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accompanying document to the

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European Banking Authority

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European Insurance and Occupational Pensions Authority

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

establishing a European Securities and Markets Authority

POSSIBLE AMENDMENTS TO FINANCIAL SERVICES LEGISLATION

{COM(2009) 501 final}
{COM(2009) 502 final}
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Introduction

The Commission Communication of 27 May 2009, "European financial supervision"[1], proposed changes to strengthen the architecture of European financial supervision following the financial market disruption that began in 2007. Specifically, it proposed the creation of two new bodies:

- a **European Systemic Risk Council (ESRC)** to monitor and assess risks to the stability of the financial system as a whole ("macro-prudential supervision"), and provide early warning of systemic risks that may be building up and, where necessary, recommendations for action to deal with these risks.

- a **European System of Financial Supervisors (ESFS)** for the supervision of individual financial institutions ("micro-prudential supervision"), consisting of a network of national financial supervisors working in tandem with new European Supervisory Authorities (ESAs), created by the transformation of existing Committees for the banking, securities and insurance and occupational pensions sectors.[2] The Communication proposed transferring to the new Authorities all of the current competences of the Committees in question and granting them extra competences, including the following:

    - Developing proposals for technical standards;
    - Settling cases of disagreement between national supervisory authorities, including within colleges of supervisors;
    - Contributing to ensuring compliance with Community law;
    - Exercising direct supervisory powers for defined entities with a pan European reach;
    - Co-ordination and decision-making in crisis situations; and
    - Collecting relevant information.

The Communication stated that the Commission intended to bring forward, as soon as possible, the legislative changes to put in place the new framework for EU supervision, on the basis of the orientations set out in the Communication and after further consultation of stakeholders, so that the necessary measures could be adopted in time for the renewed framework to be up and running before the end of 2010. It invited the European Council to endorse this plan. The Conclusions of the European Council of 18-19 June 2009 supported the creation of an ESRC (renamed European Systemic Risk Board, ESRB) and an ESFS, consisting of the three ESAs.

The Communication also concluded that in order for the ESFS to work effectively, changes to the financial services legislation would be necessary, in particular to provide an appropriate scope to the more general powers provided for in the individual regulations establishing the authorities, ensuring a more harmonised set of financial rules through the possibility to develop draft technical standards and to facilitate the sharing, where necessary, of micro-prudential information.

[1] COM(2009) 252 final.
[2] The 3 level 3 committees, CESR, CEBS and CEIOPS

This document accompanies the proposals for legislative acts creating the ESFS and outlines the possible changes that may be made in the relevant sectoral legislation. The areas in which amendments may be proposed fall broadly into the following categories:

- Definition of the appropriate scope of **technical standards** as an additional tool for supervisory convergence and with a view towards developing a single rule book (Section 1 and Annex I).

- Changes to the credit rating agencies regulation to allow the European Securities and Markets Authority to exercise **direct supervision** of such entities (Section 2).

- To appropriately integrate the possibility for the authority to **settle disagreements** in a balanced way to those areas where common decision making processes already exist in sectoral legislation (Section 3).

- **General amendments** which are common to most sectoral legislation and necessary for the directives to operate in the context of new authorities for example, renaming the level 3 committees to the new authorities and ensuring the appropriate gateways for the exchange of information are present (Section 4).

This document gives an overview of the amendments that should be made to the banking, insurance and securities sectoral legislation to ensure the Authorities can operate effectively. However they do not constitute a formal proposal. The Commission will propose a package of detailed legislative changes for the Council and Parliament by the end of October 2009.

General scope of competencies of each respective Authority

For clarity when discussing the changes outlined in the remainder of this document, the list of directives relevant to each authority is provided below.

European Banking Authority

- **Financial conglomerates directive (FCD):**[3] The FCD ensures the effective supervision of financial conglomerates - financial groups active in different financial sectors, often across borders.

- **Capital requirements directive (CRD):**[4] The CRD sets the EU rules on capital requirements for credit institutions and investment firms. The CRD implements the Basel II accord into EU legislation and deals with a number of areas not covered in the accord but critical to the functioning of the single market.

