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

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 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

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) No 1022/2013 of the European Parliament and of the Council. (See end of Document for details)*

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[6], 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[(7)] 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[(8)].

(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: