



Ministerium für Wirtschaft, Arbeit, Verkehr und Technologie |  
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Staatssekretär

Vorsitzenden des Europaausschusses  
des Schleswig-Holsteinischen Landtages  
Herrn Peter Lehnert, MdL  
Landeshaus  
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24105 Kiel

17. Oktober 2012

Sehr geehrter Herr Vorsitzender,

ich beziehe mich auf den Tagesordnungspunkt 1 der 4. Sitzung des Europaausschusses des Schleswig-Holsteinischen Landtages vom 26. September 2012, bei dem es um einen Vorschlag für eine Verordnung des Rates zur Übertragung besonderer Aufgaben im Zusammenhang mit der Aufsicht über Kreditinstitute auf die Europäische Zentralbank (KOM(2012) 511) und einen Vorschlag für eine Verordnung des Europäischen Parlaments und des Rates zur Änderung der Verordnung (EU) Nr. 1093/2010 zur Errichtung einer Europäischen Aufsichtsbehörde (Europäische Bankenaufsichtsbehörde) hinsichtlich ihrer Wechselwirkungen mit der Verordnung (EU) Nr. .../... des Rates zur Übertragung besonderer Aufgaben im Zusammenhang mit der Aufsicht über Kreditinstitute auf die Europäische Zentralbank (KOM(2012) 512) ging. Gern komme ich dem Wunsch des Europaausschusses nach, die Mitglieder über den weiteren Fortgang zu informieren.

Das EU-Parlament (siehe beigefügten „Draft Report“, Amendments 3 – 5) schlägt vor, die Aufsicht der Europäischen Zentralbank (EZB) auf systemrelevante Banken zu beschränken. Bezüglich der übrigen Banken sollen der EZB vor allem Rechte gegenüber den nationalen Aufsichtsbehörden eingeräumt werden, notfalls auch Durchgriffsrechte. Dieser Vorschlag kann aus deutscher Sicht als deutlicher Fortschritt gegenüber dem bisherigen Kommissionsvorschlag gewertet werden.

Auch bei der EU-Kommission scheint sich eine Kompromissbereitschaft abzuzeichnen. Danach solle sich in der Aufsichtspraxis für kleinere und mittlere Institute nicht viel ändern. Die nationalen Aufsichtsbehörden sollen weiterhin „Hauptansprechpartner“ sein und eine direkte Aufsicht durch die EZB nur ausnahmsweise erfolgen. Wie dies konkret aussehen soll, bleibt aber nach wie vor unklar.

In Anbetracht dieser aktuellen Entwicklung erscheint der ebenfalls beigefügte Antrag des Landes Rheinland-Pfalz für den Wirtschaftsausschuss des Bundesrates am 18. Oktober 2012 aus Sicht der schleswig-holsteinischen Landesregierung zielführender als eine formelle Subsidiaritätsrüge. Die ohnehin ungewissen Erfolgsaussichten einer solchen Rüge dürften durch die aufgezeigten Kompromisslinien noch ungewisser geworden sein.

Unter Ziffer 2 des Antrags des Landes Rheinland-Pfalz wird der Tenor der Subsidiaritätsrüge – nämlich die europäische Bankenaufsicht nur auf große, grenzüberschreitend tätige, systemrelevante Institute zu erstrecken - inhaltlich nachvollzogen. Daher wird vonseiten der Landesregierung eine Mit Antragstellung erwogen.

Mit freundlichen Grüßen

  
Dr. Frank Nägele

Anlagen

**Antrag****des Landes Rheinland-Pfalz**

zum

**Vorschlag für eine Verordnung des Rates zur Übertragung besonderer Aufgaben im Zusammenhang mit der Aufsicht über Kreditinstitute auf die Europäische Zentralbank**

**Com (2012) 511 final****TOP 11 der Sitzung des Wirtschaftsausschusses am 18. Oktober 2012**

Der Wirtschaftsausschuss empfiehlt dem Bundesrat, zu dem Gesetzentwurf gem. Art. 76 Abs. 2 des Grundgesetzes wie folgt Stellung zu nehmen:

1. Der Bundesrat begrüßt die Zielsetzung des Verordnungsentwurfs, einen einheitlichen Aufsichtsmechanismus für Banken einzurichten, um die Finanzstabilität auf der Basis effektiver Aufsichts- und Krisenmanagementsysteme zu sichern und den Binnenmarkt für Finanzdienstleistungen zu erhalten. Der einheitliche Aufsichtsmechanismus gewährleistet, dass das geltende Regelwerk für Finanzdienstleistungen auf alle Kreditinstitute in sämtlichen teilnehmenden Mitgliedsstaaten gleichermaßen angewandt wird.
2. Der Bundesrat hält es für wirksamer, die europäische Bankenaufsicht unmittelbar nur auf große, grenzüberschreitend tätige, systemrelevante Institute zu erstrecken. Das Ziel eines einheitlichen Aufsichtsmechanismus kann besser dadurch erreicht werden, dass kleine Institute mit regionalem Geschäft und Förderbanken von nationalen Aufsichtsbehörden beaufsichtigt werden. Durch den europaweit geltenden Regulierungsrahmen als Grundlage der nationalen Aufsichtspraxis können eine länderübergreifende Vergleichbarkeit und eine effektive Aufsicht sichergestellt werden. Ferner kann die europäische Aufsicht bei einer Gefährdung der europäischen Finanzmarktstabilität der nationalen Aufsicht Anweisungen erteilen. Eine direkte europäische Aufsicht über alle kleinen Institute würde gegen das Prinzip der Subsidiarität verstoßen.