- **Anti money laundering directive:**[5] To limit opportunities for money laundering and financial crime, those subject to the Directive are required to identify and verify the identity of their customer and of its beneficial owner, monitor their business relationship with the customer; and report suspicions of money laundering or terrorist financing to the public authorities.

[3] 2002/87/EC
[4] 2006/48/EC
[5] 2006/60/EC

- **Deposit guarantee schemes directive:**[6] Deposit Guarantee Schemes reimburse a limited amount of deposits to depositors whose bank has failed to help to protect both depositors and wider financial stability.

- **Regulation on information on the payer accompanying transfer of funds:**[7] The Regulation lays down rules for payment service providers to send information on the payer throughout the payment chain. This is done for the purposes of prevention, investigation and detection of money laundering and terrorist financing.

European Insurance and Occupational Pensions Authority

- **Financial conglomerates directive:** See above

- **Institutions for Occupational Retirement Provision directive (IORP):**[8] The IORP directive provides a framework for the prudential regulation of occupational pension schemes that operate on a funded basis and are outside the scope of social security schemes. It puts in place minimum standards to facilitate cross-border operation by pension schemes.

- **Current Insurance and Reinsurance Directives**:[9] The current regime for insurance and reinsurance supervision is contained in a number of different directives (life directives, non-life directives, reinsurance directive, winding-up directive and insurance groups directive).

- **Solvency II:** In spring 2009 Council and European Parliament agreed on the Solvency II Directive. The Directive consists of a recast of 14 existing insurance and reinsurance directives and a modern, economic and risk-based regime for the supervision of insurance and reinsurance undertakings, and of insurance/reinsurance groups. The new regime will come into force end October 2012.

- **Insurance mediation directive (IMD):**[10] The IMD introduced a set of requirements for the regulation of EU insurance intermediaries, to permit them to operate in other Member States, on an establishment or freedom of services basis.

- **Anti money laundering directive:** See above

European Securities and Markets Authority

- **Financial conglomerates directive:** See above

- **Transparency directive:**[11] The Directive sets out minimum requirements which govern takeover procedures in the EU, with a view to giving adequate protection to minority shareholders across the EU in takeover situations and facilitating corporate restructuring.

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[6] 94/19/EC
[7] 1781/2006/EC
[8] 2003/41/EC
[9] For a full list please see Article 2 of the draft Regulation establishing a European Insurances and Occupational Pensions Authority
[10] 2002/92/EC

- **Markets in Financial Instruments directive (MiFID):**[12] The MiFID provides a harmonised regulatory regime for investment services across Europe. It replaced the Investment Services Directive and sets, among other things, requirements governing the organisation and conduct of business of investment firms, and how regulated markets and multilateral trading facilities operate.

- **Market abuse directive (MAD):**[13] The MAD prohibits abusive behaviour such as insider dealing and market manipulation. It creates obligations aimed at deterring abuses, such as insiders' lists, suspicious transaction reporting, and disclosure of trades by managers of issuers.

- **Prospectus directive:**[14] A prospectus is a disclosure document, containing key financial and non-financial information, that a company makes available to potential investors when it is issuing securities (shares, bonds, derivative securities, etc.) to raise capital and/or when it wants its securities admitted to trading on exchanges.

- **Undertakings for Collective Investment in Transferable Securities Directive (UCITS Directive):**[15] UCITS directive sets out common requirements for authorisation, management and oversight of undertakings for collective investments, in particular rules relating to fund diversification, liquidity and use of leverage. The UCITS directive defines also a list of eligible assets in which the fund can invest. Once authorised, a UCITS fund can be marketed to the public across the EU subject to notification in each Member State

- **Credit rating agencies regulation:** The regulation lays down conditions for the issuance of credit ratings. It introduces a registration procedure for credit rating agencies to enable European supervisors to control the activities of rating agencies whose ratings are used by credit institutions, investment firms, insurance, assurance and reinsurance undertakings, collective investment schemes and pension funds within the Community.

- **Take-over Bids directive:**[16] The Directive sets out to establish minimum guidelines for the conduct of takeover bids involving the securities of companies governed by the laws of Member States, where all or some of those securities are admitted to trading on a regulated market.

