of paragraphs 1 and 2, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, adopt measures as regards:'.*

(3p) In Article 30(3), the introductory part of the first subparagraph is replaced by the following:

*'3. In order to provide for the efficient and orderly functioning of financial markets, and ensure the uniform application of paragraphs 1 and 2, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, adopt measures in respect of:'.*

(4) Article 31 is amended as follows:

(a) in paragraph 2, the second subparagraph is replaced by the following:

*'In cases where the investment firm intends to use tied agents, the competent authority of the home Member State of the investment firm shall, at the request of the competent authority of the host Member State and within a reasonable time, communicate the identity of the tied agents that the investment firm intends to use in that Member State. The host Member State may make public such information. The European Securities and Markets Authority may request access to that information in accordance with the procedure and under the conditions set out in Article 20 of Regulation (EU) No .../2010.'*

(b) the following paragraph 7 is added:

*'7. In order to ensure consistent harmonisation of this Article ESMA may develop draft regulatory standards to specify the information to be notified in accordance with paragraphs 2, 4 and 6.'*

*Power is delegated to the Commission to adopt the draft regulatory standards referred to in the first subparagraph in accordance with Articles 7 to 7d of Regulation (EU) No .../2010. (ESMA).*

*In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3, 4 and 6.*

*Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the third subparagraph in accordance with Article 7e of Regulation (EU) No .../2010.'*

(5) In Article 32, the following paragraph is added:

*'10. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory standards to specify the information to be notified in accordance with paragraphs 2, 4 and 9.'*



Wednesday 7 July 2010

*Power is delegated to the Commission to adopt the draft regulatory standards referred to in the first subparagraph in accordance with Articles 7 to 7d of Regulation (EU) No .../2010.*

*In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3 and 9.*

Power is conferred on the Commission **to** adopt the draft **implementing** technical standards referred to in the **third** subparagraph in accordance with **Article 7e** of Regulation (EU) No .../2010. ▀

(5a) *In Article 36, the following paragraph is added:*

*'5a. ESMA shall be notified of any withdrawal of authorisation.'*

(5b) *In Article 39, the following paragraph is added:*

*'1a. In order to take account of developments in financial markets and to ensure consistent harmonisation and uniform application of this Article, ESMA shall develop draft implementing technical standards to determine the conditions of application of point (d). The Authority shall submit those draft technical standards to the Commission by 1 January 2014.'*

Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the third subparagraph in accordance with Article 7e of Regulation (EU) No .../2010.'

(5c) *In Article 40(6), the introductory wording of the first subparagraph is replaced by the following:*

*'6. In order to ensure consistent harmonisation and the uniform application of paragraphs 1 to 5, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b.'*

(5d) *Article 41(2) is replaced by the following:*

*'2. A competent authority which requests the suspension or removal of a financial instrument from trading on one or more regulated markets shall immediately make public its decision and inform the European Securities and Markets Authority and the competent authorities of the other Member States. Save where it is likely to cause significant damage to the investors' interests or the orderly functioning of the internal market, the competent authorities of the other Member States shall request the suspension or removal of that financial instrument from trading on the regulated markets and MTFs that operate under their supervision.'*

(5e) *Article 42 is amended as follows:*

(a) *in paragraph 6, the second subparagraph is replaced by the following:*

*'The regulated market shall communicate to the competent authority of its home Member State the Member State in which it intends to provide such arrangements. The competent authority of the home Member State shall communicate that information to the Member State in which the regulated market intends to provide such arrangements within one month. ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 20 of Regulation (EU) No .../2010.'*

Wednesday 7 July 2010

(b) the following paragraph is added

*'7a. In order to take account of developments in financial markets and to ensure consistent harmonisation and uniform application of this Article, ESMA shall develop draft technical standards to determine the conditions of application of paragraph 1. The Authority shall submit those draft implementing technical standards to the Commission by 1 January 2014.*

*Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the third subparagraph in accordance with Article 7e of Regulation (EU) No .../2010.'*

(5f) In Article 44(3), the introductory part of the first subparagraph is replaced by the following:

*'3. In order to take account of developments in financial markets and to ensure consistent harmonisation and the uniform application of paragraphs 1 and 2, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, adopt measures as regards:'.*

(5g) In Article 45(3), the introductory wording of the first subparagraph is replaced by the following:

*'3. In order to provide for the efficient and orderly functioning of financial markets, to take account of developments in financial markets and to ensure consistent harmonisation and the uniform application of this Article, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, adopt measures in respect of:'.*

(6) Article 47 is replaced by the following:

*'Article 47*

*List of regulated markets*

*Each Member State shall draw up a list of the regulated markets for which it is the home Member State and shall forward that list to the other Member States and ESMA. A similar communication shall be effected in respect of each change to that list. ESMA shall publish and keep up-to-date a list of all regulated markets on its website [ ]'.*

(7) Article 48 is amended as follows:

(a) paragraph 1 is replaced by the following:

*'1. Each Member State shall designate the competent authorities which are to carry out each of the duties provided for in this Directive. Member States shall inform the Commission, ESMA and the competent authorities of other Member States of the identity of the competent authorities responsible for enforcement of each of those duties, and of any division of those duties;'.*

(b) in paragraph 2, the **third** subparagraph is replaced by the following:

*'Member States shall inform the Commission, ESMA and the competent authorities of other Member States of any arrangements entered into with regard to delegation of tasks, including the precise conditions regulating such delegation;'.*

(c) paragraph 3 is replaced by the following:

*'3. ESMA shall publish and keep up-to-date a list of the competent authorities referred to in paragraphs 1 and 2 on its website [ ]'.*

Wednesday 7 July 2010

(7a) In Article 51, the following paragraphs are inserted:

*'Member States shall provide the European Securities and Markets Authority annually with aggregated information about all administrative measures and sanctions imposed in accordance with paragraphs 1 and 2.'*

*The competent authority shall report to ESMA at the same time all sanctions which are disclosed to the public in accordance with the previous subparagraph. Where a published sanction relates to an investment firm authorized according to this Directive, ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3) of this Directive.'*

(8) In Article 53, the following paragraph is added:

*'3. The competent authorities shall notify ESMA of the complaint and redress procedures referred to in paragraph 1 which are available in its jurisdictions.'*

*ESMA shall publish and keep up-to-date a list of all extra-judicial mechanisms on its website';*

(8a) The Title of Chapter II is replaced by the following:

*'Cooperation between the competent authorities of different Member States and with the European Securities and Markets Authority'*

(8b) In Article 56(1), the third subparagraph is replaced by the following:

*'In order to facilitate and accelerate cooperation, and more particularly exchange of information, Member States shall designate one single competent authority as a contact point for the purposes of this Directive. Member States shall communicate to the Commission, ESMA and to the other Member States the names of the authorities which are designated to receive requests for exchange of information or cooperation pursuant to this paragraph. ESMA shall publish and keep up-to-date a list of those authorities on its website.'*

(8c) Article 56(4) is replaced by the following:

*'Where a competent authority has good reasons to suspect that acts contrary to the provisions of this Directive, carried out by entities not subject to its supervision, are being or have been carried out on the territory of another Member State, it shall notify this in as specific a manner as possible to the competent authority of the other Member State and to the European Securities and Markets Authority. The latter authority shall take appropriate action. It shall inform the notifying competent authority and the European Securities and Markets Authority of the outcome of the action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competences of the competent authority that has forwarded the information.'*

(8d) Article 56(5) is replaced by the following:

*'5. In order to ensure the uniform application of paragraphs 1 and 2, the Commission shall, by means of delegated acts in accordance with Articles 64, 64a and 64b, define the modalities for the cooperation of the competent authorities and establish the criteria under which the operations of a regulated market in a host Member State could be considered as of substantial importance for the functioning of the securities markets and the protection of the investors in that host Member State.'*

Wednesday 7 July 2010

- (9) In Article 56, the following paragraph 6 is added:

**‘6. In order to ensure uniform *conditions of* application of *this Article*, ESMA may develop draft *implementing* technical standards to *establish standard forms, templates and procedures for the cooperation arrangements referred to in paragraph 2*.**

**Power is conferred on the Commission to adopt the draft *implementing* technical standards referred to in the first subparagraph in accordance with *Article 7e* of Regulation (EU) No .../2010 [ESMA].’.**

- (10) Article 57 is amended as follows:

- (a) the existing text is renumbered as paragraph 1.

**(aa) the following paragraph is added:**

**‘1a. With the objective to convergence supervisory practices, the Authority shall be able to participate in the activities of the colleges of supervisors, including on-site examinations, carried out jointly by two or more competent authorities in accordance with Article 12 of Regulation (EU) No .../2010 [ESMA] of the European Parliament and the Council.’;**

- (b) the following paragraph 2 is added:

**‘2. In order to ensure *consistent harmonisation* of paragraph 1, ESMA may develop draft *regulatory* standards to *specify the information to be exchanged between competent authorities when cooperating in* supervisory activities, on-the-spot-verifications, and investigations.**

**Power is delegated to the Commission to adopt the draft *regulatory* standards referred to in the first subparagraph in accordance with *Articles 7 to 7d* of Regulation. (EU) No .../2010 [ESMA].’.**

**In order to ensure uniform conditions of application of paragraph 1, ESMA may develop draft *implementing* technical standards to *establish standard forms, templates and procedures for competent authorities to cooperate in* supervisory activities, on-the-spot verifications, and investigations.**

**Power is conferred on the Commission to adopt the draft *implementing* technical standards referred to in the third subparagraph in accordance with *Article 7e* of Regulation (EU) No .../2010.’.**

- (11) Article 58 is amended as follows:

- (a) paragraph 4 is replaced by the following:

**‘4. In order to ensure uniform *conditions of* application of paragraphs 1 and 2, ESMA may develop draft *implementing* technical standards to *establish* standard forms, templates *and procedures for the exchange of information*.**

**Power is conferred on the Commission to adopt the draft *implementing* technical standards referred to in the first subparagraph in accordance with *Article 7e* of Regulation. (EU) No .../2010.’;**

Wednesday 7 July 2010

(b) paragraph 5 is replaced by the following:

**'5. Articles 54, 58 and 63 shall not prevent a competent authority from transmitting to ESMA, the European Systemic Risk Board established by Regulation (EU) No .../2010 of the European Parliament and of the Council, to central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their tasks; likewise such authorities or bodies shall not be prevented from communicating to the competent authorities such information as they may need for the purpose of performing their functions provided for in this Directive.'**

**(11a) Article 59(2) is replaced by the following:**

**'2. In the case of such a refusal, the competent authority shall notify the requesting competent authority and ESMA accordingly, providing as detailed information as possible.'**

(12) In Article 60, the following paragraph ■ is added:

**'4. In order to ensure uniform conditions of application of paragraphs 1 and 2, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation.**

**Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with ■ Article 7e of Regulation (EU) No .../2010 [ESMA].'**

(13) Article 62 is amended as follows:

(a) in paragraph 1, the third sentence in the second subparagraph is replaced by the following:

**'The Commission and ESMA shall be informed of such measures without delay;'**

(b) in paragraph 2, the second sentence in the third subparagraph is replaced by the following:

**'The Commission and ESMA shall be informed of such measures without delay;'**

(c) in paragraph 3, the second sentence in the second subparagraph is replaced by the following:

**'The Commission and ESMA shall be informed of such measures without delay.'**

**(13a) The following article is inserted:**

**'Article 62a**

**1. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No .../2010 [ESMA].**

**2. The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No .../2010 [ESMA], in accordance with Article 20 of that Regulation.'**

Wednesday 7 July 2010

(14) Article 63(1) is replaced by the following

‘1. Member States and **in accordance with Article 18 of Regulation (EU) No .../2010 [ESMA], ESMA** may conclude cooperation agreements providing for the exchange of information with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 54. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

Member States and **ESMA** may transfer personal data to a third country in accordance with Chapter IV of Directive 95/46/EC.

Member States and **ESMA** may also conclude cooperation agreements providing for the exchange of information with third country authorities, bodies and natural or legal persons responsible for **one or more of the following**:

- (a) the supervision of credit institutions, other financial organisations, insurance undertakings and the supervision of financial markets;
- (b) the liquidation and bankruptcy of investment firms and other similar procedures;
- (c) carrying out statutory audits of the accounts of investment firms and other financial institutions, credit institutions and insurance undertakings, in the performance of their supervisory functions, or which administer compensation schemes, in the performance of their functions;
- (d) overseeing the bodies involved in the liquidation and bankruptcy of investment firms and other similar procedures;
- (e) overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

The cooperation agreements referred to in the third subparagraph may **■** be concluded **only** where the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 54. Such exchange of information **shall** be intended for the performance of the tasks of those authorities or bodies or natural or legal persons.’

**(14a) Article 64 is amended as follows:**

**(a) paragraph 2 is replaced by the following:**

**‘2. The power to adopt the delegated acts referred to in Article 2, Article 4, Article 10b(1), Article 13(10), Articles 18, 19, 21, 22, 24, 25, 27, 28, 29, 30, 40, 44, 45, and Article 56(2) shall be conferred on the Commission for a period of four years following the entry into force of this Directive. The Commission shall make a report in respect of delegated powers at the latest six months before the end of the four-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 64c.’;**

**(b) the following paragraphs are inserted:**

**‘-2a. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.**

Wednesday 7 July 2010

-2b. *The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 64a and 64b.*;

(c) *paragraph 2a is replaced by the following:*

*'2a. None of the delegated acts enacted may change the essential provisions of this Directive.'*;

(d) *paragraph 4 is deleted.*

(14b) *The following articles are inserted:*

*'Article 64a*

*Revocation of the delegation*

1. *The delegation of powers referred to in Articles 2 and 4, Article 10b(1), Article 13(10), Articles 18, 19, 21, 22, 24, 25, 27, 28, 29, 30, 40, 44, 45, and Article 56(2) may be revoked at any time by the European Parliament or by the Council.*

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

3. *The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.*

*Article 64b*

*Objections to delegated acts*

1. *The European Parliament or the Council may object to a delegated act within a period of three months from the date of notification. At the initiative of the European Parliament or the Council this period may be extended by three months.*

2. *If, on the expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.*

*The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.*

3. *If the European Parliament or the Council objects to a delegated act, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the delegated act.'*

Wednesday 7 July 2010

Article 7

Amendments to Directive 2004/109/EC

Directive 2004/109/EC is amended as follows:

(-1) Article 2(3) is amended as follows:

(a) the first subparagraph is replaced by the following:

*'3. In order to take account of technical developments on financial markets, ensure consistent harmonisation and to specify the requirements laid down in paragraph 1, the Commission shall, in accordance with the procedures referred to in Article 27(2) and (2a), adopt delegated acts and implementing measures concerning the definitions set out in paragraph 1.'*

(b) the third subparagraph is replaced by the following:

*'The measures referred to in points (a) and (b) of the second subparagraph shall be laid down by means of delegated acts in accordance with Articles 27, 27a and 27b.'*

(-1a) Article 4 is amended as follows:

(a) in paragraph 2, the following point is inserted:

*'(aa) an annex including a summary of country-by-country annual accounts;'*

(b) paragraph 6 is replaced by the following:

*'6. The Commission shall in accordance with Articles 27, 27a and 27b adopt measures by means of delegated acts in order to take account of technical developments in financial markets, to ensure consistent harmonisation and to specify the requirements laid down in paragraph 1. The Commission shall in particular specify the technical conditions under which a published annual financial report, including the audit report, is to remain available to the public. Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1.'*

(-1b) Article 5(6) is amended as follows:

(a) the first subparagraph is replaced by the following:

*'6. The Commission shall adopt measures, in accordance with the procedures referred to in Article 27(2) and (2a), in order to take account of technical developments on financial markets, to ensure consistent harmonisation and to specify the requirements and ensure the uniform application of paragraphs 1 to 5 of this Article.'*

(b) the third subparagraph is replaced by the following:

*'The measures referred to in point (a) shall be adopted in accordance with the regulatory procedure referred to in Article 27(2). The measures referred to in points (b) and (c) shall be laid down by means of delegated acts in accordance with the Articles 27, 27a and 27b.'*



Wednesday 7 July 2010

(c) *the fourth subparagraph is replaced by the following:*

*'Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1 by means of a delegated act in accordance with Articles 27, 27a and 27b.'*

(-1c) *Article 9(7) is amended as follows:*

(a) *the first subparagraph is replaced by the following:*

*'7. The Commission shall, by means of delegated acts in accordance with Articles 27, 27a and 27b, adopt measures in order to take account of technical developments on financial markets, to ensure consistent harmonisation and to specify the requirements laid down in paragraphs 2, 4 and 5.'*

(b) *the second subparagraph is replaced by the following:*

*'The Commission shall specify the maximum length of the "short settlement cycle" referred to in paragraph 4 of this Article, as well as the appropriate control mechanisms by the competent authority of the home Member State by means of delegated acts in accordance with Articles 27, 27a and 27b.'*

(1) Article 12 is amended as follows:

(a) in paragraph 8:

(i) *the introductory part of the first subparagraph is replaced by the following:*

*'8. In order to take account of technical developments on financial markets, to ensure consistent harmonisation and to specify the requirements laid down paragraphs 1, 2, 4, 5 and 6 of this Article, the Commission shall adopt, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures:';*

(ii) point (a) is deleted;

(iii) *the second subparagraph is deleted;*

(b) the following paragraph ■ is added:

*'9. In order to ensure the uniform **conditions of** application of ■ this Article and to take account of technical developments in financial markets, **ESMA may** develop draft **implementing** technical standards to establish ■ standard forms, **templates and procedures** to be used when notifying the required information to the issuer under paragraph 1 of this Article or when filing information under Article 19(3).*

***Power is conferred on** the Commission **to** adopt the draft **implementing** technical standards referred to in the first subparagraph in accordance with **Article 7e** of Regulation (EU) No .../2010 [ESMA].'*

(2) Article 13 is amended as follows:

(a) in paragraph 2 ■:

(i) *the first subparagraph is replaced by the following:*

Wednesday 7 July 2010

**‘2. The Commission shall adopt, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets, to ensure consistent harmonisation and to specify the requirements laid down in paragraph 1. It shall in particular determine:’;**

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

‘(c) the contents of the notification to be made;’;

(iii) **the second subparagraph is deleted;**

(b) the following paragraph is added:

‘3. In order to ensure **■** uniform **conditions of** application of paragraph 1 **of this Article** and to take account of technical developments **in** financial markets, **ESMA may** develop draft **implementing** technical standards to establish **■** standard forms, **templates and procedures to be used** when notifying the required information to the issuer under paragraph 1 **of this Article** or when filing information under Article 19(3).

**Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with Article 7e of Regulation (EU) No .../2010 [ESMA].’.**

(2a) Article 14(2) is replaced by the following:

**‘2. The Commission shall adopt, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets, to ensure consistent harmonisation and to specify the requirements laid down in paragraph 1.’.**

(2b) Article 17(4) is replaced by the following:

**‘4. The Commission shall adopt, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology, to ensure consistent harmonisation and to specify the requirements laid down in paragraph 1, 2 and 3. It shall, in particular, specify the types of financial institution through which a shareholder may exercise the financial rights provided for in paragraph 2(c).’.**

(2c) Article 18(5) is replaced by the following:

**‘5. The Commission shall adopt, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures in order to take account of technical developments in financial markets, to take account of developments in information and communication technology, to ensure consistent harmonisation and to specify the requirements laid down in paragraph 1 to 4. It shall, in particular, specify the types of financial institution through which a debt security holder may exercise the financial rights provided for in paragraph 2(c).’.**

(2d) Article 19(4) is replaced by the following:

**‘4. In order to to ensure consistent harmonisation and to specify the requirements laid down in paragraphs 1, 2 and 3, the Commission shall adopt measures by means of delegated acts in accordance with Articles 27, 27a and 27b.**

Wednesday 7 July 2010

The Commission shall, in particular, specify the procedure in accordance with which an issuer, a holder of shares or other financial instruments, or a person or entity referred to in Article 10, is to file information with the competent authority of the home Member State under paragraphs 1 or 3, respectively, in order to:

- (a) enable filing by electronic means in the home Member State;
  - (b) coordinate the filing of the annual financial report referred to in Article 4 of this Directive with the filing of the annual information referred to in Article 10 of Directive 2003/71/EC.’
- (2e) Article 21(4) is replaced by the following:

‘4. In order to take account of technical developments in financial markets, to take account of developments in information and communication technology and to specify the requirements laid down in paragraphs 1, 2 and 3, the Commission shall adopt measures, by means of delegated acts in accordance with Articles 27, 27a and 27b.

The Commission shall, in particular, specify:

- (a) minimum standards for the dissemination of regulated information, as referred to in paragraph 1;
- (b) minimum standards for the central storage mechanism as referred to in paragraph 2.

The Commission may also specify and update a list of media for the dissemination of information to the public.’

- (2f) The first subparagraph of Article 22(1) is replaced by the following:

‘1. ESMA shall draw up guidelines, in accordance with Article 8 of Regulation (EU) No .../2010 [ESMA], with a view to further facilitating public access to information to be disclosed under Directive 2003/6/EC, Directive 2003/71/EC and this Directive.’

- (2g) Article 23 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. Where the registered office of an issuer is in a third country, the competent authority of the home Member State may exempt that issuer from requirements under Articles 4 to 7 and Articles 12(6), 14, 15 and 16 to 18, provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the competent authority of the home Member State considers as equivalent.

The competent authority shall then inform ESMA of the granted exemption.’

- (b) paragraph 4 is replaced by the following:

‘4. In order to ensure consistent harmonisation and the uniform application of paragraph 1, the Commission shall in accordance with the procedure referred to in Article 27(2), adopt implementing measures:

- (i) setting up a mechanism ensuring the establishment of equivalence of information required under this Directive, including financial statements and information, including financial statements, required under the law, regulations or administrative provisions of a third country;

Wednesday 7 July 2010

- (ii) *stating that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is registered ensures the equivalence of the information requirements provided for in this Directive.*

*In the context of point (ii) of the first subparagraph, the Commission shall also adopt, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures concerning the assessment of standards relevant to the issuers of more than one country.*

*The Commission shall, in accordance with the procedure referred to in Article 27(2), take the necessary decisions on the equivalence of accounting standards which are used by third country issuers under the conditions set out in Article 30(3) at the latest five years following the date referred to in Article 31. If the Commission decides that the accounting standards of a third country are not equivalent, it may allow the issuers concerned to continue using such accounting standards during an appropriate transitional period.*

*In the context of the third subparagraph, the Commission shall also adopt, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures aimed at establishing general equivalence criteria regarding accounting standards relevant to issuers of more than one country.*

*The draft delegated acts shall be drawn up by the European Securities and Markets Authority.’.*

- (c) *paragraph 5 is replaced by the following:*

*‘5. In order to ensure consistent harmonisation and to specify the requirements laid down in paragraph 2, the Commission may adopt, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures defining the type of information disclosed in a third country that is of importance to the public in the Union.’.*

- (d) *in paragraph 7, the second subparagraph is replaced by the following:*

*‘The Commission shall also adopt, by means of delegated acts in accordance with Articles 27, 27a and 27b, measures aimed at establishing general equivalence criteria for the purpose of the first subparagraph.’.*

- (e) *the following paragraph is added:*

*‘7a. ESMA shall assist the Commission in carrying out its tasks under this Article in accordance with Article 18 of Regulation (EU) No .../2010 [ESMA]’*

- (2h) *Article 24 is amended as follows:*

- (a) *in paragraph 1, the first subparagraph is replaced by the following:*

*‘1. Each Member State shall designate the central authority referred to in Article 21(1) of Directive 2003/71/EC as the central competent administrative authority responsible for carrying out the obligations provided for in this Directive and for ensuring that the provisions adopted pursuant to this Directive are applied. Member States shall inform the Commission and ESMA accordingly.’.*

Wednesday 7 July 2010

(b) paragraph 3 is replaced by the following:

*'3. Member States shall inform the Commission, ESMA in accordance with Article 13(3) of Regulation (EU) No .../2010 [ESMA], and competent authorities of other Member States of any arrangements entered into with regard to the delegation of tasks, including the precise conditions for regulating the delegations.'*

(3) Article 25 is amended as follows:

(a) the following paragraphs are inserted:

*'2a. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No .../2010 [ESMA].*

*2b. The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No .../2010 [ESMA], in accordance with Article 20 of that Regulation.'*

(b) in paragraph 3, the first sentence is replaced by the following:

*'Paragraph 1 shall not prevent the competent authorities from exchanging confidential information **with** or from transmitting **information** it to ESMA and the European Systemic Risk Board (ESRB) established by Regulation (EU) No .../2010 of the European Parliament and of the Council.'*

(c) paragraphh 4 is replaced by the following:

*'4. Member States and the European Securities and Markets Authority in accordance with Article 18 of Regulation (.../...ESMA), may conclude cooperation agreements providing for the exchange of information with the competent authorities or bodies of third countries enabled by their respective legislation to carry out any of its tasks under this Directive to the competent authorities in accordance with Article 24. Member States shall notify ESMA when they conclude cooperation agreements. Such an exchange of information is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such an exchange of information shall be intended for the performance of the supervisory task of the authorities or bodies mentioned. Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities from which disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.'*

(3a) Article 26 is replaced by the following:

*'Article 26*

*Precautionary measures*

*1. Where the competent authority of a host Member State finds that the issuer or the holder of shares or other financial instruments, or the person or entity referred to in Article 10, has committed irregularities or infringed its obligations, it shall refer its findings to the competent authority of the home Member State and to ESMA.*

*2. If, despite the measures taken by the competent authority of the home Member State, or because such measures prove inadequate, the issuer or the security holder persists in infringing the relevant legal or regulatory provisions, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, take, in accordance with Article 3(2), all the appropriate measures in order to protect investors, informing the Commission and ESMA thereof at the earliest opportunity.'*

Wednesday 7 July 2010

(3b) The title of Chapter VI is replaced by the following:

‘DELEGATED ACTS AND IMPLEMENTING MEASURES’.

(3c) Article 27 is amended as follows:

(a) paragraph 2a is replaced by the following:

‘2a. The power to adopt the delegated acts referred to in Article 2(3), Article 5(6), Article 9(7), Article 12(8), Article 13(2), Article 14(2), Article 17(4), Article 18(5), Article 19(4), Article 21(4), Article 23(5) and Article 23(7) shall be conferred on the Commission for a period of four years following the entry into force of this Directive. The Commission shall make a report in respect of delegated powers at the latest 6 months before the end of the four-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 27c.’.

(b) the following paragraphs are inserted:

‘2aa. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

2ab. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 27a and 27b.’.

(3d) The following articles are inserted:

‘Article 27a

*Revocation of the delegation*

1. The delegation of power referred to in Article 2(3), Article 5(6), Article 9(7), Article 12(8), Article 13(2), Article 14(2), Article 17(4), Article 18(5), Article 19(4), Article 21(4), Article 23(5) and Article 23(7) may be revoked at any time by the European Parliament or by the Council.

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

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Article 27b

*Objections to delegated acts*

1. The European Parliament or the Council may object to a delegated act within a period of three months from the date of notification. At the initiative of the European Parliament or the Council this period may be extended by three months.

Wednesday 7 July 2010

2. If, on the expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.

The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the delegated act.’

#### Article 8

#### Amendments to Directive 2005/60/EC

Directive 2005/60/EC is amended as follows:

(-1a) Article 11(4) is replaced by the following:

‘4. The Member States shall inform each other, the ESAs to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [EIOPA], and of Regulation (EU) No .../2010 [ESMA], and the Commission of cases where they consider that a third country meets the conditions laid down in paragraphs 1 or 2 or in other situations which meet the technical criteria established in accordance with Article 40(1)(b).’

(-1b) Article 16(2) is replaced by the following:

‘2. Member States shall inform each other, the ESAs to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [EIOPA], and of Regulation (EU) No .../2010 [ESMA], and the Commission of cases where they consider that a third country meets the conditions laid down in paragraph 1(b).’

(-1c) Article 28(7) is replaced by the following:

‘7. The Member States shall inform each other, the ESAs to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [EIOPA], and of Regulation (EU) No .../2010 [ESMA] and the Commission of cases where they consider that a third country meets the conditions laid down in paragraphs 3, 4 or 5.’

(-1d) Article 31(2) is replaced by the following:

‘2. Member States, the ESAs to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [EIOPA], and of Regulation (EU) No .../2010 [ESMA] and the Commission shall inform each other of cases where the legislation of the third country does not permit application of the measures required under the first subparagraph of paragraph 1 and coordinated action could be taken to pursue a solution.’

Wednesday 7 July 2010

- (1) In Article 31, the following paragraph **■** is added:

‘4. In order to ensure **consistent harmonisation of this Article** and to take account of technical developments in the fight against money laundering or terrorist financing, the European Banking Authority, **established by Regulation (EU) No .../2010 [EBA]**, the European Securities and Markets Authority, **established by Regulation (EU) No .../2010 [ESMA]** and the European Insurance and Occupational Pensions Authority, **established by Regulation (EU) No .../2010 [EIOPA]**, **taking into account the existing framework and co-operating, as appropriate, with other relevant EU bodies in the field of anti-money laundering and combating of financing of terrorism**, may develop draft **regulatory** standards in accordance with Articles 42 of **these Regulations to specify** the type of additional measures referred to in **paragraph 3 of this Article ■** and the minimum action to be taken by credit and financial institutions where the legislation of the third country does not permit application of the measures required under the first subparagraph of paragraph 1 **of this Article**.

**Power is delegated to** the Commission **to** adopt the draft **regulatory** standards referred to in the first subparagraph in accordance with **Articles 7 to 7d** of Regulation (EU) No .../2010.’

- (2) In Article 34, the following paragraph is added:

‘3. In order to ensure **consistent harmonisation** and to take account of technical developments in the fight against money laundering or terrorist financing, **the EBA, ESMA and the EIOPA, taking into account the existing framework and co-operating, as appropriate, with other relevant EU bodies in the field of anti-money laundering and combating of financing of terrorism**, may develop draft **regulatory** standards in accordance with Article 42 of Regulation (EU) No .../2010 (EBA), Regulation (EU) No .../2010 (ESMA) and **of** Regulation (EU) No .../2010 (EIOPA) of the European Parliament and of the Council to **specify** the minimum content of the communication referred to in paragraph 2.

**Power is delegated to** the Commission **to** adopt the draft **regulatory** standards referred to in the first subparagraph in accordance with **Articles 7 to 7d** of Regulation (EU) No .../2010.’

- (2a) **The following article is added:**

‘Article 37a

1. **The competent authorities shall cooperate with the ESAs for the purposes of this Directive, in accordance with Regulation (EU) No .../2010 [EBA], Regulation (EU) No .../2010 [EIOPA], and Regulation (EU) No .../2010 [ESMA].**

2. **The competent authorities shall provide the ESAs with all information necessary to carry out their duties under by this Directive and under Regulation (EU) No .../2010 [EBA], Regulation (EU) No .../2010 [EIOPA], and Regulation (EU) No .../2010 [ESMA].’**

- (2b) **The title of Chapter VI is replaced by the following:**

‘DELEGATED ACTS’.

- (2c) **Article 40 is amended as follows:**

(a) **in paragraph 1:**

- (i) **the first subparagraph is replaced by the following:**

‘1. **In order to take account of technical developments in the fight against money laundering or terrorist financing, to ensure consistent harmonisation and to specify the requirements laid down in this Directive, the Commission may, adopt the following measures:’**



Wednesday 7 July 2010

(ii) the second subparagraph is replaced by the following:

*'The measures shall be adopted by means of delegated acts in accordance with Articles 41, 41a and 41b.'*

(b) in paragraph 3, the second subparagraph is replaced by the following:

*'The measures shall be adopted by means of delegated acts in accordance with Articles 41, 41a and 41b.'*

(2d) Article 41 is amended as follows:

(a) in paragraph 2, the first subparagraph is replaced by the following:

*'2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof and provided that the measures adopted in accordance with this procedure do not modify the essential provisions of this Directive.'*

(b) paragraph 2a is replaced by the following:

*'2a. The power to adopt delegated acts referred to in Article 40 shall be conferred on the Commission shall be conferred on the Commission for a period of four years following the entry into force of this Directive. The Commission shall make a report in respect of delegated powers at the latest 6 months before the end of the four-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 41a.'*

(c) the following paragraphs are inserted:

*'2b. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.'*

*2c. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 41a and 41b.'*

(d) paragraph 3 is deleted.

(2e) The following articles are inserted:

*'Article 41a*

*Revocation of the delegation*

*1. The delegation of powers referred to in Article 40 may be revoked at any time by the European Parliament or by the Council.*

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

Wednesday 7 July 2010

3. *The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.*'

'Article 41b

*Objections to delegated acts*

1. *The European Parliament or the Council may object to a delegated act within a period of three months from the date of notification. At the initiative of the European Parliament or the Council this period may be extended by three months.*

2. *If, on the expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.*

*The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.*

3. *If the European Parliament or the Council objects to a delegated act, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the delegated act.*'

Article 9

Amendments to Directive 2006/48/EC

(1) **Article 6 is replaced by the following** :

'1. *Member States shall require credit institutions to obtain authorisation before commencing their activities. Without prejudice to Articles 7 to 12, they shall lay down the requirements for such authorisation and notify them to the Commission and the European Banking Authority established by Regulation (EU) No .../2010 [EBA] of the European Parliament and of the Council (EBA) EBA.*

2. In order to ensure **consistent harmonisation and uniform** application of this Article, **the EBA shall** develop:

(a) *draft regulatory standards on the information to be provided to the competent authorities in the application for the authorisation of credit institutions, including the programme of operations provided for in Article 7,*

(b) *draft regulatory standards specifying the conditions to comply with the requirement set out in Article 8;*

(c) *draft implementing technical standards on standard forms, templates and procedures for such provision of information;*

(d) *draft regulatory standards specifying the requirements applicable to shareholders and members with qualifying holdings, as well as to specify obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as provided for in Article 12.*

Wednesday 7 July 2010

**The EBA shall submit the draft technical standards referred to in points a, b and c to the Commission by 1 January 2014.**

**Power is delegated to the Commission to adopt the draft regulatory standards referred to in points a, c and d of the first paragraph in accordance with the procedure laid down in Articles 7 to 7d of Regulation (EU) No .../2010.**

**Power is also conferred on the Commission to adopt the draft implementing technical standards referred to in point b of the first paragraph in accordance with Article 7e of Regulation (EU) No .../2010 [EBA].'**

**(1a) In Article 9(2), point b is replaced by the following:**

**'(b) the Member States concerned shall notify the Commission and the EBA of their reasons for exercising this option; and'.**

**(2) Article 14 is replaced by the following:**

**'Article 14**

**Every authorisation shall be notified to the EBA.**

**The name of each credit institution to which authorisation has been granted shall be entered in a list. The EBA shall publish ■ and ■ keep it up-to-date *that list on its website*.'**

**(2a) Article 17(2) is replaced by the following:**

**'2. Withdrawal of authorisation shall be notified to the Commission and the EBA and shall be reasoned. The persons concerned shall be notified of those reasons.'**

**(3) In Article 19, the following paragraph ■ is added:**

**'In order to ensure *consistent harmonisation* of this Directive, the EBA shall develop draft regulatory standards to establish an exhaustive list of information, referred to in Article 19a(4), to be included by proposed acquirers in their notification, without prejudice to Article 19(3).**

**The EBA shall submit those draft technical standards to the Commission by 1 January 2014.**

**Power is delegated to the Commission to adopt the draft regulatory standards referred to in the first subparagraph in accordance with Articles 7 to 7d of Regulation (EU) No .../2010.**

**In order to ensure uniform conditions of application of this Directive, EBA shall develop draft implementing technical standards to establish common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 19b.**

**The EBA shall submit those draft technical standards to the Commission by 1 January 2014.**

**Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the fourth subparagraph in accordance with Article 7e of Regulation (EU) No .../2010 [EBA].'**

Wednesday 7 July 2010

(3a) In Article 22, the following paragraphs are added:

**‘2a. In order to specify the requirements laid in this Article and to ensure the convergence of supervisory practices, the EBA may develop draft regulatory standards to specify the arrangements, processes and mechanisms referred to in paragraph 1, in accordance with the principles of proportionality and comprehensiveness set out in paragraph 2.**

*Power is delegated to the Commission to adopt the draft regulatory standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 7 to 7d of Regulation (EU) No .../2010.*

**2b. In order to facilitate the implementation of, and ensure consistency of information collected under, paragraph 2a of this Article and the principles on remuneration policy set out in points 22 and 22a of Annex V, the EBA may develop draft regulatory standards to specify the arrangements, processes and mechanisms referred to in paragraph 1, respecting the principles of proportionality and comprehensiveness set out in paragraph 2.**

*Power is delegated to the Commission to adopt the draft regulatory standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 7 to 7d of Regulation (EU) No .../2010.*

**ESMA shall cooperate closely with the EBA in elaborating such technical standards on remuneration policies for categories of staff involved in the provision of investment services and activities meaning of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments.’.**

(4) In Article 26, the following paragraph **■** is added:

**‘5. In order to ensure uniform application of Article 25 and this Article **■**, the EBA shall develop:**

**(a) draft regulatory standards to specify the information to be notified in accordance with Article 25 and this Article, and**

**(b) draft implementing technical standards to establish standard forms, templates and procedures for such notification.**

**The EBA shall submit those draft technical standards to the Commission by 1 January 2014.**

**Power is delegated to the Commission to adopt the draft regulatory standards referred to in point a of the first subparagraph in accordance with the procedure laid down in Articles 7 to 7d of Regulation (EU) No .../2010 [EBA]. Power is also conferred on the Commission to adopt the draft implementing technical standards referred to in point b of the first subparagraph in accordance with Article 7e of Regulation (EU) No .../2010 [EBA].’.**

(5) In Article 28, the following paragraph **■** is added:

**‘4. In order to ensure consistent harmonisation and uniform application of this Article **■** the EBA shall develop:**

**(a) draft regulatory standards to specify the information to be notified in accordance with this Article and**

**(b) draft implementing technical standards to establish standard forms, templates and procedures for such notification.**

Wednesday 7 July 2010

**Power is delegated to the Commission to adopt the draft regulatory standards referred to in point a of the first subparagraph in accordance with the procedure laid down in Articles 7 to 7d of Regulation (EU) No .../2010. Power is also conferred on the Commission to adopt the draft implementing technical standards referred to in point b of the first paragraph in accordance with Article 7e of Regulation. (EU) No .../2010 [EBA].**

- (6) In Article 33, the first paragraph is replaced by the following:

‘Before following the procedure provided for in Article 30, the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of depositors, investors and others to whom services are provided. The Commission, the EBA and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.’.

- (6a) Article 36 is replaced by the following:

**‘Article 36**

**The Member States shall inform the Commission and the EBA of the number and type of cases in which there has been a refusal pursuant to Articles 25 and 26(1) to (3) or in which measures have been taken in accordance with Article 30(3).’.**

- (6b) Article 38(2) is replaced by the following:

**‘2. The competent authorities shall notify the Commission, the EBA and the European Banking Committee of all authorisations for branches granted to credit institutions having their head office outside the European Union.’.**

- (6c) In Article 39(2), the following point is added:

**‘(ba) that the EBA is able to obtain the information from competent authorities of the Member States have received from national authorities of third countries in accordance with Article 20 of Regulation (EU) No .../2010 [EBA];’.**

- (6d) In Article 39, the following paragraph is added:

**‘3a. The EBA shall assist the Commission for the purposes of this Article in accordance with Article 18 of Regulation (EU) No .../2010 [EBA].’.**

- (7) In Article 42, the following paragraph is added:

‘In order to ensure uniform application of this Article, the EBA shall develop:

(a) draft regulatory standards to specify the information contained therein.

(b) In order to ensure uniform application of this Article, draft implementing technical standards to establish standard forms, templates and procedures for the information sharing requirements which are likely to facilitate the monitoring of credit institutions.

The EBA shall submit those draft technical standards to the Commission by 1 January 2014.

Wednesday 7 July 2010

**Power is delegated to the Commission to adopt the draft regulatory standards referred to in point a of the second subparagraph in accordance with the procedure laid down in Articles 7 to 7d of Regulation (EU) No .../2010. Power is also conferred on the Commission to adopt the draft implementing technical standards referred to in point a of the second subparagraph in accordance with Article 7e of Regulation (EU) No .../2010 [EBA].**

- (8) In Article 42a(1) the following is added at the end of the fourth sub-paragraph:

‘If, at the end of the **initial** two-month period **any of the** competent **authorities concerned** has referred the matter to the European Banking Authority in accordance with Article 11 of Regulation (EU) No .../2010 [EBA], the **competent authorities of the host member State** shall **defer their decision and** await **the** decision that the European Banking Authority may take in accordance with Article 11(3) of that Regulation. **The competent authorities of the host member State** shall **take their decision** in conformity with **the Authority’s** decision. The two month period shall be deemed the conciliation period within the meaning of that Regulation. The European Banking Authority shall take its decision within one month. The matter shall not be referred to the Authority after the end of the **initial** two month period or after a joint decision has been reached.’.

- (9) Article 42b is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. In the exercise of their duties, **the** competent authorities shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive. For that purpose, Member States shall ensure that:

- (a) the competent authorities participate in the activities of the **EBA**,
- (b) the competent authorities follow the guidelines and recommendations of the **EBA**, and shall state the reasons if they do not do so,
- (c) national mandates conferred on the competent authorities do not inhibit the performance of their duties as members of **the EBA** under this Directive.’;

- (b) paragraph 2 is deleted.

- (10) Article 44(2) is replaced by the following:

‘2. Paragraph 1 shall not prevent the competent authorities of the various Member States from exchanging information or transmitting information to the **EBA** in accordance with this Directive and with other Directives applicable to credit institutions **as well as with Articles 16 and 20 of Regulation (EU) No .../2010 [EBA]**. That information shall be subject to the conditions of professional secrecy set out in paragraph 1’.

- (11) ■ Article 46 ■ is replaced by the following:

#### ‘Article 46

Member States and the **EBA in accordance with Article 18 of Regulation (EU) No .../2010 [EBA]** may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in Articles 47 and 48(1) **of this Directive** only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in Article 44(1) **of this Directive**. **Such exchange of information shall be for the purpose of performing the supervisory tasks of these authorities or bodies.**

Wednesday 7 July 2010

*Where the information originates in another Member State, it may not be disclosed without the express agreement of the authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.'*

(12) Article 49 is amended as follows:

(a) **█** the first paragraph is replaced by the following:

*'This Section shall not prevent a competent authority from transmitting information to the following for the purposes of their tasks:*

*(a) central banks of the European system of the central banks and other bodies with a similar function in their capacity as monetary authorities when this information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems, and the safeguarding of stability of the financial system;*

*(b) where appropriate, to other public authorities responsible for overseeing payment systems;*

*(c) the European Systemic Risk Board (ESRB) where this information is relevant for the exercise of its statutory tasks under Regulation (EU) No .../2010 of the European Parliament and of the Council **█**.*

*This Section shall not prevent the authorities or bodies referred to in the first subparagraph from communicating to the competent authorities such information as they may need for the purposes of Article 45.:'*

(b) the fourth paragraph is replaced by the following:

*'In an emergency situation as referred to in Article 130(1), Member States shall allow competent authorities to communicate, **without delay**, information to the central banks in the European system of the central banks when this information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and securities settlement systems, and the safeguarding stability of the financial system, and to the **ESRB under Regulation (EU) No .../2010 [ESRB]** when this information is relevant for the exercise of its statutory tasks.'*

(13) Article 63a is amended as follows:

(a) paragraph 4 is replaced by the following:

*'4. The provisions governing the instrument shall provide for principal, unpaid interest or dividend to be such as to absorb losses and to not hinder the recapitalisation of the credit institution through appropriate mechanisms, as developed by the **EBA** under paragraph 6';*

(b) paragraph 6 is replaced by the following:

*'6. In order to ensure **consistent harmonisation** and **to ensure** the convergence of supervisory practices, the **EBA** shall develop draft **regulatory** technical standards to **specify the requirements applicable to** the instruments referred to in paragraph 1 of this Article The Authority shall submit those draft **regulatory** standards to the Commission by 1 January 2014.*

***Power is delegated to** the Commission **to** adopt the draft **regulatory** standards referred to in the **previous** subparagraph in accordance with the procedure laid down in **Articles 7 to 7d** of Regulation (EU) No .../2010 [EBA].*

Wednesday 7 July 2010

The **EBA** shall also issue guidelines in relation to instruments referred to in point (a) of the first paragraph of Article 57.

The **EBA** shall monitor the application of *these guidelines*.

- (14) In Article 74(2), the second subparagraph is replaced by the following:

***In order to ensure uniform application of this Directive***, for the communication of these calculations by credit institutions, competent authorities shall apply, from 31 December 2012, uniform formats, frequencies, language and dates of reporting. In order to ensure uniform application of this Directive, the **EBA** shall develop draft **implementing** technical standards to introduce, within the **European Union**, uniform formats (**with associated instructions**), frequencies and dates of reporting before 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions' activities.

***In order to ensure uniform application of this Directive, EBA shall also develop draft implementing standards regarding IT solutions to be applied for such reporting.***

***Power is conferred on*** the Commission to adopt the draft **implementing** technical standards referred to in **the second and third** subparagraphs in accordance with **Article 7e** of Regulation (EU) No .../2010 [EBA].

- (15) In Article 81(2) the following subparagraphs are added:

***In order to ensure consistent harmonisation*** of this Article, **EBA**, in consultation with **ESMA**, shall develop draft **regulatory** standards to **specify** the assessment methodology relating to credit assessments. The **EBA** shall submit those draft technical standards to the Commission by 1 January 2014.

***Power is conferred on*** the Commission **to** adopt the draft **regulatory** standards referred to in **point (a) of** the second subparagraph in accordance with the procedure laid down in **Articles 7 to 7d** of Regulation (EU) No .../2010 [EBA].

- (16) In Article 84(2), the following subparagraphs are added:

***In order to ensure consistent harmonisation*** of this Article, **EBA**, **in consultation with ESMA**, shall develop draft **regulatory** standards to **specify the assessment methodology relating to credit assessments**. **The EBA shall submit those draft technical standards to the Commission by 1 January 2014.**

***Power is delegated to*** the Commission **to** adopt the draft **regulatory** standards referred to in **point a of the first** subparagraph in accordance with the procedure laid down in **Articles 7 to 7d** of Regulation (EU) No .../2010 [EBA].

- (17) In Article 97(2), the following subparagraphs are added:

***In order to ensure consistent harmonisation*** of this Article, **EBA**, in consultation with **ESMA**, shall develop draft **regulatory** standards to **specify** the assessment methodology relating to credit assessments. The **EBA** shall submit those draft technical standards to the Commission by 1 January 2014.

***Power is delegated to*** the Commission **to** adopt the draft **regulatory** standards referred to in **point (a) of the first** subparagraph in accordance with the procedure laid down in **Articles 7 to 7d** of Regulation (EU) No .../2010 [EBA].



Wednesday 7 July 2010

- (18) In Article 105(1), the following subparagraphs are added:

'In order to ensure **consistent harmonisation** of this Article, **EBA** may develop draft **regulatory** standards to **specify the assessment methodology** under which competent authorities permit credit institutions to use the Advanced Measurement Approaches.

**Power is delegated to the Commission to adopt the draft regulatory standards referred to in point (a) of the second subparagraph in accordance with the procedure laid down in Articles 7 to 7d of Regulation (EU) No .../2010. ¶.**

- (19) In Article 106(2), the **second** sub-paragraph is replaced by the following:

'In order to ensure **consistent harmonisation** of this paragraph, **EBA** shall develop draft **regulatory** standards in order to **specify** the exemptions in points (c) and (d) **as well as to specify the conditions used to determine the existence of a group of connected clients, as stated in paragraph (3)**. The **EBA** shall submit those draft technical standards to the Commission by 1 January 2014.

**Power is delegated to the Commission to adopt the draft regulatory standards referred to in point a of the second subparagraph in accordance with the procedure laid down in Articles 7 to 7d of Regulation (EU) No .../2010 [EBA].'**

- (20) Article 110(2) is replaced by the following:

'2. Member States shall provide that reporting shall be carried out at least twice a year. The competent authorities shall apply, from 31 December 2012, uniform formats, frequencies ¶ and dates of reporting. In order to ensure uniform application of **this Directive**, the **EBA** shall develop draft **implementing** technical standards to introduce, within the **European Union**, uniform formats (**with associated instructions**), frequencies ¶ and dates of reporting before 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions' activities.

**In order to ensure uniform application of this Directive, EBA shall also develop draft implementing technical standards regarding IT solutions to be applied for such reporting.**

**Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the first and second subparagraphs in accordance with the procedure laid down in Article 7e of Regulation (EU) No .../2010 [EBA].'**

- (20a) In Article 111(1), the fourth subparagraph is replaced by the following:

**'Member States may set a lower limit than EUR 150 million and shall inform the EBA and the Commission thereof.'**

- (21) Article 122a(10) is replaced by the following:

'10. The **EBA** shall report to the Commission annually on the compliance with this Article by the competent authorities.

In order to ensure **consistent harmonisation** of this Article, **EBA** shall develop draft **regulatory** standards **for the convergence of supervisory practices with regard to** this Article, including the measures taken in case of breach of the due diligence and risk management obligations. The **EBA** shall submit those draft technical standards to the Commission by 1 January 2014.

