

EBA/DC/2011/001 (Rev 5)

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12 January 2011

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# Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors

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## The Board of Supervisors of the European Banking Authority

Having regard to 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), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC<sup>1</sup> (the ‘Regulation’ and ‘the EBA’), in particular Article 44 (3) thereof,

Having regard to the ACT concerning the conditions of accession of the Republic of Croatia and the adjustment to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community,<sup>2</sup>

Having regard to Regulation (EU) No 1022/2013 of the European Parliament and of the Council of 22 October 2013 amending the Regulation,<sup>3</sup> in order to reflect the establishment of the Single supervisory mechanism by 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,<sup>4</sup>

Having regard to Decision of the EEA Joint Committee No 199/2016 of 30 September 2016 amending Annex IX (Financial services) to the EEA Agreement,<sup>5</sup> in order to reflect the incorporation of the Regulation into the EEA Agreement,

**Has decided as follows:**

## Chapter I – THE BOARD OF SUPERVISORS

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1. OJ L331, 15.12.2010, p. 12.

2. OJ L112, 24.04.2012, p. 21.

3. OJ L287, 29.10.2013, p. 5.

4. OJ L287, 29.10.2013, p. 63.

<sup>5</sup> OJ L001, 03.01.1994, p. 3.

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## Article 1 - Date and place of meetings

- 1.1. The Board of Supervisors shall decide on the dates of its meetings on a proposal from the Chairperson submitted before the start of each calendar year. The Board of Supervisors shall meet at least four times a year. The Board of Supervisors shall convene meetings with the Banking Stakeholder Group referred to in Article 40(2) of the Regulation, regularly, at least twice a year.
- 1.2. The Chairperson shall convene a meeting of the Board of Supervisors if a request is submitted by at least one third of its voting members or on receipt of a warning or recommendation from the European Systemic Risk Board ('ESRB'). The Chairperson may also convene a meeting when he/she deems it necessary or 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 EU.
- 1.3. The Board of Supervisors shall normally hold its meetings on the premises of the EBA.
- 1.4. Meetings may also be held by means of teleconferencing.

## Article 2 – Attendance at meetings

- 2.1. Except as otherwise provided herein, attendance at meetings of the Board of Supervisors shall be restricted to the Chairperson, the Head of the national public authority competent for the supervision of credit institutions in each Member State and the Head of the national public authority competent for the supervision of credit institutions in an EEA EFTA State ('EEA EFTA Member'), the Executive Director, one representative of the Commission, one representative nominated by the Supervisory Board of the European Central Bank ('ECB Supervisory Board representative'), one representative of the ESRB, one representative of each of the other two European Supervisory Authorities and one representative of the EFTA Surveillance Authority.
- 2.2. Each national public authority competent for the supervision of credit institutions in a Member State or in an EEA EFTA State shall appoint, in writing, a high level alternate from that authority who may represent the member of the Board of Supervisors in the absence of the member. The alternate of a member with a right to vote may vote on his/her behalf.
- 2.3. Each member with a right to vote and each EEA EFTA Member may bring a non-voting representative of the national central bank where the national central bank is not responsible for the supervision of credit institutions,<sup>6</sup> or a non-voting representative of the relevant national authority where there is more than one authority competent for the supervision of credit institutions, or a non-voting representative from the relevant public authority which administers or supervises the deposit guarantee schemes pursuant to Directive 2014/49/EU. When an item to be discussed by the Board of Supervisors does not fall within the competence of the national authority being represented by the voting member or the EEA EFTA Member, that member may bring a representative from the relevant national authority, who shall be non-voting. In discussions not relating to individual financial institutions, as provided in Article 44(4) of the Regulation, the ECB Supervisory Board representative may be accompanied by a representative of the European Central Bank with expertise on central banking tasks.

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<sup>6</sup> Does not apply in the case of Liechtenstein.