3. Der Bundesrat hält es für unabdingbar, dass durch strikte organisatorische Vorgaben die Unabhängigkeit der EZB in Angelegenheiten der Geldpolitik sichergestellt wird. Zwischen den Zielen der Geldpolitik und der Finanzmarktaufsicht können Interessenkonflikte entstehen, die es zu vermeiden gilt. Das vorgesehene Letztentscheidungsrecht des Rates der EZB auch in bankaufsichtlichen Belangen ist daher problematisch. Ferner muss die Finanzmarktaufsicht anders als die Geldpolitik einer Kontrolle des Parlaments unterliegen.
4. Die im Verordnungsentwurf vorgesehene Verteilung der Zuständigkeiten zwischen europäischer und nationaler Aufsicht sollte nach Auffassung des Bundesrates überprüft und präzisiert werden. Die vorgesehene umfassende Zuständigkeit der europäischen Aufsicht für alle zentralen Aufsichtsaufgaben bei allen rund 6.000 Banken ist kaum vereinbar mit der gleichfalls vorgesehenen Rolle der nationalen Aufsichtsbehörden als „integraler Bestandteil eines einheitlichen Aufsichtsmechanismus auch hinsichtlich der auf die EZB übertragenen Aufgaben“.
- 5.

Der Bundesrat ist der Auffassung, dass eine effektive europäische Bankenunion gründlich vorbereitet werden muss, damit sie zum Erfolg werden kann. Dabei ist die Errichtung einer wirksamen europäischen Bankenaufsicht nur einer von vielen Schritten zur Schaffung einer Bankenunion. Das Projekt Bankenunion hat vielfältige Auswirkungen auf die Stabilität des Finanzsektors, auf Finanzstrukturen und damit auf die Wirtschaft in Europa. Daher sind ein angemessener Konsultationsprozess sowie eine sorgfältige Folgenabschätzung erforderlich.



EUROPEAN PARLIAMENT

2009 - 2014

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*Committee on Economic and Monetary Affairs*

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2012/0242(CNS)

8.10.2012

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## DRAFT REPORT

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

Committee on Economic and Monetary Affairs

Rapporteur: Marianne Thyssen

***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

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

**(Special legislative procedure – consultation)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2012)0511),
  - having regard to Article 127(6) of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0314/2012),
  - having regard to 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 Legal Affairs, the Committee on Civil Liberties, Justice and Home Affairs and the Committee on Constitutional Affairs (A7-0000/2012),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a regulation**

##### **Recital 10**

*Text proposed by the Commission*

(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

*Amendment*

(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 crises should be preceded by common controls to reduce the likelihood that intervention mechanisms will have to be used.

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. ***In particular, the single supervisory mechanism should be consistent with the functioning of the internal market for financial services and with the free movement of capital.*** A single supervisory mechanism is the basis for the next steps towards the banking union. This reflects the principle that any introduction of common intervention mechanisms in case of crises should be preceded by common controls to reduce the likelihood that intervention mechanisms will have to be used.

Or. en

**Amendment 2**  
**Proposal for a regulation**  
**Recital 11**

*Text proposed by the Commission*

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

*Amendment*

(11) As the *euro* area's central bank with extensive expertise in macroeconomic and financial stability issues, ***with access to multiple information resources, with widely recognised expertise and having maintained its credibility through the crisis,*** the ECB is well placed to carry out 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. *Specific tasks should therefore be conferred upon the ECB* concerning policies relating to the supervision of credit institutions within the *euro* area.

Or. en

**Amendment 3**  
**Proposal for a regulation**  
**Recital 13**

*Text proposed by the Commission*

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

*Amendment*

(13) Safety and soundness of large banks is essential to ensure the stability of the financial system. ***Therefore, the ECB should be able to exercise specific and clearly defined supervisory tasks in relation to all banks of European systemic importance as defined in this Regulation. The ECB also needs to exercise these tasks in relation to banks which have received or which have requested public financial assistance.***

Or. en

**Amendment 4**  
**Proposal for a regulation**  
**Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) National competent authorities should continue to supervise the credit institutions that fall outside the scope of direct ECB supervision. The ECB should establish a supervisory framework for the supervision by national competent authorities of credit institutions falling outside the scope of direct ECB supervision. As part of their duties under the supervisory framework, national competent authorities should submit a report to the ECB on a quarterly basis. The ECB should monitor national competent authorities on an ongoing basis on the basis of the supervisory framework, making use of the powers referred to in this Regulation.***

**Amendment 5**  
**Proposal for a regulation**  
**Recital 13 b (new)**

*Text proposed by the Commission*

*Amendment*

***(13b) In addition to ongoing reporting, national competent authorities should inform the ECB without delay of any serious concerns about the safety and/or soundness of any credit institution falling outside the scope of direct ECB supervision, where the stability of the financial system is or is likely to be endangered by the situation of any credit institution, individually or as part of a group of credit institutions, falling outside the scope of direct ECB supervision, and when a credit institution falling within the jurisdiction of a national competent authority starts fulfilling any of the criteria that determine the direct supervision by the ECB.***

**Amendment 6**  
**Proposal for a regulation**  
**Recital 13 c (new)**

*Text proposed by the Commission*

*Amendment*

***(13c) The ECB should be empowered to take a decision to take over the supervision of any credit institution in a participating Member State not subject to its direct supervision when the national competent authorities fail to perform their duties under this Regulation or when there is evidence that the credit institution, individually or as part of a group of credit institutions, may pose or is***

*likely to pose a threat to the orderly functioning and integrity of the Union financial market and/or to the stability of the financial system, or to exacerbate a pre-existing threat.*

Or. en

**Amendment 7**  
**Proposal for a regulation**  
**Recital 15**

*Text proposed by the Commission*

(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.