Wednesday 7 July 2010

**Power is delegated to the Commission to adopt the draft regulatory standards referred to in point a of the second subparagraph in accordance with the procedure laid down in Articles 7 to 7d of Regulation (EU) No .../2010 [EBA].'**

(22) In Article 124, the following paragraph ■ is added:

'6. In order to ensure **consistent harmonisation** of this Article, **EBA may** develop draft **regulatory standards to specify** this Article and a common risk assessment procedure **and methodology**.

**Power is delegated to the Commission to adopt the draft regulatory standards referred to in point a of the first subparagraph in accordance with the procedure laid down in Articles 7 to 7d of Regulation (EU) No .../2010 [EBA].'**

(22a) Article 126(4) is replaced by the following.

'4. **The competent authorities shall notify the EBA and the Commission of any agreement falling within paragraph 3.**'

(22b) In Article 129(1), the following subparagraph is inserted after the first subparagraph:

'Where the consolidating supervisor fails to carry out the tasks referred to in the first subparagraph or where the competent authorities do not cooperate with the consolidating supervisor to the extent required in carrying out the tasks in the first sub-paragraph, any of the competent authorities concerned may bring the matter to the attention of EBA, which may act in accordance with Article 11 of Regulation .../2010 [EBA].'

(23) In Article 129(2), the fifth subparagraph is replaced by the following:

■

If, at the end of the six month period, **any of the competent authorities concerned** has referred the matter to the **EBA** in accordance with Article 11 of Regulation (EU) No .../2010 [EBA], the consolidating supervisor shall **defer its decision and** await any decision that the **EBA** may take in accordance with Article 11(3) of that Regulation **on its decision**, and shall **take its decision** in conformity with **the decision of the EBA**. The six month period shall be deemed the conciliation period within the meaning of **that** Regulation. The **EBA** shall take its decision within one month. The matter shall not be referred to the **EBA** after the end of the six month period or after a joint decision has been reached'.

(23a) The following subparagraph is added to Article 129(2):

'The **EBA may** develop draft **implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in this paragraph, with regard to the applications for permissions referred to in Article 84(1), Article 87(9) and Article 105 and in Annex III part 6, with a view to facilitating joint decisions**.

**Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the previous two subparagraphs in accordance with Article 7e of Regulation (EU) No .../2010 [EBA].'**

(24) Article 129(3) is amended as follows:

(a) in the third sub-paragraph, **the term** 'Committee of European Banking Supervisors' is replaced by 'European Banking Authority';

Wednesday 7 July 2010

(b) the fourth subparagraph is replaced by the following:

‘In the absence of such a joint decision between the competent authorities within four months, a decision on the application of Articles 123 and 124 and Article 136(2) shall be taken on a consolidated basis by the consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities. If, at the end of the four month period, **any of the competent authorities concerned** has referred the matter to the **EBA** in accordance with Article 11 of Regulation (EU) No .../2010 [EBA], the consolidating supervisor shall **defer its decision and** await any decision that the **EBA** may take in accordance with Article 11(3) of that Regulation, and shall **take its decision** in conformity with **the decision of the EBA**. The four month period shall be deemed the conciliation period within the meaning of the Regulation. The **EBA** shall take its decision within one month. The matter shall not be referred to the **EBA** after the end of the four month period or after a joint decision has been reached.’;

(c) the fifth subparagraph is replaced by the following:

‘The decision on the application of Articles 123 and 124 and Article 136(2) shall be taken by the respective competent authorities responsible for supervision of subsidiaries of an EU parent credit institution or an EU parent financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor. If, at the end of the four-month period, **any of the competent authorities concerned** has referred the matter to the **EBA** in accordance with Article 11 of Regulation (EU) No .../2010 [EBA], the competent authorities shall **defer their decision and** await any decision that the **EBA** shall take in accordance with Article 11(3) of that Regulation, and shall **take its decision** in conformity with **the decision of the EBA**. The four month period shall be deemed the conciliation period within the meaning of that Regulation. The **EBA** shall take its decision within one month. The matter shall not be referred to the **EBA** after the end of the four month period or after a joint decision has been reached.’;

(d) the seventh subparagraph is replaced by the following:

‘Where the **EBA** has been consulted, all competent authorities shall consider its advice, and explain any significant deviation therefrom’;

(e) the tenth subparagraph is replaced by the following:

‘**■** The **EBA may** develop draft **implementing** technical standards to **ensure uniform** conditions of application of the joint decision process referred to in this paragraph, with regard to the application of Articles 123, 124 and **136(2)** with a view to facilitating joint decisions. **■**

**Power is conferred on** the Commission **to** adopt **the** draft **implementing** technical standards referred to in **the first subparagraph** in accordance with the procedure laid down in **Article 7e** of Regulation (EU) No .../2010 [EBA].’

(25) In Article 130(1), the first and second subparagraphs are replaced by the following:

‘130. Where an emergency situation, **including situation as defined in Article 10 of Regulation (EU) No .../2010 [EBA]**, including adverse developments in **■** markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member State where entities of a group have been authorised or where significant branches referred to in Article 42a are established, the consolidating supervisor shall, subject to Chapter 1, Section 2, alert as soon as is practicable, the **EBA**, **the ESRB** and the authorities referred to in the fourth subparagraph of Article 49 and Article 50, and shall communicate all information essential for the pursuance of their tasks. Those obligations shall apply to all competent authorities under Articles 125 and 126 and to the competent authority identified under Article 129(1).

If the authority referred to in the fourth paragraph of Article 49 becomes aware of a situation described in the first subparagraph of this paragraph, it shall alert as soon as is practicable the competent authorities referred to in Articles 125 and 126, and the **EBA**.’

Wednesday 7 July 2010

(26) In Article 131, the third paragraph is replaced by the following:

'The competent authorities responsible for authorising the subsidiary of a parent undertaking which is a credit institution may, by bilateral agreement, **in accordance with Article (13) of Regulation (EU) No .../2010 [EBA]**, delegate their responsibility for supervision to the competent authorities which authorised and supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with this Directive. The **EBA** shall be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the European Banking Committee.'

(27) Article **131a** is amended as follows:

(a) **paragraph 1** is replaced by the following:

**'1. The consolidating supervisor shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Article 129 and Article 130(1) and subject to the confidentiality requirements of paragraph 2 of this Article and compatibility with Union law, ensure appropriate coordination and cooperation with relevant third country competent authorities where appropriate.**

**The EBA shall lead in ensuring, promote and monitor the efficient, effective and consistent functioning of colleges referred to in this Article in accordance with Article 12 of Regulation (EU) No .../2010 [EBA]. To this end, the EBA shall participate as it deems appropriate and shall be considered as a competent authority for that purpose.**

**Colleges of supervisors shall provide a framework for the consolidating Supervisor, the EBA and the other competent authorities concerned to carry out the following tasks:**

- (a) **exchanging information among themselves and with the EBA in accordance with Article 12 of Regulation (EU) No .../2010 [EBA];**
- (b) **agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;**
- (c) **determining supervisory examination programmes based on a risk assessment of the group in accordance with Article 124;**
- (d) **increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 130(2) and Article 132(2);**
- (e) **consistently applying the prudential requirements under this Directive across all entities within a banking group without prejudice to the options and discretions available in Community legislation;**
- (f) **applying Article 129(1)(c) taking into account the work of other forums that may be established in this area.**

**The competent authorities and the EBA participating in the colleges of supervisors shall cooperate closely. The confidentiality requirements under Chapter 1, Section 2 shall not prevent competent authorities from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the competent authorities under this Directive.'**

Wednesday 7 July 2010

**(b) in paragraph 2:**

- (i) the second subparagraph is replaced by the following:

‘In order to ensure **consistent harmonisation of this Article and Article 42a(3)**, EBA may develop draft **regulatory standards in order to specify general conditions of** functioning of colleges.

**Power is delegated to the Commission to adopt the draft regulatory standards referred to in point a of the second subparagraph in accordance with the procedure laid down in Articles 7 to 7d of Regulation (EU) No .../2010 [EBA].**’

- (ii) the **sixth** subparagraph is replaced by the following:

‘The consolidating supervisor, subject to the confidentiality requirements under Chapter 1, Section 2, shall inform the **EBA** of the activities of the college of supervisors, including in emergency situations, and communicate to **the EBA** all information that is of particular relevance for the purposes of supervisory convergence.’

**(27a) In Article 132(1), the following subparagraphs are inserted after the first subparagraph:**

**‘The competent authorities shall cooperate with EBA for the purposes of this Directive, in accordance with Regulation (EU) No .../2010 [EBA].**

**The competent authorities shall provide EBA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No .../2010 [EBA], in accordance with Article 20 of that Regulation.’**

**(27b) In Article 140, the third paragraph is replaced by the following:**

**‘3. The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies referred to in Article 71(2). Those lists shall be communicated to the competent authorities of the other Member States, to the EBA and to the Commission.’**

**(28) Article 143(2) is amended as follows:**

- (a) the following sentence is added at the end of the first sub-paragraph:

‘The **EBA** shall assist the Commission and the European Banking Committee in carrying out those tasks, including as to whether such guidance should be updated.’;

- (b) the second sub-paragraph is replaced by the following:

‘The competent authority carrying out the verification referred to in the first sub-paragraph of paragraph 1 shall take into account any such guidance. For this purpose, the competent authority shall consult the EBA before adopting a decision.’

**(28a) Article 143(3), the fourth subparagraph is replaced by the following:**

**‘The supervisory techniques shall be designed to achieve the objectives of consolidated supervision as defined in this Chapter and shall be notified to the other competent authorities involved, the EBA and the Commission.’**

Wednesday 7 July 2010

(29) In Article 144, the following paragraph is added:

'In order to ensure uniform application of this Article, the European Banking Authority shall develop draft **implementing** technical standards to determine **■** the format, structure, contents list and annual publication date of the disclosures provided for in this Article. The Authority shall submit those draft technical standards to the Commission by 1 January 2014.

**Power is conferred on the Commission to** adopt the draft **implementing** technical standards referred to in the third paragraph in accordance with **Article 7e** of Regulation (EU) No .../2010 [EBA].'

(30) In Article 150, the following paragraph is added:

(a) The following paragraph 3 is added:

'3. The **EBA** shall develop draft **implementing** technical standards to **ensure uniform application of this Directive with respect to:**

(a) the conditions of application of points 15 to 17 of Annex V;

(b) the conditions of application of Part 2 of Annex VI in respect of the quantitative factors referred to in point 12, the qualitative factors referred to in point 13 and the benchmark referred to in point 14;

The **EBA** shall submit those draft **implementing** technical standards to the Commission by 1 January 2014.

**Power is conferred on the Commission to** adopt the draft **implementing** technical standards referred to in the first subparagraph in accordance with the procedure laid down in **Article 7e** of Regulation.(EU) No .../2010 [EBA].'

(31) **■** Article 156 is amended as follows:

(a) the term 'Committee of European Banking Supervisors' is replaced by 'European Banking Authority';

(b) the first subparagraph is replaced by the following:

*'The Commission, in cooperation with the EBA and the Member States, and taking into account the contribution of the European Central Bank, shall periodically monitor whether this Directive, together with Directive 2006/49/EC, has significant effects on the economic cycle and, in the light of that examination, shall consider whether any remedial measures are justified.'*

Article 10

Amendments to Directive 2006/49/EC

**Directive 2006/49/EC is amended as follows:**

(1) In Article 18 **■**, the following paragraph is added:

'5. **■** The European Banking Authority (**EBA**) established by Regulation (EU) No .../2010 of the European Parliament and of the Council may develop draft **regulatory** standards **to specify the assessment methodology under which** competent authorities permit **■** institutions to use internal models for the purposes of calculating capital requirements under this Directive.

Wednesday 7 July 2010

**Power is delegated to** the Commission **to** adopt the draft **regulatory** standards referred to in **point a** of the first subparagraph in accordance with the procedure laid down in **Articles 7 to 7d** of Regulation (EU) No .../2010.

(1a) In Article 22(1), the following subparagraph is added:

*'Where the competent authorities waive the application of capital requirements on a consolidated basis provided for in this Article, they shall notify the EBA and the Commission.'*

(1b) Article 32(1) is amended as follows:

(a) the second paragraph is replaced by the following:

*'The competent authorities shall notify the EBA, the Council and the Commission of those procedures.'*

(b) the following paragraph is added:

*'3a. The European Banking Authority shall issue guidelines in relation to the procedures referred to in the first paragraph of this Article.'*

(1c) Article 36(1) is replaced by the following:

*'1. Member States shall designate the authorities which are competent to carry out the duties provided for in this Directive. They shall inform the EBA and the Commission thereof, indicating any division of duties.'*

(1d) In Article 38(1), the following subparagraphs are added:

*'1. The competent authorities shall cooperate with EBA for the purposes of this Directive, in accordance with Regulation (EU) No .../2010 [EBA].*

*2. The competent authorities shall without delay provide EBA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No .../2010 [EBA], in accordance with Article 20 of that Regulation.'*

#### Article 11

#### Amendments to Directive 2009/65/EC (UCITS)

Directive 2009/65/EC is amended as follows:

(1) In Article 5, the following paragraph ■ is added:

*'8. In order to ensure **consistent harmonisation** of this Article **ESMA** may develop draft **regulatory** standards to **specify** the ■ information to be provided to the competent authorities in the application for authorisation of a UCITS.'*

**Power is delegated to** the Commission **to** adopt the draft **regulatory** standards referred to in the first subparagraph in accordance with the procedure laid down in **Articles 7 to 7d** of Regulation (EU) No .../2010.

Wednesday 7 July 2010

(1a) In Article 6(1) the following subparagraph is added:

*‘ESMA shall be notified of every authorisation granted and shall publish and keep up-to-date a list of authorised management companies on its website.’.*

(2) In Article 7, the following paragraph **1** is added:

*‘6. In order to ensure **consistent harmonisation** of this Article, ESMA shall develop draft **regulatory** standards to:*

- (a) specify the information to be provided to the competent authorities in the application for the authorisation of the management company, including the programme of activity;*
- (b) specify the requirements applicable to the management company under Article 7(2) and the information for the notification foreseen in Article 7(2);*
- (c) specify the requirements applicable to shareholders and members with qualifying holdings, as well as to specify obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as foreseen in Articles 8(1) and Articles 10(1)-(2) of Directive 2004/39/EC, as referred to in Article 11 of this Directive.*

*The Authority shall submit the draft regulatory technical standards referred to in points (a) and (b) to the Commission by 1 January 2014.*

*Power is delegated to the Commission to adopt the draft regulatory technical standards referred to in points (a), (b) and (c) in accordance with Articles 7 to 7d of Regulation (EU) No .../2010.*

*In order to ensure uniform conditions of application of this Article, ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in points (a) and (b) of the first subparagraph.*

*The Authority shall submit those draft implementing technical standards to the Commission by 1 January 2014.*

*Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the fourth subparagraph in accordance with Article 7e of Regulation (EU) No .../2010.’.*

(2a) Article 9(2) is replaced by the following:

*‘2. Member States shall inform ESMA and the Commission of any general difficulties which UCITS encounter in marketing their units in any third country.*

*The Commission shall examine such difficulties as quickly as possible in order to find an appropriate solution. The European Securities and Markets Authority shall assist it in discharging this task.’*



Wednesday 7 July 2010

(2b) In Article 11, the following paragraph is added:

*'3. In order to ensure consistent harmonisation of this Directive the ESA may develop draft regulatory standards to establish an exhaustive list of information, as provided for in this Article, with reference to Article 10b(4) of Directive 2004/39/EC, to be included by proposed acquirers in their notification, without prejudice to Article 10a(2) of that Directive*

*Power is delegated to the Commission to adopt the draft regulatory standards referred to in the first subparagraph in accordance with Articles 7 to 7d of Regulation (EU) No .../2010.*

*In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities, as provided for in this Article, with reference to Article 10(4) of Directive 2004/39/EC.*

*Power is conferred to the Commission to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with Article 7e of Regulation (EU) No .../2010.'*

(2c) Article 12(3) is amended as follows:

(a) the first subparagraph is replaced by the following:

*'3. Without prejudice to Article 116, the Commission shall adopt, by 1 July 2010, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures specifying the procedures and arrangements as referred to under point (a) of the second subparagraph of paragraph 1 and the structures and organisational requirements to minimise conflicts of interests as referred to under point (b) of the second subparagraph of paragraph 1.'*

(b) the second subparagraph is deleted.

(3) In Article 12, the following paragraph **■** is added:

*'4. In order to ensure uniform **conditions of** application of this Article, **ESMA** may develop draft **implementing** technical standards to determine the **delegated acts** adopted by the Commission regarding the procedures, arrangements, structures and organisational requirements referred to in paragraph 3 of this Article.*

***Power is conferred on** the Commission **to** adopt the draft **implementing** technical standards referred to in the first subparagraph in accordance with **Article 7e** of Regulation.(EU) No .../2010.'*

(3a) Article 14(2) is amended as follows:

(a) in the first subparagraph, the introductory part is replaced by the following:

*'2. Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures, with a view to ensuring that the management company complies with the duties set out in paragraph 1, in particular to:'*

(b) the second subparagraph is deleted.

Wednesday 7 July 2010

(4) In Article 14, the following paragraph 3 is added:

*'3. In order to ensure uniform **conditions of** application of this Article, **ESMA** may develop draft **implementing** technical standards to determine the **delegated acts** adopted by the Commission regarding the criteria, principles and steps referred to in points (a), (b), and (c) of the **second paragraph**.*

*Power is conferred on the Commission to adopt the draft **implementing** technical standards referred to in the first subparagraph in accordance with **Article 7e** of Regulation (EU) No .../2010.'*

(4a) In Article 17, the following paragraph is added:

*'10. In order to ensure consistent harmonisation of this Article ESMA may develop draft regulatory standards to specify the information to be notified in accordance with paragraphs 1, 2, 3, 8 and 9.*

*Power is delegated to the Commission to adopt the draft regulatory standards referred to in the first subparagraph in accordance with Articles 7 to 7d of Regulation (EU) No .../2010.*

*In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3 and 9.*

*Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the third subparagraph in accordance with Article 7e of Regulation (EU) No .../2010.'*

(4b) In Article 18, the following paragraph is added:

*'4a. In order to ensure consistent harmonisation of this Article ESMA may develop draft regulatory standards to specify the information to be notified in accordance with paragraphs 1, 2 and 4.*

*Power is delegated to the Commission to adopt the draft regulatory standards referred to in the first subparagraph in accordance with Articles 7 to 7d of Regulation (EU) No .../2010.*

*In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 2 and 4.*

*Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the third subparagraph in accordance with Article 7e of Regulation (EU) No .../2010.'*

(4c) In Article 20, the following paragraph is added:

*'4a. In order to ensure consistent harmonisation and uniform application of this Article, ESMA may develop draft technical regulatory standards to determine the information to be provided to the competent authorities in the application for managing a UCITS established in another Member State.*

Wednesday 7 July 2010

*The Commission may adopt the draft technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 7 of Regulation (EU) No .../2010 [ESMA].*

*In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for such provision of information.*

*Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the third subparagraph in accordance with Article 7e of Regulation (EU) No .../2010.’.*

- (5) In Article 21(7), the first subparagraph is replaced by the following:

*‘7. Before following the procedure laid down in paragraphs 3, 4 or 5, the competent authorities of the management company’s host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission, ESMA, and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.’.*

- (5a) In Article 21(7), the second subparagraph is replaced by the following:

*‘After consulting the competent authorities of the Member States concerned, the Commission may decide that the Member State in question must amend or abolish those measures, without prejudice to ESMA’s powers under Article 9 of Regulation (EU) No .../2010 [ESMA].’.*

- (5b) The first subparagraph of Article 21(9) is replaced by the following:

*‘9. Member States shall inform ESMA and the Commission of the number and type of cases in which they refuse authorisation under Article 17 or an application under Article 20 and of any measures taken in accordance with paragraph 5 of this Article.’.*

- (5c) Article 23(6) is amended as follows:

- (a) the first subparagraph is replaced by the following:

*‘6. The Commission may adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures in relation to the measures to be taken by a depositary in order to fulfil its duties regarding a UCITS managed by a management company established in another Member State, including the particulars that need to be included in the standard agreement to be used by the depositary and the management company in accordance with paragraph 5.’;*

- (b) the second subparagraph of Article 23(6) is deleted.

6. In Article 29, the following paragraphs are added:

*‘5. In order to ensure consistent harmonisation of this Directive, the ESA may develop draft regulatory standards to specify:*

- (a) *the information to be provided to the competent authorities in the application for the authorisation of the investment company, including the programme of operations, and*
- (b) *the obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as set under Article 29(1)(c).*

Wednesday 7 July 2010

*Power is delegated to the Commission to adopt the draft regulatory standards referred to in the first subparagraph in accordance with Articles 7 to 7d of Regulation (EU) No .../2010.*

**6.** *In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the provision of information referred to in point a of paragraph 5.*

**Power is conferred on** the Commission **to** adopt the draft **implementing** technical standards referred to in the first subparagraph in accordance with **Article 7e** of Regulation (EU) No .../2010 [ESMA].

(6a) *Article 32(6) is replaced by the following:*

*'6. Member States shall inform the European Securities and Markets Authority and the Commission of the identities of the investment companies benefiting from the derogations provided for in paragraphs 4 and 5.'*

(6b) *Article 33(6) is amended as follows:*

(a) *the first subparagraph is replaced by the following:*

*'6. The Commission may adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures in relation to the measures to be taken by a depositary in order to fulfil its duties regarding a UCITS managed by a management company established in another Member State, including the particulars that need to be included in the standard agreement to be used by the depositary and the management company in accordance with paragraph 5.'*

(b) *the second subparagraph is deleted.*

(6c) *Article 43(5) is amended as follows:*

(a) *the first subparagraph is replaced by the following:*

*'5. The Commission may adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures specifying the detailed content, format and method by which to provide the information referred to in paragraphs 1 and 3.'*

(b) *the second subparagraph is deleted.*

(7) *In Article 43, the following paragraph 6 is added:*

*'6. In order to ensure uniform **conditions of** application of this Article, **ESMA** may develop draft **implementing** technical standards to determine the **delegated acts** adopted by the Commission regarding the content, format and method by which the information referred to in paragraphs 1 and 3 of this Article should be provided.*

**Power is conferred on** the Commission **to** adopt the draft **implementing** technical standards referred to in the first subparagraph in accordance with **Article 7e** of Regulation (EU) No .../2010 [ESMA].

(8) *In Article 50, the following paragraph ■ is added:*

*'4. In order to ensure **consistent harmonisation** of this Article **ESMA** may develop draft **regulatory** standards to **specify** the provisions concerning the categories of assets in which UCITS can invest in accordance **with** this Article **and with delegated acts adopted by the Commission which relate to such provisions.***

Wednesday 7 July 2010

**Power is delegated to** the Commission **to** adopt the draft **regulatory** standards referred to in the first subparagraph in accordance with **Articles 7 to 7d** of Regulation (EU) No .../2010 [ESMA].'

(9) Article 51 **is amended as follows:**

(a) **in paragraph 1, the following subparagraph is added:**

*'National competent authorities shall ensure that all information received under the previous paragraph aggregated in respect of all the management or investment companies they supervise is accessible to ESMA and the ESRB for the purpose of monitoring systemic risks at Union level.'*

(b) **paragraph 4 is replaced by the following:**

*'4. Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures specifying the following:*

*(a) criteria for assessing the adequacy of the risk management process employed by the management company in accordance with the first subparagraph of paragraph 1;*

*(b) detailed rules regarding the accurate and independent assessment of the value of OTC derivatives; and*

*(c) detailed rules regarding the content of and procedure to be followed for communicating the information referred to in the third subparagraph of paragraph 1 to the competent authorities of the management company's home Member State.'*

(c) **the following paragraph** **■** **is added:**

*'5. In order to ensure uniform **conditions of** application of this Article, ESMA may develop draft **implementing** technical standards to determine the **delegated acts** adopted by the Commission regarding the criteria and rules referred to in points (a), (b) and (c) of paragraph 4.*

**Power is conferred on** the Commission **to** adopt the draft **implementing** technical standards referred to in the first subparagraph in accordance with **Article 7e** of Regulation (EU) No .../2010 [ESMA].'

(9a) **In Article 52(4), the third subparagraph, is replaced by the following:**

*'Member States shall send to ESMA a list of the categories of bonds referred to in the first subparagraph together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in that subparagraph, to issue bonds complying with the criteria set out in this Article. A notice specifying the status of the guarantees offered shall be attached to those lists. The Commission and the European Securities and Markets Authority shall immediately forward that information to the other Member States together with any comments they consider appropriate and shall make the information available to the public on their website. Such communications may be the subject of exchanges of views within the European Securities Committee referred to in Article 112(1).'*

Wednesday 7 July 2010

(10) **█** Article 60 is amended as follows:

(a) in paragraph 6:

(i) the first subparagraph is replaced by the following:

**‘6. The Commission may adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures specifying:’;**

(ii) the second subparagraph is deleted;

(b) the following paragraph **█** is added:

**‘7. In order to ensure uniform *conditions of* application of this Article, ESMA may develop draft *implementing* technical standards to determine the *delegated acts* adopted by the Commission regarding the agreement, measures and procedures referred to in points (a), (b) and (c) of paragraph 6.**

**Power is conferred on the Commission to adopt the draft *implementing* technical standards referred to in the first subparagraph in accordance with the *Article 7e* of Regulation (EU) No .../2010.’.**

(11) **█** Article 61 is amended as follows:

(a) paragraph 3 is replaced by the following:

**‘3. The Commission may adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures further specifying the following:**

**(a) the particulars that need to be included in the agreement referred to in paragraph 1; and**

**(b) the types of irregularities referred to in paragraph 2 which are deemed to have a negative impact on the feeder UCITS.’.**

(b) the following paragraph **█** is added:

**‘4. In order to ensure uniform *conditions of* application of this Article, ESMA may develop draft *implementing* technical standards to determine the *delegated acts* adopted by the Commission regarding the agreement, *measures* and types of irregularities referred to in points (a) and (b) of paragraph 3.**

**Power is conferred on the Commission to adopt the draft *implementing* technical standards referred to in the first subparagraph in accordance with *Article 7e* of Regulation (EU) No .../2010.’.**

(11a) Article 62(4) is replaced by the following:

**‘4. The Commission may adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures specifying the content of the agreement referred to in the first subparagraph of paragraph 1.’.**

Wednesday 7 July 2010

(11b) Article 64(4) is replaced by the following:

**‘4. The Commission may adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures specifying:**

**(a) the format and the manner in which to provide the information referred to in paragraph 1; or**

**(b) in the event that the feeder UCITS transfers all or parts of its assets to the master UCITS in exchange for units, the procedure for valuing and auditing such a contribution in kind and the role of the depositary of the feeder UCITS in that process.’.**

(12) In Article 64, the following paragraph **■** is added:

**‘5. In order to ensure uniform conditions of application in which the information is provided of this Article, ESMA may develop draft implementing technical standards to determine the delegated acts adopted by the Commission regarding the format and the manner of the information provided and procedure referred to in points (a) and (b) of paragraph 4.**

**Power is conferred on the Commission to adopt the draft implementing technical standards referred to in the first subparagraph in accordance with Article 7e of Regulation (EU) No .../2010.’.**

(13) In Article 69, the following paragraph **■** is added:

**‘5. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory standards to specify the provisions concerning the content of the prospectus, the annual report and the half-yearly report as laid down in Annex I, and the format of these documents.**

**Power is delegated to the Commission to adopt the draft regulatory standards referred to in the first subparagraph in accordance with Articles 7 to 7d of Regulation (EU) No .../2010.’.**

(13a) Article 75(4) is replaced by the following:

**‘4. The Commission may adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures which define the specific conditions which need to be met when providing the prospectus in a durable medium other than paper or by means of a website which does not constitute a durable medium.’.**

(13b) Article 78(7) is replaced by the following:

**‘7. The Commission shall adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures which define the following:**

**(a) the detailed and exhaustive content of the key investor information to be provided to investors as referred to in paragraphs 2, 3 and 4;**

**(b) the detailed and exhaustive content of the key investor information to be provided to investors in the following specific cases:**

**(i) for UCITS having different investment compartments, the key investor information to be provided to investors subscribing to a specific investment compartment, including how to pass from one investment compartment into another and the costs related thereto;**

Wednesday 7 July 2010

- (ii) *for UCITS offering different share classes, the key investor information to be provided to investors subscribing to a specific share class;*
  - (iii) *for fund of funds structures, the key investor information to be provided to investors subscribing to a UCITS, which invests itself in other UCITS or other collective investment undertakings referred to in Article 50(1)(e);*
  - (iv) *for master-feeder structures, the key investor information to be provided to investors subscribing to a feeder UCITS; and*
  - (v) *for structured, capital protected and other comparable UCITS, the key investor information to be provided to investors in relation to the special characteristics of such UCITS; and*
- (c) *the specific details of the format and presentation of the key investor information to be provided to investors as referred to in paragraph 5.’.*

(14) In Article 78, the following paragraph ■ is added:

‘8. In order to ensure uniform **conditions of** application of this Article, **ESMA** may develop draft **implementing** technical standards ■ to determine the **delegated acts** adopted by the Commission **in accordance with paragraph 7** regarding the information referred to in paragraph 3.

**Power is conferred on** the Commission **to** adopt the draft **implementing** technical standards referred to in the first subparagraph in accordance with **Article 7e** of Regulation (EU) No .../2010.’.

(14a) **Article 81(2) is replaced by the following:**

‘2. **The Commission may adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures which define the specific conditions which need to be met when providing key investor information in a durable medium other than on paper or by means of a website which does not constitute a durable medium.’.**

(14b) **In Article 83, the following paragraph is added:**

‘3. **In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory standards to specify the requirements of this Article relating to borrowing.**

**Power is delegated to the Commission to** adopt the draft **regulatory standards** referred to in the first subparagraph in accordance with **Articles 7 to 7d** of Regulation (EU) No .../2010.’.

(15) In Article 84, the following paragraph ■ is added:

‘4. In order to ensure **consistent harmonisation** of this Article, **ESMA** may develop draft **regulatory** standards to **specify** the conditions **which need to be met by the UCITS after the adoption of** the temporary suspension of the re-purchase or redemption of the units of the UCITS as referred to in point (a) of paragraph 2, once the suspension has been decided.

**Power is delegated to** the Commission **to** adopt the draft **regulatory** standards referred to in the first subparagraph in accordance with **Articles 7 to 7d** of Regulation (EU) No .../2010.’.



Wednesday 7 July 2010

(15a) Article 95(1) is amended as follows:

**'1. The Commission may adopt, by means of delegated acts in accordance with Articles 112, 112a and 112b, measures specifying:**

**(a) the scope of the information referred to in Article 91(3);**

**(b) the facilitation of access for the competent authorities of the UCITS host Member States to the information or documents referred to in Article 93(1), (2) and (3) in accordance with Article 93(7).'**

16. In Article 95, paragraph 2 is replaced by the following:

**'2. In order to ensure uniform *conditions of* application of Article 93, ESMA may develop draft *implementing* technical standards to determine **■**:**

**(a) the form and contents of a standard model notification letter to be used by a CITS for the purpose of notification referred to in Article 93(1), including an indication as to which documents the translations refer to;**

**(b) the form and contents of a standard model attestation to be used by competent authorities of Member States referred to in Article 93(3);**

**(c) the procedure for the exchange of information and the use of electronic communication between competent authorities for the purpose of notification under the provisions of Article 93.**

**Power is conferred on the Commission to adopt the draft *implementing* technical standards referred to in the first subparagraph in accordance with *Article 7e* of Regulation (EU) No .../2010.'**

(16a) Article 97(1) is replaced by the following:

**'1. Member States shall designate the competent authorities which are to carry out the duties provided for in this Directive. They shall inform the European Securities and Markets Authority and the Commission thereof, indicating any division of duties.'**

(16b) In Article 101, the following paragraph is inserted:

**'2a. The competent authorities shall cooperate with the ESMA for the purposes of this Directive, in accordance with Regulation .../... [ESMA].**

**The competent authorities shall without delay provide the ESMA with all information necessary to carry out its duties, in accordance with Article 20 of Regulation (EU) No .../2010 [ESMA].'**

(17) In Article 101, paragraphs 8 and 9 are replaced by the following:

**'8. The competent authorities may bring to the attention of ESMA situations where a request:**

**(a) to exchange information as provided for in Article 109 has been rejected or has not been acted upon within a reasonable time;**

**(b) to carry out an investigation or on-the-spot verification as provided for in Article 110 has been rejected or has not been acted upon within a reasonable time; or**

Wednesday 7 July 2010

- (c) for authorisation for its officials to accompany those of the competent authority of the other Member State has been rejected or has not been acted upon within a reasonable time.

**Without prejudice to the provisions of Article 258 TFEU, in these cases ESMA may act in accordance with the powers conferred on it by Article 11 of Regulation (EU) No .../2010 [ESMA], without prejudice to the possibilities for refusing to act on a request for information or for an investigation foreseen in paragraph 6 of this Article and to ESMA's possibility to act in accordance with Article 9 of that Regulation in these cases.**

9. In order to ensure uniform application of this Article, **ESMA** may develop draft technical **implementing** standards to **establish common procedures for competent authorities to cooperate in** on-the-spot verifications and investigations as referred to in paragraphs 4 and 5.

**Power is conferred on** the Commission **to** adopt the draft **implementing** technical standards referred to in the first subparagraph in accordance with **Article 7e of Regulation .../2010 [ESMA].'**

- (18) Article 102 is amended as follows:

- (a) in paragraph 2, the first subparagraph is replaced by the following:

'2. Paragraph 1 shall not prevent the competent authorities of the Member States from exchanging information in accordance with this Directive or other **Union legislation** applicable to UCITS or to undertakings contributing towards their business activity or from transmitting it to **ESMA in accordance with Regulation (EU) No .../2010** or the European Systemic Risk Board established by Regulation (EU) No .../2010 of the European Parliament and of the Council. That information shall be subject to the conditions of professional secrecy laid down in paragraph 1 **of this Article.**;

- (b) in paragraph 5, the following point **■** is added:

'(d) the **European Securities and Market Authority (ESMA)** established by Regulation (EU) No .../2010 of the European Parliament and of the Council, **the European Banking Authority (EBA) established by Regulation (EU) No .../2010 European Parliament and of the Council**, the European Insurance and Occupational Pensions Authority (**EIOPA**) established by Regulation. (EU) No .../2010 of the European Parliament and of the Council and the **ESRB.**;

- (18a) Article 103(3) is replaced by the following:

'3. **Member States shall communicate to ESMA, to the Commission and to the other Member States the names of the authorities which may receive information pursuant to paragraph 1.**'

- (18b) Article 103(7) is replaced by the following:

'7. **Member States shall communicate to ESMA, to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to paragraph 4.**'

- (19) Article 105 is replaced by the following:

'Article 105

In order to ensure uniform application of the provisions in this Directive concerning the exchange of information, **ESMA** may develop draft technical standards to determine the conditions of application with regard to the procedures for exchange of information between competent authorities and between the competent authorities and **ESMA.**

Wednesday 7 July 2010

**Power is conferred on** the Commission **to** adopt the draft **implementing** technical standards referred to in the first subparagraph in accordance with **Article 7e** of Regulation (EU) No .../2010 [ESMA].'

- (20) In Article 108(5), point (b) of the first subparagraph and the second subparagraph are replaced by the following:

'(b) if necessary, bring the matter to the attention of **ESMA**, which may act in accordance with the powers conferred on it by **Article 11 of** Regulation (EU) No .../2010 [ESMA].

The Commission and the European Securities and Markets Authority shall be informed without delay of any measure taken pursuant to point (a) of the first subparagraph.'

- (20a) *The title of chapter XIII is replaced by the following:*

'DELEGATED ACTS AND POWERS OF EXECUTION'.

- (20b) *Article 111 is replaced by the following:*

'Article 111

*The Commission may adopt technical amendments to this Directive in the following areas:*

- (a) *clarification of the definitions in order to ensure consistent harmonisation and uniform application of this Directive throughout the Union; or*
- (b) *alignment of terminology and the framing of definitions in accordance with subsequent acts on UCITS and related matters.*

*Those measures shall be adopted by means of delegated acts in accordance with Articles 112, 112a and 112b.'*

- (20c) *Article 112 is replaced by the following:*

'Article 112

1. *The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC.*

2. *The power to adopt the delegated acts referred to in Articles 12, 14, 23, 33, 43, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall be conferred on the Commission for a period of four years following the entry into force of this Directive. The Commission shall make a report in respect of delegated powers at the latest 6 months before the end of the four-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 64c.*

2a. *As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.*

2b. *The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 112a and 112b.*

3. *Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.'*

Wednesday 7 July 2010

(20d) *The following articles are inserted:*

**‘Article 112a**

**Revocation of the delegation**

1. *The delegation of power referred to in Articles 12, 14, 23, 33, 43, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 may be revoked at any time by the European Parliament or by the Council.*
2. *The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation.*
3. *The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.*

**Article 112b**

**Objections to delegated acts**

1. *The European Parliament or the Council may object to a delegated act within a period of three months from the date of notification. At the initiative of the European Parliament or the Council this period may be extended by three months.*
2. *If, on the expiry of that period neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the Official Journal of the European Union and shall enter into force at the date stated therein.*

*The delegated act may be published in the Official Journal of the European Union and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.*

3. *If the European Parliament or the Council objects to a delegated act, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the delegated act.’.*

**Article 11a**

**Review**

*The Commission shall, by 1 January 2014, submit to the European Parliament and to the Council a report specifying whether the ESA have submitted the draft technical standards foreseen in this Directive, where such submission is mandatory or optional, with any appropriate proposals.*

**Article 12**

**Transposition**

1. *Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2010 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.*

*When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.*

Wednesday 7 July 2010

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### Article 13

##### Entry into force

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

#### Article 14

##### Addressees

This Directive is addressed to the Member States.

Done at

For the European Parliament  
The President

For the Council  
The President

## European Securities and Markets Authority \*\*\*I

P7\_TA(2010)0270

**Proposal for a regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority (COM(2009)0503 – C7-0167/2009 – 2009/0144(COD))**

(2011/C 351 E/36)

(Ordinary legislative procedure: first reading)

The proposal was amended on 7 July 2010 as follows <sup>(1)</sup>:

#### AMENDMENTS BY PARLIAMENT (\*)

to the Commission proposal

#### REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European **Supervisory** Authority (***European Securities and Markets Authority***)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

<sup>(1)</sup> The matter was then referred back to committee pursuant to Rule 57(2), second subparagraph (A7-0169/2010).

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

Wednesday 7 July 2010

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Having regard to the opinion of the European Central Bank <sup>(3)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(4)</sup>,

Whereas:

- (1) The financial crisis in 2007/2008 exposed important shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. Nationally-based supervisory models have lagged behind the **financial globalisation and the** integrated and interconnected reality of European financial markets, in which many financial firms operate across borders. The crisis exposed shortcomings in the area of cooperation, coordination, consistent application of **Union** law and trust between national supervisors.
- (1a) *Long before the financial crisis the European Parliament was already calling regularly for the reinforcement of a true level playing field for all actors at Union level while pointing out significant failures in the Union's supervision of ever more integrated financial markets (in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan <sup>(5)</sup>, of 21 November 2002 on prudential supervision rules in the European Union <sup>(6)</sup>, of 11 July 2007 on financial services policy (2005-2010) – White Paper <sup>(7)</sup>, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity <sup>(8)</sup>, of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision <sup>(9)</sup>, of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II <sup>(10)</sup> and of 23 April 2009 on the proposal for a regulation of the European parliament and of the Council on Credit Rating Agencies <sup>(11)</sup>).*
- (2) A report published on 25 February 2009 by a high-level group of experts chaired by J. de Larosière (**the de Larosière Report**), requested by the Commission, concluded that the supervisory framework needed to be strengthened to reduce the risk and severity of future financial crises. It recommended **■** reforms to the structure of supervision of the financial sector in the **Union**. That group of experts also concluded that a European System of Financial Supervisors should be created, comprising three European Supervisory Authorities, one for the **banking sector, one for the insurance and occupational pensions sector and one for the securities** sector, and the creation of a European Systemic Risk Council. *The recommendations in the report represented the lowest level of change that the experts qualified as necessary to avoid a similar crisis to take place in the future.*
- (3) **■** In its Communication of 4 March 2009 entitled 'Driving European Recovery', **the Commission** proposed to bring forward draft legislation creating a European System of Financial Supervisors and a European Systemic Risk Board (**ESRB**), and in its Communication of 27 May 2009 entitled 'European Financial Supervision', **it** provided more detail about the possible architecture of such a new supervisory framework **but did not include all the recommendations made in the de Larosière Report.**

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

<sup>(2)</sup> OJ C , , p. .

<sup>(3)</sup> OJ C 13, 20.1.2010, p. 1.

<sup>(4)</sup> Position of the European Parliament of ....

<sup>(5)</sup> OJ C 40, 7.2.2001, p. 453.

<sup>(6)</sup> OJ C 25 E, 29.1.2004, p. 394.

<sup>(7)</sup> OJ C 175 E, 10.7.2008, p. 392.

<sup>(8)</sup> OJ C 8 E, 14.1.2010, p. 26.

<sup>(9)</sup> OJ C 9 E, 15.1.2010, p. 48.

<sup>(10)</sup> Texts adopted, P6\_TA(2009)0251.

<sup>(11)</sup> Texts adopted, P6\_TA(2009)0279.

Wednesday 7 July 2010

- (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 market participants 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. *The European Supervisory Authority (European Securities and Markets Authority) (the Authority) should also be the supervisor for Trade Repositories. The Commission is requested to propose a solution for supervision of Central Counterparties by the Authority, modelled after the solution found in the Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies* <sup>(1)</sup>.
- (4a) *The International Monetary Fund (IMF) report of 16 April 2010 entitled ‘A Fair and Substantial Contribution by the Financial Sector’, written at the request of the G20 Pittsburgh summit, stated that ‘the cost of financial sector failures should be contained and covered by a Financial Stability Contribution (FSC) linked to a credible and effective resolution mechanism. If defined properly, resolution mechanisms will avoid governments in the future being forced to bail out institutions too important, too big or too interconnected to fail’.*
- (4b) *The Commission Communication of 3 March 2010 entitled ‘Europe 2020’ also declared that a crucial priority in the short term would be to set ‘to better prevent and if needed manage possible financial crises, and that—taking into account the specific responsibility of the financial sector in the current crisis—will look also into adequate contributions from the financial sector’.*
- (4c) *The European Council stated clearly on 25 March 2010 that ‘progress is particularly needed on issues such as ... systemic institutions, financing instruments for crisis management.’*
- (4d) *The European Council finally expressed on 17 June 2010 that ‘Member States should introduce systems of levies on financial institutions to ensure fair burden sharing and to set incentives to contain systemic risk. Such levies should be part of a credible resolution framework’.*
- (5) The financial and economic crisis has created real and serious risks to the stability of the **financial system and the functioning of the** internal market. Restoring and maintaining a stable and reliable financial system is an absolute prerequisite to preserving trust and coherence in the internal market, hence to preserve and improve the conditions for the establishment of a fully integrated and functioning internal market in the field of financial services. Moreover, deeper and more integrated financial markets offer better opportunities for financing and risk diversification, and thus help to improve the capacity of the economies to absorb shocks.
- (6) The **Union** has reached the limits of what can be done with the present status of the Committees of European Supervisors **■**. The **Union** cannot remain in a situation where there is no mechanism to ensure that national supervisors arrive at the best possible supervisory decisions for cross-border institutions; where there is insufficient cooperation and information exchange between national supervisory authorities; where joint action by national authorities requires complicated arrangements to take account of the patchwork of regulatory and supervisory requirements; where national solutions are most often the only feasible option in responding to European problems, where different interpretations of the same legal text exist. The European System of **Financial Supervision (ESFS)** should be designed to overcome these deficiencies and provide a system that is in line with the objective of a stable and single **Union** financial market for financial services, linking national supervisors into a strong **Union** network.

<sup>(1)</sup> OJ L 302, 17.11.2009, p. 1.

Wednesday 7 July 2010

- (7) The ESFS should be **an integrated** network of national and **Union** supervisory authorities, leaving day-to-day supervision of financial **institutions to** the national level **█**. **The Authority should have a leading role in the colleges of supervisors supervising cross-border financial market participants and clear supervisory norms for them should be defined. The Authority should pay special attention to financial market participants that may pose a systemic risk since their failure could jeopardise the stability of the Union financial system, where a national authority has failed to exercise its powers.** Greater harmonisation and the coherent application of rules for financial **institutions** and markets across the **Union** should also be achieved. **In addition to the Authority █, a European Supervisory Authority (European Insurance and Occupational Pensions Authority) and a European Supervisory Authority (European Banking Authority) as well as a European Supervisory Authority (Joint Committee) should be established. A European Systemic Risk Board should form part of the EFSF.**
- (8) The European Supervisory **Authority** should replace the Committee of European Banking Supervisors established by Commission Decision 2009/78/EC <sup>(1)</sup>, the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2009/79/EC <sup>(2)</sup> and the Committee of European Securities Regulators established by Commission Decision 2009/77/EC <sup>(3)</sup>, and assume all of the tasks and competences of those committees **including the continuation of on-going work and projects, where appropriate**. The scope of each Authority's action should be clearly defined **█**. Where institutional reasons and the responsibilities assigned in the **Treaty on the Functioning of the European Union (TFEU)** so require the Commission should also be part of the network of supervisory activities.
- (9) The **█ Authority █** should act with a view to improving the functioning of the internal market, **█** in particular by ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States, **and the different nature of financial market participants. The Authority should protect public values like the stability of the financial system, the transparency of markets and financial products and the protection of depositors and investors. The Authority should also prevent regulatory arbitrage and guarantee a level playing field, and** strengthen international supervisory coordination, for the benefit of the economy at large, including financial market participants and other stakeholders, consumers and employees. Its tasks **should** also include promoting supervisory convergence and providing advice to the EU institutions in the areas of securities and markets regulation and supervision, **and** related corporate governance and financial reporting issues. **The Authority should also be entrusted with a general oversight responsibility for existing and new financial products/types of transactions.**
- (9a) **The Authority shall take due account of the impact of its activities on competition and innovation within the internal market, the Union's global competitiveness, financial inclusion, and the Union's new strategy for jobs and growth.**
- (9b) **In order to fulfil its objectives, the Authority should have legal personality as well as administrative and financial autonomy. The Authority should be granted 'powers to address compliance with laws in particular those related with systemic risk and cross-border risks' (Basel Committee on Banking Supervision).**
- (9c) **Systemic risk is defined by international authorities (IMF, FSB, BIS) as 'a risk of disruption to financial services that is (i) caused by an impairment of all or parts of the financial system and (ii) has the potential to have serious negative consequences for the real economy All types of financial intermediaries, markets and infrastructure can potentially be systematically important to some degree'.**
- (9d) **Cross-border risk, according to those institutions, includes all risks caused by economic imbalances or financial failures in all or parts of the Union that have the potential to have significant negative consequences for the transactions between economic operators of two or more Member States, for the functioning of the internal market or for the public finances of the Union or any of its Member States.**

<sup>(1)</sup> OJ L 25, 29.1.2009, p. 23.

<sup>(2)</sup> OJ L 25, 29.1.2009, p. 28.

<sup>(3)</sup> OJ L 25, 29.1.2009, p. 18.



Wednesday 7 July 2010

- (10) The Court of Justice of the European **Union** in its judgement on 2 May 2006 **█** (United Kingdom/ European Parliament and Council) **held that: ‘nothing in the wording of Article 95 TEC [now Article 114 TFEU] implies that the addressees of the measures adopted by the Community legislature can only be the individual Member State. The legislature may deem it necessary to provide for the establishment of a Community body responsible for contributing to the implementation of a process of harmonization in situations where, in order to facilitate the uniform implementation and application of acts based on that provision, the adoption of non-binding supporting and framework measures seems appropriate’** <sup>(1)</sup>. The purpose and tasks of the Authority - assisting competent national supervisory authorities in the consistent interpretation and application of **Union** rules and contributing to financial stability necessary for financial integration - are closely linked to the objectives of the **Union** acquis concerning the internal market for financial services. The Authority should therefore be established on the basis of **Article 114 TFEU**.
- (11) The legal acts which lay down the tasks for competent authorities of Member States, including cooperating with each other and with the Commission, are the following: Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes <sup>(2)</sup>, Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, <sup>(3)</sup> Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities <sup>(4)</sup>, Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements <sup>(5)</sup>, 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 <sup>(6)</sup>, Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) <sup>(7)</sup>, Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC <sup>(8)</sup>, Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids <sup>(9)</sup>, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments <sup>(10)</sup>, Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC <sup>(11)</sup>, 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 <sup>(12)</sup>, Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services <sup>(13)</sup>, Directive 2006/49/EC of the European Parliament and the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) <sup>(14)</sup>, without prejudice to the competence of the European Banking Authority in terms of prudential supervision, Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 concerning Undertakings for Collective Investment in Transferable Securities <sup>(15)</sup>, Directive ... (future AIFM Directive), and Regulation ... (future CRA Regulation), including all Commission directives, regulations and decisions based on these acts, and of any further Community act which confers tasks on the Authority.

