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Price: EUR 4

⁽¹⁾ Text with EEA relevance

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 1021/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 9 October 2013****amending Directives 1999/4/EC and 2000/36/EC of the European Parliament and of the Council and Council Directives 2001/111/EC, 2001/113/EC and 2001/114/EC as regards the powers to be conferred on the Commission****(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 43(2) and 114(1) 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 Economic and Social Committee ⁽¹⁾,

Acting in accordance with the ordinary legislative procedure ⁽²⁾,

Whereas:

- (1) Directive 1999/4/EC of the European Parliament and of the Council of 22 February 1999 relating to coffee extracts and chicory extracts ⁽³⁾, Directive 2000/36/EC of the European Parliament and of the Council of 23 June 2000 relating to cocoa and chocolate products intended for human consumption ⁽⁴⁾, Council Directive 2001/111/EC of 20 December 2001 relating to certain

sugars intended for human consumption ⁽⁵⁾, Council Directive 2001/113/EC of 20 December 2001 relating to fruit jams, jellies and marmalades and sweetened chestnut purée intended for human consumption ⁽⁶⁾ and Council Directive 2001/114/EC of 20 December 2001 relating to certain partly or wholly dehydrated preserved milk for human consumption ⁽⁷⁾ confer powers on the Commission in order to implement some of the provisions of those Directives. Those powers have been exercised in accordance with the procedures laid down in Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ⁽⁸⁾. It is appropriate, following the entry into force of the Treaty of Lisbon, to align that conferral of powers to Article 290 of the Treaty on the Functioning of the European Union (TFEU).

- (2) In particular, Directives 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC confer powers on the Commission to adopt measures necessary for the implementation of those Directives relating to adaptation to technical progress. Such measures are currently subject to the regulatory procedure with scrutiny in the case of Directive 2000/36/EC, and to the regulatory procedure in the case of Directives 2001/111/EC, 2001/113/EC and 2001/114/EC. It is appropriate, following the entry into force of the Treaty of Lisbon, to align that conferral of powers to Article 290 TFEU and the scope of those powers should be reviewed.

- (3) The Annexes to Directives 2000/36/EC, 2001/111/EC and 2001/113/EC contain technical elements which might have to be adapted or updated in order to take

⁽¹⁾ OJ C 229, 31.7.2012, p. 143.

⁽²⁾ Position of the European Parliament of 11 September 2013 (not yet published in the Official Journal) and decision of the Council of 26 September 2013.

⁽³⁾ OJ L 66, 13.3.1999, p. 26.

⁽⁴⁾ OJ L 197, 3.8.2000, p. 19.

⁽⁵⁾ OJ L 10, 12.1.2002, p. 53.

⁽⁶⁾ OJ L 10, 12.1.2002, p. 67.

⁽⁷⁾ OJ L 15, 17.1.2002, p. 19.

⁽⁸⁾ OJ L 184, 17.7.1999, p. 23.

account of developments in relevant international standards. However, Directives 2000/36/EC and 2001/111/EC do not confer on the Commission appropriate powers to promptly amend the Annexes thereto in order to take account of such developments. Therefore, in order to ensure the consistent implementation of Directives 2000/36/EC and 2001/111/EC, additional powers to amend Sections C and D of Annex I to Directive 2000/36/EC and Part B of the Annex to Directive 2001/111/EC should be delegated to the Commission to take account of developments in relevant international standards. Furthermore, Directive 2001/113/EC confers on the Commission powers to bring that Directive into line with developments in relevant international standards in accordance with the regulatory procedure. It is appropriate, following the entry into force of the Treaty of Lisbon, to align that conferral of powers to Article 290 TFEU and the scope of those powers should be reviewed.

- (4) Therefore, in order to take account of technical progress and developments in relevant international standards, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of the following: amending Sections C and D of Annex I to Directive 2000/36/EC; amending Part B of the Annex to Directive 2001/111/EC; and amending Annex II and Part B of Annex III to Directive 2001/113/EC. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (5) Following the adoption of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽¹⁾, which applies to all stages of production, processing and distribution of food and feed at Union and national level, general Union provisions on foodstuffs apply directly to the products covered by Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC. It is therefore no longer necessary for the Commission to have the powers to align the provisions of those Directives to the general Union provisions on foodstuffs. The provisions conferring such powers should therefore be deleted.
- (6) This Regulation is limited to aligning the existing conferral of powers on the Commission under Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC to Article 290 TFEU and, where appropriate, to reviewing the scope of those powers.

Since it remains the case that the objectives of those Directives cannot be sufficiently achieved by the Member States and can therefore be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve its objectives.

- (7) Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC should therefore be amended accordingly.
- (8) Since the amendments made to Directives 1999/4/EC, 2000/36/EC, 2001/111/EC, 2001/113/EC and 2001/114/EC concern Commission powers only, they do not need to be transposed by the Member States,

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Directive 1999/4/EC

Articles 4 and 5 of Directive 1999/4/EC are deleted.

Article 2

Amendments to Directive 2000/36/EC

Directive 2000/36/EC is hereby amended as follows:

- (1) Article 5 is replaced by the following:

'Article 5

For the purposes of taking into account technical progress and developments in relevant international standards, the Commission shall be empowered to adopt delegated acts in accordance with Article 6 to amend Sections C and D of Annex I.;

- (2) Article 6 is replaced by the following:

'Article 6

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

⁽¹⁾ OJ L 31, 1.2.2002, p. 1.

2. The power to adopt delegated acts referred to in Article 5 shall be conferred on the Commission for a period of five years from 18 November 2013. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 5 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 5 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months from the date of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 3

Amendments to Directive 2001/111/EC

Directive 2001/111/EC is hereby amended as follows:

(1) Article 4 is replaced by the following:

'Article 4

For the purposes of taking into account technical progress and developments in relevant international standards, the Commission shall be empowered to adopt delegated acts in accordance with Article 5 to amend Part B of the Annex.;

(2) Article 5 is replaced by the following:

'Article 5

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 4 shall be conferred on the Commission for a period of five years from 18 November 2013. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 4 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 4 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months from the date of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.;

Article 4

Amendments to Directive 2001/113/EC

Directive 2001/113/EC is hereby amended as follows:

(1) Article 5 is replaced by the following:

'Article 5

For the purposes of taking into account technical progress and developments in relevant international standards, the Commission shall be empowered to adopt delegated acts in accordance with Article 6 to amend Annex II and Part B of Annex III.;

(2) Article 6 is replaced by the following:

Article 6

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 5 shall be conferred on the Commission for a period of five years from 18 November 2013. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Article 5 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 5 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months from the date of notification of that act to the European Parliament and the Council or if before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 5

Amendments to Directive 2001/114/EC

Articles 5 and 6 of Directive 2001/114/EC are deleted.

Article 6

Entry into force

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

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

Done at Strasbourg, 9 October 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
V. LEŠKEVIČIUS

**REGULATION (EU) No 1022/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 22 October 2013**

amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Central Bank ⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

(1) On 29 June 2012, the Euro Area Heads of State or Government called on the Commission to present proposals to provide for a single supervisory mechanism involving the European Central Bank (ECB). In its conclusions of 29 June 2012, the European Council invited its President to develop, in close collaboration with the President of the Commission, the President of the Eurogroup and the President of the ECB, a specific and time-bound road map for the achievement of a genuine economic and monetary union, which includes concrete proposals on preserving the unity and integrity of the internal market in financial services.

(2) Provision for a single supervisory mechanism is the first step towards the creation of a European banking union, underpinned by a true single rulebook for financial services and new frameworks for deposit insurance and for resolution.

(3) In order to provide for a single supervisory mechanism, Council Regulation (EU) No 1024/2013 ⁽⁴⁾ confers specific tasks on the ECB concerning policies relating to the prudential supervision of credit institutions in Member States whose currency is the euro and allows other Member States to establish close cooperation with the ECB.

(4) The conferral of supervisory tasks on the ECB relating to credit institutions in some of the Member States should not in any way hamper the functioning of the internal market for financial services. The European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council ⁽⁵⁾, should therefore maintain its role and retain all its existing powers and tasks: it should continue to develop and to contribute to the consistent application of the single rulebook applicable to all Member States and to enhance convergence of supervisory practices across the Union as a whole.

(5) It is crucial that the banking union contain democratic accountability mechanisms.

(6) When carrying out the tasks conferred on it, and with due regard to the objective of ensuring the safety and soundness of credit institutions, EBA should have full regard to the diversity of credit institutions and their size and business models, as well as to the systemic benefits of diversity in the European banking industry.

(7) In order to promote best supervisory practices in the internal market, it is fundamentally important that the single rulebook be accompanied by a European supervisory handbook on the supervision of financial institutions, drawn up by EBA in consultation with the competent authorities. That supervisory handbook should identify best practices across the Union as regards supervisory methodologies and processes to achieve adherence to core international and Union principles. The handbook should not take the form of legally binding acts or restrict judgement-led supervision. It should cover all matters which are within EBA's remit, including, to the extent applicable, consumer protection and the fight against money laundering. It should set out metrics and methodologies for risk assessment, early

⁽¹⁾ OJ C 30, 1.2.2013, p. 6.

⁽²⁾ OJ C 11, 15.1.2013, p. 34.

⁽³⁾ Position of the European Parliament of 12 September 2013 (not yet published in the Official Journal) and decision of the Council of 15 October 2013.

⁽⁴⁾ Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (See page 63 of this Official Journal).

⁽⁵⁾ OJ L 331, 15.12.2010, p. 12.

warnings and criteria for supervisory action. Competent authorities should use the handbook. The use of the handbook should be considered as a significant element in the assessment of the convergence of supervisory practices and for the peer review under Regulation (EU) No 1093/2010.

- (8) EBA should be able to request information from financial institutions in accordance with Regulation (EU) No 1093/2010 in relation to any information to which those financial institutions have legal access, including information held by persons remunerated by those financial institutions for carrying out relevant activities, audits provided to those financial institutions by external auditors and copies of relevant documents, books and records.
- (9) Requests for information by EBA should be duly justified and reasoned. Objections to specific requests for information on grounds of non-compliance with Regulation (EU) No 1093/2010 should be raised in accordance with the relevant procedures. Where an addressee of a request for information raises such objections, this should not absolve him from providing the information requested. The Court of Justice of the European Union should be competent to decide, in accordance with the procedures set out in the Treaty on the Functioning of the European Union, whether a specific request for information by EBA complies with that Regulation.
- (10) The internal market and the cohesion of the Union should be secured and in this context concerns relating to EBA's governance and voting arrangements should be considered carefully and the equal treatment between Member States participating in the Single Supervisory Mechanism (SSM) as established in Regulation (EU) No 1024/2013 and other Member States should be guaranteed.
- (11) Since EBA, in which all Member States participate with equal rights, was established with the aim of developing and contributing towards the consistent application of the single rulebook and of enhancing the coherence of supervisory practices within the Union and since the ECB has a leading role within the SSM, EBA should be equipped with adequate instruments to enable it to carry out efficiently the tasks conferred on it concerning the integrity of the internal market.
- (12) In view of the supervisory tasks conferred on the ECB by Regulation (EU) No 1024/2013, EBA should be able to carry out its tasks also in relation to the ECB in the same manner as in relation to the other competent authorities. In particular, existing mechanisms for settlement of disagreements and actions in emergency situations should be adjusted accordingly to remain effective.
- (13) In order to be able to perform its facilitating and coordinating role in emergency situations, EBA should be fully informed of any relevant developments, and should be invited to participate as an observer in any relevant gathering by the relevant competent authorities, including the right to take the floor or to make any other contributions.
- (14) In order to ensure that the interests of all Member States are adequately taken into account and to allow for the proper functioning of EBA with a view to maintaining and deepening the internal market for financial services, the voting arrangements within its Board of Supervisors should be adapted.
- (15) Decisions concerning breaches of Union law and concerning the settlement of disagreements should be examined by an independent panel composed of voting members of the Board of Supervisors which do not have any conflicts of interest, appointed by the Board of Supervisors. The decisions proposed by the panel to the Board of Supervisors should be adopted by a simple majority of the voting members of the Board of Supervisors, which should include a simple majority of its members from competent authorities of Member States participating in the SSM ("participating Member States") and a simple majority of its members from competent authorities of Member States that are not participating Member States ("non-participating Member States").
- (16) Decisions concerning actions in emergency situations should be adopted by a simple majority of the Board of Supervisors, which should include a simple majority of its members from competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States.
- (17) Decisions concerning the acts specified in Articles 10 to 16 of Regulation (EU) No 1093/2010 and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI of that Regulation should be adopted by a qualified majority of the Board of Supervisors, which should include at least a simple majority of its members from competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States.
- (18) EBA should develop rules of procedure for the panel that ensure its independence and objectivity.
- (19) The composition of the Management Board should be balanced and proper representation of non-participating Member States should be ensured.

- (20) Appointments of the members of EBA internal bodies and committees should ensure a geographical balance among Member States.
- (21) In order to ensure the proper functioning of EBA and adequate representation of all Member States, the voting arrangements, the composition of the Management Board, and the composition of the independent panel should be monitored. They should be reviewed after an appropriate period of time, taking into account any experience gained and developments.
- (22) No Member State or group of Member States should be discriminated against, directly or indirectly, as a venue for financial services.
- (23) EBA should be provided with appropriate financial and human resources to enable it adequately to carry out any additional tasks conferred on it under this Regulation. The procedure for the establishment, implementation and control of its budget, as set out in Articles 63 and 64 of Regulation (EU) No 1093/2010, should take due account of those additional tasks. EBA should ensure that the highest standards of efficiency are met.
- (24) Since the objectives of this Regulation, namely ensuring a high level of effective and consistent prudential regulation and supervision across all Member States, protecting the integrity, efficiency and orderly functioning of the internal market, and maintaining the stability of the financial system, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (25) Regulation (EU) No 1093/2010 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 1093/2010 is amended as follows:

- (1) Article 1 is amended as follows:

- (a) paragraph 2 is replaced by the following:

"2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 94/19/EC, Directive 2002/87/EC, Regulation (EC) No 1781/2006, Regulation (EU) No 575/2013 of

the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms (*), Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms(**) and, to the extent that those acts apply to credit and financial institutions and the competent authorities that supervise them, within the relevant parts of Directive 2002/65/EC, Directive 2005/60/EC, Directive 2007/64/EC and Directive 2009/110/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority. The Authority shall also act in accordance with Council Regulation (EU) No 1024/2013 (**).

(*) OJ L 176, 27.6.2013, p. 1.

(**) OJ L 176, 27.6.2013, p. 338.

(***) Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, p. 63).";

- (b) in paragraph 5, the second subparagraph is replaced by the following:

"For those purposes, the Authority shall contribute to the consistent, efficient and effective application of the acts referred to in paragraph 2, foster supervisory convergence, provide opinions to the European Parliament, the Council and the Commission, and undertake economic analyses of the markets to promote the achievement of the Authority's objective.";

- (c) in paragraph 5, the fourth subparagraph is replaced by the following:

"When carrying out its tasks, the Authority shall act independently, objectively and in a non-discriminatory manner, in the interests of the Union as a whole.";

- (2) in Article 2(2), point (f) is replaced by the following:

"(f) the competent or supervisory authorities as specified in the Union acts referred to in Article 1(2) of this Regulation, including the European Central Bank with regard to the tasks conferred on it by Regulation (EU) No 1024/2013, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.";

(3) Article 3 is replaced by the following:

"Article 3

Accountability of the Authorities

The Authorities referred to in points (a) to (d) of Article 2(2) shall be accountable to the European Parliament and to the Council. The European Central Bank shall be accountable to the European Parliament and to the Council with regard to the exercise of the supervisory tasks conferred on it by Regulation (EU) No 1024/2013 in accordance with that Regulation.";

(4) in point (2) of Article 4, point (i) is replaced by the following:

"(i) competent authorities as defined in point (40) of Article 4(1) of Regulation (EU) No 575/2013, including the European Central Bank with regard to matters relating to the tasks conferred on it by Regulation (EU) No 1024/2013, in Directive 2007/64/EC, and as referred to in Directive 2009/110/EC;"

(5) Article 8 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (a) is replaced by the following:

"(a) to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, in particular by providing opinions to the Union institutions and by developing guidelines, recommendations, draft regulatory and implementing technical standards, and other measures which shall be based on the legislative acts referred to in Article 1(2);

(aa) to develop and maintain up to date, taking into account, inter alia, changing business practices and business models of financial institutions, a European supervisory handbook on the supervision of financial institutions in the Union as a whole, which sets out supervisory best practices for methodologies and processes;"

(ii) point (c) is replaced by the following:

"(c) to facilitate the delegation of tasks and responsibilities among competent authorities;"

(iii) point (i) is replaced by the following:

"(i) to promote the consistent and coherent functioning of colleges of supervisors, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans, providing a high level of protection to depositors and investors throughout the Union and developing methods for the resolution of failing financial institutions and an assessment of the need for appropriate financing instruments, with a view to fostering cooperation between competent authorities involved in the management of crisis concerning cross-border institutions that have the potential to pose a systemic risk, in accordance with Articles 21 to 26;"

(iv) point (l) is deleted;

(b) the following paragraph is inserted:

"1a. When carrying out its tasks in accordance with this Regulation, the Authority shall:

(a) use the full powers available to it; and

(b) with due regard to the objective to ensure the safety and soundness of credit institutions, take fully into account the different types, business models and sizes of credit institutions;"

(c) the following paragraph is inserted:

"2a. When carrying out the tasks referred to in paragraph 1 and exercising the powers referred to in paragraph 2, the Authority shall have due regard to the principles of better regulation, including the results of cost-benefit analyses produced in accordance with this Regulation;"

(6) Article 9 is amended as follows:

(a) paragraph 4 is replaced by the following:

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

- (b) in paragraph 5, the fourth subparagraph is replaced by the following:

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

- (7) Article 18 is amended as follows:

- (a) paragraph 1 is replaced by the following:

"1. In the case of adverse developments which may seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union, the Authority shall actively facilitate and, where deemed necessary, coordinate any actions undertaken by the relevant competent supervisory authorities.

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

- (b) paragraph 3 is replaced by the following:

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

- (8) in Article 19(1), the first subparagraph is replaced by the following:

"1. Without prejudice to the powers laid down in Article 17, where a competent authority disagrees about the procedure or content of an action or inaction of another competent authority in cases specified in the Union acts referred to in Article 1(2), the Authority, at the request of one or more of the competent authorities

concerned, may assist the competent authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 of this Article.";

- (9) the following Article is inserted:

"Article 20a

Convergence of supervisory review process

The Authority shall promote, within the scope of its powers, convergence of the supervisory review and evaluation process in accordance with Directive 2013/36/EU in order to bring about strong supervisory standards in the Union.";

- (10) Article 21 is amended as follows:

- (a) paragraph 1 is replaced by the following:

"1. The Authority shall promote, within the scope of its powers, the efficient, effective and consistent functioning of the colleges of supervisors referred to in Regulation (EU) No 575/2013 and Directive 2013/36/EU and foster the consistency of the application of Union law among the colleges of supervisors. With the objective of converging supervisory best practices, the Authority shall promote joint supervisory plans and joint examinations, and staff from the Authority may participate in the activities of the colleges of supervisors, including on-site examinations, carried out jointly by two or more competent authorities.";

- (b) in paragraph 2, the first subparagraph is replaced by the following:

"2. The Authority shall lead in ensuring a consistent functioning of colleges of supervisors for cross-border institutions across the Union, taking account of the systemic risk posed by financial institutions referred to in Article 23, and shall, where appropriate, convene a meeting of a college.";

- (11) in Article 22, the following paragraph is inserted:

"1a. At least annually, the Authority shall consider whether it is appropriate to carry out Union-wide assessments of the resilience of financial institutions, in accordance with Article 32, and shall inform the European Parliament, the Council and the Commission of its reasoning. Where such Union-wide assessments are carried out and the Authority considers it appropriate to do so, it shall disclose the results for each participating financial institution.";

(12) in Article 25, paragraph 1 is replaced by the following:

"1. The Authority shall contribute to, and participate actively in, the development and coordination of effective, consistent and up-to-date recovery and resolution plans for financial institutions. The Authority shall also, where provided for in the Union acts referred to in Article 1(2), assist in developing procedures in emergency situations and preventive measures to minimise the systemic impact of any failure.";

(13) in Article 27(2), the first subparagraph is replaced by the following:

"2. The Authority shall provide its assessment of the need for a system of coherent, robust and credible funding mechanisms, with appropriate financing instruments linked to a set of coordinated crisis management arrangements.";

(14) in Article 29(2), the following subparagraph is added:

"For the purpose of building a common supervisory culture, the Authority shall develop and maintain up to date, taking into account, inter alia, changing business practices and business models of financial institutions, a European supervisory handbook on the supervision of financial institutions for the Union as a whole. The European supervisory handbook shall set out supervisory best practices for methodologies and processes.";

(15) in Article 30, paragraph 3 is replaced by the following:

"3. On the basis of a peer review, the Authority may issue guidelines and recommendations pursuant to Article 16. In accordance with Article 16(3), the competent authorities shall endeavour to follow those guidelines and recommendations. When developing draft regulatory technical or implementing technical standards in accordance with Articles 10 to 15, the Authority shall take into account the outcome of the peer review, along with any other information acquired in carrying out its tasks, in order to ensure convergence of the standards and practices of the highest quality.

3a. The Authority shall submit an opinion to the Commission where the peer review or any other information acquired in carrying out its tasks shows that a legislative initiative is necessary to ensure the further harmonisation of prudential rules.";

(16) in Article 31, the second subparagraph is amended as follows:

(a) point (b) is replaced by the following:

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

(b) points (d), (e) and (f) are replaced by the following:

"(d) notifying the ESRB, the Council and the Commission of any potential emergency situations without delay;

(e) taking all appropriate measures in case of developments which may jeopardise the functioning of the financial markets with a view to the coordination of actions undertaken by relevant competent authorities;

(f) centralising information received from competent authorities in accordance with Articles 21 and 35 as the result of the regulatory reporting obligations of institutions. The Authority shall share that information with the other competent authorities concerned.";

(17) Article 32 is amended as follows:

(a) paragraph 2 is replaced by the following:

"2. The Authority shall, in cooperation with the ESRB, initiate and coordinate Union-wide assessments of the resilience of financial institutions to adverse market developments. To that end it shall develop:

(a) common methodologies for assessing the effect of economic scenarios on an institution's financial position;

(b) common approaches to communication on the outcomes of those assessments of the resilience of financial institutions;

(c) common methodologies for assessing the effect of particular products or distribution processes on an institution; and

(d) common methodologies for asset evaluation, as necessary, for the purpose of the stress testing.";

(b) the following paragraphs are inserted:

"3a. For the purpose of running the Union-wide assessments of the resilience of financial institutions under this Article, the Authority may, in accordance with Article 35 and subject to the conditions set out therein, request information directly from those financial institutions. It may also require competent authorities to conduct specific reviews. It may request competent authorities to carry out on-site inspections, and may participate in such on-site inspections in accordance with Article 21 and subject to the conditions set out therein, in order to ensure comparability and reliability of methods, practices and results.

3b. The Authority may request that the competent authorities require that financial institutions subject to an independent audit information that they must provide under paragraph 3a.";

(18) Article 35 is amended as follows:

(a) paragraphs 1, 2 and 3 are replaced by the following:

"1. At the request of the Authority, the competent authorities shall provide the Authority with all the necessary information, in specified formats, to carry out the tasks conferred on it by this Regulation, provided that they have legal access to the relevant information. The information shall be accurate, coherent, complete and timely.

2. The Authority may also request information to be provided at recurring intervals and in specified formats or by way of comparable templates approved by the Authority. Such requests shall, where possible, be made using common reporting formats.

3. Upon a duly justified request from a competent authority, the Authority shall provide any information that is necessary to enable the competent authority to carry out its tasks in accordance with the professional secrecy obligations laid down in sectoral legislation and in Article 70.";

(b) in paragraph 6, the first subparagraph is replaced by the following:

"6. Where complete or accurate information is not available or is not made available in a timely fashion

under paragraph 1 or 5, the Authority may request information, by way of a duly justified and reasoned request, directly from:

- (a) relevant financial institutions;
- (b) holding companies or branches of a relevant financial institution;
- (c) non-regulated operational entities within a financial group or conglomerate that are significant to the financial activities of the relevant financial institutions.

The addressees of such a request shall provide the Authority promptly and without undue delay with clear, accurate and complete information.";

(c) the following paragraph is added:

"7a. Where the addressees of a request under paragraph 6 do not provide clear, accurate and complete information promptly, the Authority shall inform the European Central Bank where applicable and the relevant authorities in the Member States concerned which, subject to national law, shall cooperate with the Authority with a view of ensuring full access to the information and to any originating documents, books or records to which the addressees have legal access in order to verify the information.";

(19) Article 36 is amended as follows:

(a) in paragraph 4, the third subparagraph is replaced by the following:

"If the Authority does not act on a recommendation, it shall explain to the Council and to the ESRB its reasons for not doing so. The ESRB shall inform the European Parliament thereof in accordance with Article 19(5) of Regulation (EU) No 1092/2010.";

(b) in paragraph 5, the third subparagraph is replaced by the following:

"Where the competent authority, in accordance with Article 17(1) of Regulation (EU) No 1092/2010, informs the Council and the ESRB of the actions it has undertaken in response to a recommendation of the ESRB, it shall take due account of the views of the Board of Supervisors and shall also inform the Commission.";

(20) Article 37 is amended as follows:

- (a) in paragraph 1, the second subparagraph is replaced by the following:

"The Banking Stakeholder Group shall meet on its own initiative as necessary, and in any event at least four times a year.";

- (b) in paragraph 4, the first subparagraph is replaced by the following:

"4. The Authority shall provide all necessary information subject to professional secrecy as set out in Article 70 and ensure adequate secretarial support for the Banking Stakeholder Group. Adequate compensation shall be provided to members of the Banking Stakeholder Group representing non-profit organisations, excluding industry representatives. Such compensation shall be at least equivalent to the reimbursement rates of officials pursuant to Title V, Chapter 1, Section 2 of the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (*) (Staff Regulations). The Banking Stakeholder Group may establish working groups on technical issues. Members of the Banking Stakeholder Group shall serve for a period of two-and-a-half years, following which a new selection procedure shall take place.

(*) OJ L 56, 4.3.1968, p. 1.";

(21) Article 40 is amended as follows:

- (a) in paragraph 1, point (d) is replaced by the following:

"(d) one representative nominated by the Supervisory Board of the European Central Bank, who shall be non-voting;"

- (b) the following paragraph is inserted:

"4a. In discussions not relating to individual financial institutions, as provided in Article 44(4), the representative nominated by the Supervisory Board of the European Central Bank may be accompanied by a representative of the European Central Bank with expertise on central banking tasks.";

(22) In Article 41, paragraphs 2, 3 and 4 are replaced by the following:

"1a. For the purposes of Article 17, the Board of Supervisors shall convoke an independent panel, consisting of the Chairperson of the Board of Supervisors and six other members, who are not representatives of the competent authority alleged to have breached Union law and who have neither any interest in the matter nor direct links to the competent authority concerned.

Each member of the panel shall have one vote.

Decisions of the panel shall be taken where at least four members vote in favour.

2. For the purposes of Article 19, the Board of Supervisors shall convoke an independent panel consisting of the Chairperson of the Board of Supervisors, and of six other members who are not representatives of the competent authorities party to the disagreement and who have neither any interest in the conflict nor direct links to the competent authorities concerned.

Each member of the panel shall have one vote.

Decisions of the panel shall be taken where at least four members vote in favour.

3. The panels referred to in this Article shall propose decisions under Article 17 or Article 19 for final adoption by the Board of Supervisors.

4. The Board of Supervisors shall adopt rules of procedure for the panels referred to in this Article.";

(23) in Article 42, the following paragraph is added:

"The first and second paragraphs are without prejudice to the tasks conferred on the European Central Bank by Regulation (EU) No 1024/2013.";

(24) Article 44 is amended as follows:

- (a) paragraph 1 is replaced by the following:

"1. Decisions of the Board of Supervisors shall be taken by a simple majority of its members. Each member shall have one vote.

With regard to the acts specified in Articles 10 to 16 and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union and in Article 3 of Protocol No 36 on transitional provisions, which shall include at least a simple majority of its members from competent authorities of Member States that are participating Member States as defined in point 1 of Article 2 of Regulation (EU) No 1024/2013 (participating Member States) and a simple majority of its members from competent authorities of Member States that are not participating Member States as defined in point 1 of Article 2 of Regulation (EU) No 1024/2013 (non-participating Member States).

With regard to decisions in accordance with Articles 17 and 19, the decision proposed by the panel shall be adopted by a simple majority of the voting members of the Board of Supervisors, which shall include a simple majority of its members from competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States.

By way of derogation from the third subparagraph, from the date when four or fewer voting members are from competent authorities of non-participating Member States, the decision proposed by the panel shall be adopted by a simple majority of the voting members of the Board of Supervisors, which shall include at least one vote from members from competent authorities of non-participating Member States.

Each voting member shall have one vote.

With regard to the composition of the panel in accordance with Article 41(2), the Board of Supervisors shall strive for consensus. In the absence of consensus, decisions of the Board of Supervisors shall be taken by a majority of three quarters of its voting members. Each voting member shall have one vote.

With regard to decisions adopted under Article 18(3) and (4), and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a simple majority of its voting members, which shall include a simple majority of its members from competent authorities of participating Member States and a simple majority of its members from competent authorities of non-participating Member States.";

(b) paragraph 4 is replaced by the following:

"4. The non-voting members and the observers, with the exception of the Chairperson, the Executive Director and the European Central Bank representative nominated by its Supervisory Board, shall not attend any discussions within the Board of Supervisors relating to individual financial institutions, unless otherwise provided for in Article 75(3) or in the acts referred to in Article 1(2).";

(c) the following paragraph is added:

"4a. The Authority's Chair shall have the prerogative to call a vote at any time. Without prejudice to that power and to the effectiveness of the Authority's decision-making procedures, the Board of Supervisors of the Authority shall strive for consensus when taking its decisions.";

(25) in Article 45(1), the third subparagraph is replaced by the following:

"The term of office of the members elected by the Board of Supervisors shall be two-and-a-half years. That term may be extended once. The composition of the Management Board shall be balanced and proportionate and shall reflect the Union as a whole. The Management Board shall include at least two representatives of non-participating Member States. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.";

(26) in Article 47, paragraph 4 is replaced by the following:

"4. The Management Board shall adopt the Authority's staff policy plan and, pursuant to Article 68(2), the necessary implementing measures of the Staff Regulations.";

(27) the following Article is inserted:

"Article 49a

Expenses

The Chair shall make public meetings held and hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations.";

(28) the following Article is inserted:

"Article 52a

Expenses

The Executive Director shall make public meetings held and hospitality received. Expenses shall be recorded publicly in accordance with the Staff Regulations.";

(29) in Article 63, paragraph 7 is deleted;

(30) in Article 81, paragraph 3 is replaced by the following:

"3. Concerning the issue of direct supervision of institutions or infrastructures of pan-European reach and taking account of market developments, the stability of the internal market and the cohesion of the Union as a whole, the Commission shall draw up an annual report on the appropriateness of entrusting the Authority with further supervisory responsibilities in this area.";

(31) the following Article is inserted:

"Article 81a

Review of voting arrangements

From the date on which the number of non-participating Member States reaches four, the Commission shall review and report to the European Parliament, the European

Council and the Council on the operation of the voting arrangements described in Articles 41 and 44, taking into account any experience gained in the application of this Regulation.".

Article 2

Without prejudice to Article 81 of Regulation (EU) No 1093/2010, by 31 December 2015, the Commission shall publish a report on the application of the provisions of this Regulation in relation to:

(a) the composition of the Management Board; and

(b) the composition of the independent panels referred to in Article 41 of Regulation (EU) No 1093/2010, preparing decisions for the purposes of Articles 17 and 19 of that Regulation.

The report shall take into account in particular any developments in the number of participating Member States and shall examine whether in light of such developments any further adjustments of those provisions are necessary to ensure that EBA decisions are taken in the interest of maintaining and strengthening the internal market for financial services.

Article 3

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

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

Done at Strasbourg, 22 October 2013.

