

1. From the 1st of July 2013, the ECB shall carry out the supervisory tasks conferred on it also in relation to the most significant credit institutions, financial holding companies and mixed financial holding companies of European systemic importance at the highest level of consolidation, based on their size as reflected in, the sum of exposure values of all assets and off-balance sheet liabilities not deducted when determining the common equity tier 1 capital for regulatory purposes, and their cross-border activity as reflected in cross-jurisdictional claims such as deposits and other assets in respect of customers or other financial operators located in another country and cross-jurisdictional liabilities such as loans and notes in respect of customers or other financial operators located in another country, which together cover at least half of the banking sector in the Euro area as a whole, on 1 January 2013. The ECB shall adopt and make public the list of those institutions before 1 March 2013.

2. The ECB shall assume in full the tasks conferred on it by this regulation on the 1 January 2014 at latest.

3. Before 1 January 2014 the ECB may, by a decision addressed to the credit institution, financial holding company or mixed financial holding company and the national competent authority of the participating Member States concerned, start carrying out the tasks conferred on it by this Regulation, in particular where a credit institution, financial holding company or mixed financial holding company has received or requested public financial assistance.

4. From the entry into force of this Regulation, in view of the assumption of its tasks in accordance with paragraph 1 to 3, the ECB may require the competent authorities of the participating Member States and the persons referred to in Article 9 to provide all relevant information for the ECB to carry out a comprehensive assessment of the credit institutions of the participating Member State. The credit institution and the competent authority shall supply the information requested.

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

6. Credit institutions authorised by participating Member States on the date referred to in Article 28 or where relevant on the dates referred to in paragraphs 2 and 3, shall until the entry into force of legislative acts on supplementary supervision over credit institutions, insurance undertakings and investment firms in a financial conglomerate enabling the ECB to exercise the powers of competent authorities, the ECB shall exercise the tasks conferred on it by Article 4(2)(j) by addressing instructions to national competent authorities on the exercise of any relevant powers conferred on them.



## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE PROPOSAL**

Today, the solidity of the banking sector is in many instances still closely linked to the Member State in which they are established. Doubts about the sustainability of public debt, economic growth prospects, and the viability of credit institutions have been creating negative, mutually reinforcing market trends. This may lead to risks for the viability of some credit institutions as well as for the stability of the financial system, and may impose a heavy burden for already strained public finances of the Member States concerned.

The situation poses specific risks within the euro area, where the single currency increases the likelihood that developments in one Member State can create risks for economic development and the stability of the Euro area as a whole. Furthermore, the current risk of financial disintegration along national borders significantly undermines the Single Market for financial services and prevents it from contributing to economic recovery.

The creation of the European Banking Authority (EBA) by Regulation (EU) No. 1093/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), and of the European System of Financial Supervision (ESFS) already contributed to improved cooperation between national supervisors and to the development of a single rulebook for financial services in the EU. However, supervision of banks remains to a large extent within national boundaries and thereby fails to keep up with integrated banking markets. Supervisory failings have, since the onset of the banking crisis, significantly eroded confidence in the EU banking sector and contributed to an aggravation of tensions in euro area sovereign debt markets.

The Commission has therefore called in May 2012, as part of a longer term vision for economic and fiscal integration, for a banking union to restore confidence in banks and in the euro. One of the key elements of the banking union should be a Single Supervisory Mechanism (SSM) with direct oversight of banks, to enforce prudential rules in a strict and impartial manner and perform effective oversight of cross border banking markets. Ensuring that banking supervision across the Euro area abides by high common standards will contribute to build the necessary trust between Member States, which is a pre-condition for the introduction of any common backstops.

At the Euro area summit on 29 June, 2012, the Heads of State or Government have called on the Commission "to present proposals for the setting up of a single supervisory mechanism shortly. When such a mechanism will be in place for banks in the euro area the ESM could, following a regular decision, have the possibility to recapitalize banks directly". The European Council conclusions of the meeting held on the 28/29 June 2012 state that this Euro Area statement and the proposals that the Commission will present accordingly should take into account the development of "a specific and time-bound road map for the achievement of a genuine Economic and Monetary Union".

### *Article 24*

#### *Supervisory fees*

1. The ECB shall levy fees on credit institutions which shall cover expenditures relating to its tasks, and not exceed those expenditures .
2. The amount of a fee levied on a credit institution shall be proportionate to the importance and risk profile of the credit institution concerned.

### *Article 25*

#### *Staff exchange*

1. The ECB shall ensure an appropriate exchange and secondment of staff with and among national competent authorities.
2. The ECB shall require where appropriate that supervisory teams of national competent authorities taking supervisory actions regarding a credit institution, financial holding company or mixed financial holding company located in one participating Member State in accordance with this regulation involve also staff from national competent authorities of other participating Member States.

## **Chapter V**

### **General and final provisions**

### *Article 26*

#### *Review*

By 31 December 2015, the Commission shall publish a report on the application of this Regulation. That report shall evaluate, inter alia:

- (a) the functioning of the ECB within the European System of Financial Supervision;
- (b) the effectiveness of independence and accountability arrangements;
- (c) the interaction between the ECB and the European Banking Authority
- (d) the appropriateness of governance arrangements, including the composition of the supervisory board.

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

authorities and bodies in the cases where Union law allows national competent authorities to disclose information to those entities or where Member States may provide for such disclosure under Union law.

#### *Article 21*

#### *Reporting*

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

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

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

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

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

#### *Article 22*

#### *Resources*

#### *Article 23*

#### *Budget*

1. The ECB's expenditure for carrying out the tasks conferred upon it by this Regulation shall be entered into a separate section of the budget of the ECB.

2. The ECB shall, as part of the report referred to in Article 22, report in detail on the supervisory section of its budget. It shall publish the detailed annual accounts in relation to the supervisory section of its budget in accordance with Article 26.2 of the Statute of the ECB and of the ESCB.

## **2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS**

The Commission has taken into account the analysis done in the context of the adoption of the "supervisory package" creating the European Supervisory Authorities, which assessed operational, governance, financial and legal aspects relevant to the establishment of a SSM. The preparation of a formal impact assessment was not possible within the timetable set by the Euro area Summit of 29 June.

### **3. LEGAL ELEMENTS OF THE PROPOSAL**

The proposal is based on Article 127 (6) TFEU, which provides a legal basis for conferring specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions and other institutions with the exception of insurance undertakings.