*Amendment*

(15) In addition to the conditions set out in Union *law* for authorisation of credit institutions and the cases for withdrawal of such authorisations, Member States *are* currently *able to* provide for further conditions for authorisation and cases for withdrawal of authorisation. The ECB should therefore carry out its task to authorise credit institutions and to withdraw the authorisation in case of non-compliance with national law upon a proposal by the relevant national competent authority, which assesses compliance with the relevant conditions set out by national law. ***The ECB should grant authorisation within six weeks of receiving the proposal by the relevant national competent authority, where the conditions provided for in Union law are met.***

Or. en

**Amendment 8**  
**Proposal for a regulation**  
**Recital 24**

*Text proposed by the Commission*

(24) The conferral of supervisory tasks on

*Amendment*

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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 *ESFS*.

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 EBA, *ESMA* and *EIOPA*, within the framework of the *ESFS*. ***The ECB should carry out its tasks in accordance with the provisions of this Regulation and without prejudice to the competence and the tasks of the other participants within the ESFS.***

Or. en

**Amendment 9**  
**Proposal for a regulation**  
**Recital 29**

*Text proposed by the Commission*

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

*Amendment*

(29) As regards the supervision of cross-border banks active both inside and outside the *euro* area the ECB should cooperate closely with the competent authorities of non participating Member States. As a competent authority the ECB should be subject to the related obligations to cooperate and exchange information under Union law and should participate fully in the colleges of supervisors. In addition, since the exercise of supervisory tasks by a European institution brings about clear benefits in terms of financial stability and sustainable market integration, Member States not participating in the common

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

currency should therefore also have the possibility to participate in the new mechanism. However, it is a necessary precondition for an effective exercise of supervisory tasks, that supervisory decisions are implemented fully and without delay. Member States wishing to participate in the new mechanism should therefore undertake to ensure that their national competent authorities will abide by and adopt any measure in relation to credit institutions requested by the ECB. The ECB should be able to establish a close cooperation with the competent authorities of a Member State not participating in the common currency. It should be obliged to establish the cooperation where the conditions set out in this regulation are met. The conditions under which representatives of the competent authorities of the Member States which established a close co-operation take part to the activities of the Supervisory Board should ***ensure fair treatment and representation*** 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.

Or. en

**Amendment 10**  
**Proposal for a regulation**  
**Recital 34**

*Text proposed by the Commission*

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

*Amendment*

(34) The conferral of supervisory tasks implies a significant responsibility for the ECB to safeguard financial stability in the Union, and to use its supervisory powers in the most effective and proportionate way. ***Any shift of supervisory powers from the Member State to the Union level should be balanced by appropriate transparency***

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.

***and accountability requirements.***  
***Consequently,*** the ECB should 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.

Or. en

**Amendment 11**  
**Proposal for a regulation**  
**Recital 34 a (new)**

*Text proposed by the Commission*

*Amendment*

***(34a) At the request of the parliaments of the participating Member States, a representative of the supervisory board of the ECB, together with the national competent authority, may be heard in the competent committees of the national parliaments concerned, on the execution of its supervisory tasks. This further strengthening of democratic accountability is appropriate given the impact that supervisory measures may have on public finances, credit institutions, their customers and employees, and the markets in the participating Member States.***

Or. en

**Amendment 12**  
**Proposal for a regulation**  
**Recital 34 b (new)**



*Text proposed by the Commission*

*Amendment*

***(34b) This Regulation is without prejudice to the right of the European Parliament to set up a temporary Committee of Inquiry to investigate alleged contraventions or maladministration in the implementation of Union law pursuant to Article 226 TFEU.***

Or. en

**Amendment 13**  
**Proposal for a regulation**  
**Recital 34 c (new)**

*Text proposed by the Commission*

*Amendment*

***(34c) Pursuant to Article 263 TFEU, the Court of Justice of the European Union must review the legality of acts of, inter alia, the ECB, other than recommendations and opinions, intended to produce legal effects vis-à-vis third parties.***

Or. en

**Amendment 14**  
**Proposal for a regulation**  
**Recital 34 d (new)**

*Text proposed by the Commission*

*Amendment*

***(34d) Regulation No 1 determining the languages to be used by the European Economic Community<sup>1</sup> applies to the ECB by virtue of Article 342 TFEU.***

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<sup>1</sup> OJ L 17, 6.10.1958, p. 385.

Or. en

**Amendment 15**  
**Proposal for a regulation**  
**Recital 35**

*Text proposed by the Commission*

(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.