For the European Parliament

The President

M. SCHULZ

For the Council

The President

V. LEŠKEVIČIUS

REGULATION (EU, EURATOM) No 1023/2013 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**of 22 October 2013****amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 336 thereof,

Having regard to the Protocol on the Privileges and Immunities of the European Union, and in particular Article 12 thereof,

Having regard to the proposal from the European Commission, submitted following consultation with the Staff Regulations Committee,

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

Having regard to the opinion of the Court of Justice ⁽¹⁾,

Having regard to the opinion of the Court of Auditors ⁽²⁾,

Acting in accordance with the ordinary legislative procedure ⁽³⁾,

Whereas:

(1) The European Union, and its more than 50 institutions and agencies, should continue to be equipped with a high-quality European public administration, so as to enable it to achieve its objectives, implement its policies and activities and perform its tasks to the highest possible standard in accordance with the Treaties in order to meet the challenges, both internal and external, that it will face in the future and to serve the citizens of the Union.

(2) Consequently, it is necessary to ensure a framework for attracting, recruiting and maintaining highly qualified and

multilingual staff, drawn on the broadest possible geographical basis from among citizens of the Member States, and with due regard to gender balance, who are independent and who adhere to the highest professional standards, and to enable such staff to carry out their duties as effectively and efficiently as possible. In that respect, it is necessary to overcome the current difficulties experienced by the institutions in recruiting officials or staff from certain Member States.

(3) Given the size of the European civil service when measured against the objectives of the Union and its population, a decrease in the number of staff of the institutions and agencies of the Union should not lead to any impairment of the performance of their tasks, duties and functions in accordance with the obligations and powers under the Treaties. In this regard, there is a need for transparency in relation to the personnel costs incurred by each institution and agency with respect to all categories of staff employed by them.

(4) The European civil service is expected to live up to the highest standards of professional ethics and to remain independent at all times. To that end, Title II of the Staff Regulations ⁽⁴⁾, which provides a framework for rights and obligations, should be further clarified. Any failure by officials or former officials to comply with these obligations should render them liable to disciplinary action.

(5) The value of the European civil service lies equally in its cultural and linguistic diversity, which can only be ensured if appropriate balance is secured regarding officials' nationality. Recruitment and appointments should ensure that staff are employed on the broadest possible geographical basis from among the nationals of all Member States of the European Union without, however, posts being reserved for nationals of any specific Member State. To that end and in order to address possible significant imbalances between nationalities among officials which are not justified by objective criteria, each institution should be given the possibility to adopt justified and appropriate measures. Such measures should never result in recruitment criteria other than those based on merit. The Commission should report to the European Parliament and to the Council on the implementation of the appropriate measures by the institutions.

⁽¹⁾ Opinion of 22 March 2012 (not published in the Official Journal).

⁽²⁾ OJ C 205, 12.7.2012, p. 1.

⁽³⁾ Position of the European Parliament of 2 July 2013 (not yet published in the Official Journal) and decision of the Council of 10 October 2013.

⁽⁴⁾ Staff Regulations of Officials of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (OJ L 56, 4.3.1968, p. 1).

- (6) In order to facilitate recruitment on the broadest possible geographical basis, the institutions should strive to support multilingual and multicultural education for the children of their staff. It is desirable that a contribution by the Union to the financing of the European Schools, determined by the budgetary authority in accordance with the relevant rules, be charged to the budget of the Union. Where necessary in the interests of the functioning of the institutions, the Commission should be able to ask the competent authorities to reconsider the location of a new European School.
- (7) A broader aim should be to optimise the management of human resources in a European civil service characterised by its excellence, competence, independence, loyalty, impartiality and stability, as well as by cultural and linguistic diversity and attractive recruitment conditions.
- (8) Officials should serve a nine-month probationary period. When deciding on the establishment of an official, the appointing authority should take into account the report on the probationary period made at the end of that period and the probationer's conduct with respect to his obligations under the Staff Regulations. It should be possible for a report on the probationer to be made at any time if the work of the probationer has proved obviously inadequate. Otherwise a report should only be made at the end of the probationary period.
- (9) In the interest of guaranteeing that the purchasing power of officials and other servants of the European Union develops in parallel with that of national civil servants in central governments of the Member States, it is essential to preserve the principle of a multi-annual mechanism for pay update, known as 'the method', by ensuring its application until the end of 2023 with a review at the beginning of 2022, while including a mechanism for the provisional prolongation of the method. Moreover, in order to remedy the difficulties with the application of the method in the past, provision should be made for a method to allow for an automatic annual update of all salaries, pensions and allowances, including an automatic crisis clause. To that effect, the relevant amounts contained in the Staff Regulations and the Conditions of Employment of Other Servants of the European Union should be understood as reference amounts which are subject to a regular and automatic update. Those updated amounts should be published by the Commission in the C series of the *Official Journal of the European Union* for information purposes. This update mechanism should equally be used for all other instances where such an update is provided for.
- (10) It is important to ensure the quality of statistical data used for updating remuneration and pensions. In accordance with the principle of impartiality, national statistical institutes or other appropriate authorities in the Member States should collect the data at national level and transmit them to Eurostat.
- (11) The potential advantages for officials and other servants of the European Union of the application of the method should be balanced by the reintroduction of the system of a 'levy'. As in the case of the method, the application of the solidarity levy may be provisionally prolonged. It seems appropriate in the present circumstances to increase the solidarity levy, as compared with the level of the special levy applicable from 2004 to 2012, and to provide for a more progressive rate. This is to take account of the particularly difficult economic and social context in the Union, and its ramifications for public finances throughout the Union. The need to consolidate public finances in the Union, including in the short term, requires a swift and particular effort of solidarity on the part of the staff of the institutions of the Union. Such a solidarity levy should thus apply to all officials and other servants of the Union as from 1 January 2014.
- (12) In its conclusions of 8 February 2013 on the multi-annual financial framework, the European Council pointed out that the need to consolidate public finances in the short, medium and long term requires a particular effort by every public administration and its staff to improve efficiency and effectiveness and to adjust to the changing economic context. That call reiterated in fact the objective of the 2011 Commission proposal for amendment of the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Union, which strove to ensure cost-efficiency and acknowledged that challenges currently faced by the European Union require a particular effort by each and every public administration and each and every member of its staff to improve efficiency and to adjust to the changing economic and social context in Europe. The European Council called moreover, as part of the reform of the Staff Regulations, for the adjustment of remuneration and pensions of all staff of the Union institutions through the method to be suspended for two years and for the new solidarity levy to be reintroduced as part of the reform of the salary method.
- (13) In view of those conclusions and in order to respond to future budgetary constraints as well as to show solidarity on the part of the European civil service with the severe measures taken by Member States as a result of the unprecedented financial crisis and the particularly difficult social and economic context in the Member States and the Union as a whole, it is necessary to provide for suspension of the method for two years for all remuneration, pensions and allowances of officials and to apply the solidarity levy despite such suspension.

- (14) Demographic changes and the changing age structure of the population concerned require that the pension age be increased, subject however to transitional measures for officials and other servants of the European Union already in service. Those transitional measures are necessary in order to respect acquired rights of officials already in service who have contributed to the notional pension fund for European Union officials. The pension age should also be made more flexible by making it easier for staff to continue to work voluntarily until the age of 67 and by making it possible, in exceptional circumstances and under specific conditions, to work until the age of 70.
- (15) Since the European Union pension scheme is in actuarial balance and that balance has to be maintained in the short and in the long term, staff employed before 1 January 2014 should be compensated for their pension contribution by transitional measures, such as an adjusted accrual rate for the years of service after reaching pensionable age (Barcelona incentive) and by applying half of the reduction for early retirement between the age of 60 and the statutory retirement age.
- (16) Commonly accepted actuarial practice requires that a period of past observations between 20 and 40 years be used for interest rates and salary growth with a view to ensuring the balance of pension schemes. The moving averages for interest rates and salary growth should therefore be extended to 30 years with a transitional period of seven years.
- (17) The Council requested from the Commission a study and the submission of appropriate proposals on Article 5(4), Annex I, Section A, and Article 45(1) of the Staff Regulations with a view to establishing a clear link between responsibilities and grade and in order to ensure a greater emphasis on the level of responsibilities when comparing merits in the context of promotion.
- (18) Taking that request into account, it is appropriate that promotion to a higher grade should be made conditional on personal dedication, improvement of skills and competences, and the performance of duties the importance of which justifies the official's appointment to that higher grade.
- (19) The career stream in the AD and AST function groups should be restructured in such a way that the top grades will be reserved for a limited number of officials exercising the highest level of responsibilities. Therefore administrators can only progress as far as grade AD 12 unless they are appointed to a specific post above that grade, and grades AD 13 and 14 should be reserved for those staff whose roles entail significant responsibilities. Similarly, officials in grade AST 9 can be promoted to grade AST 10 only in accordance with the procedure laid down in Article 4 and Article 29(1) of the Staff Regulations.
- (20) With a view to adjusting career structures in the current domains of AST staff even further to different levels of responsibility and as an indispensable contribution to limiting administrative expenses, a new function group 'AST/SC' for secretarial and clerical staff should be introduced. Salaries and promotion rates should establish a suitable correlation between the level of responsibility and the level of remuneration. In this way it will be possible to preserve a stable and comprehensive European civil service. The Commission should assess and report on the scale and effects of introducing this new function group, taking particular account of the situation of women, so that the preservation of a stable and comprehensive European civil service can be ensured.
- (21) The minimum of two years in the grade before promotion of an official to the next higher grade is maintained in order to allow for faster promotions for high performers. Each institution should ensure that its internal human resources policies use the possibilities provided in the Staff Regulations to allow for appropriate careers for high-potential and high-performing officials.
- (22) Working hours applied in the institutions should be aligned with those in force in certain of the Member States of the European Union to compensate for the reduction of staff in the institutions. That alignment should take into account the working hours applied in the civil services of Member States. The introduction of a minimum number of weekly working hours will ensure that the staff employed by the institutions are able to carry out the work-load resulting from the European Union's policy objectives while, at the same time, harmonising working conditions in the institutions, in the interest of solidarity throughout the Union's civil service.
- (23) Flexible working-time arrangements are an essential element of a modern and efficient public administration allowing for family-friendly working conditions and enabling a suitable gender balance within the institutions. It is therefore necessary to introduce an explicit reference to those arrangements in the Staff Regulations.

- (24) The rules on travelling time and annual payment of travel expenses between the place of employment and the place of origin should be modernised, rationalised and linked with expatriate status in order to make their application simpler and more transparent. In particular, the annual travelling time should be replaced by home leave and limited to a maximum of two and a half days.
- (25) Likewise, the rules on the reimbursement of removal costs should be simplified in order to facilitate their application both for the administration and the staff members concerned. To that end, cost ceilings which take account of the official's or agent's family situation and of the average cost of removal and associated insurance should be introduced.
- (26) Some staff members frequently have to go on mission to the other principal places of work of their institution. These situations are at present not adequately taken into account in the rules on missions. These rules should therefore be adapted, in order to allow in such cases the reimbursement of accommodation costs on the basis of a flat-rate sum.
- (27) It is appropriate to modernise working conditions for staff employed in third countries and to render them more cost-effective whilst generating cost savings. Annual leave entitlements should be adjusted, and provision should be made for the possibility of including a wider range of parameters to fix the allowance for living conditions, without affecting the overall aim of generating cost savings. The conditions for granting the accommodation allowance should be revised to take better account of local conditions and to reduce the administrative burden.
- (28) It is appropriate to provide a more flexible framework for the employment of contract staff. The institutions of the Union should therefore be enabled to engage contract staff for a maximum period of six years in order to perform tasks under the supervision of officials or temporary staff. In addition, while the vast majority of officials will continue to be recruited on the basis of open competitions, the institutions should be authorised to organise internal competitions which may exceptionally and subject to specific conditions be open to contract staff.
- (29) Transitional arrangements should be laid down to enable the new rules and measures to be applied gradually, whilst respecting the acquired rights and legitimate expectations of the staff employed before the entry into force of these amendments to the Staff Regulations.
- (30) In common with other staff to whom the Staff Regulations apply, the staff of agencies are covered by the EU pension scheme. Agencies which are fully self-financed currently pay the employers' contribution to the scheme. In order to ensure budgetary transparency and more balanced burden-sharing, agencies which are partly financed from the general budget of the European Union should pay that part of the employers' contributions which corresponds to the proportion between the agency's revenues without the subsidy from the general budget of the European Union and its total revenues. As this new provision may require the adjustment of the relevant rules on the fees collected by the agencies, it should apply only with effect from 1 January 2016. Where appropriate, the Commission should submit proposals for the adaptation of those rules.
- (31) In the interest of simplification and of a consistent staff policy, the rules adopted by the Commission to implement the Staff Regulations should apply by analogy to the agencies. However, in order to ensure that the specific situation of agencies may, if necessary, be taken into account, agencies should be entitled to request the Commission's authorisation to adopt implementing rules which derogate from those adopted by the Commission, or not to apply the Commission's rules at all.
- (32) A register of all of the rules adopted to implement the Staff Regulations should be set up and administered within the Court of Justice of the European Union. That register, to be open to consultation by all institutions, agencies and Member States, will allow for transparency and promote a consistent application of the Staff Regulations.
- (33) In order to harmonise and clarify the rules on the adoption of implementing provisions, and having regard to their internal and administrative nature, it is appropriate to confer the relevant decision-making powers on the appointing authority and the authority authorised to conclude contracts.
- (34) Taking into account the high number of temporary staff within agencies and the need to define a consistent staff policy, it is necessary to create a new category of temporary staff and to lay down specific rules for that category.
- (35) The Commission should continue to monitor the budgetary situation of the Joint Sickness Insurance Scheme and take all necessary steps in the event of a structural imbalance of the system.

(36) Article 15 of the Protocol No 7 on Privileges and Immunities of the European Union provides that certain data of officials and other servants are to be communicated to the governments of the Member States.

(37) In order to achieve the objectives set out in the Staff Regulations, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission notably in respect of certain aspects of working conditions. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council,

HAVE ADOPTED THIS REGULATION:

Article 1

The Staff Regulations of Officials of the European Union are amended as follows:

(1) Article 1d is amended as follows:

(a) in paragraph 3, the word 'institutions' is replaced by 'appointing authorities of the institutions';

(b) paragraph 4 is replaced by the following:

'4. For the purposes of paragraph 1, a person has a disability if he has a long-term physical, mental, intellectual or sensory impairment which, in interaction with various barriers, may hinder his full and effective participation in society on an equal basis with others. The impairment shall be determined in accordance with the procedure set out in Article 33.

A person with a disability meets the conditions laid down in point (e) of Article 28 if he can perform the essential functions of the job when reasonable accommodation is made.

"Reasonable accommodation", in relation to the essential functions of the job, shall mean appropriate measures, where needed, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, unless such measures would impose a disproportionate burden on the employer.

The principle of equal treatment shall not prevent the appointing authorities of the institutions from maintaining or adopting measures providing for specific advantages in order to make it easier for persons with disabilities to pursue a vocational activity or in order to prevent or compensate for disadvantages in their professional careers.;

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

'1. Officials in active employment shall have access to measures of a social nature, including specific measures to reconcile working life with family life, adopted by the institutions, and to services provided by the social welfare bodies referred to in Article 9. Former officials may have access to limited specific measures of a social nature.;

(3) Article 5 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The posts covered by the Staff Regulations shall be classified, according to the nature and importance of the duties to which they relate, in an administrators' function group (hereinafter 'AD'), an assistants' function group (hereinafter 'AST') and a secretaries and clerks' function group (hereinafter 'AST/SC').;

(b) paragraph 2 is replaced by the following:

'2. Function group AD shall comprise twelve grades, corresponding to managerial, conceptual and analytical as well as to linguistic and scientific duties. Function group AST shall comprise eleven grades, corresponding to executive and technical duties. Function group AST/SC shall comprise six grades, corresponding to clerical and secretarial duties.;

(c) in point (a) of paragraph 3 the words 'and function group AST/SC' are inserted after the words 'in function group AST';

(d) paragraph 4 is replaced by the following:

'4. A table showing types of posts is given in Annex I, Section A. By reference to that table, the appointing authority of each institution may define in more detail the duties and powers attaching to each type of post after consulting the Staff Regulations Committee.;

(4) Article 6 is replaced by the following:

'Article 6

1. The establishment plan appended to the section of the budget related to each institution shall indicate the number of posts in each grade and function group.

2. Without prejudice to the principle of promotion based on merit as laid down in Article 45, that plan shall ensure that, for each institution, the number of vacant positions at every grade of the establishment plan on 1 January of each year corresponds to the number of officials in the lower grade in active employment on 1 January of the preceding year, multiplied by the rates laid down in Annex I, Section B, for that grade. Those rates shall be applied on a five-year average basis as from 1 January 2014.

3. The rates laid down in Annex I, Section B, shall form part of the report referred to in Article 113.

4. The implementation of the provisions concerning function group AST/SC and of the transitional provisions laid down in Article 31 of Annex XIII, taking into account the evolution of the need for staff carrying out secretarial and clerical tasks in all institutions and the evolution of permanent and temporary posts in function groups AST and AST/SC, shall form part of the report referred to in Article 113.;

(5) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Without prejudice to paragraph 1a, there shall be set up within each institution:

- a Staff Committee, which may be organised in sections for the different places of employment;
- one or more Joint Committees, as appropriate for the number of officials at the places of employment;
- one or more Disciplinary Boards, as appropriate for the number of officials at the places of employment;
- one or more Joint Advisory Committees on professional incompetence, as appropriate for the number of officials at the places of employment;
- a Reports Committee, if required;
- an Invalidity Committee,

which shall perform the functions assigned to them by these Staff Regulations.;

(b) paragraph 1a is replaced by the following:

'1a. For the application of certain provisions of these Staff Regulations, a common Joint Committee may be established for two or more institutions. The other Committees referred to in paragraph 1 and the Disciplinary Board may be established as common bodies by two or more agencies.;

(c) in paragraph 2, the following subparagraph is inserted after the first subparagraph:

'The agencies may derogate from the provisions of Article 1 of Annex II regarding membership of Staff Committees to take into account the composition of their personnel. The agencies may decide not to appoint alternate members in the Joint Committee or Committees provided for in Article 2 of Annex II.;

(6) In the second sentence of the first paragraph of Article 10, the word 'institutions' is replaced by 'appointing authorities of the institutions';

(7) Article 11 is replaced by the following:

'Article 11

An official shall carry out his duties and conduct himself solely with the interests of the Union in mind. He shall neither seek nor take instructions from any government, authority, organisation or person outside his institution. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duty of loyalty to the Union.

An official shall not without the permission of the appointing authority accept from any government or from any other source outside the institution to which he belongs any honour, decoration, favour, gift or payment of any kind whatever, except for services rendered either before his appointment or during special leave for military or other national service and in respect of such service.

Before recruiting an official, the appointing authority shall examine whether the candidate has any personal interest such as to impair his independence or any other conflict of interest. To that end, the candidate, using a specific form, shall inform the appointing authority of any actual or potential conflict of interest. In such cases, the appointing authority shall take this into account in a duly reasoned opinion. If necessary, the appointing authority shall take the measures referred to in Article 11a(2).

This Article shall apply by analogy to officials returning from leave on personal grounds.;

(8) Article 16 is replaced by the following:

'Article 16

An official shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Officials intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform their institution thereof using a specific form. If that activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the appointing authority may, having regard to the interests of the service, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit. The appointing authority shall, after consulting the Joint Committee, notify its decision within 30 working days of being so informed. If no such notification has been made by the end of that period, this shall be deemed to constitute implicit acceptance.

In the case of former senior officials as defined in implementing measures, the appointing authority shall, in principle, prohibit them, during the 12 months after leaving the service, from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during the last three years in the service.

In compliance with Regulation (EC) No 45/2001 of the European Parliament and of the Council (*), each institution shall publish annually information on the implementation of the third paragraph, including a list of the cases assessed.

(*) Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).;

(9) Article 18(1) is replaced by the following:

'1. All rights in any writings or other work done by any official in the performance of his duties shall be the property of the European Union where such writings or

work relate to its activities or, where such writings or work relate to activities of the European Atomic Energy Community, the property of that Community. The Union or, where applicable, the European Atomic Energy Community shall have the right to acquire compulsorily the copyright in such works.;

(10) Article 19 is replaced by the following:

'Article 19

An official shall not, without permission from the appointing authority, disclose on any grounds whatever, in any legal proceedings, information of which he has knowledge by reason of his duties. Permission shall be refused only where the interests of the Union so require and such refusal would not entail criminal consequences as far as the official is concerned. An official shall continue to be bound by this obligation after leaving the service.

The provisions of the first paragraph shall not apply to an official or former official giving evidence before the Court of Justice of the European Union or before the Disciplinary Board of an institution on a matter concerning a servant or former servant of the European Union.;

(11) In Article 21a, the following paragraph is added:

'3. An official who informs his superiors of orders which he considered to be irregular or likely to give rise to serious difficulties shall not suffer any prejudice on that account.;

(12) The following Article is inserted:

'Article 22c

In accordance with Articles 24 and 90, each institution shall put in place a procedure for the handling of complaints made by officials concerning the way in which they were treated after or in consequence of the fulfilment by them of their obligations under Article 22a or 22b. The institution concerned shall ensure that such complaints are handled confidentially and, where warranted by the circumstances, before the expiry of the deadlines set out in Article 90.

The appointing authority of each institution shall lay down internal rules on *inter alia*:

- the provision to officials referred to in Article 22a(1) or Article 22b of information on the handling of the matters reported by them,
- the protection of the legitimate interests of those officials and of their privacy, and

— the procedure for the handling of complaints referred to in the first paragraph of this Article.;

(13) In Article 26a, the word 'institutions' is replaced by 'appointing authorities of the institutions';

(14) Article 27 is replaced by the following:

'Article 27

Recruitment shall be directed to securing for the institution the services of officials of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Union. No posts shall be reserved for nationals of any specific Member State.

The principle of the equality of Union's citizens shall allow each institution to adopt appropriate measures following the observation of a significant imbalance between nationalities among officials which is not justified by objective criteria. Those appropriate measures must be justified and shall never result in recruitment criteria other than those based on merit. Before such appropriate measures are adopted, the appointing authority of the institution concerned shall adopt general provisions for giving effect to this paragraph in accordance with Article 110.

After a three-year period starting on 1 January 2014, the Commission shall report to the European Parliament and to the Council on the implementation of the second paragraph.

In order to facilitate recruitment on the broadest possible geographical basis, the institutions shall strive to support multilingual and multicultural education for the children of their staff.;

(15) In Article 29, paragraph 1 is replaced by the following:

'1. Before filling a vacant post in an institution, the appointing authority shall first consider:

(a) whether the post can be filled by:

(i) transfer, or

(ii) appointment in accordance with Article 45a, or

(iii) promotion

within the institution;

(b) whether requests for transfer have been received from officials of the same grade in other institutions, and/or

(c) if it was not possible to fill the vacant post through the possibilities mentioned in points (a) and (b), whether to consider lists of suitable candidates within the meaning of Article 30, where appropriate, taking into account the relevant provisions concerning suitable candidates in Annex III and/or

(d) whether to hold a competition internal to the institution, which shall be open only to officials and temporary staff as defined in Article 2 of the Conditions of Employment of Other Servants of the European Union;

or follow the procedure for competitions on the basis either of qualifications or of tests, or of both qualifications and tests. Annex III lays down the competition procedure.

The procedure may likewise be followed for the purpose of constituting a reserve for future recruitment.

While maintaining the principle that the vast majority of officials are to be recruited on the basis of open competitions, the appointing authority may decide, by way of derogation from point (d) and only in exceptional cases, to hold a competition internal to the institution which shall also be open to contract staff as defined in Articles 3a and 3b of the Conditions of Employment of Other Servants of the European Union. That latter category of staff shall be subject to restrictions with regard to that possibility as laid down in Article 82(7) of the Conditions of Employment of Other Servants of the European Union and with regard to the specific tasks it was entitled to perform as contract staff.;

(16) Article 30 is replaced by the following:

'Article 30

For each competition, a selection board shall be appointed by the appointing authority. This board shall draw up a list of suitable candidates.

The appointing authority shall decide which of these candidates to appoint to the vacant posts.

These candidates shall have access to adequate information on appropriate vacancies published by the institutions and agencies.;

- (17) The first sentence of the first subparagraph of Article 31(2) is replaced by the following:

'Without prejudice to Article 29(2), officials shall be recruited only at grades SC 1 to SC 2, AST 1 to AST 4 or AD 5 to AD 8.;

- (18) In the third paragraph of Article 32, the word 'institution' is replaced by 'appointing authority of each institution';

- (19) Article 34 is replaced by the following:

'Article 34

1. Officials shall serve a nine-month probationary period before they can be established. The decision to establish an official shall be taken on the basis of the report referred to in paragraph 3 as well as on the basis of elements available to the appointing authority relating to the probationer's conduct with regard to Title II.

Where, during his probationary period, an official is prevented, by sickness, maternity leave under Article 58, or accident, from performing his duties for a continuous period of at least one month, the appointing authority may extend his probationary period by the corresponding length of time. The total length of the probationary period shall in no circumstances exceed 15 months.

2. A report on the probationer may be made at any time before the end of the probationary period if his work is proving obviously inadequate.

That report shall be communicated to the person concerned, who shall have the right to submit his comments in writing within eight working days. The report and the comments shall be transmitted immediately by the probationer's immediate superior to the appointing authority, which shall, within three weeks, obtain the opinion of the Joint Reports Committee on the action to be taken. The appointing authority may decide to dismiss the probationer before the end of the probationary period, giving him one month's notice, or to assign the official to another department for the remaining time of the probationary period.

3. One month at the latest before the expiry of the probationary period, a report shall be made on the ability of the probationer to perform the duties pertaining to his post and also on his efficiency and conduct in the

service. That report shall be communicated to the probationer, who shall have the right to submit his comments in writing within eight working days.

Should it recommend dismissal or, in exceptional circumstances, extension of the probationary period in accordance with paragraph 1, the report and the comments shall be transmitted immediately by the probationer's immediate superior to the appointing authority, which shall, within three weeks, consult the Joint Reports Committee on the action to be taken.

A probationer whose work or conduct has not proved adequate for establishment in his post shall be dismissed.

4. Except where he is in a position forthwith to resume employment elsewhere, a dismissed probationer shall receive compensation equal to three months' basic salary if he has completed more than one year's service, two months' basic salary if he has completed at least six months' service and one month's basic salary if he has completed less than six months' service.

5. Paragraphs 2, 3 and 4 shall not apply to officials who resign before the end of their probationary period.;

- (20) In Article 35, the following point is added:

'(g) Leave in the interests of the service';

- (21) In the second indent of point (b) of Article 37, the word 'institutions' is replaced by 'appointing authorities of the institutions';

- (22) Article 40 is amended as follows:

- (a) the following paragraph is inserted:

'1a. Article 12b shall continue to apply during the period of leave on personal grounds. The permission under Article 12b shall not be granted to an official for the purpose of his engaging in an occupational activity, whether gainful or not, which involves lobbying or advocacy vis-à-vis his institution and which could lead to the existence or possibility of a conflict with the legitimate interests of the institution.;

- (b) in the second subparagraph of paragraph 2, the words '15 years' are replaced by '12 years';

(c) the third subparagraph of paragraph 2 is amended as follows:

(i) point (ii) is replaced by the following:

'(ii) to follow his spouse, the latter also being an official or other servant of the Union required in the course of his duties to establish his habitual residence at such a distance from the place of employment of the applicant official that the establishment of their conjugal home in such a place would inconvenience the applicant official in the performance of his duties; or';

(ii) the following point is added:

'(iii) to assist his spouse, a relative in the ascending line, a relative in the descending line, a brother or a sister in the case of medically certified serious illness or disability;';

(23) Article 42a is replaced by the following:

'Article 42a

An official shall be entitled to up to six months of parental leave without basic salary for every child, to be taken during the first twelve years after the birth or adoption of the child. The duration of the leave may be doubled for single parents recognised under general implementing provisions adopted by the appointing authority of each institution and for parents of dependent children with a disability or a severe illness recognised by the institution's medical officer. The minimum leave taken at any one time shall not be less than one month.

During parental leave, the official's membership of the social security scheme shall continue; the acquisition of pension rights, dependent child allowance and education allowance shall be maintained. The official shall retain his post, and continue to be entitled to advancement to a higher step or promotion in grade. The leave may be taken as full-time or half-time leave. Where parental leave is taken in the form of half-time leave, the maximum period provided for in the first paragraph shall be doubled. During parental leave, an official shall be entitled to an allowance of EUR 911,73 per month, or 50 % of such sum if on half-time leave, but may not engage in any other gainful employment. The full contribution to the social security scheme provided for in Articles 72 and 73 shall be borne by the institution and calculated on the basis of the basic salary of the

official. However, in the case of half-time leave this provision shall apply only to the difference between the full basic salary and the proportionally reduced basic salary. For the part of the basic salary actually received, the official's contribution shall be calculated by using the same percentages as if he were in full-time employment.

The allowance shall be EUR 1 215,63 per month, or 50 % of such sum if the official is on half-time leave, for the single parents and parents of dependent children with a disability or a severe illness recognised by the medical officer referred to in the first paragraph and during the first three months of parental leave where such leave is taken by the father during maternity leave or by either parent immediately after maternity leave or during or immediately after adoption leave.

Parental leave may be extended for a further six months with an allowance limited to 50 % of the amount referred to in the second paragraph. For single parents as referred to in the first paragraph, parental leave may be extended for a further twelve months with an allowance limited to 50 % of the amount referred to in the third paragraph.

The amounts mentioned in this Article shall be updated in line with remuneration.;

(24) In Chapter 2 of Title III, the following Section is added:

'Section 7

Leave in the interests of the service

Article 42c

At the earliest five years before the official's pensionable age, an official with at least ten years of service may be placed by decision of the appointing authority on leave in the interests of the service for organisational needs linked to the acquisition of new competences within the institutions.

The total number of officials placed on leave in the interests of the service each year shall not be higher than 5 % of the officials in all institutions who retired the previous year. The total number thus calculated shall be allocated to each institution according to their respective numbers of officials at 31 December of the preceding year. The result of such allocation shall be rounded up to the nearest whole number in each institution.

Such leave shall not constitute a disciplinary measure.

The duration of the leave shall correspond in principle to the period until the official reaches pensionable age. However, in exceptional situations, the appointing authority may decide to put an end to the leave and reinstate the official.

When the official placed on leave in the interests of the service reaches pensionable age, he shall automatically be retired.

Leave in the interests of the service shall be governed by the following rules:

- (a) another official may be appointed to the post occupied by the official;
- (b) an official on leave in the interests of the service shall not be entitled to advancement to a higher step or promotion in grade.

An official thus placed on leave shall receive an allowance calculated in accordance with Annex IV.

At the official's request, the allowance shall be subject to contributions to the pension scheme, calculated on the basis of that allowance. In such a case, the period of service as an official on leave in the interests of the service shall be taken into account for the purpose of calculating years of pensionable service within the meaning of Article 2 of Annex VIII.

The allowance shall not be subject to a correction coefficient.;

(25) Article 43 is replaced by the following:

'Article 43

The ability, efficiency and conduct in the service of each official shall be the subject of an annual report as provided for by the appointing authority of each institution in accordance with Article 110. That report shall state whether or not the performance level of the official has been satisfactory. The appointing authority of each institution shall lay down provisions conferring the right to lodge an appeal within the reporting procedure, which has to be exercised before the lodging of a complaint as referred to in Article 90(2).

As of grade AST 5, the report may also contain an opinion as to whether the official, on the basis of his performance, has the potential to carry out an administrator's function.

The report shall be communicated to the official. He shall be entitled to make any comments thereon which he considers relevant.;

(26) Article 44 is replaced by the following:

'Article 44

An official who has been at one step in his grade for two years shall automatically advance to the next step in that grade, unless his performance has been evaluated as unsatisfactory pursuant to the last annual report referred to in Article 43. An official shall advance to the next step in his grade after no later than four years, unless the procedure laid down in Article 51(1) is applied.