<sup>(1)</sup> At point 44; not yet published in the European Court Reports.

<sup>(2)</sup> OJ L 84, 26.3.1997, p. 22.

<sup>(3)</sup> OJ L 166, 11.6.1998, p. 45.

<sup>(4)</sup> OJ L 184, 6.7.2001, p. 1.

<sup>(5)</sup> OJ L 168, 27.6.2002, p. 43.

<sup>(6)</sup> OJ L 35, 11.2.2003, p. 1.

<sup>(7)</sup> OJ L 96, 12.4.2003, p. 16.

<sup>(8)</sup> OJ L 345, 31.12.2003, p. 64.

<sup>(9)</sup> OJ L 142, 30.4.2004, p. 12.

<sup>(10)</sup> OJ L 145, 30.4.2004, p. 1.

<sup>(11)</sup> OJ L 390, 31.12.2004, p. 38.

<sup>(12)</sup> OJ L 309, 25.11.2005, p. 15.

<sup>(13)</sup> OJ L 271, 9.10.2002, p. 16.

<sup>(14)</sup> OJ L 177, 30.6.2006, p. 201.

<sup>(15)</sup> OJ L 302, 17.11.2009, p. 32.

Wednesday 7 July 2010

- (12) The term financial market participant should cover a diverse range of participants who are subject to Community legislation in this area. It may include both legal persons and individuals. It can include for example investment firms, UCITS and their management companies, alternative investment fund managers, market operators, clearing houses, settlement systems, credit rating agencies, issuers, offerors, investors, persons who control or have an interest in participants, persons involved in the management of participants as well as other persons in relation to whom a requirement in the legislation applies. It should also include financial institutions such as credit institutions and insurance companies when engaging in activities covered by Community legislation in this area. Competent authorities in the EU and of third countries as well as the Commission do not fall within this definition.
- (13) It is desirable that the Authority promote a consistent approach in the area of investor compensation schemes to ensure a level playing field and the equitable treatment of investors across the **Union**. As investor compensation 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 investor compensation **scheme** itself and its operator **█**. ***The role of the Authority should be reviewed once a European Investors Guarantee fund is established.***
- (14) There is a need to introduce an effective instrument to establish harmonised **regulatory** technical standards in financial services to ensure, also through a single rulebook, a level playing field and an adequate protection **of depositors**, investors and consumers across Europe. As a body with highly specialised expertise, it is efficient and appropriate to entrust the Authority, in areas defined by **Union** law, with the elaboration of draft **regulatory** technical standards, which do not involve policy choices. The Commission should endorse those **regulatory and implementing** technical standards in accordance with **Article 290 TFEU** in order to give them binding legal effect. **█**
- (15) ***The Commission should endorse those draft regulatory technical standards in order to give them binding legal effect. They will be subject to amendment only in very restricted and extraordinary circumstances, provided that the Authority is the one in close contact with and acknowledging the daily work of financial markets. They would be subject to amendment if, for example, the draft regulatory standards were incompatible with Union law, would not respect the principle of proportionality or would run counter to the fundamental principles of the internal market for financial services as reflected in the acquis of Community financial services legislation. The Commission should not change the content of the technical standards prepared by the Authority without prior coordination with the Authority. To ensure a smooth and expeditious adoption process for those standards, the Commission should be subject to a time limit for its decision on the endorsement.***
- (15a) ***The Commission should also be empowered to implement legal acts as stated in Article 291 TFEU.***
- (15b) ***Regulatory and implementing technical standards have to take into account the principle of proportionality, i. e. the requirements laid down in these standards should be proportionate to the nature, scale and complexity of the risks inherent in the business of the financial institution concerned.***
- (16) In areas not covered by **regulatory** technical standards, the Authority should have the power to issue **█** guidelines and recommendations on the application of **Union** legislation. In order to ensure transparency and strengthen compliance by national supervisory authorities with those guidelines and recommendations, national authorities should be obliged to **publish the** reasons where they do not comply with those guidelines and recommendations **in order to ensure full transparency towards market participants.**
- (17) Ensuring the correct and full application of **Union** law is a core prerequisite for the integrity, **transparency**, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial **institutions in the Union**. A mechanism should therefore be established whereby the Authority addresses instances of **non-application or** incorrect **█** application **and thus a breach of Union** law. This mechanism should apply in areas where Community legislation defines clear and unconditional obligations.

Wednesday 7 July 2010

- (18) To allow for a proportionate response to instances of incorrect or insufficient application of Community law, a three-step mechanism should apply. At **the** 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. **Where the competent national authority does not follow the recommendation, the Commission should be empowered to issue a formal opinion taking into account the Authority's recommendation, requiring the competent authority to take the actions necessary to ensure compliance with Union law.**
- (19) Where the national authority does not comply with the recommendation, **within a deadline fixed by the Authority**, the **Authority** should **■** address a Decision **without delay** to the national supervisory authority concerned in order to ensure compliance with **Union** law, creating direct legal effects which can be invoked before national courts and authorities and enforced under **Article 258 TFEU**.
- (20) To overcome exceptional situations of persistent inaction by the competent authority concerned, the Authority should be empowered, as a last resort, to adopt decisions addressed to individual financial institutions. This power should be limited to exceptional circumstances in which a competent authority does not comply with the **formal opinion** addressed to it and in which **Union** law is directly applicable to financial institutions by virtue of existing<sup>(1)</sup> or future EU Regulations. **In this regard, the European Parliament and the Council are looking forward to the implementation of the programme of the Commission for 2010, in particular as regards the proposal on the reform of the Capital Requirements Directive.**
- (21) Serious threats to the orderly functioning and integrity of financial markets or the stability of the financial system in the **European Union** require a swift and concerted response at **Union** level. The Authority should therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. **Bearing in mind the sensitivity of the issue, the power to determine the existence of** an emergency situation **■** should be **conferred on the Commission at its own initiative or at the request of the European Parliament, the Council, the ESRB, or the Authority. Where the European Parliament, the Council, the ESRB or the European Supervisory Authority (ESA) deem that the existence of an emergency situation could be in the offing, they should contact the Commission. In this process, due care of confidentiality is of the outmost importance. If the Commission determines the existence of an emergency situation, it should duly inform the European Parliament and the Council.**
- (22) In order to ensure efficient and effective supervision and a balanced consideration of the positions of the competent authorities in different Member States, the Authority should be able to settle disagreements between those competent authorities with binding effect, including within colleges of supervisors. A conciliation phase should be provided for, during which the competent authorities may reach an agreement. **Where such an agreement is not reached, the Authority shall require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter in order to ensure compliance with EU legislation, with binding effects for the competent authorities concerned.** In 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 **Union** law directly applicable to them.

<sup>(1)</sup> The following are existing Regulations within the scope of activities of the Authority: Commission Regulation (EC) No 1287/2006 of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 1); Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149, 30.4.2004, p. 1); Commission Regulation (EC) No 2273/2003 of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards exemptions for buy-back programmes and stabilisation of financial instruments (OJ L 336, 23.12.2003, p. 33); Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities pursuant to Directives 2003/71/EC and 2004/109/EC of the European Parliament and of the Council (OJ L 340, 22.12.2007, p. 66).

Wednesday 7 July 2010

- (22a) *The crisis has proven that the mere cooperation between national authorities whose jurisdiction end at the national border is clearly inadequate to supervise financial institutions that operate cross border.*
- (22b) *Furthermore, 'the current arrangements, combining branch passporting rights, home country supervision, and purely national deposit insurance, are not sound basis for the future regulation and supervision of European cross-border retail banks' (Turner Review).*
- (22c) *As the Turner Review concluded, 'sounder arrangements require either increased national powers, implying a less open single market, or a greater degree of European integration'.*
- (22d) *The 'national' solution implies giving the host country the right to oblige foreign institutions to act only through the subsidiaries and not through branches and to oversee the capital and liquidity of banks operating in their country, which would amount to more protectionism.*
- (22e) *The 'European' solution calls for the reinforcement of the Authority in the College of Supervisors and for a strengthening in supervision of financial institutions that pose systemic risk.*
- (23) *Colleges of supervisors play an important role in the efficient, effective and consistent supervision of financial institutions operating across borders. The Authority should **play a leading role** and have full participation rights in colleges of supervisors with a view to streamlining the functioning of and the information exchange process in colleges and to foster convergence and consistency across colleges in the application of Union law. *As the de Larosière Report states 'competition distortions and regulatory arbitrage stemming from different supervisory practices must be avoided, because they have the potential of undermining financial stability – inter alia by encouraging a shift of financial activity to countries with lax supervision. The supervisory system has to be perceived as fair and balanced'.**
- (23a) *The Authority and national supervisors should strengthen supervision of financial institutions meeting the systemic risk criteria since their failure may jeopardise the stability of the Union Financial System and damage the real economy.*
- (23b) *Systemic risk criteria should be identified taking into account international standards, in particular those established by the Financial Stability Board, the International Monetary Fund, the International Association of Insurance Supervisors and the G-20. Interconnectedness, substitutability and timing are the most commonly used criteria for the identification of systemic risk.*
- (23c) *A framework for dealing with distressed institutions should be established in order to stabilise or wind them down since 'it has been clearly demonstrated that the stakes in a banking crisis are high for government and society at large because such a situation has the potential to jeopardise financial stability and the real economy' (de Larosière Report). The Commission should make appropriate proposals for the establishment of a new framework for financial crisis management. The key elements of crisis management are a common set of rules and financial resolution vehicles (execution and funding to deal with the crisis of large, cross-border and/or interconnected institutions).*
- (23d) *A European Deposit Guarantee Fund should be established to ensure the co-responsibility of cross-border financial institutions, protect Union depositors' interests and reduce the cost to tax payers of a systemic financial crisis. An EU-level fund seems to be the most efficient way to protect depositors' interests and the best defence against competitive distortions. It is obvious however that EU approaches are more complex and some others are keen to keep their national schemes. At very minimum therefore, the Authority must harmonise the most important features of national scheme. It may also ensure that financial institutions are required to pay to only one scheme.*

Wednesday 7 July 2010

- (23e) ***The European Securities and Market Stability Fund should finance the orderly winding-up or rescue interventions of financial institutions facing difficulties when those could menace financial stability of the Union's single financial market. The Fund should be financed through adequate contributions from the financial sector. The contributions to the Fund should replace those made to the national funds of similar nature.***
- (24) The delegation of tasks and responsibilities can be a useful instrument in the functioning of the network of supervisors in order to reduce the duplication of supervisory tasks, foster cooperation and thereby streamline the supervisory process as well as reduce the burden imposed on financial institutions, ***particularly for those financial institutions that do not have a Union dimension.*** 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, ***should*** be able to decide upon a certain supervisory matter in its name in lieu of ***the Authority or of*** another national supervisory authority. Delegations should be governed by the principle of allocating supervisory competence to a supervisor which is well placed to take action in the subject matter. A reallocation of responsibilities ***would*** be appropriate, for example, for reasons of economies of scale or scope, of coherence in group supervision, and of optimal use of technical expertise among national supervisory authorities. Relevant ***Union*** legislation may further specify the principles for reallocation of responsibilities upon agreement. The Authority should facilitate ***and monitor*** delegation agreements between national supervisory authorities by all appropriate means. It should be informed in advance of intended delegation agreements to be able to express an opinion where appropriate. It should centralise the publication of such agreements to ensure timely, transparent and easily accessible information about agreements for all parties concerned. ***It should identify and disseminate best practices regarding delegation and delegation agreements.***
- (25) The Authority should actively foster supervisory convergence across the ***Union*** with the aim of establishing a common supervisory culture.
- (26) Peer reviews are an efficient and effective tool for fostering consistency within the network of financial supervisors. The Authority should therefore develop the methodological framework for such reviews and conduct them on a regular basis. Reviews should focus not only on convergence of supervisory practices but also on the capacity of supervisors to achieve high quality supervisory outcomes as well as the independence of competent authorities. ***The outcome of peer reviews should be made public and best practices should be identified and also made public.***
- (27) The Authority should actively promote a coordinated ***Union*** supervisory response, in particular ***to ensure*** the orderly functioning and integrity of financial markets or the stability of the financial system in the ***European Union***. In addition to its powers for action in emergency situations, it should therefore be entrusted with a general coordination function within the ***ESFS***. The smooth flow of all relevant information between competent authorities should be a particular focus of the Authority's actions.
- (28) In order to safeguard financial stability it is necessary to identify, at an early stage, trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors. The Authority should monitor and assess such developments in the area of its competence and, where necessary, inform the European Parliament, the Council, the Commission, the other European Supervisory Authorities and the ***ESRB*** on a regular and, as necessary, ad hoc basis. The Authority should also ***initiate and*** coordinate ***Union-wide*** stress tests to assess the resilience of financial ***institutions*** to adverse market developments, ensuring an as consistent as possible methodology is applied at the national level to such tests. ***In order properly to perform its functions, the Authority should conduct economic analyses of the markets and the impact of potential market developments.***
- (29) Given the globalisation of financial services and the increased importance of international standards, the Authority should ***represent*** the ***European Union in relation to*** dialogue and cooperation with supervisors ***in third countries.***

Wednesday 7 July 2010

- (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 2004/39/EC, amended by 2007/44/EC <sup>(1)</sup>.
- (31) In order to effectively carry out its duties, the Authority should have the right to request all necessary information **relating to prudential supervision**. To avoid duplication of reporting obligations for financial market participants, that information should normally be provided by the national supervisory authorities who are closest to financial markets and market participants **and take into account already existing statistics**. However, **as a last resort**, the Authority should **be able to address a duly justified and reasoned request for information directly to a financial market participant** where a national competent authority does not or cannot provide such information in a timely fashion. Member States' authorities should be obliged to assist the Authority in enforcing such direct requests. **In this context, the work on common reporting formats is essential**.
- (31a) **The measures for the collection of information should be without prejudice to the legal framework of the European Statistical System (ESS) and the European System of Central Banks (ESCB) in the field of statistics. This Regulation should therefore be without prejudice to Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics <sup>(2)</sup> and to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank <sup>(3)</sup>.**
- (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 **and the European Systemic Risk Board** should share any relevant information **among each other**. Data related to individual undertakings should be provided only upon reasoned request. Upon receipt of warnings or recommendations addressed by the European Systemic Risk Board to the Authority or a national supervisory authority, the Authority should **█** ensure follow-up.
- (33) **█** The Authority should consult interested parties on **regulatory** standards, guidelines and recommendations and provide them with a reasonable opportunity to comment on proposed measures. **Before adopting draft regulatory standards, guidelines and recommendations the Authority should carry out an impact study**. For reasons of efficiency, a Securities and Markets Stakeholder Group should be established for that purpose, representing in balanced proportions **Union financial market participants (representing the diverse models and sizes of financial institutions and businesses)**, (including as appropriate institutional investors and other financial institutions which themselves use financial services), **SME's, trade unions, academics** and consumers and other retail users of financial services, including SMEs. The Securities and Markets Stakeholder Group should actively work as an interface with other user groups in the financial services area established by the Commission or **Union** legislation.
- (33a) **Non-profit organisations are marginalised in the debate on the future of financial services and in the corresponding decision making process in comparison to well-funded and well-connected industry representatives. That disadvantage should be compensated for by adequate funding of their representatives in the Securities and Markets Stakeholder Group.**
- (34) Member States have a core responsibility **for ensuring coordinated crisis management and preserving financial stability in crisis situations**, in particular with regard to stabilising and resolving individual ailing financial market participants. **Their actions should be closely coordinated with the framework and the principles of the EMU**. Measures by the Authority in emergency or settlement situations affecting the stability of a financial **institution** should not impinge **significantly** 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.

<sup>(1)</sup> OJ L 247, 21.9.2007, p. 1.

<sup>(2)</sup> OJ L 87, 31.3.2009, p. 164.

<sup>(3)</sup> OJ L 318, 27.11.1998, p. 8.

Wednesday 7 July 2010

- (34a) *Within three years from the entry into force of a regulation establishing such a mechanism, clear and sound guidance on when the safeguard is triggered by Member States should be laid down at Union level by the Commission on the basis of the experience acquired. Member States' use of the safeguard clause should be assessed against that guidance.*
- (34b) *Without prejudice to the particular responsibilities of the Member States in crisis situations, if a Member State chooses to invoke the safeguard, it should inform the European Parliament at the same time as the Authority, the Council and the Commission. Furthermore, the Member State should explain its reasons for invoking the safeguard. The Authority should, in cooperation with the Commission, set out the next steps to be taken.*
- (35) In its decision-making procedures, the Authority should be bound by Community rules and general principles on due process and transparency. The right to **hear** the addressees of the Authority's decisions should be fully respected. The Authority's acts form an integral part of **Union** law.
- (36) A Board of Supervisors composed of the heads of the relevant competent authority in each Member State, and chaired by the Chairperson of the Authority, should be the principal decision-making organ of the Authority. Representatives of the Commission, the European Systemic Risk Board, and the **European Insurance and Pensions Authority and the European Banking Authority** should participate as observers. Members of the Board of Supervisors should act independently and only in the **Union's** interest. For acts of a general nature, including those related to the adoption of **regulatory** technical standards, guidelines and recommendations as well as budgetary matters, it is appropriate to apply the rules on qualified majority as laid down in **Article 16 TFEU**, whereas for all other decisions simple majority of members should apply. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted panel.
- (36a) *As a general rule, the Board of Supervisor should take its decisions with simple majority according to the principle of one man-one vote. However for acts relating to the adoption of technical standards, guidelines and recommendations as well as budgetary matters, it is appropriate to apply the rules of qualified majority as laid down in the Treaty on European Union, in the TFEU and in the Protocol (No 36) on transitional provisions attached to thereto. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted, objective panel, composed of members who are not representatives of the competent authorities which are parties to the disagreement, nor have any interest in the conflict or direct links to the competent authorities concerned. The composition of the panel should be appropriately balanced. The decision taken by the panel should be approved by the Board of Supervisors by simple majority according to the principle where each member has one vote. However, with regard to decisions taken by the consolidating supervisor, the decision proposed by the panel could be rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol No 36 on transitional provisions annexed to the Treaty on European Union and to the TFEU.*
- (37) A Management Board composed of the Chairperson of the Authority, representatives of national supervisory authorities and the Commission should ensure that the Authority carries out its mission and performs the tasks assigned to it. The Management Board should be entrusted with the necessary powers to, inter alia, propose the annual and multi-annual work programme, exercise certain budgetary powers, adopt the Authorities staff policy plan, adopt special provisions on the right to access to documents and adopt the annual report.
- (38) A full time Chairperson, selected by the **European Parliament following an open competition managed by the Commission and the subsequent drawing up of a short list for the Commission**, should represent the Authority. The management of the Authority should be entrusted to an Executive Director, who should have the right to participate in meetings of the Board of Supervisors and the Management Board without the right to vote.

Wednesday 7 July 2010

- (39) In order to ensure cross-sectoral consistency in the activities of the European Supervisory Authorities, those authorities should coordinate closely **through the European Supervisory Authority (Joint Committee) (the 'Joint Committee')** and reach common positions where appropriate. The Joint Committee of European Supervisory Authorities should **coordinate the functions of the three European Supervisory Authorities in relation to financial conglomerates**. Where relevant, acts also falling within the area of competence of the **European Supervisory Authority (Insurance and Occupational Pensions)** or the **European Supervisory Authority (Banking)** should be adopted in parallel by the European Supervisory Authorities concerned. **The Joint Committee should be chaired for a 12-month term on a rotating basis by the Chairpersons of the three European Supervisory Authorities. The Chairperson of the Joint Committee should be a Vice-Chair of the European Systemic Risk Board. The Joint Committee should have a permanent secretariat, staffed on secondment from the three European Supervisory Authorities to allow for informal information sharing and the development of a common cultural approach across the three European Supervisory Authorities.**
- (40) It is necessary to ensure that the parties affected by decisions adopted by the Authority may exercise the necessary remedies. To effectively protect the rights of parties and for reasons of procedural economy, where the Authority has decision-making powers, parties should be granted a right of appeal to a Board of Appeal. For reasons of efficiency and consistency, the Board of Appeal should be a joint body of the three European Supervisory Authorities, independent from their administrative and regulatory structures. The decision of the Board of Appeal should be subject to appeal before the Court of First Instance and the Court of Justice of the European Communities.
- (41) In order to guarantee its full autonomy and independence, the Authority should be granted an autonomous budget with revenues mainly from obligatory contributions from national supervisory authorities and from the General Budget of the European Union **through a separate budget section within it. Union financing of the Authority is subject to an agreement by the budgetary authority in accordance with Point 47 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management<sup>(1)</sup> (IIA).** The **Union** budgetary procedure should be applicable as far as the **European Union** contribution is concerned. The auditing of accounts should be undertaken by the Court of Auditors. **The overall budget is subject to the discharge procedure.**
- (42) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>(2)</sup> 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)<sup>(3)</sup>.
- (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<sup>(4)</sup> 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 **made available to the Authority and** exchanged in the network should **be subject to stringent and effective confidentiality rules.**

<sup>(1)</sup> OJ C 139, 14.6.2006, p. 1.

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 1.

<sup>(3)</sup> OJ L 136, 31.5.1999, p. 15.

<sup>(4)</sup> OJ L 56, 4.3.1968, p. 1.



Wednesday 7 July 2010

- (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 <sup>(1)</sup> and by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(2)</sup>, 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 <sup>(3)</sup> should apply to the Authority.
- (47) Countries which are not members of the European Union should be allowed to participate in the work of the Authority in accordance with appropriate agreements to be concluded by the **Union**.
- (48) Since the objectives of this Regulation, namely improving the functioning of the internal market by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting depositors and investors, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability of the financial system, and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of scale of the action, be better achieved at **Union** level, the **Union** may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty **on European Union**. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (49) The Authority assumes all current tasks and powers of the Committee of European Securities Regulators. Commission Decision 2009/77/EC of 23 January 2009 establishing the Committee of European Securities Regulators should therefore be repealed, and Decision **No 716/2009/EC** of the European Parliament and of the Council **of 16 September 2009** establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing <sup>(4)</sup>, 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 Securities Regulators,

HAVE ADOPTED THIS REGULATION:

## CHAPTER I

## ESTABLISHMENT AND LEGAL STATUS

## Article 1

## Establishment and Scope of action

1. This Regulation establishes a **European Supervisory Authority** (European Securities and Markets Authority) (the Authority).

<sup>(1)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(2)</sup> OJ L 8, 12.1.2001, p. 1.

<sup>(3)</sup> OJ L 145, 31.5.2001, p. 43.

<sup>(4)</sup> **OJ L 253, 25.9.2009, p. 8.**

Wednesday 7 July 2010

2. The Authority shall act **within the powers of this Regulation and** within the scope of Directive 97/9/EC, Directive 98/26/EC, Directive 2001/34/EC, Directive 2002/47/EC, Directive 2002/87/EC, Directive 2003/6/EC, Directive 2003/71/EC, **■** Directive 2004/39/EC, Directive 2004/109/EC, **■** Directive 2009/65/EC, **and of** Directive 2006/49/EC, **■** without prejudice to the competence of the **European Supervisory Authority** (European Banking Authority) in terms of prudential supervision **■**, Directive ... [future AIFM Directive], and Regulation (EC) No 1060/2009, **and, to the extent that these acts apply to firms providing investment services or to collective investment undertakings marketing their units or shares and the competent authorities that supervise them, within the relevant parts of Directive 2005/60/EC and of Directive 2002/65/EC** including all directives, regulations, and decisions based on these acts, and of any further **Union legislative** act which confers tasks on the Authority.

2a. *The Authority shall also act in the field of activities covered by the legislation referred to in paragraph 2, including matters of corporate governance, auditing and financial reporting, provided that such actions by the Authority are necessary to ensure the effective and consistent application of the legislation referred to in paragraph 2.*

3. The provisions of this Regulation are without prejudice to the powers of the Commission, in particular under **Article 258 TFEU** to ensure compliance with **Union** law.

4. The objective of the Authority shall be to **protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The Authority shall** contribute to: (i) improving the functioning of the internal market, including in particular a **sound**, effective and consistent level of regulation and supervision, **■** (iii) ensuring the integrity, **transparency**, efficiency and orderly functioning of financial markets, (iv) **■** strengthening international supervisory coordination (v) **preventing regulatory arbitrage and contributing to equal conditions of competition**, (vi) **ensuring the taking of investment and other risks are appropriately regulated and supervised**, and (vii) **contribute to enhance customer protection**. For those purposes, the Authority shall contribute to ensuring the consistent, efficient and effective application of the **Union legislative acts referred to in paragraph 2**, fostering supervisory convergence and providing opinions to the European Parliament, the Council, and the Commission **and undertaking economic analyses of the markets to promote the achievement of the Authority's objective**.

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

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

#### Article 1a

##### The European System of Financial Supervision

1. *The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented, to preserve financial stability ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services.*

2. *The ESFS shall comprise the following:*

(a) *the European Systemic Risk Board, for the purposes of the tasks as specified in Regulation (EU) No .../2010 (ESRB) and this Regulation;*

(b) *the Authority;*

Wednesday 7 July 2010

- (c) *the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No .../2010 [ESMA];*
- (d) *the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No .../2010 [EIOPA];*
- (e) *the European Supervisory Authority (Joint Committee) for the purposes of carrying out the tasks as specified in Articles 40 to 43 (the 'Joint Committee');*
- (f) *the authorities in the Member States referred to in Article 2(2) of Regulation (EU) No .../2010 [ESMA], Regulation (EU) No .../2010 [EIOPA] and Regulation (EU) No .../2010 [EBA];*
- (g) *the Commission, for the purposes of carrying out the tasks referred to in Articles 7 and 9.*

3. *The Authority shall cooperate regularly and closely with the European Systemic Risk Board as well as with the European Supervisory Authority (Insurance and Occupational Pensions) and the European Supervisory Authority (Banking) through the Joint Committee, ensuring cross-sectoral consistency of work and arrive at joint positions in the area of supervision of financial conglomerates and on other cross-sectoral issues.*

4. *In accordance with the principle of sincere cooperation under Article 4(3) of the Treaty on European Union, the parties to the ESFS shall cooperate with trust and full mutual respect, in particular in ensuring the flow of appropriate and reliable information flows between them.*

5. *Those supervisory authorities that are party to the ESFS shall be obligated to supervise financial institutions operating in the Union in accordance with the legislative acts referred to in Article 1(2).*

#### Article 1b

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

#### Article 2

##### Definitions

For the purposes of this Regulation the following definitions apply:

- (1) 'financial market participant' means any person in relation to whom a requirement in the legislation referred to in Article 1(2) or a national law implementing such legislation applies;
- (2) 'competent authorities' means competent authorities and/or supervisory authorities as defined in the legislation referred to in Article 1(2). *With regard to Directives 2002/65/EC and 2005/60/EC, 'competent authorities' means the authorities competent for ensuring compliance with the requirements of those Directives by firms providing investment services and by collective investment undertakings marketing their units or shares. Where investor compensation schemes are concerned, competent authorities means bodies which administer national compensation schemes pursuant to Directive 97/9/EC, or in the case where the operation of the investor compensation scheme is administered by a private company, the public authority supervising these schemes, pursuant to that Directive.*

Wednesday 7 July 2010

Article 3

Legal status

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

Article 4

Composition

The Authority shall comprise the following:

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

Article 5

**Headquarters**

The authority shall have its **headquarters in Frankfurt**.

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

CHAPTER II

TASKS AND POWERS OF THE AUTHORITY

Article 6

Tasks and Powers of the Authority

1. The Authority shall have the following tasks:
  - (a) contribute to the establishment of high quality common regulatory and supervisory standards and practices, in particular by providing opinions to the **Union** institutions and by developing guidelines, recommendations, and draft **regulatory technical and implementing** technical standards which shall be based on the **legislative acts** referred to in Article 1(2);

Wednesday 7 July 2010

- (b) contribute to a consistent application of **Union legislative acts**, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the **legislative acts** referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, **ensuring effective and consistent supervision of financial market participants and ensuring** a coherent functioning of colleges of supervisors and taking actions, **inter alia**, in emergency situations;
- (c) **stimulate and** 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) **organise and** conduct peer review **analyses** of competent authorities, **including issuing advice, in order to** strengthen consistency in supervisory outcomes;
- (f) monitor and assess market developments in the area of its competence;
- (fa) undertake economic analyses of markets to inform the discharge of the Authority's functions;**
- (fb) foster depositor and investor protection;**
- (fc) help to manage crisis of cross-border institutions that have the potential to pose a systemic risk referred to in Article 12b, leading and executing all early interventions, resolution or insolvency procedures for such institutions through its Resolution Unit as set out in Article 12c;**
- (g) fulfil any other specific tasks set out in this Regulation or in the **Union legislative acts** referred to in Article 1(2);
- (ga) supervise those financial market participants that are not subject to the supervision of competent authorities;**
- (gb) publish on its website and regularly update information relating to its field of activities, in particular, within the area of its competence, on registered financial market participants, in order to ensure easily accessible information to the public;**
- (gc) take over, as appropriate, all existing and ongoing tasks from the Committee of European Securities Regulators.**

2. To achieve the tasks set out in paragraph 1, the Authority shall have the powers set out in this Regulation, in particular **■** to:

- (a) develop draft **regulatory** technical standards in the specific cases referred to in Article 7;
- (aa) develop draft implementing technical standards in the specific cases referred to in Article 7e;**
- (b) issue guidelines and recommendations, as laid down in Article 8;
- (c) issue recommendations in specific cases, as referred to in Article 9(3);

Wednesday 7 July 2010

- (d) take individual decisions addressed to competent authorities in the specific cases referred to in **Articles 10 and 11**;
- (e) take individual decisions addressed to financial market participants, 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;
- (fa) collect the necessary information concerning financial market participants as provided for in Article 20;**
- (fb) developing common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of financial market participants and on customer protection;**
- (fc) provide a database of registered financial market participants in the area of its competence and, where specified in the legislation referred to in Article 1(2), at a central level;**
- (fd) develop a regulatory standard setting out the minimum information that shall be made available to the Authority about transactions and market participants and how coordination of collection shall be carried out as well as outlining how existing national databases shall be linked in order to ensure that the Authority always can access the relevant and necessary information concerning transactions and market.**

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

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

#### Article 6a

##### Consumer protection and financial activity

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

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

Wednesday 7 July 2010

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

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

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

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

*The Authority shall review that decision at regular, timely intervals.*

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

#### Article 7

##### **Regulatory** technical standards

1. *The European Parliament and the Council may delegate powers to the Commission to adopt regulatory technical standards under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in ■ legislation referred to in Article 1(2). Those standards shall be technical, not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based. Draft regulatory technical standards shall be developed by the authority and submitted to the Commission for endorsement. Where the Authority does not submit a draft to the Commission within the time limits set out in the legislation referred to in Article 1(2), the Commission may adopt a regulatory technical standard.*

1a. *The Authority shall ■ conduct open public consultations on regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the regulatory technical standards concerned or in relation to the particular urgency of the matter before submitting them to the Commission. The Authority shall also request the opinion or advice of the Securities and Markets Stakeholder Group referred to in Article 22.*

1b. *The Commission shall upon receipt of the draft regulatory technical standard from the Authority forward them immediately to the European Parliament and the Council. The Commission may extend that period by one month. The Commission may endorse the draft technical standards only in part or with amendments where the Union interest so requires.*

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Wednesday 7 July 2010

#### Article 7a

##### *Non-endorsement or amendment of draft regulatory standards*

1. *Where the Commission intends not to endorse the draft regulatory technical standards or to endorse them in part or with amendments, it shall send the draft regulatory technical standards back to the Authority, proposing reasoned amendments.*
2. *Within a period of six weeks, the Authority may amend the draft regulatory technical standards on the basis of the Commission's proposed amendments and resubmit them to the Commission for endorsement. The Authority shall inform the European Parliament, the Council and the Commission on its decision.*
3. *When the Authority does not agree with the Commission's decision to reject or amend its initial proposals, the European Parliament or Council may convene the responsible Commissioner, together with the Chairman of the Authority, within one month for an ad hoc meeting of the competent committee of the European Parliament or Council to present and explain their differences.*

#### Article 7b

##### *Exercise of delegation*

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

#### Article 7c

##### *Objections to regulatory technical standards*

1. *The European Parliament or the Council may object to the regulatory technical standard within a period of three months from the date of notification by the Commission. At the initiative of the European Parliament or the Council that period may be extended by another three months.*
2. *The regulatory technical standard shall be published in the Official Journal of the European Union and should enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections. If, on expiry of that period, neither the European Parliament nor the Council has objected to the regulatory technical standard it shall be published in the Official Journal of the European Union.*
3. *The European Parliament and the Council, as soon as the draft has been forwarded by the Commission, may adopt an anticipated and conditioned declaration of non objection that shall enter into force when the Commission adopts the regulatory standard without modifying the draft.*
4. *If the European Parliament or the Council objects to a regulatory technical standard, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the delegated act.*



Wednesday 7 July 2010

**Article 7d****Revocation of the delegation**

1. *The delegation of power referred to in Article 7 may be revoked by the European Parliament or by the Council.*
2. *The decision of revocation shall put an end to the delegation.*
3. *The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within reasonable time before the final decision is taken, indicating the regulatory technical standard powers which could be subject to revocation.*

**Article 7e****Implementing technical standards**

1. *Where the European Parliament and the Council confer powers on the Commission to adopt implementing technical standards under Article 291 TFEU where uniform conditions for implementing legally binding Union acts are needed in the areas specifically set out in legislation referred to in Article 1(2) the following shall apply:*
  - (a) *where in accordance with the above mentioned legislation Authority drafts implementing technical standards for submission to the Commission, those standards shall be technical, not include policy choices and limited to determining the conditions of application of legally binding Union acts;*
  - (b) *where the Authority does not submit a draft to the Commission within the time limits set out in the legislation referred to in Article 1(2), or where the Authority does not submit a draft to the Commission within the time limit indicated in a request addressed to the Authority by the Commission in accordance with Article 19, the Commission may adopt an implementing technical standard by means of an implementing act.*
2. *Before submitting them to the Commission, the Authority shall conduct open public consultations on implementing technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the technical standards concerned or in relation to the particular urgency of the matter.*

*The Authority shall also request the opinion or advice of the Securities and Markets Stakeholder Stakeholder Group referred to in Article 22.*

3. *The Authority shall submit its draft implementing technical standards to the Commission for endorsement in accordance with Article 291 TFEU and, at the same time, to the European Parliament and the Council.*
4. *Within three months of receipt of the draft implementing technical standards, the Commission shall decide whether to endorse the draft implementing standards. The Commission may extend that period by one month. The Commission may endorse the draft standards only in part or with amendments where the Union interest so requires.*

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

Wednesday 7 July 2010

**5. 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

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

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

2. The competent authorities **and financial market participants** shall make every effort to comply with those guidelines and recommendations.

**Within two months of the issuance of a guideline or recommendation, each competent authority shall confirm that it intends to comply with that guideline or recommendation. In the event that a competent authority does not intend to comply, it shall inform the Authority stating reasons. The Authority shall publish those reasons.**

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

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

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

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

#### Article 9

##### Breach of Union law

1. Where a competent authority has not **applied or has applied the legislative acts** referred to in Article 1(2) **in a way which appears to be a breach of Union law, including the regulatory technical and implementing technical standards established in accordance with Articles 7 and 7e**, in particular by failing to ensure that a financial market participant 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, **from the European Parliament, the Council or the Securities and Markets Stakeholder Group**, or on its own initiative and after having informed the competent authority concerned, the Authority may investigate the alleged **breach or non-application of Union law**.

Wednesday 7 July 2010

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

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

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 **Union** law within one month from receipt of the Authority's recommendation, the Commission may, after having been informed by the Authority or on its own initiative, **issue a formal opinion** requiring the competent authority to take the action necessary to comply with **Union** law. **The Commission's formal opinion shall take into account the Authority's recommendation.**

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

▯

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

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

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

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

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

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

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

Wednesday 7 July 2010

## Article 10

### Action in emergency situations

1. In the case of adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the **European Union**, the **Authority shall actively facilitate and, where deemed necessary, coordinate any actions undertaken by the relevant national competent supervisory authorities.**

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

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

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

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

3. Without prejudice to the powers of the Commission under Article **258 TFEU**, where a competent authority does not comply with the decision of the Authority referred to in paragraph 2 within the period laid down therein, the Authority may, where the relevant requirements laid down in the **legislative acts** referred to in Article 1(2) are directly applicable to financial market participants, adopt an individual decision addressed to a financial market participant 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 **issues** which are subject to a decision pursuant to paragraph 2 or 3 shall be compatible with those decisions.

## Article 11

### Settlement of disagreements between competent authorities

1. Without prejudice to the powers laid down in Article 9, where a competent authority disagrees on the procedure or content of an action or inaction by another competent authority in areas where the **legislative acts** referred to in Article 1(2) requires cooperation, coordination or joint decision making by competent authorities from more than one Member State, the Authority, **on its own initiative or** at the request of one or more of the competent authorities concerned, **shall take the lead in assisting** the authorities in reaching an agreement in accordance with the procedure set out in **paragraphs 2 to 4.**

Wednesday 7 July 2010

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

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

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

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

**4b. In the Report referred to in 35(2), the Chairperson shall set out the disagreements between competent authorities, the agreements reached and the decision taken to settle such disagreements.**

#### Article 11a

##### Settlement of disagreements between competent authorities across sectors

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

#### Article 12

##### Colleges of supervisors

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

2. The Authority shall **lead the** colleges of supervisors as it deems appropriate. For **that** purpose it shall be considered a 'competent authority' within the meaning of the relevant legislation. **It shall, at least:**

**(a) collect and share all relevant information in going concern and emergency situations in order to facilitate the work of the colleges of supervisors and establish and manage a central system to make such information accessible to the competent authorities in the colleges of supervisors;**

**(b) initiate and coordinate Union-wide stress tests to assess the resilience of financial institutions, in particular of those identified in Article 12b, to adverse market developments, ensuring an as consistent as possible methodology is applied at the national level to such tests;**

Wednesday 7 July 2010

- (c) *plan and lead supervisory activities in going concern as well as in emergency situations, including evaluating the risks to which financial institutions are or might be exposed; and*
  
- (d) *oversee the tasks carried out by the competent authorities.*

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

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

#### Article 12a

##### General provisions

1. *The Authority shall pay special attention to and address risks of disruption in financial services that (i) is caused by an impairment of all or parts of the financial system and (ii) has the potential to have serious negative consequences for internal market and the real economy (systemic risk). All types of financial intermediaries, markets and infrastructure can potentially be systematically important to some degree.*
  
2. *The Authority, in collaboration with the European Systemic Risk Board, shall develop a common set of quantitative and qualitative indicators (risk dashboard), which will serve as the basis to assign a supervisory rating to cross-border financial market participants identified in Article 12b. That rating shall be reviewed on a regular basis, to take into account material changes of the risk profile of an institution. The supervisory rating shall be a critical element for the decision to directly supervise or intervene in an ailing institution.*
  
3. *Without prejudice to legislative acts referred to in Article 1(2), the Authority shall propose, as necessary, additional draft regulatory and implementing standards as well as guidelines and recommendations for institutions identified in Article 12b.*
  
4. *The Authority shall exert supervision of cross-border institutions that may pose a systemic risk as established in Article 12b. In those cases, the Authority shall act through the competent authorities.*
  
5. *The Authority shall establish a Resolution Unit with a mandate to put in practice the clearly defined governance and modus operandi of crisis management from early intervention to resolution and insolvency and lead such procedures.*

#### Article 12b

##### Identification of cross border financial market participants that potentially could pose a systemic risk

1. *The Board of Supervisors, following consultation of the ESRB, may, in accordance with the procedure set out in Article 29(1), identify cross-border financial market participants that, due to the systemic risk they may pose need to be subject to direct supervision by the Authority or placed under the Resolution Unit referred to in Article 12c.*
  
2. *The criteria for identifying such financial market participants shall be consistent with the criteria established by the FSB, the IMF and the BIS.*

Wednesday 7 July 2010

### Article 12c

#### Resolution Unit

1. The Resolution Unit shall preserve financial stability and minimise the contagion effect of distressed institutions identified in Article 12b to the rest of the system and the economy at large and limit the cost to taxpayers respecting the principle of proportionality, creditors' hierarchy and guaranteeing equal treatment across borders.
2. The Resolution Unit shall be empowered to fulfil the tasks set out in paragraph 1, in order to rehabilitate distressed institutions or to decide on a winding-up on non-viable institutions (critical to limit moral hazard). Among other actions it could require adjustments in capital or liquidity, adapt the business mix, improve processes, appoint or replace management, recommend guarantees, loans and liquidity assistance, total or partial sales, create a good bank / bad bank or a bridge bank, swap debt into equity (with appropriate haircuts) or take the institution into temporary public ownership.
3. The Resolution Unit shall comprise experts appointed by the Board of Supervisors of the Authority with knowledge and expertise in restructuring, turn-a-rounds and liquidation of financial institutions.

### Article 12d

#### European System of Investor Guarantee Schemes

1. The Authority shall contribute to strengthening national Investor Compensation Schemes (ICS) by ensuring that they are adequately funded by contributions from financial institutions including from market participant headquartered in third-countries, and provide a high level of protection to all investors in a harmonised framework throughout the Union, which leaves the stabilising safeguard role of mutual guarantee schemes intact, provided they comply with Union standards.
2. Article 8 concerning the Authority's powers to adopt guidelines and recommendations shall apply to investors guarantee schemes.
3. The Commission may adopt regulatory and implementing technical standards as specified in the legislative acts referred to in Article 1(2) in accordance with the procedure laid down in Articles 7 to 7d of this Regulation.

### Article 12e

#### European System of resolution and funding arrangements

1. A European Stability Fund for Securities and Markets shall be established in order to strengthen the internalisation of the costs of the financial system and to assist in crisis resolution for failing cross border financial market participants. Financial market participants operating in only one Member State shall have the option to join the fund. The European Stability Fund for Securities and Markets shall adopt appropriate measures to avoid that the availability of aid generates a moral hazard.
2. The European Stability Fund for Securities and Markets shall be financed through direct contributions from all cross border financial market participants identified under article 12b and those which have chosen to take part in that system pursuant to paragraph 1. Those contributions shall be proportionate to the level of risk that each of the financial market participants pose. Levels of contributions required shall take into account broader economic conditions e.g. the lending capacity to industry and SME and the need for financial market participants to maintain capital for other regulatory and business requirements.

Wednesday 7 July 2010

**3. The European Stability Fund shall be managed by a Board appointed by the Authority for a period of five years. The members of the Board shall be selected from staff proposed by the national authorities. The Fund shall also create a Consultative Board involving non-voting representation of the financial market participants participating in the Fund. The Board of the Fund may propose to the Authority the outsourcing of the management of its liquidity to reputable institutions (such as the EIB). These funds should be invested in safe and liquid instruments.**

#### Article 13

##### Delegation of tasks and responsibilities

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

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

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

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

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

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

#### Article 14

##### Common supervisory culture

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

- (a) provide opinions to competent authorities;
- (b) promote an effective bilateral and multilateral exchange of information between competent authorities, with full respect of the applicable confidentiality and data protection provisions provided for in the relevant Community legislation;
- (c) contribute to developing high quality and uniform supervisory standards, including reporting standards, **and international accounting standards in accordance with Article 1(2a)**;
- (d) review the application of the relevant **regulatory and implementing** technical standards adopted by the Commission, guidelines and recommendations issued by the Authority and propose amendments where appropriate;



Wednesday 7 July 2010

- (e) establish sectoral and cross-sectoral training programmes, facilitate personnel exchanges and encourage competent authorities to intensify the use of secondment schemes and other tools.
2. The Authority may, as appropriate, develop new practical instruments and convergence tools to promote common supervisory approaches and practices.

## Article 15

## Peer review of competent authorities

1. The Authority shall periodically **organise and** conduct peer review analyses of some or all of the activities of competent authorities, to further enhance consistency in supervisory outcomes. To this end, the Authority shall develop methods to allow for objective assessment and comparison between the authorities reviewed. **When conducting peer reviews, existing information and evaluations already made with regard to the competent authority concerned shall be taken into account.**
2. The peer review shall include an assessment of, but not be limited to:
- (a) the adequacy of **resources and governance** arrangements, resourcing and staff expertise of the competent authority, with particular regard to the effective application of the **regulatory technical and implementing technical standards referred to in Articles 7 to 7e and legislative acts** referred to in Article 1(2) and to the capacity to respond to market developments;
  - (b) the degree of convergence reached in the application of **Union** law and in supervisory practice, including **regulatory technical and implementing** technical standards, guidelines and recommendations adopted under Articles 7 and 8, and the extent to which the supervisory practice achieves the objectives set out in **Union** law;
  - (c) good practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;
  - (d) **the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where these provisions have not been complied with.**
3. On the basis of the peer review the Authority may issue **guidelines and** recommendations pursuant to Article 8 addressed to competent authorities. **The Authority shall take into account the outcome of the peer review when developing draft regulatory technical or implementing technical standards in accordance with Articles 7 to 7e. Competent authorities shall endeavour to follow the advice given by the Authority. Where a competent authority does not follow this advice, it shall inform the Authority of its reasons.**

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

## Article 16

## Coordination function

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 **European Union**.

Wednesday 7 July 2010

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

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

#### Article 17

##### Assessment of market developments

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

**1a.** The Authority shall, in cooperation with the ESRB, initiate and coordinate **Union**-wide assessments of the resilience of **■** financial market participants 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 a key financial market participant's financial positions;
  - (b) common approaches to communication on the outcomes of these assessments of the resilience of **■** financial market participants;
- (ba) common methodologies for assessing the effect of particular products or distribution processes on a market participant's financial position and on depositors, investors and customer information.**

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

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

Wednesday 7 July 2010

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 Banking Authority **through the Joint Committee**.

## Article 18

## International relations

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

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

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

## Article 19

## Other tasks

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

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

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

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

## Article 20

## Collection of information

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

Wednesday 7 July 2010

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

**1b.** *On a duly justified request from a competent authority of a Member State, the Authority may provide any information that is necessary to enable the competent authority to carry out its duties in accordance with the professional secrecy obligations laid down in sectoral legislation and Article 56.*

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

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

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

**The Authority shall inform the relevant competent authorities of requests in accordance with paragraphs 2 and 2a.**

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

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

## Article 21

### Relationship with the ESRB

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

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

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 .../2010 [ESRB].

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

Wednesday 7 July 2010

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

If the Authority does not act further to a recommendation, it shall explain to the **European Parliament, Council and 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 **Council and the** ESRB in accordance with Article [17] of Regulation (EU) No .../2010 [ESRB].

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

#### Article 22

##### Securities and Markets Stakeholder Group

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

**The Securities and Markets Stakeholder Group shall meet at least four times a year.**

2. The Securities and Markets Stakeholder Group shall be composed of 30 members, representing in balanced proportions **investment institutions operating in the Union, their employee representatives** as well as consumers, **users of financial services and representatives of SMEs. At least five of its members shall be independent top-ranking academics. The number of members representing financial market participants shall not exceed 10.**

3. The members of the Securities and Markets Stakeholder Group shall be appointed by the Board of Supervisors of the Authority, following proposals from the relevant stakeholders.

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

4. The Authority shall **provide all necessary information and** ensure adequate secretarial support for the Securities and Markets Stakeholder Group.

**Adequate compensation of travel expenses shall be provided for members of the stakeholder group representing non-profit organisations. The Group may establish working groups on technical issues.** Members of the Securities and Markets Stakeholder Group shall serve for a period of two and a half years, following which a new selection procedure shall take place.

Wednesday 7 July 2010

The members may serve two successive terms.

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

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

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

#### Article 23

##### Safeguards

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

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

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

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

#### Article 24

##### Decision-making procedures

1. Before taking the decisions provided for in **this Regulation**, the Authority shall inform **any named** addressee of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the matter, taking full account of the urgency, **complexity and potential consequences** of the matter. **This applies mutatis mutandis to recommendations as referred to in Article 9 paragraph 4.**

2. The decisions of the Authority shall state the reasons on which they are based.

3. The addressees of decisions of the Authority shall be informed of the legal remedies available under this Regulation.

4. Where the Authority has taken a decision pursuant to Article 10(2) or (3), it shall review that decision at appropriate intervals.

Wednesday 7 July 2010

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 market participant concerned and the main content of the decision, **unless such publication is in conflict with** the legitimate interest of financial market participants in the protection of their business secrets **or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the European Union.**

## CHAPTER III

## ORGANISATION

## Section 1

## Board of Supervisors

## Article 25

## Composition

1. The Board of Supervisors shall be composed of:
  - (a) the Chairperson, who shall be non-voting;
  - (b) the *Heads of the national public authorities competent for the supervision of financial market participants* in each Member State, **who shall meet in person at least twice a year;**
  - (c) one representative of the Commission who shall be non-voting;
  - (d) one representative of the ESRB who shall be non-voting;
  - (e) one representative of each of the other two European Supervisory Authorities who shall be non-voting.