*Amendment*

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

Or. en

**Amendment 16**  
**Proposal for a regulation**  
**Recital 36**

*Text proposed by the Commission*

(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

*Amendment*

(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 ***be composed of representatives from the ECB and from national authorities from participating member states.*** The board should be chaired by a Chair ***appointed by the governing council of the ECB.*** ***The chair should be selected following an open***

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.*

*selection procedure and after approval by the European Parliament and should have considerable expertise and experience with financial institutions and financial supervision. The Vice-Chair of the supervisory board should be directly elected by the ECB Governing Council. The term of office of the Chair should not exceed five years and should be renewable once. The term of office of the Vice-Chair 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 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. *When exercising its tasks, the supervisory board should take account of all relevant facts and circumstances in the participating Member States and should perform its duties in the interest of the Union as a whole. The national competent authorities of the participating Member States represented in the supervisory board should have equal voting rights.*

Or. en

**Amendment 17**  
**Proposal for a regulation**  
**Recital 36 a (new)**

*Text proposed by the Commission*

*Amendment*

***(36a) The supervisory board may be supported by a steering committee with a more limited composition. The steering committee should be chaired by the Chair of the supervisory board and should be composed of six members of the supervisory board, the Chair excluded. These six members should include two representatives of the ECB and four members selected on a proportionate basis among the national competent authorities from Member States whose currency is the euro and the national competent authorities of non-euro area Member States having opted for a close cooperation. The steering committee should prepare the meetings of the supervisory board, perform its duties in the interest of the Union as a whole and should work in full transparency with the supervisory board.***

Or. en

**Amendment 18**  
**Proposal for a regulation**  
**Recital 37**

*Text proposed by the Commission*

*Amendment*

(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

(37) The supervisory board, ***the steering committee*** and staff of the ECB carrying out supervisory duties should be subject to appropriate professional secrecy requirements. Similar requirements should apply to the exchange of information with the staff of the ECB not involved in supervisory activities. This should not prevent the ECB from exchanging information within the limits and under the conditions set out in the relevant Union legislation, including with the Commission for the purposes of its tasks under Articles

TFEU and under Union law on enhanced economic and budgetary surveillance.

107 and 108 TFEU and under Union law on enhanced economic and budgetary surveillance.

Or. en

**Amendment 19**  
**Proposal for a regulation**  
**Recital 44**

*Text proposed by the Commission*

(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*

*Amendment*

(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. *The timetable for the implementation of the single supervisory mechanism should take into account the necessity of ensuring the highest quality of supervision, the need to establish a reasonable period for the preparation of the new European supervisor to assume supervisory tasks under this Regulation, as well as the existence of the appropriate regulatory framework that encompasses and supports the performance of those supervision tasks.*

*completed within one year from the entry into force of this Regulation at the latest.*

Or. en

**Amendment 20**  
**Proposal for a regulation**  
**Article 1**

*Text proposed by the Commission*

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.

*Amendment*

This Regulation confers on the ECB specific ***and clearly defined*** tasks concerning policies relating to the prudential supervision of credit institutions, with a view to promoting the safety and soundness of credit institutions and the stability of the financial system, with due regard for the unity and integrity of the internal market. ***The ECB shall carry out its tasks within a single supervisory mechanism composed of the ECB and national competent authorities of participating Member States and in full cooperation with the EBA.***

Or. en

**Amendment 21**  
**Proposal for a regulation**  
**Article 2 – point 1**

*Text proposed by the Commission*

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

*Amendment*

(1) ‘participating Member State’ means a Member State whose currency is the euro ***or a Member State whose currency is not the euro which has established a close cooperation with the ECB in accordance with Article 6;***

Or. en

**Amendment 22**  
**Proposal for a regulation**  
**Article 3**

*Text proposed by the Commission*

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

*Amendment*

The ECB shall cooperate closely with *EBA, ESMA, EIOPA* and the European Systemic Risk Board, which form part of the *ESFS* established by Article 2 of Regulations (EU) No 1093/2010, (EU) No 1094/2010, and (EU) No 1095/2010, ***which ensure a sound, effective and consistent level of regulation and supervision in the Union.***

Or. en

**Amendment 23**  
**Proposal for a regulation**  
**Article 3 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The ECB shall carry out its tasks in accordance with this Regulation and without prejudice to the competence and the tasks of the other participants within the single supervisory mechanism and within the ESFS.***

Or. en

**Amendment 24**  
**Proposal for a regulation**  
**Article 4 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

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

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*:

following tasks in relation to *the* credit institutions *referred to in paragraph 1a*:

Or. en

**Amendment 25**  
**Proposal for a regulation**  
**Article 4 – paragraph 1 – point h**

*Text proposed by the Commission*

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

*Amendment*

(h) To carry out supervisory stress-tests on credit institutions to support the supervisory review *subject to appropriate coordination with EBA*;

Or. en

**Amendment 26**  
**Proposal for a regulation**  
**Article 4 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*1a. The ECB shall exercise the tasks set out in paragraph 1 in relation to credit institutions established in the participating Member States and which fall in one of the following categories:*

*(a) credit institutions, financial holding companies or mixed financial holding companies which have received or requested public financial assistance;*

*(b) 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:*

*i) 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;*  
*(ii) the systemic risk for the domestic economy concerned, expressed as the percentage of assets of a bank divided by GDP of its home country; and*  
*(iii) 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, and which together cover at least half of the banking sector in the euro area as a whole and in each Member State.*

Or. en

**Amendment 27**  
**Proposal for a regulation**  
**Article 4 – paragraph 1 b (new)**

*Text proposed by the Commission*

*Amendment*

*1b. The ECB shall give notice to each credit institution about the supervisory arrangements to which it is subject.*

Or. en

**Amendment 28**  
**Proposal for a regulation**  
**Article 4 – paragraph 1 c (new)**

*Text proposed by the Commission*

*Amendment*

*1c. For banks not covered by paragraph 1a, the ECB shall exercise the tasks set out in paragraph 1 only under the conditions set out in Article 5(4a) and Article 5a.*

**Amendment 29**  
**Proposal for a regulation**  
**Article 4 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

3. Subject to and in compliance with any relevant Union law rule and in particular any legislative and non-legislative act ***including technical standards developed by EBA and adopted by the Commission***, the ECB may adopt regulations and recommendations and take decisions to implement or apply Union law, to the extent necessary to carry out the tasks conferred upon it by this Regulation.

