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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) No 1093/2010 as regards the location of the seat of the European Banking Authority (First reading) - Preparation for the trilogue

With a view to a coming trilogue on EBA and in the light of the first trilogue on 5 June as well as of technical discussions on 7 June, the Presidency would like to suggest that its negotiating mandate includes the following elements:

- endorsing the outcome of the technical meeting as set out in the Annex;
- as regards the EP demands of a more institutional nature, as reflected in the unilateral statement tabled by the EP, presenting the following Council statement, which is relevant in the context of both EBA and EMA given that the EP raised the same institutional issues through the same statement for both agencies:

"Recalling the commitment of the EP, the Council and the Commission ("the three Institutions") to sincere and transparent cooperation, and in the light of the process followed for the relocation of the EMA and EBA, which was specific to the situation and did not constitute a precedent for location of agencies in the future,

the Council acknowledges the value of enhanced exchange of information to the benefit of the three Institutions from the early stages of future processes for the location of agencies.

Such early exchange of information would make it easier for the three Institutions to make their views known, in a timely manner and within the limits set by the Treaties, in the run-up to the decision on the location of agencies."

- as regards the EP's demand (new recital 4a) regarding the conclusion of the revision of the 2012 Joint Statement and Common Approach by the end of 2018, opposing the deadline of 31 December 2018 but accepting a reference to transparency as follows:

"Acknowledge that it is possible for the location of a decentralised agency to be set out in a Union legislative act which is subject to the ordinary legislative procedure. The location of a Union agency should be selected in a transparent procedure, defining objective selection criteria."

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Coreper is invited to endorse the above mandate.

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulation (EU) No 1093/2010 as regards the location of the seat of the European Banking Authority

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,

[citation referring to the TEU: deleted]

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 Bank¹,

Having regard to the opinion of the European *Economic and Social* and ~~European~~ Committee²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) In the context of the United Kingdom's notification on 29 March 2017 of its intention to leave the Union, pursuant to Article 50 of the Treaty on European Union (*TEU*), the other 27 Member States, meeting in the margins of the General Affairs Council ('Article 50'), selected Paris, France, as the new seat of the *European Supervisory Authority (European Banking Authority) (EBA)*.

¹ [...]

² [...]

(1a) ~~The costs of the relocation of the seat of the EBA arise as a result of the unilateral decision of the United Kingdom to leave the Union. Nevertheless, on the basis~~ Taking note of the “Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union” ~~agreed on~~ of 8 December 2017 and in particular its chapter on financial settlement, and of the commitment of the United Kingdom to contribute to the general budget of the Union for the financial years 2019 and 2020 as if it remained in the Union and to contribute to its share of the financing of the commitments outstanding at 31 December 2020, the costs of relocation of the seat of the EBA, arising from the decision of the United Kingdom to leave the Union, ~~those costs~~ are to be borne by all Union taxpayers through the general budget of the Union. The United Kingdom has offered to discuss with those Union agencies that are located in London how they could reduce their withdrawal costs.

(2) Having regard to Article 50(3) *TEU*, the *EBA* should take its new seat as from the date on which the Treaties cease to apply to the United Kingdom or from 30 March, 2019, whichever is the earlier.

(3) To ensure the proper functioning of the *EBA* in its new location, a headquarters agreement should be concluded *and a building project in accordance with Article 88 of Commission Delegated Regulation (EU) No 1271/2013³ should be approved* before the *EBA* takes up its new seat. *The new premises should be ready and fit for the purpose of permanent relocation by 30 March 2019 ~~the time the withdrawal of the United Kingdom from the Union comes into effect~~. The headquarters agreement should reflect the responsibility of the French authorities to provide the most appropriate conditions in order to ensure the proper functioning of the Authority in the context of its relocation, ~~and the most efficient solution for the location of the EBA.~~*

³ *Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).*

(3a) The transfer of the seat of the EBA does not call into question the establishment plan as adopted by the European Parliament and the Council, nor the application of the Staff Regulations to officials or other agents who work at the EBA.

(4) To give the **EBA** sufficient time to relocate, this Regulation should enter into force as a matter of urgency ***following its adoption in accordance with the ordinary legislative procedure*** ~~***while taking into account the co-decision powers of the European Parliament and the Council.***~~

[(4a) In order to acknowledge that it is possible for the location of a decentralised agency to be set out in a Union legislative act which is subject to the ordinary legislative procedure, the European Parliament, the Council and the Commission are committed to concluding, by 31 December 2018, a revision of the Joint Statement on decentralised agencies. The location of a Union agency should be selected in a transparent procedure which reinforces democratic accountability and by jointly defining and weighting the selection criteria.] (bracketed text not addressed at the technical meeting)

(4b) The relocation of the EBA should not have any consequences with regard to executing the distinct mandate or maintaining the separate legal status of the European Supervisory Authorities. The relocation might allow, where applicable, for the sharing of administrative support services and facility management services among Union agencies which are not related to core activities. [To address the efficiency of those agencies, the European Parliament, the Council and the Commission should, when revising the Joint Statement on decentralised agencies, also build on the recommendations of the Interinstitutional Working Group on decentralised agencies' resources.] (bracketed sentence to be further discussed)

(5) Regulation (EU) No 1093/2010 of the European Parliament and of the Council should therefore be amended accordingly.

(5a) ~~Article 13(2) TEU requires~~ Relations between the institutions of the Union are to be carried out in mutual sincere cooperation, while each of them is acting within the limits of the powers conferred on it in the Treaties and in conformity with the procedures, conditions and objectives set out in them. ~~The European Parliament is to be fully informed and involved throughout all steps of the ordinary legislative procedure,~~

HAVE ADOPTED THIS REGULATION:

Article 1 - para. 1

Article 7 of Regulation (EU) No 1093/2010 is replaced by the following:

“Article 7

Seat

The Authority shall have its seat in Paris, France.

The location of the seat of the EBA shall not affect EBA’s execution of its powers and tasks, the organisation of its governance structure, the operation of its main organisation, or the main financing of its activities, ~~which all are different in their field of competence, independent of their location, while, where applicable,~~ while allowing, where applicable, for the sharing of administrative support services and facility management services, which are not related to its core activities, with Union agencies. By ... [date of application of this Regulation] and every 12 months thereafter, the Commission shall report to the European Parliament and the Council on the compliance of those Authorities with that requirement.^{4”}

Article 2

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

This Regulation shall apply from the date on which the Treaties cease to apply to the United Kingdom or from 30 March 2019, whichever is the earlier.

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

⁴ Commission does not support the last sentence