If an official is appointed head of unit, director or director-general in the same grade, and provided that his performance has been satisfactory within the meaning of Article 43 during the first nine months following his appointment, he shall retroactively benefit from advancement by one step in that grade at the time the appointment comes into effect. This advancement shall lead to an increase in his basic monthly salary corresponding to the percentage between the first and the second step in each grade. If the increase is less or if the official at that time is already in the last step of his grade, he shall receive an increase in basic salary ensuring the increase between the first and second step until his next promotion comes into effect.;

(27) Article 45 is amended as follows:

- (a) paragraph 1 is replaced by the following:

'1. Promotion shall be by decision of the appointing authority in the light of Article 6(2). Unless the procedure laid down in Articles 4 and 29(1) is applied, officials may only be promoted if they occupy a post which corresponds to one of the types of posts set out in Annex I, Section A, for the next higher grade. Promotion shall be effected by appointment of the official to the next higher grade in the function group to which he belongs. Promotion shall be exclusively by selection from among officials who have completed a minimum of two years in their grade after consideration of the comparative merits of the officials eligible for promotion. When considering comparative merits, the appointing authority shall in particular take account of the reports on the officials, the use of languages in the execution of their duties other than the language for which they have produced evidence of thorough knowledge in accordance with point (f) of Article 28 and the level of responsibilities exercised by them.;

(b) in the first sentence of paragraph 2, the words 'Article 55 of the Treaty on European Union' are replaced by 'Article 55(1) of the Treaty on European Union';

(c) in the second sentence of paragraph 2, the word 'institutions' is replaced by 'appointing authorities of the institutions';

(28) Article 45a is amended as follows:

(a) in the first subparagraph of paragraph 2, the words 'their periodical reports' are replaced by 'the annual reports';

(b) in paragraph 5, the word 'institutions' is replaced by 'appointing authority of each institution';

(29) In the third paragraph of Article 48, the words 'function group AST' are replaced by 'function groups AST and AST/SC';

(30) In the eighth paragraph of Article 50, the words 'fifty-five' are replaced by 'fifty-eight';

(31) Article 51 is replaced by the following:

'Article 51

1. The appointing authority of each institution shall define procedures to identify, deal with and remedy cases of incompetence in a timely and appropriate fashion.

When adopting internal provisions, the appointing authority of each institution shall respect the following requirements:

(a) an official who, on the basis of three consecutive unsatisfactory annual reports as referred to in Article 43, still shows no progress in his professional competence shall be downgraded by one grade. If the following two annual reports still show unsatisfactory performance, the official shall be dismissed;

(b) any proposal to downgrade or dismiss an official shall set out the reasons on which it is based and shall be communicated to the official concerned. The proposal from the appointing authority shall be referred to the Joint Advisory Committee provided for in Article 9(6).

2. The official shall have the right to obtain his complete personal file and to take copies of all documents relating to the procedure. He shall have at least 15 days, but no more than 30 days, from the date of receipt of the proposal to prepare a defence. He may be assisted by a person of his choice. The official may submit written comments. He shall be heard by the Joint Advisory Committee. The official may also call witnesses.

3. The institution shall be represented before the Joint Advisory Committee by an official designated for that purpose by the appointing authority. That official shall have the same rights as the official concerned.

4. In the light of the proposal under point (b) of paragraph 1 and any written and oral statements from the official concerned or from witnesses, the Joint Advisory Committee shall deliver by a majority a reasoned opinion stating the measure which it considers appropriate in the light of the facts established at its request. It shall forward that opinion to the appointing authority and to the official concerned within two months of the date on which the matter is referred to it. The chairman shall not vote on decisions of the Joint Advisory Committee, except in procedural matters and where votes are tied.

5. An official dismissed for incompetence shall, for the period defined in paragraph 6, be entitled to a monthly dismissal allowance equal to the basic monthly salary of an official in the first step of grade AST 1. The official shall also be entitled during the same period to the family allowances provided for in Article 67. The household allowance shall be calculated on the basis of the basic monthly salary of an official in grade AST 1 in accordance with Article 1 of Annex VII.

The allowance shall not be paid if the official resigns after the start of the procedure referred to in paragraphs 1 and 2 or if he is entitled to the immediate payment of a full pension. If he is entitled to unemployment benefit under a national unemployment scheme, the amount of that benefit shall be deducted from the above allowance.

6. The period during which the payments referred to in paragraph 5 are to be made shall be:

(a) three months where the official has completed less than five years' service at the date on which the dismissal decision is taken;

(b) six months where the official has completed at least five years' service but less than 10;

(c) nine months where the official has completed at least 10 years' service but less than 20;

(d) 12 months where the official has completed at least 20 years' service.

7. Officials who are downgraded on grounds of incompetence may after a period of six years ask for all references to that measure to be deleted from their personal files.

8. Officials shall be entitled to reimbursement of reasonable expenses incurred on their initiative in the course of the proceedings, including fees payable to a defending adviser not belonging to the institution, where the proceedings provided for in this Article end without any decision being taken to dismiss or downgrade.;

(32) Article 52 is replaced by the following:

'Article 52

Without prejudice to the provisions of Article 50, an official shall be retired:

(a) either automatically on the last day of the month in which he reaches the age of 66, or

(b) at his own request on the last day of the month in respect of which the request was submitted where he has reached pensionable age or where he is between 58 and pensionable age and satisfies the requirements for immediate payment of a pension in accordance with Article 9 of Annex VIII. The second sentence of the second paragraph of Article 48 shall apply by analogy.

However, an official may at his own request, and where the appointing authority considers it justified in the interests of the service, carry on working until the age of 67, or exceptionally, until the age of 70, in which case he shall be retired automatically on the last day of the month in which he reaches that age.

Where the appointing authority decides to authorise an official to remain in service beyond the age of 66, that authorisation shall be granted for a maximum duration of one year. It may be renewed at the official's request.;

(33) Article 55 is amended as follows:

(a) the paragraphs shall be numbered;

(b) the first sentence of the second paragraph is replaced by the following:

'The normal working week shall range from 40 to 42 hours, the hours of the working day to be determined by the appointing authority';

(c) the second sentence of the third paragraph is replaced by the following:

'The appointing authority of each institution shall lay down detailed rules for the application of this paragraph after consulting the Staff Committee';

(d) the following paragraph is added:

'4. The appointing authority of each institution may introduce flexible working-time arrangements. Under those arrangements, entire working days shall not be granted for officials in grade AD/AST 9 or higher. Those arrangements shall not be applicable to officials to whom the provisions of the second paragraph of Article 44 apply. Those officials shall manage their working time in agreement with their superiors.;

(34) In Article 55a, paragraph 2 is replaced by the following:

'2. The official shall be entitled to authorisation in the following cases:

(a) to care for a dependent child under 9 years of age,

(b) to care for a dependent child aged between 9 and 12, if the reduction in working time is no more than 20 % of normal working time,

(c) to care for a dependent child until he reaches the age of 14 when the official is a single parent,

(d) in cases of serious hardship, to care for a dependent child until he reaches the age of 14 if the reduction in working time is no more than 5 % of normal working time. In that case, the first two paragraphs of Article 3 of Annex IVa shall not apply. Where both parents are employed in the service of the Union, only one shall be entitled to such reduction,

(e) to care for a seriously ill or disabled spouse, relative in the ascending line, relative in the descending line, brother or sister,

(f) to take part in further training, or

(g) as of the age of 58 during the last three years before he reaches pensionable age.

Where part-time is requested in order to take part in further training, or during the last three years before reaching pensionable age, but not before the age of 58, the appointing authority may refuse authorisation or postpone its date of effect only in exceptional circumstances and for overriding service-related reasons.

Where such entitlement to authorisation is exercised to care for a seriously ill or disabled spouse, relative in the ascending line, relative in the descending line, brother or sister, or to take part in further training, the total of all such periods shall not exceed five years over the official's career.;

(35) The third paragraph of Article 56 is replaced by the following:

'As provided in Annex VI, overtime worked by officials in grades SC 1 to SC 6 and grades AST 1 to AST 4 shall entitle them either to compensatory leave or to remuneration where requirements of the service do not allow compensatory leave during two months following that in which the overtime was worked.;

(36) The second paragraph of Article 56a is replaced by the following:

'After consulting the Staff Regulations Committee, the Commission shall determine, by means of delegated acts in accordance with Articles 111 and 112, the categories of officials entitled to such allowances, the conditions for granting the allowances and the rates thereof.;

(37) The second paragraph of Article 56b is replaced by the following:

'After consulting the Staff Regulations Committee, the Commission shall determine, by means of delegated acts in accordance with Articles 111 and 112, the categories of officials entitled to such allowances, the conditions for granting the allowances and the rates thereof.;

(38) The second paragraph of Article 56c is replaced by the following:

'After consulting the Staff Regulations Committee, the Commission shall determine, by means of delegated acts in accordance with Articles 111 and 112, the categories of officials entitled to the special allowances, the conditions for granting such allowances and the rates thereof.;

(39) In the first paragraph of Article 57, the word 'institutions' is replaced by 'appointing authorities of the institutions';

(40) Article 58 is replaced by the following:

'Article 58

Pregnant women shall, in addition to the leave provided for in Article 57, be entitled on production of a medical certificate to 20 weeks of leave. The leave shall start not earlier than six weeks before the expected date of confinement shown in the certificate and end not earlier than 14 weeks after the date of confinement. In the case of multiple or premature birth or the birth of a child with a disability or serious illness, the duration shall be 24 weeks. Premature birth for the purposes of this provision is a birth taking place before the end of the 34th week of pregnancy.;

(41) Article 61 is replaced by the following:

'Article 61

Lists of public holidays shall be drawn up by agreement between the appointing authorities of the institutions of the Union after consulting the Staff Regulations Committee';

(42) Article 63 is replaced by the following:

'Article 63

Officials' remuneration shall be expressed in euros. It shall be paid in the currency of the country in which the official performs his duties or in euros.

Remuneration paid in a currency other than euros shall be calculated on the basis of the exchange rates used for the implementation of the general budget of the European Union on 1 July of that year.

Every year the exchange rates shall be updated retroactively at the time of the annual update of remuneration provided for in Article 65.;

(43) Article 64 is replaced by the following:

'Article 64

An official's remuneration expressed in euros shall, after the compulsory deductions set out in these Staff Regulations or in any implementing regulations have been made, be weighted at a rate above, below or equal to 100 %, depending on living conditions in the various places of employment.

The correction coefficients shall be created or withdrawn as well as annually updated in accordance with Annex XI. With respect to the update, all values shall be understood as reference values. The Commission shall publish the updated values within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes.

No correction coefficient shall be applicable in Belgium and Luxembourg, having regard to the special referential role of those places of employment as principal and original seats of most of the institutions.;

(44) Article 65 is replaced by the following:

'Article 65

1. The remuneration of the officials and other servants of the European Union shall be updated every year, taking into account the economic and social policy of the Union. Particular account shall be taken of any salary increases in the civil service of the Member States and of recruitment needs. The update of the remuneration shall be implemented in accordance with Annex XI. That update shall take place before the end of each year in the light of a report by the Commission based on statistical data prepared by the Statistical Office of the European Union in agreement with the national statistical offices of the Member States; the statistical data shall reflect the situation as at 1 July in each of the Member States. That report shall contain data pertaining to the budgetary impact of remuneration and pensions of Union officials. It shall be transmitted to the European Parliament and to the Council.

The amounts referred to in the second and third paragraphs of Article 42a, Articles 66 and 69, Articles 1(1), 2(1), 3(1) and (2), 4(1), 7(2), 8(2), 10(1) of Annex VII and Article 8(2) of Annex XIII, and in the former Article 4a of Annex VII to be updated in accordance with Article 18(1) of Annex XIII, the amounts referred to in Article 24(3), the second subparagraph of Article 28a(3), Articles 28a(7), 93, 94, the second subparagraph of Article 96(3) and Articles

96(7), 133, 134 and 136 of the Conditions of Employment of Other Servants, the amounts referred to in the first subparagraph of Article 1(1) of Council Regulation (ECSC, EEC, Euratom) No 300/76 (*) and the coefficient for the amounts referred to in Article 4 of Council Regulation (EEC, Euratom, ECSC) No 260/68 (**) shall be updated annually in accordance with Annex XI. The Commission shall publish the updated amounts within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes.

2. In the event of a substantial change in the cost of living, the amounts referred to in paragraph 1 and the weightings referred to in Article 64 shall be updated in accordance with Annex XI. The Commission shall publish the updated amounts and weightings within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes.

3. The amounts referred to in paragraph 1 and the weightings referred to in Article 64 shall be understood as amounts and weightings the actual value of which at a given point in time is subject to update without intervention of another legal act.

4. Without prejudice to Article 3(5) and (6) of Annex XI, no update provided for under paragraphs 1 and 2 shall be made in the years 2013 and 2014.

(*) Council Regulation (ECSC, EEC, Euratom) No 300/76 of 9 February 1976 determining the categories of officials entitled to allowances for shift work, and the rates and conditions thereof (OJ L 38, 13.2.1976, p. 1).

(**) Council Regulation (EEC, Euratom, ECSC) No 260/68 of 29 February 1968 laying down the procedure and the conditions for applying the tax for the benefit of the European Communities (OJ L 56, 4.3.1968, p. 8).;

(45) Article 66 is amended as follows:

(a) the introductory sentence of the first paragraph is replaced by the following:

'Basic monthly salaries are for each grade and step in function groups AD and AST as provided in the following table:'

(b) the following paragraph is added:

'Basic monthly salaries are for each grade and step in function group AST/SC as provided in the following table:

Grade	Step				
	1	2	3	4	5
SC 6	4 349,59	4 532,36	4 722,82	4 854,21	4 921,28
SC 5	3 844,31	4 005,85	4 174,78	4 290,31	4 349,59
SC 4	3 397,73	3 540,50	3 689,28	3 791,92	3 844,31
SC 3	3 003,02	3 129,21	3 260,71	3 351,42	3 397,73
SC 2	2 654,17	2 765,70	2 881,92	2 962,10	3 003,02
SC 1	2 345,84	2 444,41	2 547,14	2 617,99	2 654,17'

(46) Article 66a is replaced by the following:

'Article 66a

1. By way of derogation from Article 3(1) of Regulation (EEC, Euratom, ECSC) No 260/68 and in order to take account, without prejudice to Article 65(3), of the application of the method for updating the remuneration and pensions of officials, a temporary measure regarding remuneration paid by the Union to staff in active employment, to be known as the "solidarity levy", shall be applied from 1 January 2014 to 31 December 2023.

2. The rate of this solidarity levy, which shall apply to the base defined in paragraph 3, shall be 6 %. The rate shall however be 7 % for officials in grade AD 15, step 2, and above.

3. (a) The base for the solidarity levy shall be the basic salary used to calculate remuneration, minus:

(i) social security and pension contributions and the tax, before solidarity levy, payable by an official in the same grade and step without dependants within the meaning of Article 2 of Annex VII, and

(ii) an amount equal to the basic salary of an official in grade AST 1, step 1.

(b) The components used to determine the base for the solidarity levy shall be expressed in euro and weighted at 100.

4. The solidarity levy shall be deducted monthly at source; the proceeds shall be entered as revenue in the general budget of the European Union.'

(47) Article 67(3) is replaced by the following:

'3. The dependent child allowance may be doubled, by special reasoned decision of the appointing authority based on medical documents establishing that the child concerned has a disability or a long-term illness which involves the official in heavy expenditure.'

(48) Article 72 is amended as follows:

(a) in the first sentence of the first subparagraph of paragraph 1 and in the third subparagraph of paragraph 1, the word 'institutions' is replaced by 'appointing authorities of the institutions';

(b) in paragraph 2, the words 'until the age of 63 years' are replaced by 'until pensionable age';

(c) in points (i) and (ii) of paragraph 2a, the words 'before reaching the age of 63' are replaced by 'before reaching pensionable age';

(d) in paragraph 2b, the words 'grade 1' are replaced by 'grade AST 1';

(49) In Article 73(1), the word 'Institutions' is replaced by 'appointing authorities of the institutions';

(50) In the second sentence of Article 76a, the word 'institutions' is replaced by 'appointing authorities of the institutions';

(51) Article 77 is replaced by the following:

'Article 77

An official who has completed at least ten year's service shall be entitled to a retirement pension. He shall, however, be entitled to such pension, irrespective of length of service, if he is over pensionable age, if it has

not been possible to reinstate him during a period of non-active status or in the event of retirement in the interests of the service.

The maximum retirement pension shall be 70 % of the final basic salary carried by the last grade in which the official was classified for at least one year. 1,80 % of that final basic salary shall be payable to an official for each year of service reckoned in accordance with Article 3 of Annex VIII.

However, in the case of officials who have been assisting a person holding an office provided for in the Treaty on European Union or the Treaty on the Functioning of the European Union, the elected President of one of the institutions or organs of the Union or the elected Chairman of one of the political groups in the European Parliament, the entitlement to pensions corresponding to the years of pensionable service acquired while working in that capacity shall be calculated by reference to the final basic salary received during that time if the basic salary received exceeds that taken as reference for the purposes of the second paragraph of this Article.

The amount of the retirement pension must not be less than 4 % of the minimum subsistence figure per year of service.

The pensionable age shall be 66 years.

The pensionable age shall be assessed every five years starting on 1 January 2014 on the basis of a report by the Commission to the European Parliament and to the Council. The report shall examine, in particular, the evolution of pensionable age for staff in the civil services of the Member States and the evolution of life expectancy of officials of the institutions.

Where appropriate, the Commission shall make a proposal amending the pensionable age in line with the conclusions of that report, paying particular attention to developments in the Member States.¹

(52) Article 78 is replaced by the following:

'Article 78

An official shall be entitled, in the manner provided for in Articles 13 to 16 of Annex VIII, to an invalidity allowance in the case of total permanent invalidity preventing him from performing the duties corresponding to a post in his function group.

Article 52 shall apply by analogy to recipients of an invalidity allowance. If the recipient of an invalidity allowance retires before the age of 66 without having reached the maximum pension entitlement, the general rules on retirement pensions shall be applied. The

amount of the retirement pension shall be based on the salary for the grade and step occupied by the official when he became an invalid.

The invalidity allowance shall be equal to 70 % of the official's last basic salary. However, it may not be less than the minimum subsistence figure.

The invalidity allowance shall be subject to contributions to the pension scheme, calculated on the basis of that allowance.

Where the invalidity arises from an accident in the course of or in connection with the performance of an official's duties, from an occupational disease, from a public-spirited act or from risking his life to save another human being, the invalidity allowance may not be less than 120 % of the minimum subsistence figure. In such cases, moreover, contributions to the pension scheme shall be paid in full from the budget of the institution or body referred to in Article 1b.²

(53) The sixth paragraph of Article 80 is replaced by the following:

'Entitlement as provided for in the first, second and third paragraphs shall apply in the event of the death of a former official entitled to an allowance under Article 50 of the Staff Regulations, Article 5 of Council Regulation (EEC, Euratom, ECSC) No 259/68 (*), Article 3 of Council Regulation (Euratom, ECSC, EEC) No 2530/72 (**) or Article 3 of Council Regulation (ECSC, EEC Euratom) No 1543/73 (***) and in the event of the death of a former official who left the service before reaching pensionable age and requested that his retirement pension be deferred until the first day of the calendar month following that in which he reached pensionable age.

(*) Council Regulation (EEC, Euratom, ECSC) No 259/68 of 29 February 1968 laying down the Staff Regulations and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

(**) Council Regulation (Euratom, ECSC, EEC) No 2530/72 of 4 December 1972 introducing special and temporary measures applicable to the recruitment of officials of the European Communities in consequences of the accession of new Member States, and for the termination of service of officials of those Communities (OJ L 272, 5.12.1972, p. 1).

(***) Council Regulation (ECSC, EEC Euratom) No 1543/73 of 4 June 1973 introducing special measures temporarily applicable to officials of the European Communities paid from research and investment funds (OJ L 155, 11.6.1973, p. 1).³

(54) Article 81a(1) is amended as follows:

(a) in point (b), the words 'age of 65' are replaced by 'age of 66';

(b) point (d) is replaced by the following:

'(d) in the event of the death of a former official who left the service before reaching pensionable age and requested that his retirement pension be deferred until the first day of the calendar month following that in which he reached pensionable age, the amount of the retirement pension to which he would have been entitled at pensionable age had he been alive, subject to the allowances and deductions referred to in point (b)';

(c) in point (e), the words 'allowance under Article 41 or 50' are replaced by 'allowance under Article 41, 42c or 50';

(55) Article 82(2) is replaced by the following:

'2. Where remuneration is updated in accordance with Article 65(1), the same update shall be applied to pensions.'

(56) The second subparagraph of Article 83(1) is deleted;

(57) Paragraphs 2, 3, 4 and 5 of Article 83a are replaced by the following:

'2. Agencies which do not receive a subsidy from the general budget of the European Union shall pay into that budget the entire amount of the contributions needed to finance the scheme. From 1 January 2016 agencies which are partly financed from that budget shall pay the part of the employers' contributions which corresponds to the proportion between the agency's revenues without the subsidy from the general budget of the European Union and its total revenues.

3. The balance of the pension scheme shall be ensured by the pensionable age and the rate of contribution to the scheme. On the occasion of the five-yearly actuarial assessment in accordance with Annex XII, the rate of contribution to the pension scheme shall be updated in order to ensure the balance of the scheme.

4. Each year the Commission shall update the actuarial assessment referred to in paragraph 3, in accordance with Article 1(2) of Annex XII. Where it is shown that there is a gap of at least 0,25 points between the rate of contribution currently applied and the rate required to

maintain actuarial balance, the rate shall be updated, in accordance with the arrangements laid down in Annex XII.

5. For the purposes of paragraphs 3 and 4 of this Article, the reference figure set out in Article 83(2) shall be updated. The Commission shall publish the resulting updated rate of contribution within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes';

(58) Title VIII is deleted;

(59) Article 110 is replaced by the following:

'Article 110

1. The general provisions implementing these Staff Regulations shall be adopted by the appointing authority of each institution after consulting the Staff Committee and the Staff Regulations Committee.

2. Implementing rules adopted by the Commission to give effect to these Staff Regulations, including the general implementing provisions referred to in paragraph 1, shall apply by analogy to the agencies. To that end, the Commission shall inform the agencies of any such implementing rule without delay after adoption.

Such implementing rules shall enter into force at the agencies nine months after their entry into force at the Commission or nine months after the date on which the Commission informed the agencies of the adoption of the respective implementing rule, whichever is later. Notwithstanding the foregoing, an agency may also decide that such implementing rules are to enter into force at an earlier date.

By way of derogation, an agency may, before the expiry of the nine-month period referred to in the second subparagraph of this paragraph and after consulting its Staff Committee, submit to the Commission for its agreement implementing rules which are different from those adopted by the Commission. Under the same conditions, an agency may request the agreement of the Commission to the non-application of certain of those implementing rules. In the latter case, the Commission may, instead of accepting or rejecting the request, require the agency to submit for its agreement implementing rules which are different from those adopted by the Commission.

The nine-month period referred to in the second subparagraph of this paragraph shall be suspended from the date on which the agency has requested the Commission's agreement until the date on which the Commission has expressed its position.

An agency may also, after consulting its Staff Committee, submit to the Commission for its agreement implementing rules which concern subjects other than the implementing rules adopted by the Commission.

For the purposes of the adoption of implementing rules, the agencies shall be represented by the management board or the equivalent body referred to in the Union act establishing them.

3. For the purposes of the adoption of rules by agreement between the institutions, the agencies shall not be treated as institutions. However, the Commission shall consult the agencies before the adoption of those rules.

4. Rules giving effect to these Staff Regulations, including the general implementing provisions referred to in paragraph 1, and rules adopted by agreement between the appointing authorities of the institutions, shall be brought to the attention of the staff.

5. The administrative departments of the institutions and the agencies shall consult each other regularly concerning the application of these Staff Regulations. Agencies shall be jointly represented in those consultations in accordance with rules to be fixed by agreement between them.

6. The Court of Justice of the European Union shall administer a register of the rules adopted by the appointing authority of each institution to give effect to these Staff Regulations, and those rules adopted by the agencies to the extent that they derogate from the rules adopted by the Commission, in accordance with the procedure provided in paragraph 2, including any amendments thereto. Institutions and agencies shall have direct access to that register and the full right to amend their own rules. Member States shall have direct access to it. Moreover, every three years, the Commission shall present a report to the European Parliament and the Council on the rules adopted by the appointing authority of each institution to give effect to these Staff Regulations.';

(60) The following Articles are added:

'Article 111

The Commission shall be empowered to adopt delegated acts in accordance with Article 112 concerning certain

aspects of working conditions, certain aspects of the implementation of the rules on remuneration and the social security scheme.

Article 112

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 56a, 56b and 56c of the Staff Regulations, Article 13(3) of Annex VII and Article 9 of Annex XI thereto and Articles 28a(11) and 96(11) of the Conditions of Employment of Other Servants shall be conferred on the Commission for an indeterminate period of time from 1 January 2014.

3. The delegation of power referred to in Articles 56a, 56b, 56c of the Staff Regulations, Article 13(3) of Annex VII and Article 9 of Annex XI thereto and Articles 28a(11) and 96(11) of the Conditions of Employment of Other Servants may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 56a, 56b, 56c of the Staff Regulations, Article 13(3) of Annex VII or Article 9 of Annex XI thereto or Articles 28a(11) or 96(11) of the Conditions of Employment of Other Servants shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Article 113

The Commission shall, by 31 December 2020, submit a report to the European Parliament and to the Council assessing the functioning of these Staff Regulations.';

(61) Annex I is amended as follows:

(a) Section A is replaced by the following:

'A. Types of posts in each function group, as provided for in Article 5(4)

1. Function group AD

Director-General	AD 15 - AD 16
Director	AD 14 - AD 15
Adviser or equivalent	AD 13- AD 14
Head of unit or equivalent	AD 9 - AD 14
Administrator	AD 5 - AD 12

2. Function group AST

Senior assistant Carrying out administrative, technical or training activities requiring a high degree of autonomy and carrying significant responsibilities in terms of staff management, budget implementation or political coordination	AST 10 – AST 11
Assistant Carrying out administrative, technical or training activities requiring a certain degree of autonomy, in particular with regard to the implementation of rules and regulations or general instructions or as personal assistant of a Member of the institution, of the Head of a Member's private office or of a (Deputy) Director-General or an equivalent senior manager	AST 1 – AST 9

3. Function group AST/SC

Secretary/Clerk Carrying out clerical and secretarial tasks, office management and other equivalent tasks requiring a certain degree of autonomy (*)	SC 1 – SC 6
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(*) The number of posts of Parliamentary ushers in the European Parliament shall not exceed 85.;

(b) Section B is replaced by the following:

'B. Multiplication rates for guiding average career equivalence

1. Multiplication rates for guiding average career equivalence in function groups AST and AD:

Grade	Assistants	Administrators
13	—	15 %
12	—	15 %
11	—	25 %
10	20 %	25 %
9	8 %	25 %
8	25 %	33 %
7	25 %	36 %
6	25 %	36 %
5	25 %	36 %
4	33 %	—
3	33 %	—
2	33 %	—
1	33 %	—

2. Multiplication rates for guiding average career equivalence in function group AST/SC:

Grade	Secretaries / Clerks
SC 6	—
SC 5	12 %
SC 4	15 %
SC 3	17 %
SC 2	20 %
SC 1	25 %'

(62) Annex II is amended as follows:

(a) in the second sentence of the first paragraph of Article 1, the word 'institution' is replaced by 'appointing authority of each institution';

(b) the second sentence of the second paragraph of Article 1 is replaced by the following:

'However, the appointing authority of each institution may decide that the conditions for election are to be determined in accordance with the preference of the staff of the institution as expressed in a referendum';

- (c) in the fourth paragraph of Article 1, the words 'both function groups' are replaced by 'the three function groups';
- (d) in the first indent of the second paragraph of Article 2, the words 'the third subparagraph of' are deleted;
- (63) The Sole Article of Annex IV is amended as follows:
- (a) in the second subparagraph of paragraph 1, the words 'age of 63 years' are replaced by 'age of 66 years';
- (b) the third subparagraph of paragraph 1 is deleted;
- (c) in the last row of the table in paragraph 3, the words '59 to 64' are replaced by '59 to 65';
- (d) in the fourth subparagraph of paragraph 4, the words 'age of 63 years' are replaced by 'age of 66 years';
- (64) Annex IVa is amended as follows:
- (a) in the second paragraph of Article 1, the words 'Article 55a(2)(e)' are replaced by 'point (g) of Article 55a(2)';
- (b) in the first paragraph of Article 4, the words 'officials aged over 55 authorised to work half time in preparation for retirement' are replaced by 'officials authorised, in accordance with point (g) of Article 55a(2) of the Staff Regulations, to work half time';
- (65) Annex V is amended as follows:
- (a) Article 6 is replaced by the following:
- Article 6*
- In addition to annual leave, an official may, on application, be granted special leave. In particular, in the following cases special leave shall be granted as shown:
- marriage of the official: four days;
 - change of residence of the official: up to two days;
 - serious illness of spouse: up to three days;
 - death of spouse: four days;
 - serious illness of a relative in the ascending line: up to two days;
 - death of a relative in the ascending line: two days;
 - marriage of a child: two days;
 - birth of a child: 10 days, to be taken during the 14 weeks following birth;
 - birth of a disabled or seriously ill child: 20 days, to be taken during the 14 weeks following the birth;
 - death of the wife during maternity leave: a number of days corresponding to the remaining maternity leave; if the deceased wife is not an official, the remaining maternity leave is determined by applying the provisions of Article 58 of the Staff Regulations, by analogy;
 - serious illness of a child: up to two days;
 - very serious illness of a child, as certified by a doctor, or hospitalisation of a child aged 12 or under: up to five days;
 - death of a child: four days;
 - adoption of a child: 20 weeks, rising to 24 weeks in the case of the adoption of a disabled child;
- Every adopted child shall confer entitlement to only one period of special leave, which may be shared between the adoptive parents if both are officials. It shall be granted only if the official's spouse engages in a gainful activity at least half-time. If the spouse works outside the institutions of the Union and benefits from comparable leave, a corresponding number of days shall be deducted from the official's entitlement.
- The appointing authority may, in cases of necessity, grant additional special leave where the national legislation of the country in which the adoption procedure takes place and which is not the country of employment of the adopting official requires a stay of one or both adoptive parents.
- Special leave of 10 days shall be granted if the official does not benefit from the full special leave of 20 or 24 weeks by reason of the first sentence of this indent; that additional special leave shall be granted only once for each adopted child.

The institution may also grant special leave in the case of further training and instruction, within the limits laid down in the further training and instruction programme drawn up by the institution pursuant to Article 24a of the Staff Regulations.

Special leave may furthermore be granted to officials on an exceptional basis in the case of exceptional work which goes beyond an official's normal obligations. Such special leave shall be granted at the latest three months after the appointing authority has taken a decision on the exceptional character of the work of the official.

For the purposes of this Article, the unmarried partner of an official shall be treated as the spouse where the first three conditions in point (c) of Article 1(2) of Annex VII are met.

Where special leave is granted pursuant to this section, any travelling time shall be fixed by special decision taking into account particular needs.;

(b) Article 7 is replaced by the following:

'Article 7

Officials who are entitled to the expatriation or foreign residence allowance shall be entitled to two and a half days of supplementary leave every year, for the purpose of visiting their home country.

The first paragraph shall apply to officials whose place of employment is within the territories of the Member States. If the place of employment is outside those territories, the duration of the home leave shall be fixed by special decision taking into account particular needs.;

(66) Annex VI is amended as follows:

(a) Article 1 is replaced by the following:

'Article 1

Within the limits laid down in Article 56 of the Staff Regulations, overtime worked by an official in grade SC 1 to SC 6 or grade AST 1 to AST 4 shall entitle him to compensatory leave or to remuneration as follows:

(a) for each hour of overtime, he shall be entitled to one hour and a half off as compensatory leave; if the hour of overtime is worked between 22:00 hours and 07:00 hours or on a Sunday or on a public holiday, the entitlement to compensatory leave shall be two hours off; in the granting of compensatory leave, account shall be taken of the requirements of the service and the preference of the official concerned;

(b) where the requirements of the service do not permit compensatory leave to be taken during two months following that during which the overtime was worked, the appointing authority shall authorise remuneration for uncompensated hours of overtime at the rate of 0,56 % of the monthly basic salary for each hour of overtime on the basis set out in point (a);

(c) to qualify for compensatory leave or remuneration for one hour's overtime, the extra time worked must have been more than thirty minutes.;

(b) Article 3 is replaced by the following:

'Article 3

Notwithstanding the foregoing provisions of this Annex, remuneration for overtime worked by certain groups of officials in grades SC 1 to SC 6 and grades AST 1 to AST 4 in special conditions may be paid in the form of a fixed allowance the amount and terms of which shall be determined by the appointing authority after consulting the Joint Committee.;

(67) Annex VII is amended as follows:

(a) in Article 1(3), the words 'grade 3' are replaced by 'grade AST 3';

(b) the second subparagraph of Article 3(1) is replaced by the following:

'Entitlement to that allowance shall commence on the first day of the month in which the child begins to attend a primary educational establishment and shall cease at the end of the month in which the child finishes its education or at the end of the month in which the child reaches the age of twenty-six, whatever is the earliest.;

(c) Article 7 is replaced by the following:

'Article 7

1. An official shall be entitled to a flat-rate payment corresponding to the cost of travel for himself, his spouse and his dependants actually living in his household:

- (a) on taking up his appointment, from the place where he was recruited to the place where he is employed;
- (b) on termination of service within the meaning of Article 47 of the Staff Regulations, from the place where he is employed to the place of origin as defined in paragraph 4 of this Article;
- (c) on any transfer involving a change in the place where he is employed.