**1a. The Board of Supervisors shall convene meetings with the Securities and Markets Stakeholder Group regularly, at least twice per year.**

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

**2a. In Member States where there is more than one authority competent for the supervision according to this Regulation, those authorities shall agree on a common representative. Nevertheless, when an item to be discussed by the Board of Supervisors does not fall within the competence of the national authority being represented by the member referred to in paragraph 1(b), that member may bring a representative from the relevant national authority, who shall be non-voting.**

3. For the purpose of acting within the scope of Directive 97/9/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 **investors-guarantee** schemes in each Member State, who shall be non-voting.

4. 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.

Wednesday 7 July 2010

## Article 26

### Internal committees and Panels

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

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

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

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

## 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 **sole interest of Union as a whole** and shall neither seek nor take instructions from **Union** institutions or bodies, from a Government of a Member State or from any other public or private body.

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

## Article 28

### Tasks

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

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

3. The Board of Supervisors shall appoint the Chairperson.

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

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



Wednesday 7 July 2010

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

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

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

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

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

#### Article 29

##### Decision making

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

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

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

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

2. Meetings of the Board of Supervisors shall be convened by the Chairperson at his or her own initiative or at the request of one third of its members, and shall be chaired by the Chairperson.

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

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

Wednesday 7 July 2010

Section 2

Management Board

Article 30

Composition

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

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

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

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

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

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

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

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

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

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

Article 31

Independence

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

**No Member State, Union institution or body, or any other public or private body shall seek to influence the members of the Management Board.**

Wednesday 7 July 2010

## 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 **propose an** annual report on the activities of the Authority, **including on the Chairperson's duties**, on the basis of the draft report referred to in Article 38(7) **to the Board of Supervisors for approval and submission** to the European Parliament **■**.
7. The Management Board shall adopt and make public its rules of procedure.
8. The Management Board shall appoint and remove the members of the Board of Appeal in accordance with Article 44(3) and 44(5).

## Section 3

## Chairperson

## Article 33

## Appointment and tasks

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

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

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

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

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

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

Wednesday 7 July 2010

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

(a) the results achieved in the first term of Office and the way they were achieved;

(b) the Authority's duties and requirement in the coming years.

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

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

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

#### Article 34

##### Independence

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

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

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

#### Article 35

##### Report

1. The European Parliament **and the Council** may invite the Chairperson or his or her alternate, while fully respecting his or her independence ■ to make a statement. **The Chairperson shall make a statement before the European Parliament and answer any questions put by its members, whenever so requested.**

2. **The Chairperson shall report in writing on the main activities of the Authority to the European Parliament when requested and at least 15 days before making the statement referred to in paragraph 1.**

2a. **In addition to the information referred to in Articles 7a to 7e, 8, 9, 10, 11a and 18, the Report shall also include any relevant information requested by the European Parliament on an ad-hoc basis.**

Wednesday 7 July 2010

## 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 market participants and markets, and experience relevant to financial supervision and regulation and managerial experience, following an open selection procedure **after the confirmation of the European Parliament**.
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.

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

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

Wednesday 7 July 2010

## Article 38

### Tasks

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

## CHAPTER IV

### EUROPEAN SYSTEM OF FINANCIAL SUPERVISORS

#### Section 1

#### **■ European Supervisory Authority (Joint Committee)**

### Article 40

#### Establishment

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

Wednesday 7 July 2010

- *anti-money laundering measures; and*
- *information exchange with the European Systemic Risk Board and developing the relationship between the European Systemic Risk Board and the European Supervisory Authorities.*

3. *The Joint Committee shall have a dedicated staff provided by the three European Supervisory Authorities that shall act as a secretariat.* The Authority shall contribute adequate resources to administrative, infrastructure, and operational expenses.

#### Article 40a

##### Supervision

*In the event that a financial institution reaches across different sectors, the Joint Committee shall resolve disagreements in accordance with article 42 of this Regulation.*

#### Article 41

##### Composition

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

The Joint Committee 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 Supervisory Authority (*Insurance and Occupational Pensions*) and with the European Supervisory Authority (*Banking*) 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 Supervisory Authority (*Insurance and Occupational Pensions*) or the European Supervisory Authority (*Banking*) shall be adopted by the Authority, the European Supervisory Authority (*Insurance and Occupational Pensions*), and the European Supervisory Authority (*Banking*), as appropriate, in parallel.

Wednesday 7 July 2010

#### Article 43

##### Sub-committees

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

#### Section 3

##### Board of Appeal

#### Article 44

##### Composition

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

The Board of Appeal designates its President.

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

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

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

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

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



Wednesday 7 July 2010

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

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

#### Article 45

##### Independence and impartiality

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

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

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

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

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

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

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

6. The members of the Board of Appeal shall undertake to act independently and in the public interest.

For that purpose, they shall make a declaration of commitments and a declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence.

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

Wednesday 7 July 2010

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 invite the parties to the appeal proceedings to file observations on notifications issued by itself or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make an oral presentation.

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

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

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

Article 47

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

1. An action may be brought before the **General** Court or the Court of Justice, in accordance with **Article 263 TFEU**, contesting a decision taken by the Board of Appeal or, in cases where there is no right of appeal before the Board of Appeal, by the Authority.

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

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

Wednesday 7 July 2010

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

## CHAPTER VI

## FINANCIAL PROVISIONS

## Article 48

## Budget of the Authority

1. The revenues of the Authority, **a European body in accordance with Article 185 of Council Regulation (EC, Euratom) No 1605/2002**, shall consist, in particular, of **any combination of the following**:

- (a) obligatory contributions from the **national public authorities competent for the supervision of financial institutions; which shall be made in accordance with a formula based on the weighting of votes set out in Article 3(3) of the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union and to the TFEU**;
- (b) a subsidy from the Union, entered in the General Budget (Commission Section); **the financing of the Authority by the Union is subject to an agreement by the budgetary authority as foreseen in Point 47 of the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management**;
- (c) any fees paid to the Authority in the cases specified in the relevant instruments of **Union** law.

2. The expenditure of the Authority shall include, at least, staff, remuneration, administrative, infrastructure, **professional training** and operational expenses.

3. Revenue and expenditure shall be in balance.

4. Estimates of all Authority revenue and expenditure shall be prepared for each financial year, corresponding to the calendar year, and shall be presented in the budget of the Authority.

## Article 49

## Establishment of the budget

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

2. The statement of estimates shall be transmitted by the Commission to the European Parliament and to the Council (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 **Articles 313 and 314** of the Treaty.

Wednesday 7 July 2010

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

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

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

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

#### Article 50

##### Implementation and control of the budget

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

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

The Commission's accounting officer shall then consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002 <sup>(1)</sup>, (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.

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.

<sup>(1)</sup> OJ L 248, 16.9.2002, p. 1.

Wednesday 7 July 2010

7. The Executive Director shall send the Court of Auditors a reply to the latter's observations by 30 September. He or she shall also send a copy of this reply to the Management Board and the Commission.

8. The Executive Director shall submit to the European Parliament, at the latter's request and as provided for in Article 146(3) of the Financial Regulation, any information necessary for the smooth application of the discharge procedure for the financial year in question.

9. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget (**including all costs and revenues of the Authority**) for the financial year N.

#### Article 51

##### Financial rules

The financial rules applicable to the Authority shall be adopted by the Management Board after the Commission has been consulted. Those rules may not depart from Commission Regulation (EC, Euratom) No 2343/2002 <sup>(1)</sup> 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) <sup>(2)</sup> and shall immediately adopt appropriate provisions for all staff of the Authority.

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

#### CHAPTER VII

##### GENERAL PROVISIONS

#### Article 53

##### Privileges and immunities

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

<sup>(1)</sup> OJ L 357, 31.12.2002, p. 72.

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 15.

Wednesday 7 July 2010

#### Article 54

##### Staff

1. The Staff Regulations, the Conditions of employment of other servants and the rules adopted jointly by the **Union** institutions for the purpose of applying these shall apply to the staff of the Authority, including its Executive Director **and its Chairperson**.
2. The Management Board, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations.
3. In respect of its staff, the Authority shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of employment of other servants.
4. The Management Board shall adopt provisions to allow national experts from Member States to be seconded to the Authority.

#### Article 55

##### Liability of the Authority

1. In the case of non-contractual liability, the Authority shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its staff in the performance of their duties. The Court of Justice shall have jurisdiction in any dispute over the remedying of such damage.
2. The personal financial liability and disciplinary liability of Authority staff towards the Authority shall be governed by the relevant provisions applying to the staff of the Authority.

#### Article 56

##### Obligation of Professional Secrecy

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

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

***No Member State, Union institution or body, or any other public or private body shall seek to influence staff members of the Authority.***

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

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

Wednesday 7 July 2010

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

**I**

## 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 228** and **263 TFEU** respectively.

## Article 59

## Language arrangements

1. The provisions of Council Regulation No 1 <sup>(1)</sup> 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

<sup>(1)</sup> OJ L17, 6.10.1958, p. 385/58.

Wednesday 7 July 2010

## Article 61

### Participation of third countries

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

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

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

## CHAPTER VIII

### TRANSITIONAL AND FINAL PROVISIONS

## Article 62

### Preparatory actions

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

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

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

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

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

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



Wednesday 7 July 2010

## Article 63

## Transitional Staff provisions

1. By way of derogation from Article 54, all employment contracts **and secondment agreements** concluded by the Committee of European Securities Regulators 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 **■** referred to in paragraph 1 shall be offered the possibility of concluding temporary agent contracts under Article 2(a) of the Conditions of Employment of Other Servants at the various grades as set out in the Authority's establishment plan.

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

3. Depending on the type and level of functions to be performed, successful applicants shall be offered temporary agents' contracts of a duration corresponding at least to the time remaining under the prior contract.
4. The relevant national law relating to labour contracts and other relevant instruments shall continue to apply to staff members with prior contracts who choose not to apply for temporary agent's contracts or who are not offered temporary agents contracts in accordance with paragraph 2.

**Article 63a****National provisions**

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

## Article 64

## Amendments

Council and Parliament Decision **No 716/2009/EC** is hereby amended insofar as the Committee of European Securities Regulators is removed from the list of beneficiaries set out in Section B of the Annex to that Decision.

## Article 65

## Repeal

Commission Decision 2009/77/EC, establishing the Committee of European Securities Regulators, is hereby repealed **with effect from 1 January 2011.**

## Article 66

**Review clause**

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

(\*) **six months from the date of entry into force of this Regulation.**

Wednesday 7 July 2010

1. By ... (\*) and every three years thereafter, the Commission shall **submit to the European Parliament and the Council the necessary proposals to ensure the establishment of a credible resolution framework including systems of contributions by financial market participants to contain systemic risks** and publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation.

That report shall ■ evaluate, *inter alia*:

- (a) *the convergence in supervisory practices reached by competent authorities;*
- (b) *the functioning of the colleges of supervisors;*
- (c) *progress achieved towards convergence in the fields of crisis prevention, management and resolution, including European funding mechanisms;*
- (d) *whether, notably in light of the progress achieved with regard to the issues referred to in (c), the role of the Authority in the supervision of financial market participants posing a potential systemic risk should be strengthened and whether it should exercise enhanced supervisory powers over those market participants;*
- (e) *the application of the Safeguard clause established in Article 23 and in particular whether this clause may unduly prevent the Authority from fulfilling its role as set out in this Regulation.*

1a. The report referred to in paragraph 1 shall also examine whether:

- (a) *it is appropriate to move the Authorities to a single seat to enhance a better coordination between them;*
- (b) *it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets;*
- (c) *it is appropriate to supervise prudential supervision and the conduct of business separately or by the same supervisor;*
- (d) *it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;*
- (e) *the evolution of the ESFS is consistent with that of the global evolution;*
- (f) *there is sufficient diversity and excellence within the ESFS;*
- (g) *accountability and transparency in relation to publication requirements are adequate;*
- (h) *the appropriateness of the seat of the Authority;*
- (i) *to establish a Stability Fund for Securities and Markets at EU level as the best defence against competitive distortion and most efficient way to deal with the failure of a cross-border market participants.*

(\*) *three years after the date of application of this Regulation.*

Wednesday 7 July 2010

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

## Article 67

## Entry into force

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

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

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

Done at,

For the European Parliament  
The President

For the Council  
The President

## **Macro-prudential oversight of the financial system and establishment of a European Systemic Risk Board \*\*\*I**

P7\_TA(2010)0271

**Proposal for a regulation of the European Parliament and of the Council on Community macro prudential oversight of the financial system and establishing a European Systemic Risk Board (COM(2009)0499 – C7-0166/2009 – 2009/0140(COD))**

(2011/C 351 E/37)

(Ordinary legislative procedure: first reading)

The proposal was amended on 7 July 2010 as follows <sup>(1)</sup>:

### AMENDMENTS BY PARLIAMENT (\*)

to the Commission proposal

### REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**on *Union* macro-prudential oversight of the financial system and establishing a European Systemic Risk Board**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

<sup>(1)</sup> The matter was then referred back to committee pursuant to Rule 57(2), second subparagraph (A7-0168/2010).

(\*) Political amendments: new or replacement text is marked in **bold italics** and deletions are indicated by the symbol **■**.

Wednesday 7 July 2010

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Central Bank <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) **Financial stability is a precondition for the real economy to provide jobs, credit and growth.** The financial crisis has revealed important shortcomings in financial supervision, which has failed to prevent the accumulation of excessive risks within the financial system. **The crisis has huge consequences for the tax payers, for many Union citizens who are now unemployed and for many small and medium size enterprises (SMEs). The Members States cannot afford to bail out financial institutions, in the event of a new crisis on the same scale, without breaching the rules of the Stability and Growth Pact.**
- (1a) **Long before the financial crisis, the European Parliament was already calling regularly for the reinforcement of a true level playing field for all actors at the Union level while pointing out significant failures in the Union's supervision of ever more integrated financial markets (in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan <sup>(4)</sup>, of 21 November 2002 on prudential supervision rules in the European Union <sup>(5)</sup>, of 11 July 2007 on financial services policy (2005-2010) – White Paper <sup>(6)</sup>, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity <sup>(7)</sup>, of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision <sup>(8)</sup>, of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) <sup>(9)</sup> and of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies <sup>(10)</sup>).**
- (2) In November 2008, the Commission mandated a High Level Group chaired by Mr Jacques de Larosière (the 'de Larosière Group') to make recommendations on how to strengthen European supervisory arrangements with a view to better protecting its citizens and rebuilding trust in the financial system.
- (3) In its final report presented on 25 February 2009 (**the de Larosière Report**), the de Larosière Group recommended, among other things, the establishment of a **Union** level body charged with overseeing risk in the financial system as a whole.
- (4) In its Communication entitled 'Driving European Recovery' of 4 March 2009, the Commission welcomed and broadly supported the recommendations of the de Larosière Group. At its meeting of 19 and 20 March 2009, the European Council agreed on the need to improve the regulation and supervision of financial institutions within the EU and to use the report from the de Larosière Group as a basis for action.

<sup>(1)</sup> OJ C 270, 11.11.2009, p. 1.

<sup>(2)</sup> Opinion of 22 January 2010 (not yet published in the Official Journal).

<sup>(3)</sup> Position of the European Parliament of ....

<sup>(4)</sup> OJ C 40, 7.2.2001, p. 453.

<sup>(5)</sup> OJ C 25 E, 29.1.2004, p. 394.

<sup>(6)</sup> OJ C 175 E, 10.7.2008, p. 392.

<sup>(7)</sup> OJ C 8 E, 14.1.2010, p. 26.

<sup>(8)</sup> OJ C 9 E, 15.1.2010, p. 48.

<sup>(9)</sup> Texts adopted, P6\_TA(2009)0251.

<sup>(10)</sup> Texts adopted, P6\_TA(2009)0279.

Wednesday 7 July 2010

- (5) In its Communication entitled 'European Financial Supervision' of 27 May 2009, the Commission set out a series of reforms to the current arrangements for safeguarding financial stability at **Union** level, notably including the creation of a European Systemic Risk Board (ESRB) responsible for macro-prudential oversight. The Council on 9 June 2009 and the European Council at its meeting of 18 and 19 June supported the view of the Commission and welcomed the Commission's intention to bring forward legislative proposals so that the new framework is in place in the course of 2010. In line with the views of the Commission, it concluded inter alia that the ECB 'should provide analytical, statistical, administrative and logistical support to the ESRB, also drawing on technical advice from national central banks and supervisors'. **The support provided by the ECB to the ESRB as well as the tasks conferred upon and assigned to the ESRB should be without prejudice to the principle of the independence of the ECB in the performance of its tasks pursuant to the Treaty on the Functioning of the European Union (TFEU).**
- (5a) *Given the integration of international financial markets, there is a need for a strong commitment on the part of the Union at the global level. The ESRB should draw expertise from a high-level scientific committee and take on all the global responsibilities required in order to ensure that the voice of the Union is heard on financial stability matters, in particular in cooperating closely with the International Monetary Fund (IMF), the Financial Services Board (FSB) and all the partners of the Group of Twenty (G-20).*
- (5b) *The ESRB should contribute, inter alia, towards implementing the recommendations of the IMF, the FSB and the Bank for International Settlements (BIS) to the G-20, in the initial consideration of their report on Guidance to Assess the Systemic Importance of Financial Institutions, Markets and Instruments published in October 2009 which states that systemic risk must be dynamic to take into account the evolution of the financial sector and of the global economy. Systemic risk may be seen as a risk of disruption to financial services that is caused by an impairment of all or parts of the financial system and has the potential to have serious negative consequences for the real economy.*
- (5c) *The report on Guidance to Assess the Systemic Importance of Financial Institutions also states that the assessment of systemic risk is likely to vary depending on the economic environment. It will also be conditioned by the financial infrastructure and crisis management arrangements, and the capacity to deal with failures when they occur. Institutions may be systemically important for local, national or international financial systems and economies. The key criteria helping to identify the systemic importance of markets and institutions are size (the volume of financial services provided by the individual component of the financial system), substitutability (the extent to which other components of the system can provide the same services in the event of a failure) and interconnectedness (linkages with other components of the system). An assessment based on those three criteria should be complemented with reference to financial vulnerabilities and the capacity of the institutional framework to deal with financial failures.*
- (5d) *The ESRB's task should be to monitor and assess systemic risk in normal times for the purpose of mitigating the exposure of the system to the risk of failure of systemic components and enhancing the financial system's resilience to shocks. In this respect, the ESRB should ensure financial stability and mitigate the negative impacts on the internal market and the real economy. In order to accomplish its objectives, the ESRB should analyse all the relevant information, in particular relevant legislation with a potential impact on financial stability, such as accounting, bankruptcy and bail-out rules.*
- (6) *A proper functioning of Union and global financial systems and the mitigation of threats thereto require enhanced consistency between macro and the micro supervision. As stated in the Turner review, 'A regulatory response to the global banking crisis', of March 2009, 'Sounder arrangements require either increased national powers, implying a less open single market, or a greater degree of European integration'. Given the role of a sound financial system in terms of its contribution to competitiveness and growth in the Union and its impact on the real economy, the Union institutions, as recommended in the de Larosière Report, have opted for a greater degree of European integration.*

Wednesday 7 July 2010

- (6a) *This newly designed system of macro supervision requires credible and high-profile leadership. Therefore, given its key role and its international and internal credibility, and in the spirit of the de Larosière Report, the President of the ECB should be the Chair of the ESRB. In addition, the accountability requirements should be increased as well as the enlargement of the composition of the ERSB bodies to encompass a wide range of experience, backgrounds and opinions.*
- (6b) *The de Larosière Report also states that macro-prudential supervision is not meaningful unless it can somehow impact on supervision at the micro-level whilst micro-prudential supervision cannot effectively safeguard financial stability without adequately taking account of macro-level developments.*
- (6c) *A European System of Financial Supervision (ESFS) should be established, gathering the actors of financial supervision both at a national and at the Union level, to act as a network. Pursuant to the principle of sincere cooperation in accordance with Article 4(3) of the Treaty on European Union, the parties to the ESFS should cooperate with trust and full mutual respect, in particular to ensure that appropriate and reliable information flows between them. At the Union level, the network should comprise the ESRB and three micro-supervisory authorities: the European Supervisory Authority (Banking), established by Regulation (EU) No .../2010, the European Supervisory Authority (Securities and Markets), established by Regulation (EU) No .../2010, and the European Supervisory Authority (Insurance and Occupational Pensions) established by Regulation (EU) No .../2010.*
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- (7a) *The ESRB should comprise a General Board, a Steering Committee, a Secretariat, and an Advisory Scientific Committee.*
- (8) *The ESRB should, where appropriate, issue **and make public** warnings and recommendations of a general nature concerning the **Union** as a whole, individual Member States or groups of Member States, with a specified timeline for the relevant policy response. **Where such warnings or recommendations are addressed to individual, or a group of, Member States, it may be possible for the ESRB to propose appropriate support measures. Where appropriate, the Commission on its own initiative or at the request of the ESRB, an Authority, the European Parliament or the Council, may adopt a decision addressed to an Authority, determining the existence of an emergency situation***
- (8a) *The ESRB should decide whether a recommendation should be kept confidential or made public, bearing in mind that public disclosure can help to foster compliance with the recommendations in certain circumstances.*
- (8b) *A colour code should be elaborated by the ESRB, in order to allow interested parties better to assess the nature of the risk.*
- (9) *In order to increase their weight and legitimacy, such warnings and recommendations should be transmitted through **the European Parliament**, the Council, **the Commission**, **the addressees** and, where appropriate, the **ESAs**.*
- (10) *The ESRB should also monitor compliance with its recommendations, based on reports from addressees, in order to ensure that its warnings and recommendations are effectively followed. Addressees of recommendations should adequately **justify any failure in duly complying with the ESRB recommendations** (the 'act-or-explain mechanism'), **in particular towards the European Parliament. The ESRB should be able to have recourse to the European Parliament and to the Council in cases where it is not satisfied with the addressees' response to the recommendations.***

Wednesday 7 July 2010

- I
- (12) The ESRB should report to the European Parliament and the Council at least annually, and more frequently in the event of widespread financial distress.
- (13) The ECB and the national central banks should have a leading role in macro-prudential oversight because of their expertise and existing responsibilities in the area of financial stability. The participation of micro-prudential supervisors in the work of the ESRB is essential to ensure that assessment of macro-prudential risk is based on complete and accurate information about developments in the financial system. Accordingly, the chairpersons of the European Supervisory Authorities should be members with voting rights. **In a spirit of openness, six independent persons, who should not be members of an ESA, chosen on the basis of their general competence and commitment to the Union and their diverse backgrounds in academic fields or in the private sector, in particular in SMEs, trade-unions or as providers or consumers of financial services and offering all guarantees in terms of independence and confidentiality, should be members of the General Board. One representative of the national competent authorities of every Member State should attend meetings of the General Board** without voting rights.
- (14) The participation of a Member of the Commission will help to establish a link with the macro-economic and financial surveillance of the **Union**, while the presence of the Chairman of the Economic and Financial Committee reflects the role of finance ministries in safeguarding financial stability.
- (14a) **Because banks and financial institutions from third countries that are members of the European Economic Area or the European Free Trade Association may operate within the Union, it should be possible to invite one high-level representative from each of those countries to participate in meetings of the General Board subject to authorisation from their home country.**
- (15) It is essential that the members of the ESRB perform their duties impartially and only consider the financial stability of the European Union as a whole. **Where a consensus cannot be reached**, voting on warnings and recommendations within the ESRB should not be weighted and decisions should as a rule be taken by a simple majority.
- (16) The interconnectedness of financial institutions and markets implies that the monitoring and assessment of potential systemic risks should be based on a broad set of relevant macro-economic and micro-financial data and indicators. **Those systemic risks include risks of disruption to financial services caused by a significant impairment of all or parts of the Union's financial system that have the potential to have serious negative consequences for the internal market and the real economy. Any type of financial institution and intermediary, market, infrastructure and instrument has the potential to be systemically significant.** The ESRB should therefore have access to all the information necessary to perform its duties while preserving the confidentiality of these data as required.
- (17) Market participants can provide valuable input to the understanding of the evolutions affecting the financial system. Where appropriate, the ESRB should therefore consult private sector stakeholders (financial sector representatives, consumer associations, user groups in the financial services area established by the Commission or **Union** legislation ...) and give them a fair opportunity to provide their comments. **Furthermore, given that there is no rigid definition of systemic risk and that the assessment of systemic risk may vary depending on the economic environment, the ESRB should ensure a wide range of experiences and skills among its staff and advisors.**
- I

Wednesday 7 July 2010

- (19) The establishment of the ESRB should contribute directly to achieving the objectives of the Internal Market. The **Union** macro prudential oversight of the financial system is an integral part of the overall new supervisory arrangements in the **Union** as the macro-prudential aspect is closely linked to the micro-prudential supervisory tasks attributed to the European Supervisory Authorities. Only with arrangements in place that properly acknowledge the interdependence between micro- and macro-prudential risks can all stakeholders have sufficient confidence to engage in cross-border financial activities. The ESRB should monitor and assess risks to financial stability arising from developments that can impact on a sectoral level or at the level of the financial system as a whole. By addressing such risks, the ESRB should directly contribute to an integrated **Union** supervisory structure necessary to promote timely and consistent policy responses among the Member States, thus preventing diverging approaches and improving the functioning of the Internal Market.
- (20) Since an effective macro-prudential oversight of the **Union** financial system cannot be sufficiently achieved by the Member States because of the integration of the European financial markets, the **Union** 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 to achieve those objectives,
- (20a) *As suggested in the de Larosière Report, a step-by-step approach is necessary and the European Parliament and the Council should conduct a full review of the ESFS, the ESRB and the ESAs by ... (\*)*,

HAVE ADOPTED THIS REGULATION:

#### CHAPTER I

#### GENERAL PROVISIONS

#### Article 1 ■

1. A European Systemic Risk Board, hereinafter referred to as 'ESRB', is established. **It shall have its seat in Frankfurt.**

1a. **The ESRB shall be part of the European System of Financial Supervision (ESFS), the purpose of which is to ensure the supervision of the Union's financial system.**

1b. **The ESFS shall comprise:**

(a) **the ESRB;**

(b) **the European Supervisory Authority (Securities and Markets) established by Regulation (EU) No .../2010 [ESMA];**

(c) **the European Supervisory Authority (Insurance and Occupational Pensions) established by Regulation (EU) No .../2010 [EIOPA];**

(d) **the European Supervisory Authority (Banking) established by Regulation (EU) No .../2010 [EBA];**

(e) **the European Supervisory Authority (Joint Committee) provided for by Article 40 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA] and of Regulation (EU) No .../2010 [EIOPA];**

(\*) **three years after the entry into force of this Regulation.**



Wednesday 7 July 2010

- (f) *the authorities in the Member States as specified in Article 1(2) of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA] and of Regulation (EU) No .../2010 [EIOPA];*
- (g) *the Commission, for the purposes of carrying out the tasks referred to in Articles 7 and 9 of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA] and of Regulation (EU) No .../2010 [EIOPA].*

*The ESAs referred to in points (b), (c) and (d) shall have their headquarters in Frankfurt.*

*They may have representations in the most important financial centres of the European Union.*

*1c. Pursuant to the principle of sincere cooperation in accordance with Article 4(3) of the Treaty on European Union, the parties to the ESFS shall cooperate with trust and full mutual respect, in particular to ensure that appropriate and reliable information flows between them.*

#### Article 2

##### Definitions

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

- (a) *'financial institution' means any undertaking covered by the legislation referred to in Article 1(2) of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA] and of Regulation (EU) No .../2010 [EIOPA], and any other undertaking or entity operating in the Union, whose financial activities may pose a systemic risk even if they have no direct links with the public at large;*
- (b) *'financial system' means all financial institutions, markets, products and market infrastructures;*
- (ba) *'systemic risk' means a risk of disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree.*

#### Article 3

##### Mission, Objectives and Tasks

1. The ESRB shall be responsible for the macro-prudential oversight of the financial system within the **Union** in order to **contribute to the prevention or mitigation of systemic risks to financial stability in the Union that arise from developments** within the financial system **and taking into account macro-economic developments**, so as to avoid **periods** of widespread financial distress, **and** contribute to a smooth functioning of the internal market and **thereby** ensure a sustainable contribution of the financial sector to economic growth.
2. For the purposes of paragraph 1, the ESRB shall carry out the following tasks:
  - (a) determine and/or collect, as appropriate, and analyse all the **relevant** information, **including legislation with a potential impact on financial stability such as accounting, reorganisation and winding-up rules**, for the **objectives** described in paragraph 1;
  - (b) identify and prioritise **systemic** risks;

Wednesday 7 July 2010

- (c) issue warnings where **such systemic** risks are deemed to be significant **and, where appropriate, make them public**;
- (d) issue recommendations for remedial action **in response to the risks identified and**, where appropriate, **make them public**;
- (da) **issue a confidential warning addressed to the Commission when the ESRB deems that an emergency situation as defined in Article 10 of Regulation (EU) No .../2010 [ESMA], of Regulation (EU) No .../2010 [EIOPA] and of Regulation (EU) No .../2010 [EBA] may arise. The ESRB shall provide with an assessment of the situation, in order for the Commission to determine the need to adopt a decision addressed to the ESAs determining the existence of an emergency situation.**
- (e) monitor the follow-up to warnings and recommendations;
- (f) cooperate closely with **all the other parties to the ESFS** and, where appropriate, provide the ESAs with the information on systemic risks required for the achievement of their tasks; **in particular the ESRB shall, in collaboration with the ESAs, develop a common set of quantitative and qualitative indicators (risk dashboard), which will serve as the basis to assign a supervisory rating to cross-border institutions that potentially could pose a systemic risk.**

**Such rating will be reviewed on a regular basis, reflecting material changes of the risk profile of an institution. The supervisory rating will be a critical element for the decision to directly supervise or intervene in an ailing institution;**

- (fa) **participate, where appropriate, in the Joint Committee;**
- (g) coordinate with international financial organisations, particularly the International Monetary Fund and the Financial Stability Board as well as the relevant bodies in third countries on matters related to macro-prudential oversight;
- (h) carry out other related tasks as specified in **Union** legislation.

## CHAPTER II

### ORGANISATION

#### Article 4

#### Structure

1. The ESRB shall have a General Board, a Steering Committee, a Secretariat **and an Advisory Scientific Committee**.
2. The General Board shall take the decisions necessary to ensure the performance of the tasks entrusted to the ESRB.
3. The Steering Committee shall assist in the decision-making process of the ESRB by **preparing** the meetings of the General Board, reviewing the documents to be discussed and monitoring the progress of the ESRB's ongoing work.

Wednesday 7 July 2010

4. The Secretariat **shall be responsible for the day-to-day business of the ESRB and all staff matters**. It shall provide **high-quality** analytical, statistical, administrative and logistical support to the ESRB under the direction of the Chair of the General Board in accordance with Council **Regulation (EU) No .../2010 [ESRB]**. **It shall also draw on technical advice from ESAs, national central banks and national supervisors.**

5. The **Advisory Scientific** Committee referred to in Article 12 shall provide advice and assistance on issues relevant to the work of the ESRB.

#### Article 5

##### Chairmanship

1. The Chair of the ESRB shall be **the President of the ECB**.

**1a. The first Vice-Chair shall be elected by and from the Members of the General Council of the ECB for a term of 5 years, with regard to the need for a balanced representation of Member States, and those within and outside the euro area. He or she may be re-elected once.**

**1b. The second Vice-Chair shall be the Chair of the Joint Committee as appointed pursuant to Article [XX] of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA], and of Regulation (EU) No .../2010 [EIOPA].**

**1c. The Chair and Vice-Chairs shall present to the European Parliament, during a public hearing, how they intend to discharge their duties under this Regulation.**

2. The Chair shall preside at the meetings of the General Board and the Steering Committee.

3. The **Vice-Chairs, in order of precedence**, shall preside at the General Board and/or the Steering Committee when the Chair cannot participate in a meeting.

4. If the term of office of the Members of the General Council of the ECB elected as **first** Vice-Chair ends before the completion of the 5 year term or if for any reason the **first** Vice Chair is unable to discharge their duties, a new **first** Vice-Chair shall be elected in accordance with **paragraph 1a**.

5. The Chair shall represent the ESRB externally.

#### Article 6

##### General Board

1. The following persons shall be Members of the General Board with voting rights:

(a) the President and the Vice-President of the ECB;

(b) the Governors of the national central banks;

(c) a Member of the European Commission;

(d) the Chairperson of the European Banking Authority;

Wednesday 7 July 2010

- (e) the Chairperson of the European Insurance and Occupational Pensions Authority;
  - (f) the Chairperson of the European Securities and Markets Authority;
- (fa) six independent persons appointed by the Members of the General Board with voting rights on the proposal of the Joint Committee; the nominees must not be Members of the ESAs and shall be chosen on the basis of their general competence as well as for their diverse backgrounds in academic fields or other sectors, in particular in small and medium size enterprises, trade-unions or as providers or consumers of financial services; at the time of their nomination, the Joint Committee shall indicate which persons are designated also to serve on the Steering Committee; in carrying out their responsibilities, the persons nominated shall neither seek nor take instructions from any Government, institution, body, office, entity or private person; they shall refrain from any action incompatible with their duties or the performance of their tasks.*
- 2. The following persons shall be Members of the General Board without voting rights:
    - (a) one high level representative per Member State of the competent national supervisory authorities, **in accordance with paragraph 3 of this Article**;
    - (b) the President of the Economic and Financial Committee.
  - 3. **With regard to the representation of** national supervisory authorities **█**, the respective high level representatives shall **rotate depending on the item discussed, unless the national supervisory authorities have agreed on a common representative.**
  - 4. The General Board shall establish the Rules of Procedure for the ESRB.

#### Article 7

##### Impartiality

1. When participating in the activities of the General Board and of the Steering Committee or when conducting any other activity relating to the ESRB, the Members of the ESRB shall perform their duties impartially and **solely in the interest of the European Union as a whole. They** shall neither seek nor take instructions from Member States, **Union institutions or any other public or private body.**

**1a. Members of the General Board who are also members of the General Council of the ECB shall act independently when performing their duties.**

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

#### Article 8

##### Professional secrecy

1. Members of the General Board of the ESRB and any other persons who work or who have worked for or in connection with the ESRB (including the relevant staff of central banks, Advisory **Scientific** Committee, ESAs and competent national supervisory authorities of the Member States), shall be required not to disclose information covered by professional secrecy, even after their duties have ceased.

Wednesday 7 July 2010

2. Information received by Members of the ESRB may only be used in the course of their duties and in performing the tasks set out in Article 3(2).
3. Without prejudice to Article 16 and the application of criminal law, any confidential information received by the 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.
4. The ESRB shall, **together** with the European Supervisory Authorities, **agree** on **and establish** specific confidentiality procedures **in order** to safeguard information **regarding** individual financial institutions, or information where individual financial institutions can be identified.

#### Article 9

##### Meetings of the General Board

1. Ordinary plenary meetings of the General Board shall be convened by the Chair of the General Board and shall occur at least four times a year. Extraordinary meetings may be convened at the initiative of the Chair of the General Board or at the request of at least one third of the Members with voting rights.
  2. Each Member shall be present in person at the meetings of the General Board and may not be represented.
  3. By way of derogation from paragraph 2, a Member who is prevented from attending the meetings for a prolonged period may appoint an alternate. That Member may also be replaced by a person who has been formally appointed under the rules governing the institution concerned for the substitution of representatives on a temporary basis.
- 3a. Where appropriate, high-level representatives from international institutions carrying out other related activities may be invited to attend the meetings of the General Board.**
- 3b. Where appropriate, and on an ad hoc basis, one high-level representative of a third country, in particular a member country of the European Economic Area or the European Free Trade Association, may be invited to attend meetings of the General Board, depending on the item discussed.**
4. The proceedings of the meetings shall be confidential.

#### Article 10

##### Voting modalities of the General Board

1. Each Member of the General Board with a voting right shall have one vote.
2. **Without prejudice to the voting procedures set out in Article 18(1), the** General Board shall act by a simple majority of Members present with voting rights. In the event of a tie, the Chair shall have the casting vote.
3. A quorum of two-thirds of the Members with voting rights is needed for any vote to be taken by the General Board. If the quorum is not met, the Chair may convene an extraordinary meeting at which decisions may be taken **with a quorum of one third. The rules of procedure shall set an adequate notice applicable for convening an extraordinary meeting.**

Wednesday 7 July 2010

**3a. By derogation from paragraph 2, a majority of two-thirds of the votes shall be required to make a warning or recommendation public.**

#### Article 11

##### Steering Committee

1. The Steering Committee shall be composed of the following:
  - (a) the Chair of the ESRB;
  - (b) the **first** Vice-Chair of the ESRB;
  - (ba) the Vice-President of the ECB;**
  - (c) **four** other members of the General Board who are also members of the General Council of the ECB, **with regard to the need for a balanced representation of Member States and those within and outside the euro area.** They shall be elected by and from **among** the Members of the General Board who are also members of the General Council of the ECB for a period of **three years**;
  - (d) a Member of the European Commission;
  - (e) the Chairperson of the European **Supervisory** Authority (**Banking**);
  - (f) the Chairperson of the European **Supervisory** Authority (**Insurance and Occupational Pensions**);
  - (g) the Chairperson of the European **Supervisory** Authority (**Securities and Markets**);

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**(ha) three of the six independent persons referred to in Article 6(1)(fa).**

Any vacancy for an elected Member of the Steering Committee shall be filled by the election of a new Member by the General Board.

2. Meetings of the Steering Committee shall be convened by the Chair at least quarterly, before each meeting of the General Board. The Chair may also convene ad-hoc meetings.

#### Article 12

##### Advisory **Scientific** Committee

1. The Advisory **Scientific** Committee shall be composed of the following:
  - (a) **nine experts with acknowledged competence and guaranteed independence proposed by the Steering Committee, who shall represent a wide range of experiences and skills and who shall be approved by the General Board for a four-year, renewable mandate in carrying out their responsibilities, the persons nominated shall neither seek nor take instructions from any Government, institution, body, office, entity or private person; they shall refrain from any action incompatible with their duties or the performance of their tasks;**

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Wednesday 7 July 2010

- (c) one representative of the European **Supervisory** Authority (**Banking**);
- (d) one representative of the European **Supervisory** Authority (**Insurance and Occupational Pensions**);
- (e) one representative of the European **Supervisory** Authority (**Securities and Markets**);
- (f) two representatives of the Commission;
- (g) one representative of the Economic and Financial Committee.

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2. The Chair of the Advisory **Scientific** Committee shall be appointed by the General Board following a proposal from the Chair of the General Board.
3. The Committee shall perform the tasks referred to in Article 4(5) at the request of the Chair of the General Board.
4. The ESRB Secretariat shall support the work of the Advisory **Scientific** Committee and the Head of the Secretariat shall participate in the meetings.

**4a. Where appropriate, the Advisory Scientific Committee shall organize consultations at an early stage with stakeholders such as market participants, consumer bodies, academic experts, in an open and transparent manner, while keeping in mind the confidentiality requirement.**

**4b. The Advisory Scientific Committee shall be provided with all necessary means in order to successfully complete its tasks, in particular analytical and ICT tools.**

## Article 13

## Other sources of advice

In performing its tasks, the ESRB shall seek, where appropriate, the **views** of relevant private **or public** sector stakeholders, **particularly, but not exclusively, the members of the ESAs.**

## Article 14

## Access to documents

1. 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<sup>(1)</sup> shall apply to documents held by the ESRB.
2. The General Board shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001 within six months after the entry into force of this Regulation.
3. Decisions taken by the ESRB pursuant to Article 8 of Regulation (EC) No 1049/2001 may form the subject of a complaint to the Ombudsman or of an action before the Court of Justice, under the conditions laid down in **Articles 228 and 263 TFEU** respectively.

<sup>(1)</sup> OJ L 145, 31.5.2001, p. 43.

Wednesday 7 July 2010

CHAPTER III

TASKS

Article 15

Collection and exchange of information

1. The ESRB shall provide the European Supervisory Authorities with the information on systemic risks necessary for the achievement of their tasks.

2. The European Supervisory Authorities, **the ESCB, the Commission, the national supervisory authorities and national statistics authorities** shall cooperate closely with the ESRB and provide all the information necessary for the fulfilment of its tasks in accordance with **European Union** legislation.

3. **Subject to Article 21(2) of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [ESMA], of Regulation (EU) No .../2010 [EIOPA]**, the ESRB may request information from the European Supervisory Authorities, **as a rule** in summary or collective form such that individual financial institutions cannot be identified. █

**3a. Before requesting information in accordance with this Article, the ESRB shall first take account of the existing statistics produced, disseminated and developed by the European Statistical System and the ESCB.**

**3b. If the requested data are not available to those Authorities or are not made available in a timely manner, the ESRB may request the data from the ESCB, national supervisory authorities or national statistics authorities. When the data is not available at the aforementioned authorities, the ESRB may request the data from the Member State concerned.**

**3c. Where the ESRB requests data that is not in summary or collective form, the reasoned request shall explain why data on the respective individual financial institution is deemed to be systemically relevant, and necessary, considering the prevailing market situation.**

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5. Before each request for information which is not in summary or collective form, the ESRB shall duly consult the relevant European Supervisory Authority in order to ensure that the request is justified and proportionate. **If the relevant European Supervisory Authority does not consider the request to be justified and proportionate, it shall, without delay, send the request back to the ESRB and ask for additional justification. After the ESRB has provided the relevant European Supervisory Authority with such additional justification, the requested data shall be transmitted to the ESRB from the addressee of the request, provided that the addressee has legal access to the relevant data.**

Article 16

Warnings and recommendations

1. When significant risks to the achievement of the objective in Article 3(1) are identified, the ESRB shall provide warnings and, where appropriate, issue recommendations for remedial action, **including, where appropriate, for legislative initiatives.**

2. Warnings or recommendations issued by the ESRB in accordance with points (c) and (d) of Article 3(2) may be either of a general or specific nature and shall be addressed in particular to the **Union** as a whole or to one or more Member States, or to one or more of the European Supervisory Authorities, or to one or more national supervisory authorities. **In case a warning or a recommendation is addressed to one or more supervisory authorities, the Member State concerned shall be informed thereof.** Recommendations shall include a specified timeline for the policy response. Recommendations may also be addressed to the Commission in respect of the relevant **Union** legislation.



Wednesday 7 July 2010

3. The warnings or recommendations shall also be transmitted to the **European Parliament**, the Council, **the Commission**, **the addressees in accordance with paragraph 2**, and, where addressed to one or more national supervisory **authorities**, to the **ESAs**.

4. *In order to enhance the awareness of risks in the European economy and to prioritise such risks, the ESRB, in close cooperation with the ESFS, shall elaborate a colour-coded system corresponding to situations of different risk levels.*

*Once the criteria of such classification have been elaborated, its warnings and recommendations will indicate, on a case-by-case basis, and where appropriate, to which category the risk belongs.*

#### Article 16a

##### Action in emergency situations

*In the case of adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the European Union, the ESRB may issue an emergency warning.*

*The Commission on its own initiative or at the request of the ESRB, an Authority, the European Parliament or the Council, may adopt a decision addressed to an Authority, determining the existence of an emergency situation. The Commission shall review that decision at appropriate intervals and in any event once a month and shall declare the discontinuation of the emergency situation as soon as appropriate.*

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

#### Article 17

##### Follow-up of the ESRB recommendations

1. Where a recommendation referred to in **point (d)** of Article 3(2) is addressed to one or more Member States, one or more European Supervisory Authorities, or one or more national supervisory authorities, the addressees shall communicate the actions undertaken in response to the recommendations to the ESRB or explain why they have not acted. The **European Parliament**, **the Council** and, where relevant, the European Supervisory Authorities shall be informed.

2. *Where* the ESRB decides that **an addressee of one of its recommendations** has **failed to follow or has inappropriately followed that recommendation**, and that the **addressee has not justified such failure**, it shall inform **the European Parliament**, the Council, **the Commission** and, where relevant, the European Supervisory Authorities concerned.

2a. *Where the ESRB has made a decision under paragraph 2, the European Parliament may, where appropriate, invite an addressee for an exchange of views with its competent Committee. This exchange of views, in presence of the ESRB, is notably relevant when national decisions have an effect on one or multiple Member States (spill over effect).*

#### Article 18

##### Public warnings and recommendations

1. The General Board of the ESRB shall decide whether a warning or a recommendation should be made public on a case- by-case basis. By derogation **from** Article 10(2), a majority of two-thirds of the votes is needed to make a warning or recommendation public. **Notwithstanding Article 10(3), a quorum of two-third shall always apply in respect of decisions taken under this paragraph.**

Wednesday 7 July 2010

2. Where the General Board of the ESRB decides to make a warning or recommendation public, it shall inform the addressee(s) in advance.

**2a. The addressees of warnings and recommendations released by the ESRB should be provided with the rights of making public its views and reasoning as well in response to the warning and recommendation published by the ESRB.**

3. Where the general Board of the ESRB decides not to make a warning or a recommendation public, the addressee and where appropriate, the Council and the European Supervisory Authorities, shall take all the measures necessary for the protection of their confidential nature. ▀

**3a. Any data on which the General Board of the ESRB bases its analysis before issuing a warning or a recommendation shall be made public in an appropriately anonymous form. In the event of confidential warnings, information shall be made available within an appropriate period of time, to be defined in the ESRB's rules of procedure.**

#### CHAPTER IV

#### FINAL PROVISIONS

#### Article 19

#### **Accountability and reporting obligations**

1. At least annually, **but more frequently in the event of widespread financial distress, the ESRB Chair shall be invited to an annual hearing in the European Parliament, marking the publication of the ESRB's annual report** to the European Parliament and ▀ the Council. **Those hearings shall be made in a different context from the monetary dialogue between the European Parliament and the President of the ECB.**

**1a. The reports referred to in this Article shall contain the information that in accordance with Article 18, the General Board of the ESRB decides should be made public. The reports shall be made available to the public.**

2. The ESRB shall also examine specific issues at the invitation of **the European Parliament**, the Council or the Commission.

**2a. The European Parliament may request the President of the ESRB and the other members of the Steering Committee to attend a hearing of the competent Committees of the European Parliament.**

#### Article 20

#### Review clause

**The European Parliament and the Council shall, by ... (\*)**, examine this Regulation on the basis of a report from the Commission and shall determine whether the **objectives** and organisation of the ESRB need to be reviewed after having received an opinion from the ECB.

**The report shall assess, in particular, whether:**

**(a) it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels as well as between the ESAs;**

**(b) it is appropriate to increase the regulatory powers of the ESAs;**

(\*) **three years after the entry into force of this Regulation.**

Wednesday 7 July 2010

(c) *the evolution of the ESFS is consistent with that of global developments in this area;*

(d) *there is sufficient diversity and excellence within the ESFS;*

(e) *accountability and transparency in relation to publication requirements are adequate.*

Article 21

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*.

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

Done at ...,

For the European Parliament  
The President

For the Council  
The President

## European Banking Authority \*\*\*I

P7\_TA(2010)0272

**Proposal for a regulation of the European Parliament and of the Council establishing a European Banking Authority (COM(2009)0501 – C7-0169/2009 – 2009/0142(COD))**

(2011/C 351 E/38)

(Ordinary legislative procedure: first reading)

The proposal was amended on 7 July 2010 as follows <sup>(1)</sup>:

AMENDMENTS BY PARLIAMENT (\*)

to the Commission proposal

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

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

<sup>(1)</sup> The matter was then referred back to committee pursuant to Rule 57(2), second subparagraph (A7-0166/2010).

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

Wednesday 7 July 2010

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Having regard to the opinion of the European Central Bank <sup>(3)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(4)</sup>,

Whereas:

- (1) The financial crisis in 2007/2008 exposed important shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. Nationally-based supervisory models have lagged behind the **financial globalisation and the** integrated and interconnected reality of European financial markets, in which many financial firms operate across borders. The crisis exposed shortcomings in the area of cooperation, coordination, consistent application of **Union** law and trust between national supervisors.
- (1a) *Long before the financial crisis the European Parliament was already calling regularly for the reinforcement of a true level playing field for all actors at Union level while pointing out significant failures in the Union's supervision of ever more integrated financial markets (in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan <sup>(5)</sup>, of 21 November 2002 on prudential supervision rules in the European Union <sup>(6)</sup>, of 11 July 2007 on financial services policy (2005-2010) - White Paper <sup>(7)</sup>, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity <sup>(8)</sup> and of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision <sup>(9)</sup>, and in its positions of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) <sup>(10)</sup> and of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies <sup>(11)</sup>).*
- (2) A report published on 25 February 2009 by a high-level group of experts chaired by J. de Larosière (**the de Larosière Report**), requested by the Commission, concluded that the supervisory framework needed to be strengthened to reduce the risk and severity of future financial crises. It recommended reforms to the structure of supervision of the financial sector in the **Union**. That group of experts also concluded that a European System of Financial Supervisors should be created, comprising three European Supervisory Authorities, one for the banking sector, one for the securities sector and one for the insurance and occupational pensions sector, and the creation of a European Systemic Risk Council. **The recommendations in the report represented the lowest level of change that the experts qualified as necessary to avoid a similar crisis to take place in the future.**

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

<sup>(2)</sup> OJ C , , p. .

<sup>(3)</sup> OJ C 13, 20.1.2010, p. 1.

<sup>(4)</sup> Position of the European Parliament of ....

<sup>(5)</sup> OJ C 40, 7.2.2001, p. 453.