Or. en

**Amendment 30**  
**Proposal for a regulation**  
**Article 4 – paragraph 4**

*Text proposed by the Commission*

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

*Amendment*

***deleted***

Or. en

**Amendment 31**  
**Proposal for a regulation**  
**Article 5 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

**1. The ECB shall carry out its tasks within a single supervisory mechanism composed of the ECB and national competent authorities.**

**deleted**

Or. en

**Amendment 32**  
**Proposal for a regulation**  
**Article 5 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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.

**2. As regards credit institutions that fall within the scope of Article 4(1a), national competent authorities shall assist the ECB to the extent possible** with the preparation and implementation of any acts relating to the tasks referred to in Article 4.

Or. en

**Amendment 33**  
**Proposal for a regulation**  
**Article 5 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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.

3. The ECB shall organise the practical modalities of implementation of paragraph 2 by the national supervisory authorities in discharging its tasks. **The ECB** shall clearly define the framework and conditions under which national competent authorities shall carry out those activities, **whereby the national competent authorities of all participating Member States shall be treated on an equal footing.**

Or. en

**Amendment 34**  
**Proposal for a regulation**  
**Article 5 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. National competent authorities shall continue to supervise the credit institutions that fall outside the scope of Article 4(1a), without prejudice to the role of the ECB set out in Article 5a. National competent authorities shall notify to the ECB a list of these credit institutions and any changes thereto.***

Or. en

**Amendment 35**  
**Proposal for a regulation**  
**Article 5 – paragraph 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***4b. The ECB shall establish a Supervisory Framework for the supervision by national competent authorities of credit institutions falling outside the scope of Article 4(1a). As part of their duties under the Supervisory Framework, national competent authorities shall submit a report to the ECB on a quarterly basis.***

Or. en

**Amendment 36**  
**Proposal for a regulation**  
**Article 5 a (new)**

*Text proposed by the Commission*

*Amendment*

***Article 5a***

### ***Monitoring and right of intervention***

***1. The ECB shall monitor national competent authorities on an ongoing basis on the basis of the Supervisory Framework referred to in Article 5(4b). For these purposes it may at any time make use of the powers referred to in Articles 8 to 12.***

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

***(a) where there are serious concerns about the safety and/or soundness of any credit institution falling outside the scope of Article 4(1a) and for which they are competent;***

***(b) where the stability of the financial system is or is likely to be endangered by the situation of any credit institution, individually or as part of a group of credit institutions, falling outside the scope of Article 4(1a) and for which they are competent;***

***(c) where a credit institution for which they are competent ceases to fall outside the scope of Article 4(1a).***

***3. The ECB may take a decision to take over the supervision of a credit institution falling outside the scope of Article 4(1a) in the following cases:***

***(a) where the national competent authorities fail to perform their duties under this Regulation;***

***(b) where there is evidence that the credit institution, individually or as part of a group of credit institutions, may pose or is likely to pose a threat to the orderly functioning and integrity of the Union financial market and/or to the stability of the financial system, or may exacerbate or is likely to exacerbate a pre-existing risk to the orderly functioning and integrity of the EU financial market and/or to the stability of the financial system;***

*(c) where a credit institution falls or will fall within the scope of Article 4(1a).*

*4. The decision to which paragraph 3 refers shall be notified to the national competent authority and to the credit institution concerned.*

Or. en

**Amendment 37**  
**Proposal for a regulation**  
**Article 6 – paragraph 5 a\* – subparagraph 1**

*Text proposed by the Commission*

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.

*Amendment*

*5a. Where the conditions set out in paragraph 2(a) to (c) are no longer met by a Member State concerned, or where its competent authority does not act in accordance with the obligation referred to in paragraph 2(c), the ECB may decide to **issue a warning to the Member State concerned that the close cooperation will be terminated if no decisive corrective action is undertaken. If no such action has been undertaken 10 days after notification of such a warning, the ECB may terminate the close cooperation with that Member State on a date to be determined by the ECB.***

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*\* NB: wrongly numbered as a second paragraph '5' in the Commission proposal.*

Or. en

**Amendment 38**  
**Proposal for a regulation**  
**Article 11 – paragraph 4**

*Text proposed by the Commission*

4. Officials of, as well as those authorised

*Amendment*

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***.

or appointed by, the competent authority of the Member State where the inspection is to be conducted shall, ***under the supervision and coordination*** of the ECB, actively assist the officials of and other persons authorised by the ECB. To that end, they shall enjoy the powers set out in paragraph 2. Officials of the competent authority of the participating Member State concerned may also attend the on-site inspections.

Or. en

**Amendment 39**  
**Proposal for a regulation**  
**Article 13 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

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.

*Amendment*

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

Or. en

**Amendment 40**  
**Proposal for a regulation**  
**Article 18 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

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.