In the event of the death of an official, the surviving spouse and the dependants shall be entitled to the flat rate payment under the same conditions.

Travel expenses for children aged less than two years during the entire calendar year shall not be reimbursed.

2. The flat-rate payment shall be based on an allowance per kilometre of geographical distance between the places referred to in paragraph 1.

The kilometric allowance shall be:

EUR 0 for every km from	0 to 200 km
EUR 0,1895 for every km from	201 to 1 000 km
EUR 0,3158 for every km from	1 001 to 2 000 km
EUR 0,1895 for every km from	2 001 to 3 000 km
EUR 0,0631 for every km from	3 001 to 4 000 km
EUR 0,0305 for every km from	4 001 to 10 000 km
EUR 0 for every km over	10 000 km.

To the above kilometric allowance shall be added a flat-rate supplement amounting to:

— EUR 94,74 if the geographical distance between the places referred to in paragraph 1 is between 600 km and 1 200 km,

— EUR 189,46 if the geographical distance between the places referred to in paragraph 1 is greater than 1 200 km.

The above kilometric allowances and flat-rate supplements shall be updated every year in the same proportion as remuneration.

3. By way of derogation from paragraph 2, travel expenses which relate to a transfer involving a change between a place of employment within the territories of the Member States of the European Union and a place of employment outside those territories or to a transfer involving a change between places of employment outside those territories shall be reimbursed in the form of a flat-rate payment based on the cost of air travel in the class immediately superior to economy class.

4. An official's place of origin shall be determined when he takes up his appointment, account being taken in principle of where he was recruited or, upon express and duly reasoned request, the centre of his interests. The place of origin as so determined may by special decision of the appointing authority be changed while the official is in service or when he leaves the service. While he is in the service, however, such decision shall be taken only exceptionally and on production by the official of appropriate supporting evidence.

The effect of such a change shall not, however, be such as to recognise as the centre of the official's interests a place which is outside the territories of the Member States of the Union as well as outside the countries and territories listed in Annex II to the Treaty on the Functioning of the European Union and the territories of the Member States of the European Free Trade Association.¹

(d) Article 8 is replaced by the following:

'Article 8

1. Officials entitled to the expatriation or foreign residence allowance shall be entitled, within the limit set out in paragraph 2, in each calendar year to a flat-rate payment corresponding to the cost of travel from the place of employment to the place of origin as defined in Article 7 for themselves and, if they are entitled to the household allowance, for the spouse and dependants within the meaning of Article 2.

Where a husband and wife are both officials of the European Union, each has the right in respect of himself or herself and in respect of dependants to the flat-rate payment of travelling expenses, in accordance with the above provisions; each dependant shall be entitled to one payment only. The payment in respect of dependent children is fixed at the request of the husband or wife, on the basis of the place of origin of one or other of them.

Where an official marries during a given year and thereby becomes entitled to the household allowance, the travel expenses payable for the spouse shall be calculated in proportion to the period from the date of the marriage to the end of the year.

Any alteration to the basis of calculation which may arise from changes in family status after the date of payment of the sums in question shall not render the official concerned liable to make repayment.

Travel expenses for children aged less than two years during the entire calendar year shall not be reimbursed.

2. The flat-rate payment shall be based on an allowance per kilometre of geographical distance between the official's place of employment and his place of origin.

Where the place of origin as defined in Article 7 is outside the territories of the Member States of the Union as well as outside the countries and territories listed in Annex II to the Treaty on the Functioning of the European Union and the territories of the Member States of the European Free Trade Association, the flat-rate payment shall be based on an allowance per kilometre of geographical distance between the official's place of employment and the capital city of the Member State whose nationality he holds. Officials whose place of origin is outside the territories of the Member States of the Union as well as outside the countries and territories listed in Annex II to the Treaty on the Functioning of the European Union and the territories of the Member States of the European Free Trade Association and who are not nationals of one of the Member States shall not be entitled to the flat-rate payment.

The kilometric allowance shall be:

EUR 0 for every km from	0 to 200 km
EUR 0,3790 for every km from	201 to 1 000 km
EUR 0,6316 for every km from	1 001 to 2 000 km
EUR 0,3790 for every km from	2 001 to 3 000 km
EUR 0,1262 for every km from	3 001 to 4 000 km
EUR 0,0609 for every km from	4 001 to 10 000 km
EUR 0 for every km over	10 000 km.

To the above kilometric allowance a flat-rate supplement shall be added, amounting to:

- EUR 189,48 if the geographical distance between the place of employment and the place of origin is between 600 km and 1 200 km,
- EUR 378,93 if the geographical distance between the place of employment and the place of origin is greater than 1 200 km.

The above kilometric allowances and flat-rate supplements shall be updated every year in the same proportion as remuneration.

3. An official whose service is terminated in the course of a calendar year for any reason other than death or who is on leave on personal grounds during part of the year shall, if he is in active employment in the service of an institution of the Union for less than nine months of that year, be entitled only to part of the flat-rate payment provided for in paragraphs 1 and 2, calculated in proportion to the time spent in active employment.

4. Paragraphs 1, 2 and 3 of this Article shall apply to officials whose place of employment is within the territories of the Member States. Officials whose place of employment is outside the territory of the Member States shall be entitled for themselves and, if they are entitled to receive the household allowance, for their spouse and other dependants within the meaning of Article 2, in each calendar year, to a flat-rate payment for travel expenses to their place of origin, or to repayment of travel expenses to another place not exceeding the expense of travel to the place of origin. However, if the spouse and the persons referred to in Article 2(2) do not live with the official at the place of employment, they shall be

entitled each calendar year to reimbursement of travel expenses from the place of origin to the place of employment or to another place not exceeding the cost of the former journey.

The flat-rate payment shall be based on the cost of air travel in economy class.;

(e) Article 9 is replaced by the following:

'Article 9

1. Within the limits of costs ceilings, officials obliged to change their place of residence in order to comply with Article 20 of the Staff Regulations upon entry into service or on a subsequent change of place of employment while in service and who have not been reimbursed in respect of the same expenses from another source, shall be entitled to the reimbursement of expenses incurred in respect of the removal of furniture and personal effects, including the cost of insurance against ordinary risks (notably breakage, theft, fire).

The ceilings shall take into account the official's family situation at the time of the removal, and the average costs of removal and associated insurance.

General implementing provisions shall be adopted by the appointing authority of each institution to give effect to this paragraph.

2. On termination of service or on death of an official, the expenses incurred in respect of removal from the place where he was employed to his place of origin shall be reimbursed within the limits defined in paragraph 1. Where the deceased official was unmarried, the expenses shall be reimbursed to those entitled under him.

3. In the case of an established official, removal shall be effected within one year of the end of his probationary period. On termination of service, removal shall be effected within three years as provided in the second subparagraph of Article 6(4). Removals effected after the expiry of the time limits set out in this paragraph shall be reimbursed only in exceptional cases and by special decision of the appointing authority.;

(f) Article 13 is amended as follows:

(i) paragraph 3 is replaced by the following:

'3. The Commission shall review every two years the rates set out in point (a) of paragraph 2. That review shall take place in the light of a report on the prices of hotels, restaurants and catering services, and shall be based on the indexes on the evolution of such prices. For the purpose of that review, the Commission shall act by means of delegated acts in accordance with Articles 111 and 112 of the Staff Regulations.;

(ii) the following paragraph is added:

'4. By way of derogation from paragraph 1, accommodation costs incurred by officials for missions to the principal places of work of their institution as referred to in Protocol No 6 to the Treaty on the Functioning of the European Union may be reimbursed on the basis of a flat-rate sum which shall not exceed the maximum fixed for the Member States in question.;

(g) in Article 13a, the words 'various institutions' are replaced by 'appointing authorities of the various institutions';

(h) Article 17 is amended as follows:

(i) paragraph 1 is replaced by the following:

'1. Payment shall be made to each official at the place and in the currency of the country where he carries out his duties or, at the request of the official, in euros in a bank within the European Union.;

(ii) the first subparagraph of paragraph 2 is replaced by the following:

'Under the conditions laid down in rules fixed by the appointing authorities of each institution by common consent after consulting the Staff Regulations Committee, officials may apply for special regular transfer of part of their remuneration.;

(iii) in the first sentence of paragraph 3, after the words 'shall be made', the words 'in the currency of the relevant Member State' are inserted;

(iv) in the first sentence of paragraph 4, after the words 'to another Member State', the words 'in local currency' are inserted;

(68) Annex VIII is amended as follows:

- (a) in point (b) of Article 3, the words 'under Articles 41 and 50' are replaced by 'under Articles 41, 42c and 50';

- (b) Article 5 is replaced by the following:

'Article 5

Notwithstanding the provisions of Article 2 of this Annex, officials who remain in service after pensionable age shall be entitled to an increase of their pension equal to 1,5 % of the basic salary taken into account for the calculation of their pension per year worked after that age, with the proviso that the total of their pension plus the increase does not exceed 70 % of their final basic salary as referred to in the second or third paragraph, as the case may be, of Article 77 of the Staff Regulations.

Such increase shall likewise be payable in the event of death of an official who has remained in the service after pensionable age.;

- (c) in Article 6, the words 'the first step of grade 1' are replaced by 'the first step of grade AST 1';

- (d) Article 9 is replaced by the following:

'Article 9

An official leaving the service before reaching pensionable age may request that his retirement pension:

- (a) be deferred until the first day of the calendar month following that in which he reaches pensionable age; or
- (b) be paid immediately, provided that he is not less than 58 years of age. In that case, the retirement pension shall be reduced by an amount calculated by reference to the official's age when he starts to draw his pension.

The pension shall be reduced by 3,5 % for every year before the one in which the official would become entitled to a retirement pension within the meaning

of Article 77 of the Staff Regulations. If between the age at which entitlement to a retirement pension is acquired within the meaning of Article 77 of the Staff Regulations and the age of the person concerned at the time, the difference exceeds an exact number of years, an extra year shall be added to the reduction.;

- (e) In the second subparagraph of Article 11(2), the word 'institution' shall be replaced by 'appointing authority of the institution';

- (f) Article 12 is amended as follows:

- (i) paragraph 1 is replaced by the following:

'1. An official aged less than the pensionable age whose service terminates otherwise than by reason of death or invalidity and who is not entitled to an immediate or deferred retirement pension shall be entitled on leaving the service:

- (a) where he has completed less than one year's service and has not made use of the arrangement laid down in Article 11(2), to payment of a severance grant equal to three times the amounts withheld from his basic salary in respect of his pension contributions, after deduction of any amounts paid under Articles 42 and 112 of the Conditions of Employment of Other Servants;

- (b) in other cases, to the benefits provided under Article 11(1) or to the payment of the actuarial equivalent of such benefits to a private insurance company or pension fund of his choice, on condition that such company or fund guarantees that:

- (i) the capital will not be repaid;

- (ii) a monthly income will be paid from age 60 at the earliest and age 66 at the latest;

- (iii) provisions are included for reversion or survivors' pensions;

- (iv) transfer to another insurance company or other fund will be authorised only if such fund fulfils the conditions laid down in points (i), (ii) and (iii).;

(ii) paragraph 2 is replaced by the following:

'2. By way of derogation from point (b) of paragraph 1, officials under pensionable age who, since taking up their duties, have, in order to establish or maintain pension rights, paid into a national pension scheme, a private insurance scheme or a pension fund of their choice which satisfies the requirements set out in paragraph 1, and whose service terminates for reasons other than death or invalidity without their qualifying for an immediate or deferred retirement pension, shall be entitled, on leaving the service, to a severance grant equal to the actuarial value of their pension rights acquired during service in the institutions. In those cases the payments made in order to establish or maintain their pension rights under the national pension scheme in application of Articles 42 or 112 of the Conditions of Employment of Other Servants shall be deducted from the severance grant.'

(g) in Article 15, the words '63 years' are replaced by 'the pensionable age'.

(h) in Article 18a, the words 'age of 63 years' are replaced by 'pensionable age';

(i) in the second paragraph of Article 27, the word 'adjusted' is replaced by 'updated';

(j) Article 45 is amended as follows:

(i) in the third paragraph, the words 'Member State of residence' are replaced by 'European Union';

(ii) in the first sentence of the fourth paragraph, the words 'in the European Union or' are inserted after the word 'bank';

(iii) in the second sentence of the fourth paragraph, the words 'in euro into a bank in the country where the institution has its headquarters, or' are deleted;

(69) Annex IX is amended as follows:

(a) in Article 2(3), the word 'institutions' is replaced by 'appointing authority of each institution';

(b) the first sentence of Article 5(1) is replaced by the following:

'A Disciplinary Board, hereinafter referred to as "the Board", shall be established in each institution, unless two or more agencies decide, in accordance with paragraph 1a of Article 9 of the Staff Regulations, to set up a common Board.'

(c) Article 30 is replaced by the following:

'Article 30

Without prejudice to Article 2(3), the appointing authority of each institution shall, if it sees fit, adopt implementing arrangements for this Annex after consulting the Staff Committee';

(70) Annex X is amended as follows:

(a) Article 6 is replaced by the following:

'Article 6

An official shall, per calendar year, be entitled to annual leave of two working days for each month of service.

Notwithstanding the first paragraph of this Article, officials posted already in a third country on 1 January 2014 shall be entitled to:

— three working days from 1 January 2014 until 31 December 2014;

— two and half working days from 1 January 2015 until 31 December 2015.'

(b) Article 7 is replaced by the following:

'Article 7

In the year in which an official takes up or ceases to perform his duties in a third country, he shall be entitled to two working days leave for each complete month of service, to two working days for an incomplete month consisting of more than 15 days and to one working day for an incomplete month of 15 days or less.

Where an official, for reasons other than the requirements of the service, has not used up his annual leave before the end of the current calendar year, the amount of leave which may be carried over to the following year shall not exceed 14 working days.'

(c) in Article 8, the following paragraph is added:

'Officials who take part in professional training courses pursuant to Article 24a of the Staff Regulations and who have been granted rest leave pursuant to the first paragraph of this Article shall undertake, where appropriate, to combine their periods of professional training with their rest leave.'

(d) Article 9(1) is replaced by the following:

'1. Annual leave may be taken all at once or in several periods, according to what the official desires and taking account of the requirements of the service. It must, however, include at least one period of two consecutive weeks.'

(e) Article 10 is replaced by the following:

'Article 10

1. An allowance for living conditions shall be fixed, according to the official's place of employment, as a percentage of a reference amount. That reference amount shall comprise the total basic salary, plus the expatriation allowance, household allowance and dependent child allowance, less the compulsory deductions referred to in the Staff Regulations or in the regulations adopted to implement them.

Where an official is employed in a country in which living conditions can be deemed equivalent to those normally obtaining in the European Union, no such allowance shall be payable.

In the case of other places of employment, the allowance for living conditions shall be fixed taking into account, *inter alia*, the following parameters:

- health and hospital environment,
- security,
- climate,
- degree of isolation,
- other local living conditions.

The allowance for living conditions fixed for each place of employment shall be reviewed and, where appropriate, adjusted each year by the appointing authority after the opinion of the Staff Committee has been obtained.

The appointing authority may decide to grant a supplementary premium in addition to the allowance for living conditions in cases where an official has had more than one assignment to a place of employment considered difficult or very difficult. That supplementary premium shall not exceed 5 % of the reference amount referred to in the first subparagraph and the appointing authority shall duly substantiate its individual decisions in order to respect equality of treatment, basing itself on the level of difficulty of the previous assignment.

2. If living conditions at the place of employment are such as to put the official at personal risk, a temporary additional allowance shall be paid to him by special reasoned decision of the appointing authority. That allowance shall be fixed as a percentage of the reference amount referred to in the first subparagraph of paragraph 1:

- where the authority recommends to its staff not to settle their families or other dependants in the place of employment, provided that they follow that recommendation;
- where the authority decides to reduce temporarily the number of staff serving in the place of employment.

In duly justified cases, the appointing authority may also determine that a post is a non-family posting. The above-mentioned allowance shall be paid to staff members who respect that determination.

3. Detailed provisions for the application of this Article shall be decided by the appointing authority.'

(f) in the first sentence of Article 11, the word 'Belgium' is replaced by 'the European Union';

(g) Article 13 is replaced by the following:

'Article 13

In order to ensure as far as possible that officials enjoy equivalent purchasing power irrespective of their place of employment, the weighting referred to in Article 12 shall be updated once a year in accordance with Annex XI. With respect to the update, all values shall be understood as reference values. The Commission shall publish the updated values within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes.

Where, however, in the case of a given country, the variation in the cost of living measured on the basis of the weighting and the corresponding exchange rate is found to have exceeded 5 % since the last update, an interim update of the weighting in accordance with the procedure laid down in the first paragraph shall take place.;

(h) Article 23 is replaced by the following:

'Article 23

On the basis of a list of countries to be defined by the appointing authority, and where the official is not provided with accommodation by the institution, the appointing authority shall either pay the official an accommodation allowance or reimburse the rent paid by the official.

The accommodation allowance shall be paid upon presentation of a tenancy agreement unless the

appointing authority waives that obligation for duly justified reasons linked to practices and local conditions in the place of employment in the third country concerned. The accommodation allowance shall be calculated depending primarily on the official's level of duties and subsequently on the composition of his dependent family.

The rent shall be reimbursed, provided that the accommodation has been expressly authorised by the appointing authority and corresponds primarily to the official's level of duties and subsequently to the composition of his dependent family.

Detailed rules for the application of this Article shall be laid down by the appointing authority. The accommodation allowance shall not in any case exceed the costs incurred by the official.;

(71) Annex XI is replaced by the following:

'ANNEX XI

RULES FOR IMPLEMENTING ARTICLES 64 AND 65 OF THE STAFF REGULATIONS

CHAPTER 1

ANNUAL UPDATE OF REMUNERATION PROVIDED FOR IN ARTICLE 65(1) OF THE STAFF REGULATIONS

Section 1

Factors determining annual updates

Article 1

1. Report from the Statistical Office of the European Union (Eurostat)

For the purposes of the update provided for in Article 65(1) of the Staff Regulations and in Article 13 of Annex X, Eurostat shall draw up every year before the end of October a report on changes in the cost of living in Belgium and Luxembourg, the economic parities between Brussels and certain places in the Member States and in third countries where necessary, and changes in the purchasing power of salaries in national civil services in central government.

2. Changes in the cost of living in Belgium and Luxembourg

Eurostat shall draw up an index to measure changes in the cost of living for officials of the Union in Belgium and Luxembourg. That index (hereinafter the "Joint Index") shall be calculated by weighting national inflation (as measured by the Harmonised Indices of Consumer Prices (HICP) in the case of Belgium and the Consumer Prices Index (CPI) in the case of Luxembourg) between June of the previous year and June of the current year according to the distribution of the staff serving in those Member States.

3. Changes in the cost of living outside Brussels

(a) Eurostat shall, in agreement with national statistical institutes or other appropriate authorities in the Member States as defined in Regulation (EC) No 223/2009 of the European Parliament and of the Council (*) (hereinafter "national statistical institutes or other appropriate authorities in the Member States"), calculate the economic parities which establish the equivalence of purchasing power:

(*) Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European Statistics and repealing Regulation (EC, Euratom) No 1101/2008 of the European Parliament and of the Council on the transmission of data subject to statistical confidentiality to the Statistical Office of the European Communities, Council Regulation (EC) No 322/97 on Community Statistics, and Council Decision 89/382/EEC, Euratom establishing a Committee on the Statistical Programmes of the European Communities (OJ L 87, 31.3.2009, p. 164).

- (i) of the salaries of officials of the Union serving in the capitals of the Member States, except for the Netherlands where The Hague is used instead of Amsterdam, and in certain other places of employment with reference to Brussels,
 - (ii) of the pensions of officials paid in the Member States with reference to Belgium.
 - (b) The economic parities shall refer to the month of June each year.
 - (c) The economic parities shall be calculated in such a way that each basic component can be updated twice per year and checked by a direct survey at least once every five years. Eurostat shall update the economic parities using the change in the Harmonised Index of Consumer Prices of the Member States and the most appropriate indices as defined by the Working Group on Articles 64 and 65 of the Staff Regulations referred to in Article 13.
 - (d) Outside Belgium and Luxembourg, changes in the cost of living during the reference period shall be measured by the implicit indices. Those indices are calculated by multiplying the Joint Index by the change in the economic parity.
4. *Changes in the purchasing power of salaries of national civil servants in central government (specific indicators)*
- (a) For the purpose of measuring the percentage change, either upward or downward, in the purchasing power of salaries in the national civil services, Eurostat shall, on the basis of information supplied before the end of September by the national statistical institutes or other appropriate authorities in the Member States, calculate specific indicators reflecting changes in the real remuneration of civil servants in central government, between the month of July of the previous year and the month of July of the current year. The two should include one twelfth of all annually-paid elements.

The specific indicators shall take two forms:

- (i) one indicator for each of the function groups as they are defined in the Staff Regulations,
- (ii) an average indicator weighted to reflect the number of national civil servants corresponding to each function group.

Each of those indicators shall be established in real gross and real net terms. For the transition from gross to net, account shall be taken of statutory deductions and general taxation factors.

To establish the gross and net indicators for the European Union total, Eurostat shall use a sample composed of the following Member States: Belgium, Germany, Spain, France, Italy, Luxembourg, Netherlands, Austria, Poland, Sweden and United Kingdom. The European Parliament and the Council, acting on a Commission proposal under Article 336 of the Treaty on the Functioning of the European Union, may adopt a new sample which represents at least 75 % of the Union gross domestic product (GDP) and which will apply from the year following its adoption. The results per country shall be weighted in proportion to the appropriate national GDP aggregate measured using purchasing power parities as shown in the most recent statistics published in accordance with the national accounts definitions in the European System of Accounts currently in force.

- (b) At the request of Eurostat, the national statistical institutes or other appropriate authorities in the Member States shall supply it with the additional information which it considers necessary in order to draw up a specific indicator accurately measuring changes in the purchasing power of national civil servants.

If, after further consultation of the national statistical institutes or other appropriate authorities in the Member States, Eurostat finds statistical anomalies in the information obtained or finds it impossible to draw up indicators which measure with statistical accuracy the changes in the real income of civil servants in a given Member State, it shall report to the Commission and provide it with all the material it needs to make an assessment.

- (c) Besides the specific indicators, Eurostat shall calculate appropriate control indicators. One such indicator shall be in the form of data on real per capita emoluments in central government, drawn up in accordance with the national accounts definitions in the European System of Accounts currently in force.

The Eurostat report on the specific indicators shall be accompanied by comments on the differences between those indicators and the control indicators referred to in this point.

Article 2

For the purposes of Article 15 of this Annex the Commission shall regularly survey the recruitment needs of the institutions.

*Section 2***Arrangements for the annual update of remuneration and pensions***Article 3*

1. Under Article 65 of the Staff Regulations, on the basis of the criteria set out in Section 1 of this Annex, the remuneration and pensions shall be updated before the end of each year, with effect from 1 July.

2. The amount of the update shall be obtained by multiplying the Joint Index by the specific indicator. The update shall be in net terms as a uniform across-the-board percentage.

3. The amount of the update thus fixed shall be incorporated, in accordance with the following method, in the basic salary tables appearing in Article 66 of the Staff Regulations and in Annex XIII to the Staff Regulations and in Articles 20, 93 and 133 of the Conditions of Employment of Other Servants:

- (a) the net remuneration and net pension without correction coefficient shall be increased or reduced by the update referred to above,
 - (b) the new table of basic salaries shall be drawn up by calculating the gross amount which, after deduction of tax having regard to paragraph 4 and compulsory deductions for social security and pension contributions, corresponds to the net amount,
 - (c) the conversion of net amounts into gross amounts shall be based on the situation of an unmarried official who does not receive the allowances provided for in the Staff Regulations.
4. For the purposes of applying Regulation (EEC, Euratom, ECSC) No 260/68, the amounts in Article 4 of that Regulation shall be multiplied by a factor composed of:

- (a) the factor resulting from the previous update, and/or
- (b) the rate of update of remuneration referred to in paragraph 2.

5. No correction coefficient shall be applicable in Belgium and Luxembourg. The correction coefficients applicable:

- (a) to the salaries of officials of the European Union serving in the other Member States and in certain other places of employment,
- (b) by way of derogation from Article 82(1) of the Staff Regulations, to European Union pensions paid in the other Member States for the part corresponding to the rights acquired before 1 May 2004,

shall be determined on the basis of the ratios between the corresponding economic parities referred to in Article 1 of this Annex and the exchange rates specified in Article 63 of the Staff Regulations for the relevant countries.

The procedures laid down in Article 8 of this Annex concerning the retrospective application of correction coefficients in places of employment with a high rate of inflation shall apply.

6. The institutions shall make the corresponding positive or negative update to the remuneration and pensions of the officials, former officials and other persons concerned with retroactive effect for the period between the effective date and the date of entry into force of the next update.

If that retroactive update necessitates the recovery of sums overpaid, such recovery may be spread over a period of not more than 12 months from the date of entry into force of the next annual update.

CHAPTER 2

INTERMEDIATE UPDATES OF REMUNERATION AND PENSIONS (ARTICLE 65(2) OF THE STAFF REGULATIONS)*Article 4*

1. An intermediate update of remuneration and pensions pursuant to Article 65(2) of the Staff Regulations, taking effect on 1 January, shall be effected in the event of a substantial change in the cost of living between June and December (by reference to the sensitivity threshold defined in Article 6 of this Annex) and with due allowance being made for the forecast of the change in purchasing power during the current annual reference period.
2. Such intermediate updates shall be taken into account in the annual salary update.

Article 5

1. In March each year Eurostat shall make a forecast of changes in purchasing power over the period concerned on the basis of the information supplied at the meeting provided for in Article 13 of this Annex.

If that forecast produces a negative percentage, half of that percentage shall be taken into account in the calculation of the intermediate update.

2. The change in the cost of living for Belgium and Luxembourg shall be measured by the Joint Index for the period from June to December of the previous calendar year.
3. For each place for which a correction coefficient has been set (other than Belgium and Luxembourg), an estimate for December of the economic parities mentioned in Article 1(3) shall be calculated. The change in the cost of living shall be calculated in accordance with the rules set out in Article 1(3).

Article 6

1. The sensitivity threshold for the six-month period mentioned in Article 5(2) of this Annex shall be the percentage corresponding to 6 % for a 12-month period.
2. The threshold shall be applied in accordance with the following procedure, subject to application of the second subparagraph of Article 5(1) of this Annex:
 - (a) if the sensitivity threshold is reached or exceeded in Belgium and Luxembourg (as measured by the Joint Index between June and December), the remuneration for all places shall be updated following the annual update procedure,
 - (b) if the sensitivity threshold is not reached in Belgium and Luxembourg, only the correction coefficients of places where the change in the cost of living (as measured by the implicit indices between June and December) has exceeded the threshold shall be updated.

Article 7

For the purposes of Article 6 of this Annex:

The amount of the update shall be the Joint Index, multiplied, where appropriate, by half of the specific indicator forecast if this is negative.

Correction coefficients shall be the ratio between the relevant economic parity and the exchange rate provided for in Article 63 of the Staff Regulations, multiplied, if the update threshold is not reached for Belgium and Luxembourg, by the value of the update.

CHAPTER 3

DATE ON WHICH A CORRECTION COEFFICIENT COMES INTO EFFECT (PLACES OF EMPLOYMENT WITH A HIGH COST-OF-LIVING INCREASE)*Article 8*

1. For places with a high cost-of-living increase (as measured by the change in the implicit indices), the correction coefficient shall come into effect before 1 January in the case of the intermediate update, or 1 July in the case of the annual update. This is so as to bring the loss in purchasing power into line with what it would be in a place of employment where the change in the cost of living corresponded to the sensitivity threshold.

2. The effective dates for the annual update shall be as follows:

(a) 16 May for places of employment having an inflation rate higher than 6 %, and

(b) 1 May for places of employment having an inflation rate higher than 10 %.

3. The effective dates for the intermediate update shall be as follows:

(a) 16 November for places of employment having an inflation rate higher than 6 %, and

(b) 1 November for places of employment having an inflation rate higher than 10 %.

CHAPTER 4

CREATION AND WITHDRAWAL OF CORRECTION COEFFICIENTS (ARTICLE 64 OF THE STAFF REGULATIONS)*Article 9*

1. The appropriate authorities of the Member States concerned, the administration of an institution of the Union or the representatives of officials of the Union in a given place of employment can request the creation of a correction coefficient specific to that place.

Such a request should be supported by objective factors revealing an appreciable difference over some years in the cost of living between that place of employment and the capital of the Member State concerned (except for the Netherlands, where The Hague is used instead of Amsterdam). If Eurostat confirms that the difference is appreciable (more than 5 %) and sustainable, the Commission shall enact, by means of delegated acts in accordance with Articles 111 and 112 of the Staff Regulations, a correction coefficient for that place.

2. The Commission shall decide, by means of delegated acts in accordance with Articles 111 and 112 of the Staff Regulations, to withdraw the application of a correction coefficient specific to a certain place. In that case the decision shall be based on one of the following:

(a) a request by the appropriate authorities of the Member State concerned, the administration of an institution of the Union or the representatives of officials of the Union in a given place of employment showing that the cost of living in that place is no longer significantly different (less than 2 %) from that in the capital of the Member State concerned. Such convergence should be sustainable and validated by Eurostat,

(b) the fact that there are no longer any officials and temporary staff of the Union employed in that place.

CHAPTER 5

MODERATION AND EXCEPTION CLAUSES*Article 10*

The value of the specific indicator used for the annual update shall be subject to an upper limit of 2 % and a lower limit of - 2 %. If the value of the specific indicator exceeds the upper limit or is below the lower limit, then the value of the limit shall be used to calculate the update value.

The first paragraph shall not apply when Article 11 applies.

The remainder of the annual update resulting from the difference between the update value calculated with the specific indicator and the update value calculated with the limit shall be applied as from 1 April of the following year.

Article 11

1. If there is a decrease in the real Union GDP for the current year as forecast by the Commission and the specific indicator is positive, only part of the specific indicator shall be used to calculate the value of the update. The remainder of the update value corresponding to the remainder of the specific indicator shall be applied as from a later date in the following year. That remainder of the update value shall not be taken into account for the purposes of Article 10. The value of the Union GDP, the consequences in terms of split of the specific indicator, and the application date are defined in accordance with the following table:

Union GDP	Consequences on the specific indicator	Date of payment of the second part
[- 0,1 %; - 1 %]	33 %; 67 %	1 April of year n + 1
[- 1 %; - 3 %]	0 %; 100 %	1 April of year n + 1
below - 3 %	0 %	—

2. Where there is a gap between the forecast mentioned under paragraph 1 and the final data on Union GDP made available by the Commission and those final data would modify the consequences as laid down in the table under paragraph 1, the necessary corrections, including retroactive adjustments, either positive or negative, shall take place in accordance with the same table.

3. Any updated reference amount resulting from a correction shall be published by the Commission within two weeks from the correction in the C series of the *Official Journal of the European Union* for information purposes.

4. When the application of paragraph 1 or 2 has led to the fact that the value of the specific indicator did not serve the update of the remunerations and the pensions, that value shall form the basis of the calculation of a future update once the cumulative increase of the Union GDP measured from the year in which paragraph 1 or 2 was applied becomes positive. In any case the value mentioned in the first sentence shall be subject by analogy to the limits and the principles laid down in Article 10 of this Annex. The evolution of the Union GDP shall be regularly measured by Eurostat for this purpose.