The proposal confers certain key supervisory tasks necessary for the supervision of credit institutions on the ECB, while all tasks not spell out in the regulation will remain the competence of national supervisors. The proposal also mandates the ECB with carrying out supervision of financial conglomerates. However, to ensure compliance with Article 127 (6) TFEU, the ECB will be only responsible for carrying out its tasks for the supplementary supervision of financial conglomerates on a group-wide basis, while the prudential supervision of the individual insurance undertaking itself will be carried out by national competent authorities.

The objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore be better achieved by the EU. Recent events have clearly demonstrated that only supervision at the European level can ensure appropriate oversight of an integrated banking sector and a high level of financial stability in the EU and the Euro area in particular. The provisions of this proposal do not go beyond what is necessary to achieve the objectives pursued. The ECB is entrusted with the supervisory tasks which need to be exercised at EU level to ensure uniform and effective application of prudential rules, risk control and crisis prevention. National authorities will continue to carry out certain tasks which can be better performed at national level.

According to Article 127 (6) TFEU, the Council acts by means of regulations. Therefore a regulation is the only legal instrument that allows for the conferral of supervisory tasks on the ECB.

## **4. DETAILED EXPLANATION OF THE PROPOSAL**

### **4.1. Conferral of specific supervisory tasks on the ECB**

#### *4.1.1. Structure*

The ECB will be responsible for specific tasks concerning the prudential supervision of credit institutions which are established in Member States whose currency is the Euro (participating Member States) with the objective to promote the safety and soundness of credit institutions and the stability of the financial system. The ECB will carry out its tasks within the framework of the ESFS and will cooperate closely with national supervisors and the EBA.

#### 4.1.2. Scope of supervisory activities

After a transitional period, the ECB will be responsible for carrying out key supervisory tasks for all credit institutions established in participating Member States, regardless of their business model or size. The ECB shall be the host supervisor for credit institutions established in non-participating Member States, which establish a branch or provide cross-border services in a participating Member State.

#### 4.1.3. Cooperation with the European Supervisory Authorities

The ECB will carry out its tasks within in the framework of the European System of Financial Supervision and will closely cooperate with the three European supervisory Authorities. The EBA will keep its powers and tasks to further develop the single rulebook and ensure convergence and consistency of supervisory practice. The ECB will not take over any tasks of the EBA and the exercise of its regulatory powers in accordance with Article 132 TFEU will be limited to areas which are necessary for the proper exercise of the tasks conferred on the ECB by this regulation.

The composition of the board of supervisors of the EBA will remain unaffected and representatives from national competent authorities will continue shaping decision-making in the EBA. However, to reflect the ECB's supervisory responsibilities, representatives from competent authorities from participating Member States shall coordinate and express, for matters falling in the competences of the ECB, a common position.

### 4.2. Tasks of the ECB

#### 4.2.1. Tasks of the ECB

The ECB will be exclusively competent for key supervisory tasks which are indispensable to detect risks for banks' viability and require them to take the necessary action. The ECB will, inter alia, be the competent authority for licensing and authorizing credit institutions, assessing qualifying holdings, ensuring compliance with the minimum capital requirements, ensuring the adequacy of internal capital in relation to the risk profile of a credit institution (Pillar 2 measures), conducting supervision on a consolidated basis and supervisory tasks in relation to financial conglomerates. Furthermore, the ECB will also ensure compliance with provisions on leverage and liquidity, apply capital buffers and carry out, in coordination with resolution authorities, early intervention measures when a bank is in breach of, or is about to breach, regulatory capital requirements. The ECB will also coordinate and express a common position of representatives from competent authorities of the participating Member States in the Board of Supervisors and the Management Board of the EBA, for topics relating to the abovementioned tasks.

#### 4.2.2. Role of national supervisors

National supervisors will continue to play an important role with the creation of a Single Supervisory Mechanism.

First, all tasks not conferred on the ECB will remain with national supervisors. For example, national supervisors will remain in charge of consumer protection and the fight against money laundering, and of the supervision of third country credit institutions establishing branches or providing cross-border services within a Member State.

### Article 19

#### Supervisory board

1. The planning and execution of the tasks conferred upon the ECB, shall be undertaken by an internal body composed of four representatives of the ECB appointed by the Executive Board of the ECB and one representative of the national authority competent for the supervision of credit institutions in each participating Member State (hereinafter "supervisory board").
2. In addition, the supervisory board shall include a Chair elected by the members of the Governing Council from the members, with the exception of the President, of the Executive Board, and a Vice-Chair elected by and from the members of the Governing Council of the ECB.
3. The Governing Council of the ECB may delegate clearly defined supervisory tasks and related decisions regarding individual or a set of identifiable credit institutions, financial holding companies or mixed financial holding companies to the supervisory board, subject to the oversight and responsibility of the Governing Council.
4. The supervisory board may appoint from among its members a steering committee with a more limited composition which supports its activities, including preparing the meetings.
5. The representatives of the competent authority of the Member States which established a close cooperation in accordance with Article 6 shall take part to the activities of the supervisory board in accordance with the conditions set out in the decision adopted in accordance with paragraphs 2 and 3 of Article 6, in compliance with the Statute of ESCB and of the ECB.
6. The Chair of the European Banking Authority and a member of the European Commission may participate as observers in the meetings of the supervisory board.
7. The Governing Council shall adopt the rules of procedure of the supervisory board including rules on the term of office of the Chair and the Vice-Chair. The term of office shall not exceed five years and shall not be renewable.

### Article 20

#### Professional secrecy and exchange of information

1. Members of the Supervisory Board and staff of the ECB carrying out supervisory duties, even after their duties are ceased, shall be subject to the professional secrecy requirements set out in Article 37 of Protocol No. 4 and in the relevant acts of Union law.
2. For the purpose of carrying out the tasks conferred upon it by this Regulation, the ECB shall be authorised, within the limits and under the conditions set out in the relevant acts of Union law, to exchange information with national or European

7. Without prejudice to paragraphs 1 to 6, for the purposes of carrying out the tasks conferred on it by this Regulation, in case of breaches of ECB regulations or decisions the ECB may impose sanctions in accordance with Council Regulation (EC) No 2532/98.

## Chapter IV

### Organisational principles

#### Article 16

#### Independence

1. When carrying out the tasks conferred upon it by this Regulation, the ECB shall act independently.

2. Union institutions, bodies, offices and agencies and the governments of the Member States shall respect that independence.