- **Settlement finality directive (SFD):**[17] the SFD provides that transfer orders entered into payment and securities settlement systems cannot be revoked or otherwise invalidated. It also protects the collateral provided to a central bank and collateral provided in combination with participation in a designated system from the effects of the insolvency of the collateral giver.

- **Financial collateral arrangements directive:**[18] the Financial Collateral Directive created a uniform EU legal framework for the use of financial collateral by abolishing most of the

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[11] 2004/109/EC
[12] 2004/39/EC
[13] 2003/6/EC
[14] 2003/71/EC
[15] 2009/65/EC (recast of the directive 85/611/EC)
[16] 2004/25/EC
[17] 98/26/EC
[18] 2002/47/EC

formal requirements traditionally imposed on collateral arrangements and by insulating collateral arrangements against insolvency.

- **Investor compensation schemes directive:**[19] The Directive requires Member States to set up one or more investor compensation schemes. All investment firms supplying investment services must belong to such a scheme.

- **Directive on the admission of securities to official stock exchange listings and on information to be published on those securities:**[20] the directive specifies conditions that must be met before securities are admitted to official listing on a stock exchange

- **Anti money laundering directive:** See above

- **Capital Requirements Directive (2006/49/EC):** For aspects not related to prudential supervision. See above.

- **Distance Marketing Directive:**[21] the directive sets minimum standards that must be met before financial services can be marketed to across borders.

[19] 97/9/EC
[20] 2001/34/EC
[21] 2002/65/EC

1. Technical standards

The establishment of the three European Supervisory Authorities will be accompanied by the development of a single rule book which will ensure uniform application of rules in the EU and contribute to a more effective functioning of the internal market. The Authorities will, as specified in sectoral legislation, develop technical standards in areas selected on the basis of criteria outlined below.

The European Supervisory Authorities will hold the key responsibility for developing draft standards which will be adopted by the Authorities on the basis of qualified majority of the members of the Boards of supervisors as defined in Article 205 of the Treaty. The Community legal order requires the Commission to endorse the draft standards by the adoption of Commission Regulations or Decisions in order to give them legal effects and allow financial institutions and other entities or persons concerned to invoke their provisions before national authorities and courts. The proposals for the regulations provide that the Commission should be subject to a time limit of normally three months for its decision on the endorsement. For reasons of Community interest, the Commission may decide not to endorse the standards or to endorse them only in part or with amendments, the reasons for which it will make available to the Authority.

The Authorities will develop the standards using better regulation principles including appropriate consultation. The proposed regulations provide for the Authorities to consult stakeholders through open consultations and/or through relevant stakeholder groups. In developing their internal rules and procedures, the Authorities should design appropriate policies building on the relevant guidelines that already exist for the level 3 Committees[22].

Technical standards and the Lamfalussy framework

The technical standards constitute a complementary instrument to strengthen the current level 3 of the Lamfalussy structure which is limited to the adoption of non-binding guidelines. The new technical standards may cover matters which are currently the subject of non-binding guidelines at level 3, upgrading the guidelines to be binding, as well as genuinely technical matters currently subject to a level 2 empowerment under which implementing measures have not yet been adopted. Consideration could also be given to whether technical standards should also be used to further specify some genuinely technical matters which are covered by level 2 rules, which have been adopted on the basis of an empowerment to the Commission given under the Level 1 instruments, without supplementing the level 1 and 2 instruments concerned. As per the current remit of the Level 3 Committees, the possibility remains for the Authorities to draw up non binding guidelines in order to contribute to consistent supervisory practices and application of Community legislation.

The system set up whereby the Authorities will develop draft standards is without prejudice to measures, other than genuinely technical, which the Commission is empowered to adopt in the sector legislation at level 2 under the Comitology procedures. The Standards must be consistent with both the level 1 and 2 legislation.

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[22] http://www.c-ebs.org/getdoc/27041300-341c-44ee-878f-5f6e3caf9c96/3L3-IA-GL.aspx
http://www.c-ebs.org/getdoc/eed60d2e-5caf-494f-9422-2467ba1e4bbb/20080805_CP01rev.aspx
http://www.ceiops.eu/media/files/consultations/statementonconsultation/cp_0401_ps.pdf
http://www.cesr-eu.org/popup.php?ref=01-007c

The areas where the Authority may develop draft technical standards for endorsement by the Commission concern issues of a highly technical nature. Irrespective of their binding nature following endorsement by the Commission, the matters concerned by the standards will not involve policy decisions, and their content will be framed by the Community acts adopted at Level 1. Development of draft standards by the Authorities ensures that they benefit in full from the specialised expertise of supervisors.