5. If relevant, the legal consequences resulting from the application of Article 10 and this Article shall continue to have full effect even after the date of expiry of this Annex as referred to in Article 15.

CHAPTER 6

ROLE OF EUROSTAT AND RELATIONS WITH THE NATIONAL STATISTICAL INSTITUTES OR OTHER APPROPRIATE AUTHORITIES OF THE MEMBER STATES

Article 12

It shall be the task of Eurostat to monitor the quality of basic data and statistical methods used to work out the factors taken into account for the update of remuneration. In particular, it shall make any assessments or carry out any studies required for such monitoring.

Article 13

In March each year Eurostat shall convene a meeting of a working group composed of experts from the national statistical institutes or other appropriate authorities in the Member States, to be known as the 'Working Group on Article 64 and 65 of the Staff Regulations'.

At that meeting, the statistical methodology and its implementation concerning specific and control indicators, the joint index and economic parities shall be examined.

The information required to produce a forecast of changes in purchasing power for the purposes of the intermediate update of remuneration shall also be provided, together with the data on working hours in central government departments.

Article 14

At the request of Eurostat, Member States shall inform Eurostat of any factors having a direct or indirect impact on the composition and changes in the remuneration of central government civil servants.

CHAPTER 7

FINAL PROVISION AND REVIEW CLAUSE

Article 15

1. The provisions of this Annex shall apply from 1 January 2014 to 31 December 2023.
2. Before 31 March 2022 the Commission shall submit a report to the European Parliament and the Council. That report shall have regard to the survey conducted under Article 2 of this Annex and shall assess whether, in particular, the evolution of purchasing power of remuneration and pensions of Union officials is in accordance with the changes in the purchasing power of salaries in national civil services in central governments. On the basis of that report, if appropriate, the Commission shall submit a proposal to amend this Annex as well as Article 66a of the Staff Regulations on the basis of Article 336 of the Treaty on the Functioning of the European Union.
3. As long as the European Parliament and the Council have not adopted a Regulation on the basis of a Commission proposal, this Annex and Article 66a of the Staff Regulations shall continue to apply provisionally beyond the expiry dates laid down in paragraph 1 of this Article and in Article 66a of the Staff Regulations.
4. At the end of 2018 the Commission shall submit an interim report to the European Parliament and the Council on the application of this Annex and of Article 66a of the Staff Regulations.;

(72) Annex XII is amended as follows:

(a) Article 2 is replaced by the following:

'Article 2

1. Any update of the contribution rate shall take effect on 1 July at the same time as the annual update of remuneration under Article 65 of the Staff Regulations. Any update shall not lead to a contribution being more than one percentage point above or below the valid rate of the previous year.

2. The difference established between the update of the contribution rate which would have resulted from the actuarial calculation and the update resulting from the variation referred to in the last sentence of paragraph 1 shall not be recovered at any time, or, consequently, taken into account in subsequent actuarial calculations. The contribution rate which would have resulted from the actuarial calculation shall be mentioned in the assessment report provided for in Article 1 of this Annex.;

(b) in Article 4(6), the words '12-year' are replaced by '30-year';

(c) in Articles 10(2) and 11(2) the words '12 years' are replaced by '30 years';

(d) the following Article is inserted:

'Article 11a

Until 2020, for the application of Articles 4(6), 10(2) and 11(2) of this Annex, the moving average shall be calculated on the basis of the following time scale:

	In 2017 – 22 years
In 2014 – 16 years	In 2018 – 24 years
In 2015 – 18 years	In 2019 – 26 years
In 2016 – 20 years	In 2020 – 28 years';

(e) Article 12 is replaced by the following:

'Article 12

The rate in Articles 4 and 8 of Annex VIII for the calculation of compound interest shall be the effective rate referred to in Article 10 of this Annex and shall, if necessary, be updated on the occasion of the five-yearly actuarial assessments.

With respect to the update, the rate referred to in Articles 4 and 8 of Annex VIII shall be understood as a reference rate. The Commission shall publish the updated effective rate within two weeks after the update in the C series of the *Official Journal of the European Union* for information purposes.;

(f) Article 14 is replaced by the following:

'Article 14

1. In 2022 the Commission shall submit a report to the European Parliament and the Council. That report shall have regard to the budgetary implications of this Annex and shall assess the actuarial balance of the pension system. On the basis of that report the Commission will, if appropriate, submit a proposal to amend this Annex.

2. In 2018 the Commission shall submit an interim report to the European Parliament and the Council on the application of this Annex.';

(73) Annex XIII is amended as follows:

(a) in the third subparagraph of Article 7(2), the word 'adjustment' shall be replaced by 'update';

(b) Articles 10, 14 to 17 and Article 18(2) are deleted;

(c) in Article 18(1), the word 'adjusted' is replaced by 'updated' and the word 'adjustment' is replaced by 'update';

(d) Article 19 is replaced by the following:

'Article 19

Notwithstanding the provisions of Regulation (EU) No 1023/2013 of the European Parliament and of the Council (*), Articles 63, 64, 65, 82 and 83a of the Staff Regulations, Annexes XI and XII thereto and Articles 20(1), 64, 92 and 132 of the Conditions of Employment of Other Servants as in force before 1.11.2013 shall continue to be in force exclusively for the purpose of any adjustment required to comply with a judgment of the Court of Justice of the European Union under Article 266 of the Treaty on the Functioning of the European Union on the application of those articles.

(*) Regulation (EU) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ L 287, 29.10.2013, p. 15)';

(e) Article 20 is amended as follows:

(i) paragraph 2 is deleted;

(ii) the second subparagraph of paragraph 3 is replaced by the following:

'Their pensions shall be subject to the correction coefficient only if the residence of the official coincides with their last place of employment or with the country of their place of origin within the meaning of Article 7(4) of Annex VII. However, for family or medical reasons, officials receiving a pension may request the appointing authority to change their place of origin; the decision in that regard shall be taken on production by the official concerned of appropriate supporting evidence.';

(iii) the last sentence of paragraph 4 is deleted;

(f) Article 21 is replaced by the following:

'Article 21

Notwithstanding the second sentence of the second paragraph of Article 77 of the Staff Regulations, officials who entered the service before 1 May 2004 shall be entitled to 2 % of their salary referred to therein for every year of pensionable service calculated in accordance with Article 3 of Annex VIII.

Officials who entered the service in the period from 1 May 2004 until 31 December 2013 shall be entitled to 1,9 % of their salary referred to therein for every year of pensionable service calculated in accordance with Article 3 of Annex VIII.';

(g) Article 22 is replaced by the following:

'Article 22

1. Officials with 20 or more years' service on 1 May 2004 shall become entitled to a retirement pension when they reach the age of 60.

Officials aged 35 years or more on 1 May 2014 and who entered the service before 1 January 2014 shall become entitled to a retirement pension at the age shown in the table below:

Age on 1 May 2014	Pensionable age	Age on 1 May 2014	Pensionable age
60 years and above	60 years	47 years	62 years 6 months
59 years	60 years 2 months	46 years	62 years 8 months
58 years	60 years 4 months	45 years	62 years 10 months

Age on 1 May 2014	Pensionable age	Age on 1 May 2014	Pensionable age
57 years	60 years 6 months	44 years	63 years 2 months
56 years	60 years 8 months	43 years	63 years 4 months
55 years	61 years	42 years	63 years 6 months
54 years	61 years 2 months	41 years	63 years 8 months
53 years	61 years 4 months	40 years	63 years 10 months
52 years	61 years 6 months	39 years	64 years 3 months
51 years	61 years 8 months	38 years	64 years 4 months
50 years	61 years 11 months	37 years	64 years 5 months
49 years	62 years 2 months	36 years	64 years 6 months
48 years	62 years 4 months	35 years	64 years 8 months

Officials aged less than 35 years on 1 May 2014 shall become entitled to a retirement pension at the age of 65 years.

However, for officials aged 45 years or more on 1 May 2014 who entered the service between 1 May 2004 and 31 December 2013, the pensionable age shall remain 63 years.

For officials in service before 1 January 2014 pensionable age to be taken into consideration for all references to the pensionable age in these Staff Regulations shall be determined in accordance with the above provisions, save as otherwise provided in these Staff Regulations.

2. Notwithstanding Article 2 of Annex VIII, officials who enter the service before 1 January 2014 and remain in service after the age at which they would have become entitled to a retirement pension shall be entitled to an additional increase of 2,5 % of their final basic salary for each year worked after that age, provided that their total pension does not exceed 70 % of the final basic salary within the meaning of the second or third paragraph of Article 77 of the Staff Regulations, as the case may be.

However, for officials aged 50 years or over or with 20 or more years' service on 1 May 2004, the increase in pension provided for in the previous subparagraph shall not be less than 5 % of the amount of the pension rights acquired at the age of 60.

The increase shall also be granted in the event of death, if the official has remained in service beyond the age at which he became entitled to a retirement pension.

If, pursuant to Annex IVa, an official who enters the service before 1 January 2014 and working part-time contributes to the pension scheme in proportion to the time worked, the increase in pension entitlements provided for in this Article shall be applied only in the same proportion.

3. If the official retires before reaching pensionable age as laid down in this Article, only half of the reduction laid down in point (b) of Article 9 of Annex VIII shall be applied for the period between the age of 60 and the pensionable age.

4. By way of derogation from the second subparagraph of paragraph 1 of the Sole Article of Annex IV, an official to whom a pensionable age of less than 65 years applies in accordance with paragraph 1 shall receive the allowance provided for in that Annex under the conditions laid down therein until the day on which the official reaches his pensionable age.

However, above that age and up to the age of 65 years the official shall continue to receive the allowance until he reaches the maximum retirement pension unless Article 42c of the Staff Regulations applied;

(h) Article 23 is replaced by the following:

'Article 23

1. When point (a) of Article 52 of the Staff Regulations applies, and without prejudice to the provisions of Article 50, an official in service before 1 January 2014 shall be retired automatically on the last day of the month in which he reaches the age of 65. For officials in service before 1 January 2014, the words "age of 66" and "age 66" in the second paragraph of Article 78 and point (b) of Article 81a(1) of the Staff Regulations and in point (b) of Article 12(1) of Annex VIII shall be read as "age of 65" and "age 65".

2. Notwithstanding Article 52 of the Staff Regulations, officials who entered the service before 1 January 2014 and who leave the service before the age at which they would have become entitled to a retirement pension in accordance with Article 22 of this Annex may request that point (b) of Article 9 of Annex VIII be applied

(a) until 31 December 2015 as from the age of 55;

(b) until 31 December 2016 as from the age of 57.

3. By way of derogation from the eighth paragraph of Article 50 of the Staff Regulations, an official who is retired in the interests of the service in accordance with the first paragraph of Article 50 of the Staff Regulations shall be entitled to receive the payment of a pension under Article 9 of Annex VIII in accordance with the table below:

Date of the decision under the first paragraph of Article 50	Age
Until 31 December 2016	55 years
After 31 December 2016	58 years'

- (i) The following Article is inserted:

'Article 24a

In the case of a pension determined before 1 January 2014, the recipient's pension entitlement shall continue to be determined after that date in accordance with the rules applied when the entitlement was initially determined. The same applies to the cover under the joint sickness insurance scheme.;

- (j) Article 28 is replaced by the following:

'Article 28

1. Servants referred to in Article 2 of the Conditions of Employment of Other Servants who were under contract on 1 May 2004 and who are appointed as officials after that date and before 1 January 2014 shall, on retirement, be entitled to an actuarial adjustment of the pension rights they acquired as temporary servants which takes into account the change in their pensionable age as referred to in Article 77 of the Staff Regulations.

2. Servants referred to in Articles 2, 3a and 3b of the Conditions of Employment of Other Servants who are under contract on 1 January 2014 and are appointed as officials after that date shall, on retirement, be entitled to an actuarial adjustment of the pension rights they acquired as temporary or contract staff which takes into account the change in their pensionable age as referred to in Article 77 of the Staff Regulations, in the event that they are at least 35 years old on 1 May 2014.;

- (k) the following Section is added:

'Section 5

Article 30

1. By way of derogation from Annex I, Section A, point 2, the following table of types of posts in function group AD shall apply to officials in service on 31 December 2013:

Director-General	AD 15 – AD 16
Director	AD 14 – AD 15
Head of unit or equivalent	AD 9 – AD 14
Adviser or equivalent	AD 13 – AD 14
Senior Administrator in transition	AD 14
Administrator in transition	AD 13
Administrator	AD 5 – AD 12

2. With effect from 1 January 2014, the appointing authority shall classify officials in service on 31 December 2013 in function group AD in types of posts as follows:

- (a) Officials who were in grade AD 14 on 31 December 2013 and who were not Director or equivalent, Head of unit or equivalent or Adviser or equivalent shall be assigned to the type of post "Senior Administrator in transition".
- (b) Officials who were in grade AD 13 on 31 December 2013 and who were not Head of unit or equivalent or Adviser or equivalent shall be assigned to the type of post "Administrator in transition".
- (c) Officials who were in grades AD 9 to AD 14 on 31 December 2013 and who were Head of unit or equivalent shall be assigned to the type of post "Head of unit or equivalent".
- (d) Officials who were in grades AD 13 or AD 14 on 31 December 2013 and who were Adviser or equivalent shall be assigned to the type of post "Adviser or equivalent".
- (e) Officials who were in grades AD 5 to AD 12 on 31 December 2013 and who were not Head of unit or equivalent shall be assigned to the type of post "Administrator".

3. By way of derogation from paragraph 2, officials in grades AD 9 to AD 14 holding special responsibilities may be assigned by the appointing authority before 31 December 2015 to the type of post "Head of unit or equivalent" or "Adviser or equivalent". Each appointing authority shall lay down provisions to give effect to this Article. However, the total number of officials benefiting from this provision shall not exceed 5 % of the officials in function group AD on 31 December 2013.

4. The assignment to a type of post shall be valid until the official is assigned to a new function corresponding to another type of post.

5. Provided they satisfy the conditions laid down in the first paragraph of Article 44, officials in grade AD 12, step 5, holding a post of Administrator shall, as from 1 January 2016, receive an increase in basic salary equivalent to the difference between the salary corresponding to grade AD 12, step 4, and grade AD 12, step 3.

6. Provided they satisfy the conditions laid down in the first paragraph of Article 44, officials in grade AD 12, step 5, holding a post of Administrator and benefiting from the measure in paragraph 5 shall receive after two years an additional increase in basic salary equivalent to the difference between the salary corresponding to grade AD 12, step 5, and grade AD 12, step 4.

7. By way of derogation from paragraph 5, the following provisions shall apply to officials in grade AD 12 holding a post of Administrator, who were recruited before 1 May 2004 and who have not been promoted between 1 May 2004 and 31 December 2013:

(a) provided they satisfy the conditions laid down in the first paragraph of Article 44, officials in step 8 shall, as from 1 January 2016, receive an increase in basic salary equivalent to the difference between the salary corresponding to grade AD 12, step 4, and grade AD 12, step 3.

(b) provided they benefit from the measure in point (a), officials in step 8 shall receive after two years an additional increase in basic salary equivalent to the difference between the salary corresponding to grade AD 12, step 5, and grade AD 12, step 4.

8. Provided they satisfy the conditions laid down in the first paragraph of Article 44, officials in grade AD 13, step 5, holding a post of Administrator in transition shall, as from 1 January 2016, receive an increase in basic salary equivalent to the difference between the salary corresponding to grade AD 13, step 4, and grade AD 13, step 3.

9. Provided they satisfy the conditions laid down in the first paragraph of Article 44, officials in grade AD 13, step 5, holding a post of Administrator in transition and benefiting from the measure in paragraph 8 shall receive after two years an additional increase in basic salary equivalent to the difference between the salary corresponding to grade AD 13, step 5, and grade AD 13, step 4.

10. Officials receiving the increase in basic salary provided for in paragraphs 5 to 9 and subsequently appointed Head of unit or equivalent or Adviser or equivalent in the same grade shall keep such increase in basic salary.

11. By way of derogation from the first sentence of Article 46, officials appointed to the next higher grade and benefiting from the increase in basic salary provided for in paragraphs 5, 6, 8 and 9 shall be placed in the second step of that grade. They shall lose the benefit of the increase of basic salary provided for in paragraphs 5, 6, 8 and 9.

12. The increase of basic salary in paragraph 7 shall not be paid after promotion and shall not be included in the basis used for determining the increase in basic monthly salary referred to in Article 7(5) of this Annex.

Article 31

1. By way of derogation from Annex I, Section A, point 2, the following table of types of posts in function group AST shall apply to officials in service on 31 December 2013:

Senior Assistant in transition	AST 10 – AST 11
Assistant in transition	AST 1 – AST 9
Administrative Assistant in transition	AST 1 – AST 7
Support Agent in transition	AST 1 – AST 5

2. With effect from 1 January 2014, the appointing authority shall classify officials in service on 31 December 2013 in function group AST in types of posts as follows:

(a) Officials who were in grade AST 10 or AST 11 on 31 December 2013 shall be assigned to the type of post "Senior Assistant in transition".

(b) Officials not covered by point (a) who were before 1 May 2004 in the former category B or who were before 1 May 2004 in the former category C or D and have become a member of function group AST without restriction, as well as AST officials recruited since 1 May 2004, shall be assigned to the type of post "Assistant in transition".

(c) Officials not covered by points (a) and (b) who were before 1 May 2004 in the former category C shall be assigned to the type of post "Administrative Assistant in transition".

(d) Officials not covered by points (a) and (b) who were before 1 May 2004 in the former category D shall be assigned to the type of post "Support Agent in transition".

3. The assignment to a type of post shall be valid until the official is assigned to a new function corresponding to another type of post. Administrative Assistants in transition and Support Agents in transition may be assigned to the type of post of Assistant as defined in Annex I, Section A, only in accordance with the procedure laid down in Articles 4 and 29(1) of the Staff Regulations. Promotion shall only be allowed within the career streams corresponding to each type of post indicated in paragraph 1.

4. By way of derogation from Article 6(1) of the Staff Regulations and from Annex I, Section B, the number of vacant positions in the next higher grade required for promotion purposes shall be calculated separately for Support Agents in transition. The following multiplication rates shall apply:

	Grade	Rate
Support Agents in transition	5	—
	4	10 %
	3	22 %
	2	22 %
	1	—

As far as Support Agents in transition are concerned, comparative merits for the purposes of promotion (Article 45(1) of the Staff Regulations) shall be considered between eligible officials of the same grade and classification.

5. Administrative Assistants in transition and Support Agents in transition who were before 1 May 2004 in the former category C or D shall continue to be entitled either to compensatory leave or to remuneration, where the requirements of the service do not allow compensatory leave during the two months following that in which the overtime was worked, as provided for in Annex VI.

6. Officials who were authorised, on the basis of point (g) of Article 55a(2) of the Staff Regulations and Article 4 of Annex IVa to the Staff Regulations, to work part-time for a period starting before 1 January 2014 and extending beyond that date may continue to work part-time under the same conditions for a maximum overall period of five years.

7. For officials whose pensionable age under Article 22 of this Annex is less than 65 years, the period of three years referred to in point (g) of Article 55a(2) of the Staff Regulations may exceed their pensionable age, without however exceeding the age of 65 years.

Article 32

By way of derogation from the first sentence of the fourth paragraph of Article 1 of Annex II to the Staff Regulations, the representation of the function group AST/SC need not be ensured in the Staff Committee until the next elections of a new Staff Committee at which the AST/SC staff can be represented.

Article 33

By way of derogation from Article 40(2) of the Staff Regulations, when an official has, on 31 December 2013, been on leave on personal grounds for more than 10 years over the entire career, the total length of leave on personal grounds may not exceed 15 years in the course of the official's entire career.¹

Article 2

The Conditions of Employment of Other Servants of the European Union are amended as follows:

(1) The second indent of Article 1 is deleted;

(2) The following point is added to Article 2:

'(f) staff engaged to fill a post which is included in the list of posts appended to the section of the budget relating to an agency as referred to in Article 1a(2) of the Staff Regulations and which the budgetary authorities have classified as temporary, except heads of agencies and deputy heads of agencies as referred to in the Union act establishing the agency and officials seconded in the interests of the service to an agency.¹;

(3) Article 3 is deleted;

(4) In point (b) of Article 3b, point (i) is replaced by the following:

'(i) Officials or temporary staff in function groups AST/SC and AST;¹;

(5) In the first paragraph of Article 8, the words 'Article 2(a)' are replaced by 'Article 2(a) or Article 2(f)';

(6) Article 10(4) is deleted;

(7) Article 11 is amended as follows:

(a) in the first sentence of the first paragraph, the words 'Articles 11 to 26' are replaced by 'Articles 11 to 26a';

(b) in the third paragraph, the words 'second paragraph' are replaced by 'third paragraph';

(8) Article 12 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The engagement of temporary staff shall be directed to securing for the institution the services of persons of the highest standard of ability, efficiency and integrity, recruited on the broadest possible geographical basis from among nationals of Member States of the Union.

Temporary staff shall be selected without distinction as to race, political, philosophical or religious beliefs, sex or sexual orientation and without reference to their marital status or family situation.

No posts shall be reserved for nationals of any Member State. However, the principle of equality of the Union's citizens shall allow each institution to adopt appropriate measures following the observation of a significant imbalance between nationalities among temporary staff which is not justified by objective criteria. Those appropriate measures must be justified and shall never result in recruitment criteria other than those based on merit. Before such appropriate measures are adopted, the authority referred to in the first paragraph of Article 6 shall adopt general provisions for giving effect to this paragraph in accordance with Article 110 of the Staff Regulations.

After a three-year period starting on 1 January 2014, the Commission shall report to the European Parliament and to the Council on the implementation of the preceding subparagraph.

In order to facilitate engagement on the broadest possible geographical basis, the institutions shall strive to support multilingual and multicultural education for the children of their staff;

(b) In paragraph 5, the words 'Each institution' are replaced by 'The authority referred to in the first paragraph of Article 6';

(9) Article 14 is replaced by the following:

'Article 14

1. A member of the temporary staff shall serve a nine-month probationary period.

Where, during his probationary period, a member of the temporary staff is prevented, by sickness, maternity leave under Article 58 of the Staff Regulations, or accident, from performing his duties for a continuous period of at least one month, the authority referred to in the first paragraph of Article 6 may extend his probationary period by the corresponding length of time. The total length of the probationary period shall in no circumstances exceed 15 months.

2. A report on the member of the temporary staff may be made at any time before the end of the probationary period if his work is proving obviously inadequate.

That report shall be communicated to the person concerned, who shall have the right to submit his comments in writing within eight working days. The report and the comments shall be transmitted immediately by the immediate superior of the member of the temporary staff to the authority referred to in the first paragraph of Article 6. On the basis of the report, the authority referred to in the first paragraph of Article 6 may decide to dismiss the member of the temporary staff before the end of the probationary period, giving him one month's notice, or to assign the member of the temporary staff to another department for the remaining time of the probationary period.

3. One month at the latest before the expiry of the probationary period, a report shall be made on the ability of the member of the temporary staff to perform the duties pertaining to his post and also on his efficiency and conduct in the service. That report shall be communicated to the member of the temporary staff, who shall have the right to submit his comments in writing within eight working days.

Should it recommend dismissal or, in exceptional circumstances, extension of the probationary period in accordance with paragraph 1, the report and the comments shall be transmitted immediately by the immediate superior of the member of the temporary staff to the authority referred to in the first paragraph of Article 6.

A member of the temporary staff whose work or conduct has not proved adequate for establishment in his post shall be dismissed.

The final decision shall be taken on the basis of the report referred to in this paragraph as well as on the basis of elements available to the authority referred to in the first paragraph of Article 6 relating to the conduct of the member of the temporary staff with regard to Title II of the Staff Regulations.

4. A dismissed member of the temporary staff shall be entitled to compensation equal to one-third of his basic salary per month of probation completed.;

(10) In Article 15(1), the following sentence is added to the first subparagraph:

'Members of the temporary staff graded in accordance with the grading criteria adopted by the authority referred to in the first paragraph of Article 6 shall retain the seniority in the step acquired in that capacity if they are engaged as temporary staff in the same grade immediately following the preceding period of temporary service.;

(11) Article 16 is replaced by the following:

'Article 16

Articles 42a, 42b and 55 to 61 of the Staff Regulations, concerning leave, hours of work, overtime, shiftwork, standby duty at place of work or at home and public holidays, shall apply by analogy. Special leave and parental and family leave shall not extend beyond the term of the contract. In addition, Articles 41, 42, 45 and 46 of the Staff Regulations shall apply by analogy to the temporary servants referred to in Article 29 of Annex XIII to the Staff Regulations, irrespective of the date of their engagement.

The paid sick leave provided for in Article 59 of the Staff Regulations shall not, however, exceed three months or the length of time worked by the member of the temporary staff, where the latter is longer. The leave shall not extend beyond the term of his contract.

On expiry of those time limits, a servant whose contract is not terminated, notwithstanding that he is unable to resume his duties, shall be placed on unpaid leave.

However, where a servant contracts an occupational disease or sustains an accident in the performance of his duties, he shall continue to receive his full remuneration throughout the period during which he is incapable of working until such time as he is awarded an invalidity pension under Article 33.;

(12) Article 17 is replaced by the following:

'Article 17

In exceptional circumstances a member of the temporary staff may at his own request be granted unpaid leave on compelling personal grounds. Article 12b of the Staff Regulations shall continue to apply during the period of unpaid leave on personal grounds.

The permission under Article 12b shall not be granted to a member of the temporary staff for the purpose of his engaging in an occupational activity, whether gainful or not, which involves lobbying or advocacy vis-à-vis his institution and which could lead to the existence or possibility of a conflict with the legitimate interests of the institution.

The authority referred to in the first paragraph of Article 6 shall determine the length of such leave, which shall not exceed one quarter of the length of time already worked by the servant or:

— three months if the servant's seniority is less than four years;

— twelve months in all other cases.

Any period of leave granted in accordance with the first paragraph shall not count for the purposes of the first paragraph of Article 44 of the Staff Regulations.

While a member of the temporary staff is on unpaid leave his membership of the social security scheme provided for in Article 28 shall be suspended.

However, a member of the temporary staff who is not gainfully employed may, not later than one month following that in which unpaid leave begins, apply to continue to be covered against the risks referred to in Article 28, provided that he bears half the cost of the contributions provided for in that Article for the duration of his leave; the contribution shall be calculated by reference to his last basic salary.

Moreover, a member of the temporary staff to whom Article 2(c) or (d) applies who proves that he cannot acquire pension rights under another pension scheme may apply to continue to acquire further pension rights throughout the period of unpaid leave, provided that he bears the cost of a contribution equal to three times the rate laid down in Article 41; the contributions shall be calculated by reference to the basic salary for his grade and step.

Women whose maternity leave begins before the end of their contract shall be entitled to maternity leave and maternity pay.;

(13) Article 20 is amended as follows:

(a) in paragraph 1, the words 'adjustments to' are replaced by 'updates of';

(b) in paragraph 3, the words 'special levy' are replaced by 'solidarity levy';

(c) paragraph 4 is replaced by the following:

'4. Article 44 of the Staff Regulations shall apply by analogy to temporary staff.;

(14) Article 28a is amended as follows:

(a) in the last sentence of paragraph 3, the word 'adjusted' is replaced by 'updated';

(b) in paragraph 10, the words 'Institutions of the Union' are replaced by 'authorities of the institutions referred to in the first paragraph of Article 6';

(c) paragraph 11 is replaced by the following:

'Every two years the Commission shall present a report on the financial situation of the unemployment insurance scheme. Independently of that report, the Commission may, by means of delegated acts in accordance with Articles 111 and 112 of the Staff Regulations, adjust the contributions provided for in paragraph 7 of this Article if this is necessary in the interests of the balance of the scheme.'

(15) In the second subparagraph of Article 33(1) the words 'age of 65' are replaced by 'age of 66';

(16) Article 34 is replaced by the following:

'Article 34

The persons entitled under a deceased servant, as defined in Chapter 4 of Annex VIII to the Staff Regulations, shall be entitled to the survivor's pension as provided for in Articles 35 to 38.

Where a former servant in receipt of an invalidity allowance or a former servant within the meaning of Article 2 (a), (c), (d), (e) or (f) who was in receipt of a retirement pension or who left the service before reaching pensionable age and requested that his retirement pension be deferred until the first day of the calendar month following that during which he reached pensionable age dies, the persons entitled under the deceased servant, as defined in Chapter 4 of Annex VIII to the Staff Regulations, shall be entitled to the survivor's pension as provided for in that Annex.

Where the whereabouts of a member of the temporary staff, or of a former member of temporary staff in receipt of an invalidity allowance or retirement pension, or of a former member of temporary staff who left the service before he reached pensionable age and who has requested that his retirement pension be deferred until the first day of the calendar month following that in which he reaches pensionable age, are unknown for more than one year, the provisions of Chapters 5 and 6 of Annex VIII to the Staff Regulations dealing with provisional pensions shall apply by analogy to his spouse and to persons recognised as his dependants';

(17) In the third sentence of the first paragraph of Article 36, the words 'Article 2(a), (c) or (d)' are replaced by 'Article 2 (a), (c), (d), (e) or (f)';

(18) In the fourth paragraph of Article 37, the words '63 years of age' are replaced by 'the pensionable age', and the words 'Article 2(a), (c) or (d)' are replaced by 'Article 2(a), (c), (d), (e) or (f)';

(19) Article 39(1) is replaced by the following:

'1. On leaving the service, a servant within the meaning of Article 2 shall be entitled to a retirement pension,

transfer of the actuarial equivalent or the payment of the severance grant in accordance with Chapter 3 of Title V of, and Annex VIII to, the Staff Regulations. Where the servant is entitled to a retirement pension his pension rights shall be reduced in proportion to the amounts paid under Article 42.';

(20) The first paragraph of Article 42 is replaced by the following:

'In accordance with conditions to be laid down by the authority referred to in the first paragraph of Article 6, a servant may request that authority to effect any payments which he is required to make in order to constitute or maintain pension rights in his country of origin.';

(21) Article 47 is replaced by the following:

'Article 47

Apart from cessation on death, the employment of temporary staff shall cease:

(a) at the end of the month in which the servant reaches the age of 66 or, where applicable, at the date fixed in accordance with the second and third paragraphs of Article 52 of the Staff Regulations; or

(b) where the contract is for a fixed period:

(i) on the date stated in the contract;

(ii) at the end of the period of notice specified in the contract giving the servant or the institution the option to terminate earlier. The period of notice shall not be less than one month per year of service, subject to a minimum of one month and a maximum of three months. For temporary staff whose contracts have been renewed the maximum shall be six months. The period of notice shall not, however, commence to run during pregnancy if confirmed by a medical certificate, maternity leave or sick leave, provided such sick leave does not exceed three months. It shall, moreover, be suspended during pregnancy if confirmed by a medical certificate, maternity or sick leave subject to the limits aforesaid. If the institution terminates the contract, the servant shall be entitled to compensation equal to one-third of his basic salary for the period between the date when his duties end and the date when his contract expires;

(iii) where the servant no longer satisfies the conditions laid down in point (a) of Article 12(2), subject to the possibility of authorising an exception under that provision. Should the exception not be authorised, the period of notice referred to in point (ii) shall apply; or

(c) where the contract is for an indefinite period:

- (i) at the end of the period of notice stipulated in the contract; the length of the period of notice shall not be less than one month for each completed year of service, subject to a minimum of three months and a maximum of 10 months. The period of notice shall not, however, commence to run during pregnancy if confirmed by a medical certificate, maternity leave or sick leave, provided such sick leave does not exceed three months. It shall, moreover, be suspended during pregnancy if confirmed by a medical certificate, maternity or sick leave subject to the limits aforesaid; or
- (ii) where the servant no longer satisfies the conditions laid down in point (a) of Article 12(2), subject to the possibility of authorising an exception under that provision. Should the exception not be authorised, the period of notice referred to in point (i) shall apply.;

(22) The following Article is inserted:

'Article 48a

In any given parliamentary term, Article 50 of the Staff Regulations may be applied by analogy to a maximum of five members of senior temporary staff of political groups in the European Parliament who are in grade AD 15 or AD 16, provided that they have attained the age of fifty-five years and have twenty years of service in the institutions and at least 2,5 years of seniority in their last grade.;

(23) Article 50c(2) is deleted;

(24) The following Chapter is added to Title II:

'CHAPTER 11

SPECIAL PROVISIONS FOR TEMPORARY STAFF REFERRED TO IN ARTICLE 2(f)

Article 51

Article 37, with the exception of point (b) of the first paragraph, and Article 38 of the Staff Regulations shall apply by analogy to the temporary staff referred to in Article 2(f).