#### Article 17

#### Accountability

The ECB shall be accountable to the European Parliament and to the Council for the implementation of this Regulation, in accordance with this Chapter

#### Article 18

#### Separation from monetary policy function

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

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

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

Second, even for the tasks conferred on the ECB, most day-to-day verifications and other supervisory activities necessary to prepare and implement the ECB's acts could be exercised by national supervisors operating as an integral part of the SSM. An SSM covering all banks in the participating Member States can only work based on a model which integrates a strong role for national level supervisory expertise. The proposal recognises that within the SSM national supervisors are in many cases best placed to carry out such activities, due to their knowledge of national, regional and local banking markets, their significant existing resources and to locational and language considerations, and therefore enables the ECB to rely on national authorities to a significant extent. Preparatory and implementing activities which national authorities could deliver within the SSM for example include the following

- In case of a request for authorisation of a new bank, the national supervisor could be responsible for assessing compliance with any conditions of authorisation set out in national law, and could propose a decision to the ECB which could authorise the bank if it is satisfied that the conditions set out in EU law are met. A similar procedure applies to the withdrawal of authorisation.

- National supervisors could carry out ongoing day-to-day assessment of a bank's situation and on site verifications, implementing general guidance or regulations issued by the ECB. For these purposes national supervisors could make use of their existing powers, for example to carry out on site examinations. If on the basis of their ongoing assessment it appears that a bank is in serious difficulties the national supervisor would warn the ECB.

- In case of a request of a bank to use an internal risk model, the national supervisor could assess the request and its compliance with EU law and any guidance issued by the ECB and could propose to the ECB whether and under which conditions to validate the model. After validation, the national supervisor could oversee the application of the model and monitor its ongoing use.

- Sanctioning powers would be shared between the ECB and the national level.

### 4.3. Powers of the ECB

#### 4.3.1. Supervisory and investigatory powers

For the purposes of carrying out its tasks, the ECB will be considered as the competent authority of participating Member States and will have the supervisory powers that those authorities shall have in accordance with the EU banking legislation. Those include supervisory powers such as the authorisation of credit institutions and the withdrawal of authorisations and the removal of a member of a credit institution's management board. In addition, for the purposes of carrying out the supervisory tasks conferred on it, the ECB may impose pecuniary sanctions and periodic penalty payments. The approach on sanctions laid down in this regulation is without prejudice to that in other fields where EU institutions have the power to impose sanctions, including, in certain cases, on parent undertakings.

In order to be able to carry out its tasks the ECB will have all necessary investigatory powers. In particular, the ECB will be able to request all relevant information from supervised entities and persons involved in their activities, related or connected to those activities or carrying out operational functions on their behalf. It will also be empowered to conduct all necessary

investigations, including on-site inspections. The exercise of the investigatory powers will be subject to appropriate safeguards.

#### 4.3.2. *Specific provision on authorisation and home host issues*

The authorisation of credit institutions by the ECB will take into account the additional conditions that may be set out by national legislation. In particular, the ECB will grant the authorisation following a proposal made by the national competent authority where the conditions set out in national legislation are met.

Where credit institutions exercise the right of establishment and the free provision of services in other Member States, Union law provides for a clear attribution of competences between home and host Member States and for specific notification. For the tasks conferred on it, the ECB will assume the role of both home and host supervisor for credit institutions exercising the right of establishment and the free provision of services in other participating Member States. In relation to the issues covered by those tasks, there is therefore no need for attribution of competences between home and host Member States and for specific notification procedures and the relevant provisions will no longer apply between participating Member States.

Under Union law, supervisors of cross-border banking groups participate in consolidated supervision of the group and coordinate their supervisory activities in the framework of colleges of supervisors. However, for banking groups established only in participating Member States, the ECB will take over all relevant supervisory tasks. For these groups the provisions on cooperation between supervisors and on colleges will therefore no longer apply.

#### 4.4. **Relationship with Member States whose currency is not the Euro**

The proposal takes into account the situation of Member States that have not adopted the euro in three ways.

First, under the related proposal amending Regulation (EU) No. 1093/2010 establishing the European Banking Authority, it is proposed that voting arrangements within the EBA should be adapted to ensure EBA decision-making structures continue to be balanced and effective and preserve fully the integrity of the Single Market (see section 4.1.3).

Second, as regards the supervision of cross-border banks active both within and outside the Euro area, the proposal does not affect in any way the position of non participating Member States in the Colleges of Supervisors set up under Directive 2006/48/EC. The provisions on those colleges and the obligation to cooperate and exchange information in consolidated supervision and between home and host supervisors will apply fully to the ECB – as the competent authority for the participating Member States. Those provisions will provide an effective framework for the cooperation between the ECB and the national supervisors in Member States that have not adopted the euro.

Third, Member States that have not adopted the euro but wish to participate in the banking union will be able to enter into a close supervisory cooperation with the ECB subject to meeting specific conditions. These include in particular that those Member States abide by and implement relevant ECB acts. For a Member State that has entered into a close cooperation arrangement, the ECB will carry out the supervisory tasks conferred on it in this regulation as regards the credit institutions established in the Member State concerned. A representative of the Member State may take part in the activities of the supervisory board set

2. The provisions set out in Union acts in relation to the cooperation between competent authorities from different Member States for conducting supervision on a consolidated basis shall not apply to the extent that the competent authorities involved are competent authorities of participating Member States.

#### *Article 15*

#### *Sanctions*

1. For the purpose of carrying out the tasks conferred upon it by this Regulation, where credit institutions, financial holding companies, or mixed financial holding companies, intentionally or negligibly, breach a requirement under directly applicable Union acts in relation to which administrative pecuniary sanctions shall be available to competent authorities under Union law, the ECB may impose administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined, or up to 10% of the total annual turnover of a legal person in the preceding business year.
2. Where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover referred to in the first subparagraph shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.
3. The sanctions applied shall be effective, proportionate and dissuasive. In determining whether to impose a sanction and in determining the appropriate sanction, the ECB shall take into account all relevant circumstances set out in Union law.
4. The ECB shall apply this Article in accordance with Articles 3 to 5 of the Council Regulation (EC) No 2532/98.
5. In the cases not covered by paragraph 1, where necessary for the purpose of carrying out the tasks conferred upon it by this Regulation, the ECB may require national competent authorities to take action in order to ensure that appropriate sanctions are imposed. The sanctions applied by national competent authorities will be effective, proportionate and dissuasive.  
  