- 2.4. If a member does not bring a representative from a relevant national authority in accordance with Article 2(3), the member shall be responsible for coordinating with that national authority to ensure that the member is sufficiently informed on the item to be able to carry out his functions as such. In doing so, the voting member shall have regard to the requirement to act independently and objectively in the sole interest of the Union as a whole, in accordance with Article 42 of the Regulation.
- 2.5. Each member with a right to vote and each EEA EFTA Member may bring one accompanying person.
- 2.6. The Chairperson shall appoint a member of staff of the EBA who shall assist the Executive Director in preparing the meetings of the Board of Supervisors, in the conduct of deliberations and votes and in drafting the conclusions and summary of the proceedings of the meetings. The Chairperson and the Executive Director may be assisted by other EBA staff.
- 2.7. The Board of Supervisors may admit observers and experts.
- 2.8. The members without a right to vote and the observers, with the exception of the Chairperson, the Executive Director, the EEA EFTA Members, the representative of the EFTA Surveillance Authority and the ECB Supervisory Board representative, shall not attend any discussions within the Board of Supervisors relating to individual financial institutions, except where there is a direct interest. A national central bank without a right to vote that exercises supervisory tasks related to the discussion has such direct interest.

### **Article 3 – Voting**

- 3.1. The Head of the national public authority competent for the supervision of credit institutions in each EU Member State, or in his/her absence, his/her alternate, shall have a right to vote.
- 3.2. The Board of Supervisors shall proceed to a vote at the request of the Chairperson or any member of the Board of Supervisors with a right to vote. The Chairperson has the prerogative to call for a vote at any time. The Board of Supervisors shall strive for consensus when taking its decisions.
- 3.3. In order for the Board of Supervisors to proceed to a vote, there shall be a quorum of two-thirds of the members with a right to vote. If the quorum is not met, the Chairperson may convene an extraordinary meeting at which decisions may be taken without quorum.
- 3.4. Decisions of the Board of Supervisors shall be taken by simple majority of its members unless otherwise stated. Each member shall have one vote. A simple majority shall be achieved where more voting members vote in favour of a proposal than vote against it. Abstentions will not be counted as approvals or as objections, and will not be considered when calculating the number of votes cast.
- 3.5. With regard to regulatory technical standards, implementing technical standards, guidelines and recommendations (Articles 10 to 16 of the Regulation) and measures and decisions adopted under the third subparagraph of Article 9(5) of the Regulation and under Chapter VI of the Regulation, decisions of the Board of Supervisors shall be taken on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union ('TEU') and Article 3 of the 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 the Council 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 the Council Regulation (EU) No 1024/2013 ('non-participating Member States').

- 3.6. With regard to decisions in accordance with Articles 17 and 19 of the Regulation, 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. 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.
- 3.7. With regard to the composition of the panel established in accordance with Article 41 (2) of the Regulation, 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 members. Each voting member of the Board of Supervisors shall have one vote.
- 3.8. With regard to decisions adopted under Article 18(3) and 18 (4) of the Regulation 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.
- 3.9. Until 31 October 2014, qualified majority for the purposes of Article 3.5 is achieved if there are at least 260 votes casted by voting members in favour of a proposal. If a voting member of the Board of Supervisors so requests upon the announcement of the result of the vote by the Chairperson, it shall be verified that the Member States of the voting members constituting the qualified majority represent at least 62% of the total population of the Union. This paragraph shall also apply between 1 November 2014 and 31 March 2017 when a member of the Board of Supervisors so requests in accordance with Article 3(2) of the Protocol (No 36) on transitional provisions. In votes held by written procedure, the request shall be sent in writing to the Chairperson within the first 24 hours of the launch of the written procedure; for other votes, where advance notice has been given to the Board of Supervisors, this request shall be expressed in writing to the Chairperson no later than 24 hours before the vote is due to take place.
- 3.10. From 1 November 2014, qualified majority for the purposes of Article 3.5 is achieved, if there are at least 55% of the voting members in favour, comprising at least fifteen of them and coming from competent authorities from Member States comprising at least 65% of the population of the Union. A blocking minority shall be achieved as defined in Article 16(4) of the TEU.
- 3.11. For the purpose of paragraphs 3.9. and 3.10, population figures shall be calculated using the population figures adopted by the Council of the European Union from time to time for the purpose of adopting its own decisions by a qualified majority.
- 3.12. On a proposal of the Chairperson, decisions may also be taken by written procedure unless at least one third of the members of the Board of Supervisors with a right to vote object. All voting members should express their approval (I agree), disapproval (I disagree) or abstention (I abstain). A proposal

from the Chairperson will be circulated to the Board of Supervisors, stating the time and date by which votes must be cast. The proposal will also stipulate whether a failure to vote will be considered a vote for the proposal, and the minimum number of votes required. The Chairperson will also describe the key issues and whether the decision proposed is consensual or controversial. There will be justification as to the use of written procedure where it is used in relation to the adoption of draft technical standards. A written procedure shall require: (i) normally not less than five working days for consideration by every voting member of the Board of Supervisors; and (ii) the vote of each voting member of the Board of Supervisors. The result of the written procedure shall be notified without delay to the members of the Board of Supervisors and shall be recorded in the minutes of the subsequent meeting of the Board of Supervisors. Where exceptionally, the period for casting votes is less than 5 working days, the reason for the short period shall be given.