<sup>(6)</sup> OJ C 25 E, 29.1.2004, p. 394.

<sup>(7)</sup> OJ C 175 E, 10.7.2008, p. 392.

<sup>(8)</sup> OJ C 8 E, 14.1.2010, p. 26.

<sup>(9)</sup> OJ C 9 E, 15.1.2010, p. 48.

<sup>(10)</sup> Texts adopted, P6\_TA(2009)0251.

<sup>(11)</sup> Texts adopted, P6\_TA(2009)0279.

Wednesday 7 July 2010

- (3) **I**n its Communication of 4 March 2009 entitled 'Driving European Recovery' **the Commission** proposed to bring forward draft legislation creating a European System of Financial Supervisors and a European Systemic Risk Board (**ESRB**), and in its Communication of 27 May 2009 entitled 'European Financial Supervision' **I**t provided more detail about the possible architecture of such a new supervisory framework **but did not include all the recommendations made in the de Larosière Report**.
- (4) The European Council, in its conclusions of 19 June 2009, recommended that a European System of Financial Supervisors, comprising three new European Supervisory Authorities, be established. The system should be aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross border groups and establishing a European single rule book applicable to all financial institutions in the Single Market. It emphasised that the European Supervisory Authorities should also have supervisory powers for credit rating agencies and invited the Commission to prepare concrete proposals on how the European System of Financial Supervisors could play a strong role in crisis situations, while stressing that decisions taken by the European Supervisory Authorities should not impinge on the fiscal responsibilities of Member States.
- (4a) *The International Monetary Fund (IMF) report of 16 April 2010 entitled 'A Fair and Substantial Contribution by the Financial Sector', written at the request of the G-20 Pittsburgh summit, stated that 'the cost of financial sector failures should be contained and covered by a Financial Stability Contribution (FSC) linked to a credible and effective resolution mechanism. If defined properly, resolution mechanisms will avoid governments in the future being forced to bail out institutions too important, too big or too interconnected to fail'.*
- (4b) *The Commission Communication of 3 March 2010 entitled 'Europe 2020' also declared that a crucial priority in the short term would be to set 'to better prevent and if needed manage possible financial crises, and that – taking into account the specific responsibility of the financial sector in the current crisis – will look also into adequate contributions from the financial sector'.*
- (4c) *The European Council stated clearly on 25 March 2010 that 'progress is particularly needed on issues such as systemic institutions financing instruments for crisis management'.*
- (4d) *The European Council finally expressed on 17 June 2010 that 'Member States should introduce systems of levies on financial institutions to ensure fair burden sharing and to set incentives to contain systemic risk. Such levies should be part of a credible resolution framework'.*
- (5) The financial and economic crisis has created real and serious risks to the stability of the **financial system and the functioning of the** internal market. Restoring and maintaining a stable and reliable financial system is an absolute prerequisite to preserving trust and coherence in the internal market, hence to preserve and improve the conditions for the establishment of a fully integrated and functioning internal market in the field of financial services. Moreover, deeper and more integrated financial markets offer better opportunities for financing and risk diversification, and thus help to improve the capacity of the economies to absorb shocks.
- (6) The **Union** has reached the limits of what can be done with the present status of the Committees of European Supervisors **I**. The **Union** cannot remain in a situation where there is no mechanism to ensure that national supervisors arrive at the best possible supervisory decisions for cross-border institutions; where there is insufficient cooperation and information exchange between national supervisory authorities; where joint action by national authorities requires complicated arrangements to take account of the patchwork of regulatory and supervisory requirements; where national solutions are most often the only feasible option in responding to European problems, where different interpretations of the same legal text exist. The European System **of Financial Supervision (ESFS)** should be designed to overcome these deficiencies and provide a system that is in line with the objective of a stable and single **Union** financial market for financial services, linking national supervisors into a strong **Union** network.

Wednesday 7 July 2010

- (7) The ESFS should be **an integrated** network of national and **Union** supervisory authorities, leaving day-to-day supervision of financial institutions **to** the national level. **A European Supervisory Authority (the Authority) should have a leading role in the colleges of supervisors supervising cross-border financial institutions, and clear supervisory norms for them should be defined. The Authority should pay special attention to financial institutions that may pose a systemic risk since their failure could jeopardise the stability of the Union financial system, where a national authority has failed to exercise its powers.** Greater harmonisation and the coherent application of rules for financial institutions and markets across the **Union** should also be achieved. **In addition to the Authority, a European Supervisory Authority (Insurance and Occupational Pensions) and a European Supervisory Authority (Securities and Markets) as well as a European Supervisory Authority (Joint Committee) should be established. The ESRB should form part of the EFSF.**
- (8) The European Supervisory **Authority** should replace the Committee of European Banking Supervisors established by Commission Decision 2009/78/EC <sup>(12)</sup>, the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2009/79/EC <sup>(13)</sup> and the Committee of European Securities Regulators established by Commission Decision 2009/77/EC <sup>(14)</sup>, and assume all of the tasks and competences of those committees **including the continuation of on-going work and projects, where appropriate.** The scope of each Authority's action should be clearly defined. Where institutional reasons and the responsibilities assigned in the Treaty **on the Functioning of the European Union (TFEU)** so require, the Commission should also be part of the network of supervisory activities.
- (9) The **Authority** should act with a view to improving the functioning of the internal market, **in particular by ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States and the different nature of financial institutions. The Authority should protect public values like the stability of the financial system, the transparency of markets and financial products and the protection of depositors and investors. The Authority should also prevent regulatory arbitrage and guarantee a level playing field, and strengthen international supervisory coordination, for the benefit of the economy at large, including financial institutions and other stakeholders, consumers and employees. Its tasks should also include promoting supervisory convergence and providing advice to the EU institutions in the areas of banking, payments, e-money regulation and supervision, and related corporate governance, auditing and financial reporting issues. The Authority should also be entrusted with a general oversight responsibility for existing and new financial products/types of transactions.**
- (9a) **The Authority shall take due account of the impact of its activities on competition and innovation within the internal market, the Union's global competitiveness, financial inclusion, and the Union's new strategy for jobs and growth.**
- (9b) **In order to fulfil its objectives, the Authority should have legal personality as well as administrative and financial autonomy. The Authority should be granted 'powers to address compliance with laws in particular those related with systemic risk and cross-border risks' (Basel Committee on Banking Supervision).**
- (9c) **Systemic risk is defined by international authorities (the IMF, the Financial Stability Board (FSB) and the Bank for International Settlements (BIS)) as 'a risk of disruption to financial services that is (i) caused by an impairment of all or parts of the financial system and (ii) has the potential to have serious negative consequences for the real economy. All types of financial intermediaries, markets and infrastructure can potentially be systematically important to some degree'.**

<sup>(12)</sup> OJ L 25, 29.1.2009, p. 23.

<sup>(13)</sup> OJ L 25, 29.1.2009, p. 28.

<sup>(14)</sup> OJ L 25, 29.1.2009, p. 18.

Wednesday 7 July 2010

- (9d) **Cross-border risk, according to those institutions, includes all risks caused by economic imbalances or financial failures in all or parts of the Union that have the potential to have significant negative consequences for the transactions between economic operators of two or more Member States, for the functioning of the internal market or for the public finances of the Union or any of its Member States.**
- (10) The Court of Justice of the European **Union** in its judgement of 2 May 2006 in Case C-217/04 (United Kingdom/European Parliament and Council) **held that: ‘nothing in the wording of Article 95 TEC [now Article 114 TFEU] implies that the addressees of the measures adopted by the Community legislature can only be the individual Member States. The legislature may deem it necessary to provide for the establishment of a Community body responsible for contributing to the implementation of a process of harmonization in situations where, in order to facilitate the uniform implementation and application of acts based on that provision, the adoption of non-binding supporting and framework measures seems appropriate’.** The purpose and tasks of the Authority – assisting competent national supervisory authorities in the consistent interpretation and application of **Union** rules and contributing to financial stability necessary for financial integration – are closely linked to the objectives of the **Union** *acquis* concerning the internal market for financial services. The Authority should therefore be established on the basis of **Article 114 TFEU**.
- (11) The legal acts which lay down the tasks for competent authorities of Member States, including cooperating with each other and with the Commission, are the following: Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions <sup>(15)</sup>, Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions <sup>(16)</sup> and Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes <sup>(17)</sup>.
- (12) Existing **Union** legislation regulating the field covered by this Regulation also includes Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate <sup>(18)</sup>, **Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds** <sup>(19)</sup>, **Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions** <sup>(20)</sup> and, in relevant parts, Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing <sup>(21)</sup>, **Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services** <sup>(22)</sup> and **Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market** <sup>(23)</sup>.
- (13) It is desirable that the Authority promote a consistent approach in the area of deposit guarantees to ensure a level playing field and the equitable treatment of depositors across the **Union**. As deposit guarantee schemes are subject to oversight in their Member States rather than regulatory supervision, it is appropriate that the Authority should be able to exercise its powers under this Regulation in relation to the deposit guarantee scheme itself and its operator. **The role of the Authority should be reviewed once a European Deposit Guarantee fund is established.**

<sup>(15)</sup> OJ L 177, 30.6.2006, p. 1.

<sup>(16)</sup> OJ L 177, 30.6.2006, p. 201.

<sup>(17)</sup> OJ L 135, 31.5.1994, p. 5.

<sup>(18)</sup> OJ L 35, 11.2.2003, p. 1.

<sup>(19)</sup> **OJ L 345, 8.12.2006, p. 1.**

<sup>(20)</sup> **OJ L 267, 10.10.2009, p. 7.**

<sup>(21)</sup> OJ L 309, 25.11.2005, p. 15.

<sup>(22)</sup> OJ L 271, 9.10.2002, p. 16.

<sup>(23)</sup> **OJ L 319, 5.12.2007, p. 1.**

Wednesday 7 July 2010

- (14) There is a need to introduce an effective instrument to establish harmonised **regulatory** technical standards in financial services to ensure, also through a single rulebook, a level playing field and an adequate protection of depositors, investors and consumers across **the Union**. As a body with highly specialised expertise, it is efficient and appropriate to entrust the Authority, in areas defined by **Union** law, with the elaboration of draft **regulatory** technical standards, which do not involve policy choices. **The Commission should endorse those regulatory and implementing technical standards in accordance with Article 290 TFEU in order to give them binding legal effect.**
- (15) **Draft regulatory technical standards should be subject to amendment only in very restricted and extraordinary circumstances, provided that the Authority is the one in close contact with and acknowledging the daily work of financial markets. They would be subject to amendment if, for example, the draft regulatory standards were incompatible with Union Law, would not respect the principle of proportionality or would run counter to the fundamental principles of the internal market for financial services as reflected in the acquis of Union financial services legislation. The Commission should not change the content of the technical standards prepared by the Authority without prior coordination with the Authority. To ensure a smooth and expeditious adoption process for those standards, the Commission should be subject to a time limit for its decision on the endorsement.**
- (15a) **The Commission should also be empowered to implement legally binding Union acts as stated in Article 291 TFEU. Regulatory and implementing technical standards have to take into account the principle of proportionality, i. e. the requirements laid down in these standards should be proportionate to the nature, scale and complexity of the risks inherent in the business of the financial institution concerned.**
- (16) In areas not covered by **regulatory** technical standards, the Authority should have the power to issue guidelines and recommendations on the application of **Union** legislation. In order to ensure transparency and strengthen compliance by national supervisory authorities with those guidelines and recommendations, national authorities should be obliged to **publish the** reasons where they do not comply with those guidelines and recommendations **in order to ensure full transparency towards market participants.**
- (17) Ensuring the correct and full application of **Union** law is a core prerequisite for the integrity, **transparency**, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial institutions in the **Union**. A mechanism should therefore be established whereby the Authority addresses instances of **non-application or** incorrect **application and thus a breach of Union** law. This mechanism should apply in areas where **Union** legislation defines clear and unconditional obligations.
- (18) To allow for a proportionate response to instances of incorrect or insufficient application of **Union** law, a three-step mechanism should apply. At a first level, the Authority should be empowered to investigate alleged incorrect or insufficient application of **Union** law obligations by national authorities in their supervisory practice, concluded by a recommendation. **Where the competent national authority does not follow the recommendation, the Commission should be empowered to issue a formal opinion taking into account the Authority's recommendation, requiring the competent authority to take the actions necessary to ensure compliance with Union law.**
- (19) Where the national authority does not comply with the recommendation **within a deadline fixed by the Authority**, the **Authority** should **address a Decision without delay** to the national supervisory authority concerned in order to ensure compliance with **Union** law, creating direct legal effects which can be invoked before national courts and authorities and enforced under **Article 258 TFEU.**
- (20) To overcome exceptional situations of persistent inaction by the competent authority concerned, the Authority should be empowered, as a last resort, to adopt decisions addressed to individual financial institutions. This power should be limited to exceptional circumstances in which a competent authority does not comply with the **formal opinion** addressed to it and in which **Union** law is directly applicable to financial institutions by virtue of existing or future EU Regulations. **In this regard, the European Parliament and the Council are looking forward to the implementation of the programme of the Commission for 2010, in particular as regards the proposal on the reform of the Capital Requirements Directive.**



Wednesday 7 July 2010

- (21) Serious threats to the orderly functioning and integrity of financial markets or the stability of the financial system in the **European Union** require a swift and concerted response at **Union** level. The Authority should therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. **Bearing in mind the sensitivity of the issue, the power to determine the existence of an emergency situation should be conferred on the Commission at its own initiative or at the request of the European Parliament, the Council, the ESRB or the Authority. Where the European Parliament, the Council, the ESRB or the European Supervisory Authority (ESA) deem that the existence of an emergency situation is likely to arise, they should contact the Commission. In this process, due care of confidentiality is of the utmost importance. If the Commission determines the existence of an emergency situation, it should duly inform the European Parliament and the Council.**
- (22) In order to ensure efficient and effective supervision and a balanced consideration of the positions of the competent authorities in different Member States, the Authority should be able to settle disagreements between those competent authorities with binding effect, including within colleges of supervisors. A conciliation phase should be provided for, during which the competent authorities may reach an agreement. **Where such an agreement is not reached, the Authority should require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter in order to ensure compliance with EU legislation, with binding effects for the competent authorities concerned. In cases where the relevant EU legislation confers discretion on Member States' competent authorities, decisions taken by the ESA cannot replace the exercise in compliance with Union law of that discretion. In the event of inaction by the national supervisory authorities concerned, the Authority should be empowered to adopt, as a last resort, decisions directly addressed to financial institutions in areas of Community law directly applicable to them.**
- (22a) **The crisis has proven that the mere cooperation between national authorities whose jurisdiction ends at the national border is clearly inadequate to supervise financial institutions that operate cross border.**
- (22b) **Furthermore, 'the current arrangements, combining branch passporting rights, home country supervision, and purely national deposit insurance, are not a sound basis for the future regulation and supervision of European cross-border retail banks' (Turner Review).**
- (22c) **As the Turner Review concluded, 'sounder arrangements require either increased national powers, implying a less open single market, or a greater degree of European integration'. The 'national' solution implies giving the host country the right to oblige foreign institutions to act only through the subsidiaries and not through branches and to oversee the capital and liquidity of banks operating in their country, which would amount to more protectionism. The 'European' solution calls for the reinforcement of the Authority in the College of Supervisors and for a strengthening in supervision of financial institutions that pose systemic risk.**
- (23) Colleges of supervisors play an important role in the efficient, effective and consistent supervision of financial institutions operating across borders. The Authority should **play a leading role and** have full participation rights in colleges of supervisors with a view to streamlining the functioning of and the information exchange process in colleges and to foster convergence and consistency across colleges in the application of **Union** law. **As the de Larosière Report states 'competition distortions and regulatory arbitrage stemming from different supervisory practices must be avoided, because they have the potential of undermining financial stability – inter alia by encouraging a shift of financial activity to countries with lax supervision. The supervisory system has to be perceived as fair and balanced'.**
- (23a) **The Authority and national supervisors should strengthen supervision of financial institutions meeting the systemic risk criteria since their failure may jeopardise the stability of the Union Financial System and damage the real economy.**

Wednesday 7 July 2010

- (23b) *The systemic risk should be identified, taking into account international standards, in particular those established by the FSB, the IMF, the International Association of Insurance Association and the G-20. Interconnectedness, substitutability and timing are the most commonly used criteria for the identification of systemic risk.*
- (23c) *A framework for dealing with distressed institutions should be established in order to stabilise or wind them down since 'it has been clearly demonstrated that the stakes in a banking crisis are high for government and society at large because such a situation has the potential to jeopardise financial stability and the real economy' (de Larosière Report). The Commission should make appropriate proposals for the establishment of a new framework for financial crisis management. The key elements of crisis management are a common set of rules and financial resolution vehicles (execution and funding to deal with the crisis of large, cross-border and/or interconnected institutions).*
- (23d) *A European Deposit Guarantee Fund should be established to ensure the co-responsibility of cross-border financial institutions, protect Union depositors' interests and reduce the cost to tax payers of a systemic financial crisis. An EU-level fund seems to be the most efficient way to protect depositors' interests and the best defence against competitive distortions. It is obvious however that EU approaches are inevitably more complex and that some Member States have already started to design or even to run such schemes. At the very minimum therefore, the Authority should ensure that there is harmonisation of the most important features of national schemes. It should also be able to ensure that financial institutions are required to pay in to only one scheme.*
- (23e) *The European Banking Stability Fund should finance the orderly winding-up or rescue interventions of financial institutions facing difficulties where those could menace the financial stability of the Union's internal financial market. The Fund should be financed through adequate contributions from the financial sector. The contributions to the Fund should replace those made to the national funds of similar nature.*
- (24) The delegation of tasks and responsibilities can be a useful instrument in the functioning of the network of supervisors in order to reduce the duplication of supervisory tasks, foster cooperation and thereby streamline the supervisory process as well as reduce the burden imposed on financial institutions, **particularly those financial institutions that do not have a Union dimension**. This Regulation should therefore provide a clear legal basis for such delegation. Delegation of tasks means that tasks are carried out by another supervisory authority instead of the responsible authority, while the responsibility for supervisory decisions remains with the delegating authority. By delegation of responsibilities one national supervisory authority, the delegatee, **should** be able to decide upon a certain supervisory matter in **the** name of **the Authority or of** another national supervisory authority. Delegations should be governed by the principle of allocating supervisory competence to a supervisor which is well placed to take action in the subject matter. A reallocation of responsibilities **would** be appropriate, for example, for reasons of economies of scale or scope, of coherence in group supervision, and of optimal use of technical expertise among national supervisory authorities. Relevant **Union** legislation may further specify the principles for reallocation of responsibilities upon agreement. The Authority should facilitate **and monitor** delegation agreements between national supervisory authorities by all appropriate means. It should be informed in advance of intended delegation agreements to be able to express an opinion where appropriate. It should centralise the publication of such agreements to ensure timely, transparent and easily accessible information about agreements for all parties concerned. **It should identify and disseminate best practices regarding delegation and delegation agreements.**
- (25) The Authority should actively foster supervisory convergence across the **European Union** with the aim of establishing a common supervisory culture.

Wednesday 7 July 2010

- (26) Peer reviews are an efficient and effective tool for fostering consistency within the network of financial supervisors. The Authority should therefore develop the methodological framework for such reviews and conduct them on a regular basis. Reviews should focus not only on convergence of supervisory practices but also on the capacity of supervisors to achieve high quality supervisory outcomes as well as the independence of competent authorities. **The outcome of peer reviews should be made public and best practices should be identified and also made public.**
- (27) The Authority should actively promote a coordinated **Union** supervisory response, in particular **to ensure** the orderly functioning and integrity of financial markets or the stability of the financial system in the **European Union**. In addition to its powers for action in emergency situations, it should therefore be entrusted with a general coordination function within the **ESFS**. The smooth flow of all relevant information between competent authorities should be a particular focus of the Authority's actions.
- (28) In order to safeguard financial stability it is necessary to identify, at an early stage, trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors. The Authority should monitor and assess such developments in the area of its competence and, where necessary, inform the European Parliament, the Council, the Commission, the other European Supervisory Authorities and the **ESRB** on a regular and, as necessary, ad hoc basis. The Authority should also **initiate and** coordinate **Union-wide** stress tests to assess the resilience of financial institutions to adverse market developments, ensuring an as consistent as possible methodology is applied at the national level to such tests. **In order to properly to perform its functions, the Authority should conduct economic analyses of the markets and the impact of potential market developments.**
- (29) Given the globalisation of financial services and the increased importance of international standards, the Authority should **represent the European Union in relation to** dialogue and cooperation with supervisors **in third countries**.
- (30) The Authority should serve as an independent advisory body to the European Parliament, the Council, and the Commission in the area of its competence. It should be able to provide its opinion on the prudential assessment of mergers and acquisitions under Directive 2006/48/EC.
- (31) In order to effectively carry out its duties, the Authority should have the right to request all necessary information **relating to prudential supervision**. To avoid duplication of reporting obligations for financial institutions, that information should normally be provided by the national supervisory authorities who are closest to financial markets and institutions **and take into account already existing statistics**. However, **as a last resort**, the Authority should **be able to address a duly justified and reasoned** request **for** information directly **to a** financial institution **■** where a national competent authority does not or cannot provide such information in a timely fashion. Member States' authorities should be obliged to assist the Authority in enforcing such direct requests. **In this context, work on common reporting formats is essential.**
- (31a) **The measures for the collection of information should be without prejudice to the legal framework of the European Statistical System (ESS) and the European System of Central Banks (ESCB) in the field of statistics. This Regulation should therefore be without prejudice to Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics <sup>(24)</sup> or to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank <sup>(25)</sup>.**

<sup>(24)</sup> OJ L 87, 31.3.2009, p. 164.

<sup>(25)</sup> OJ L 318, 27.11.1998, p. 8.

Wednesday 7 July 2010

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

Wednesday 7 July 2010

- (36) A Board of Supervisors composed of the heads of the relevant competent authority in each Member State, and chaired by the Chairperson of the Authority, should be the principal decision-making organ of the Authority. Representatives of the Commission, the **ESRB**, the European Central Bank, the European Supervisory Authority (**Insurance and Pensions**) and the **European Supervisory Authority (Securities and Markets)** should participate as observers. Members of the Board of Supervisors should act independently and only in the **Union's** interest. For acts of a general nature, including those related to the adoption of **regulatory** standards, guidelines and recommendations as well as budgetary matters, it **would be** appropriate to apply the rules on qualified majority as laid down in **Article 16 TFEU**, whereas for all other decisions simple majority of members should apply. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted panel.
- (36a) *As a general rule, the Board of Supervisors should take its decisions by simple majority according to the principle of one man-one vote. However for acts relating to the adoption of technical standards, guidelines and recommendations as well as budgetary matters, it is appropriate to apply the rules of qualified majority as laid down in the Treaty on European Union, in the TFEU and in the Protocol (No. 36) on transitional provisions attached to them. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted, objective panel, composed of members who are not representatives of the competent authorities which are party to the disagreement or have any interest in the conflict or direct links to the competent authorities concerned. The composition of the panel should be appropriately balanced. The decision taken by the panel should be approved by the Board of Supervisors by simple majority according to the principle where each member has one vote. However, with regard to decisions taken by the consolidating supervisor, the decision proposed by the panel could be rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union and to the TFEU.*
- (37) A Management Board composed of the Chairperson of the Authority, representatives of national supervisory authorities and the Commission should ensure that the Authority carries out its mission and performs the tasks assigned to it. The Management Board should be entrusted with the necessary powers to, inter alia, propose the annual and multi-annual work programme, exercise certain budgetary powers, adopt the Authorities staff policy plan, adopt special provisions on the right to access to documents and adopt the annual report.
- (38) A full time Chairperson, selected by the **European Parliament following an open competition managed by the Commission and the subsequent drawing up of a short list for the Commission**, should represent the Authority. The management of the Authority should be entrusted to an Executive Director, who should have the right to participate in meetings of the Board of Supervisors and the Management Board without the right to vote.
- (39) In order to ensure cross-sectoral consistency in the activities of the European Supervisory Authorities, those authorities should coordinate closely **through the European Supervisory Authorities (Joint Committee) (the 'Joint Committee')** and reach common positions where appropriate. The Joint Committee **should coordinate the functions of the three European Supervisory Authorities in relation to financial conglomerates**. Where relevant, acts also falling within the area of competence of the **European Supervisory Authority (Insurance and Occupational Pensions)** or the **European Supervisory Authority (Securities and Markets)** should be adopted in parallel by the European Supervisory Authorities concerned. **The Joint Committee should be chaired for a 12-month term on a rotating basis by the Chairpersons of the three European Supervisory Authorities. The Chairperson of the Joint Committee should be a Vice-Chair of the ESRB. The Joint Committee should have a permanent secretariat, staffed on secondment from the three European Supervisory Authorities to allow for informal information sharing and the development of a common cultural approach across the three European Supervisory Authorities.**

Wednesday 7 July 2010

- (40) It is necessary to ensure that the parties affected by decisions adopted by the Authority may exercise the necessary remedies. To effectively protect the rights of parties and for reasons of procedural economy, where the Authority has decision-making powers, parties should be granted a right of appeal to a Board of Appeal. For reasons of efficiency and consistency, the Board of Appeal should be a joint body of the three European Supervisory Authorities, independent from their administrative and regulatory structures. The decision of the Board of Appeal should be subject to appeal before the Court of First Instance and the Court of Justice of the European Communities.
- (41) In order to guarantee its full autonomy and independence, the Authority should be granted an autonomous budget with revenues mainly from obligatory contributions from national supervisory authorities and from the General Budget of the European Union. **Union financing of the Authority should be subject to an agreement by the budgetary authority in accordance with Point 47 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management** <sup>(26)</sup> (IIA). The **Union** budgetary procedure should be applicable. The auditing of accounts should be undertaken by the Court of Auditors. **The overall budget should be subject to the discharge procedure.**
- (42) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) <sup>(27)</sup> 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) <sup>(28)</sup>.
- (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 <sup>(29)</sup> 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 **made available to the Authority and** exchanged in the network should **be subject to stringent and effective confidentiality rules.**
- (45) The protection of individuals with regard to the processing of personal data is governed by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(30)</sup> and by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(31)</sup>, 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 <sup>(32)</sup> should apply to the Authority.
- (47) Countries which are not members of the European Union should be allowed to participate in the work of the Authority in accordance with appropriate agreements to be concluded by the **Union**.

<sup>(26)</sup> OJ C 139, 14.6.2006, p. 1.

<sup>(27)</sup> OJ L 136, 31.5.1999, p. 1.

<sup>(28)</sup> OJ L 136, 31.5.1999, p. 15.

<sup>(29)</sup> OJ L 56, 4.3.1968, p. 1.

<sup>(30)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(31)</sup> OJ L 8, 12.1.2001, p. 1.

<sup>(32)</sup> OJ L 145, 31.5.2001, p. 43.

Wednesday 7 July 2010

- (48) Since the objectives of this Regulation, namely improving the functioning of the internal market by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting depositors and investors, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability of the financial system, and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of scale of the action, be better achieved at **Union** level, the **European Union** may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty **on European Union**. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (49) The Authority assumes all current tasks and powers of the Committee of European Banking Supervisors. Commission Decision 2009/78/EC of 23 January 2009 establishing the Committee of European Banking Supervisors should therefore be repealed, and Decision No 716/2009/EC of the European Parliament and of the Council of 16 September 2009 establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing <sup>(33)</sup>, 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 **Supervisory** Authority (European **Banking** Authority, 'the Authority').
2. The Authority shall act **within the powers conferred by this Regulation and** within the scope of Directive 2006/48/EC, Directive 2006/49/EC, Directive 2002/87/EC, **Regulation (EC) No 1781/2006, Directive 94/19/EC and, to the extent that these acts apply to credit and financial institutions and the competent authorities that supervise them, within the relevant parts of** Directive 2005/60/EC, Directive 2002/65/EC, **Directive 2007/64/EC** and **Directive 2009/110/EC**, including all directives, regulations, and decisions based on these acts, and of any further **Union legislative** act which confers tasks on the Authority.  
  
**2a. The Authority shall also act in the field of activities of credit institutions, financial conglomerates, investment firms, payment institutions and e-money institutions, including matters of corporate governance, auditing and financial reporting, provided that such actions by the Authority are necessary to ensure the effective and consistent application of the legislation referred to in paragraph 2.**
3. The provisions of this Regulation are without prejudice to the powers of the Commission, in particular under **Article 258 TFEU** to ensure compliance with **Union** law.
4. The objective of the Authority shall be to **protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The Authority shall** contribute to:

<sup>(33)</sup> OJ L 253, 25.9.2009, p. 8.

Wednesday 7 July 2010

(i) improving the functioning of the internal market, including in particular a **sound**, effective and consistent level of regulation and supervision,

■

(iii) ensuring the integrity, **transparency**, efficiency and orderly functioning of financial markets,

■

(v) strengthening international supervisory coordination,

*(va) preventing regulatory arbitrage and contributing to equal conditions of competition,*

*(vb) ensuring the taking of credit and other risks are appropriately regulated and supervised, and*

*(vc) contribute to enhance customer protection.*

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

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

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

#### Article 1a

##### The European System of Financial Supervision

1. **The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented, to preserve financial stability and to ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services.**

2. **The ESFS shall comprise the following:**

**(a) the European Systemic Risk Board (ESRB), for the purposes of the tasks as specified in Regulation (EU) No .../2010 (ESRB) and this Regulation;**

**(b) the Authority;**

**(c) the European Supervisory Authority (Securities and Markets) established by Regulation (EU) No .../2010 [ESMA];**

**(d) the European Supervisory Authority (Insurance and Occupational Pensions) established by Regulation (EU) No .../2010 [EIOPA];**



Wednesday 7 July 2010

- (e) *the European Supervisory Authority (Joint Committee) for the purposes of carrying out the tasks as specified in Articles 40 to 43 (the 'Joint Committee');*
- (f) *the authorities in the Member States referred to in Article 2(2) of Regulation (EU) No .../2010 [ESMA], Regulation (EU) No .../2010 [EIOPA] and in this Regulation;*
- (g) *the Commission, for the purposes of carrying out the tasks referred to in Articles 7 and 9.*

3. *The Authority shall cooperate regularly and closely with the ESRB as well as with the EIOPA and ESMA through the Joint Committee, ensuring cross-sectoral consistency of work and reaching joint positions in the area of supervision of financial conglomerates and on other cross-sectoral issues.*

4. *In accordance with the principle of sincere cooperation under Article 4(3) of the Treaty on European Union, the parties to the ESFS shall cooperate with trust and full mutual respect, in particular in ensuring the flow of appropriate and reliable information between them.*

5. *Those supervisory authorities that are party to the ESFS shall be obliged to supervise financial institutions operating in the Union in accordance with the legislative acts referred to in Article 1(2).*

#### Article 1b

##### Accountability to the European Parliament

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

#### Article 2

##### Definitions

For the purposes of this Regulation the following definitions apply:

- (1) 'financial institutions' means 'credit institutions' as defined in **Article 4(1) of Directive 2006/48/EC**, 'investment firms' as defined in **Article 3(1)(b) of Directive 2006/49/EC**, and 'financial conglomerates' as defined in **Article 2(14) of Directive 2002/87/EC**, *save that with regard to Directive 2005/60/EC, 'financial institutions' means credit institutions and financial institutions as defined in Article 3(1) and (2) of that Directive;*
- (2) 'competent authorities' means:
  - (i) *competent authorities as defined in Directives 2006/48/EC, 2006/49/EC and 2007/64/EC and as referred to in Directive 2009/110/EC;*
  - (ii) *with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by credit and financial institutions;*
  - (iii) *with regard to deposit guarantee schemes, bodies which administer deposit-guarantee schemes pursuant to Directive 94/19/EC, or, where the operation of the deposit guarantee scheme is administered by a private company, the public authority supervising those schemes pursuant to Directive 94/19/EC.*

Wednesday 7 July 2010

Article 3

Legal status

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

Article 4

Composition

The Authority shall comprise the following:

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

Article 5

**Headquarters and** seat

***The Authority shall have its headquarters in Frankfurt.***

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

CHAPTER II

TASKS AND POWERS OF THE AUTHORITY

Article 6

Tasks and Powers of the Authority

1. The Authority shall have the following tasks:
  - (a) **contributing** to the establishment of high-quality common regulatory and supervisory standards and practices, in particular by providing opinions to the **Union** institutions and by developing guidelines, recommendations, and draft **regulatory technical and implementing** technical standards which shall be based on the **legislative acts** referred to in Article 1(2);

Wednesday 7 July 2010

- (b) **contributing** to a consistent application of **Union legislative acts**, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the **legislative acts** referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, **ensuring effective and consistent supervision of financial institutions**, **ensuring** a coherent functioning of colleges of supervisors and taking actions, **inter alia**, in emergency situations;
  - (c) **stimulating and facilitating** the delegation of tasks and responsibilities between competent authorities;
  - (d) **cooperating** closely with the ESRB, in particular by providing the ESRB with the necessary information for the achievement of its tasks and by ensuring a proper follow up to the warnings and recommendations of the ESRB;
  - (e) **organising and conducting** peer review analyses of competent authorities, **including issuing advice, in order** to strengthen consistency in supervisory outcomes;
  - (f) monitor and assess market developments in the area of its competence;
  - (fa) **undertaking economic analyses of markets to inform the discharge of the Authority's functions;**
  - (fb) **fostering depositor and investor protection;**
  - (fc) **contributing to managing crisis of cross-border institutions that have the potential to pose a systemic risk referred to in Article 12b, leading and executing all early interventions, resolution or insolvency procedures for such institutions through its Banking Resolution Unit as set out in Article 12c;**
  - (g) fulfilling any other specific tasks set out in this Regulation or in the **legislative acts** referred to in Article 1(2);
  - (ga) **supervising those financial institutions that are not subject to the supervision of competent authorities;**
  - (gb) **publishing on its website and regularly updating information relating to its field of activities, in particular, within the area of its competence, on registered financial institutions, in order to ensure easily accessible information to the public;**
  - (gc) **taking over, as appropriate, all existing and ongoing tasks from the Committee of European Banking Supervisors (CEBS).**
2. To achieve the tasks set out in paragraph 1, the Authority shall have the powers set out in this Regulation, in particular the power to:
- (a) develop draft **regulatory** technical standards in the specific cases referred to in Article 7;
  - (aa) **develop draft implementing technical standards in the specific cases referred to in Article 7e;**
  - (b) issue guidelines and recommendations, as laid down in Article 8;

Wednesday 7 July 2010

- (c) issue recommendations in specific cases, as referred to in Article 9(3);
  - (d) take individual decisions addressed to competent authorities in the specific cases referred to in Articles 10 and 11;
  - (e) take individual decisions addressed to financial institutions, in the specific cases referred to in Article 9(6), Article 10(3), and Article 11(4);
  - (f) issue opinions to the European Parliament, the Council or the Commission as provided for in Article 19;
- (fa) collect the necessary information concerning financial institutions as provided for in Article 20;*
- (fb) developing common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of institutions and on customer protection;*
- (fc) provide a database of registered financial institutions in the area of its competence and, where specified in the legislative acts referred to in Article 1(2), at a central level;*
- (fd) develop a regulatory technical standard setting out the minimum information that shall be made available to the Authority about transactions and market participants and how coordination of collection shall be carried out as well as outlining how existing national databases shall be linked in order to ensure that the Authority always can access the relevant and necessary information concerning transactions and market.*
3. The Authority shall execute any exclusive supervisory powers over entities with **Union-wide** reach or economic activities with **Union-wide** reach entrusted to it in the **legislative acts** referred to in Article 1(2).
4. For **the purpose of exercising its exclusive supervisory powers under paragraph 3**, the Authority shall have appropriate powers of investigation and enforcement as specified in the relevant legislation, as well as the possibility of charging fees. **The Authority shall work in close cooperation with the competent authorities and build on their expertise, facilities and powers to carry out its tasks.**

#### Article 6a

##### *Tasks related to consumer protection and financial activities*

1. **In order to foster depositors and investors protection the Authority shall take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the single market, including by:**
- (i) collecting, analysing and reporting on consumer trends,*
  - (ii) reviewing and coordinating financial literacy and education initiatives,*
  - (iii) developing training standards for the industry,*
  - (iv) contributing to the development of common disclosure rules, and*
  - (v) assess, in particular, the accessibility, availability and credit cost for households and enterprises, in particular SMEs.*

Wednesday 7 July 2010

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

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

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

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

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

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

#### Article 7

##### **Regulatory** technical standards

1. *The European Parliament and the Council may delegate powers to the Commission to adopt regulatory technical standards under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts referred to in Article 1(2). Those regulatory standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based. Draft regulatory technical standards shall be developed by the Authority and submitted to the Commission for endorsement. Where the Authority does not submit a draft to the Commission within the time limits set out in the legislative acts referred to in Article 1(2), the Commission may adopt a regulatory technical standard.*

2. *The Authority shall conduct open public consultations on regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the regulatory technical standards concerned or in relation to the particular urgency of the matter before submitting them to the Commission. The Authority shall also request the opinion or advice of the Banking Stakeholder Group referred to in Article 22.*

3. *The Commission shall upon receipt of a draft regulatory technical standard from the Authority forward it immediately to the European Parliament and the Council.*

4. *The Commission shall decide within three months of receipt whether to adopt a draft regulatory technical standard. The regulatory technical standard shall be adopted by means of regulations or decisions. If the Commission does not intend to adopt the standard it shall inform the European Parliament and Council of this and of the reasons for this.*

Wednesday 7 July 2010

#### Article 7a

##### *Non-endorsement or amendment of draft regulatory standards*

1. *Where the Commission intends not to endorse the draft regulatory technical standards or to endorse them in part or with amendments, it shall send the draft regulatory technical standards back to the Authority, proposing reasoned amendments.*
2. *Within a period of 6 weeks, the Authority may amend the draft regulatory technical standards on the basis of the Commission's proposed amendments and resubmit them to the Commission for endorsement. The Authority shall inform the European Parliament, the Council and the Commission on its decision.*
3. *When the Authority does not agree with the Commission's decision to reject or amend its initial proposals, the European Parliament or Council may convene the responsible Commissioner, together with the Chairman of the Authority, within one month for an ad hoc meeting of the competent committee of the European Parliament or Council to present and explain their differences.*

#### Article 7b

##### *Exercise of the delegation*

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

#### Article 7c

##### *Objections to regulatory standards*

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

Wednesday 7 July 2010

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

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

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

#### Article 7d

##### Revocation of the delegation

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

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

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

#### Article 7e

##### Implementing technical standards

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

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

(b) where the Authority does not submit a draft to the Commission within the time limits set out in the legislative acts referred to in Article 1(2), or indicated in a request addressed to the Authority by the Commission in accordance with Article 19, the Commission may adopt an implementing technical standard by means of an implementing act.

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

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

Wednesday 7 July 2010

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

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

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

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

#### Article 8

##### Guidelines and recommendations

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

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

2. The competent authorities **and financial institutions** shall make every effort to comply with those guidelines and recommendations. **Within two months of the issuance of a guideline or recommendation, each competent authority shall confirm that it intends to comply with that guideline or recommendation. In the event that a competent authority does not intend to comply, it shall inform the Authority, stating reasons. The Authority shall publish those reasons.**

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

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

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

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



Wednesday 7 July 2010

## Article 9

**Breach of Union law**

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

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

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

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

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

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

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

**apart from**

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

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

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

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

Wednesday 7 July 2010

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

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

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

#### Article 10

##### Action in emergency situations

1. In the case of adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the **European Union, the Authority shall actively facilitate and, where deemed necessary, coordinate any actions undertaken by the relevant national competent supervisory authorities.**

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

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

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

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

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

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

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

Wednesday 7 July 2010

## Article 11

## Settlement of disagreements between competent authorities

1. Without prejudice to the powers laid down in Article 9, where a competent authority disagrees on the procedure or content of an action or inaction by another competent authority in areas where the **legislative acts** referred to in Article 1(2) require cooperation, coordination or joint decision making by competent authorities from more than one Member State, the Authority **on its own initiative or at the request of one or more of the competent authorities concerned, shall take the lead in assisting** the competent authorities **█** in reaching an agreement in accordance with the procedure set out in **paragraphs 2 to 4**.
2. The Authority shall set a time limit for conciliation between the competent authorities taking into account any relevant time periods specified in **the legislative acts** referred to in Article 1(2) and the complexity and urgency of the matter. **At that stage the Authority shall act as a mediator.**
3. If, at the end of the conciliation phase, the competent authorities concerned have failed to reach an agreement, the Authority **shall, in accordance with the procedure set out in the third subparagraph of Article 29(1), take a decision requiring to settle the disagreement and to require** them to take specific action **█** in compliance with **Union law, with binding effects on the competent authorities concerned.**
4. Without prejudice to the powers of the Commission under **Article 258 TFEU**, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial institution complies with requirements directly applicable to it by virtue of the **legislative acts** referred to in Article 1(2), the Authority may adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under Community law, including the cessation of any practice.
  - 4a. **Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter. Any action by the competent authorities in relation to facts which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.**
  - 4b. **In the Report referred to in Article 28(4a), the Chairperson shall set out the disagreements between competent authorities, the agreements reached and the decision taken to settle such disagreements.**

## Article 11a

## Settlement of disagreements between competent authorities across sectors

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

## Article 12

## Colleges of supervisors

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

Wednesday 7 July 2010

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

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

3. *The Authority shall, at least:*

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

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

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

#### Article 12a

##### General provisions

1. *The Authority shall pay special attention to and address risks of disruption in financial services that (i) is caused by an impairment of all or parts of the financial system and (ii) has the potential to have serious negative consequences for internal market and the real economy (systemic risk). All types of financial intermediaries, markets and infrastructure can potentially be systematically important to some degree.*
2. *The Authority, in collaboration with the European Systemic Risk Board, shall develop a common set of quantitative and qualitative indicators (risk dashboard), which will serve as the basis to assign a supervisory rating to cross-border institutions identified in Article 12b. That rating shall be reviewed on a regular basis, to take into account material changes of the risk profile of an institution. The supervisory rating shall be a critical element for the decision to directly supervise or intervene in an ailing institution.*
3. *Without prejudice to the legislative acts referred to in Article 1(2), the Authority shall propose, as necessary, additional draft regulatory and implementing standards as well as guidelines and recommendations for institutions identified in Article 12b.*
4. *The Authority shall exert supervision of cross-border institutions that may pose a systemic risk as established in Article 12b. In those cases, the Authority shall act through the competent authorities.*

Wednesday 7 July 2010

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

#### Article 12b

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

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

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

#### Article 12c

##### Banking Resolution Unit

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

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

3. The Banking Resolution Unit shall comprise experts appointed by the Board of Supervisors of the Authority with knowledge and expertise in restructuring, turn-a-rounds and liquidation of financial institutions.

#### Article 12d

##### European Deposit Guarantee Schemes

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

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

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

Wednesday 7 July 2010

## Article 12e

### European Banking Stability Fund

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

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

3. The European Banking Stability Fund shall be managed by a Board appointed by the Authority for a period of five years. The members of the Board shall be selected from staff proposed by the national authorities. The Fund shall also create a Consultative Board involving non-voting representation of the financial institutions participating in the Fund. The Board of the Fund may propose that the Authority outsource the management of its liquidity to reputable institutions (such as the EIB), which shall be invested in safe and liquid instruments.

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

## Article 13

### Delegation of tasks and responsibilities

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

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

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

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

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

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

Wednesday 7 July 2010

## Article 14

## Common supervisory culture

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

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

2. The Authority may, as appropriate, develop new practical instruments and convergence tools to promote common supervisory approaches and practices.

## Article 15

## Peer review of competent authorities

1. The Authority shall periodically **organise and** conduct peer review analyses of some or all of the activities of competent authorities, to further enhance consistency in supervisory outcomes. To this end, the Authority shall develop methods to allow for objective assessment and comparison between the authorities reviewed. **When conducting peer reviews, existing information and evaluations already made with regard to the competent authority concerned shall be taken into account.**

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

- (a) the adequacy of **resources and governance** arrangements of the competent authority, with particular regard to the effective application of the **regulatory technical and implementing technical standards referred to in Articles 7 to 7e and of the legislative acts** referred to in Article 1(2) and to the capacity to respond to market developments;
- (b) the degree of convergence reached in the application of **Union** law and in supervisory practice, including **regulatory technical and implementing** technical standards, guidelines and recommendations adopted under Articles 7 and 8, and the extent to which the supervisory practice achieves the objectives set out in **Union** law;
- (c) good practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;

Wednesday 7 July 2010

(ca) *the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where these provisions have not been complied with.*

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

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

#### Article 16

##### Coordination function

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

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

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

#### Article 17

##### Assessment of market developments

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



Wednesday 7 July 2010

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

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

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

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

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

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

#### Article 18

##### International relations

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

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

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

#### Article 19

##### Other tasks

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

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

Wednesday 7 July 2010

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

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

#### Article 20

##### Collection of information

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

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

**1b.** **On a duly justified request from a competent authority of a Member State, the Authority may provide any information that is necessary to enable the competent authority to carry out its duties, in accordance with the professional secrecy obligations laid down in sectoral legislation and Article 56.**

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

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

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

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

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

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

Wednesday 7 July 2010

## Article 21

## Relationship with the ESRB

1. The Authority shall co-operate ***closely and on a regular basis*** with the ESRB.
2. The Authority shall **■** provide the ESRB with regular and up-to-date information necessary for the achievement of its tasks. Any data necessary for the achievement of its tasks that are not in summary or collective form shall be provided without delay to the ESRB upon a reasoned request, as specified in Article [15] of Regulation (EU) No .../2010 (ESRB). ***The Authority, in cooperation with the ESRB, shall have in place adequate internal procedures for the transmission of confidential information, in particular regarding individual financial institutions.***
3. The Authority shall, in accordance with paragraphs 4 and 5, ensure a proper follow-up to ESRB warnings and recommendations referred to in Article [16] of Regulation (EU) No .../2010 (ESRB).
4. On receipt of a warning or recommendation from the ESRB addressed to the Authority, it shall convene a meeting of the Board of Supervisors without delay and assess the implications of such a warning or recommendation for the fulfilment of its tasks.

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

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

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

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

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

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

## Article 22

## Banking Stakeholder Group

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

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

Wednesday 7 July 2010

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

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3. The members of the Banking Stakeholder Group shall be appointed by the Board of Supervisors of the Authority, following proposals from the relevant stakeholders. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical **and gender** balance and representation of stakeholders across the **European Union**.

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

The members may serve two successive terms.

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

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

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

Article 23

Safeguards

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

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

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

Wednesday 7 July 2010

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

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

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

#### Article 24

##### Decision-making procedures

1. Before taking the decisions provided for in *this Regulation*, the Authority shall inform *any named* addressee of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the matter, taking full account of the urgency, *complexity and potential consequences* of the matter. *This applies mutatis mutandis to recommendations as referred to in Article 9(4).*

2. The decisions of the Authority shall state the reasons on which they are based.

3. The addressees of decisions of the Authority shall be informed of the legal remedies available under this Regulation.

4. Where the Authority has taken a decision pursuant to Article 10(2) or (3), it shall review that decision at appropriate intervals.

5. The decisions which the Authority takes pursuant to Articles 9, 10 and 11 shall be made public and shall state the identity of the competent authority or financial institution concerned and the main content of the decision, *unless such publication is in conflict with* the legitimate interest of financial institutions in the protection of their business secrets *or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the European Union.*

#### CHAPTER III

##### ORGANISATION

##### SECTION 1

##### BOARD OF SUPERVISORS

#### Article 25

##### Composition

1. The Board of Supervisors shall be composed of:

(a) the Chairperson, who shall be non-voting;

(b) the Head of the national public authority competent for the supervision of credit institutions in each Member State, *who shall meet in person at least twice a year;*

Wednesday 7 July 2010

- (c) one representative of the Commission, who shall be non-voting;
- (d) one representative of the European Central Bank, who shall be non-voting;
- (e) one representative of the ESRB, who shall be non-voting;
- (f) one representative of each of the other two European Supervisory Authorities, who shall be non-voting.

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

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

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

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

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

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

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

## Article 26

### Internal committees and Panels

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

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

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

Wednesday 7 July 2010

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

#### Article 27

##### Independence

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

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

#### Article 28

##### Tasks

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

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

3. The Board of Supervisors shall appoint the Chairperson.

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

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

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

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

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

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

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

Wednesday 7 July 2010

## Article 29

### Decision making

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

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

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

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

2. Meetings of the Board of Supervisors shall be convened by the Chairperson at his or her own initiative or at the request of one third of its members, and shall be chaired by the Chairperson.

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

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

## SECTION 2

### MANAGEMENT BOARD

## Article 30

### Composition

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

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

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

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



Wednesday 7 July 2010

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

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

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

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

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

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

#### Article 31

##### Independence

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

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

#### Article 32

##### Tasks

1. The Management Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with this Regulation.

2. The Management Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme.

3. The Management Board shall exercise its budgetary powers in accordance with Articles 49 and 50.

4. The Management Board shall adopt the Authority's staff policy plan and, pursuant to Article 54(2), the necessary implementing measures of the Staff Regulations of Officials of the European Communities ('the Staff Regulations').

5. The Management Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 58.

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

Wednesday 7 July 2010

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 (5).