The first subparagraph shall be applicable in particular to pecuniary sanctions to be imposed on credit institutions, financial holding companies or mixed financial holding companies for breaches of national law transposing relevant EU Directives, and to any administrative sanctions or measures to be imposed on members of the management board or any other individuals who under national law are responsible for a breach by a credit institution, financial holding company or mixed financial holding company.
6. The ECB shall publish any sanction referred to paragraph 1 without undue delay including information on the type and nature of the breach and the identity of persons responsible for it, unless such publication would seriously jeopardise the stability of the financial markets. Where publication would cause a disproportionate damage to the parties involved, the ECB shall publish the sanction on an anonymous basis.

lawfulness of the ECB's decision shall be subject to review only by the Court of Justice of the European Union.

## SECTION 2

### SPECIFIC SUPERVISORY POWERS

#### Article 13

#### Authorisation

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

If the credit institution complies with all conditions of authorisation set out in national law of that Member State, the national competent authority shall take a decision to propose to the ECB to grant the authorisation. The decision shall be notified to the ECB and to the credit institution concerned.

When the ECB receives the proposal from the national competent authority referred to in the second subparagraph, it shall grant the authorisation where the conditions set out in Union law are met. The decision shall be notified to the credit institution concerned.

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

Where the national competent authority which has proposed the authorisation in accordance with paragraph 1 considers that the authorisation must be withdrawn in that case, the ECB may withdraw the authorisation.

#### Article 14

#### Powers of host authorities and cooperation on consolidated supervision

1. Between participating Member States the procedures set out in Union acts for credit institutions wishing to establish a branch or to exercise the freedom to provide services by carrying on their activities within the territory of another Member State and the related competences of home and host Member States shall apply only for the purposes of the tasks not conferred upon the ECB by Article 4 of this Regulation.

up by the Regulation for carrying out the planning and execution of the ECB's tasks in the area of prudential supervision of credit institutions, subject to the conditions set out in the decision establishing the close cooperation in compliance with the Statute of the ESCB and the ECB.

#### 4.5. Organisations principles

##### 4.5.1. Independence and accountability

The ECB will be independent when carrying out banking supervision and will be subject to strong accountability provisions to ensure that it uses its supervisory powers in the most effective and proportionate way, within the boundaries set by the Treaty in parallel to the arrangements provided for the European Supervisory Authorities. The ECB shall therefore be accountable for its tasks to the European Parliament and to the Council/the Eurogroup. The ECB will be subject to regular reporting requirements and will respond to questions. The chair of the supervisory board will present an annual report on the ECB's supervisory activities to the EF and the Eurogroup and may be heard by the competent committees of the EF on any other occasions. The ECB will also be obliged to respond to any questions asked by the EF and its members on its supervisory activities. Moreover, under the Treaty, the President and the Vice-President of the Governing Council as the body with final responsibility for the ECB's action, as well as the other members of the Executive Board, are appointed by the European Council after consultation of the European Parliament. As the Chair of the supervisory board will be selected from the Members of the Executive Board, this also ensures a significant role of the EF for the selection of the Chair. As regards the budget, in accordance with 314(1) TFEU the ECB's budget is not part of the Union budget. Nevertheless, with a view to ensuring accountability within this framework, the ECB will be required to develop a separate budget line for supervisory tasks from its general budget. Expenditures relating to the ECB's supervisory tasks will be financed by charging fees from supervised institutions.

##### 4.5.2. Governance

Monetary policy tasks will be strictly separated from supervisory tasks to eliminate potential conflicts of interest between the objectives of monetary policy and prudential supervision. To implement the necessary separation between both tasks and ensure appropriate attention to supervisory tasks, the ECB will ensure that all preparatory and executing activities within the ECB will be carried out by bodies and administrative divisions separated from those responsible for monetary policy. To this end a supervisory board will be set up that will prepare decisions on supervisory matters. The Governing Council will be ultimately responsible for taking decisions but may decide to delegate certain tasks or decision-making power to the supervisory board. The supervisory board will be led by a Chair and a Vice-Chair elected by the ECB Governing Council and composed in addition to them of four representatives of the ECB and of one representative of each national central bank or other national competent authority.

##### 4.5.3. Exchange of information

For the exercise of its supervisory tasks, the ECB will be subject to the professional secrecy requirements provided for in the EU banking legislation and will be allowed to exchange information with relevant national authorities under the conditions set out in that legislation.

#### 4.6. Entry into force and review

Due to the urgency of setting up an effective SSM, the regulation will enter into force on 1 January 2013. In order to ensure a smooth start of the mechanism a phasing-in approach is envisaged, which provides for the possibility for the ECB as of 1 January 2013 to apply its supervisory tasks to any banks, in particular banks which have received or requested public financial assistance, while the most significant credit institutions of European systemic importance shall be subject to ECB supervision as of 1 July 2013. The ECB will assume in full its tasks in relation to all other banks as from 1 January 2014 at the latest.

It is expected that the Directive on Access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and the Regulation on prudential requirements for credit institutions and investment firms proposed by the Commission on 20 July 2011 (CRD IV package)<sup>1</sup> will enter into force on 1 January 2013 and the ECB will therefore be able to exercise its supervisory tasks on the basis of those acts. Nevertheless if this was not the case, a specific transitional provision enables the ECB to carry out its tasks already on the basis of Directives 2006/48/EC and 2006/49/EC (CRD III).

By 1 January 2016, the Commission will publish a report on the experiences acquired with the operation of the SSM and the procedures laid down in this regulation.

#### 5. BUDGETARY IMPLICATION

This proposal has no implication for the Union budget, since in accordance with the Treaty the ECB's budget is not part of the Union budget.

#### Article 11

##### *On-site inspections*

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

#### Article 12

##### *Authorisation by a judicial authority*

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

<sup>1</sup> COM(2011)452 and COM(2011)453 of 20 July 2011.



Proposal for a

## COUNCIL REGULATION

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Central Bank,

Acting in accordance with a special legislative procedure,

Whereas:

(1) Over the past decades, the Union has made considerable progress in creating an internal market for banking services. Consequently, in many Member States, banking groups with their headquarters established in other Member States hold a significant market share, and credit institutions have geographically diversified their business, especially within the Euro area.

(2) Maintaining and deepening the internal market for banking services is essential in order to foster economic recovery in the Union. However this proves increasingly challenging. Evidence shows that the integration of banking markets in the Union is coming to a halt.

(3) At the same time supervisors must step up their supervisory scrutiny to take account of the lessons of the financial crisis in recent years, and be able to oversee highly complex and inter-connected markets and institutions.