- 3.13. Votes on decisions being taken by written procedure shall be in written form. Where the Board of Supervisors has been informed that a failure to vote shall be treated as a vote for the proposal, then if within the first 48 hours of the proposed vote, three or more voting members indicate in writing to the Chairperson that they consider the vote in question to be of significant importance, then a failure to vote shall not be considered a vote for the proposal. Two-thirds of the voting members shall be required to express objection, approval or abstention. The time and date by which votes must be cast shall if necessary be extended to ensure a minimum of 24 hours for voting members to vote on the revised basis. The Chairperson shall notify the Board of Supervisors accordingly.
- 3.14. When an item to be decided on by the Board of Supervisors does not fall within the competence of the national authority being represented by the voting member, the voting member shall be responsible for coordinating with that national authority in accordance with Article 2(4).

#### **Article 4 – Agenda and documents**

- 4.1. The agenda of each meeting shall be adopted by the Board of Supervisors. The Board of Supervisors may decide to remove items from or add items to the provisional agenda on a proposal from the Chairperson or from any member of the Board of Supervisors.
- 4.2. The provisional agenda and the related documents shall be sent to the members and observers at least five working days before the relevant meeting, except in emergencies where this delay may be shortened having regard to the circumstances.
- 4.3. Where there is more than one competent authority(ies) in a Member State or an EEA EFTA State, the member for that State shall keep the other competent authority informed about matters that are discussed at the Board of Supervisors and fall within the competence of, and are relevant to, that authority(ies).

#### **Article 5 – Minutes**

- 5.1. The conclusions and summary of the proceedings of each meeting of the Board of Supervisors shall be submitted to its members for approval within two weeks after the meeting.

5.2. After their approval, the conclusions and summary of the proceedings shall be signed by the Chairperson.

### **Article 6 – The Chairperson**

The Board of Supervisors may adopt supplementary rules for the selection, appointment and dismissal of the Chairperson.

### **Article 7 – Election of the Alternate to the Chairperson**

7.1. The Board of Supervisors shall elect from among its members with a right to vote an alternate to the Chairperson who shall carry out the functions of the Chairperson in his/her absence. The alternate Chairperson shall not be elected from among the members of the Management Board.

7.2. The term of office of the alternate to the Chairperson shall be two and a half years and may be extended once.

7.3. Nominations for the alternate to the Chairperson shall be submitted in writing by the candidates themselves to the Executive Director no later than fifteen working days before the start of the meeting of the Board of Supervisors at which the election is to take place and shall be communicated to the members of the Board of Supervisors.

7.4. Candidates shall submit a brief résumé in support of their candidature at the time of the nomination.

7.5. The election requires a simple majority of the voting members. Each member shall have one vote. The election shall be held by a secret ballot. A vote is held even if there is only one candidate. If there are more than two candidates and a simple majority is not reached, a second secret ballot shall be held between the two candidates who obtained the highest number of votes. If there were not any two candidates with the highest number of votes, ballots will be held until there are two candidates with the highest number of votes. Additional ballots shall be held until one candidate obtains a simple majority of the voting members. If a simple majority cannot be reached, a new election shall be held at the latest at the next meeting of the Board of Supervisors.

7.6. Should the alternate to the Chairperson prematurely terminate his/her term of office, there will be a new election in the meeting of the Board of Supervisors following the premature termination.

## **Chapter III – THE MANAGEMENT BOARD**

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### **Article 8 - Composition**

8.1. The Management Board consists of the Chairperson and six members elected by the Board of Supervisors from among its members.

8.2. Each member other than the Chairperson shall appoint in writing an alternate, from his/her authority, who may replace the member of the Management Board if he/she is prevented from attending, and vote on his/her behalf.