General principles for selecting measures for technical standards

The identification of areas for technical standards is based on the following high level principles:

- **Technical issues:** those areas selected are genuinely technical, where the development of standards is best left to supervisory experts. They are areas which do not involve policy decisions.

- **Practical issues/cooperation procedures:** relate to practical issues like procedural approaches to information exchange which could enhance cooperation between supervisory authorities, and which are of a direct concern to the authorities involved. These areas should include such issues where a common approach or predictability would be of benefit to all concerned.

- **Flexibility:** where it is important to have technical flexibility to respond rapidly to future market developments or where in some areas it is not necessary to make changes now but to have the option to do so if necessary at a later date.

- **Necessity:** only those areas where detailed, technical and consistent rules are needed for financial stability, depositor, policy holder and investor protection, to ensure market efficiency and integrity or to strengthen the single market have been selected. This ensures an appropriate balance is struck between building a single rulebook, and not unduly increasing the complexity of regulation.

The areas where it is possible to develop technical standards will be specified precisely in the sectoral legislation. Empowerment will, as is normal, be made at level 1. In the case of existing non-binding level 3 guidelines which are proposed to become technical standards, they will need to be scrutinised carefully by the Authorities to ensure they remain appropriate and be amended if necessary.

Annex I provides an overview of the key areas by directive, such as supervisory standards for colleges of supervisors and technical standards for internal model validation in banking and insurance. In practice, the types of areas covered by technical standards fall into three categories. Firstly, standards may be developed in those areas where detailed methodological or quantitative standards are required to ensure consistent application of certain rules and where there is generally less need for supervisory judgement. Secondly, in those areas that would benefit from a uniform approach to reporting or disclosure for example in facilitating work towards a uniform reporting format in banking by 2012. Finally, in those areas where supervisors would benefit from a consistent approach to cooperation processes including in terms of supervisory risk assessment and information sharing, for example in situations where host supervisors of branches would benefit from a consistent minimum set of information from home supervisors.

2. Direct supervision of Credit Rating Agencies

The Regulation on Credit Rating Agencies should be revised in order to introduce centralised oversight of credit rating agencies (CRAs) operating in the EU. The ESMA should assume general competence in matters relating to the registration and on-going supervision of registered CRAs as well as surveillance of those overseas CRAs that operate under the certification or endorsement regimes. At the same time, national supervisory authorities, acting in their specific fields of competence, should have the oversight responsibilities regarding the use of credit ratings by the supervised entities (like credit institutions or insurance undertakings) which employ those credit ratings for regulatory purposes.

In order to ensure sufficient supervisory and enforcement capacity, the ESMA should be empowered to require all necessary information from CRAs and other persons related to credit rating activity. It should be able to start investigations into potential breaches of the Regulation and in the remit of those it should be able to exercise supervisory powers corresponding to those already available to national supervisory authorities (e.g. examining records and other relevant material and taking copies/extracts thereof, requiring oral explanations, hearing a person, requiring records of telephone and data traffic). The ESMA shall also be able to conduct on-site inspections.

Where necessary or appropriate for reasons of efficiency, in its supervisory activity the ESMA should be able to seek the assistance or cooperation of a national supervisory authority. As the necessary underpinning to its supervisory authority, the Commission will consider further enforcement issues.

As a result of introduction of the new, single supervisory authority for the oversight of CRAs, existing provisions, which envisage a college type of supervisory co-ordination and ultimate, formal decision-making by a competent authority of the home Member State, should be changed. National supervisory authorities should nonetheless contribute to the supervisory activity of the ESMA, by ensuring all necessary information exchange and co-operation. In limited cases, they should be able to take some clearly defined measures (for example, to request the ESMA to examine whether the conditions for withdrawal of a CRA's registration are met).