#### SECTION 3

#### CHAIRPERSON

#### Article 33

#### Appointment and tasks

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

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

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

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

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

3. The Chairperson's term of office shall be five years and may be extended once.
  
4. In the course of the nine months preceding the end of the five-year term of office of the Chairperson, the Board of Supervisors shall evaluate:
  - (a) the results achieved in the first term of Office and the way they were achieved;
  
  - (b) the Authority's duties and requirement in the coming years.

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

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

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

Wednesday 7 July 2010

## Article 34

## Independence

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

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

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

## Article 35

## Report

1. The European Parliament **and the Council** may invite the Chairperson or his **or her** alternate, while fully respecting his or her independence to make a statement. **The Chairperson shall make a statement before the European Parliament** and answer **any** questions put by **its** members, **whenever so requested.**

2. **■** The Chairperson **shall** report **in writing** on the **main activities of the Authority to the European Parliament when requested and at least 15 days before making the statement referred to in paragraph 1.**

**2a. In addition to the information referred to in Articles 7a to 7e, 8, 9, 10, 11a and 18, the Report shall also include any relevant information requested by the European Parliament on an ad-hoc basis.**

## SECTION 4

## EXECUTIVE DIRECTOR

## Article 36

## Appointment

1. The 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 **after the confirmation of the European Parliament.**

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.

Wednesday 7 July 2010

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

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

#### Article 37

##### Independence

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

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

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

#### Article 38

##### Tasks

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

Wednesday 7 July 2010

## CHAPTER IV

## EUROPEAN SYSTEM OF FINANCIAL SUPERVISORS ■

## SECTION 2

■ EUROPEAN SUPERVISORY AUTHORITIES (**JOINT COMMITTEE**)

## Article 40

## Establishment

1. ■ The European Supervisory Authorities **Joint Committee** is hereby established
2. The Joint Committee shall serve as a forum in which the Authority **cooperates** regularly and closely and ensure cross-sectoral consistency with the **other ESAs, in particular regarding:**
  - **financial conglomerates;**
  - **accounting and auditing;**
  - **micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability;**
  - **retail investment products;**
  - **anti-money laundering measures; and**
  - **information exchange with the ESRB and developing the relationship between the ESRB and the European Supervisory Authorities.**
3. **The Joint Committee shall have a** dedicated staff provided by **the three European Supervisory Authorities that shall act as a secretariat.** The Authority shall contribute adequate resources to ■ administrative, infrastructure and operational expenses.

**Article 40a****Supervision**

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

## Article 41

## Composition

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

Wednesday 7 July 2010

4. The Joint Committee shall adopt and publish its own rules of procedure. The rules may specify further participants of the meetings of the Joint Committee.

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

#### Article 42

##### Joint positions and common acts

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

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

#### Article 43

##### Sub-committees

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

#### SECTION 3

##### BOARD OF APPEAL

#### Article 44

##### Composition

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

The Board of Appeal designates its President.

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

Wednesday 7 July 2010

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

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

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

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

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

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

#### Article 45

##### Independence and impartiality

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

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

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

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

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

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

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

6. The members of the Board of Appeal shall undertake to act independently and in the public interest.

Wednesday 7 July 2010

For that purpose, they shall make a declaration of commitments and a declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence.

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

#### CHAPTER V

#### REMEDIES

#### Article 46

#### Appeals

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

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

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

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

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

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

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

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

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

#### Article 47

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

1. An action may be brought before the **General Court** or the Court of Justice, in accordance with **Article 263 TFEU**, contesting a decision taken by the Board of Appeal or, in cases where there is no right of appeal before the Board of Appeal, by the Authority.



Wednesday 7 July 2010

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

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

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

## CHAPTER VI

### FINANCIAL PROVISIONS

#### Article 48

##### Budget of the Authority

1. The revenues of the Authority, **a European body in accordance with Article 185 of Council Regulation (EC, Euratom) No 1605/2002**, shall consist, in particular, of **any combination of the following**:

(a) obligatory contributions from the national **public authorities competent for the supervision of financial institutions, which shall be made in accordance with a formula based on the weighting of votes set out in Article 3(3) of the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union and to the TFEU**;

(b) a subsidy from the **Union**, entered in the General Budget of the European Union (Commission Section); **the financing of the Authority by the European Union is subject to an agreement by the budgetary authority as provided for in Point 47 of the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management**;

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

2. The expenditure of the Authority shall include, at least, staff, remuneration, administrative, infrastructure **professional training** and operational expenses.

3. Revenue and expenditure shall be in balance.

4. Estimates of all Authority revenue and expenditure shall be prepared for each financial year, corresponding to the calendar year, and shall be presented in the budget of the Authority.

#### Article 49

##### Establishment of the budget

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

**Wednesday 7 July 2010**

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

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

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

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

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

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

## Article 50

## Implementation and control of the budget

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

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

The Commission's accounting officer shall then consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002 <sup>(34)</sup>, (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.

4. The Management Board shall deliver an opinion on the final accounts of the Authority.

<sup>(34)</sup> OJ L 248, 16.9.2002, p. 1.

Wednesday 7 July 2010

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

#### Article 51

##### Financial rules

The financial rules applicable to the Authority shall be adopted by the Management Board after the Commission has been consulted. Those rules may not depart from Commission Regulation (EC, Euratom) No 2343/2002 <sup>(35)</sup> 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) <sup>(36)</sup> and shall immediately adopt appropriate provisions for all staff of the Authority.
3. The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks on the beneficiaries of monies disbursed by the Authority as well as on the staff responsible for allocating these monies.

#### CHAPTER VII

##### GENERAL PROVISIONS

#### Article 53

##### Privileges and immunities

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

<sup>(35)</sup> OJ L 357, 31.12.2002, p. 72.

<sup>(36)</sup> OJ L 136, 31.5.1999, p. 15.

Wednesday 7 July 2010

#### Article 54

##### Staff

1. The Staff Regulations, the Conditions of employment of other servants and the rules adopted jointly by the **Union** institutions for the purpose of applying these shall apply to the staff of the Authority, including its Executive Director **and its Chairperson**.
2. The Management Board, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations.
3. In respect of its staff, the Authority shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of employment of other servants.
4. The Management Board shall adopt provisions to allow national experts from Member States to be seconded to the Authority.

#### Article 55

##### Liability of the Authority

1. In the case of non-contractual liability, the Authority shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its staff in the performance of their duties. The Court of Justice shall have jurisdiction in any dispute over the remedying of such damage.
2. The personal financial liability and disciplinary liability of Authority staff towards the Authority shall be governed by the relevant provisions applying to the staff of the Authority.

#### Article 56

##### Obligation of Professional Secrecy

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

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

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

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

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

Wednesday 7 July 2010

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 <sup>(37)</sup>.

#### 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 228 and 263 TFEU** respectively.

#### Article 59

##### Language arrangements

1. The provisions of Council Regulation No 1 <sup>(38)</sup> 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.

<sup>(37)</sup> OJ L 317, 3.12.2001, p. 1.

<sup>(38)</sup> OJ 17, 6.10.1958, p. 385.

Wednesday 7 July 2010

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

## Article 61

### Participation of third countries

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

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

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

## CHAPTER VIII

### TRANSITIONAL AND FINAL PROVISIONS

## Article 62

### Preparatory actions

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

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

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

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

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

Wednesday 7 July 2010

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

#### Article 63

##### Transitional Staff provisions

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

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

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

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

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

#### Article 63a

##### National provisions

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

#### Article 64

##### Amendments

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

#### Article 65

##### Repeal

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

Wednesday 7 July 2010

Article 66

*Review clause*

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

1. **By ... <sup>(\*)</sup> and every three years thereafter**, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation. That report shall **■** evaluate, *inter alia*:

- (a) the convergence in supervisory practices reached by competent authorities;**
- (b) the functioning of the colleges of supervisors;**
- (c) progress achieved towards convergence in the fields of crisis prevention, management and resolution, including European funding mechanisms;**
- (d) whether, in particular in light of the progress achieved with regard to the issues referred to in point (c), the role of the Authority in the supervision of financial institutions posing a potential systemic risk should be strengthened and whether it should exercise enhanced supervisory powers over those institutions;**
- (e) the application of the safeguard clause established in Article 23.**

**1a. The report referred to in paragraph 1 shall also examine whether:**

- (a) it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets;**
- (b) it is appropriate to supervise prudential supervision and the conduct of business separately or by the same supervisor;**
- (c) it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the European Supervisory Authorities;**
- (d) the evolution of the ESFS is consistent with that of the global evolution;**
- (e) there is sufficient diversity and excellence within the ESFS;**
- (f) accountability and transparency in relation to publication requirements are adequate;**
- (g) it is appropriate to maintain the seat of the Authority in Frankfurt.**

<sup>(1)</sup> six months from the date of entry into force of this Regulation.

<sup>(\*)</sup> three years after the date of application of this Regulation.



Wednesday 7 July 2010

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

## Article 67

## Entry into force

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

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

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

Done at

For the European Parliament  
The President

For the Council  
The President

## European Insurance and Occupational Pensions Authority \*\*\*I

P7\_TA(2010)0273

**Proposal for a regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority (COM(2009)0502 – C7-0168/2009 – 2009/0143(COD))**

(2011/C 351 E/39)

(Ordinary legislative procedure: first reading)

The proposal was amended on 7 July 2010 as follows <sup>(1)</sup>:

### AMENDMENTS BY PARLIAMENT (\*)

to the Commission proposal

### REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European **Supervisory** Authority (**Insurance and Occupational Pensions**)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

<sup>(1)</sup> The matter was then referred back to committee pursuant to Rule 57(2), second subparagraph (A7-0170/2010).

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

Wednesday 7 July 2010

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Economic and Social Committee <sup>(1)</sup>,

Having regard to the opinion of the Committee of the Regions <sup>(2)</sup>,

Having regard to the opinion of the European Central Bank <sup>(3)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(4)</sup>,

Whereas:

- (1) The financial crisis in 2007/2008 exposed important shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. Nationally-based supervisory models have lagged behind the **financial globalisation and the** integrated and interconnected reality of European financial markets, in which many financial firms operate across borders. The crisis exposed shortcomings in the area of cooperation, coordination, consistent application of **Union** law and trust between national supervisors.
- (1a) *Long before the financial crisis the European Parliament was already calling regularly for the reinforcement of a true level playing field for all actors at Union level while pointing out significant failures in the Union's supervision of ever more integrated financial markets (in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan <sup>(5)</sup>, of 21 November 2002 on prudential supervision rules in the European Union <sup>(6)</sup>, of 11 July 2007 on financial services policy (2005-2010) - White Paper <sup>(7)</sup>, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity <sup>(8)</sup>, of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision <sup>(9)</sup>, of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) <sup>(10)</sup> and of 23 April 2009 on the proposal for a regulation of the European parliament and of the Council on Credit Rating Agencies <sup>(11)</sup>.*
- (2) A report published on 25 February 2009 by a high-level group of experts chaired by J. de Larosière (**the de Larosière Report**), requested by the Commission, concluded that the supervisory framework needed to be strengthened to reduce the risk and severity of future financial crises. It recommended reforms to the structure of supervision of the financial sector in the **Union**. That group of experts also concluded that a European System of Financial Supervisors should be created, comprising three European Supervisory Authorities, one for the banking sector, one for the securities sector and one for the insurance and occupational pensions sector, and the creation of a European Systemic Risk Council. **The recommendations in the report represented the lowest level of change that the experts qualified as necessary to avoid a similar crisis to take place in the future.**

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

<sup>(2)</sup> OJ C , , p. .

<sup>(3)</sup> OJ C 13, 20.1.2010, p. 1.

<sup>(4)</sup> Position on the European Parliament of ....

<sup>(5)</sup> OJ C 40, 7.2.2001, p. 453.

<sup>(6)</sup> OJ C 25 E, 29.1.2004, p. 394.

<sup>(7)</sup> OJ C 175 E, 10.7.2008, p. 392.

<sup>(8)</sup> OJ C 8 E, 14.1.2010, p. 26.

<sup>(9)</sup> OJ C 9 E, 15.1.2010, p. 48.

<sup>(10)</sup> Texts adopted, P6\_TA(2009)0251.

<sup>(11)</sup> Texts adopted, P6\_TA(2009)0279.

Wednesday 7 July 2010

- (3) **¶** In its Communication of 4 March 2009 entitled 'Driving European Recovery' **the Commission** proposed to bring forward draft legislation creating a European System of Financial Supervisors and a European Systemic Risk Board (**ESRB**), and in its Communication of 27 May 2009 entitled 'European Financial Supervision' **¶**, it provided more detail about the possible architecture of such a new supervisory framework **but did not include all the recommendations made in the de Larosière Report**.
- (4) The European Council, in its conclusions of 19 June 2009, recommended that a European System of Financial Supervisors, comprising three new European Supervisory Authorities, be established. The system should be aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross border groups and establishing a European single rule book applicable to all financial institutions in the Single Market. It emphasised that the European Supervisory Authorities should also have supervisory powers for credit rating agencies and invited the Commission to prepare concrete proposals on how the European System of Financial Supervisors could play a strong role in crisis situations, while stressing that decisions taken by the European Supervisory Authorities should not impinge on the fiscal responsibilities of Member States.
- (4a) *The International Monetary Fund (IMF) report of 16 April 2010 entitled 'A Fair and Substantial Contribution by the Financial Sector', written at the request of the G-20 Pittsburgh summit, stated that 'the cost of financial sector failures should be contained and covered by a Financial Stability Contribution (FSC) linked to a credible and effective resolution mechanism. If defined properly, resolution mechanisms will avoid governments in the future being forced to bail out institutions too important, too big or too interconnected to fail'.*
- (4b) *The Commission Communication of 3 March 2010 entitled 'Europe 2020' also declared that a crucial priority in the short term would be to set 'to better prevent and if needed manage possible financial crises, and that – taking into account the specific responsibility of the financial sector in the current crisis – will look also into adequate contributions from the financial sector'.*
- (4c) *The European Council stated clearly on 25 March 2010 that 'progress is particularly needed on issues such as systemic institutions financing instruments for crisis management'.*
- (4d) *The European Council finally expressed on 17 June 2010 that 'Member States should introduce systems of levies on financial institutions to ensure fair burden sharing and to set incentives to contain systemic risk. Such levies should be part of a credible resolution framework'.*
- (5) The financial and economic crisis has created real and serious risks to the stability of the **financial system and the functioning of the** internal market. Restoring and maintaining a stable and reliable financial system is an absolute prerequisite to preserving trust and coherence in the internal market, hence to preserve and improve the conditions for the establishment of a fully integrated and functioning internal market in the field of financial services. Moreover, deeper and more integrated financial markets offer better opportunities for financing and risk diversification, and thus help to improve the capacity of the economies to absorb shocks.
- (6) The **Union** has reached the limits of what can be done with the present status of the Committees of European Supervisors **¶**. The **Union** cannot remain in a situation where there is no mechanism to ensure that national supervisors arrive at the best possible supervisory decisions for cross-border institutions; where there is insufficient cooperation and information exchange between national supervisory authorities; where joint action by national authorities requires complicated arrangements to take account of the patchwork of regulatory and supervisory requirements; where national solutions are most often the only feasible option in responding to European problems, where different interpretations of the same legal text exist. The European System **of Financial Supervision (ESFS)** should be designed to overcome these deficiencies and provide a system that is in line with the objective of a stable and single **Union** financial market for financial services, linking national supervisors into a strong **Union** network.

Wednesday 7 July 2010

- (7) The ESFS should be **an integrated** network of national and **Union** supervisory authorities, leaving day-to-day supervision of financial institutions **to** the national level. **The Authority should have a leading role in the colleges of supervisors supervising cross-border financial institutions, and clear supervisory norms for them should be defined. The Authority should pay special attention to financial institutions that may pose a systemic risk since their failure could jeopardise the stability of the Union financial system, where a national authority has failed to exercise its powers.** Greater harmonisation and the coherent application of rules for financial institutions and markets across the **Union** should also be achieved. **In addition to the Authority**, a European Supervisory Authority (**Banking**) and a European Supervisory Authority (**Securities and Markets**) as well as a European Supervisory Authority (**Joint Committee**) should be established. **The ESRB should form part of the EFSF.**
- (8) The European Supervisory **Authority** should replace the Committee of European Banking Supervisors established by Commission Decision 2009/78/EC <sup>(1)</sup>, the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2009/79/EC <sup>(2)</sup> and the Committee of European Securities Regulators established by Commission Decision 2009/77/EC <sup>(3)</sup>, and assume all of the tasks and competences of those committees **including the continuation of on-going work and projects, where appropriate.** The scope of each Authority's action should be clearly defined. Where institutional reasons and the responsibilities assigned in the Treaty **on the Functioning of the European Union (TFEU)** so require, the Commission should also be part of the network of supervisory activities.
- (9) The **Authority** should act with a view to improving the functioning of the internal market, **in particular by ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States and the different nature of financial institutions. The Authority should protect public values like the stability of the financial system, the transparency of markets and financial products and the protection of** depositors and investors. **The Authority should also prevent regulatory arbitrage and guarantee a level playing field**, and **strengthen international supervisory coordination**, for the benefit of the economy at large, including financial institutions and other stakeholders, consumers and employees. **Its tasks should also include promoting supervisory convergence and providing advice to the EU institutions in the areas of insurance, re-insurance, occupational retirement provision and insurance mediation, and related corporate governance, auditing and financial reporting issues. The Authority should also be entrusted with a general oversight responsibility for existing and new financial products/types of transactions.**
- (9a) **The Authority shall take due account of the impact of its activities on competition and innovation within the internal market, the Union's global competitiveness, financial inclusion, and the Union's new strategy for jobs and growth.**
- (9b) **(In order to fulfil its objectives, the Authority should have legal personality as well as administrative and financial autonomy. The Authority should be granted 'powers to address compliance with laws in particular those related with systemic risk and cross-border risks'.**
- (9c) **Systemic risk is defined by international authorities (the IMF, the Financial Stability Board (FSB) and the Bank for International Settlements (BIS)) as 'a risk of disruption to financial services that is (i) caused by an impairment of all or parts of the financial system and (ii) has the potential to have serious negative consequences for the real economy. All types of financial intermediaries, markets and infrastructure can potentially be systematically important to some degree'.**

<sup>(1)</sup> OJ L 25, 29.1.2009, p. 23.

<sup>(2)</sup> OJ L 25, 29.1.2009, p. 28.

<sup>(3)</sup> OJ L 25, 29.1.2009, p. 18.

Wednesday 7 July 2010

- (9d) **Cross-border risk, according to those institutions, includes all risks caused by economic imbalances or financial failures in all or parts of the Union that have the potential to have significant negative consequences for the transactions between economic operators of two or more Member States, for the functioning of the internal market or for the public finances of the Union or any of its Member States.**
- (10) The Court of Justice of the European **Union** in its judgement of 2 May 2006 in Case C-217/04 (United Kingdom/European Parliament and Council) **held that: ‘nothing in the wording of Article 95 TEC [now Article 114 TFEU] implies that the addressees of the measures adopted by the Community legislature can only be the individual Member States. The legislature may deem it necessary to provide for the establishment of a Community body responsible for contributing to the implementation of a process of harmonization in situations where, in order to facilitate the uniform implementation and application of acts based on that provision, the adoption of non-binding supporting and framework measures seems appropriate’.** The purpose and tasks of the Authority – assisting competent national supervisory authorities in the consistent interpretation and application of **Union** rules and contributing to financial stability necessary for financial integration – are closely linked to the objectives of the **Union** *acquis* concerning the internal market for financial services. The Authority should therefore be established on the basis of **Article 114 TFEU**.
- (11) The legal acts which lay down the tasks for national supervisory authorities of Member States, including cooperating with each other and with the Commission, are the following <sup>(1)</sup>: Directive 64/225/EEC of 25 February 1964 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession <sup>(2)</sup>, First Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance <sup>(3)</sup>, Council Directive 73/240/EEC of 24 July 1973 abolishing restrictions on freedom of establishment in the business of direct insurance other than life assurance <sup>(4)</sup>, Council Directive 76/580/EEC of 29 June 1976 amending Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance <sup>(5)</sup>, Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance <sup>(6)</sup>, Council Directive 84/641/EEC of 10 December 1984 amending, particularly as regards tourist assistance, the First Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance <sup>(7)</sup>, Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance <sup>(8)</sup>, Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC <sup>(9)</sup>, Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive) <sup>(10)</sup>, Directive 98/78/EC of the

<sup>(1)</sup> Please note that Directives 64/225/EEC, 73/239/EEC, 73/240/EEC, 76/580/EEC, 78/473/EEC, 84/641/EEC, 87/344/EEC, 88/357/EEC, 92/49/EEC, 98/78/EC, 2001/17/EC, 2002/83/EC and 2005/68/EC are part of the Solvency II recast (Amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (recast) (COM(2008)0119 – C6-0231/2007 – 2007/0143(COD)), i.e. will be repealed with effect of 1 November 2012.

<sup>(2)</sup> OJ 56, 4.4.1964, p. 878.

<sup>(3)</sup> OJ L 228, 16.8.1973, p. 3.

<sup>(4)</sup> OJ L 228, 16.8.1973, p. 20.

<sup>(5)</sup> OJ L 189, 13.7.1976, p. 13.

<sup>(6)</sup> OJ L 151, 7.6.1978, p. 25.

<sup>(7)</sup> OJ L 339, 27.12.1984, p. 21.

<sup>(8)</sup> OJ L 185, 4.7.1987, p. 77.

<sup>(9)</sup> OJ L 172, 4.7.1988, p. 1.

<sup>(10)</sup> OJ L 228, 11.8.1992, p. 1.

Wednesday 7 July 2010

European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group <sup>(1)</sup>, Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings <sup>(2)</sup>, Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance <sup>(3)</sup>, Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation <sup>(4)</sup>, and Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision <sup>(5)</sup>.

- (12) Existing **European Union** legislation regulating the field covered by this Regulation also includes Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate <sup>(6)</sup>, **Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds** <sup>(7)</sup>, **Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions** <sup>(8)</sup> and, in relevant parts, Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing <sup>(9)</sup>, Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services <sup>(10)</sup> and **Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market** <sup>(11)</sup>.
- (12a) *It is desirable that the Authority promote a consistent approach in the area of deposit guarantees to ensure a level playing field and the equitable treatment of depositors across the Union. As deposit guarantee schemes are subject to oversight in their Member States rather than regulatory supervision, it is appropriate that the Authority should be able to exercise its powers under this Regulation in relation to the deposit guarantee scheme itself and its operator. The role of the Authority should be reviewed once a European Deposit Guarantee fund is established.*
- (13) There is a need to introduce an effective instrument to establish harmonised **regulatory** technical standards in financial services to ensure, also through a single rulebook, a level playing field and an adequate protection of depositors, investors and consumers across **the Union**. As a body with highly specialised expertise, it is efficient and appropriate to entrust the Authority, in areas defined by **Union** law, with the elaboration of draft **regulatory** technical standards, which do not involve policy choices. **The Commission should endorse those regulatory and implementing technical standards in accordance with Article 290 TFEU in order to give them binding legal effect.**
- (14) **Draft regulatory technical standards should be subject to amendment only in very restricted and extraordinary circumstances, provided that the Authority is the one in close contact with and acknowledging the daily work of financial markets. They would be subject to amendment if, for example, the draft regulatory standards were incompatible with Union Law, would not respect the principle of proportionality or would run counter to the fundamental principles of the internal market for financial services as reflected in the acquis of Union financial services legislation. The Commission should not change the content of the technical standards prepared by the Authority without prior coordination with the Authority. To ensure a smooth and expeditious adoption process for those standards, the Commission should be subject to a time limit for its decision on the endorsement.**

<sup>(1)</sup> OJ L 330, 5.12.1998, p. 1.

<sup>(2)</sup> OJ L 110, 20.4.2001, p. 28.

<sup>(3)</sup> OJ L 345, 19.12.2002, p. 1.

<sup>(4)</sup> OJ L 9, 15.1.2003, p. 3.

<sup>(5)</sup> OJ L 235, 23.9.2003, p. 10.

<sup>(6)</sup> OJ L 35, 11.2.2003, p. 1.

<sup>(7)</sup> **OJ L 345, 8.12.2006, p. 1.**

<sup>(8)</sup> **OJ L 267, 10.10.2009, p. 7.**

<sup>(9)</sup> OJ L 309, 25.11.2005, p. 15.

<sup>(10)</sup> OJ L 271, 9.10.2002, p. 16.

<sup>(11)</sup> **OJ L 319, 5.12.2007, p. 1.**

Wednesday 7 July 2010

- (14a) *The Commission should also be empowered to implement legally binding Union acts as stated in Article 291 TFEU. Regulatory and implementing technical standards have to take into account the principle of proportionality, i. e. the requirements laid down in these standards should be proportionate to the nature, scale and complexity of the risks inherent in the business of the financial institution concerned.*
- (15) In areas not covered by **regulatory** technical standards, the Authority should have the power to issue guidelines and recommendations on the application of **Union** legislation. In order to ensure transparency and strengthen compliance by national supervisory authorities with those guidelines and recommendations, national authorities should be obliged to **publish the** reasons where they do not comply with those guidelines and recommendations **in order to ensure full transparency towards market participants.**
- (16) Ensuring the correct and full application of **Union** law is a core prerequisite for the integrity, **transparency**, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial institutions in the **Union**. A mechanism should therefore be established whereby the Authority addresses instances of **non-application or** incorrect **application and thus a breach of Union** law. This mechanism should apply in areas where **Union** legislation defines clear and unconditional obligations.
- (17) To allow for a proportionate response to instances of incorrect or insufficient application of **Union** law, a three-step mechanism should apply. At a first level, the Authority should be empowered to investigate alleged incorrect or insufficient application of **Union** law obligations by national authorities in their supervisory practice, concluded by a recommendation. **Where the competent national authority does not follow the recommendation, the Commission should be empowered to issue a formal opinion taking into account the Authority's recommendation, requiring the competent authority to take the actions necessary to ensure compliance with Union law.**
- (18) Where the national authority does not comply with the recommendation **within a deadline fixed by the Authority**, the **Authority** should **address a Decision without delay** to the national supervisory authority concerned in order to ensure compliance with **Union** law, creating direct legal effects which can be invoked before national courts and authorities and enforced under **Article 258 TFEU**.
- (19) To overcome exceptional situations of persistent inaction by the competent authority concerned, the Authority should be empowered, as a last resort, to adopt decisions addressed to individual financial institutions. This power should be limited to exceptional circumstances in which a competent authority does not comply with the **formal opinion** addressed to it and in which **Union** law is directly applicable to financial institutions by virtue of existing or future EU Regulations. **In this regard, the European Parliament and the Council are looking forward to the implementation of the programme of the Commission for 2010, in particular as regards the proposal on the reform of the Capital Requirements Directive.**
- (20) Serious threats to the orderly functioning and integrity of financial markets or the stability of the financial system in the **European Union** require a swift and concerted response at **Union** level. The Authority should therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. **Bearing in mind the sensitivity of the issue, the power to determine the existence of an emergency situation should be conferred on the Commission at its own initiative or on request of the Council, the ESRB, the European Parliament or the Authority. Where the European Parliament, the Council, the ESRB or the European Supervisory Authorities deem that the existence of an emergency situation is likely to arise, they should contact the Commission. In this process, due care of confidentiality is of the utmost importance. If the Commission determines the existence of an emergency situation, it should duly inform the European Parliament and the Council.**

Wednesday 7 July 2010

- (21) In order to ensure efficient and effective supervision and a balanced consideration of the positions of the competent authorities in different Member States, the Authority should be able to settle disagreements between those competent authorities with binding effect, including within colleges of supervisors. A conciliation phase should be provided for, during which the competent authorities may reach an agreement. **Where such an agreement is not reached, the Authority should require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter in order to ensure compliance with EU legislation, with binding effects for the competent authorities concerned. In 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 Union law directly applicable to them.**
- (21a) *The crisis has proven that the mere cooperation between national authorities whose jurisdiction ends at the national border is clearly inadequate to supervise financial institutions that operate cross border.*
- (21b) *Furthermore, 'the current arrangements, combining branch passporting rights, home country supervision, and purely national deposit insurance, are not a sound basis for the future regulation and supervision of European cross-border retail banks' (Turner Review).*
- (21c) *As the Turner Review concluded, 'sounder arrangements require either increased national powers, implying a less open single market, or a greater degree of European integration'.*
- (21d) *The 'national' solution implies giving the host country the right to oblige foreign institutions to act only through the subsidiaries and not through branches and to oversee the capital and liquidity of banks operating in their country, which would amount to more protectionism.*
- (21e) *The 'European' solution calls for the reinforcement of the Authority in the College of Supervisors and for a strengthening in supervision of financial institutions that pose systemic risk.*
- (22) Colleges of supervisors play an important role in the efficient, effective and consistent supervision of financial institutions operating across borders. The Authority should **play a leading role and** have full participation rights in colleges of supervisors with a view to streamlining the functioning of and the information exchange process in colleges and to foster convergence and consistency across colleges in the application of Union law. **As the de Larosière Report states 'competition distortions and regulatory arbitrage stemming from different supervisory practices must be avoided, because they have the potential of undermining financial stability – inter alia by encouraging a shift of financial activity to countries with lax supervision. The supervisory system has to be perceived as fair and balanced'.**
- (22a) *The Authority and national supervisors should strengthen supervision of financial institutions meeting the systemic risk criteria since their failure may jeopardise the stability of the Union Financial System and damage the real economy.*
- (22b) *The systemic risk should be identified, taking into account international standards, in particular those established by the FSB, the IMF, the International Association of Insurance Association and the G-20. Interconnectedness, substitutability and timing are the most commonly used criteria for the identification of systemic risk.*
- (22c) *A framework for dealing with distressed institutions should be established in order to stabilise or wind them down since 'it has been clearly demonstrated that the stakes in a banking crisis are high for government and society at large because such a situation has the potential to jeopardise financial stability and the real economy' (de Larosière Report). The Commission should make appropriate proposals for the establishment of a new framework for financial crisis management. The key elements of crisis management are a common set of rules and financial resolution vehicles (execution and funding to deal with the crisis of large, cross-border and/or interconnected institutions).*



Wednesday 7 July 2010

- (22d) *To ensure the co-responsibility of cross-border financial institutions, to protect European policy holders' interests and to reduce the cost to tax payers of a systemic financial crisis, a European Financial Protection Fund (Fund) shall be established. The European Insurance Guarantee Scheme (Fund) should be established to finance the orderly winding-up or rehabilitation interventions in ailing cross-border financial institutions, whose impact would threaten the financial stability of the European single financial market, and in order to internalise the costs of such interventions, provided their contribution to national Insurance Guarantee Schemes is not sufficient. The Fund should be financed through contributions from those institutions, through debt issued by the Fund or, in exceptional circumstances, through contributions made by the affected Member States in accordance with criteria previously agreed upon (revised Memorandum of Understanding). The contributions to the Fund should replace those made to the national Insurance Guarantee Schemes.*
- (22e) *A European Insurance and Occupational pensions Stability Fund shall be established to finance the orderly winding-up or rescue interventions of financial institutions facing difficulties when those could menace financial stability of the European Single Financial Market. The Fund should be financed through adequate contributions from the insurance and occupational pensions sector. The contributions to the Fund should replace those made to the national Funds of similar nature.*
- (23) The delegation of tasks and responsibilities can be a useful instrument in the functioning of the network of supervisors in order to reduce the duplication of supervisory tasks, foster cooperation and thereby streamline the supervisory process as well as reduce the burden imposed on financial institutions, **particularly those financial institutions that do not have a Union dimension.** This Regulation should therefore provide a clear legal basis for such delegation. Delegation of tasks means that tasks are carried out by another supervisory authority instead of the responsible authority, while the responsibility for supervisory decisions remains with the delegating authority. By delegation of responsibilities one national supervisory authority, the delegatee, **should** be able to decide upon a certain supervisory matter in **the** name of **the Authority or of** another national supervisory authority. Delegations should be governed by the principle of allocating supervisory competence to a supervisor which is well placed to take action in the subject matter. A reallocation of responsibilities **would** be appropriate, for example, for reasons of economies of scale or scope, of coherence in group supervision, and of optimal use of technical expertise among national supervisory authorities. Relevant **Union** legislation may further specify the principles for reallocation of responsibilities upon agreement. The Authority should facilitate **and monitor** delegation agreements between national supervisory authorities by all appropriate means. It should be informed in advance of intended delegation agreements to be able to express an opinion where appropriate. It should centralise the publication of such agreements to ensure timely, transparent and easily accessible information about agreements for all parties concerned. **It should identify and disseminate best practices regarding delegation and delegation agreements.**
- (24) The Authority should actively foster supervisory convergence across the **European Union** with the aim of establishing a common supervisory culture.
- (25) Peer reviews are an efficient and effective tool for fostering consistency within the network of financial supervisors. The Authority should therefore develop the methodological framework for such reviews and conduct them on a regular basis. Reviews should focus not only on convergence of supervisory practices but also on the capacity of supervisors to achieve high quality supervisory outcomes as well as the independence of competent authorities. **The outcome of peer reviews should be made public and best practices should be identified and also made public.**

Wednesday 7 July 2010

- (26) The Authority should actively promote a coordinated **European Union** supervisory response, in particular **to ensure** the orderly functioning and integrity of financial markets or the stability of the financial system in the **European Union**. In addition to its powers for action in emergency situations, it should therefore be entrusted with a general coordination function within the **ESFS**. The smooth flow of all relevant information between competent authorities should be a particular focus of the Authority's actions.
- (27) In order to safeguard financial stability it is necessary to identify, at an early stage, trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors. The Authority should monitor and assess such developments in the area of its competence and, where necessary, inform the European Parliament, the Council, the Commission, the other European Supervisory Authorities and the **ESRB** on a regular and, as necessary, ad hoc basis. The Authority should also **initiate and** coordinate **Union-wide** stress tests to assess the resilience of financial institutions to adverse market developments, ensuring an as consistent as possible methodology is applied at the national level to such tests. **In order to inform the discharge of its functions the Authority should conduct economic analyses of the markets and the impact of potential market developments.**
- (28) Given the globalisation of financial services and the increased importance of international standards, the Authority should **represent the European Union in relation to** dialogue and cooperation with supervisors **in third countries**.
- (29) 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.
- (30) In order to effectively carry out its duties, the Authority should have the right to request all necessary information **relating to prudential supervision**. To avoid duplication of reporting obligations for financial institutions, that information should normally be provided by the national supervisory authorities who are closest to financial markets and institutions **and take into account already existing statistics**. However, **as a last resort**, the Authority should **be able to address a duly justified and reasoned** request for information directly to a financial institution **where a national competent authority does not or cannot provide such information in a timely fashion**. Member States' authorities should be obliged to assist the Authority in enforcing such direct requests. **In this context, work on common reporting formats is essential.**
- (30a) **The measures for the collection of information should be without prejudice to the legal framework of the European Statistical System (ESS) and the European System of Central Banks (ESCB) in the field of statistics. This Regulation should therefore be without prejudice to Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics<sup>(1)</sup> or to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank<sup>(2)</sup>.**
- (31) Close cooperation between the Authority and the **ESRB** is essential to give full effectiveness to the functioning of the **ESRB** and the follow-up to its warnings and recommendations. The Authority **and the ESRB** should share any relevant information **among each other**. Data related to individual undertakings should be provided only upon reasoned request. Upon receipt of warnings or recommendations addressed by the **ESRB** to the Authority or a national supervisory authority, the Authority should ensure follow-up **as appropriate**.

<sup>(1)</sup> OJ L 87, 31.3.2009, p. 164.

<sup>(2)</sup> OJ L 318, 27.11.1998, p. 8.

Wednesday 7 July 2010

- (32) **I** The Authority should consult interested parties on **regulatory** standards, guidelines and recommendations and provide them with a reasonable opportunity to comment on proposed measures. **Before adopting draft regulatory standards, guidelines or recommendations the Authority should carry out an impact study.** For reasons of efficiency, an Insurance, Reinsurance and Occupational Pension Funds Stakeholder Group should be established for that purpose, representing in balanced proportions **Union** insurance and reinsurance firms as well as occupational pension funds (including as appropriate institutional investors and other financial institutions which themselves use financial services), **trade unions, academics** and consumers and other retail users of the insurance, reinsurance and occupational pension services, including SMEs. The Insurance, Reinsurance and Occupational Pension Funds Stakeholder Group should actively work as an interface with other user groups in the financial services area established by the Commission or **by Union** legislation.
- (32a) **Non-profit organisations are marginalised in the debate on the future of financial services and in the corresponding decision making process in comparison to well-funded and well-connected industry representatives. That disadvantage should be compensated for by adequate funding of their representatives in the Stakeholder Group.**
- (33) Member States have a core responsibility **for ensuring coordinated crisis management and** preserving financial stability in crisis **situations**, in particular with regard to stabilising and resolving individual ailing financial institutions. **Their actions should be closely coordinated with the framework and the principles of the Economic and Monetary Union.** Measures by the Authority in emergency or settlement situations affecting the stability of a financial institution should not impinge **significantly** 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.
- (33a) **Within three years from the entry into force of a regulation establishing such a mechanism, clear and sound guidance on when the safeguard is triggered by Member States should be laid down at Union level by the Commission on the basis of the experience acquired. Member States' use of the safeguard clause should be assessed against that guidance.**
- (33b) **Without prejudice to the particular responsibilities of the Member States in crisis situations, if a Member State chooses to invoke the safeguard it should inform the European Parliament at the same time as the Authority, the Council and the Commission. Furthermore, the Member State should explain its reasons for invoking the safeguard. The Authority should, in cooperation with the Commission, set out the next steps to be taken.**
- (34) In its decision-making procedures, the Authority should be bound by Community rules and general principles on due process and transparency. The right to hear the addressees of the Authority's decisions should be fully respected. The Authority's acts form an integral part of **Union** law.
- (35) A Board of Supervisors composed of the heads of the relevant competent authority in each Member State, and chaired by the Chairperson of the Authority, should be the principal decision-making organ of the Authority. Representatives of the Commission, the **ESRB**, the European Central Bank, the European Supervisory **Authority (Banking) and the European Supervisory Authority (Securities and Markets)** should participate as observers. Members of the Board of Supervisors should act independently and only in the **Union's** interest. For acts of a general nature, including those related to the adoption of **regulatory** standards, guidelines and recommendations as well as budgetary matters, it **would be** appropriate to apply the rules on qualified majority as laid down in **Article 16 TFEU**, whereas for all other decisions simple majority of members should apply. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted panel.

Wednesday 7 July 2010

- (35a) *As a general rule, the Board of Supervisors should take its decisions by simple majority according to the principle of one man-one vote. However for acts relating to the adoption of technical standards, guidelines and recommendations as well as budgetary matters, it is appropriate to apply the rules of qualified majority as laid down in the Treaty on European Union, in the TFEU and in the Protocol (No. 36) on transitional provisions attached to them. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted, objective panel, composed of members who are not representatives of the competent authorities which are parties to the disagreement, nor have any interest in the conflict or direct links to the competent authorities concerned. The composition of the panel should be appropriately balanced. The decision taken by the panel should be approved by the Board of Supervisors by simple majority according to the principle where each member has one vote. However, with regard to decisions taken by the consolidating supervisor, the decision proposed by the panel could be rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union and to the TFEU.*
- (36) 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.
- (37) A full time Chairperson, selected by the **European Parliament following an open competition managed by the Commission and the subsequent drawing up of a short list for the Commission**, should represent the Authority. The management of the Authority should be entrusted to an Executive Director, who should have the right to participate in meetings of the Board of Supervisors and the Management Board without the right to vote.
- (38) In order to ensure cross-sectoral consistency in the activities of the European Supervisory Authorities, those authorities should coordinate closely **through the European Supervisory Authorities (Joint Committee) (the 'Joint Committee')** and reach common positions where appropriate. The Joint Committee **should coordinate the functions of the three European Supervisory Authorities in relation to financial conglomerates.** Where relevant, acts also falling within the area of competence of the **European Supervisory Authority (Banking)** or the **European Supervisory Authority (Securities and Markets)** should be adopted in parallel by the European Supervisory Authorities concerned. **The Joint Committee should be chaired for a 12-month term on a rotating basis by the Chairpersons of the three European Supervisory Authorities. The Chairperson of the Joint Committee should be a Vice-Chair of the ESRB. The Joint Committee should have a permanent secretariat, staffed on secondment from the three European Supervisory Authorities to allow for informal information sharing and the development of a common cultural approach across the three European Supervisory Authorities.**
- (39) 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.

Wednesday 7 July 2010

- (40) In order to guarantee its full autonomy and independence, the Authority should be granted an autonomous budget with revenues mainly from obligatory contributions from national supervisory authorities and from the General Budget of the European Union. **Union financing of the Authority should be subject to an agreement by the budgetary authority in accordance with Point 47 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management<sup>(1)</sup> (IIA).** The **Union** budgetary procedure should be applicable. The auditing of accounts should be undertaken by the Court of Auditors. **The overall budget should be subject to the discharge procedure.**
- (41) 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)<sup>(2)</sup> 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)<sup>(3)</sup>.
- (42) 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<sup>(4)</sup> should apply to the staff of the Authority.
- (43) It is essential that business secrets and other confidential information are protected. The confidentiality of information **made available to the Authority and** exchanged in the network should **be subject to stringent and effective confidentiality rules.**
- (44) 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<sup>(5)</sup> and by Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>(6)</sup>, which are fully applicable to the processing of personal data for the purposes of this Regulation.
- (45) 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<sup>(7)</sup> should apply to the Authority.
- (46) Countries which are not members of the European Union should be allowed to participate in the work of the Authority in accordance with appropriate agreements to be concluded by the **Union.**
- (47) Since the objectives of this Regulation, namely improving the functioning of the internal market by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting depositors and investors, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability of the financial system, and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of scale of the action, be better achieved at **Union** level, the **European Union** may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty **on European Union.** In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

<sup>(1)</sup> OJ C 139, 14.6.2006, p. 1.

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 1.

<sup>(3)</sup> OJ L 136, 31.5.1999, p. 15.

<sup>(4)</sup> OJ L 56, 4.3.1968, p. 1.

<sup>(5)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(6)</sup> OJ L 8, 12.1.2001, p. 1.

<sup>(7)</sup> OJ L 145, 31.5.2001, p. 43.

Wednesday 7 July 2010

- (48) The Authority assumes all current tasks and powers of the Committee of European Insurance and Occupational Pension Supervisors (**CEIOPS**), Commission Decision 2009/79/EC of 23 January 2009 establishing the Committee of European Insurance and Occupational Pension Supervisors should therefore be repealed, and Decision No 716/2009/EC of the European Parliament and of the Council of 16 September 2009 establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing <sup>(1)</sup>, should be amended accordingly.
- (49) 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 **CEIOPS**,

HAVE ADOPTED THIS REGULATION

#### CHAPTER I

##### ESTABLISHMENT AND LEGAL STATUS

##### Article 1

##### Establishment and Scope of action

1. This Regulation establishes a European **Supervisory** Authority (European **Insurance and Occupational Pensions** Authority, 'the Authority').

2. The Authority shall act **within the powers of this Regulation and** within the scope of **Directive 2009/138/EC**, Directive 2002/92/EC, Directive 2003/41/EC, Directive 2002/87/EC, **and, to the extent that these acts apply to insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision, insurance intermediaries and the competent authorities that supervise them, within the relevant parts of** Directive 2005/60/EC **and** Directive 2002/65/EC, including all directives, regulations, and decisions based on these acts, and of any further **European Union legislative** act which confers tasks on the Authority.

**2a. The Authority shall also act in the field of activities of insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision and insurance intermediaries, including matters of corporate governance, auditing and financial reporting, provided that such actions by the Authority are necessary to ensure the effective and consistent application of the legislative acts referred to in paragraph 2.**

3. The provisions of this Regulation are without prejudice to the powers of the Commission, in particular under **Article 258 TFEU** to ensure compliance with **Union** law.

4. The objective of the Authority shall be to **protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The Authority shall** contribute to:

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

■

- (iii) ensuring the integrity, transparency, efficiency and orderly functioning of financial markets;

■

- (v) strengthening international supervisory coordination;

<sup>(1)</sup> OJ L 253, 25.9.2009, p. 8.