- 8.3. The Executive Director and a representative from the Commission shall participate in meetings of the Management Board.
- 8.4. The composition of the Management Board shall be balanced and proportionate and reflect the European Union as a whole. In particular, the Management Board shall include at least two members of the Board of Supervisors from Member States which are non-participating Member States.

## **Article 9 – Election of the members of the Management Board**

- 9.1. Members of the Management Board shall be elected from among the members of the Board of Supervisors with the right to vote. Their term of office shall be two and a half years and may be extended once. In addition, the term of office of members shall expire when:
- a. the member ceases to be a member of the Board of Supervisors; or
  - b. the status of a non-participating Member State whose member of the Board of Supervisors is an elected member of the Management Board changes, to the extent that such change would result in a breach of the requirement in Article 8.4 were the term of office to continue.
- 9.2. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.
- 9.3. Nominations for Members of the Management Board shall be submitted in writing by the candidates themselves to the Executive Director no later than fifteen working days before the start of the meeting of the Board of Supervisors at which the election is to take place and shall be communicated to the members of the Board of Supervisors.
- 9.4. Candidates shall submit a brief résumé in support of their candidature at the time of the nomination.
- 9.5. The Chairperson shall advise the Board of Supervisors on a balanced and reasoned composition of the Management Board. In particular, the Chairperson may, in order to ensure compliance with the requirement in Article 8.4, limit nominations to members of the Board of Supervisors from non-participating Member States.
- 9.6. The election requires a simple majority of the voting members. Each member shall have one vote. Where there is an election for one position on the Management Board, the procedure as outlined under Article 7.5 shall apply. Where there is more than one vacant position on the Management Board, one voting member shall have one vote for each vacant position. Subject to the need to elect one or more candidate(s) from non-participating Member States pursuant to Article 8.4, those candidates who receive a simple majority and the highest number of votes given the positions available shall be selected. In the event of a need to elect one or more members from the non-participating Member States pursuant to Article 8.4, the candidate(s) from the non-participating Member State(s) who receive (s) the most votes shall be selected in place of the other candidates, subject to the need for a simple majority. Possible additional secret ballots for the remaining positions shall be held whereby one voting member shall have one vote for each of the remaining positions. In case there would be one remaining position, the election as outlined under Article 7.5 shall apply. If a simple majority cannot be reached, a new election procedure shall be held at the latest at the next meeting of the Board of Supervisors.

9.7. Should a member of the Management Board prematurely terminate his/her term of office, there will be a new election in the meeting of the Board of Supervisors following the premature termination.

### **Article 10 – Organisation of the meetings of the Management Board**

The Management Board shall adopt and make public its rules of procedure.

## **Chapter III – THE EXECUTIVE DIRECTOR**

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### **Article 11 – The Executive Director**

- 11.1. The European Banking Authority shall be managed by the Executive Director.
- 11.2. The Board of Supervisors may adopt supplementary rules for the selection, appointment and dismissal of the Executive Director.

## **Chapter IV – ORGANISATION OF THE EUROPEAN BANKING AUTHORITY**

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### **Article 12 – Delegation of powers**

- 12.1. The Board of Supervisors may delegate tasks or decisions to the Chairperson, to the Management Board, to the Executive Director or to internal committees and panels.
- 12.2. Where delegations of tasks or of decisions have legal effects on third parties, the delegation shall be notified to the parties concerned or, where appropriate, published. Acts adopted by way of delegation shall be communicated promptly to the Board of Supervisors.

### **Article 13 – Internal committees and panels**

- 13.1. The Board of Supervisors shall establish and dissolve internal committees and panels as required by legislative acts. The Board of Supervisors may establish and dissolve internal committees and panels.
- 13.2. Internal committees shall contribute to the work of and shall report to the Board of Supervisors via the Management Board.
- 13.3. The Board of Supervisors shall lay down the mandates of the internal committees and appoint their chairperson.
- 13.4. Internal committees may establish working groups and tasks forces, with the agreement of the Management Board.
- 13.5. The Board of Supervisors may decide to establish ad hoc internal committees for specific advisory tasks.

- 13.6. The Board of Supervisors shall adopt the rules of procedure of the Panels for the purposes of Articles 17 and 19 of the Regulation 1093/2010 establishing the European Banking Authority.