Article 52

By way of derogation from the third paragraph of Article 17, the temporary staff referred to in Article 2(f) with a contract for an indefinite period may, irrespective of their seniority, be granted unpaid leave for periods not exceeding one year.

The total length of such leave may not exceed twelve years in the course of the staff member's entire career.

Another person may be engaged to the post occupied by the member of the temporary staff.

On the expiry of his leave a member of the temporary staff must be reinstated in the first post corresponding to his grade which falls vacant in his function group, provided that he satisfies the requirements for that post. If he declines the post offered to him, he shall retain his right to reinstatement when the next vacancy corresponding to his grade occurs in his function group subject to the same provisions; if he declines a second time, employment may be terminated by the institution without notice. Until effectively reinstated or placed on secondment he shall remain on unpaid leave on personal grounds.

Article 53

Temporary staff referred to in Article 2(f) shall be engaged on the basis of a selection procedure organised by one or more agencies. The European Personnel Selection Office shall, at the request of the agency or agencies concerned, provide assistance to the agencies, in particular by defining the contents of the tests and organising the selection procedures. The European Personnel Selection Office shall ensure the transparency of the selection procedures.

In the case of an external selection procedure, temporary staff referred to in Article 2(f) shall be engaged only at grades SC1 to SC2, AST 1 to AST 4 or AD 5 to AD 8. However, the agency may, where appropriate and in duly justified cases, authorise the engagement at grade AD 9, AD 10, AD 11 or, on an exceptional basis, at grade AD 12, for posts with corresponding responsibilities and within the limits of the approved establishment plan. The total number of engagements at grades AD 9 to AD 12 in an agency shall not exceed 20 % of the total number of engagements of temporary staff to the function group AD, calculated over a five-year rolling period.

Article 54

In the case of temporary staff referred to in Article 2(f), classification in the next higher grade shall be exclusively by selection from among staff members who have completed a minimum period of two years in their grade, after consideration of the comparative merits of such temporary staff and of the reports on them. The last sentence of Article 45(1) and Article 45(2) of the Staff Regulations shall apply by analogy. The multiplication rates for guiding average career equivalence, as set out for officials in Section B of Annex I to the Staff Regulations, may not be exceeded.

In accordance with Article 110 of the Staff Regulations, each agency shall adopt general provisions for the implementation of this Article.

Article 55

Where a member of the temporary staff referred to in Article 2(f) moves, following an internal publication of a post, to a new post within his function group, he shall not be classified in a lower grade or step than in his former post, provided that his grade is one of the grades set out in the vacancy notice.

The same provisions shall apply by analogy where the member of such temporary staff concludes a new contract with an agency immediately following a preceding contract for such temporary staff with another agency.

Article 56

In accordance with Article 110(2) of the Staff Regulations, each agency shall adopt general provisions on the procedures governing the engagement and use of temporary staff referred to in Article 2(f).';

(25) Title III is deleted;

(26) In Article 79(2), the words 'Each institution' are replaced by 'The authority referred to in the first paragraph of Article 6';

(27) Article 80 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. Based on this table the authority referred to in the first paragraph of Article 6 of each institution, agency or entity referred to in Article 3a may, after consulting the Staff Regulations Committee, define in more detail the powers attaching to each type of duties.';

(b) paragraph 4 is replaced by the following:

'4. Articles 1d and 1e of the Staff Regulations shall apply by analogy.';

(28) Article 82 is amended as follows:

(a) in paragraph 6, the words 'Each institution' are replaced by 'The authority referred to in the first paragraph of Article 6';

(b) The following paragraph is added:

'7. Contract staff in function groups II, III and IV may be authorised to take part in internal competitions only after having completed three years of service in the institution. Contract staff in function group II may have access only to competitions at grades SC 1 to 2, in function group III at grades AST 1 to 2 and in function group IV at grades AST 1 to 4 or at grades AD 5 to 6. The total number of candidates who are members of the contract staff and

who are appointed to vacant posts at any of those grades shall never exceed 5 % of the total number of appointments to those function groups made per year in accordance with the second paragraph of Article 30 of the Staff Regulations.';

(29) Article 84 is replaced by the following:

'Article 84

1. A contract staff member whose contract is concluded for a duration of at least one year shall serve a probationary period for the first six months of his period of employment if he is in function group I and the first nine months if he is in any other function group.

Where, during his probationary period, a contract staff member is prevented by sickness, maternity leave under Article 58 of the Staff Regulations or accident from performing his duties for a continuous period of at least one month, the authority referred to in the first paragraph of Article 6 may extend his probationary period by the corresponding length of time. The total length of the probationary period shall in no circumstances exceed 15 months.

2. A report on the contract staff member may be made at any time before the end of the probationary period if his work is proving obviously inadequate.

That report shall be communicated to the person concerned, who shall have the right to submit his comments in writing within eight working days. The report and the comments shall be transmitted immediately by the immediate superior of the contract staff member to the authority referred to in the first paragraph of Article 6. On the basis of the report, the authority referred to in the first paragraph of Article 6 may decide to dismiss the contract staff member before the end of the probationary period, giving him one month's notice, or to assign the contract staff member to another department for the remaining time of the probationary period.

3. One month at the latest before the expiry of the probationary period, a report shall be made on the ability of the contract staff member to perform the duties pertaining to his post and also on his efficiency and conduct in the service. That report shall be communicated to the contract staff member, who shall have the right to submit his comments in writing within eight working days.

Should it recommend dismissal or, in exceptional circumstances, extension of the probationary period in accordance with paragraph 1, the report and the comments shall be transmitted immediately by the immediate superior of the contract staff member to the authority referred to in the first paragraph of Article 6.

A contract staff member whose work or conduct has not proved adequate for establishment in his post shall be dismissed.

The final decision shall be taken on the basis of the report referred to in this paragraph as well as on the basis of elements available to the authority referred to in the first paragraph of Article 6 relating to the conduct of the contract staff member with regard to Title II of the Staff Regulations.

4. A dismissed contract staff member shall be entitled to compensation equal to one-third of his basic salary per month of probation completed.;

(30) In Article 85(3), the words 'Article 314 of the EC Treaty' are replaced by 'Article 55(1) of the Treaty on European Union';

(31) Article 86(1) is amended as follows:

(a) the following sentence is added to the second subparagraph:

'However, the second paragraph of Article 32 of the Staff Regulations shall apply by analogy to contract staff recruited in grade 1.;

(b) the following subparagraph is added:

'General implementing provisions shall be adopted to give effect to this paragraph in accordance with Article 110 of the Staff Regulations.;

(32) In point (b) of the first paragraph of Article 88, the words 'three years' are replaced by 'six years';

(33) Article 91 is replaced by the following:

'Article 91

Articles 16 to 18 shall apply by analogy.

The second sentence of Article 55(4) of the Staff Regulations shall not apply by analogy to the contract staff.

Overtime worked by the contract staff in function groups III and IV shall carry no right to compensation or remuneration.

Under the conditions laid down in Annex VI to the Staff Regulations, overtime worked by the contract staff in function groups I and II shall entitle them either to compensatory leave or to remuneration where requirements of the service do not allow compensatory leave during two months following that in which the overtime was worked.;

(34) In Article 95, the words 'age of 63' are replaced by 'pensionable age';

(35) Article 96 is amended as follows:

(a) in paragraph 3, the word 'adjusted' is replaced by 'updated';

(b) paragraph 11 is replaced by the following:

'11. Every two years the Commission shall present a report on the financial situation of the unemployment insurance scheme. Independently of that report, the Commission may, by means of delegated acts in accordance with Articles 111 and 112 of the Staff Regulations, adjust the contributions provided for in paragraph 7 if this is necessary in the interests of the balance of the scheme.;

(36) In the second sentence of the second subparagraph of Article 101(1), the words 'age of 65' are replaced by 'age of 66';

(37) Article 103 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. In the event of the death of a former contract staff member in receipt of an invalidity allowance or a former contract staff member who is in receipt of a retirement pension or who leaves the service before reaching pensionable age and requests that his retirement pension be deferred until the first day of the calendar month following that in which he reached the pensionable age, the persons entitled under the deceased former contract staff member, as defined in Chapter 4 of Annex VIII to the Staff Regulations, shall be entitled to a survivor's pension as provided for in that Annex.;

(b) paragraph 3 is replaced by the following:

'3. Where the whereabouts of a contract staff member or of a former contract staff member in receipt of an invalidity allowance or retirement pension, or of a former contract staff member who leaves the service before reaching pensionable age and requests that his retirement pension be deferred until the first day of the calendar month following that in which he reaches pensionable age, are unknown for more than one year, the provisions of Chapters 5 and 6 of Annex VIII to the Staff Regulations dealing with provisional pensions shall apply by analogy to his spouse and to persons recognised as his dependants.;

(38) In Article 106(4), the words '63 years of age' are replaced by 'the pensionable age';

(39) In Article 120, the words 'each institution' are replaced by 'the authority referred to in the first paragraph of Article 6';

(40) The following Article is inserted:

'Article 132a

In accordance with the implementing measures referred to in Article 125(1) and upon express request of the respective Member or Members whom they support, accredited parliamentary assistants may be paid only once either an installation allowance or a resettlement allowance paid out from the respective Member's parliamentary assistance allowance based on evidence that a change of the place of residence was required. The amount of the allowance shall not exceed one month's basic salary of the assistant.'

(41) Article 139 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (b) is replaced by the following:

'(b) at the end of the month in which the accredited parliamentary assistant reaches the age of 66 years or, on an exceptional basis, at the date fixed in accordance with the second and third paragraphs of Article 52 of the Staff Regulations';

(ii) point (d) is replaced by the following:

'(d) taking into account the fact that trust is the basis of the working relationship between the Member and his accredited parliamentary assistant, at the end of the period of notice specified in the contract, which shall give the accredited parliamentary assistant or the European Parliament, acting at the request of the Member or Members of the European Parliament whom the accredited parliamentary assistant was taken on to assist, the right to terminate the contract before its expiry. The period of notice shall not be less than one month per year of service, subject to a minimum of one month and a maximum of three months. The period of notice shall not, however, start to run during pregnancy if confirmed by a medical certificate, maternity leave or sick leave, provided such sick leave does not exceed three months. It shall, moreover, be suspended during pregnancy if confirmed by a medical certificate, maternity or sick leave subject to these limits';

(b) the following paragraph is inserted:

'3a. The implementing measures referred to in Article 125(1) shall provide for a conciliation procedure which shall apply before the contract of an accredited parliamentary assistant is terminated, at the request of the Member or Members of the European Parliament whom he was taken on to assist or the parliamentary assistant concerned, pursuant to point (d) of paragraph 1 and to paragraph 3.';

(42) In Article 141, the words 'each institution' are replaced by 'the authority referred to in the first paragraph of Article 6';

(43) The following Article is added:

'Article 142a

The Commission shall, by 31 December 2020, submit a report to the European Parliament and to the Council assessing the functioning of these Conditions of Employment of Other Servants.';

(44) The Annex is amended as follows:

(a) the following sentences are added to Article 1(1):

'Article 21, Article 22, with the exception of paragraph 4, Article 23, Article 24a and Article 31(6) and (7) of that Annex shall apply by analogy to other servants employed on 31 December 2013. Article 30 and Article 31(1), (2), (3) and (5) of that Annex shall apply by analogy to temporary staff employed on 31 December 2013. For agents in service before 1 January 2014, the words "age of 66" in the second subparagraph of Article 33(1), in point (a) of Article 47, in the second subparagraph of Article 101(1) and in point (b) of Article 139(1) of the Conditions of Employment of other Servants shall be read as "age of 65".';

(b) the following Article is added:

'Article 6

With effect from 1 January 2014, contracts of temporary staff to whom Article 2(a) of the Conditions of Employment of Other Servants applies and who are in service on 31 December 2013 in an agency shall be transformed, without selection procedure, into contracts under point (f) of Article 2 of these Conditions of Employment. The conditions of the contract shall remain unchanged for the rest. This Article does not apply to contracts of temporary staff engaged as heads of agencies or deputy heads of agencies as referred to in the Union act establishing the agency or to officials seconded in the interests of the service to an agency.'

Article 3

1. This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*.
2. It shall apply as from 1 January 2014 except for Article 1, point 44, and Article 1, point 73(d) which shall apply as from the date of entry into force of this Regulation.

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

Done at Strasbourg, 22 October 2013.

For the European Parliament
The President
M. SCHULZ

For the Council
The President
V. LEŠKEVIČIUS

COUNCIL REGULATION (EU) No 1024/2013**of 15 October 2013****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, within both the euro area and non-euro area.
- (2) The present financial and economic crisis has shown that the integrity of the single currency and the internal market may be threatened by the fragmentation of the financial sector. It is therefore essential to intensify the integration of banking supervision in order to bolster the Union, restore financial stability and lay the basis for economic recovery.
- (3) Maintaining and deepening the internal market for banking services is essential in order to foster economic growth in the Union and adequate funding of the real economy. However this proves increasingly challenging. Evidence shows that the integration of banking markets in the Union is coming to a halt.
- (4) At the same time, in addition to the adoption of an enhanced Union regulatory framework, 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.
- (5) Competence for supervision of individual credit institutions in the Union remains mostly at national level. Coordination between supervisors is vital but the crisis has shown that mere coordination is not enough, in particular in the context of a single currency. In order to preserve financial stability in the Union and increase the positive effects of market integration on growth and welfare, integration of supervisory responsibilities should therefore be enhanced. This is particularly important to ensure a smooth and sound overview over an entire banking group and its overall health and would reduce the risk of different interpretations and contradictory decisions on the individual entity level.
- (6) The stability 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 to the viability of some credit institutions and to the stability of the financial system in the euro area and the Union as a whole, and may impose a heavy burden for already strained public finances of the Member States concerned.
- (7) The European Supervisory Authority (European Banking Authority) (EBA), established in 2011 by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), ⁽¹⁾, and the European System of Financial Supervision (ESFS) established by Article 2 of that Regulation, and Article 2 of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) ⁽²⁾ (EIOPA) and Article 2 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) ⁽³⁾ (ESMA) 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 agreed by the euro Summit of 26 October 2011 of major Union credit institutions, consistent with the guidelines and conditions relating to State aid adopted by the Commission.

⁽¹⁾ OJ L 331, 15.12.2010, p. 12.

⁽²⁾ OJ L 331, 15.12.2010, p. 48.

⁽³⁾ OJ L 331, 15.12.2010, p. 84.

- (8) The European Parliament has 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 ⁽¹⁾ and of 21 November 2002 on prudential supervision rules in the European Union ⁽²⁾.
- (9) 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 Summit pointed out that when an effective single supervisory mechanism is established involving the European Central Bank (ECB) for banks in the euro area, the European Stability Mechanism (ESM) could, following a regular decision, have the possibility to recapitalise banks directly which would rely on appropriate conditionality, including compliance with State aid rules.
- (10) The European Council on 19 October 2012 concluded that the process towards deeper economic and monetary union should build on the Union institutional and legal framework and be characterised by openness and transparency towards Member States whose currency is not the euro and by respect for the integrity of the internal market. The integrated financial framework will have a single supervisory mechanism which will be open to the extent possible to all Member States wishing to participate.
- (11) A banking union should therefore be set up in the Union, underpinned by a comprehensive and detailed single rulebook for financial services for the internal market as a whole and composed of a single supervisory mechanism and new frameworks for deposit insurance and resolution. In view of the close links and interactions between Member States whose currency is the euro, the banking union should apply at least to all 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.
- (12) As a first step towards a 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 manner, that the single rulebook for financial services is applied in the same manner 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 (SSM) 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 the ESM will, following a regular decision, have the possibility to recapitalise banks directly when an effective single supervisory mechanism is established. The European Council noted in its conclusions of 13/14 December 2012 that 'In a context where banking supervision is effectively moved to a single supervisory mechanism, a single resolution mechanism will be required, with the necessary powers to ensure that any bank in participating Member States can be resolved with the appropriate tools' and that 'the single resolution mechanism should be based on contributions by the financial sector itself and include appropriate and effective backstop arrangements'.
- (13) As the euro area's central bank with extensive expertise in macroeconomic and financial stability issues, the ECB is well placed to carry out clearly defined supervisory tasks with a focus on protecting the stability of the financial system of the Union. Indeed many Member States' central banks are already responsible for banking supervision. Specific tasks should therefore be conferred on the ECB concerning policies relating to the supervision of credit institutions within the participating Member States.
- (14) The ECB and the competent authorities of Member States that are not participating Member States ('non-participating Member States') should conclude a memorandum of understanding describing in general terms how they will cooperate with one another in the performance of their supervisory tasks under Union law in relation to the financial institutions referred to in this Regulation. The memorandum of understanding could, inter alia, clarify the consultation relating to decisions of the ECB having effect on subsidiaries or branches established in the non-participating Member State whose parent undertaking is established in a participating Member State, and the cooperation in emergency situations, including early warning mechanisms in accordance with the procedures set out in relevant Union law. The memorandum should be reviewed on a regular basis.
- (15) 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 should be conferred on the ECB, while other tasks should remain with national authorities. The ECB's tasks should include measures taken in pursuance of macroprudential stability, subject to specific arrangements reflecting the role of national authorities.
- (16) The safety and soundness of large credit institutions is essential to ensure the stability of the financial system. However, recent experience shows that smaller credit institutions can also pose a threat to financial stability. Therefore, the ECB should be able to exercise supervisory tasks in relation to all credit institutions authorised in, and branches established in, participating Member States.

⁽¹⁾ OJ C 40, 7.2.2001, p. 453.

⁽²⁾ OJ C 25 E, 29.1.2004, p. 394.

- (17) When carrying out the tasks conferred on it, and without prejudice to the objective to ensure the safety and soundness of credit institutions, the ECB should have full regard to the diversity of credit institutions and their size and business models, as well as the systemic benefits of diversity in the banking industry of the Union.
- (18) The exercise of the ECB's tasks should contribute in particular to ensure that credit institutions fully internalise all costs caused by their activities so as to avoid moral hazard and the excessive risk taking arising from it. It should take full account of the relevant macro-economic conditions in Member States, in particular the stability of the supply of credit and facilitation of productive activities for the economy at large.
- (19) Nothing in this Regulation should be understood as changing the accounting framework applicable pursuant to other acts of Union and national law.
- (20) 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 of authorising credit institutions that are to be established in a participating Member State and should be responsible for the withdrawal of authorisations, subject to specific arrangements reflecting the role of national authorities.
- (21) In addition to the conditions set out in Union law for the 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 with regard to authorisation of credit institutions and withdrawal of the authorisation in case of non-compliance with national law on a proposal by the relevant national competent authority, which assesses compliance with the relevant conditions laid down in national law.
- (22) 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 for ensuring 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 on the internal market. The ECB should have the task of assessing the acquisition and disposal of significant holdings in credit institutions, except in the context of bank resolution.
- (23) 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 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 of ensuring compliance with those rules, including in particular by granting approvals, permissions, derogations, or exemptions foreseen for the purposes of those rules.
- (24) Additional capital buffers, including a capital conservation buffer, 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, global and other systemic institution buffers, and other measures aimed at addressing systemic or macroprudential risk, are key prudential tools. In order to ensure full coordination, where national competent authorities or national designated authorities impose such measures, the ECB should be duly notified. Moreover, where necessary the ECB should be able to apply higher requirements and more stringent measures, subject to close coordination with national authorities. The provisions in this Regulation on measures aimed at addressing systemic or macroprudential risk are without prejudice to any coordination procedures provided for in other acts of Union law. National competent authorities or national designated authorities and the ECB shall act in respect of any coordination procedure provided for in such acts after having followed the procedures provided for in this Regulation.
- (25) 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 of applying requirements ensuring that credit institutions in the participating Member States 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 of imposing appropriate measures including specific additional own funds requirements, specific disclosure requirements, and specific liquidity requirements.
- (26) 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 those 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, excluding the supervision of insurance undertakings.

- (27) In order to preserve financial stability, the deterioration of an institution's financial and economic situation must be remedied at an early stage. The ECB should have the task of carrying out early intervention actions as laid down in relevant Union law. It should however coordinate its early intervention action with the relevant resolution authorities. As long as national authorities remain competent to resolve credit institutions, 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 those purposes.
- (28) Supervisory tasks not conferred on the ECB should remain with the 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, the prevention of the use of the financial system for the purpose of money laundering and terrorist financing and consumer protection.
- (29) The ECB should cooperate, as appropriate, fully with the national authorities which are competent to ensure a high level of consumer protection and the fight against money laundering.
- (30) 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 as well as of individual participating Member States 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. In particular the ECB should duly take into account the principles of equality and non-discrimination.
- (31) The conferral of supervisory tasks on the ECB should be consistent with the framework of the ESFS 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, the European Systemic Risk Board (ESRB), and the other authorities which form part 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. It should also be required to cooperate with relevant resolution authorities and facilities financing direct or indirect public financial assistance.
- (32) The ECB should carry out its tasks subject to and in compliance with relevant Union law including the whole of primary and secondary Union law, Commission decisions in the area of State aid, competition rules and merger control and the single rulebook applying to all Member States. 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 those tasks by EBA, and should therefore exercise powers to adopt regulations in accordance with Article 132 of the Treaty on the Functioning of the European Union (TFEU) and in compliance with Union acts adopted by the Commission on the basis of drafts developed by EBA and subject to Article 16 of Regulation (EU) No 1093/2010.
- (33) Where necessary the ECB should enter into memoranda of understanding with competent authorities responsible for markets in financial instruments describing in general terms how they will cooperate with one another in the performance of their supervisory tasks under Union law in relation to financial institutions referred to in this Regulation. Such memoranda should be made available to the European Parliament, to the Council and to the competent authorities of all Member States.
- (34) For the carrying out of its tasks and the exercise of its supervisory powers, the ECB should apply the material rules relating to the prudential supervision of credit institutions. Those rules are composed of the relevant Union law, in particular directly applicable Regulations or Directives, such as those on capital requirements for credit institutions and on financial conglomerates. Where the material rules relating to the prudential supervision of credit institutions are laid down in Directives, the ECB should apply the national legislation transposing those Directives. Where the relevant Union law is composed of Regulations and in areas where, on the date of entry into force of this Regulation, those Regulations explicitly grant options for Member States, the ECB should also apply the national legislation exercising such options. Such options should be construed as excluding options available only to competent or designated authorities. This is without prejudice to the principle of the primacy of Union law. It follows that the ECB should, when adopting guidelines or recommendations or when taking decisions, base itself on, and act in accordance with, the relevant binding Union law.

- (35) Within the scope of the tasks conferred on the ECB, national law confers on national competent authorities certain powers which are currently not required by Union law, including certain early intervention and precautionary powers. The ECB should be able to require national authorities in the participating Member States to make use of those powers in order to ensure the performance of full and effective supervision within the SSM.
- (36) 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 penalties should be imposed in case of a breach. 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 ⁽¹⁾, 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 penalties on credit institutions, financial holding companies and mixed financial holding companies for breaches of such rules. National authorities should remain able to apply penalties 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 penalty is applied for such breaches, it should be able to refer the matter to national competent authorities for those purposes.
- (37) 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 those purposes. Therefore, in order to ensure high-quality, Union-wide supervision, national competent authorities should be responsible for assisting 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 credit institution's situation and related on-site verifications.
- (38) The criteria laid down in this Regulation defining the scope of institutions that are less significant should be applied at the highest level of consolidation within participating Member States based on consolidated data. Where the ECB carries out the tasks conferred on it by this Regulation with regard to a group of credit institutions that is not less significant on a consolidated basis, it should carry out those tasks on a consolidated basis with regard to the group of credit institutions and on an individual basis with regard to the banking subsidiaries and branches of that group established in participating Member States.
- (39) The criteria laid down in this Regulation defining the scope of institutions that are less significant should be specified in a framework adopted and published by the ECB in consultation with national competent authorities. On that basis, the ECB should be responsible to apply those criteria and verify, through its own calculations, whether those criteria are met. The ECB's request for information to perform its calculation should not force the institutions to apply accounting frameworks differing from those applicable to them pursuant to other acts of Union and national law.
- (40) Where a credit institution has been considered significant or less significant, that assessment should generally not be modified more often than once every 12 months, except if there are structural changes in the banking groups, such as mergers or divestitures.
- (41) When deciding, following a notification by a national competent authority, whether an institution is of significant relevance with regard to the domestic economy and should therefore be supervised by the ECB, the ECB should take into account all relevant circumstances, including level-playing field considerations.
- (42) As regards the supervision of cross-border credit institutions 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 Union institution brings about clear benefits in terms of financial stability and sustainable market integration, Member States whose currency is not the euro should therefore also have the possibility to participate in the SSM. 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 SSM 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 whose currency is not the euro. It should be obliged to establish the cooperation where the conditions set out in this Regulation are met.
- (43) Taking into account that participating Member States whose currency is not the euro are not present in the Governing Council for as long as they have not adopted the euro in accordance with the TFEU, and they cannot

⁽¹⁾ OJ L 318, 27.11.1998, p. 4.

fully benefit from other mechanisms provided for Member States whose currency is the euro, additional safeguards in the decision-making process are provided for in this Regulation. However, those safeguards, in particular the possibility of the participating Member States whose currency is not the euro to request the immediate termination of the close cooperation after informing the Governing Council of its reasoned disagreement with a draft decision of the Supervisory Board, should be used in duly justified, exceptional cases. They should only be used as long as those specific circumstances apply. The safeguards are due to the specific circumstances in which participating Member States whose currency is not the euro are under this Regulation, since they are not present in the Governing Council and cannot fully benefit from other mechanisms provided for Member States whose currency is the euro. Therefore, the safeguards cannot and should not be construed as a precedent for other areas of Union policy.

- (44) Nothing in this Regulation should alter in any way the current framework regulating the change of legal form of subsidiaries or branches and the application of such framework, or be understood or applied as providing incentives in favour of such change. In this respect, the responsibility of competent authorities of non-participating Member States should be fully respected, so that those authorities continue to enjoy sufficient supervisory tools and powers over credit institutions operating in their territory in order to have the capacity to fulfil this responsibility and effectively safeguard financial stability and public interest. Moreover, in order to assist those competent authorities in fulfilling their responsibilities, timely information on a change of legal form of subsidiaries or branches should be provided to depositors and to the competent authorities.
- (45) 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 those 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 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.
- (46) The ECB should have the supervisory power to remove a member of a management body in accordance with this Regulation.
- (47) 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, where appropriate in cooperation with national competent

authorities. The ECB and the national competent authorities should have access to the same information without credit institutions being subject to double reporting requirements.

- (48) Legal profession privilege is a fundamental principle of Union law, protecting the confidentiality of communications between natural or legal persons and their advisors, in accordance with the conditions laid down in the case-law of the Court of Justice of the European Union (CJEU).
- (49) When the ECB needs to require information from a person established in a non-participating Member State but belonging to a credit institution, financial holding company or mixed financial holding company established in a participating Member State, or to which such credit institution, financial holding company or mixed financial holding company has outsourced operational functions or activities, and when such requirements will not apply and will not be enforceable in the non-participating Member State, the ECB should coordinate with the competent authority in the non-participating Member State concerned.
- (50) This Regulation does not affect the application of the rules established by Articles 34 and 42 of Protocol No 4 on the statute of the European System of Central Banks and of the European Central Bank, attached to the Treaty on European Union (TEU) and to the TFEU ('Statute of the ESCB and of the ECB'). The acts adopted by the ECB under this Regulation should not create any rights or impose any obligations in non-participating Member States, except where such acts are in accordance with relevant Union law, in accordance with that Protocol and with Protocol No 15 on certain provisions related to the United Kingdom of Great Britain and Northern Ireland, attached to the TEU and to the TFEU.
- (51) 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.
- (52) When carrying out its tasks under this Regulation and when requesting assistance from national competent authorities, the ECB should have due regard to a fair balance between the involvement of all national competent authorities involved, in line with the responsibilities set out in applicable Union law for solo supervision and for supervision on a sub-consolidated basis and on a consolidated basis.

- (53) Nothing in this Regulation should be understood as conferring on the ECB the power to impose penalties on natural or legal persons other than credit institutions, financial holding companies or mixed financial holding companies, without prejudice to the ECB's power to require national competent authorities to act in order to ensure that appropriate penalties are imposed.
- (54) As established by the Treaties, the ECB is an institution of the Union as a whole. It should be bound in its decision-making procedures 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 as well as their right to request a review of the decisions of the ECB according to the rules set out in this Regulation.
- (55) 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 and accountability requirements. The ECB should therefore be accountable for the exercise of those tasks towards the European Parliament and the Council as democratically legitimised institutions representing the citizens of the Union and the Member States. That should include regular reporting, and responding to questions by the European Parliament in accordance with its Rules of Procedure, and by the euro Group in accordance with its procedures. Any reporting obligations should be subject to the relevant professional secrecy requirements.
- (56) The ECB should also forward the reports, which it addresses to the European Parliament and to the Council, to the national parliaments of the participating Member States. National parliaments of the participating Member States should be able to address any observations or questions to the ECB on the performance of its supervisory tasks, to which the ECB may reply. The internal rules of those national parliaments should take into account details of the relevant procedures and arrangements for addressing the observations and questions to the ECB. In this context particular attention should be attached to observations or questions related to the withdrawal of authorisations of credit institutions in respect of which actions necessary for resolution or to maintain financial stability have been taken by national authorities in accordance with the procedure set out in this Regulation. The national parliament of a participating Member State should also be able to invite the Chair or a representative of the Supervisory Board to participate in an exchange of views in relation to the supervision of credit institutions in that Member State together with a representative of the national competent authority. This role for national parliaments is appropriate given the potential impact that supervisory measures may have on public finances, credit institutions, their customers and employees, and the markets in the participating Member States. Where national competent authorities take action under this Regulation, accountability arrangements provided for under national law should continue to apply.
- (57) 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 to the exercise of its functions of political control as laid down in the Treaties, including the right for the European Parliament to take a position or adopt a resolution on matters which it considers appropriate.
- (58) In its action, the ECB should comply with the principles of due process and transparency.
- (59) The regulation referred to in Article 15(3) TFEU should determine detailed rules enabling access to documents held by the ECB resulting from the carrying out of supervisory tasks, in accordance with the TFEU.
- (60) Pursuant to Article 263 TFEU, the CJEU is to 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.
- (61) In accordance with Article 340 TFEU, the ECB should, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties. This should be without prejudice to the liability of national competent authorities to make good any damage caused by them or by their servants in the performance of their duties in accordance with national legislation.
- (62) Council Regulation No 1 determining the languages to be used by the European Economic Community ⁽¹⁾ applies to the ECB by virtue of Article 342 TFEU.
- (63) When determining whether the right of access to the file by persons concerned should be limited, the ECB should respect the fundamental rights and observe the principles recognised in the Charter of Fundamental Rights of the European Union, in particular the right to an effective remedy and to a fair trial.

⁽¹⁾ OJ 17, 6.10.1958, p. 385.