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

Or. en

**Amendment 41**  
**Proposal for a regulation**  
**Article 18 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 42**  
**Proposal for a regulation**  
**Article 19 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

2. In addition, the supervisory board shall include a **Chairman or Chairwoman, appointed** by the **Governing Council** of the **ECB. The Chairman or Chairwoman of the supervisory board shall be selected on the basis of merit, skills and thorough knowledge of financial institutions and financial supervision, following an open selection procedure and after approval by the European Parliament. The Vice-Chair of the supervisory board shall be** elected by and from the members of the Governing Council of the ECB.

Or. en



**Amendment 43**  
**Proposal for a regulation**  
**Article 19 – paragraph 3 – subparagraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

*When exercising its tasks pursuant to this Article, the supervisory board shall take account of all relevant facts and circumstances in the participating Member States and shall perform its duties in the interest of the Union as a whole. The national competent authorities of the participating Member States represented in the supervisory board shall have equal voting rights.*

Or. en

**Amendment 44**  
**Proposal for a regulation**  
**Article 19 – paragraph 4**

*Text proposed by the Commission*

*Amendment*

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.

4. The supervisory board may appoint from among its members a steering committee with a more limited composition which supports its activities. *The steering committee may prepare the meetings of the supervisory board but shall have no decision-making powers. The steering committee shall be chaired by the chair of the supervisory board and shall be composed of six members of the supervisory board, excluding the Chair. Those six members shall include two representatives of the ECB and four members selected on a proportionate basis among the national competent authorities from Member States whose currency is the euro and the national competent authorities of non-euro area Member States that have opted for close cooperation pursuant to Article 6. The steering committee shall execute its*

*preparatory tasks in the interest of the Union as a whole and shall work in full transparency with the supervisory board.*

Or. en

**Amendment 45**  
**Proposal for a regulation**  
**Article 19 – paragraph 7**

*Text proposed by the Commission*

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.

*Amendment*

7. The Governing Council shall adopt the rules of procedure of the supervisory board, **taking into account the specific composition of the supervisory board**, including rules on the term of office of the Chair and the Vice-Chair. The term of office **of the Chair** shall not exceed five years and shall **be renewable once**. **The term of office of the Vice-Chair shall not exceed five years and shall be not** renewable.

Or. en

**Amendment 46**  
**Proposal for a regulation**  
**Article 21 – paragraph 3**

*Text proposed by the Commission*

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

*Amendment*

3. 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. **In the event of widespread financial distress in the banking sector the Chair may be invited to be heard at short notice.**

Or. en

**Amendment 47**  
**Proposal for a regulation**  
**Article 21 – paragraph 4 a (new)**

*Text proposed by the Commission*

*Amendment*

***4a. Upon request, the Chair of the supervisory board shall provide to the Chair and the Vice-Chairs of the Economic and Monetary Affairs Committee of the European Parliament, which have undertaken in writing not to disclose that information outside this group, any confidential information concerning its tasks which are required for the exercise of the European Parliament's powers under the Treaty and under this Regulation.***

Or. en

**Amendment 48**  
**Proposal for a regulation**  
**Article 21 – paragraph 4 b (new)**

*Text proposed by the Commission*

*Amendment*

***4b. At the request of the parliaments of the participating Member States, a representative of the supervisory board, together with the national competent authority, may be heard in the parliaments concerned on the execution of its supervisory tasks.***

Or. en

**Amendment 49**  
**Proposal for a regulation**  
**Article 26 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

By 31 December 2015, the Commission

By ***no later than*** 31 December 2015, the

shall publish a report on the application of this Regulation. That report shall evaluate, inter alia:

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

Or. en

**Amendment 50**  
**Proposal for a regulation**  
**Article 26 – paragraph 1 – point d a (new)**

*Text proposed by the Commission*

*Amendment*

*(da) the division of responsibilities between the ECB and the national competent authorities.*

Or. en

**Amendment 51**  
**Proposal for a regulation**  
**Article 27 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

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*

1. From *1 July 2013*, the ECB shall carry out the supervisory tasks conferred on it.

*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.*

Or. en

**Amendment 52**  
**Proposal for a regulation**  
**Article 27 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

Or. en

**Amendment 53**  
**Proposal for a regulation**  
**Article 27 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

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.

3. Before 1 **July 2013** 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, where a credit institution, financial holding company or mixed financial holding company has received or requested public financial assistance.

Or. en

**Amendment 54**  
**Proposal for a regulation**  
**Article 27 – paragraph 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***6a. The Vice-Chair of the supervisory board, elected in accordance with Article 19(2), may be appointed as acting Chair of the supervisory board pending appointment of a Chair pursuant to that provision.***

Or. en

## EXPLANATORY STATEMENT

Het Europees Parlement heeft in het verleden bij herhaling aangedrongen op ingrijpende maatregelen om het vertrouwen in de banken te herstellen onder meer door een gemeenschappelijk toezichtmechanisme. Een geïntegreerde bancaire markt heeft immers behoefte aan een gemeenschappelijk toezicht. Dit geldt des te meer voor de eurozone waar de kans op wederzijdse besmetting nog groter is. Op 12 september heeft de Commissie twee verordeningvoorstellen gelanceerd. Het voorstel waarbij de ECB bevoegdheden worden verleend voor het banktoezicht (COM(2012)511) maakt het voorwerp uit van dit rapport. Hoewel de wettelijke grondslag en de daarop geënte wetgevingsprocedure voor elk voorstel anders is, zullen beide in het Parlement als één wetgevingspakket worden behandeld.