(4) Competence for supervision of individual banks in the Union remains mostly at national level. This limits the effectiveness of supervision and the ability of supervisors to reach a common understanding of the soundness of the banking sector throughout the Union. In order to preserve and increase the positive effects of market

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recurring intervals and in specified formats for supervisory and related statistical purposes:

(a) credit institutions;

(b) financial holding companies;

(c) mixed financial holding companies;

(d) mixed-activity holding companies;

(e) persons involved in the activities of the entities referred to in (a) to (d), and related third parties;

(f) third parties to whom the entities referred to in (a) to (d) have outsourced operational functions or activities;

(g) persons otherwise closely and substantially related or connected to the activities of the entities referred to in (a) to (d);

(h) national competent authorities.

2. The persons referred to in paragraph 1 shall supply the information requested.

## Article 10

## General investigations

1. In order to carry out the tasks conferred upon it by this Regulation, the ECB may conduct all necessary investigations of persons referred to in Article 9 (1) (a) to (g). To that end, the ECB shall have the right to:

(a) require the submission of documents;

(b) examine the books and records of the persons referred to in Article 9 (1) (a) to (g) and take copies or extracts from such books and records;

(c) obtain written or oral explanations from any person referred to in Article 9(1) (a) to (g) or their representatives or staff;

(d) interview any other natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject matter of an investigation;

2. The persons referred to in Article 9 (1) (a) to (g) shall submit to investigations launched on the basis of a decision of the ECB.

When a person obstructs the conduct of the investigation, the participating Member State where the relevant premises are located shall afford the necessary assistance, including access by the ECB to the business premises of the legal persons referred to in Article 9(1) (a) to (g), so that the aforementioned rights can be exercised.

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integration on growth and welfare, integration of supervisory responsibilities should therefore be enhanced.

- (5) The solidity of credit institutions is in many instances still closely linked to the Member State in which they are established. Doubts about the sustainability of public debt, economic growth prospects, and the viability of credit institutions have been creating negative, mutually reinforcing market trends. This may lead to risks for the viability of some credit institutions as well as for the stability of the financial system, and may impose a heavy burden for already strained public finances of the Member States concerned. The problem poses specific risks within the euro area where the single currency increases the likelihood that negative developments in one Member State can create risks for economic development and the stability of the Euro area as a whole.
- (6) The European Banking Authority (EBA), established in 2011 by Regulation (EU) No. 1093/2010 of the European Parliament and the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority),<sup>4</sup> and the European System of Financial Supervision established by Article 2 of that Regulation and of Regulation (EU) No 1094/2010 of 24 November 2010 establishing a European Supervisory Authority (EIOPA),<sup>5</sup> and Regulation (EU) No 1095/2010 of 24 November 2010 establishing a European Supervisory Authority (ESMA)<sup>6</sup> have significantly improved cooperation between banking supervisors within the Union. EBA is making important contributions to the creation of a single rulebook for financial services in the Union, and has been crucial in implementing in a consistent way the recapitalisation of major Union credit institutions agreed by the European Council in October 2011.
- (7) The European Parliament called on various occasions for a European body to be directly responsible for certain supervisory tasks over financial institutions, starting with its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan,<sup>7</sup> and of 21 November 2002 on prudential supervision rules in the European Union.<sup>8</sup>
- (8) The European Council conclusions of 29 June 2012 invited the President of the European Council to develop a road map for the achievement of a genuine Economic and Monetary Union. On the same day, the Euro area Heads of State or Government Summit pointed out that when an effective single supervisory mechanism is established involving the ECB for banks in the euro area, the ESM could, following a regular decision, have the possibility to recapitalize banks directly which would rely on appropriate conditionality, including compliance with state aid rules.
- (9) A European banking union should therefore be set up, underpinned by a true single rulebook for financial services for the Single Market as a whole and composed of a single supervisory mechanism, and a common deposit insurance and resolution framework. . In view of the close links and interactions between Member States participating in the common currency, the banking union should apply at least to all

<sup>4</sup> OJ L 331, 15.12.2010, p. 12.

<sup>5</sup> OJ L 331, 15.12.2010, p. 37.

<sup>6</sup> OJ L 331, 15.12.2010, p. 84.

<sup>7</sup> OJ C 40, 7.2.2001, p. 453.

<sup>8</sup> OJ C 25 E, 29.1.2004, p. 394.

## Article 7

### International relations

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

## Chapter III

### Supervisory and investigatory powers

#### Article 8

##### Supervisory and investigatory powers

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

## SECTION 1

### INVESTIGATORY POWERS

#### Article 9

##### Requests for information

1. The ECB may by simple request or by decision require the following legal or natural persons to provide all information that is necessary in order to carry out the tasks conferred upon it by this Regulation, including information to be provided at

(a) The Member State concerned notifies the other Member States, the Commission, the ECB and the EBA the request to enter into a close cooperation with the ECB in relation to the exercise of the tasks referred to in Article 4 with regards to all credit institutions established in the Member State concerned.

(b) In the notification, the Member State concerned undertakes:

- to ensure that its national competent authority will abide by any guidelines or requests issued by the ECB;
- to provide all information on the credit institutions established in that Member State that the ECB may require for the purpose of carrying out a comprehensive assessment of those credit institutions.

(c) The Member State concerned has adopted national legal acts to ensure that its national competent authority will be obliged to adopt any measure in relation to credit institutions requested by the ECB, in accordance with paragraph 5.

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

4. The decision referred to in paragraph 2 shall be published in the Official Journal of the European Union. The decision shall apply 14 days after such publication.

5. Where the ECB considers that a measure relating to the tasks referred to in paragraph 1 should be adopted by the competent authority of a concerned Member State in relation to a credit institution, financial holding company or mixed-financial holding company, it shall make a request to that authority, specifying a relevant timeframe. That timeframe shall be no less than 48 hours unless earlier adoption is indispensable to prevent irreparable damage. The competent authority of the concerned Member State shall take all the necessary measures in accordance with the obligation referred to in paragraph 2(c).

5. Where the conditions set out in paragraph 2(a) to (c) are no longer met by a Member State concerned, or where its competent authority does not act in accordance with the obligation referred to in paragraph 2(c), the ECB may decide to terminate the close cooperation with that Member State.

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

Euro area Member States. With a view to maintaining and deepening the internal market, and to the extent that this is institutionally possible, the banking union should also be open to the participation of other Member States.

(10) As a first step towards the banking union, a single supervisory mechanism should ensure that the Union's policy relating to the prudential supervision of credit institutions is implemented in a coherent and effective way, that the single rulebook for financial services is applied equally to credit institutions in all Member States concerned, and that those credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations. A single supervisory mechanism is the basis for the next steps towards the banking union. This reflects the principle that any introduction of common intervention mechanisms in case of crisis should be preceded by common controls to reduce the likelihood that intervention mechanisms will have to be used.