- (64) The ECB should provide natural and legal persons with the possibility to request a review of decisions taken under the powers conferred on it by this Regulation and addressed to them, or which are of direct and individual concern to them. The scope of the review should pertain to the procedural and substantive conformity with this regulation of such decisions while respecting the margin of discretion left to the ECB to decide on the opportunity to take those *decisions*. For that purpose, and for reasons of procedural economy, the ECB should establish an administrative board of review to carry out such internal review. To compose the board, the Governing Council of the ECB should appoint individuals of a high repute. In making its decision, the Governing Council should, to the extent possible, ensure an appropriate geographical and gender balance across the Member States. The procedure laid down for the review should provide for the Supervisory Board to reconsider its former draft decision as appropriate.
- (65) 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. They should therefore be carried out in full separation, in order to avoid conflicts of interests and to ensure that each function is exercised in accordance with the applicable objectives. The ECB should be able to ensure that the Governing Council operates in a completely differentiated manner as regards monetary and supervisory functions. Such differentiation should at least include strictly separated meetings and agendas.
- (66) Organisational separation of staff should concern all services needed for independent monetary policy purposes and should ensure that the exercise of the tasks conferred by this Regulation is fully subject to democratic accountability and oversight as provided for by this Regulation. The staff involved in carrying out the tasks conferred on the ECB by this Regulation should report to the Chair of the Supervisory Board.
- (67) In particular, a Supervisory Board responsible for preparing decisions on supervisory matters should be set up within the ECB encompassing the specific expertise of national supervisors. The board should therefore be chaired by a Chair, have a Vice Chair and include representatives from the ECB and from national competent authorities. The appointments for the Supervisory Board in accordance with this Regulation should respect the principles of gender balance, experience and qualification. All members of the Supervisory Board should be timely and fully informed on the items on the agenda of its meetings, so as to facilitate the effectiveness of the discussion and the draft decision making process.
- (68) 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.
- (69) With full respect to the institutional and voting arrangements set by the Treaties, the Supervisory Board should be an essential body in the exercise of supervisory tasks by the ECB, tasks which until now have always been in the hands of national competent authorities. For this reason, the Council should be given the power to adopt an implementing decision to appoint the Chair and the Vice-Chair of the Supervisory Board. After hearing the Supervisory Board, the ECB should submit a proposal for the appointment of the Chair and the Vice-Chair to the European Parliament for approval. Following the approval of this proposal, the Council should adopt that implementing decision. The Chair should be chosen on the basis of an open selection procedure, on which the European Parliament and the Council should be kept duly informed.
- (70) In order to allow for an appropriate rotation while ensuring the full independence of the Chair, the Chair's term of office should not exceed five years and should not be renewable. In order to ensure full coordination with the activities of EBA and with the prudential policies of the Union, the Supervisory Board should be able to invite EBA and the Commission as observers. The Chair of the European Resolution Authority, once established, should participate as observer in the meetings of the Supervisory Board.
- (71) The Supervisory Board should be supported by a steering committee with a more limited composition. The steering committee should prepare the meetings of the Supervisory Board, perform its duties solely in the interest of the Union as a whole, and work in full transparency with the Supervisory Board.
- (72) The Governing Council of the ECB should invite the representatives from participating Member States whose currency is not the euro whenever it is contemplated by the Governing Council to object to a draft decision prepared by the Supervisory Board or whenever the concerned national competent authorities inform the Governing Council of their reasoned disagreement with a draft decision of the Supervisory Board, when such decision is addressed to the national authorities in respect of credit institutions from participating Member States whose currency is not the euro.
- (73) With a view to ensuring separation between monetary policy and supervisory tasks, the ECB should be required to create a mediation panel. The setting up of the panel, and in particular its composition, should ensure that it resolves differences of views in a balanced way, in the interest of the Union as a whole.

- (74) 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 107 and 108 TFEU and under Union law on enhanced economic and budgetary surveillance.
- (75) In order to carry out its supervisory tasks effectively, the ECB should exercise the supervisory tasks conferred on it in full independence, in particular free from undue political influence and from industry interference which would affect its operational independence.
- (76) The use of cooling-off periods in supervisory authorities forms an important part of ensuring the effectiveness and independence of the supervision conducted by those authorities. To this end, and without prejudice to the application of stricter national rules, the ECB should establish and maintain comprehensive and formal procedures, including proportionate review periods, to assess in advance and prevent possible conflicts with the legitimate interest of the SSM/ECB where a former member of the Supervisory Board begins work within the banking industry he or she once supervised.
- (77) 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 borne by the entities subject to it. Therefore, the exercise of supervisory tasks by the ECB should be financed by annual fees charged to credit institutions established in the participating Member States. It should also be able to levy fees on branches established in a participating Member State by a credit institution established in a non-participating Member State to cover the expenditure incurred by the ECB when carrying out its tasks as a host supervisor over these branches. In the case a credit institution or a branch is supervised on a consolidated basis, the fee should be levied on the highest level of a credit institution within the involved group with establishment in participating Member States. The calculation of the fees should exclude any subsidiaries established in non-participating Member States.
- (78) Where a credit institution is included in supervision on a consolidated basis, the fee should be calculated at the highest level of consolidation within participating Member States and allocated to the credit institutions established in a participating Member State and included in the supervision on a consolidated basis, based on objective criteria relating to the importance and risk profile, including the risk weighted assets.
- (79) 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 all national competent authorities and the ECB should be provided for. To ensure a peer control on an on-going basis, particularly in the supervision of large credit institutions, the ECB should be able to request that national supervisory teams involve also staff from competent authorities of other participating Member States, making it possible to install supervisory teams of geographical diversity with specific expertise and profile. The exchange and secondment of staff should establish a common supervisory culture. On a regular basis the ECB should provide information on how many staff members from the national competent authorities are seconded to the ECB for the purposes of the SSM.
- (80) 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 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, while coordinating with EBA and while fully respecting the existing roles and respective competences of the Member States and the institutions of the Union.
- (81) 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⁽¹⁾ 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⁽²⁾ are fully applicable to the processing of personal data by the ECB for the purposes of this Regulation.
- (82) 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)⁽³⁾ applies to the ECB. The

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

⁽²⁾ OJ L 8, 12.1.2001, p. 1.

⁽³⁾ OJ L 136, 31.5.1999, p. 1.

ECB has adopted Decision ECB/2004/11 ⁽¹⁾ concerning the terms and conditions for European Anti-Fraud Office investigations of the European Central Bank.

- (83) 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 which concern credit institutions and Member States are 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.
- (84) When adopting the detailed operational arrangements for the implementation of the tasks conferred on the ECB by this Regulation, the ECB should provide for transitional arrangements which ensure the completion of ongoing supervisory procedures, including any decision and/or measure adopted or investigation commenced prior to the entry into force of this Regulation.
- (85) The Commission has stated in its Communication of 28 November 2012 on a Blueprint for a deep and genuine economic and monetary union that Article 127(6) TFEU could be amended to make the ordinary legislative procedure applicable and to eliminate some of the legal constraints it currently places on the design of the SSM (e.g. enshrine a direct and irrevocable opt-in by Member States whose currency is not the euro to the SSM, beyond the model of 'close cooperation', grant Member States whose currency is not the euro participating in the SSM fully equal rights in the ECB's decision-making, and go even further in the internal separation of decision-making on monetary policy and on supervision). It has also stated that a specific point to be addressed would be to strengthen democratic accountability over the ECB insofar as it acts as a banking supervisor. It is recalled that TEU provides that proposals for treaty change may be submitted by the Government of any Member State, the European Parliament, or the Commission, and may relate to any aspect of the Treaties.
- (86) This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular 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.
- (87) 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 failures of credit institutions 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 TEU. 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 and scope

This Regulation confers on the ECB specific tasks concerning policies relating to the prudential supervision of credit institutions, with a view to contributing to the safety and soundness of credit institutions and the stability of the financial system within the Union and each Member State, with full regard and duty of care for the unity and integrity of the internal market based on equal treatment of credit institutions with a view to preventing regulatory arbitrage.

The institutions referred to in Article 2(5) of the Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms ⁽²⁾ are excluded from the supervisory tasks conferred on ECB in accordance with Article 4 of this Regulation. The scope of the ECB's supervisory tasks is limited to the prudential supervision of credit institutions pursuant to this Regulation. This Regulation shall not confer on the ECB any other supervisory tasks, such as tasks relating to the prudential supervision of central counterparties.

When carrying out its tasks according to this Regulation, and without prejudice to the objective to ensure the safety and soundness of credit institutions, the ECB shall have full regard to the different types, business models and sizes of credit institutions.

No action, proposal or policy of the ECB shall, directly or indirectly, discriminate against any Member State or group of Member States as a venue for the provision of banking or financial services in any currency.

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 conferred on the ECB by this Regulation.

⁽¹⁾ Decision ECB/2004/11 of the European Central Bank of 3 June 2004 concerning the terms and conditions for European Anti-Fraud Office investigations of the European Central Bank, in relation to the prevention of fraud, corruption and any other illegal activities detrimental to the European Communities' financial interests (OJ L 230, 30.6.2004, p. 56).

⁽²⁾ OJ L 176, 27.6.2013, p. 338.

This Regulation is also without prejudice to the responsibilities and related powers of the competent or designated authorities of the participating Member States to apply macroprudential tools not provided for in relevant acts of Union law.

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 or a Member State whose currency is not the euro which has established a close cooperation in accordance with Article 7;
- (2) 'national competent authority' means a national competent authority designated by a participating Member State in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms ⁽¹⁾ and Directive 2013/36/EU;
- (3) 'credit institution' means a credit institution as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013;
- (4) 'financial holding company' means a financial holding company as defined in point 20 of Article 4(1) of Regulation (EU) No 575/2013;
- (5) 'mixed financial holding company' means a mixed financial holding company as defined in point 15 of Article 2 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 ⁽²⁾;
- (6) 'financial conglomerate' means a financial conglomerate as defined in point 14 of Article 2 of Directive 2002/87/EC;
- (7) 'national designated authority' means a designated authority of a participating Member State, within the meaning of the relevant Union law;
- (8) 'qualifying holding' means a qualifying holding as defined in point 36 of Article 4(1) of Regulation (EU) No 575/2013;
- (9) 'Single supervisory mechanism' (SSM) means the system of financial supervision composed by the ECB and national competent authorities of participating Member States as described in Article 6 of this Regulation.

CHAPTER II

Cooperation and tasks

Article 3

Cooperation

1. The ECB shall cooperate closely with EBA, ESMA, EIOPA and the European Systemic Risk Board (ESRB), and the other authorities which form part of the ESFS, which ensure an adequate level of regulation and supervision in the Union.

Where necessary the ECB shall enter into memoranda of understanding with competent authorities of Member States responsible for markets in financial instruments. Such memoranda shall be made available to the European Parliament, to the Council and to competent authorities of all Member States.

2. For the purposes of this Regulation, the ECB shall participate in the Board of Supervisors of EBA under the conditions set out in Article 40 of Regulation (EU) No 1093/2010.

3. The ECB shall carry out its tasks in accordance with this Regulation and without prejudice to the competence and the tasks of EBA, ESMA, EIOPA and the ESRB.

4. The ECB shall cooperate closely with the authorities empowered to resolve credit institutions, including in the preparation of resolution plans.

5. Subject to Articles 1, 4 and 6, the ECB shall cooperate closely with any public financial assistance facility including the European Financial Stability Facility (EFSF) and the ESM, in particular where such a facility has granted or is likely to grant, direct or indirect financial assistance to a credit institution which is subject to Article 4.

6. The ECB and the competent authorities of non-participating Member States shall conclude a memorandum of understanding describing in general terms how they will cooperate with one another in the performance of their supervisory tasks under Union law in relation to the financial institutions referred to in Article 2. The memorandum shall be reviewed on a regular basis.

Without prejudice to the first subparagraph the ECB shall conclude a memorandum of understanding with the competent authority of each non-participating Member State that is home to at least one global systemically important institution, as defined in Union law.

Each memorandum shall be reviewed on a regular basis and shall be published subject to appropriate treatment of confidential information.

⁽¹⁾ OJ L 176, 27.6.2013, p. 1.

⁽²⁾ OJ L 35, 11.2.2003, p. 1.

*Article 4***Tasks conferred on the ECB**

1. Within the framework of Article 6, the ECB shall, in accordance with paragraph 3 of this Article, 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 authorisations of credit institutions subject to Article 14;
- (b) for credit institutions established in a participating Member State, which wish to establish a branch or provide cross-border services in a non participating Member State, to carry out the tasks which the competent authority of the home Member State shall have under the relevant Union law;
- (c) to assess notifications of the acquisition and disposal of qualifying holdings in credit institutions, except in the case of a bank resolution, and subject to Article 15;
- (d) to ensure compliance with the acts referred to in the first subparagraph of Article 4(3), which impose prudential requirements on credit institutions in the areas of own funds requirements, securitisation, large exposure limits, liquidity, leverage, and reporting and public disclosure of information on those matters;
- (e) to ensure compliance with the acts referred to in the first subparagraph of Article 4(3), which impose requirements on credit institutions to have in place robust governance arrangements, including the fit and proper requirements for the persons responsible for the management of credit institutions, risk management processes, internal control mechanisms, remuneration policies and practices and effective internal capital adequacy assessment processes, including Internal Ratings Based models;
- (f) to carry out supervisory reviews, including where appropriate in coordination with EBA, stress tests and their possible publication, in order 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, where specifically made available to competent authorities by relevant Union law;
- (g) 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 without prejudice to the participation of

national competent authorities in those colleges as observers, in relation to parents not established in one of the participating Member State;

- (h) to participate in supplementary supervision of a financial conglomerate in relation to the credit institutions included in it and to 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 in relevant Union law;
- (i) to carry out supervisory tasks in relation to recovery plans, and early intervention where a credit institution or group in relation to which the ECB is the consolidating supervisor, does not meet or is likely to breach the applicable prudential requirements, and, only in the cases explicitly stipulated by relevant Union law for competent authorities, structural changes required from credit institutions to prevent financial stress or failure, excluding any resolution powers.

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, the ECB shall carry out, within the scope of paragraph 1, the tasks for which the national competent authorities are competent in accordance with relevant Union law.

3. For the purpose of carrying out the tasks conferred on it by this Regulation, and with the objective of ensuring high standards of supervision, the ECB shall apply all relevant Union law, and where this Union law is composed of Directives, the national legislation transposing those Directives. Where the relevant Union law is composed of Regulations and where currently those Regulations explicitly grant options for Member States, the ECB shall apply also the national legislation exercising those options.

To that effect, the ECB shall adopt guidelines and recommendations, and take decisions subject to and in compliance with the relevant Union law and in particular any legislative and non-legislative act, including those referred to in Articles 290 and 291 TFEU. It shall in particular be subject to binding regulatory and implementing technical standards developed by EBA and adopted by the Commission in accordance with Article 10 to 15 of Regulation (EU) No 1093/2010, to Article 16 of that Regulation, and to the provisions of that Regulation on the European supervisory handbook developed by EBA in accordance with that Regulation. The ECB may also adopt regulations only to the extent necessary to organise or specify the arrangements for the carrying out of the tasks conferred on it by this Regulation.

Before adopting a regulation, the ECB shall conduct open public consultations and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the regulations concerned or in relation to the particular urgency of the matter, in which case the ECB shall justify that urgency.

Where necessary the ECB shall contribute in any participating role to the development of draft regulatory technical standards or implementing technical standards by EBA in accordance with Regulation (EU) No 1093/2010 or shall draw the attention of EBA to a potential need to submit to the Commission draft standards amending existing regulatory or implementing technical standards.

Article 5

Macroprudential tasks and tools

1. Whenever appropriate or deemed required, and without prejudice to paragraph 2 of this Article, the national competent authorities or national designated authorities of the participating Member States shall apply requirements for capital buffers to be held by credit institutions at the relevant level in accordance with relevant Union law in addition to own funds requirements referred to in point (d) of Article 4(1) of this Regulation, including countercyclical buffer rates, and any other measures aimed at addressing systemic or macro-prudential risks provided for, and subject to the procedures set out, in the Regulation (EU) No 575/2013 and Directive 2013/36/EU in the cases specifically set out in relevant Union law. Ten working days prior to taking such a decision, the concerned authority shall duly notify its intention to the ECB. Where the ECB objects, it shall state its reasons in writing within five working days. The concerned authority shall duly consider the ECB's reasons prior to proceeding with the decision as appropriate.

2. The ECB may, if deemed necessary, instead of the national competent authorities or national designated authorities of the participating Member State, apply higher requirements for capital buffers than applied by the national competent authorities or national designated authorities of participating Member States to be held by credit institutions at the relevant level in accordance with relevant Union law in addition to own funds requirements referred to in point (d) of Article 4(1) of this Regulation, including countercyclical buffer rates, subject to the conditions set out in paragraphs 4 and 5 of this Article, and apply more stringent measures aimed at addressing systemic or macroprudential risks at the level of credit institutions subject to the procedures set out in the Regulation (EU) No 575/2013 and Directive 2013/36/EU in the cases specifically set out in relevant Union law.

3. Any national competent authority or a national designated authority may propose to the ECB to act under paragraph 2, in order to address the specific situation of the financial system and the economy in its Member State.

4. Where the ECB intends to act in accordance with paragraph 2, it shall cooperate closely with the national designated authorities in the Member States concerned. It shall in particular notify its intention to the concerned national competent authorities or national designated authorities ten working days prior to taking such a decision. Where any of the concerned authorities objects, it shall state its reasons in writing within five working days. The ECB shall duly consider those reasons prior to proceeding with the decision as appropriate.

5. When carrying out the tasks referred to in paragraph 2, the ECB shall take into account the specific situation of the financial system, economic situation and the economic cycle in individual Member States or parts thereof.

Article 6

Cooperation within the SSM

1. The ECB shall carry out its tasks within a single supervisory mechanism composed of the ECB and national competent authorities. The ECB shall be responsible for the effective and consistent functioning of the SSM.

2. Both the ECB and national competent authorities shall be subject to a duty of cooperation in good faith, and an obligation to exchange information.

Without prejudice to the ECB's power to receive directly, or have direct access to information reported, on an ongoing basis, by credit institutions, the national competent authorities shall in particular provide the ECB with all information necessary for the purposes of carrying out the tasks conferred on the ECB by this Regulation.

3. Where appropriate and without prejudice to the responsibility and accountability of the ECB for the tasks conferred on it by this Regulation, national competent authorities shall be responsible for assisting the ECB, under the conditions set out in the framework mentioned in paragraph 7 of this Article, with the preparation and implementation of any acts relating to the tasks referred to in Article 4 related to all credit institutions, including assistance in verification activities. They shall follow the instructions given by the ECB when performing the tasks mentioned in Article 4.

4. In relation to the tasks defined in Article 4 except for points (a) and (c) of paragraph 1 thereof, the ECB shall have the responsibilities set out in paragraph 5 of this Article and the national competent authorities shall have the responsibilities set out in paragraph 6 of this Article, within the framework and subject to the procedures referred to in paragraph 7 of this Article, for the supervision of the following credit institutions, financial holding companies or mixed financial holding companies, or branches, which are established in participating Member States, of credit institutions established in non-participating Member States:

— those that are less significant on a consolidated basis, at the highest level of consolidation within the participating Member States, or individually in the specific case of branches, which are established in participating Member States, of credit institutions established in non-participating Member States. The significance shall be assessed based on the following criteria:

- (i) size;
- (ii) importance for the economy of the Union or any participating Member State;

(iii) significance of cross-border activities.

With respect to the first subparagraph above, a credit institution or financial holding company or mixed financial holding company shall not be considered less significant, unless justified by particular circumstances to be specified in the methodology, if any of the following conditions is met:

- (i) the total value of its assets exceeds EUR 30 billion;
- (ii) the ratio of its total assets over the GDP of the participating Member State of establishment exceeds 20 %, unless the total value of its assets is below EUR 5 billion;
- (iii) following a notification by its national competent authority that it considers such an institution of significant relevance with regard to the domestic economy, the ECB takes a decision confirming such significance following a comprehensive assessment by the ECB, including a balance-sheet assessment, of that credit institution.

The ECB may also, on its own initiative, consider an institution to be of significant relevance where it has established banking subsidiaries in more than one participating Member States and its cross-border assets or liabilities represent a significant part of its total assets or liabilities subject to the conditions laid down in the methodology.

Those for which public financial assistance has been requested or received directly from the EFSF or the ESM shall not be considered less significant.

Notwithstanding the previous subparagraphs, the ECB shall carry out the tasks conferred on it by this Regulation in respect of the three most significant credit institutions in each of the participating Member States, unless justified by particular circumstances.

5. With regard to the credit institutions referred to in paragraph 4, and within the framework defined in paragraph 7:

- (a) the ECB shall issue regulations, guidelines or general instructions to national competent authorities, according to which the tasks defined in Article 4 excluding points (a) and (c) of paragraph 1 thereof are performed and supervisory decisions are adopted by national competent authorities.

Such instructions may refer to the specific powers in Article 16(2) for groups or categories of credit institutions for the purposes of ensuring the consistency of supervisory outcomes within the SSM;

- (b) when necessary to ensure consistent application of high supervisory standards, the ECB may at any time, on its own initiative after consulting with national competent

authorities or upon request by a national competent authority, decide to exercise directly itself all the relevant powers for one or more credit institutions referred to in paragraph 4, including in the case where financial assistance has been requested or received indirectly from the EFSF or the ESM;

- (c) the ECB shall exercise oversight over the functioning of the system, based on the responsibilities and procedures set out in this Article, and in particular point (c) of paragraph 7;
- (d) the ECB may at any time make use of the powers referred to in Articles 10 to 13;
- (e) the ECB may also request, on an ad hoc or continuous basis, information from the national competent authorities on the performance of the tasks carried out by them under this Article.

6. Without prejudice to paragraph 5 of this Article, national competent authorities shall carry out and be responsible for the tasks referred to in points (b), (d) to (g) and (i) of Article 4(1) and adopting all relevant supervisory decisions with regard to the credit institutions referred to in the first subparagraph of paragraph 4 of this Article, within the framework and subject to the procedures referred to in paragraph 7 of this Article.

Without prejudice to Articles 10 to 13, the national competent authorities and national designated authorities shall maintain the powers, in accordance with national law, to obtain information from credit institutions, holding companies, mixed holding companies and undertakings included in the consolidated financial situation of a credit institution and to perform on site inspections at those credit institutions, holding companies, mixed holding companies and undertakings. The national competent authorities shall inform the ECB, in accordance with the framework set out in paragraph 7 of this Article, of the measures taken pursuant to this paragraph and closely coordinate those measures with the ECB.

The national competent authorities shall report to the ECB on a regular basis on the performance of the activities performed under this Article.

7. The ECB shall, in consultation with national competent authorities, and on the basis of a proposal from the Supervisory Board, adopt and make public a framework to organise the practical arrangements for the implementation of this Article. The framework shall include, at least, the following:

- (a) the specific methodology for the assessment of the criteria referred to in the first, second and third subparagraph of paragraph 4 and the criteria under which the fourth subparagraph of paragraph 4 ceases to apply to a specific credit institution and the resulting arrangements for the purposes of implementing paragraphs 5 and 6. Those arrangements and the methodology for the assessment of

the criteria referred to in the first, second and third subparagraph of paragraph 4 shall be reviewed to reflect any relevant changes, and shall ensure that where a credit institution has been considered significant or less significant that assessment shall only be modified in case of substantial and non-transitory changes of circumstances, in particular those circumstances relating to the situation of the credit institution which are relevant for that assessment.

- (b) the definition of the procedures, including time-limits, and the possibility to prepare draft decisions to be sent to the ECB for consideration, for the relation between the ECB and the national competent authorities regarding the supervision of credit institutions not considered as less significant in accordance with paragraph 4;
- (c) the definition of the procedures, including time-limits, for the relation between the ECB and the national competent authorities regarding the supervision of credit institutions considered as less significant in accordance with paragraph 4. Such procedures shall in particular require national competent authorities, depending on the cases defined in the framework, to:
 - (i) notify the ECB of any material supervisory procedure;
 - (ii) further assess, on the request of the ECB, specific aspects of the procedure;
 - (iii) transmit to the ECB material draft supervisory decisions on which the ECB may express its views.

8. Wherever the ECB is assisted by national competent authorities or national designated authorities for the purpose of exercising the tasks conferred on it by this Regulation, the ECB and the national competent authorities shall comply with the provisions set out in the relevant Union acts in relation to the allocation of responsibilities and cooperation between competent authorities from different Member States.

Article 7

Close cooperation with the competent authorities of participating Member States whose currency is not the euro

1. Within the limits set out in this Article, the ECB shall carry out the tasks in the areas referred to in Articles 4(1), 4(2) and 5 in relation to credit institutions established in a Member State whose currency is not the euro, where 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 instructions to the national competent authority or to the national designated authority of the participating Member State whose currency is not the euro.

2. Close cooperation between the ECB and the national competent authority of a participating Member State whose currency is not the euro shall be established, by a decision adopted by the ECB, where the following conditions are met:

- (a) the Member State concerned notifies the other Member States, the Commission, the ECB and EBA the request to enter into a close cooperation with the ECB in relation to the exercise of the tasks referred to in Articles 4 and 5 with regard to all credit institutions established in the Member State concerned, in accordance with Article 6;
- (b) in the notification, the Member State concerned undertakes:
 - to ensure that its national competent authority or national designated authority will abide by any guidelines or requests issued by the ECB, and
 - 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 relevant national legislation 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 4.

3. 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 its publication.

4. Where the ECB considers that a measure relating to the tasks referred to in paragraph 1 should be adopted by the national competent authority of a concerned Member State in relation to a credit institution, financial holding company or mixed-financial holding company, it shall address instructions 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 national competent authority of the concerned Member State shall take all the necessary measures in accordance with the obligation referred to in point (c) of paragraph 2.

5. The ECB may decide to issue a warning to the Member State concerned that the close cooperation will be suspended or terminated if no decisive corrective action is undertaken in the following cases:

- (a) where, in the opinion of the ECB, the conditions set out in points (a) to (c) of paragraph 2 are no longer met by the Member State concerned; or

(b) where, in the opinion of the ECB, the national competent authority of the Member State concerned does not act in accordance with the obligation referred to in point (c) of paragraph 2.

If no such action has been undertaken within 15 days of notification of such a warning, the ECB may suspend or terminate the close cooperation with that Member State.

The decision to suspend or terminate the close cooperation 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.

6. The Member State may request the ECB to terminate the close cooperation at any time after a lapse of three years from the date of the publication in the *Official Journal of the European Union* of the decision adopted by the ECB for the establishment of the close cooperation. The request shall explain the reasons for the termination, including, when relevant, potential significant adverse consequences as regards the fiscal responsibilities of the Member State. In this case, the ECB shall immediately proceed to adopt a decision terminating the close cooperation and indicate the date from which it applies within a maximum period of three months, taking due consideration of supervisory effectiveness and legitimate interests of credit institutions. The decision shall be published in the *Official Journal of the European Union*.

7. If a participating Member State whose currency is not the euro notifies the ECB in accordance with Article 26(8) of its reasoned disagreement with an objection of the Governing Council to a draft decision of the Supervisory Board, the Governing Council shall, within a period of 30 days, give its opinion on the reasoned disagreement expressed by the Member State and, stating its reasons to do so, confirm or withdraw its objection.

Where the Governing Council confirms its objection, the participating Member State whose currency is not the euro may notify the ECB that it will not be bound by the potential decision related to a possible amended draft decision by the Supervisory Board.

The ECB shall then consider the possible suspension or termination of the close cooperation with that Member State, taking due consideration of supervisory effectiveness, and take a decision in that respect.

The ECB shall take into account, in particular, the following considerations:

(a) whether the absence of such suspension or termination could jeopardize the integrity of the SSM or have significant

adverse consequences as regards the fiscal responsibilities of the Member States;

(b) whether such suspension or termination could have significant adverse consequences as regards the fiscal responsibilities in the Member State which has notified a reasoned disagreement in accordance with Article 26(8);

(c) whether or not it is satisfied that the national competent authority concerned has adopted measures which, in the ECB's opinion:

— ensure that credit institutions in the Member State which notified its reasoned disagreement pursuant to the previous subparagraph are not subject to a more favourable treatment than credit institutions in the other participating Member States, and

— are equally effective as the decision of the Governing Council under the second subparagraph of this paragraph in achieving the objectives referred to in Article 1 and in ensuring compliance with relevant Union law.

The ECB shall include these considerations in its decision and communicate them to the Member State in question.

8. If a participating Member State whose currency is not the euro disagrees with a draft decision of the Supervisory Board, it shall inform the Governing Council of its reasoned disagreement within five working days of receiving the draft decision. The Governing Council shall then decide about the matter within five working days, taking fully into account those reasons, and explain in writing its decision to the Member State concerned. The Member State concerned may request the ECB to terminate the close cooperation with immediate effect and will not be bound by the ensuing decision.

9. A Member State which has terminated the close cooperation with the ECB may not enter into a new close cooperation before a lapse of three years from the date of the publication in the *Official Journal of the European Union* of the ECB decision terminating the close cooperation.

Article 8

International relations

Without prejudice to the respective competences of the Member States and institutions and bodies of the Union, other than the ECB, including EBA, 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 EBA. Those arrangements shall not create legal obligations in respect of the Union and its Member States.

CHAPTER III

Powers of the ECB

Article 9

Supervisory and investigatory powers

1. For the exclusive purpose of carrying out the tasks conferred on it by Articles 4(1), 4(2) and 5(2), the ECB shall be considered, as appropriate, the competent authority or the designated authority in the participating Member States as established by the relevant Union law.

For the same exclusive purpose, the ECB shall have all the powers and obligations set out in this Regulation. It shall also have all the powers and obligations, which competent and designated authorities shall have under the relevant Union law, unless otherwise provided for by this Regulation. In particular, the ECB shall have the powers listed in Sections 1 and 2 of this Chapter.

To the extent necessary to carry out the tasks conferred on it by this Regulation, the ECB may require, by way of instructions, those national authorities to make use of their powers, under and in accordance with the conditions set out in national law, where this Regulation does not confer such powers on the ECB. Those national authorities shall fully inform the ECB about the exercise of those powers.

2. The ECB shall exercise the powers referred to in paragraph 1 of this Article in accordance with the acts referred to in the first subparagraph of Article 4(3). In the exercise of their respective supervisory and investigatory powers, the ECB and national competent authorities shall cooperate closely.

3. By derogation from paragraph 1 of this Article, with regard to credit institutions established in participating Member States whose currency is not the euro, the ECB shall exercise its powers in accordance with Article 7.

Section 1

Investigatory powers

Article 10

Request for information

1. Without prejudice to the powers referred to in Article 9(1), and subject to the conditions set out in relevant Union law, the ECB may require the following legal or natural persons, subject to Article 4, to provide all information that is necessary in order to carry out the tasks conferred on it by this Regulation, including information to be provided at recurring intervals and in specified formats for supervisory and related statistical purposes:

(a) credit institutions established in the participating Member States;

(b) financial holding companies established in the participating Member States;

(c) mixed financial holding companies established in the participating Member States;

(d) mixed-activity holding companies established in the participating Member States;

(e) persons belonging to the entities referred to in points (a) to (d);

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

2. The persons referred to in paragraph 1 shall supply the information requested. Professional secrecy provisions do not exempt those persons from the duty to supply that information. Supplying that information shall not be deemed to be in breach of professional secrecy.

3. Where the ECB obtains information directly from the legal or natural persons referred to in paragraph 1 it shall make that information available to the national competent authorities concerned.

Article 11

General investigations

1. In order to carry out the tasks conferred on it by this Regulation, and subject to other conditions set out in relevant Union law, the ECB may conduct all necessary investigations of any person referred to in Article 10(1) established or located in a participating Member State.

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 10(1) and take copies or extracts from such books and records;

(c) obtain written or oral explanations from any person referred to in Article 10(1) or their representatives or staff;

(d) interview any other 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 10(1) shall be subject to investigations launched on the basis of a decision of the ECB.

When a person obstructs the conduct of the investigation, the national competent authority of the participating Member State where the relevant premises are located shall afford, in compliance with national law, the necessary assistance including, in the cases referred to in Articles 12 and 13, facilitating the access by the ECB to the business premises of the legal persons referred to in Article 10(1), so that the aforementioned rights can be exercised.

Article 12

On-site inspections

1. In order to carry out the tasks conferred on it by this Regulation, and subject to other conditions set out in relevant Union law, the ECB may in accordance with Article 13 and subject to prior notification to the national competent authority concerned conduct all necessary on-site inspections at the business premises of the legal persons referred to in Article 10(1) and any other undertaking included in supervision on a consolidated basis where the ECB is the consolidating supervisor in accordance with point (g) of Article 4(1). Where the proper conduct and efficiency of the inspection so require, the ECB may carry out the on-site inspection without prior announcement to those legal persons.

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 11(1).

3. The legal persons referred to in Article 10(1) shall be subject to on-site inspections on the basis of a decision of the ECB.

4. Officials and other accompanying persons authorised or appointed by the national 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 national competent authority of the participating Member State concerned shall also have the right to participate in the on-site inspections.

5. Where the officials of and other accompanying persons authorised or appointed by the ECB find that a person opposes an inspection ordered pursuant to this Article, the national competent authority of the participating Member State concerned shall afford them the necessary assistance in accordance with national law. To the extent necessary for the inspection, this assistance shall include the sealing of any business premises and books or records. Where that power is not available to the national competent authority concerned, it shall use its powers to request the necessary assistance of other national authorities.