Bij de beoordeling van het Commissievoorstel heeft uw rapporteur zich laten leiden door de volgende uitgangspunten :

- nood aan een kwalitatief, geloofwaardig en efficiënt georganiseerd gemeenschappelijk toezichtmechanisme (SSM),
- SSM dat maximaal spoort met een goede werking van de interne markt en het vrij verkeer van kapitaal,
- SSM waaraan in elk geval de kredietinstellingen van de eurozone onderworpen zijn en dat niet-eurozone lidstaten door middel van een opt-in de gelegenheid geeft toe te treden tot het stelsel onder zo gelijkwaardig mogelijke voorwaarden, onder meer op het vlak van stemrecht in de Raad van Toezicht,
- heldere verdeling van de taken en operationele verantwoordelijkheden binnen het SSM tussen de Europese en de Nationale Toezichthouders, rekening houdend met de principes van subsidiariteit en proportionaliteit,
- principe dat elke verschuiving van toezichttaken van het nationale naar het Europese niveau gepaard moet gaan met het organiseren van transparantie en een verantwoordingsplicht op het Europese niveau, zeker ook ten aanzien van het Europees Parlement,
- een realistisch tijdspad voor de inwerkingtreding van het SSM dat rekening houdt met het noodzakelijk hoge kwaliteitsniveau van het toezicht, de capaciteit van de Europese toezichthouder om de nieuwe toezichttaken uit te voeren, alsook het aanwezig zijn van het ondersteunend regelgevend kader (CRDIV, herstel en afwikkeling, depositogarantie).

### **Gemeenschappelijk toezichtmechanisme**

Ofschoon uw rapporteur zich er van bewust is dat er bepaalde beperkingen verbonden zijn aan een SSM waarvan de ECB de spil is, is zij van oordeel dat het toevertrouwen van toezichttaken aan de ECB een belangrijke toegevoegde waarde kan leveren. Uw rapporteur brengt de ervaring van de ECB in rekening, haar informatiebronnen en de geloofwaardigheid die ze doorheen de crisisperiode heeft bewaard en zelfs versterkt. Uw rapporteur is overtuigd dat een SSM dat uitgebouwd wordt binnen een bestaande instelling sneller kan opgestart dan wanneer ervoor geopteerd wordt een nieuwe instelling in het leven te roepen. En dit zonder in te boeten op de kwaliteit. Het feit dat er binnen de Raad een breed draagvlak is voor de ECB en dat het VWEU een duidelijke rechtsgrondslag biedt, bevordert de vooruitgang van een constructief legislatief besluitvormingsproces.

## **Materieel toepassingsgebied van het voorstel**

Uw rapporteur is van mening dat de beslissing over welk toezichtniveau geschikt is voor welk soort kredietinstelling niet volledig kan worden overgelaten aan de discretionaire bevoegdheid van de ECB maar door de wetgever moet genomen worden. Temeer gezien de hoge graad van onafhankelijkheid van de ECB is het verkieslijk het toezichtkader in de verordening zelf nader te definiëren. Uw rapporteur stelt daartoe een amendement voor dat nader bepaalt wat de rol en de opdracht is van de nationale toezichthouders en de ECB. Dit amendement staat de ECB onder uitzonderlijke en welomschreven voorwaarden toe het toezicht op elke kredietinstelling in elke deelnemende lidstaat zo nodig rechtstreeks naar zich toe halen (interventierecht).

De ECB houdt in dit amendement direct toezicht op kredietinstellingen die financiële steun hebben gekregen of gevraagd, alsook op kredietinstellingen die systeemrelevant zijn. Voor het bepalen welke kredietinstellingen systeemrelevant zijn, worden drie criteria in aanmerking genomen : omvang, grensoverschrijdende activiteiten, alsook het systemisch risico van de kredietinstelling voor de lidstaat waarin deze gevestigd is. De eerste twee zijn in het commissievoorstel opgenomen. Met het derde criterium wordt gegarandeerd dat elke lidstaat die deelneemt aan het SSM, ook effectief kredietinstellingen onder rechtstreeks ECB toezicht heeft. De nationale toezichthouders moeten worden betrokken bij de voorbereiding en de uitvoering van de taken die kaderen in dit toezicht van de ECB. De nationale toezichthouders blijven verantwoordelijk voor het toezicht op alle andere kredietinstellingen, binnen het door de ECB bepaald toezichtkader.

Om de éénheid van toezicht en de doelmatigheid van het gemeenschappelijk toezicht-mechanisme te garanderen, is het noodzakelijk dat de ECB er op toeziet dat de nationale toezichthouders hun bevoegdheden en taken goed uitvoeren, dat er een optimale informatiedoorstroming is van de nationale toezichthouders naar de ECB en dat de ECB zonodig altijd rechtstreeks kan ingrijpen in elke kredietinstelling in een deelnemende lidstaat.

## **De rechten van niet-eurozone lidstaten binnen het SSM**

Uw rapporteur vindt het bijzonder belangrijk dat het SSM, dat alleszins alle eurozone toezichthouders omvat, zo aantrekkelijk mogelijk wordt gemaakt voor deelname vanuit niet-eurozone lidstaten. Uw rapporteur vindt het noodzakelijk de nauwe samenwerking ten voordele van de niet-euro lidstaten te verbeteren. In de huidige Verdragsrechtelijke context draagt de Raad van Bestuur van de ECB juridisch-formeel de eindverantwoordelijkheid voor de toezichtbeslissingen van de Raad van Toezicht. Deze beperking is alleen te verhelpen met een Verdragswijziging.