#### **Article 14 – Legal instruments of the EBA**

- 14.1. EBA draft technical standards shall be adopted by the Board of Supervisors and submitted to the European Commission for endorsement.
- 14.2. EBA guidelines and recommendations adopted under Article 16 of the EBA Regulation shall be adopted by the Board of Supervisors and signed by the Chairperson. They shall be published on the Authority's website, as appropriate.
- 14.3. EBA decisions including individual recommendations addressed to a competent authority, as referred to in Article 17(3) of the Regulation, adopted by the Board of Supervisors, shall be signed by the Chairperson and notified to the parties concerned. The decisions which EBA takes pursuant to Articles 17, 18 and 19 shall be made public and shall state the identity of the competent authority or financial institution concerned and the main content of the decision, unless such publication is in conflict with the legitimate interest of financial institutions in the protection of their business secrets or could seriously jeopardise the orderly functioning and integrity of the financial markets or the stability of the whole or part of the financial system of the Union.
- 14.4. EBA decisions adopted by the Management Board, according to its respective tasks, shall be signed by the Chairperson and notified to the parties concerned, where appropriate. They shall be published on the Authority's website, as appropriate.
- 14.5. EBA opinions or EBA advice referred to in Chapter II of the EBA Regulation shall be adopted by the Board of Supervisors, signed by the Chairperson and notified to the parties concerned. They may be published on the Authority's website, as appropriate.

#### **Article 15 – Staff of the EBA**

- 15.1. Each member of staff of the EBA shall be informed about his/her position, reporting line and professional responsibilities.
- 15.2. The Management Board shall adopt the EBA's staff policy plan and the necessary implementing measures, in accordance with Article 110 of the Staff Regulations of Officials of the European Communities.
- 15.3. The Executive Director shall manage staff matters in accordance with Article 53 of the Regulation.

#### **Article 16 – Code of conduct**

- 16.1. The Board of Supervisors shall adopt and make public the code of conduct of the EBA.
- 16.2. The Chairperson, the members of the Board of Supervisors, the members of the Management Board, the Executive Director and the members of staff of the EBA shall abide by the code of conduct of the EBA.

16.3. Members shall disclose to the Board of Supervisors any conflict of interest which that member may have and is aware of before the resolution of a matter to which that conflict relates. No voting member may vote on a matter where that voting member has a material conflict.

### **Article 17 – Obligation of professional secrecy**

All proceedings of the Board of Supervisors shall be confidential. The Management Board shall lay down EBA's internal rules of procedure regarding professional secrecy.

### **Article 18 – External communication**

Decisions, activities and publications of the European Banking Authority may be published on its website, in the Official Journal of the European Union, or by means of wire services common to financial markets or any other media.

### **Article 19 – Confidentiality of and access to documents**

19.1. The detailed proceedings of the Board of Supervisors, the Management Board, the internal committees and their substructures, and panels shall be confidential. All attendees shall respect their confidentiality and shall comply with the EBA's standards on professional secrecy.

19.2. The Management Board shall lay down the rules and practical measures regarding the public access to the documents of the EBA.

### **Article 19a – Rights and obligations of the EEA EFTA Members and of the EFTA Surveillance Authority**

19a.1. The competent authorities of the EEA EFTA States and the EFTA Surveillance Authority shall, but for the right to vote, have the same rights and obligations as the competent authorities of the EU Member States in the work of the EBA.

19a.2 The Chairperson shall enter into a Memorandum of Understanding on cooperation, information exchange and consultation with the EFTA Surveillance Authority to further clarify practical arrangements of cooperation in order to give effect to Union law as implemented into the EEA Agreement.

## **Chapter V – FINAL AND TRANSITIONAL PROVISIONS**

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### **Article 20 – Amendments to these rules of procedure**

The Board of Supervisors may amend these rules of procedure. The Board of Supervisors and the Management Board may adopt supplementary rules where provided for in these rules of procedures.

### **Article 21 – Transitional provision**

To obtain a rotating system as referred to in Article 9.2., the initial term of office of half of the members of the first elected Management Board shall be one and a half years while the initial term of office of the

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other half shall be two and a half years. In accordance with Article 9.1., their term of office may be extended once for an additional term of two and a half years.

These Rules of Procedure shall enter into force immediately after their approval.

Done at London, 12 January 2011

Amended at London on 5 July 2012

Amended at London on 20 June 2013

Amended at London on 11 December 2013

Amended at London on 27 November 2014

Amended at London on 25 October 2016

[signed]

Andrea Enria

Chairperson

For the EBA Board of Supervisors