Article 13

Authorisation by a judicial authority

1. If an on-site inspection provided for in Article 12(1) and (2) or the assistance provided for in Article 12(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 of this Article 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 acts referred to in the first subparagraph of Article 4(3) 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 lawfulness of the ECB's decision shall be subject to review only by the CJEU.

Section 2

Specific supervisory powers

Article 14

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 submitted to 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 law.

2. If the applicant complies with all conditions of authorisation set out in the relevant national law of that Member State, the national competent authority shall take, within the period provided for by relevant national law, a draft decision to propose to the ECB to grant the authorisation. The draft decision shall be notified to the ECB and the applicant for authorisation. In other cases, the national competent authority shall reject the application for authorisation.

3. The draft decision shall be deemed to be adopted by the ECB unless the ECB objects within a maximum period of ten working days, extendable once for the same period in duly justified cases. The ECB shall object to the draft decision only where the conditions for authorisation set out in relevant Union law are not met. It shall state the reasons for the rejection in writing.

4. The decision taken in accordance with paragraphs 2 and 3 shall be notified by the national competent authority to the applicant for authorisation.

5. Subject to paragraph 6, the ECB may withdraw the authorisation in the cases set out in relevant Union law on its own initiative, following consultations with the national competent authority of the participating Member State where the credit institution is established, or on a proposal from such national competent authority. These consultations shall in particular ensure that before taking decisions regarding withdrawal, the ECB allows sufficient time for the national authorities to decide on the necessary remedial actions, including possible resolution measures, and takes these into account.

Where the national competent authority which has proposed the authorisation in accordance with paragraph 1 considers that the authorisation must be withdrawn in accordance with the relevant national law, it shall submit a proposal to the ECB to that end. In that case, the ECB shall take a decision on the proposed withdrawal taking full account of the justification for withdrawal put forward by the national competent authority.

6. As long as national authorities remain competent to resolve credit institutions, in cases where they consider that the withdrawal of the authorisation would prejudice the adequate implementation of or actions necessary for resolution or to maintain financial stability, they shall duly notify their objection to the ECB explaining in detail the prejudice that a withdrawal would cause. In those cases, the ECB shall abstain from proceeding to the withdrawal for a period mutually agreed with the national authorities. The ECB may extend that period if it is of the opinion that sufficient progress has been made. If, however, the ECB determines in a reasoned decision that proper actions necessary to maintain financial stability have not been implemented by the national authorities, the withdrawal of the authorisations shall apply immediately.

Article 15

Assessment of acquisitions of qualifying holdings

1. Without prejudice to the exemptions provided for in point (c) of Article 4(1), any notification of an acquisition of a qualifying holding in a credit institution established in a participating Member State or any related information shall be introduced with the national competent authorities of the Member State where the credit institution is established in accordance with the requirements set out in relevant national law based on the acts referred to in the first subparagraph of Article 4(3).

2. The national competent authority shall assess the proposed acquisition, and shall forward the notification and a proposal for a decision to oppose or not to oppose the acquisition, based on the criteria set out in the acts referred to in the first subparagraph of Article 4(3), to the ECB, at least ten working days before the expiry of the relevant assessment period as defined by relevant Union law, and shall assist the ECB in accordance with Article 6.

3. The ECB shall decide whether to oppose the acquisition on the basis of the assessment criteria set out in relevant Union

law and in accordance with the procedure and within the assessment periods set out therein.

Article 16

Supervisory powers

1. For the purpose of carrying out its tasks referred to in Article 4(1) and without prejudice to other powers conferred on the ECB, the ECB shall have the powers set out in paragraph 2 of this Article to require any credit institution, financial holding company or mixed financial holding company in participating Member States to take the necessary measures at an early stage to address relevant problems in any of the following circumstances:

- (a) the credit institution does not meet the requirements of the acts referred to in the first subparagraph of Article 4(3);
- (b) the ECB has evidence that the credit institution is likely to breach the requirements of the acts referred to in the first subparagraph of Article 4(3) within the next 12 months;
- (c) based on a determination, in the framework of a supervisory review in accordance with point (f) of Article 4(1), that the arrangements, strategies, processes and mechanisms implemented by the credit institution and the own funds and liquidity held by it do not ensure a sound management and coverage of its risks.

2. For the purposes of Article 9(1), the ECB shall have, in particular, the following powers:

- (a) to require institutions to hold own funds in excess of the capital requirements laid down in the acts referred to in the first subparagraph of Article 4(3) related to elements of risks and risks not covered by the relevant Union acts;
- (b) to require the reinforcement of the arrangements, processes, mechanisms and strategies;
- (c) to require institutions to present a plan to restore compliance with supervisory requirements pursuant to the acts referred to in the first subparagraph of Article 4(3) and set a deadline for its implementation, including improvements to that plan regarding scope and deadline;
- (d) to require institutions to apply a specific provisioning policy or treatment of assets in terms of own funds requirements;
- (e) to restrict or limit the business, operations or network of institutions or to request the divestment of activities that pose excessive risks to the soundness of an institution;
- (f) to require the reduction of the risk inherent in the activities, products and systems of institutions;

- (g) to require institutions to limit variable remuneration as a percentage of net revenues when it is inconsistent with the maintenance of a sound capital base;
- (h) to require institutions to use net profits to strengthen own funds;
- (i) to restrict or prohibit distributions by the institution to shareholders, members or holders of Additional Tier 1 instruments where the prohibition does not constitute an event of default of the institution;
- (j) to impose additional or more frequent reporting requirements, including reporting on capital and liquidity positions;
- (k) to impose specific liquidity requirements, including restrictions on maturity mismatches between assets and liabilities;
- (l) to require additional disclosures;
- (m) to remove at any time members from the management body of credit institutions who do not fulfil the requirements set out in the acts referred to in the first subparagraph of Article 4(3).

Article 17

Powers of host authorities and cooperation on supervision on a consolidated basis

1. Between participating Member States the procedures set out in the relevant Union law 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 on the ECB by Article 4.
2. The provisions set out in the relevant Union law 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 ECB is the only competent authority involved.
3. In fulfilling its tasks as defined in Articles 4 and 5 the ECB shall respect a fair balance between all participating Member States in accordance with Article 6(8) and shall, in its relationship with non-participating Member States, respect the balance between home and host Member States established in relevant Union law.

Article 18

Administrative penalties

1. For the purpose of carrying out the tasks conferred on it by this Regulation, where credit institutions, financial holding

companies, or mixed financial holding companies, intentionally or negligently, breach a requirement under relevant directly applicable acts of Union law in relation to which administrative pecuniary penalties shall be made available to competent authorities under the relevant Union law, the ECB may impose administrative pecuniary penalties 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, as defined in relevant Union law, of a legal person in the preceding business year or such other pecuniary penalties as may be provided for in relevant Union law.

2. Where the legal person is a subsidiary of a parent undertaking, the relevant total annual turnover referred to in paragraph 1 shall be the total annual turnover resulting from the consolidated account of the ultimate parent undertaking in the preceding business year.

3. The penalties applied shall be effective, proportionate and dissuasive. In determining whether to impose a penalty and in determining the appropriate penalty, the ECB shall act in accordance with Article 9(2).

4. The ECB shall apply this Article in accordance with the acts referred to in the first subparagraph of Article 4(3) of this Regulation, including the procedures contained in Regulation (EC) No 2532/98, as appropriate.

5. In the cases not covered by paragraph 1 of this Article, where necessary for the purpose of carrying out the tasks conferred on it by this Regulation, the ECB may require national competent authorities to open proceedings with a view to taking action in order to ensure that appropriate penalties are imposed in accordance with the acts referred to in the first subparagraph of Article 4(3) and any relevant national legislation which confers specific powers which are currently not required by Union law. The penalties applied by national competent authorities shall be effective, proportionate and dissuasive.

The first subparagraph of this paragraph shall be applicable in particular to pecuniary penalties to be imposed on credit institutions, financial holding companies or mixed financial holding companies for breaches of national law transposing relevant Directives, and to any administrative penalties or measures to be imposed on members of the management board of a credit institution, financial holding company or mixed financial holding company 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 penalty referred to paragraph 1, whether it has been appealed or not, in the cases and in accordance with the conditions set out in relevant Union law.

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 a breach of ECB regulations or decisions, the ECB may impose sanctions in accordance with Regulation (EC) No 2532/98.

CHAPTER IV

Organisational principles

Article 19

Independence

1. When carrying out the tasks conferred on it by this Regulation, the ECB and the national competent authorities acting within the SSM shall act independently. The members of the Supervisory Board and the steering committee shall act independently and objectively in the interest of the Union as a whole and shall neither seek nor take instructions from the institutions or bodies of the Union, from any government of a Member State or from any other public or private body.

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

3. Following an examination of the need for a Code of Conduct by the Supervisory Board, the Governing Council shall establish and publish a Code of Conduct for the ECB staff and management involved in banking supervision concerning in particular conflicts of interest.

Article 20

Accountability and reporting

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

2. The ECB shall submit on an annual basis to the European Parliament, to the Council, to the Commission and to the euro Group a report on the execution of the tasks conferred on it by this Regulation, including information on the envisaged evolution of the structure and amount of the supervisory fees mentioned in Article 30.

3. The Chair of the Supervisory Board of the ECB shall present that report in public to the European Parliament, and to the euro Group in the presence of representatives from any participating Member State whose currency is not the euro.

4. The Chair of the Supervisory Board of the ECB may, at the request of the euro Group, be heard on the execution of its supervisory tasks by the euro Group in the presence of representatives from any participating Member States whose currency is not the euro.

5. At the request of the European Parliament, the Chair of the Supervisory Board of the ECB shall participate in a hearing

on the execution of its supervisory tasks by the competent committees of the European Parliament.

6. The ECB shall reply orally or in writing to questions put to it by the European Parliament, or by the euro Group in accordance with its own procedures and in the presence of representatives from any participating Member States whose currency is not the euro.

7. When the European Court of Auditors examines the operational efficiency of the management of the ECB under Article 27.2 of the Statute of the ESCB and of the ECB, it shall also take into account the supervisory tasks conferred on the ECB by this Regulation.

8. Upon request the Chair of the Supervisory Board of the ECB shall hold confidential oral discussions behind closed doors with the Chair and Vice-Chairs of the competent committee of the European Parliament concerning its supervisory tasks where such discussions are required for the exercise of the European Parliament's powers under the TFEU. An agreement shall be concluded between the European Parliament and the ECB on the detailed arrangements for organising such discussions, with a view to ensuring full confidentiality in accordance with the confidentiality obligations imposed on the ECB as a competent authority under relevant Union law.

9. The ECB shall cooperate sincerely with any investigations by the European Parliament, subject to the TFEU. The ECB and the European Parliament shall conclude appropriate arrangements on the practical modalities of the exercise of democratic accountability and oversight over the exercise of the tasks conferred on the ECB by this Regulation. Those arrangements shall cover, *inter alia*, access to information, cooperation in investigations and information on the selection procedure of the Chair of the Supervisory Board.

Article 21

National parliaments

1. When submitting the report provided for in Article 20(2), the ECB shall simultaneously forward that report directly to the national parliaments of the participating Member States.

National parliaments may address to the ECB their reasoned observations on that report.

2. National parliaments of the participating Member States, through their own procedures, may request the ECB to reply in writing to any observations or questions submitted by them to the ECB in respect of the tasks of the ECB under this Regulation.

3. The national parliament of a participating Member State may invite the Chair or a member of the Supervisory Board to participate in an exchange of views in relation to the supervision of credit institutions in that Member State together with a representative of the national competent authority.

4. This Regulation is without prejudice to the accountability of national competent authorities to national parliaments in accordance with national law for the performance of tasks not conferred on the ECB by this Regulation and for the performance of activities carried out by them in accordance with Article 6.

Article 22

Due process for adopting supervisory decisions

1. Before taking supervisory decisions in accordance with Article 4 and Section 2 of Chapter III, the ECB shall give the persons who are the subject of the proceedings the opportunity of being heard. The ECB shall base its decisions only on objections on which the parties concerned have been able to comment.

The first subparagraph shall not apply if urgent action is needed in order to prevent significant damage to the financial system. In such a case, the ECB may adopt a provisional decision and shall give the persons concerned the opportunity to be heard as soon as possible after taking its decision.

2. The rights of defence of the persons concerned shall be fully respected in the proceedings. They shall be entitled to have access to the ECB's file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information.

The decisions of the ECB shall state the reasons on which they are based.

Article 23

Reporting of violations

The ECB shall ensure that effective mechanisms are put in place for reporting of breaches by credit institutions, financial holding companies or mixed financial holding companies or competent authorities in the participating Member States of the legal acts referred to in Article 4(3), including specific procedures for the receipt of reports of breaches and their follow-up. Such procedures shall be consistent with relevant Union legislation and shall ensure that the following principles are applied: appropriate protection for persons who report breaches, protection of personal data, and appropriate protection for the accused person.

Article 24

Administrative Board of Review

1. The ECB shall establish an Administrative Board of Review for the purposes of carrying out an internal administrative review of the decisions taken by the ECB in the exercise of the powers conferred on it by this Regulation after a request for review submitted in accordance with paragraph 5. The scope of the internal administrative review shall pertain to the procedural and substantive conformity with this Regulation of such decisions.

2. The Administrative Board of Review shall be composed of five individuals of high repute, from Member States and having a proven record of relevant knowledge and professional experience, including supervisory experience, to a sufficiently high level in the fields of banking or other financial services, excluding current staff of the ECB, as well as current staff of competent authorities or other national or Union institutions, bodies, offices and agencies who are involved in the carrying out of the tasks conferred on the ECB by this Regulation. The Administrative Board of Review shall have sufficient resources and expertise to assess the exercise of the powers of the ECB under this Regulation. Members of the Administrative Board of Review and two alternates shall be appointed by the ECB for a term of five years, which may be extended once, following a public call for expressions of interest published in the *Official Journal of the European Union*. They shall not be bound by any instructions.

3. The Administrative Board of Review shall decide on the basis of a majority of at least three of its five members.

4. The members of the Administrative Board of Review shall act independently and in the public interest. For that purpose, they shall make a public declaration of commitments and a public declaration of interests indicating any direct or indirect interest which might be considered prejudicial to their independence or the absence of any such interest.

5. Any natural or legal person may in the cases referred to in paragraph 1 request a review of a decision of the ECB under this Regulation which is addressed to that person, or is of a direct and individual concern to that person. A request for a review against a decision of the Governing Council as referred to in paragraph 7 shall not be admissible.

6. Any request for review shall be made in writing, including a statement of grounds, and shall be lodged at the ECB within one month of the date of notification of the decision to the person requesting the review, or, in the absence thereof, of the day on which it came to the knowledge of the latter as the case may be.

7. After ruling on the admissibility of the review, the Administrative Board of Review shall express an opinion within a period appropriate to the urgency of the matter and no later than two months from the receipt of the request and remit the case for preparation of a new draft decision to the Supervisory Board. The Supervisory Board shall take into account the opinion of the Administrative Board of Review and shall promptly submit a new draft decision to the Governing Council. The new draft decision shall abrogate the initial decision, replace it with a decision of identical content, or replace it with an amended decision. The new draft decision shall be deemed adopted unless the Governing Council objects within a maximum period of ten working days.

8. A request for review pursuant to paragraph 5 shall not have suspensory effect. However, the Governing Council, on a proposal by the Administrative Board of Review may, if it considers that circumstances so require, suspend the application of the contested decision.

9. The opinion expressed by the Administrative Board of Review, the new draft decision submitted by the Supervisory Board and the decision adopted by the Governing Council pursuant to this Article shall be reasoned and notified to the parties.

10. The ECB shall adopt a decision establishing the Administrative Board of Review's operating rules.

11. This Article is without prejudice to the right to bring proceedings before the CJEU in accordance with the Treaties.

Article 25

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 on it by this Regulation without prejudice to and separately from its tasks relating to monetary policy and any other tasks. The tasks conferred on the ECB by this Regulation shall neither interfere with, nor be determined by, its tasks relating to monetary policy. The tasks conferred on the ECB by this Regulation shall moreover not interfere with its tasks in relation to the ESRB or any other tasks. The ECB shall report to the European Parliament and to the Council as to how it has complied with this provision. The tasks conferred by this Regulation on the ECB shall not alter the ongoing monitoring of the solvency of its monetary policy counterparties.

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

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 and information exchanges between the two functional areas.

4. The ECB shall ensure that the operation of the Governing Council is completely differentiated as regards monetary and supervisory functions. Such differentiation shall include strictly separated meetings and agendas.

5. With a view to ensuring separation between monetary policy and supervisory tasks, the ECB shall create a mediation panel. This panel shall resolve differences of views expressed by the competent authorities of participating Member States concerned regarding an objection of the Governing Council to a draft decision by the Supervisory Board. This panel shall include one member per participating Member State, chosen by each Member State among the members of the Governing

Council and the Supervisory Board, and shall decide by simple majority, with each member having one vote. The ECB shall adopt and make public a regulation setting up such mediation panel and its rules of procedure.

Article 26

Supervisory board

1. The planning and execution of the tasks conferred on the ECB shall be fully undertaken by an internal body composed of its Chair and Vice Chair, appointed in accordance with paragraph 3, and four representatives of the ECB, appointed in accordance with paragraph 5, and one representative of the national competent authority in each participating Member State ('Supervisory Board'). All members of the Supervisory Board shall act in the interest of the Union as a whole.

Where the competent authority is not a central bank, the member of the Supervisory Board referred to in this paragraph may decide to bring a representative from the Member State's central bank. For the purposes of the voting procedure set out in paragraph 6, the representatives of the authorities of any one Member State shall together be considered as one member.

2. The appointments for the Supervisory Board in accordance with this Regulation shall respect the principles of gender balance, experience and qualification.

3. After hearing the Supervisory Board, the ECB shall submit a proposal for the appointment of the Chair and the Vice-Chair to the European Parliament for approval. Following the approval of this proposal, the Council shall adopt an implementing decision to appoint the Chair and the Vice-Chair of the Supervisory Board. The Chair shall be chosen on the basis of an open selection procedure, on which the European Parliament and the Council shall be kept duly informed, from among individuals of recognised standing and experience in banking and financial matters and who are not members of the Governing Council. The Vice Chair of the Supervisory Board shall be chosen from among the members of the Executive Board of the ECB. The Council shall act by qualified majority without taking into account the vote of the members of the Council which are not participating Member States.

Once appointed, the Chair shall be a full-time professional and shall not hold any offices at national competent authorities. The term of office shall be five years and shall not be renewable.

4. If the Chair of the Supervisory Board no longer fulfils the conditions required for the performance of his duties or has been guilty of serious misconduct, the Council may, following a proposal by the ECB, which has been approved by the European Parliament, adopt an implementing decision to remove the Chair from office. The Council shall act by qualified majority without taking into account the vote of the members of the Council which are not participating Member States.

Following a compulsory retirement of the Vice-Chair of the Supervisory Board as a member of the Executive Board, pronounced in accordance with the Statute of the ESCB and of the ECB, the Council may, following a proposal by the ECB, which has been approved by the European Parliament, adopt an implementing decision to remove the Vice-Chair from office. The Council shall act by qualified majority without taking into account the vote of the members of the Council which are not participating Member States.

For those purposes the European Parliament or the Council may inform the ECB that they consider that the conditions for the removal of the Chair or the Vice Chair of the Supervisory Board from office are fulfilled, to which the ECB shall respond.

5. The four representatives of the ECB appointed by the Governing Council shall not perform duties directly related to the monetary function of the ECB. All the ECB representatives shall have voting rights.

6. Decisions of the Supervisory Board shall be taken by a simple majority of its members. Each member shall have one vote. In case of a draw, the Chair shall have a casting vote.

7. By derogation from paragraph 6 of this Article, the Supervisory Board shall take decisions on the adoption of regulations pursuant to Article 4(3), on the basis of a qualified majority of its members, as defined in Article 16(4) TEU and in Article 3 of Protocol No 36 on transitional provisions attached to the TEU and to the TFEU, for the members representing the participating Member State's authorities. Each of the four representatives of the ECB appointed by the Governing Council shall have a vote equal to the median vote of the other members.

8. Without prejudice to Article 6, the Supervisory Board shall carry out preparatory works regarding the supervisory tasks conferred on the ECB and propose to the Governing Council of the ECB complete draft decisions to be adopted by the latter, pursuant to a procedure to be established by the ECB. The draft decisions shall be transmitted at the same time to the national competent authorities of the Member States concerned. A draft decision shall be deemed adopted unless the Governing Council objects within a period to be defined in the procedure mentioned above but not exceeding a maximum period of ten working days. However, if a participating Member State whose currency is not the euro disagrees with a draft decision of the Supervisory Board, the procedure set out in Article 7(8) shall apply. In emergency situations the aforementioned period shall not exceed 48 hours. If the Governing Council objects to a draft decision, it shall state the reasons for doing so in writing, in particular stating monetary policy concerns. If a decision is changed following an objection by the Governing Council, a participating Member State whose currency is not the euro may notify the ECB of its reasoned disagreement with the objection and the procedure set out in Article 7(7) shall apply.

9. A secretariat shall support the activities of the Supervisory Board, including preparing the meetings on a full time basis.

10. The Supervisory Board, voting in accordance with the rule set out in paragraph 6, shall establish a steering committee from among its members with a more limited composition to support its activities, including preparing the meetings.

The steering committee of the Supervisory Board shall have no decision-making powers. The steering committee shall be chaired by the Chair or, in the exceptional absence of the Chair, the Vice-Chair of the Supervisory Board. The composition of the steering committee shall ensure a fair balance and rotation between national competent authorities. It shall consist of no more than ten members including the Chair, the Vice-Chair and one additional representative from the ECB. 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.

11. A representative of the Commission may participate as an observer in the meetings of the Supervisory Board upon invitation. Observers shall not have access to confidential information relating to individual institutions.

12. The Governing Council shall adopt internal rules setting out in detail its relation with the Supervisory Board. The Supervisory Board shall also adopt its rules of procedure, voting in accordance with the rule set out in paragraph 6. Both sets of rules shall be made public. The rules of procedure of the Supervisory Board shall ensure equal treatment of all participating Member States.

Article 27

Professional secrecy and exchange of information

1. Members of the Supervisory Board, staff of the ECB and staff seconded by participating Member States carrying out supervisory duties, even after their duties are ceased, shall be subject to the professional secrecy requirements set out in Article 37 of the Statute of the ESCB and of the ECB and in the relevant acts of Union law.

The ECB shall ensure that individuals who provide any service, directly or indirectly, permanently or occasionally, related to the discharge of supervisory duties are subject to equivalent professional secrecy requirements.

2. For the purpose of carrying out the tasks conferred on it by this Regulation, the ECB shall be authorised, within the limits and under the conditions set out in the relevant Union law, to exchange information with national or Union authorities and bodies in the cases where the relevant Union law allows national competent authorities to disclose information to those entities or where Member States may provide for such disclosure under the relevant Union law.

*Article 28***Resources**

The ECB shall be responsible for devoting the necessary financial and human resources to the exercise of the tasks conferred on it by this Regulation.

*Article 29***Budget and annual accounts**

1. The ECB's expenditure for carrying out the tasks conferred on it by this Regulation shall be separately identifiable within the budget of the ECB.

2. The ECB shall, as part of the report referred to in Article 20, report in detail on the budget for its supervisory tasks. The annual accounts of the ECB drawn up and published in accordance with Article 26.2 of the Statute of the ESCB and of the ECB shall include the income and expenses related to the supervisory tasks.

3. In line with Article 27.1 of the Statute of the ESCB and of the ECB the supervisory section of the annual accounts shall be audited.

*Article 30***Supervisory fees**

1. The ECB shall levy an annual supervisory fee on credit institutions established in the participating Member States and branches established in a participating Member State by a credit institution established in a non-participating Member State. The fees shall cover expenditure incurred by the ECB in relation to the tasks conferred on it under Articles 4 to 6 of this Regulation. These fees shall not exceed the expenditure relating to these tasks.

2. The amount of the fee levied on a credit institution or branch shall be calculated in accordance with the arrangements established, and published in advance, by the ECB.

Before establishing those arrangements, the ECB shall conduct open public consultations and analyse the potential related costs and benefits, and publish the results of both.

3. The fees shall be calculated at the highest level of consolidation within participating Member States, and shall be based on objective criteria relating to the importance and risk profile of the credit institution concerned, including its risk weighted assets.

The basis for calculating the annual supervisory fee for a given calendar year shall be the expenditure relating to the supervision of credit institutions and branches in that year. The ECB may require advance payments in respect of the annual supervisory fee which shall be based on a reasonable estimate. The ECB

shall communicate with the national competent authority before deciding on the final fee level so as to ensure that supervision remains cost-effective and reasonable for all credit institutions and branches concerned. The ECB shall communicate to credit institutions and branches the basis for the calculation of the annual supervisory fee.

4. The ECB shall report in accordance with Article 20.

5. This Article is without prejudice to the right of national competent authorities to levy fees in accordance with national law and, to the extent supervisory tasks have not been conferred on the ECB, or in respect of costs of cooperating with and assisting the ECB and acting on its instructions, in accordance with relevant Union law and subject to the arrangements made for the implementation of this Regulation, including Articles 6 and 12.

*Article 31***Staff and staff exchange**

1. The ECB shall establish, together with all national competent authorities, arrangements to ensure an appropriate exchange and secondment of staff with and among national competent authorities.

2. The ECB may require as 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 also involve staff from national competent authorities of other participating Member States.

3. The ECB shall establish and maintain comprehensive and formal procedures including ethics procedures and proportionate periods to assess in advance and prevent possible conflicts of interest resulting from subsequent employment within two years of members of the Supervisory Board and ECB staff members engaged in supervisory activities, and shall provide for appropriate disclosures subject to applicable data protection rules.

Those procedures shall be without prejudice to the application of stricter national rules. For members of the Supervisory Board who are representatives of national competent authorities, those procedures shall be established and implemented in cooperation with national competent authorities, without prejudice to applicable national law.

For the ECB staff members engaged in supervisory activities, those procedures shall determine categories of positions to which such assessment applies, as well as periods that are proportionate to the functions of those staff members in the supervisory activities during their employment at the ECB.

4. The procedures referred to in paragraph 3 shall provide that the ECB shall assess whether there are objections that members of the Supervisory Board take paid work in private sector institutions for which the ECB has supervisory responsibility after they have ceased to hold office.

The procedures referred to in paragraph 3 shall apply as a rule for two years after the members of the Supervisory Board have ceased to hold office and may be adjusted, on the basis of due justification, proportionate to the functions performed during that term of office and the length of time that office was held.

5. The Annual Report of the ECB in accordance with Article 20 shall include detailed information, including statistical data on the application of the procedures referred to in paragraphs 3 and 4 of this Article.

CHAPTER V

General and final provisions

Article 32

Review

By 31 December 2015, and subsequently every three years thereafter, the Commission shall publish a report on the application of this Regulation, with a special emphasis on monitoring the potential impact on the smooth functioning of the internal market. That report shall evaluate, inter alia:

- (a) the functioning of the SSM within the ESFS and the impact of the supervisory activities of the ECB on the interests of the Union as a whole and on the coherence and integrity of the internal market in financial services, including its possible impact on the structures of the national banking systems within the Union, and regarding the effectiveness of cooperation and information sharing arrangements between the SSM and competent authorities of non-participating Member States;
- (b) the division of tasks between the ECB and the national competent authorities within the SSM, the effectiveness of the practical arrangements of organisation adopted by the ECB, and the impact of the SSM on the functioning of the remaining supervisory colleges;
- (c) the effectiveness of the ECB's supervisory and sanctioning powers and the appropriateness of conferring on the ECB additional sanctioning powers, including in relation to persons other than credit institutions, financial holding companies or mixed financial holding companies;
- (d) the appropriateness of the arrangements set out respectively for macroprudential tasks and tools under Article 5 and for the granting and withdrawal of authorisations under Article 14;

- (e) the effectiveness of independence and accountability arrangements;
- (f) the interaction between the ECB and the EBA;
- (g) the appropriateness of governance arrangements, including the composition of, and voting arrangements in, the Supervisory Board and its relation with the Governing Council, as well as the collaboration in the Supervisory Board between Member States whose currency is the euro and the other participating Member States in the SSM;
- (h) the interaction between the ECB and the competent authorities of non-participating Member States and the effects of the SSM on these Member States;
- (i) the effectiveness of the recourse mechanism against decisions of the ECB;
- (j) the cost effectiveness of the SSM;
- (k) the possible impact of the application of Article 7(6), 7(7) and 7(8) on the functioning and integrity of the SSM;
- (l) the effectiveness of the separation between supervisory and monetary policy functions within the ECB and of the separation of financial resources devoted to supervisory tasks from the budget of the ECB, taking into account any modifications of the relevant legal provisions including at the level of primary law;
- (m) the fiscal effects that supervisory decisions taken by the SSM have on participating Member States and the impact of any developments in relation to resolution financing arrangements;
- (n) the possibilities of developing further the SSM, taking into account any modifications of the relevant provisions, including at the level of primary law, and taking into account whether the rationale of the institutional provisions in this Regulation is no longer present, including the possibility to fully align rights and obligations of Member States whose currency is the euro and other participating Member States.

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

Article 33

Transitional provisions

1. The ECB shall publish the framework referred to in Article 6(7) by 4 May 2014.

2. The ECB shall assume the tasks conferred on it by this Regulation on 4 November 2014 subject to the implementation arrangements and measures set out in this paragraph.

After 3 November 2013, the ECB shall publish by means of regulations and decisions the detailed operational arrangements for the implementation of the tasks conferred on it by this Regulation.

From 3 November 2013, the ECB shall send a quarterly report to the European Parliament, to the Council and to the Commission on progress in the operational implementation of this Regulation.

If on the basis of the reports referred to in the third subparagraph of this paragraph and following discussions of the reports in the European Parliament and in the Council, it is shown that the ECB will not be ready for exercising in full its tasks on 4 November 2014, the ECB may adopt a decision to set a date later than the one referred to in the first subparagraph of this paragraph to ensure continuity during the transition from national supervision to the SSM, and based on the availability of staff, the setting up of appropriate reporting procedures and arrangements for cooperation with national competent authorities pursuant to Article 6.

3. Notwithstanding paragraph 2, and without prejudice to the exercise of investigatory powers conferred on it under this Regulation, from 3 November 2013, the ECB may start carrying out the tasks conferred on it by this Regulation other than adopting supervisory decisions in respect of any credit institution, financial holding company or mixed financial holding company and following a decision addressed to the entities concerned and to the national competent authorities concerned.

Notwithstanding paragraph 2, if the ESM unanimously requests the ECB to take over direct supervision of a credit institution, financial holding company or mixed financial holding company as a precondition for its direct recapitalisation, the ECB may immediately start carrying out the tasks conferred on it by this Regulation in respect of that credit institution, financial holding

company or mixed financial holding company, and following a decision addressed to the entities concerned and to the national competent authorities concerned.

4. From 3 November 2013, in view of the assumption of its tasks, the ECB may require the national competent authorities and the persons referred to in Article 10(1) to provide all relevant information for the ECB to carry out a comprehensive assessment, including a balance-sheet assessment, of the credit institutions of the participating Member State. The ECB shall carry out such an assessment at least in relation to the credit institutions not covered by Article 6(4). The credit institution and the competent authority shall supply the information requested.

5. Credit institutions authorised by participating Member States on 3 November 2013 or, where relevant, on the dates referred to in paragraphs 2 and 3 of this Article shall be deemed to be authorised in accordance with Article 14 and may continue to carry out 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 of this Article, the identity of those 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.

6. Notwithstanding Article 26(7), until 31 December 2015, qualified majority voting and simple majority voting shall be applied together for the adoption of the regulations referred to in Article 4(3).

Article 34

Entry into force

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

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

Done at Luxembourg, 15 October 2013.

For the Council
The President
R. ŠADŽIUS

CORRIGENDA**Corrigendum to Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013
laying down the Union Customs Code**

(Official Journal of the European Union L 269 of 10 October 2013, p. 1)

Page 7, recital (57), second sentence

for: "(...). The other provisions should apply from 1 June 2016."

read: "(...). The other provisions should apply from 1 May 2016."

Page 88, Article 288(2)

for: "2. Articles other than those referred to in paragraph 1 shall apply as from 1 June 2016."

read: "2. Articles other than those referred to in paragraph 1 shall apply as from 1 May 2016".

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