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

(12) The ECB should be conferred those specific supervisory tasks which are crucial to ensure a coherent and effective implementation of the Union's policy relating to the prudential supervision of credit institutions, while other tasks should remain with national authorities. The ECB's tasks should include measures taken in pursuance of macro-prudential stability.

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

(14) Prior authorisation for taking up the business of credit institutions is a key prudential technique to ensure that only operators with a sound economic basis, an organisation capable of dealing with the specific risks inherent to deposit taking and credit provision, and suitable directors carry out those activities. The ECB should therefore have the task to authorise credit institutions and should be responsible for the withdrawal of authorisations.

(15) In addition to the conditions set out in Union legislative acts for authorisation of credit institutions and the cases for withdrawal of such authorisations, Member States may currently provide for further conditions for authorisation and cases for withdrawal of authorisation. The ECB should therefore carry out its task to authorise credit institutions and to withdraw the authorisation in case of non-compliance with national law upon a proposal by the relevant national competent authority, which assesses compliance with the relevant conditions set out by national law.

(16) An assessment of the suitability of any new owner prior to the purchase of a significant stake in a credit institution is an indispensable tool to ensure the continuous suitability and financial soundness of credit institutions' owners. The ECB as a Union

institution is well-placed to carry out such an assessment without imposing undue restrictions to the internal market. The ECB should have the task to assess the acquisition and disposal of significant holdings in credit institutions.

- (17) Compliance with Union rules requiring credit institutions to hold certain levels of capital against risks inherent to the business of credit institutions, to limit the size of exposures to individual counterparties, to publicly disclose information on a credit institutions' financial situation, to dispose of sufficient liquid assets to withstand situations of market stress, and to limit leverage is a prerequisite for credit institutions' prudential soundness. The ECB should have the task to ensure compliance with those rules and to set higher prudential requirements and apply additional measures to credit institutions in the cases specifically set out in Union acts.
- (18) Additional capital buffers, including a capital conservation buffer and a countercyclical capital buffer to ensure that credit institutions accumulate during periods of economic growth a sufficient capital base to absorb losses in stressed periods, are key prudential tools to ensure the availability of adequate loss absorbency. The ECB should have the task to impose such buffers and ensure credit institutions comply with them.
- (19) The safety and soundness of a credit institution depend also on the allocation of adequate internal capital, having regard to the risks to which it may be exposed, and on the availability of appropriate internal organisation structures and corporate governance arrangements. The ECB should therefore have the task to apply requirements ensuring that credit institutions have in place robust governance arrangements, processes and mechanisms, including strategies and processes for assessing and maintaining the adequacy of their internal capital. In case of deficiencies it should also have the task to impose appropriate measures including specific additional own funds requirements, specific publication requirements, and specific liquidity requirements.
- (20) Risks for the safety and soundness of a credit institution can arise both at the level of an individual credit institution and at the level of a banking group or of a financial conglomerate. Specific supervisory arrangements to mitigate these risks are important to ensure the safety and soundness of credit institutions. In addition to supervision of individual credit institutions, the ECB's tasks should include supervision at the consolidated level, supplementary supervision, supervision of financial holding companies and supervision of mixed financial holding companies.
- (21) In order to preserve financial stability, the deterioration of an institution's financial and economic situation must be remedied before that institution reaches a point at which authorities have no other alternative than to resolve it. The ECB should have the task to carry out early intervention actions as defined in relevant Union law. It should however coordinate its early intervention action with the relevant resolution authorities. Pending the conferral of resolution powers on a European body, the ECB should moreover coordinate appropriately with the national authorities concerned to ensure a common understanding about respective responsibilities in case of crises, in particular in the context of the cross border crisis management groups and the future resolution colleges established for these purposes.

the ECB shall carry out the tasks referred to in paragraph 1 for which the national competent authorities of the participating Member State are competent.

3. Subject to and in compliance with any relevant Union law rule and in particular any legislative and non-legislative act, the ECB may adopt regulations and recommendations and take decisions to implement or apply Union law, to the extent necessary to carry out the tasks conferred upon it by this Regulation.
4. This regulation is without prejudice to the responsibilities and related powers of the competent authorities of the participating Member States to carry out supervisory tasks not referred to in this Regulation.

#### *Article 5*

##### *National authorities*

1. The ECB shall carry out its tasks within a single supervisory mechanism composed of the ECB and national competent authorities.
2. National competent authorities shall assist the ECB on its request with the preparation and implementation of any acts relating to the tasks referred to in Article 4.
3. The ECB shall organise the practical modalities of implementation of paragraph 2 by the national supervisory authorities in discharging its tasks. It shall clearly define the framework and conditions under which national competent authorities shall carry out those activities.
4. National competent authorities shall follow the instructions given by the ECB.

#### *Article 6*

##### *Close cooperation with the competent authorities of non participating Member States*

1. Within the limits set out in this Article, the ECB shall carry out the tasks in the areas referred to in Article 4 (1) and (2) in relation to credit institutions established in a Member State whose currency is not the euro, where a close cooperation has been established between the ECB and the national competent authority of such Member State in accordance with this Article.  
  
To that end, the ECB may address guidelines or requests to the national competent authority of the non participating Member State.
2. The close cooperation between the ECB and the national competent authority of a non participating Member State shall be established, by a decision adopted by the ECB, where the following conditions are met:

(b) To assess acquisitions and disposals of holdings in credit institutions;

(c) To ensure compliance with any Union acts imposing prudential requirements on credit institutions in the areas of own funds requirements, large exposure limits, liquidity, leverage, and reporting and public disclosure of information on those matters;

(d) only in the cases specifically set out in Union acts, to set higher prudential requirements and apply additional measures to credit institutions;

(e) To impose capital buffers to be held by credit institutions in addition to own funds requirements referred to in (c), including setting countercyclical buffer rates and any other measures aimed at addressing systemic or macro-prudential risks in the cases specifically set out in Union acts;

(f) To apply requirements for credit institutions to have in place robust governance arrangements, processes and mechanisms and effective internal capital adequacy assessment processes;

(g) To determine whether the arrangements, strategies, processes and mechanisms put in place by credit institutions and the own funds held by these institutions ensure a sound management and coverage of their risks, and on the basis of that supervisory review to impose on credit institutions specific additional own funds requirements, specific publication requirements, specific liquidity requirements and other measures in the cases specifically set out in Union acts;