Wednesday 7 July 2010

- (va) *preventing regulatory arbitrage and contributing to equal conditions of competition;*
- (vb) *ensuring the taking of insurance, pensions and other risks are appropriately regulated and supervised, and*
- (vc) *contribute to enhance customer protection.*

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

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

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

■

#### Article 1a

##### The European System of Financial Supervision

1. *The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented, to preserve financial stability ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services.*

2. *The European System of Financial Supervision shall comprise the following:*

- (a) *the European Systemic Risk Board, for the purposes of the tasks as specified in Regulation (EU) No .../2010 (ESRB) and this Regulation;*
- (b) *the Authority;*
- (c) *the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No .../2010 [EBA];*
- (d) *the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No .../2010 [ESMA];*
- (e) *the European Supervisory Authority (Joint Committee) for the purposes of carrying out the tasks as specified in Articles 40 to 43 (the 'Joint Committee');*
- (f) *the authorities in the Member States referred to in Article 2(2) of Regulation (EU) No .../2010 [EBA], of Regulation (EU) No .../2010 [EIOPA], and of Regulation (EU) No .../2010 [ESMA];*
- (g) *the Commission, for the purposes of carrying out the tasks referred to in Articles 7 and 9.*

3. *The Authority shall cooperate regularly and closely with the European Systemic Risk Board as well as with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Securities and Markets Authority) through the Joint Committee, ensuring cross-sectoral consistency of work and arrive at joint positions in the area of supervision of financial conglomerates and on other cross-sectoral issues.*

Wednesday 7 July 2010

4. *In accordance with the principle of sincere cooperation under Article 4(3) of the Treaty on European Union, the parties to of the ESFS shall cooperate with trust and full mutual respect, in particular in ensuring the flow of appropriate and reliable information flows between them.*

5. *Those supervisory authorities that are party to the ESFS shall be obliged to supervise financial institutions operating in the Union in accordance with the legislative acts referred to in Article 1(2).*

#### Article 1b

##### Accountability to the European Parliament

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

#### Article 2

##### Definitions

For purposes of this Regulation the following definitions apply:

- (1) 'financial institutions' means **■** undertakings, *entities and natural and legal persons subject to any of the legislative acts mentioned in Article 1(2), save that with regard to Directive 2005/60/EC, 'financial institutions' means insurance companies and insurance intermediaries as defined in that Directive;*
- (2) '**competent** authorities' means:
  - (i) *supervisory authorities as defined in Directive 2009/138/EC, and competent authorities as defined in Directive 2003/41/EC and 2002/92/EC;*
  - (ii) *with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by financial institutions as defined in paragraph 1.*

#### Article 3

##### Legal status

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

#### Article 4

##### Composition

The Authority shall comprise the following:

- (1) a Board of Supervisors, which shall exercise the tasks set out in Article 28;
- (2) a Management Board, which shall exercise the tasks set out in Article 32;



Wednesday 7 July 2010

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

## Article 5

**Headquarters**

***The Authority shall have its headquarters in Frankfurt.***

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

## CHAPTER II

## TASKS AND POWERS OF THE AUTHORITY

## Article 6

## Tasks and Powers of the Authority

1. The Authority shall have the following tasks:
  - (a) contribute to the establishment of high-quality common regulatory **technical** and supervisory **technical** standards and practices, in particular by providing opinions to the **European Union** institutions and by developing guidelines, recommendations, and draft **regulatory technical and implementing** technical standards which shall be based on the **legislative acts** referred to in Article 1(2);
  - (b) contribute to a consistent application of **European Union legislative acts**, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the **legislative acts** referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between **competent** authorities, **ensuring effective and consistent supervision of financial institutions and ensuring** a coherent functioning of colleges of supervisors and taking actions, *inter alia*, in emergency situations;
  - (c) **stimulate and** 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) **organise and** conduct peer review analyses of **competent** authorities, **including issuing advice, in order** to strengthen consistency in supervisory outcomes;
  - (f) monitor and assess market developments in the area of its competence;
- (fa) **undertake economic analyses of markets to inform the discharge of the Authority's functions;**
- (fb) **foster policyholder and beneficiary protection;**

Wednesday 7 July 2010

- (fc) *help to manage crisis of cross-border institutions that have the potential to pose a systemic risk referred to in Article 12b, leading and executing all early interventions, resolution or insolvency procedures for such institutions through its Insurance and Pensions Resolution Unit as set out in Article 12c;*
- (g) fulfil any other specific tasks set out in this Regulation or in the **European Union legislative acts** referred to in Article 1(2);
- (ga) *supervise those financial institutions that are not subject to the supervision of competent authorities;*
- (gb) *publish on its website and regularly update information relating to its field of activities, in particular, within the area of its competence, on registered financial institutions, in order to ensure easily accessible information to the public;*
- (gc) *take over, as appropriate, all existing and ongoing tasks from the Committee of Insurance and Occupational Pensions Supervisors.*

2. To achieve the tasks set out in paragraph 1, the Authority shall have the powers set out in this Regulation, in particular ■ to:

- (a) develop draft **regulatory** technical standards in the specific cases referred to in Article 7;
- (aa) *develop draft implementing technical standards in the specific cases referred to in Article 7e;*
- (b) issue guidelines and recommendations, as laid down in Article 8;
- (c) issue recommendations in specific cases, as referred to in Article 9(3);
- (d) take individual decisions addressed to **competent** authorities in the specific cases referred to in Articles 10 and 11;
- (e) take individual decisions addressed to financial institutions, in the specific cases referred to in Article 9(6), Article 10(3), and Article 11(4);
- (f) issue opinions to the European Parliament, the Council, or the Commission as provided in Article 19;
- (fa) *collect the necessary information concerning financial institutions as provided for in Article 20;*
- (fb) *developing common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of institutions and on customer protection;*
- (fc) *provide a database of registered financial institutions in the area of its competence and, where specified in the legislative acts referred to in Article 1(2), at a central level;*
- (fd) *develop a regulatory standard setting out the minimum information that shall be made available to the Authority about transactions and market participants and how coordination of collection shall be carried out as well as outlining how existing national databases shall be linked in order to ensure that the Authority always can access the relevant and necessary information concerning transactions and market necessary to carry out the duties assigned to it by this Regulation;*

Wednesday 7 July 2010

*(fe) fulfil any other specific tasks set out in this Regulation or in the Union legislative acts referred to in Article 1(2).*

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

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

#### Article 6a

##### *Tasks related to consumer protection and financial activities*

1. *The Authority in order to foster policyholders and beneficiary protection shall take a leading role in promoting transparency, simplicity and fairness in the market for financial products or services across the single market, including by:*

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

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

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

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

5. *The Authority may temporarily prohibit or restrict certain types of financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or if so required in the case of an emergency situation in accordance with and under the conditions laid down in article 10. The Authority may also implement such a prohibition or restriction through the adoption of regulatory technical standards in accordance with Article 7.*

Wednesday 7 July 2010

*The Authority shall review that decision with regular, timely intervals.*

#### Article 7

##### *Regulatory technical standards*

1. *The European Parliament and the Council may delegate powers to the Commission to adopt regulatory technical standards under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in legislative acts referred to in Article 1(2). Those standards shall be technical, not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based. Draft regulatory technical standards shall be developed by the Authority and submitted to the Commission for endorsement.*

*Where the Authority does not submit a draft to the Commission within the time limits set out in the legislative acts referred to in Article 1(2), the Commission may adopt a regulatory technical standard.*

1a. *The Authority shall conduct open public consultations on regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the regulatory technical standards concerned or in relation to the particular urgency of the matter before submitting them to the Commission. The Authority shall also request the opinion or advice of the Stakeholder Groups referred to in Article 22.*

1b. *The Commission shall upon receipt of the draft regulatory technical standard from the Authority forward them immediately to the European Parliament and the Council.*

1c. *The Commission shall decide within three months of its submission whether to adopt the draft regulatory technical standard. The regulatory technical standard shall be adopted by means of regulations or decisions. If the Commission does not intend to adopt the standard, it shall inform the European Parliament and the Council accordingly and of the reasons for this.*

#### Article 7a

##### *Non-endorsement or amendment of the draft regulatory standard*

1. *Where the Commission intends not to endorse the draft regulatory technical standards or to endorse them in part or with amendments, it shall send the draft regulatory technical standards back to the Authority, proposing reasoned amendments.*

2. *Within a period of 6 weeks, the Authority may amend the draft regulatory technical standards on the basis of the Commission's proposed amendments and resubmit them to the Commission for endorsement. The Authority shall inform the European Parliament, the Council and the Commission on its decision.*

3. *When the Authority does not agree with the Commission's decision to reject or amend its initial proposals, the European Parliament or Council may convene the responsible Commissioner, together with the Chairman of the Authority, within one month for an ad hoc meeting of the competent committee of the European Parliament or Council to present and explain their differences.*

Wednesday 7 July 2010

### Article 7b

#### Exercise of the delegation

1. *The powers to adopt regulatory technical standards referred to in Article 7 shall be conferred on the Commission for a period of 4 years following the entry into force of this Regulation. The Commission shall make a report in respect of the delegated powers at the latest 6 months before the end of the four-year period. The delegation of powers shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 7c.*
2. *As soon as it adopts a regulatory technical standard, the Commission shall notify it simultaneously to the European Parliament and to the Council.*
3. *In the report referred to in Article 35(2), the Chairperson of the Authority shall inform the European Parliament and the Council of the regulatory standards that have been approved and that the competent authorities have not complied with.*

### Article 7c

#### Objections to regulatory technical standards

1. *The European Parliament or the Council may object to the regulatory technical standard within a period of three months from the date of notification by the Commission. At the initiative of the European Parliament or the Council this period may be extended by another three months.*
2. *The regulatory technical standard shall be published in the Official Journal of the European Union and should enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections. If, on expiry of that period, neither the European Parliament nor the Council has objected to the regulatory technical standard it shall be published in the Official Journal of the European Union.*
3. *The European Parliament and the Council, as soon as the draft has been forwarded by the Commission, may adopt an anticipated and conditioned declaration of non objection that shall enter into force when the Commission adopts the regulatory standard without modifying the draft.*
4. *If the European Parliament or the Council objects to a regulatory technical standard, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the regulatory technical standard.*

### Article 7d

#### Revocation of the delegation

1. *The delegation of power referred to in Article 7 may be revoked by the European Parliament or by the Council.*
2. *The decision of revocation shall put an end to the delegation.*
3. *The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the regulatory technical standard powers which could be subject to revocation*

Wednesday 7 July 2010

## Article 7e

### Implementing technical standards

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

- (a) where in accordance with the above mentioned legislation Authority drafts implementing technical standards for submission to the Commission, those standards shall be technical, not include policy choices and limited to determining the conditions of application of legally binding Union acts;
- (b) where the Authority does not submit a draft to the Commission within the time limits set out in the legislative acts referred to in Article 1(2), or indicated in a request addressed to the Authority by the Commission in accordance with Article 19, the Commission may adopt an implementing technical standard by means of an implementing act.

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

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

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

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

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

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

## Article 8

### Guidelines and recommendations

I. 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 **European Union** legislation, issue guidelines and recommendations addressed to **competent** authorities or financial institutions.

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

Wednesday 7 July 2010

2. The **competent** authorities **and financial institutions** shall make every effort to comply with those guidelines and recommendations. **Within two months of the issuance of a guideline or recommendation, each competent authority shall confirm that it intends to comply with that guideline or recommendation. In the event that a competent authority does not intend to comply, it shall inform the Authority, stating reasons. The Authority shall publish those reasons.**

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

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

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

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

#### Article 9

##### **Breach of Union law**

1. Where a **competent** authority has not **applied or has applied the legislative acts** referred to in Article 1(2) **in a way which appears to be a breach of Union law, including the regulatory technical and implementing technical standards established in accordance with Articles 7 and 7e**, in particular by failing to ensure that a financial institution satisfies the requirements laid down in that legislation, the Authority shall 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, **from the European Parliament, the Council or the Stakeholder Groups**, or on its own initiative and after having informed the **competent** authority concerned, the Authority may investigate the alleged **breach or non-application of Union law**.

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

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

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

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

Wednesday 7 July 2010

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

■

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

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

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

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

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

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

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

#### Article 10

##### Action in emergency situations

1. In the case of adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the **European Union**, the Authority **shall actively facilitate and, where deemed necessary, coordinate any actions undertaken by the relevant national competent supervisory authorities**.

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

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



Wednesday 7 July 2010

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

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

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

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

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

#### Article 11

##### Settlement of disagreements between ***competent*** authorities

1. Without prejudice to the powers laid down in Article 9, where a ***competent*** authority disagrees on the procedure or content of an action or inaction by another ***competent*** authority in areas where the ***legislative acts*** referred to in Article 1(2) require cooperation, coordination or joint decision making by ***competent*** authorities from more than one Member State, the Authority, ***on its own initiative or at the request of one or more of the competent authorities concerned, shall take the lead in assisting the competent authorities*** in reaching an agreement in accordance with the procedure set out in ***paragraphs 2 to 4***.

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

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

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

Wednesday 7 July 2010

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

4b. *In the Report referred to in Article 35(2), the Chairperson shall set out the disagreements between competent authorities, the agreements reached and the decision taken to settle such disagreements.*

#### Article 11a

##### Settlement of disagreements between competent authorities across sectors

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

#### Article 12

##### Colleges of supervisors

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

2. The Authority shall **lead the** colleges of supervisors as it deems appropriate. For **that** purpose it shall be considered a 'competent authority' within the meaning of the relevant legislation. **It shall, at least:**

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

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

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

Wednesday 7 July 2010

## Article 12a

### General provisions

1. The Authority shall pay special attention to and address risks of disruption in financial services that (i) is caused by an impairment of all or parts of the financial system and (ii) has the potential to have serious negative consequences for internal market and the real economy (systemic risk). All types of financial intermediaries, markets and infrastructure can potentially be systematically important to some degree.
2. The Authority, in collaboration with the ESRB, shall develop a common set of quantitative and qualitative indicators (risk dashboard), which will serve as the basis to assign a supervisory rating to cross-border institutions identified in Article 12b. That rating shall be reviewed on a regular basis, to take into account material changes of the risk profile of an institution. The supervisory rating shall be a critical element for the decision to directly supervise or intervene in an ailing institution.
3. Without prejudice to legislative acts referred to in Article 1(2), the Authority shall propose, as necessary, additional draft regulatory and implementing standards as well as guidelines and recommendations for institutions identified in Article 12b.
4. The Authority shall exert supervision of cross-border institutions that may pose a systemic risk as established in Article 12b. In those cases, the Authority shall act through the competent authorities.
5. The Authority shall establish a Resolution Unit with a mandate to put in practice the clearly defined governance and modus operandi of crisis management from early intervention to resolution and insolvency and lead such procedures.

## Article 12b

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

1. The Board of Supervisors, following consultation of the ESRB, may, in accordance with the procedure set out in Article 29(1), identify cross-border institutions that, due to the systemic risk they may pose need to be subject to direct supervision by the Authority or placed under the Resolution Unit referred to in Article 12c.
2. The criteria for identifying such financial institutions shall be consistent with the criteria established by the FSB, the IMF and the BIS.

## Article 12c

### Resolution Unit

1. The Banking Resolution Unit shall preserve financial stability and minimise the contagion effect of distressed institutions identified in Article 12b to the rest of the system and the economy at large and limit the cost to taxpayers respecting the principle of proportionality, creditors' hierarchy and guaranteeing equal treatment across borders.
2. The Resolution Unit shall be empowered to fulfil the tasks set out in paragraph 1, in order to rehabilitate distressed institutions or to decide on a winding-up on non-viable institutions (critical to limit moral hazard). Among other actions it could require adjustments in capital or liquidity, adapt the business mix, improve processes, appoint or replace management, recommend guarantees, loans and liquidity assistance, total or partial sales, create a good bank / bad bank or a bridge bank, swap debt into equity (with appropriate haircuts) or take the institution into temporary public ownership.

Wednesday 7 July 2010

3. *The Banking Resolution Unit shall comprise experts appointed by the Board of Supervisors of the Authority with knowledge and expertise in restructuring, turn-a-rounds and liquidation of financial institutions.*

#### Article 12d

##### European Framework of National Insurance Guarantee Schemes

1. *The Authority shall contribute to the development of a European Framework of National Insurance Guarantee Schemes by acting under the powers conferred to it in this Regulation to ensure that national insurance guarantee schemes are adequately funded by contributions from relevant financial institutions including from those financial institutions within the Union but headquartered in another Member State or outside the Union and provide a high level of protection to all policyholders in a harmonised framework throughout the Union.*

2. *Article 8 concerning the Authority's powers to adopt guidelines and recommendations shall apply to insurance compensation schemes.*

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

#### Article 12e

##### European Insurance and Occupational Pensions Stability Fund

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

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

3. *The Stability Fund shall be managed by a Board appointed by the Authority for a period of five years. The members of the Board shall be selected from staff proposed by the national authorities. The Stability Fund shall also create a Consultative Board involving non-voting representation of the financial institutions participating in the Stability Fund. The Board of the Stability Fund may propose that the Authority outsource the management of the Stability Fund's liquidity to reputable institutions (such as the EIB), which shall be invested in safe and liquid instruments.*

4. *When the accumulated resources from the contributions made by financial institutions are not sufficient to face the difficulties, the Stability Fund may increase its resources through debt issuance or other financial means.*

Wednesday 7 July 2010

## Article 13

## Delegation of tasks and responsibilities

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

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

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

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

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

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

## Article 14

## Common supervisory culture

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

- (a) provide opinions to **competent** authorities;
- (b) promote an effective bilateral and multilateral exchange of information between **competent** authorities, with full respect of the applicable confidentiality and data protection provisions provided for in the relevant **European Union** legislation;
- (c) contribute to developing high quality and uniform supervisory standards, including reporting standards, *and international accounting standards in accordance with Article 1(2a)*;
- (d) review the application of the relevant **regulatory technical and implementing** 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.

Wednesday 7 July 2010

Article 15

Peer review of **competent** authorities

1. The Authority shall periodically **organise and** conduct peer review analyses of some or all of the activities of **competent** authorities, to further enhance consistency in supervisory outcomes. To this end, the Authority shall develop methods to allow for objective assessment and comparison between the authorities reviewed. **When conducting peer reviews, existing information and evaluations already made with regard to the competent authority concerned shall be taken into account.**
2. The peer review shall include an assessment of, but not be limited to:
  - (a) the adequacy of **resources and governance** arrangements, **■** of the **competent** authority, with particular regard to the effective application of the **regulatory technical and implementing technical standards referred to in Articles 7 to 7e and legislative acts** referred to in Article 1(2) and to the capacity to respond to market developments;
  - (b) the degree of convergence reached in the application of **Union** law and in supervisory practice, including **regulatory technical and implementing** technical standards, guidelines and recommendations adopted under Articles 7 and 8, and the extent to which the supervisory practice achieves the objectives set out in **Union** law;
  - (c) good practices developed by some **competent** authorities which might be of benefit for other **competent** authorities to adopt;
  - (d) **the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where these provisions have not been complied with.**
3. On the basis of the peer review the Authority may issue **guidelines and** recommendations **pursuant to Article 8 addressed to competent authorities. The Authority shall take into account the outcome of the peer review when developing draft regulatory technical or implementing technical standards in accordance with Articles 7 to 7e. Competent authorities shall endeavour to follow the advice given by the Authority. Where a competent authority does not follow this advice, it shall inform the Authority of its reasons.**

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

Article 16

Coordination function

1. The Authority shall fulfil a general coordination role between **competent** authorities, including where adverse developments could potentially jeopardise the orderly functioning and integrity of financial markets or the stability of the financial system in the **European Union**.
2. The Authority shall promote a coordinated **European Union** response, inter alia by:
  - (1) facilitating the exchange of information between the **competent** authorities;
  - (2) determining the scope and, **where possible and appropriate**, verifying the reliability of information that should be made available to all **competent** authorities concerned;

Wednesday 7 July 2010

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

## Article 17

## Assessment of market developments

1. The Authority shall monitor and assess market developments in the area of its competence and, where necessary, inform the European **Supervisory Authority (European Banking Authority)**, the European **Supervisory Authority (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. **The Authority shall include in its assessments an economic analysis of the markets in which financial institutions operate, and an assessment of the impact of potential market developments on them.**

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

- (a) common methodologies for assessing the effect of economic scenarios on an institution's financial positions;
- (b) common approaches to communication on the outcomes of these assessments of the resilience of financial institutions;
- (ba) common methodologies for assessing the effect of particular products or distribution processes on an institution's financial position and on policyholders, beneficiaries and customer information.**

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

The Authority shall include a classification of the main risks and vulnerabilities in these assessments and, where necessary, recommend 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 **Supervisory Authority (European Banking Authority)** and the European **Supervisory Authority (European Securities and Markets Authority)** **through the Joint Committee.**

Wednesday 7 July 2010

## Article 18

### International relations

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

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

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

## Article 19

### Other tasks

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

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

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

2. With regard to prudential assessments of mergers and acquisitions falling **within the scope of Directive 2009/138/EC and which according to that Directive require consultation between competent authorities from two or more Member States**, the Authority may, **■** on application of **one of the competent authorities concerned**, issue and publish an opinion on a prudential assessment. **The opinion shall be issued promptly and in any event before the end of the assessment period according to Directive 2009/138/EC.** Article 20 shall apply **to the areas about which the Authority may issue an opinion.**

## Article 20

### Collection of information

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

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



Wednesday 7 July 2010

**1b. On a duly justified request from a competent authority of a Member State, the Authority may provide any information that is necessary to enable the competent authority to carry out its duties, in accordance with the professional secrecy obligations laid down in sectoral legislation and Article 56.**

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

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

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

**The Authority shall inform the relevant competent authorities of requests in accordance with paragraphs 2 and 2a.**

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

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

## Article 21

### Relationship with the ESRB

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

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

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

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

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

Wednesday 7 July 2010

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

5. On receipt of a warning or recommendation from the ESRB addressed to a **competent** 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 Council and** the ESRB in accordance with Article [17] of Regulation (EU) No .../2010 [ESRB].

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

#### Article 22

Insurance **and** Reinsurance **Stakeholder Group** and Occupational Pensions Stakeholder Group

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

**The Stakeholder Groups shall meet at least four times a year at the same date and the same place and shall inform each other on the issues discussed which are not commonly discussed.**

**Members of the one stakeholder group may be also member of the other stakeholder group.**

2. The Insurance **and** Reinsurance **Stakeholder Group** shall be composed of 30 members, representing in balanced proportions **insurance and reinsurance undertakings and insurance intermediaries operating in the Union**, their employees as well as consumers, users of insurance **and** reinsurance **services and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial institutions and three of those shall represent cooperative and mutual insurers or reinsurers.**

2a. **The Occupational Pensions Stakeholder Group shall be composed of 30 members, representing in balanced proportions Institutions for Occupational Retirement Provision operating in the Union, their employees representatives as well as consumers, users of occupational retirement provision services and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial institutions.**

3. The members of the **Stakeholder Groups** shall be appointed by the Board of Supervisors of the Authority, following proposals from the relevant stakeholders. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical **and gender** balance and representation of stakeholders across the **European Union**.

**In making its decision, the Board of Supervisors shall ensure that all members not representing professional market participants or their employees disclose any potential conflicts of interest.**

Wednesday 7 July 2010

**3a.** The Authority shall **provide all necessary information and ensure adequate secretarial support for the Stakeholder Groups. Adequate compensation of travel expenses shall be provided for members of the Stakeholder Groups representing non-profit organisations. The Groups may establish working groups on technical issues.**

4. Members of the Stakeholder **Groups** 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 Stakeholder **Groups** may submit opinions and advice to the Authority on any issue related to the tasks of the Authority **with particular focus on the tasks set out in** specified in **Articles 7 to 7e, 8, 14, 15 and 17.**

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

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

#### Article 23

##### Safeguards

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

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

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

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

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

#### Article 24

##### Decision-making procedures

1. Before taking the decisions provided for in **this Regulation**, the Authority shall inform **any named** addressee of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the matter, taking full account of the urgency, **complexity and potential consequences** of the matter. **This applies mutatis mutandis to recommendations as referred to in Article 9, paragraph 4.**

Wednesday 7 July 2010

2. The decisions of the Authority shall state the reasons on which they are based.
3. The addressees of decisions of the Authority shall be informed of the legal remedies available under this Regulation.
4. Where the Authority has taken a decision pursuant to Article 10(2) or (3), it shall review that decision at appropriate intervals.
5. The decisions which the Authority takes pursuant to Articles 9, 10 and 11 shall be made public and shall state the identity of the **competent** authority or financial institution concerned and the main content of the decision, **unless such publication is in conflict with** the legitimate interest of financial institutions in the protection of their business secrets **or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the European Union.**

### CHAPTER III

#### ORGANISATION

##### Section 1

#### BOARD OF SUPERVISORS

##### Article 25

##### Composition

1. The Board of Supervisors shall be composed of:
  - (a) the Chairperson, who shall be non-voting;
  - (b) the Head of the national **public** authority, competent for the supervision of financial institutions **referred to in Article 2(1)** in each Member State, **who shall meet in person at least twice a year**;
  - (c) one representative of the Commission who shall be non-voting;
  - (d) one representative of the ESRB who shall be non-voting;
  - (e) one representative of each of the other two European Supervisory Authorities who shall be non-voting.

**1a. The Board of Supervisors shall convene meetings with the Stakeholder Groups regularly, at least twice per year.**

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

**2a. In Member States where there is more than one authority competent for the supervision according to this Regulation, those authorities shall decide between themselves how to exercise representation, including any votes under Article 29.**

3. 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.

Wednesday 7 July 2010

## Article 26

## Internal committees and Panels

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

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

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

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

## Article 27

## Independence

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

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

## Article 28

## Tasks

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

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

3. The Board of Supervisors shall appoint the Chairperson.

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

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

Wednesday 7 July 2010

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

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

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

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

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

#### Article 29

##### Decision making

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

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

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

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

2. Meetings of the Board of Supervisors shall be convened by the Chairperson at his or her own initiative or at the request of one third of its members, and shall be chaired by the Chairperson.

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

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

Wednesday 7 July 2010

## Section 2

## MANAGEMENT BOARD

## Article 30

## Composition

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

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

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

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

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

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

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

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

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

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

## Article 31

## Independence

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

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

Wednesday 7 July 2010

## 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 **propose an** annual report on the activities of the Authority, **including on the Chairperson's duties**, on the basis of the draft report referred to in article 38(7) **to the Board of Supervisors for approval and submission to the European Parliament.**
7. The Management Board shall adopt and make public its rules of procedure.
8. The Management Board shall appoint and remove the members of the Board of Appeal in accordance with Article 44(3) and (5).

## Section 3

### CHAIRPERSON

## Article 33

### Appointment and tasks

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

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

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

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

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



Wednesday 7 July 2010

3. The Chairperson's term of office shall be five years and may be extended once.
4. In the course of the nine months preceding the end of the five-year term of office of the Chairperson, the Board of Supervisors shall evaluate:
  - (a) the results achieved in the first term of Office and the way they were achieved;
  - (b) the Authority's duties and requirement in the coming years.

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

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

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

#### Article 34

##### Independence

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

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

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

#### Article 35

##### Report

1. The European Parliament **and the Council** may invite the Chairperson or his or her alternate, while fully respecting his **or her** independence to make a statement. **The Chairperson shall make a statement before the European Parliament** and answer **any** questions put by **its** members, **whenever so requested**.

2. **■** The Chairperson **shall** report **in writing** on the **main activities of the Authority to the European Parliament when requested and at least 15 days before making the statement referred to in paragraph 1**.

**2a. In addition to the information referred to in Articles 7a to 7e, 8, 9, 10, 11a and 18, the Report shall also include any relevant information requested by the European Parliament on an ad-hoc basis.**

Wednesday 7 July 2010

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 ***after the confirmation of the European Parliament.***
3. The Executive Director's term of office shall be five years and may be extended once.
4. In the course of the nine months preceding the end of the five-year term of office of the Executive Director, the Board of Supervisors shall undertake an evaluation.

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

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

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

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

Article 37

Independence

1. Without prejudice to the respective roles of the Management Board and the Board of Supervisors in relation to the tasks of the Executive Director, the Executive Director shall neither seek nor take instructions from any government, authority, organisation or person outside the Authority.
2. ***The Member States, the Union institutions and any other public or private body shall not seek to influence the Executive Director in the performance of his tasks.***

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

Wednesday 7 July 2010

## 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 2

## JOINT COMMITTEE OF EUROPEAN SUPERVISORY AUTHORITIES

## Article 40

## Establishment

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

Wednesday 7 July 2010

- *anti-money laundering measures; and*
- *information exchange with the European Systemic Risk Board and developing the relationship between the European Systemic Risk Board and the European Supervisory Authorities.*

3. *The Joint Committee shall have a dedicated staff provided by the three European Supervisory Authorities that shall act as a secretariat.* The Authority shall contribute adequate resources to administrative, **■** infrastructure and operational expenses.

#### *Article 40a*

##### *Supervision*

*In the event that a financial institution reaches across different sectors, the Joint Committee shall resolve disagreements in accordance with article 42 of this Regulation.*

#### Article 41

##### Composition

1. The Joint Committee shall be composed of **■** the Chairpersons of the European **Supervisory Authorities**, and, where applicable, the Chairperson of a Sub-Committee established under Article 43.

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

3. The chair of the Joint Committee **■** shall be appointed on an annual rotational basis from among the Chairpersons of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority. *The Chairperson of the Joint Committee appointed in paragraph 3 of this article shall also be appointed Vice-Chair of the European Systemic Risk Board.*

4. The Joint Committee **■** shall adopt and publish its own rules of procedure. The rules may specify further participants of the meetings of the Joint Committee.

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

#### Article 42

##### Joint positions and common acts

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

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

Wednesday 7 July 2010

## Article 43

## Sub-committees

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

## Section 3

## BOARD OF APPEAL

## Article 44

## Composition

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

The Board of Appeal designates its President.

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

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

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

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

Wednesday 7 July 2010

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

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

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

#### Article 45

##### Independence and impartiality

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

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

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

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

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

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

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

6. The members of the Board of Appeal shall undertake to act independently and in the public interest.

For that purpose, they shall make a declaration of commitments and a declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence.

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

Wednesday 7 July 2010

## 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 **the legislative acts** referred to in Article 1(2) which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.

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

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

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

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

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

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

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

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

## Article 47

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

1. An action may be brought before the **General** Court **or** the Court of Justice, in accordance with **Article 263 TFEU**, contesting a decision taken by the Board of Appeal or, in cases where there is no right of appeal before the Board of Appeal, by the Authority.

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

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

Wednesday 7 July 2010

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

## CHAPTER VI

### FINANCIAL PROVISIONS

#### Article 48

##### Budget of the Authority

1. The revenues of the Authority, **a European body in accordance with Article 185 of Council Regulation (EC, Euratom) No 1605/2002**, shall consist, in particular, of **any combination of the following**:

- (a) obligatory contributions from the national public authorities competent for the supervision of financial institutions, **which shall be made in accordance with a formula based on the weighting of votes set out in Article 3(3) of the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union and to the TFEU**;
- (b) a subsidy from the **European Union**, entered in the General Budget (Commission Section); **the financing of the Authority by the Union is subject to an agreement by the budgetary authority as foreseen in Point 47 of the Interinstitutional Agreement of 17 May 2006 on budgetary discipline and sound financial management**;
- (c) any fees paid to the Authority in the cases specified in the relevant instruments of **European Union** law.

2. The expenditure of the Authority shall include, at least, staff, remuneration, administrative, infrastructure **professional training** and operational expenses.

3. Revenue and expenditure shall be in balance.

4. Estimates of all Authority revenue and expenditure shall be prepared for each financial year, corresponding to the calendar year, and shall be presented in the budget of the Authority.

#### Article 49

##### Establishment of the budget

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

2. The statement of estimates shall be transmitted by the Commission to the European Parliament and to the Council (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 **Articles 313 and 314 TFEU**.



Wednesday 7 July 2010

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

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

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

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

#### Article 50

##### Implementation and control of the budget

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

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

The Commission's accounting officer shall then consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of Council Regulation (EC, Euratom) No 1605/2002 <sup>(1)</sup>, (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.

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.

<sup>(1)</sup> OJ L 248, 16.9.2002, p. 1.

Wednesday 7 July 2010

8. The Executive Director shall submit to the European Parliament, at the latter's request and as provided for in Article 146(3) of the Financial Regulation, any information necessary for the smooth application of the discharge procedure for the financial year in question.

9. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget (**including all costs and revenues of the Authority**) for the financial year N.

#### Article 51

##### Financial rules

The financial rules applicable to the Authority shall be adopted by the Management Board after the Commission has been consulted. Those rules may not depart from Commission Regulation (EC, Euratom) No 2343/2002 <sup>(1)</sup> 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) <sup>(2)</sup> and shall immediately adopt appropriate provisions for all staff of the Authority.

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

### CHAPTER VII

#### GENERAL PROVISIONS

#### Article 53

##### Privileges and immunities

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

#### Article 54

##### Staff

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

<sup>(1)</sup> OJ L 357, 31.12.2002, p. 72.

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 15.

Wednesday 7 July 2010

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 **and all other persons carrying out tasks for the Authority on a contractual basis** shall be subject to the requirements of professional secrecy pursuant to **Article 339 TFEU** and the relevant provisions in **Union** legislation, even after their duties have ceased.

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

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

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

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

Wednesday 7 July 2010

3. Paragraphs 1 and 2 shall not prevent the Authority from exchanging information with national supervisory authorities in accordance with this Regulation and other **Union** 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 <sup>(1)</sup>.

#### 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 228 and 263 TFEU** respectively.

#### Article 59

##### Language arrangements

1. The provisions of Council Regulation No 1 <sup>(2)</sup> 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.

<sup>(1)</sup> OJ L 317, 3.12.2001, p. 1.

<sup>(2)</sup> OJ 17, 6.10.1958, p. 385/58.

Wednesday 7 July 2010

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

## Article 61

## Participation of third countries

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

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

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

## CHAPTER VIII

## TRANSITIONAL AND FINAL PROVISIONS

## Article 62

## Preparatory actions

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

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

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

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

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

Wednesday 7 July 2010

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

#### Article 63

##### Transitional Staff provisions

1. By way of derogation from Article 54, all employment contracts **and secondment agreements** concluded by **CEIOPS** 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 **■** referred to in paragraph 1 shall be offered the possibility of concluding temporary agent contracts under Article 2(a) of the Conditions of Employment of Other Servants at the various grades as set out in the Authority's establishment plan.

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

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

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

#### Article 63a

##### National provisions

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

#### Article 64

##### Amendments

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

#### Article 65

##### Repeal

Commission Decision 2009/79/EC, establishing the Committee of European Insurance and Occupational Pensions Supervisors, is hereby repealed **with effect from 1 January 2011.**

Wednesday 7 July 2010

## Article 66

**Review clause**

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

**1. By ... (\*\*) and every three years thereafter, the Commission shall submit to the European Parliament and the Council the necessary proposals to ensure the establishment of a credible resolution framework including systems of contributions by financial institutions to contain systemic risks and publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation. That report shall evaluate, inter alia:**

- (a) the convergence in supervisory practices reached by competent authorities;**
- (b) the functioning of the colleges of supervisors;**
- (c) progress achieved towards convergence in the fields of crisis prevention, management and resolution, including European funding mechanisms;**
- (d) whether, notably in light of the progress achieved with regard to the issues referred to in point (c), the role of the Authority in the supervision of financial institutions posing a potential systemic risk should be strengthened and whether it should exercise enhanced supervisory powers over those institutions;**
- (e) the application of the Safeguard clause established in Article 23.**

**1a. The report referred to in paragraph 1 shall also examine whether:**

- (a) it is appropriate to move the Authorities to a single seat to enhance a better coordination between them;**
- (b) it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets;**
- (c) it is appropriate to supervise prudential supervision and the conduct of business separately or by the same supervisor;**
- (d) it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;**
- (e) the evolution of the ESFS is consistent with that of the global evolution;**

**(\*) Six months from the date of entry into force of this Regulation.**

**(\*\*) Three years after the date of application of this Regulation.**

Wednesday 7 July 2010

- (f) *there is sufficient diversity and excellence within the ESFS;*
  - (g) *accountability and transparency in relation to publication requirements are adequate;*
  - (h) *the appropriateness of the seat of the Authority;*
  - (i) *to establish a Insurance Stability Fund at EU level as the best defence against competitive distortion and most efficient way to deal with the failure of a cross-border institution.*
2. The report and any accompanying proposals, as appropriate, shall be forwarded to the European Parliament and to the Council.

Article 67

Entry into force

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

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

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

Done at

For the European Parliament  
The President

For the Council  
The President

## **Capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies \*\*\*I**

P7\_TA(2010)0274

**European Parliament legislative resolution of 7 July 2010 on the proposal for a directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (COM(2009)0362 – C7-0096/2009 – 2009/0099(COD))**

(2011/C 351 E/40)

(Ordinary legislative procedure: first reading)

*The European Parliament,*

— having regard to the Commission proposal to Parliament and the Council (COM(2009)0362),

— having regard to Article 251(2) and Article 47(2) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C7-0096/2009),



Wednesday 7 July 2010

- having regard to the Commission Communication to Parliament and the Council entitled ‘Consequences of the entry into force of the Treaty of Lisbon for ongoing interinstitutional decision-making procedures’ (COM(2009)0665),
  - having regard to Article 294(3) and Article 53 of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Central Bank of 12 November 2009 <sup>(1)</sup>,
  - having regard to the opinion of the European Economic and Social Committee of 20 January 2010 <sup>(2)</sup>,
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinions of the Committee on Employment and Social Affairs and the Committee on Legal Affairs (A7-0205/2010),
1. Adopts the position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

<sup>(1)</sup> OJ C 291, 1.12.2009, p. 1.

<sup>(2)</sup> Not yet published in the Official Journal.

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## **P7\_TC1-COD(2009)0099**

**Position of the European Parliament adopted at first reading on 7 July 2010 with a view to the adoption of Directive 2010/.../EU of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies**

*(As an agreement was reached between Parliament and Council, Parliament's position corresponds to the final legislative act, Directive 2010/76/EU)*

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## **Specific tasks for the European Central Bank concerning the functioning of the European Systemic Risk Board \***

P7\_TA(2010)0275

**Proposal for a Council regulation entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board (05551/2010 – C7-0014/2010 – 2009/0141(CNS))**

(2011/C 351 E/41)

(Special legislative procedure – Consultation)

The proposal was amended on 7 July 2010 as follows <sup>(1)</sup>:

<sup>(1)</sup> The matter was then referred back to committee pursuant to Rule 57(2), second subparagraph (A7-0167/2010).

Wednesday 7 July 2010

TEXT PROPOSED BY THE COUNCIL

AMENDMENT

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

*(1a) Long before the financial crisis, the European Parliament called regularly for the reinforcement of the true level playing field for all actors at the Union level while pointing out significant failures in the Union's supervision of ever more integrated financial markets (in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan <sup>(1)</sup>, of 25 November 2002 on prudential supervision rules in the European Union <sup>(2)</sup>, of 11 July 2007 on financial services policy (2005-2010) – White Paper <sup>(3)</sup>, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity <sup>(4)</sup>, of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision <sup>(5)</sup>, of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) <sup>(6)</sup> and of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies <sup>(7)</sup>).*

<sup>(1)</sup> OJ C 40, 7.2.2001, p. 453.

<sup>(2)</sup> OJ C 25 E, 29.1.2004, p. 394.

<sup>(3)</sup> OJ C 175 E, 10.7.2008, p. xx.

<sup>(4)</sup> OJ C 8 E, 14.1.2010, p. 26.

<sup>(5)</sup> OJ C 9 E, 15.1.2010, p. 48.

<sup>(6)</sup> Texts adopted, P6\_TA(2009)0251.

<sup>(7)</sup> Texts adopted, P6\_TA(2009)0279.

**Amendment 2**  
**Proposal for a regulation**  
**Recital 8a**

*(8a) The measures for the collection of information set out in this Regulation are necessary for the performance of the tasks of the ESRB and should be without prejudice to the legal framework of the European Statistical System (ESS) and the European System of Central Banks (ESCB) in the field of statistics. This Regulation should therefore be without prejudice to Regulation EC no 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics and to Council Regulation EC No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank.*

*(8a) The ECB should be entrusted with the task of providing statistical support to the ESRB. The collection and processing of information as set out in this Regulation and as necessary for the performance of the tasks of the ESRB should therefore benefit under Article 5 of the Statute of the European System of Central Banks (ESCB) and of the ECB and under Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank <sup>(1)</sup>. Accordingly, confidential statistical information collected by the ECB or the ESCB should be shared with the ESRB.*

<sup>(1)</sup> OJ L 318, 27.11.1998, p. 8.

Wednesday 7 July 2010

TEXT PROPOSED BY THE COUNCIL

AMENDMENT

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

*1a. The Chair of the ESRB shall be the President of the ECB. His or her term of office shall be the same as his or her term of office as President of the ECB.*

**Amendment 4****Proposal for a regulation**  
**Article 1 – paragraph 1 b (new)**

*1b. The first Vice-Chair shall be elected by the members of the General Council of the ECB for the same term as that of his or her membership of the General Council, with regard to the need for a balanced representation of Member States, and those within and outside the euro area. He or she may be re-elected.*

**Amendment 5****Proposal for a regulation**  
**Article 1 – paragraph 1 c (new)**

*1c. The second Vice-Chair shall be the Chair of the Joint Committee of European Supervisory Authorities (Joint Committee) established by Article 40 of Regulation (EU) No .../2010 [ESMA], of Regulation (EU) No .../2010 [EIOPA] and of Regulation (EU) No .../2010 [EBA] (the 'Joint Committee').*

**Amendment 6****Proposal for a regulation**  
**Article 1 – paragraph 1 d (new)**

*1d. Before taking office, the Chair and the first Vice-Chair shall present to the European Parliament, during a public hearing, how they intend to discharge their duties under this Regulation. The second Vice-Chair shall be heard by the European Parliament in his or her role as Chair of the Joint Committee.*

**Amendment 7****Proposal for a regulation**  
**Article 1 – paragraph 1 e (new)**

*1e. The Chair shall preside at the meetings of the General Board and the Steering Committee.*

Wednesday 7 July 2010

TEXT PROPOSED BY THE COUNCIL

AMENDMENT

**Amendment 8****Proposal for a regulation  
Article 1 – paragraph 1 f (new)**

*1f. The Vice-Chairs, in order of precedence, shall preside at the General Board and the Steering Committee when the Chair is unable to participate in a meeting.*

**Amendment 9****Proposal for a regulation  
Article 1 – paragraph 1 g (new)**

*1g. If the Vice-Chairs are unable to discharge their duties, new Vice-Chairs shall be elected in accordance with paragraphs 1b and 1c.*

**Amendment 10****Proposal for a regulation  
Article 1 – paragraph 1 h (new)**

*1h. The Chair shall represent the ESRB externally.*

**Amendment 11****Proposal for a regulation  
Article 1 – paragraph 1 i (new)**

*1i. The Chair shall be invited to an annual hearing in the European Parliament marking the publication of the annual report of the ESRB, which shall take place in a different context from the monetary dialogue between the European Parliament and the President of the ECB.*

**Amendment 12****Proposal for a regulation  
Article 2 – introductory part**

The **European Central Bank** shall ensure a Secretariat, and thereby provide analytical, statistical, logistical and administrative support to the ESRB. The **mission** of the Secretariat **as defined** in Article 4(4) of Regulation XXXX, shall include in particular:

The **ECB** shall ensure a Secretariat, and thereby provide analytical, statistical, logistical and administrative support to the ESRB. **It shall also draw technical advice from the European Supervisory Authorities, national central banks and national supervisors. It shall also be responsible for all staff matters.** The **tasks** of the Secretariat **referred to** in Article 4(4) of Regulation (EU) No .../2010 [ESRB] shall include in particular:

**Amendment 13****Proposal for a regulation  
Article 2 – point e**

(e) the support to the work of the General Board, the Steering Committee and the Advisory **Technical** Committee.

(e) the support to the work of the General Board, the Steering Committee and the Advisory **Scientific** Committee.

Wednesday 7 July 2010

TEXT PROPOSED BY THE COUNCIL

AMENDMENT

**Amendment 14****Proposal for a regulation  
Article 2 – point e a (new)**

*(ea) the supply of information to the European Supervisory Authorities when required.*

**Amendment 15****Proposal for a regulation  
Article 3 – paragraph 1**

1. The ECB shall ensure sufficient, human and financial resources for the fulfilment of **its task of ensuring** the Secretariat.

1. The ECB shall ensure sufficient human and financial resources for the fulfilment of the **tasks of the Secretariat. The ECB shall ensure that the Secretariat has high-quality staff reflecting the broad scope of the ESRB and the composition of the General Board. The ECB shall ensure a fair financing of** the Secretariat **from its own resources.**

**Amendment 16****Proposal for a regulation  
Article 3 – paragraph 2**

2. The Head of the Secretariat shall be appointed by the ECB, **in consultation with** the General Board of the ESRB.

2. The Head of the Secretariat shall be appointed by the ECB, **on a proposal by** the General Board of the ESRB.

**Amendment 17****Proposal for a regulation  
Article 3 – paragraph 2 a (new)**

**2a. All members of the Secretariat shall be required not to disclose information subject to professional secrecy, even after their duties have ceased, in accordance with Article 8 of Regulation (EU) No .../2010 [ESRB] to ensure the aim set out in Article 6 of this Regulation.**

**Amendment 18****Proposal for a regulation  
Article 4 – paragraph 2**

2. The Head of the Secretariat or its representative shall attend the meetings of the General Board, the Steering Committee and the Advisory **Technical** Committee of the ESRB.

2. The Head of the Secretariat or its representative shall attend the meetings of the General Board, the Steering Committee and the Advisory **Scientific** Committee of the ESRB.

Wednesday 7 July 2010

TEXT PROPOSED BY THE COUNCIL

AMENDMENT

**Amendment 19****Proposal for a regulation****Article 5 – paragraph 2 a (new)**

2a. *The Secretariat may request information, in individual, summary or collective form, relating to financial institutions or markets relevant for the tasks of the ESRB from the European Supervisory Authorities and, in the cases specified in Article 15 of Regulation (EU) No .../2010 [ESRB], the national supervisory authorities, the national central banks, other authorities of the Member States or, on the basis of a reasoned request, directly from the financial institutions.*

**Amendment 20****Proposal for a regulation****Article 5 – paragraph 2 b (new)**

2b. *Information under paragraph 2 may include data relating to the European Economic Area, the Union or the euro area, or national aggregated and individual data. National data shall be collected only on a reasoned request. Before a request for data is made, the Secretariat shall first take account of the existing statistics produced, disseminated and developed by both the European Statistical System and the ESCB and then consult the relevant European Supervisory Authority, in order to ensure that the request is proportionate.*

**Amendment 21****Proposal for a regulation****Article 7**

The Council shall examine this Regulation *three years after the date set out in Article 8*, on the basis of a report from the Commission and shall determine whether *the present Regulation needs* to be reviewed after having received an opinion from the ECB *and from the European Supervisory Authorities*.

The *European Parliament and the Council* shall, by ... (\*), examine this Regulation on the basis of a report from the Commission and shall determine whether *the objectives and organisation of the ESRB need* to be reviewed after having received an opinion from the ECB.

*The report shall assess, in particular, whether:*

- (a) it is appropriate to simplify and reinforce the architecture of the European System of Financial Supervision (ESFS) in order to increase the coherence between the macro and the micro levels as well as between the European Supervisory Authorities;*
- (b) it is appropriate to increase the regulatory powers of the European Supervisory Authorities;*
- (c) the evolution of the ESFS is consistent with that of the global developments in this area;*
- (d) there is sufficient diversity and excellence within the ESFS;*
- (e) accountability and transparency in relation to publication requirements are adequate.*

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(\*). *Three years after the entry into force of this Regulation.*

Thursday 8 July 2010

**Agreement between the EU and the USA on the processing and transfer of financial messaging data from the EU to the USA for purposes of the Terrorist Finance Tracking Program \*\*\***

P7\_TA(2010)0279

**European Parliament legislative resolution of 8 July 2010 on the draft Council decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program (11222/1/2010/REV 1 and COR 1 – C7-0158/2010 – 2010/0178(NLE))**

(2011/C 351 E/42)

(Consent)

*The European Parliament,*

- having regard to the draft Council decision (11222/1/2010/REV 1 and COR 1),
- having regard to the text of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program, which is attached to the above-mentioned draft Council decision,
- having regard to its resolution of 5 May 2010 on the Recommendation from the Commission to the Council to authorise the opening of negotiations for an agreement between the European Union and the United States of America to make available to the United States Treasury Department financial messaging data to prevent and combat terrorism and terrorist financing <sup>(1)</sup>,
- having regard to the opinion of the European Data Protection Supervisor of 22 June 2010 <sup>(2)</sup>,
- having regard to the opinion expressed by the Article 29 Data Protection Working Party and the Working Party on Police and Justice on 25 June 2010,
- having regard to the request for consent submitted by the Council pursuant to Article 218 (6), second subparagraph, point (a) in conjunction with Article 87(2), point (a) and Article 88(2) of the Treaty on the Functioning of the European Union (C7-0158/2010),
- having regard to Rules 81 and 90(8) of its Rules of Procedure,
- having regard to the recommendation of the Committee on Civil Liberties, Justice and Home Affairs (A7-0224/2010),

1. Consents to conclusion of the Agreement;

<sup>(1)</sup> Texts adopted, P7\_TA(2010)0143.

<sup>(2)</sup> Not yet published in the Official Journal.

Thursday 8 July 2010

2. Invites the Commission, in compliance with Article 8 of the Charter of Fundamental Rights of the European Union, which requires that personal data be under the control of 'independent authorities', to submit to the European Parliament and to the Council as soon as possible a choice of three candidates for the role of the EU independent person referred to in Article 12(1) of the Agreement; points out that the procedure is to be, *mutatis mutandis*, the same as that followed by the European Parliament and the Council for the appointment of the European Data Protection Supervisor as provided for by Regulation (EC) No 45/2001<sup>(1)</sup> implementing Article 286 of the EC Treaty;

3. Instructs its President to forward its position to the Council, the Commission and the governments and parliaments of the Member States and the government of the United States of America; further instructs its President to enter into inter-parliamentary dialogue with the Speaker of the United States House of Representatives and the President pro tempore of the United States Senate on the future framework agreement on data protection between the European Union and the United States of America.

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<sup>(1)</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

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## European External Action Service \*

P7\_TA(2010)0280

### European Parliament legislative resolution of 8 July 2010 on the proposal for a Council decision establishing the organisation and functioning of the European External Action Service (08029/2010 – C7-0090/2010 – 2010/0816(NLE))

(2011/C 351 E/43)

(Consultation)

*The European Parliament,*

- having regard to the proposal by the High Representative of the Union for Foreign Affairs and Security Policy (08029/2010),
- having regard to the statement given by the High Representative at Parliament's plenary sitting on 8 July 2010 on the basic organisation of the EEAS central administration,
- having regard to the declaration by the High Representative on political accountability,
- having regard to Article 27(3) of the Treaty on European Union, pursuant to which the Council consulted Parliament (C7-0090/2010),
- having regard to Rule 55 of its Rules of Procedure,
- having regard to the report of the Committee on Foreign Affairs and the opinions of the Committee on Constitutional Affairs, the Committee on Development, the Committee on International Trade, the Committee on Budgets, the Committee on Budgetary Control and the Committee on Women's Rights and Gender Equality (A7-0228/2010),

1. Approves as amended the proposal by the High Representative of the Union for Foreign Affairs and Security Policy;



Thursday 8 July 2010

2. Is determined to reinforce its cooperation with national parliaments of Member States as required by the Treaty, in the area of the Union's external action, and especially concerning the CFSP and the CSDP;
3. Is of the view that amendments to the Financial Regulation should, in addition to the present Council Decision, further specify the role of the Commission concerning sub-delegation of powers to Heads of Delegation to implement operational appropriations, in particular ensuring also in the Financial Regulation that the Commission takes all necessary measures to guarantee that sub-delegation of powers does not affect the discharge procedure;
4. Invites the Commission to include in its comprehensive working document on expenditure relating to EU external action, which is to be drafted together with the Draft EU budget, details concerning, inter alia, the establishment plans of the Union's Delegations, as well as the external action expenditure per country and per mission; points out that it intends to modify the Financial Regulation accordingly;
5. Reiterates that, in the event of disputes concerning Commission instructions to Heads of EU Delegations which are, in accordance with Article 221(2) of the TFEU, placed under the authority of the High Representative, and in the event of disagreement between the High Representative and the Commissioners responsible for the programming of the relevant external assistance instruments, it is for the College of Commissioners to take the final decision;
6. Urges the High Representative to make sure that the provisions laid down in Article 6 of the Council Decision, whereby at least 60 % of all EEAS staff at AD level are to be permanent EU officials, are reflected in all grades in the EEAS hierarchy;
7. Is of the view that additional specific measures envisaged in Article 6(6) of the Council Decision for the strengthening of the geographical and gender balance should include, as regards geographical balance, measures analogous to those provided for in Council Regulation (EC, Euratom) No 401/2004 <sup>(1)</sup>;
8. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
9. Asks the Council to consult Parliament again if it intends to amend the proposal by the High Representative of the Union for Foreign Affairs and Security Policy;
10. Instructs its President to forward its position to the Council, the High Representative of the Union for Foreign Affairs and Security Policy and the Commission.

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<sup>(1)</sup> Council Regulation (EC, Euratom) No 401/2004 of 23 February 2004 introducing, on the occasion of the accession of Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia, special temporary measures for recruitment of officials of the European Communities (OJ L 67, 5.3.2004, p. 1).