Toch sluit dit volgens uw rapporteur niet uit dat ook nu al, voor de beraadslagingen in de Raad van Toezicht, aan alle deelnemende lidstaten (eurozone + niet-eurozone in nauwe samenwerking) gelijke stemrechten worden toegekend, in de mate dat de bevoegdheden van de Raad van Bestuur van de ECB gevrijwaard blijven. Uw rapporteur stelt ook andere amendementen voor om een gelijke behandeling maximaal te garanderen.

De ECB heeft de mogelijkheid om de nauwe samenwerking met een niet-eurozone lidstaat te beëindigen indien zij van mening is dat niet langer is voldaan aan de voorwaarden opgelegd



in het kader van de samenwerking. Gezien de mogelijk verregaande consequenties hiervan pleit uw rapporteur voor een meer gefaseerd sanctiesysteem, waarbij aan een niet-eurozone lidstaat eerst een waarschuwing wordt gegeven waardoor deze zich niet alleen kan verdedigen, maar ook een gelegenheid heeft om zich in orde te stellen met de engagementen waartoe hij zich verbonden heeft.

Met het oog op de transparantie en de gelijke behandeling van de eurozone en niet-eurozone lidstaten dienen de rol, de bevoegdheden en de samenstelling van het Stuurcomité dat door de Raad van Toezicht kan worden opgericht, verduidelijkt te worden. Uw rapporteur voorziet in een Stuurcomité van zes personen, de Voorzitter van de Raad van Toezicht uitgezonderd, waarin 2 vertegenwoordigers van de ECB zetelen en 4 nationale toezichthouders van deelnemende lidstaten, geproportioneerd verdeeld tussen nationale toezichthouders uit eurozone lidstaten en uit niet-eurozone lidstaten in nauwe samenwerking.

Uw rapporteur wijst er tot slot op dat de toekenning aan het SSM van toezichttaken voor slechts een deel van de lidstaten van de Unie, de werking van de interne markt niet mag belemmeren. De oprichting van het SSM mag de goede EBA werking niet verhinderen. EBA moet derhalve zijn taken ook ten aanzien van de ECB kunnen uitoefenen. Uw rapporteur versterkt de EBA-participatie bij een aantal aan de ECB toegekende taken en verduidelijkt dat de ECB niet op het bevoegdheidsdomein mag komen van de EBA.

### **Scheiding van de monetaire beleidstaken**

Uw rapporteur voorziet in voorstellen om de scheiding tussen de monetaire en toezichttaken nog scherper te stellen, door te voorzien in een apart secretariaat en aparte rapportelijnen. Zoals hieronder uiteengezet, voorziet uw rapporteur ook dat de Voorzitter van de Raad van Toezicht extern wordt geselecteerd.

### **Verantwoordingsplicht en verslaglegging**

Naast de verslagleggingsverplichtingen die zijn opgenomen in het Commissievoorstel stelt uw rapporteur een aantal amendementen voor die de democratische legitimering en verantwoordingsplicht versterken :

- de voorzitter van de Raad van Toezicht (man/vrouw) moet geselecteerd worden op grond van een open selectieprocedure. Er moet gezocht worden naar iemand met een bijzondere expertise inzake financiële instellingen en prudentieel toezicht. Het Parlement dient in te stemmen met zijn/haar benoeming. Deze aanpak zorgt voor een democratische legitimiteit die veel sterker is dan wanneer de Voorzitter van de Toezichtraad wordt verkozen uit de Raad van Bestuur/Directiecomité van de ECB,
- het mandaat van de Voorzitter van de Raad van Toezicht bedraagt vijf jaar en kan één keer worden verlengd. Het mandaat van de Vice-Voorzitter van de Raad van Toezicht, gekozen uit de Raad van Bestuur van de ECB, bedraagt vijf jaar en is niet verlengbaar,
- de Raad van Toezicht moet desgevraagd in de nationale parlementen van de deelnemende lidstaten toelichting verschaffen over binnen het SSM genomen beslissingen,
- de mogelijkheid wordt in het leven geroepen om het bureau van de Economische en Monetaire commissie van het Parlement, onder voorwaarde van strikte geheimhouding, zo nodig meer gedetailleerde informatie ter beschikking te stellen over bepaalde toezichttaken van de Raad van Toezicht,

- er wordt onderstreept dat de Raad van Toezicht, als onderdeel van het ECB, krachtens artikel 342 TFEU onderworpen is aan verordening nr 1 tot regeling van het taalgebruik binnen de EEG,
- er wordt onderstreept dat ingevolge artikel 263 TFEU het Hof van Justitie de wettigheid kan nagaan van de wetgevingshandelingen van de ECB die beogen rechtsgevolgen ten aanzien van derden te hebben, voor zover het geen aanbevelingen of adviezen betreft,
- tot slot wordt gewezen op het recht van het Europees Parlement om onder de voorwaarden artikel 226 TFEU zo nodig een tijdelijke enquêtecommissie in te stellen om vermeende inbreuken op het recht van de Unie of gevallen van wanbeheer bij de toepassing van het recht van de Unie te onderzoeken.