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

(i) To carry out supervision on a consolidated basis over credit institutions' parents established in one of the participating Member States, including over financial holding companies and mixed financial holding companies, and to participate in supervision on a consolidated basis, including in colleges of supervisors, in relation to parents not established in one of the participating Member State;

(j) To participate in supplementary supervision of a financial conglomerate in relation to the credit institutions included in it and assume the tasks of a coordinator where the ECB is appointed as the coordinator for a financial conglomerate in accordance with the criteria set out relevant Union law;

(k) To carry out supervisory tasks in relation to early intervention where a credit institution does not meet or is likely to breach the applicable prudential requirements, including recovery plans and intra group financial support arrangements, in coordination with the relevant resolution authorities;

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

2. For credit institutions established in a non-participating Member State, which establish a branch or provide cross-border services in a participating Member State,

(22) Supervisory tasks not conferred on the ECB should remain with national authorities. Those tasks should include the power to receive notifications from credit institutions in relation to the right of establishment and the free provision of services, to supervise bodies which are not covered by the definition of credit institutions under Union law but which are supervised as credit institutions under national law, to supervise credit institutions from third countries establishing a branch or providing cross-border services in the Union, to supervise payments services, to carry out day-to-day verifications of credit institutions, to carry out the function of competent authorities over credit institutions in relation to markets in financial instruments and the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

(23) The ECB should carry out the tasks conferred on it with a view to ensuring the safety and soundness of credit institutions and the stability of the financial system of the Union and the unity and integrity of the Internal Market, thereby ensuring also the protection of depositors and improving the functioning of the Internal Market, in accordance with the single rulebook for financial services in the Union.

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

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

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

(27) In order to ensure that supervisory rules and decisions are applied by credit institutions, financial holding companies and mixed financial holding companies, in order to ensure that supervisory rules and decisions are applied by credit institutions, financial holding companies and mixed financial holding companies, effective, proportionate and dissuasive sanctions should be imposed in case of breaches. In accordance with Article 132(3) TFEU and Council Regulation (EC) No. 2532/98 of 23 November 1998 concerning the powers of the European Central Bank

to impose sanctions,<sup>9</sup> the ECB is entitled to impose fines or periodic penalty payments on undertakings for failure to comply with obligations under its regulations and decisions. Moreover, in order to enable the ECB to effectively carry out its tasks relating to the enforcement of supervisory rules set out in directly applicable Union law, the ECB should be empowered to impose pecuniary sanctions on credit institutions, financial holding companies and mixed financial holding companies for breaches of such rules. National authorities should remain able to apply sanctions in case of failure to comply with obligations stemming from national law transposing Union Directives. Where the ECB considers it appropriate for the fulfilment of its tasks that a sanction is applied for such breaches, it should be able to refer the matter to national authorities for those purposes.

- (28) National supervisors have important and long-established expertise in the supervision of credit institutions within their territory and their economic, organisational and cultural specificities. They have established a large body of dedicated and highly qualified staff for these purposes. Therefore, in order to ensure high quality European supervision national supervisors should assist the ECB in the preparation and implementation of any acts relating to the exercise of the ECB supervisory tasks. This should include in particular the ongoing day-to-day assessment of a bank's situation and related on site verifications.
- (29) As regards the supervision of cross-border banks active both inside and outside the Euro area the ECB should cooperate closely with the competent authorities of non participating Member States. As a competent authority the ECB should be subject to the related obligations to cooperate and exchange information under Union law and should participate fully in the colleges of supervisors. In addition, since the exercise of supervisory tasks by a European institution brings about clear benefits in terms of financial stability and sustainable market integration, Member States not participating in the common currency should therefore also have the possibility to participate in the new mechanism. However, it is a necessary pre-condition for an effective exercise of supervisory tasks, that supervisory decisions are implemented fully and without delay. Member States wishing to participate in the new mechanism should therefore undertake to ensure that their national competent authorities will abide by and adopt any measure in relation to credit institutions requested by the ECB. The ECB should be able to establish a close cooperation with the competent authorities of a Member State not participating in the common currency. It should be obliged to establish the cooperation where the conditions set out in this regulation are met. The conditions under which representatives of the competent authorities of the Member States which established a close co-operation take part to the activities of the Supervisory Board should allow the greatest possible involvement of those representatives taking into account the limits following from the Statute of ESCB and of the ECB, in particular as regards the integrity of its decision making process.
- (30) In order to carry out its tasks, the ECB should have appropriate supervisory powers. Union law on the prudential supervision of credit institutions provides for certain powers to be conferred on competent authorities designated by the Member States for those purposes. To the extent that these powers fall within the scope of the supervisory tasks conferred on the ECB, for participating Member States the ECB should be considered the competent authority and should have the powers conferred on

<sup>9</sup> OJ L 318, 27.11.98, p. 4.

(recast)<sup>13</sup> and Directive 2006/49/EC of the European Parliament and the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast)<sup>14</sup>;

- (3) "credit institutions" means credit institutions as defined in Article 4(1) of Directive 2006/48/EC;
- (4) "financial holding company" means a financial holding company as defined in Article 4(19) of Directive 2006/48/EC;
- (5) "mixed financial holding company" means a mixed financial holding company as defined in Article 2(15) of Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate<sup>15</sup>;
- (6) "financial conglomerate" means a financial conglomerate as defined in Article 2(14) of Directive 2002/87/EC.

## Chapter II

### Cooperation and tasks

#### *Article 3*

#### *Cooperation*

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

#### *Article 4*

#### *Tasks conferred on the ECB*

1. The ECB shall, in accordance with the relevant provisions of Union law, be exclusively competent to carry out, for prudential supervisory purposes, the following tasks in relation to all credit institutions established in the participating Member States:
- (a) To authorise credit institutions and to withdraw authorisation of credit institutions;

<sup>13</sup> OJ L177, 30.6.2006, p. 1.

<sup>14</sup> OJ L177, 30.6.2006, p. 277.

<sup>15</sup> OJ L 35, 11.2.2003, p. 1–27.

(46) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, notably the right to the protection of personal data, the freedom to conduct a business, the right to an effective remedy and to a fair trial, and has to be implemented in accordance with those rights and principles.

(47) Since the objectives of this Regulation, namely setting up an efficient and effective framework for the exercise of specific supervisory tasks over credit institutions by a Union institution, and ensuring the consistent application of the single rulebook to credit institutions, cannot be sufficiently achieved at the Member State level and can therefore, by reason of the pan-Union structure of the banking market and the impact of bank failures on other Member States, be better achieved at the Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

HAS ADOPTED THIS REGULATION:

## Chapter I

### Subject matter and definitions

#### Article 1

##### *Subject matter*

This Regulation confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions, with a view to promoting the safety and soundness of credit institutions and the stability of the financial system, with due regard for the unity and integrity of the internal market.