## **P7\_TC1-NLE(2010)0816**

### **Position of the European Parliament adopted on 8 July 2010 with a view to the adoption of Council decision establishing the organisation and functioning of the European External Action Service**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 27(3) thereof,

Thursday 8 July 2010

Having regard to the proposal from the High Representative of the Union for Foreign Affairs and Security Policy ('the High Representative') <sup>(1)</sup>,

Having regard to the Opinion of the European Parliament <sup>(2)</sup>,

Having regard to the consent of the Commission <sup>(1)</sup>,

Whereas:

- (1) The purpose of this Decision is to establish the organisation and functioning of the European External Action Service ('EEAS'), a functionally autonomous body of the Union under the authority of the High Representative, set up by Article 27(3) of the Treaty on European Union ('TEU'), as amended by the Treaty of Lisbon. **This Decision and in particular the reference to the term 'High Representative' will be interpreted in accordance with her different functions under Article 18 of the TEU.**
- (2) In accordance with Article 21(3), second subparagraph, of the TEU, the Union will ensure consistency between the different areas of its external action and between these and its other policies. The Council and the Commission, assisted by the High Representative, will ensure that consistency and will cooperate to that effect.
- (3) The EEAS will support the High Representative, **who is also a Vice-President of the Commission and the President of the Foreign Affairs Council**, in fulfilling her mandate to conduct the Common Foreign and Security Policy ('CFSP') of the European Union and to ensure the consistency of the EU's external action **as outlined, notably, in Articles 18 and 27 of the TEU**. The EEAS will support the High Representative in her capacity as President of the Foreign Affairs Council, without prejudice to the normal tasks of the General Secretariat of the Council. The EEAS will also support the High Representative in her capacity as Vice-President of the Commission, for her responsibilities within the Commission for responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action, without prejudice to the normal tasks of the Commission services.
- (4) **In its contribution to the EU external cooperation programmes, the EEAS should seek to ensure that these programmes respond to the objectives for external action as set out in Article 21 of the TEU, in particular its paragraph (2)(d), and that they respect the objectives of EU development policy in line with Article 208 of the Treaty on the Functioning of the European Union ('TFEU'). In this context, the EEAS should also promote the fulfilment of the objectives of the European Consensus on Development and the European Consensus on Humanitarian Aid.**
- (5) It results from the Treaty of Lisbon that, in order to implement its provisions, the EEAS must be operational as soon as possible after the entry into force of that Treaty.
- (6) The European Parliament will fully play its role in the external action of the Union, including its functions of political control as provided for in Article 14(1) of the TEU, as well as in legislative and budgetary matters as laid down in the Treaties. Furthermore, in accordance with Article 36 of the TEU, the High Representative will regularly consult the European Parliament on the main aspects and the basic choices of the CFSP and will ensure that the views of the European Parliament are duly taken into consideration. The EEAS will assist the High Representative in this regard. **Specific arrangements should be made with regard to access for Members of the European Parliament to classified documents and information in the area of CFSP. Until the adoption of such arrangements, existing provisions under the 2002 Interinstitutional Agreement on classified documents and information in the area of ESDP will apply.**

<sup>(1)</sup> OJ ... please, complete the footnotes.

<sup>(2)</sup> OJ ...

Thursday 8 July 2010

- (7) The High Representative, or her representative, should exercise vis-à-vis the European Defence Agency, the European Union Satellite Centre, the European Union Institute for Security Studies and the European Security and Defence College the responsibilities provided for in their respective founding acts. The EEAS should provide these entities with the support currently provided by the General Secretariat of the Council.
- (8) Provisions should be adopted relating to the staff of the EEAS and their recruitment **where such provisions are necessary to establish the organisation and functioning of the EEAS. In parallel, necessary amendments should be made, in accordance with Article 336 of the TFEU, to the Staff Regulations of Officials of the European Communities ('Staff Regulations') and the Conditions of Employment of Other Servants of those Communities ('CEOS'), without prejudice to Article 298 of the TFEU.** For matters relating to its staff the EEAS should be treated as an institution within the meaning of the Staff Regulations. ■ The High Representative will be the Appointing Authority, in relation both to officials subject to the Staff Regulations ■ and agents subject to the CEOS. The number of officials and servants of the EEAS will be decided each year as part of the budgetary procedure and will be reflected in the establishment plan.
- (9) **The staff members of the EEAS will carry out their duties and conduct themselves solely with the interests of the Union in mind.**
- (10) **Recruitment will be based on merit whilst ensuring adequate geographical and gender balance. The staff of the EEAS should comprise a meaningful presence of nationals from all the Member States. The review foreseen in 2013 should also cover this issue, including, as appropriate, suggestions for additional specific measures to correct possible imbalances.**
- (11) **In accordance with Article 27(3) of the TEU, the EEAS will comprise officials from the General Secretariat of the Council and the Commission as well as personnel coming from the diplomatic services of the Member States. For that purpose, the relevant departments and functions in the General Secretariat of the Council and in the Commission will be transferred to the EEAS, together with officials and temporary agents occupying a post in such departments or functions. Before 1 July 2013, the EEAS will recruit exclusively officials originating from the General Secretariat of the Council and the Commission as well as staff coming from the diplomatic services of the Member States. After that date, all officials and other servants of the European Union should be able to apply for vacant posts in the EEAS.**
- (12) **The EEAS may, in specific cases, have recourse to specialised seconded national experts (SNEs), over which the High Representative will have authority. Seconded National Experts in post in the EEAS will not be counted in the one third which staff from Member States should represent when the EEAS will reach its full capacity. Their transfer in the phase of setting up of the EEAS will not be automatic and will be made with the consent of the authorities of the originating Member States. By the expiry of the contract of an SNE transferred to the EEAS under Article 7, the function will be converted into a temporary agent post in cases where the function performed by the SNE corresponds to a function normally carried out by staff at AD level, provided that the necessary post is available under the establishment plan.**
- (13) **The Commission and the EEAS will agree on modalities relating to the issue of instructions from the Commission to delegations. These should foresee in particular that, when the Commission issues instructions to delegations, it will simultaneously provide a copy of these to the Head of Delegation and to the EEAS central administration.**

Thursday 8 July 2010

- (14) **The Financial Regulation should be amended in order to include the EEAS in Article 1 of the Financial Regulation, with a specific section in the Union budget. In accordance with applicable rules, and as is the case for other institutions, a part of the annual report of the Court of Auditors will be dedicated also to the EEAS and the EEAS will respond to such reports.** The EEAS will be subject to the procedures regarding the discharge as provided for in Article 319 of the TFEU and in Articles 145 to 147 of the Financial Regulation. **The High Representative will provide the European Parliament with all support necessary to complete the European Parliament's right as discharge authority. The implementation of the operational budget will be the Commission's responsibility in accordance with Article 317 of the TFEU. Decisions having a financial impact will in particular respect the responsibilities laid down in Title IV of the Financial Regulation, especially Article 75 thereof regarding expenditure operations and Articles 64 to 68 regarding liability of the financial actors.**
- (15) **The establishment of the EEAS should be guided by the principle of cost-efficiency aiming towards budget neutrality. To this end, transitional arrangements and gradual build-up of capacity will have to be used. Unnecessary duplication of tasks, functions and resources with other structures should be avoided. All opportunities for rationalisation should be used. In addition, a number of additional posts for Member States' temporary agents will be necessary, which have to be financed within the framework of the current multi-annual framework.**
- (16) Rules should be laid down covering the activities of the EEAS and its staff as regards security, protection of classified information and transparency.
- (17) It is recalled that the Protocol on the Privileges and Immunities of the Union applies to the EEAS, its officials and other agents, who shall be subject either to the Staff Regulations or the **CEOS**.
- (18) The European Union and the European Atomic Energy Community continue to be served by a single institutional framework. It is therefore essential to ensure consistency between the external relations of both, and to allow the Union Delegations to undertake the representation of the European Atomic Energy Community in third countries and at international organisations.
- (19) **The High Representative should, by mid-2013, make a review of the functioning and organisation of the EEAS, accompanied, if necessary, by proposals for a revision of this Decision. Such a revision should be adopted no later than the beginning of 2014.**

HAS ADOPTED THIS DECISION:

#### Article 1

##### Nature and Scope

1. This Decision establishes the organisation and functioning of the European External Action Service ('EEAS').
2. The EEAS, which has its headquarters in Brussels, shall be a functionally autonomous body of the European Union, separate from the Commission and the General Secretariat of the Council, with the legal capacity necessary to perform its tasks and attain its objectives.
3. The EEAS shall be placed under the authority of the High Representative of the Union for Foreign Affairs and Security Policy ('High Representative').

Thursday 8 July 2010

4. The EEAS shall be made up of a central administration and of the Union delegations to third countries and to international organisations.

#### Article 2

##### Tasks

1. The EEAS shall support the High Representative *in fulfilling her mandates as outlined, notably, in Articles 18 and 27 of the TEU*:

- in fulfilling her mandate to conduct the Common Foreign and Security Policy ('CFSP') of the European Union, *including the Common Security and Defence Policy ('CSDP'), to contribute by her proposals to the development of that policy, which she shall carry out as mandated by the Council*, and to ensure the consistency of the EU's external action;
- in her capacity of President of the Foreign Affairs Council, without prejudice to the normal tasks of the General Secretariat of the Council;
- in her capacity as Vice-President of the Commission for fulfilling within the Commission the responsibilities incumbent on it in external relations and for coordinating other aspects of the Union's external action, without prejudice to the normal tasks of the services of the Commission.

2. The EEAS shall assist the *President of the European Council*, the President of the Commission *and* the Commission *in the exercise of their respective functions in the area of external relations*.

#### Article 3

##### Cooperation

1. The EEAS shall *support and* work in cooperation with the *diplomatic services of the Member States as well as with the* General Secretariat of the Council and the services of the Commission **¶** in order to ensure consistency between the different areas of the Union external action and between these and its other policies.

2. The EEAS and the services of the Commission shall consult each other on all matters relating to the external action of the Union *in the exercise of their respective functions except on matters covered by CSDP*. The EEAS shall take part in the preparatory work and procedures relating to acts to be prepared by the Commission in this area. This paragraph shall be implemented in accordance with Chapter 1 of Title V of the TEU, and with Article 205 of the TFEU.

3. The EEAS may enter into service-level arrangements with relevant services of the Commission, the General Secretariat of the Council, or other offices or interinstitutional bodies of the European Union.

4. The EEAS shall extend appropriate support and cooperation to the other institutions and bodies of the Union, *in particular to the European Parliament. The EEAS may also benefit from the support and cooperation of these institutions and bodies, including agencies as appropriate. The EEAS internal auditor will cooperate with the internal auditor of the Commission to ensure the consistency of audit policy, with particular reference to the Commission's responsibility for operational expenditure. In addition, the EEAS shall cooperate with the European Office for the Fight against Fraud (OLAF) in accordance with Regulation (EC) No 1073/1999. It shall in particular swiftly adopt the decision required by that Regulation on terms and conditions for internal investigations. As provided in that Regulation, Member States, in accordance with national provisions, and institutions shall give the necessary support to enable OLAF's agents to fulfil their task.*

Thursday 8 July 2010

Article 4

Central administration

1. The EEAS shall be managed by **an executive** Secretary-General who will operate under the authority of the High Representative. The **executive** Secretary-General shall take all measures necessary to ensure the smooth functioning of the EEAS, including its administrative and budgetary management. **The Secretary General** shall ensure effective coordination between all departments in the central administration as well as with the Union delegations **¶**.

2. The **executive** Secretary-General shall be assisted by two Deputy Secretaries-General.

3. The central administration of the EEAS shall be organised in directorates general. These shall **in particular** include:

- a number of directorates general comprising geographic desks covering all countries and regions of the world, as well as multilateral and thematic desks. These departments shall coordinate as necessary with relevant services of the Commission and with the General Secretariat of the Council;
- a directorate general for administrative, staffing, budgetary, security and communication and information system matters **working in the EEAS framework managed by the executive** Secretary-General. **The High Representative shall appoint, in accordance with the normal rules of recruitment, a Director General for budget and administration who shall work under the authority of the High Representative. He shall be responsible to the High Representative for the administrative and internal budgetary management of the EEAS. He shall follow the same budget lines and administrative rules as applicable in the part of Section III of the EU budget which falls under Heading V of the Multiannual Financial Framework;**
- the crisis management and planning directorate, the civilian planning and conduct capability, the European Union Military Staff and the European Union Situation Centre, placed under the direct authority and responsibility of the High Representative **assisting her in the task of conducting the Union's CFSP in accordance with the provisions of the Treaty while respecting, in accordance with Article 40 of the TEU, the other competences of the Union.**

The specificities of these structures, as well as the particularities of their functions, recruitment and the status of the staff shall be respected.

**Full coordination between all the structures of the EEAS shall be ensured.**

The central administration shall also include:

- **a strategic policy planning department;**
- a legal department under the **¶** administrative authority of the **executive** Secretary-General which shall work closely with the Legal Services of the Council and the Commission;
- departments for inter-institutional relations, information and public diplomacy, internal audit and inspections, and personal data protection.

Thursday 8 July 2010

4. The High Representative shall designate ■ the chairpersons of Council preparatory bodies that are chaired by a representative of the High Representative, including the chair of the Political and Security Committee, **in accordance with the modalities set out in Annex II to Council Decision 2009/908/EU of 1 December 2009 laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council** <sup>(1)</sup>.

5. The High Representative and the EEAS shall be supported where necessary by the General Secretariat of the Council and the relevant departments of the Commission. Service level arrangements may be drawn up to that effect by the EEAS, the General Secretariat of the Council and the relevant Commission departments.

#### Article 5

##### Union delegations

1. The decision to open **or close** a delegation shall be adopted by the High Representative ■, in agreement with the Council and the Commission.

2. Each Union delegation shall be **placed under the authority of** a Head of Delegation.

The Head of Delegation shall have authority over all staff in the delegation, whatever their status, and for all its activities. He shall be accountable to the High Representative for the overall management of the work of the delegation and for ensuring the coordination of all actions of the Union.

Staff in delegations shall comprise EEAS staff and, where this is appropriate for the implementation of the Union budget and Union policies other than those under the remit of the EEAS, Commission staff.

3. The Head of Delegation shall receive instructions from the High Representative and the EEAS, and shall be responsible for their execution.

In areas where the Commission exercises the powers conferred to it by the Treaties, the Commission may, **in accordance with article 221(2) of the TFEU**, also issue instructions to delegations, which shall be executed under the overall responsibility of the Head of Delegation.

4. The Head of Delegation shall implement operational credits in relation to EU projects in the corresponding third country, where sub-delegated by the Commission, in accordance with the Financial Regulation.

5. The operation of each delegation shall be periodically evaluated by the Secretary General of the EEAS; evaluation shall include financial and administrative audits. The Secretary General of the EEAS may request to be assisted for this purpose by the relevant Commission departments. **In addition to internal measures by the EEAS, OLAF shall exercise its powers, notably by conducting anti-fraud measures, in accordance with Regulation (EC) No 1073/1999.**

6. The High Representative shall enter into the necessary arrangements with the host country, the international organisation or the third country concerned. In particular, the High Representative shall take the necessary measures to ensure that the host States grant the Union delegations, their staff and their property, privileges and immunities equivalent to those referred to in the Vienna Convention of 18 April 1961 on Diplomatic Relations.

<sup>(1)</sup> OJ L 322, 9.12.2009, p. 28.

Thursday 8 July 2010

7. Union delegations shall have the capacity to service the needs of other EU institutions, in particular the European Parliament, in their contacts with the international organisations or third countries to which **the delegations** are accredited.
8. The Head of Delegation shall have the power to represent the EU in the country where the delegation is **accredited**, in particular for the conclusion of contracts and being a party to legal proceedings.
9. The Union delegations shall work in close cooperation **and share information** with the diplomatic services of the Member States.
10. The Union delegations shall, **acting in accordance with the third subparagraph of Article 35 the TEU and** upon request by Member States, support the Member States in their diplomatic relations and in their role of providing consular protection to Union citizens in third countries.

## Article 6

### Staff

1. **The provisions set out in this Article, except paragraph 3, shall apply without prejudice to the Staff Regulations of Officials of the European Communities ('Staff Regulations') and the Conditions of Employment of Other Servants of those Communities ('CEOS'), including the amendments made to these rules, in accordance with Article 336 of the TFEU, in order to adapt them to the needs of the EEAS.**
2. The EEAS shall comprise officials and other servants of the European Union, including personnel from the diplomatic services of the Member States appointed as temporary agents <sup>(1)</sup>.

**The Staff Regulations and the CEOS shall apply to this staff.**

3. If necessary, **the EEAS may, in specific cases, have recourse to a limited number of** specialised seconded national experts (SNEs).

**The High Representative shall adopt the rules, equivalent to those laid down in Council Decision 2003/479/EC as amended by Council Decision 2007/829/EC of 5 December 2007 <sup>(2)</sup>, under which SNEs are put at the disposal of the EEAS in order to provide specialised expertise.**

4. The staff members of the EEAS shall carry out their duties and conduct themselves solely with the interests of the Union in mind. Without prejudice to Articles 2(1), third **indent**, 2(2) and 5(3), they shall neither seek nor take instructions from any Government, authority, organisation or person outside the EEAS or any body or person other than the High Representative. **In accordance with the second paragraph of Article 11 of the Staff Regulations, the EEAS staff may not accept any payments of any kind whatever from any other source outside the EEAS.**

■

5. The powers conferred on the appointing authority by the Staff Regulations and on the authority authorised to conclude contracts by the **CEOS** shall be vested in the High Representative, who may delegate those powers inside the EEAS.

<sup>(1)</sup> Article 98(1), second subparagraph of the Staff Regulations will read as follows: 'As from 1 July 2013, the Appointing Authority shall also consider the applications of officials from other institutions without giving priority to any of these categories.'

<sup>(2)</sup> OJ L 327, 13.12.2007, p. 10.



Thursday 8 July 2010

6. **Recruitment** in the EEAS shall be based on merit **whilst ensuring adequate geographical and gender balance**. The staff of the EEAS shall comprise a meaningful presence of nationals from all the Member States. **The review foreseen in 2013 shall also cover this issue, including, as appropriate, suggestions for additional specific measures to correct possible imbalances.**

7. **Officials** of the European Union and temporary agents coming from the diplomatic services of the Member States **shall have the same rights and obligations** and be treated equally, in particular as concerns eligibility to assume all positions under equivalent conditions. No distinction shall be made between temporary agents coming from national diplomatic services and officials of the European Union as regards the assignment of duties to perform in all areas of activities and policies implemented by the EEAS. **In accordance with the provisions of the Financial Regulation, the Member States shall support the Union in the enforcement of financial liabilities resulting from any liability under Article 66 of the Financial Regulation of EEAS temporary agents coming from national diplomatic services.**

8. The High Representative shall establish the selection procedures for EEAS staff, which shall be **undertaken through a transparent procedure** based on merit **with the objective of securing the services of staff of the highest standard of ability, efficiency and integrity while ensuring adequate geographical and gender balance and a meaningful presence of nationals from all EU Member States in the EEAS**. Representatives of the Member States, the General Secretariat of the Council and the Commission shall be involved in the recruitment procedure for vacant posts in the EEAS. ▀

9. When the EEAS has reached its full capacity, staff from Member States, **as referred to in paragraph 2, first subparagraph**, should represent at least one third of all EEAS staff at AD level. **Likewise, permanent EU officials should represent at least 60 % of all EEAS staff at AD level, including staff coming from the diplomatic services of the Member States, who have become permanent EU officials, in accordance with the provisions of the Staff Regulations**. Each year, the High Representative shall present a report to the **European Parliament and the Council** on the occupation of posts in the EEAS.

10. The High Representative shall lay down the rules on mobility so as to ensure that the members of the staff of the EEAS are subject to a **high** degree of mobility. Specific modalities shall apply to the personnel referred to in Article 4 (3), third **indent**. In principle, all EEAS staff shall periodically serve in Union delegations. The High Representative shall establish rules to that effect.

11. In accordance with the applicable provisions of its national law, each Member State shall provide its officials who have become temporary agents in the EEAS with a guarantee of immediate reinstatement at the end of their period of **service** to the EEAS. **This period of service, in accordance with the provisions of Article 50b of CEOS, shall not exceed eight years, unless, it is extended for a maximum period of two years in exceptional circumstances and in the interest of the service.**

EU officials serving in the EEAS shall have the right to apply for posts in their institution of origin on the same terms as internal applicants.

12. Steps shall be taken in order to provide EEAS staff with adequate common training, building in particular on existing national **and EU** practices and structures. The High Representative shall take appropriate measures to that effect within the year following the entry into force of this Decision.

## Article 7

### Transitional provisions regarding staff

1. **The relevant departments and functions in the General Secretariat of the Council and in the Commission listed in the Annex shall be transferred to the EEAS. Officials and temporary agents occupying a post in departments or functions listed in the Annex shall be transferred to the EEAS. This shall apply mutatis mutandis to contract and local staff assigned to such departments and functions. SNEs working in those departments or functions shall also be transferred to the EEAS with the consent of the authorities of the originating Member State.**

Thursday 8 July 2010

*These transfers shall take effect on 1 January 2011.*

*In accordance with the Staff Regulations, upon their transfer to the EEAS, the High Representative shall assign each official to a post in his function group which corresponds to his grade.*

*2. The procedures for recruiting staff for posts transferred to the EEAS which are on-going at the date of entry into force of this Decision shall remain valid: they shall be carried on and completed under the authority of the High Representative in accordance with the relevant vacancy notices and the applicable rules of the Staff Regulations and the CEOS.*

#### Article 8

##### Budget

*1. The duties of authorising officer for the EEAS section of the General Budget of the European Union shall be delegated in accordance with Article 59 of the Financial Regulation. The High Representative shall adopt the internal rules for the management of the administrative budget lines. Operational expenditure shall remain within the Commission section of the budget.*

*2. The EEAS shall exercise its powers in accordance with the Financial Regulation applicable to the general budget of the Union within the limits of the appropriations allocated to it.*

*3. When drawing up estimates of administrative expenditure for the EEAS, the High Representative will hold consultations with, respectively, the Commissioner for Development Policy and the Commissioner for Neighbourhood Policy regarding their respective responsibility.*

*4. In accordance with Article 314(1) of the TFEU, the EEAS shall draw up estimates of its expenditure for the following financial year. The Commission shall consolidate these estimates in a draft budget, which may contain different estimates. The Commission may amend the draft budget as provided for in Article 314(2) of the TFEU.*

*5. In order to ensure the budgetary transparency in the area of external action of the Union, the Commission will transmit to the budgetary authority, together with the Draft EU Budget, a working document presenting, in a comprehensive way, all expenditure related to the external action of the Union.*

*6. The EEAS shall be subject to the procedures regarding the discharge provided for in Article 319 of the Treaty on the Functioning of the European Union and in Article 145 to 147 of the Financial Regulation. The EEAS will, in this context, fully cooperate with institutions involved in the discharge procedure and provide, as appropriate, the additional necessary information, including through attendance in meetings of the relevant bodies.*

#### Article 9

##### External Action Instruments and programming

*1. The management of EU external cooperation programmes is under the responsibility of the Commission without prejudice to role of the Commission and of the EEAS in programming as set out in the following paragraphs.*

*2. The High Representative shall ensure overall political coordination of the EU's external action, ensuring the unity, consistency and effectiveness of the EU's external action in particular through the external assistance instruments:*

— the Development Cooperation Instrument,

Thursday 8 July 2010

- the European Development Fund,
- the European Instrument for Democracy and Human Rights,
- the European Neighbourhood and Partnership Instrument,
- the Instrument for Cooperation with Industrialised Countries,
- the Instrument for Nuclear Safety Cooperation,
- the Instrument for Stability, regarding the assistance foreseen in article 4 of Regulation (EC) No. 1717/2006 of 15 November 2006.

3. ***In particular, the EEAS shall contribute to the programming and management cycle for the said instruments, on the basis of the policy objectives set out therein. It shall*** have responsibility for preparing the following Commission decisions ***regarding*** the strategic, multi-annual steps within the programming cycle:

- (i) country allocations to determine the global financial envelope for each region (subject to the indicative breakdown of the financial perspectives). Within each region, a proportion of funding will be reserved for regional programmes;
- (ii) country and regional strategic papers (CSPs/RSPs);
- (iii) national and regional indicative programmes (NIPs/RIPs).

***In accordance with Article 3, throughout the whole cycle of programming, planning and implementation of these instruments, the High Representative and the EEAS shall work with the relevant members and services of the Commission without prejudice to Article 1(3). All proposals for decision will be prepared through Commission procedures and submitted to the Commission for decision.***

4. With regard to the European Development Fund and the Development Cooperation Instrument, any proposals, including those for changes in the basic regulations and the programming documents in paragraph 3 above, shall be prepared ***jointly*** by the relevant services in the EEAS and in the Commission under the ***responsibility*** of the Commissioner responsible for Development Policy and then jointly submitted with the High Representative for decision by the Commission.

Thematic programmes, ***except the European Instrument for Democracy and Human Rights, as well as the Instrument for Nuclear Safety Cooperation and the part of the Instrument for Stability referred to in the seventh indent of paragraph 2, shall be prepared by the*** appropriate Commission Service under the guidance of the Commissioner responsible for Development and presented to the College in agreement with the High Representative and other relevant Commissioners.

5. With regard to European Neighbourhood and Partnership Instrument, any proposals, including those for changes in the basic regulations and the programming documents in paragraph 3 above, shall be prepared ***jointly*** by the relevant services in the EEAS and in the Commission under the ***responsibility*** of the Commissioner responsible for Neighbourhood Policy and then jointly submitted with the High Representative for decision by the Commission.

Thursday 8 July 2010

6. *Actions undertaken under the CFSP budget, the Instrument for Stability except the part referred to in the seventh indent of paragraph 2, the Instrument for Cooperation with Industrialised Countries, the Communication and Public Diplomacy as well as the Election Observation Missions are under the responsibility of the High Representative/EEAS. The Commission shall be responsible for their financial implementation under the authority of the High Representative in her capacity as Vice-President of the Commission.*<sup>(1)</sup> *The Commission department responsible for this implementation shall be co-located with the EEAS.*

#### Article 10

##### Security

1. The High Representative shall, *after consulting the Committee referred to in Council Decision 2001/264/EC*, decide on the security rules for the EEAS and take all appropriate measures in order to ensure that the EEAS manages effectively the risks to its staff, physical assets and information, and that it fulfils its duty of care responsibilities. Such rules shall apply to all EEAS staff, and all staff in Union Delegations, regardless of their administrative status or origin.

#### 2. *Pending the Decision referred to in paragraph 1:*

— *with regard to the protection of classified information, the EEAS shall apply Council Decision 2001/264/EC;*

— *with regard to other aspects of security, the EEAS shall apply Commission Decision 2001/844/EC.*

3. The EEAS shall have a department responsible for security matters, which shall be assisted by the competent services of the Member States.

4. The High Representative shall take any measure necessary in order to implement security rules in the EEAS, in particular as regards protection of classified information and the measures to be taken in the event of failure by EEAS staff to comply with the security rules. For that purpose, the EEAS shall seek advice from the Security Office of the General Secretariat of the Council, from the relevant services of the Commission and from the relevant services of the Member States.

#### Article 11

##### Access to documents, archives and data protection

1. The EEAS shall apply the rules laid down in Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents. The High Representative shall decide on the implementing rules for the EEAS.

2. The Secretary General of the EEAS shall organise the archives of the Service. The relevant archives of the departments transferred from the General Secretariat of the Council and the Commission shall be transferred to the EEAS.

<sup>(1)</sup> *The Commission will make a declaration to the effect that the High Representative will have the necessary authority in this area, in full respect of the Financial Regulation.*

Thursday 8 July 2010

3. The EEAS shall protect the individuals with regard to the processing of personal data in accordance with the rules laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. The High Representative shall decide on the implementing rules for the EEAS.

#### Article 12

##### Immovable property

1. The General Secretariat of the Council and the relevant Commission services shall take all necessary measures so that the transfers referred to in **Article 7** can be accompanied by the transfers of the Council and Commission buildings necessary for the functioning of the EEAS.

2. The terms on which immovable property is made available to the EEAS central administration and to the Union delegations shall be decided on jointly by the High Representative and the General Secretariat of the Council and the Commission, as appropriate.

#### Article 13

##### Final provisions

1. The High Representative, the Council, the Commission and the Member States shall be responsible for implementing this Decision and shall take all measures necessary to do so.

2. The High Representative shall submit a report to the **European Parliament**, the Council **and the Commission** on the functioning of the EEAS no later than the end of 2011. **This report shall in particular cover the implementation of the provisions of Article 5(3) and (10) and of Article 9.**

3. **By mid-2013, the High Representative shall make a review of the functioning and organisation of the EEAS, which will cover inter alia the implementation of the provisions of Article 6(8) and (11). This review, shall, if necessary, be accompanied by appropriate proposals for revision of this Decision. In this case, the Council, in accordance with Article 27(3) TEU shall, revise this Decision in the light of the review** no later than the beginning of 2014 **█**.

4. This Decision shall enter into force on the date of its adoption. Its provisions on financial management and recruitment **█** shall **take effect** once the necessary amendments to the Staff Regulations and the Financial Regulation, as well as the amending budget, have been adopted. **Arrangements** shall be entered into by the High Representative, the General Secretariat of the Council and the Commission, and consultations shall be undertaken with the Member States **to ensure a smooth transition.**

5. At the latest one month after the entry into force of this Decision, the High Representative shall submit to the Commission an estimate of the revenue and expenditure of the EEAS, including an establishment plan, in order for it to present a draft amending budget.

6. This Decision shall be published in the *Official Journal of the European Union*.

Done at Brussels, [date]

For the Council  
The President

Thursday 8 July 2010

## ANNEX

### DEPARTMENTS AND FUNCTIONS TO BE TRANSFERRED TO THE EEAS <sup>(1)</sup>

The following is a list of all the administrative entities to be transferred en bloc to the EEAS. This does not prejudice the additional needs and the allocation of resources to be determined in the overall budget negotiations establishing the EEAS, nor decisions on the provision of adequate staff responsible for support functions, and the linked need for service-level agreements between the General Secretariat of the Council and the Commission and the EEAS.

#### 1. GENERAL SECRETARIAT OF THE COUNCIL

All staff in the departments and functions listed below shall be transferred en bloc to the EEAS, except for a very limited number of staff to perform the normal tasks of the General Secretariat of the Council in line with Article 2(1), second indent, and for certain specific functions which are indicated below:

##### Policy Unit

##### ESDP and crisis management structures

- Crisis Management and Planning Directorate (CMPD)
- Civilian Planning and Conduct Capability (CPCC)
- European Union Military Staff (EUMS)
  - Departments under the direct authority of DGEUMS
  - Concepts and Capability Directorate
  - Intelligence Directorate
  - Operations Directorate
  - Logistics Directorate
  - Communications and Information Systems Directorate
- EU Situation Centre (SITCEN)

##### Exception:

- Staff in the SITCEN supporting the Security Accreditation Authority

##### Directorate-General E

- Entities placed under the direct authority of the Director-General
- Directorate for the Americas and the United Nations
- Directorate for the Western Balkans, Eastern Europe and Central Asia

<sup>(1)</sup> The human resources to be transferred are all financed from the expenditure heading 5 (Administration) of the multiannual financial framework.

Thursday 8 July 2010

- Directorate for Non-Proliferation of Weapons of Mass Destruction
- Directorate for Parliamentary affairs in the area of CFSP
- New York Liaison Office
- Geneva Liaison Office

GSC officials on secondment to European Union Special Representatives and CSDP missions.

## 2. COMMISSION (INCLUDING DELEGATIONS)

***All staff in the departments and functions listed below shall be transferred en bloc to the EEAS, except for a limited number of staff mentioned below as exceptions.***

### Directorate-General for External Relations

- All hierarchy posts ***and support staff directly attached to them***
- Directorate A (Crisis Platform and policy coordination in CFSP)
- Directorate B (Multilateral Relations and Human Rights)
- Directorate C (North America, East Asia, Australia, New Zealand, EEA, EFTA, San Marino, Andorra, Monaco)
- Directorate D (European Neighbourhood Policy Coordination)
- Directorate E (Eastern Europe, Southern Caucasus, Central Asia Republics)
- Directorate F (Middle East, South Mediterranean)
- Directorate G (Latin America)
- Directorate H (Asia (except Japan and Korea))
- Directorate I (Headquarters resources, information, inter-institutional relations)
- Directorate K (External Service)
- Directorate L (Strategy, Coordination and Analysis)
- Task Force on the Eastern Partnership
- Unit Relex-01 (audit)

Thursday 8 July 2010

Exceptions:

- Staff responsible for the management of financial instruments
- Staff responsible for the payment of salaries and allowances to staff in delegations

External Service

- All Heads of Delegation and Deputy Heads of Delegation **and support staff directly attached to them**
- All Political Sections or cells and staff
- All information and public diplomacy sections and staff
- All Administration sections

Exceptions

- Staff responsible for the implementation of financial instruments

Directorate-General for Development

- Directorate D (ACP II – West and Central Africa, Caribbean and OCT) except OCT task force
- Directorate E (Horn of Africa, East and Southern Africa, Indian Ocean and Pacific)
- Unit CI (ACP I: Aid programming and management): Staff responsible for programming
- Unit C2 (Pan-African issues and institutions, governance and migration): Staff responsible for Pan-African relations
- Applicable hierarchy posts **and support staff directly attached to them**

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ANNEX

**DECLARATION BY THE HIGH REPRESENTATIVE <sup>(1)</sup> ON POLITICAL ACCOUNTABILITY**

In her relationship with the European Parliament, the High Representative (HR) will build on the consultation, information and reporting engagements undertaken during the last legislature by the former Commissioner for external relations, the former High Representative for the Common Foreign and Security Policy, as well as by the rotating Council Presidency. Where necessary, these engagements will be adjusted in light of Parliament's role of political control and the redefinition of the role of the High Representative as set out by the Treaties and in accordance with Article 36 TEU.

<sup>(1)</sup> Footnote: The term HR in this declaration covers all functions of the High Representative of the Union for Foreign Affairs and Security Policy, who is also a Vice-President of the European Commission, and the President of the Foreign Affairs Council without prejudice to the specific responsibilities under the specific functions she exercises.



Thursday 8 July 2010

In this regard:

1. On CFSP, the HR will seek the views of the European Parliament on the main aspects and basic choices of this policy in conformity with Article 36 TEU. Any exchanges of views prior to the adoption of mandates and strategies in the area of CFSP will take place in the appropriate format, corresponding to the sensitivity and confidentiality of the topics discussed. In this context, also the practice of Joint Consultation Meetings with the Bureaux of AFET and COBU will be enhanced. Briefings given at these meetings will relate in particular to CFSP missions financed out of the EU budget, both to those being implemented and those under preparation. If necessary, additional Joint Consultation Meetings may be arranged, on top of regular meetings. The EEAS presence (at all the meetings) will include in addition to the permanent Chair of the Political and Security Committee, senior officials responsible for the policy.
2. The results of the ongoing negotiations on the Framework Agreement between the European Parliament and the Commission on negotiations of international agreements will be applied *mutatis mutandis* by the HR for agreements falling under her area of responsibility, where the consent of the Parliament is required. The European Parliament will be, in accordance with Article 218 (10) TFEU, immediately and fully informed at all stages of the procedure, including for agreements concluded in the area of CFSP.
3. The HR will continue the practice of holding in-depth dialogue on and of communicating all documents for the strategic planning phases of the financial instruments (except European Development Fund). The same will apply to all consultative documents submitted to Member States during the preparatory phase. This practice is without prejudice to the outcome of negotiations on the scope and application of Article 290 of the TFEU on delegated acts.
4. The present system of providing confidential information on CSDP missions and operations (through the IIA 2002 ESDP EP Special Committee) will be continued. The HR can also provide access to other documents in the CFSP area on a need to know basis to other MEPs, who, for classified documents, are duly security cleared in accordance with applicable rules, where such access is required for the exercise of their institutional function on the request of the AFET Chair, and, if needed, the EP President. The HR will, in this context, review and where necessary propose to adjust the existing provisions on access for Members of European Parliament to classified documents and information in the field of security and defence policy (2002 IIA ESDP). Pending this adjustment, the HR will decide on transitional measures that she deems necessary to grant duly designated and notified MEPs exercising an institutional function easier access to the above information.
5. The HR will respond positively to requests from the European Parliament for newly appointed Heads of Delegations to countries and organisations which the Parliament considers as strategically important to appear before AFET for an exchange of views (differing from hearings) before taking up their posts. The same will apply to EUSRs. These exchanges of views will take place in a format agreed with the HR, corresponding to the sensitivity and confidentiality of the topics discussed.
6. In cases where the High Representative cannot participate in a debate in the plenary of the European Parliament, she will decide on her replacement by a Member of an EU institution, that is either by a Commissioner for issues falling exclusively or prevalently into Commission competence or a Member of the Foreign Affairs Council for issues falling exclusively or principally into the area of CFSP. In the latter case, that replacement will either come from the rotating Presidency or from the trio Presidencies, in conformity with Article 26 of the Council's Rules of Procedure. The European Parliament will be informed of the High Representative's decision on replacement.
7. The HR will facilitate the appearance of Heads of Delegations, EUSRs, Heads of CSDP missions and senior EEAS officials in relevant parliamentary committees and subcommittees in order to provide regular briefings.
8. For military CSDP operations, financed by the Member States, information will continue to be provided through the IIA 2002 ESDP EP Special Committee subject to any revision of the IIA, in accordance with point 4 above.
9. The European Parliament will be consulted on the identification and planning of Election Observation Missions and their follow-up - in keeping with Parliament's budgetary scrutiny rights over the relevant funding instrument, i.e. the EIDHR. The appointment of EU Chief Observers will be done in consultation with the Election Coordination Group, in due time before the start of the Election Observation Mission.

Thursday 8 July 2010

10. The HR will play an active role in the upcoming deliberations on the updating of existing arrangements regarding the financing of CFSP contained in the 2006 IIA on budgetary discipline and sound financial management, based on the engagement with regard to the issues set out in point 1. The new budgetary procedure introduced by the Lisbon Treaty will apply fully to the CFSP budget. The High Representative will also work for greater transparency on the CFSP budget, including, inter alia, the possibility to identify major CSDP-missions in the budget (like the present missions in Afghanistan, Kosovo and Georgia), while preserving flexibility in the budget and the need to ensure continuity of action for missions already engaged.

**STATEMENT GIVEN BY THE HIGH REPRESENTATIVE IN THE PLENARY OF THE EUROPEAN PARLIAMENT  
ON THE BASIC ORGANISATION OF THE EEAS CENTRAL ADMINISTRATION**

The HR will establish in the EEAS the services and functions necessary to fulfil its objectives and to strengthen the EU's capacity for consistent external action, while avoiding duplication. Where necessary, she will ensure that appropriate proposals are submitted to the budgetary authority.

The services and functions will be adapted over time in light of new priorities and developments.

The EEAS will from the start include, inter alia, the following departments:

- A Department assisting the HR in her institutional relations with the European Parliament as laid down in the treaties and in the Declaration on Political Accountability and with national Parliaments.
- A department assisting the HR in her task of ensuring consistency of the Union's external action. This department will inter alia provide input to and ensure follow up to the regular meetings of the HR with other members of the Commission. The Department will at service level assure the necessary interaction and coordination with competent Commission services concerning the external aspects of internal policies.
- A Director General for Budget and Administration. This will be a senior figure in the EEAS with proven experience of EU budget and administration.

Crisis management and peacebuilding: the CSDP structures will be part of the EEAS in the way agreed by the European Council in October 2009 and as foreseen in the EEAS Decision. The appropriate structure is to integrate relevant units in the Commission dealing with crisis response and peace building.

The High Representative will ensure that the relevant units from the Commission transferred to the EEAS which deal with planning and programming of crises response, conflict prevention and peace building, and the CSDP structures, work in close cooperation and synergy, both under her direct responsibility and authority, within the appropriate structure. This is of course without prejudice to the specific nature, notably intergovernmental and communitarian, of the policies.

Under the direct authority and responsibility of the High Representative, full coordination between all the services of the EEAS, in particular between the CSDP structures and the other relevant services of the EEAS will be ensured, respecting the specificities of these structures.

The HR will ensure that the necessary coordination is established between the EU Special Representatives and the relevant Departments in the EEAS.

The HR will give high priority to the promotion of Human Rights and good governance around the globe and promote its mainstreaming into external policies, throughout the EEAS. There will be human rights and democracy structure at headquarters level as well as focal points in all relevant Union delegations with the task of monitoring the human rights situation and promoting an effective realisation of EU human rights policy goals.

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<u>Notice No</u>	Contents (continued)	Page
2011/C 351 E/15	AIDS/HIV in view of the XVIII International AIDS Conference (Vienna July 18-23, 2010) European Parliament resolution of 8 July 2010 on a rights-based approach to the EU's response to HIV/AIDS	95
2011/C 351 E/16	Entry into force on 1 August 2010 of the Convention on Cluster Munitions (CCM) and the role of the EU  European Parliament resolution of 8 July 2010 on the entry into force of the Convention on Cluster Munitions (CCM) and the role of the EU	101
2011/C 351 E/17	Future of the CAP after 2013  European Parliament resolution of 8 July 2010 on the future of the Common Agricultural Policy after 2013 (2009/2236(INI))	103
2011/C 351 E/18	Arrangements for importing fishery and aquaculture products into the EU with a view to the future reform of the CFP  European Parliament resolution of 8 July 2010 on the arrangements for importing fishery and aquaculture products into the EU with a view to the future reform of the CFP (2009/2238(INI))	119
2011/C 351 E/19	Zimbabwe, in particular the case of Farai Maguwu  European Parliament resolution of 8 July 2010 on Zimbabwe, notably the case of Farai Maguwu	128
2011/C 351 E/20	Venezuela, in particular the case of Maria Lourdes Afiuni  European Parliament resolution of 8 July 2010 on Venezuela, in particular the case of Maria Lourdes Afiuni	130
2011/C 351 E/21	North Korea  European Parliament resolution of 8 July 2010 on North Korea	132

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## II *Information*

### INFORMATION FROM EUROPEAN UNION INSTITUTIONS, BODIES, OFFICES AND AGENCIES

#### **European Parliament**

#### **Tuesday 6 July 2010**

2011/C 351 E/22	Request for defence of Mr Valdemar Tomaševski's parliamentary immunity  European Parliament decision of 6 July 2010 on the request for defence of the immunity and privileges of Valdemar Tomaševski (2010/2047(IMM))	137
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2011/C 351 E/29	<p>Rights of passengers when travelling by sea and inland waterway ***II</p> <p>European Parliament legislative resolution of 6 July 2010 on the Council position at first reading for adopting a regulation of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004 (14849/3/2009 – C7-0076/2010 – 2008/0246(COD)) ..... 168</p> <p>P7_TC2-COD(2008)0246</p> <p>Position of the European Parliament adopted at second reading on 6 July 2010 with a view to the adoption of Regulation (EU) No .../2010 of the European Parliament and of the Council concerning the rights of passengers when travelling by sea and inland waterway and amending Regulation (EC) No 2006/2004..... 169</p>	168
2011/C 351 E/30	<p>Intelligent Transport Systems in the field of road transport and interfaces with other transport modes ***II</p> <p>European Parliament legislative resolution of 6 July 2010 on the Council position at first reading with a view to the adoption of a directive of the European Parliament and of the Council on the framework for the deployment of Intelligent Transport Systems in the field of road transport and for interfaces with other modes of transport (06103/4/2010 – C7-0119/2010 – 2008/0263(COD)) ..... 169</p> <p>ANNEX ..... 170</p>	169
2011/C 351 E/31	<p>Reporting formalities for ships arriving in or departing from ports ***I</p> <p>European Parliament legislative resolution of 6 July 2010 on the proposal for a directive of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the Member States of the Community and repealing Directive 2002/6/EC (COM(2009)0011 – C6-0030/2009 – 2009/0005(COD)) ..... 171</p> <p>P7_TC1-COD(2009)0005</p> <p>Position of the European Parliament adopted at first reading on 6 July 2010 with a view to the adoption of Directive 2010/.../EU of the European Parliament and of the Council on reporting formalities for ships arriving in and/or departing from ports of the Member States and repealing Directive 2002/6/EC ..... 172</p> <p>ANNEX ..... 173</p>	171
<b>Wednesday 7 July 2010</b>		
2011/C 351 E/32	<p>Novel foods ***II</p> <p>European Parliament legislative resolution of 7 July 2010 on the Council position at first reading for adopting a regulation of the European Parliament and of the Council on novel foods, amending Regulation (EC) No 1331/2008 and repealing Regulation (EC) No 258/97 and Commission Regulation (EC) No 1852/2001 (11261/3/2009 – C7-0078/2010 – 2008/0002(COD)) ..... 174</p> <p>P7_TC2-COD(2008)0002</p> <p>Position of the European Parliament adopted at second reading on 7 July 2010 with a view to the adoption of Regulation (EU) No .../2010 of the European Parliament and of the Council on novel foods, amending Regulation (EC) No 1331/2008 and repealing Regulation (EC) No 258/97 and Commission Regulation (EC) No 1852/2001 (1) 175</p>	174
2011/C 351 E/33	<p>Industrial emissions (integrated pollution prevention and control) (recast) ***II</p> <p>European Parliament legislative resolution of 7 July 2010 on the Council position at first reading for adopting a directive of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (recast) (11962/2/2009 – C7-0034/2010 – 2007/0286(COD)) ..... 193</p>	193



(1) Text with EEA relevance

	P7_TC2-COD(2007)0286	
	Position of the European Parliament adopted at second reading on 7 July 2010 with a view to the adoption of Directive 2010/.../EU of the European Parliament and of the Council on industrial emissions (integrated pollution prevention and control) (Recast) .....	194
2011/C 351 E/34	Obligations of operators who place timber and timber products on the market ***II	
	European Parliament legislative resolution of 7 July 2010 on the Council position at first reading for adopting a regulation of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market (05885/4/2010 – C7-0053/2010 – 2008/0198(COD)) .....	194
	P7_TC2-COD(2008)0198	
	Position of the European Parliament adopted at second reading on 7 July 2010 with a view to the adoption of Regulation (EU) No .../2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market .....	195
2011/C 351 E/35	Powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority ***I	
	Proposal for a directive of the European Parliament and of the Council amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC, and 2009/65/EC in respect of the powers of the European Banking Authority, the European Insurance and Occupational Pensions Authority and the European Securities and Markets Authority (COM(2009)0576 – C7-0251/2009 – 2009/0161(COD)) .....	195
2011/C 351 E/36	European Securities and Markets Authority ***I	
	Proposal for a regulation of the European Parliament and of the Council establishing a European Securities and Markets Authority (COM(2009)0503 – C7-0167/2009 – 2009/0144(COD)) .....	267
2011/C 351 E/37	Macro-prudential oversight of the financial system and establishment of a European Systemic Risk Board ***I	
	Proposal for a regulation of the European Parliament and of the Council on Community macro prudential oversight of the financial system and establishing a European Systemic Risk Board (COM(2009)0499 – C7-0166/2009 – 2009/0140(COD)) .....	321
2011/C 351 E/38	European Banking Authority ***I	
	Proposal for a regulation of the European Parliament and of the Council establishing a European Banking Authority (COM(2009)0501 – C7-0169/2009 – 2009/0142(COD)) .....	337
2011/C 351 E/39	European Insurance and Occupational Pensions Authority ***I	
	Proposal for a regulation of the European Parliament and of the Council establishing a European Insurance and Occupational Pensions Authority (COM(2009)0502 – C7-0168/2009 – 2009/0143(COD)) .....	391
2011/C 351 E/40	Capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies ***I	
	European Parliament legislative resolution of 7 July 2010 on the proposal for a directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies (COM(2009)0362 – C7-0096/2009 – 2009/0099(COD)) .....	446



## P7\_TC1-COD(2009)0099

Position of the European Parliament adopted at first reading on 7 July 2010 with a view to the adoption of Directive 2010/.../EU of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies ..... 447

2011/C 351 E/41

Specific tasks for the European Central Bank concerning the functioning of the European Systemic Risk Board \*

Proposal for a Council regulation entrusting the European Central Bank with specific tasks concerning the functioning of the European Systemic Risk Board (05551/2010 – C7-0014/2010 – 2009/0141(CNS)) ..... 447

**Thursday 8 July 2010**

2011/C 351 E/42

Agreement between the EU and the USA on the processing and transfer of financial messaging data from the EU to the USA for purposes of the Terrorist Finance Tracking Program \*\*\*

European Parliament legislative resolution of 8 July 2010 on the draft Council decision on the conclusion of the Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program (11222/1/2010/REV 1 and COR 1 – C7-0158/2010 – 2010/0178(NLE)) ..... 453

2011/C 351 E/43

European External Action Service \*

European Parliament legislative resolution of 8 July 2010 on the proposal for a Council decision establishing the organisation and functioning of the European External Action Service (08029/2010 – C7-0090/2010 – 2010/0816(NLE)) ..... 454

## P7\_TC1-NLE(2010)0816

Position of the European Parliament adopted on 8 July 2010 with a view to the adoption of Council decision establishing the organisation and functioning of the European External Action Service ..... 455

ANNEX ..... 468

ANNEX ..... 470





*Key to symbols used*

- \* Consultation procedure
- \*\*I Cooperation procedure: first reading
- \*\*II Cooperation procedure: second reading
- \*\*\* Assent procedure
- \*\*\*I Codecision procedure: first reading
- \*\*\*II Codecision procedure: second reading
- \*\*\*III Codecision procedure: third reading

(The type of procedure is determined by the legal basis proposed by the Commission.)

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