#### Article 2

##### *Definitions*

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

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

(2) "national competent authority" means the national competent authority designated by participating Member States in accordance with Directive 2006/48/EC of the European Parliament and the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions

competent authorities by Union law. This includes powers conferred by those acts on the competent authorities of the home and the host Member States and the powers conferred on designated authorities.

(31) In order to carry out its tasks effectively, the ECB should be able to require all necessary information, and to conduct investigations and on-site inspections. These powers should apply to supervised entities, persons involved in the activities of those entities and related third parties, third parties to whom those entities have outsourced operational functions or activities and persons otherwise closely and substantially related or connected to the activities of those entities, including the staff of a supervised entity who are not directly involved in its activities but who, due to their function within the entity, may hold important information on a specific matter and firms which have provided services to those entities. The ECB should be able to require information by simple request under which the addressee is not obliged to provide the information but, in the event that it does so voluntarily, the information provided should not be incorrect or misleading and should be made available without delay. The ECB should also be able to require information by decision.

(32) Where credit institutions exercise their right of establishment or to provide services in another Member State, or where several entities in a group are established in different Member States, Union law provides for specific procedures and for attribution of competences between the Member States concerned. To the extent that the ECB takes over certain supervisory tasks for all participating Member States, those procedures and attributions should not apply to the exercise of the right of establishment or to provide services in another participating Member State.

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

(34) The conferral of supervisory tasks implies a significant responsibility for the ECB to safeguard financial stability in the Union, and to use its supervisory powers in the most effective and proportionate way. The ECB should therefore be accountable for the exercise of these tasks towards the European Parliament and the Council of Ministers respectively the Eurogroup as democratically legitimised institutions representing the European people and the Member States. That should include regular reporting and responding to questions. Where national supervisors take action under this Regulation, accountability arrangements provided under national law should continue to apply.

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

(36) In particular, a supervisory board responsible for preparing decisions on supervisory matters should be set up with the ECB encompassing the specific expertise of national supervisors. The board should therefore be chaired by a Chair and a Vice-Chair elected by the ECB Governing Council and composed, in addition, of representatives

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

- (37) The supervisory board and staff of the ECB carrying out supervisory duties should be subject to appropriate professional secrecy requirements. Similar requirements should apply to the exchange of information with the staff of the ECB not involved in supervisory activities. This should not prevent the ECB from exchanging information within the limits and under the conditions set out in the relevant Union legislation, including with the European Commission for the purposes of its tasks under Articles 107 and 108 TFEU and under Union law on enhanced economic and budgetary surveillance.
- (38) In order to carry out its supervisory tasks effectively, the ECB should exercise the supervisory tasks conferred on it in full independence, in particular from undue political influence and from industry interference which would affect its operational independence.
- (39) In order to carry out its supervisory tasks effectively, the ECB should dispose of adequate resources. Those resources should be obtained in a way that ensures the ECB's independence from undue influences by national competent authorities and market participants, and separation between monetary policy and supervisory tasks. The costs of supervision should be primarily borne by the entities subject to it. Therefore, the exercise of supervisory tasks by the ECB should be financed at least partly by fees charged to credit institutions. In view of the transfer of significant supervisory tasks from national authorities to the ECB it is expected that any supervisory fees due at national level can be reduced as appropriate.
- (40) Highly motivated, well-trained and impartial staff is indispensable to effective supervision. In order to create a truly integrated supervisory mechanism, appropriate exchange and secondment of staff with and among national supervisors and the ECB should be provided for. Where necessary to avoid conflicts of interest, particularly in the supervision of large banks, the ECB should be able to request that national supervisory teams involve also staff from competent authorities of other participating Member States.
- (41) Given the globalisation of banking services and the increased importance of international standards, the ECB should carry out its tasks in respect of international standards and in dialogue and close cooperation with supervisors outside the Union, without duplicating the international role of the EBA. It should be empowered to

develop contacts and enter into administrative arrangements with the supervisory authorities and administrations of third countries and with international organisations, subject to coordination with the EBA and while fully respecting the existing roles and respective competences of the Member States and the Union institutions

- (42) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data<sup>10</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>11</sup> are fully applicable to the processing of personal data for the purposes of this Regulation.
- (43) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)<sup>12</sup> applies to the ECB. The ECB has also acceded to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office.
- (44) In order to ensure that credit institutions are subject to supervision of the highest quality, unfettered by other, non-prudential considerations and that the negative mutually reinforcing impacts of market developments concerns banks and Member States is addressed in a timely and effective way, the ECB should start carrying out specific supervisory tasks as soon as possible. However, the transfer of supervisory tasks from national supervisors to the ECB requires a certain amount of preparation. Therefore, an appropriate phasing-in period should be provided for. The number of banks subject to the supervision of the ECB should increase progressively, taking into account the relevance of the supervision of those banks to ensure financial stability. As a first step the ECB should be able to apply its supervisory tasks to any banks, in particular to banks which have received or requested public financial assistance. As a second step, banks of European systemic importance as reflected in their total exposures and their cross-jurisdictional activities should be covered. Total exposures should be calculated in light of the methodologies defined in the Basel III accord of the Basel Committee on Banking Supervisors on the calculation of the leverage ratio and on the definition of common equity tier 1 capital. The phasing-in process should be completed within one year from the entry into force of this Regulation at the latest.
- (45) The current framework of prudential requirements for credit institutions and the supplementary supervision of financial conglomerates is formed by Directives providing for a significant number of options and discretions for Member States when circumscribing the powers of competent authorities. Pending the adoption of new Union legislative acts which spell out the powers which competent authorities shall have directly and without reference to Member States' options or discretions, the ECB can therefore not take any decisions directly applicable to credit institutions, financial holding companies or mixed financial holding companies. In this transitional phase, the ECB should therefore exercise its tasks only by instructing national competent authorities to act.

<sup>10</sup> OJ L 281, 23.11.1995, p. 31.

<sup>11</sup> OJ L 8, 12.1.2001, p. 1.

<sup>12</sup> OJ L 136, 31.5.1999, p. 1.



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

#### *Article 28*

##### *Entry into force*

This Regulation shall enter into force on 1 January 2013.

This Regulation shall be binding in its entirety and directly applicable in all Member States.  
Done at Brussels,

*For the Council  
The President*