3. Settlement of disagreements

The explanatory memorandum accompanying the three regulations explains the proposed process for settlement of disagreements in detail. The possibility for settlement of disagreements arises in all areas of sectoral legislation where cooperation, coordination or joint decision making by competent national supervisory authorities from more than one Member State is required. In the event of a disagreement, and on request of one of the authorities concerned, the ESAs can assist in finding a resolution within a time limit set by the ESA which takes into account any relevant time limits in the sectoral legislation, and the urgency and complexity of the disagreement. In the event that such disagreement persists, the Authority can settle the matter as outlined in the Regulation establishing the each Authority.

In general, disagreements between supervisors are intended to be fully covered by the regulation with no consequential changes to the sectoral legislation required. However, in those areas where there is already some form of non-binding mediation process possible, or where there are time limits for joint decisions to be taken by one or more supervisors, amendments may be needed to ensure there is clarity over and minimum disruption to the process for reaching a joint decision, but also that where necessary, the Authorities are able to resolve disagreements. The remainder of this section outlines those areas of sectoral legislation where changes may be needed.

Banking

The Capital Requirements Directive (CRD) requires supervisors to cooperate closely with each other. In particular, they must provide one another with any information which is essential or relevant for the exercise of their supervisory tasks[23] or likely to facilitate supervision[24]. Planning and coordination of supervisory activities by the consolidating (group) supervisor should be carried out in cooperation with the supervisors involved.[25] Supervisors are also required to have written coordination and cooperation arrangements in place[26] and are required to consult each other before taking a decision in a number of areas, including licensing and decisions regarding major sanctions/measures[27]. Therefore, the disagreement settlement mechanism in the regulation establishing the European Banking Authority (EBA) will not require specific amendments to apply. There are also a number of areas where a clear joint decision making process involving more than one supervisor already exist and for which amendments will be required to ensure the EBA, where necessary, is able to effectively resolve disagreements. These are discussed below.

Determination of significant branches in the CRD (article 42a)

The CRD as amended in 2009 requires that supervisors of all 'significant' branches may be invited to participate in the activities of supervisory colleges, and receive specific information. Home and host supervisors, and the consolidated supervisor for banking groups, are required to do everything within their power to reach a joint decision on the determination of a significant branch. If no joint decision is reached within two months, the host supervisor

[23] Article 132 in the context of banking group
[24] Article 42 in the context of home/host arrangements for branches
[25] Article 129(1)
[26] Articles 131 and 132
[27] Articles 15, 132 and 143

is able to take its own decision, taking into account any views or reservations of the other authorities.

Model Validation (article 129(2))

The CRD has introduced a joint decision process for the purposes of authorising the use of internal rating based system and internal models. National supervisors must work together, in full consultation, to decide whether or not to grant the permission following an application from the firm and to determine the terms and conditions, if any, to which such permission should be subject.

National supervisors are required to do everything within their power to reach a joint decision on the application within six months. In the absence of a joint decision, the group supervisor may make its own decision.

Group risk assessment in the CRD (article 129(3))

A key area of cooperation and joint decision making in the CRD is in the assessment of the adequacy of the overall group capital (in terms of the level and distribution, known as the 'pillar II process') with respect to its financial situation and risk profile. The CRD as amended in 2009 requires that the group supervisor and the supervisors of the group's subsidiaries do everything within their power to reach a joint decision on the application of the directive with respect to these matters to determine the adequacy of the capital held by the group and to each entity within group.

A joint decision is required to be taken within 4 months. In the case of disagreement, the current Level 3 Committee (and in future the EBA) can be consulted for advice. At the end of the four month period, supervisors can take their own decisions within their respective fields of competence, but any deviation from the advice of the Level 3 Committee must be explained.

Additionally, Annex I of this paper includes a possible area for the authority to develop technical standards which will cover pillar II issues. The further clarity and consistency of application of pillar II standards should mean there is less scope for disagreement between supervisors, or where disagreements do occur, more scope for the Authority to resolve them with reference to existing standards.

In each of the articles outlined above, an amendment is needed to ensure competent authorities make full use of the periods foreseen in the joint decision making procedures to come to an agreement between them. If this fails there exists the possibility for EBA to settle the matter as outlined in the Regulation establishing the Authority. The EBA's disagreement settlement mechanism would be triggered at the end of the time period stated in each of the above articles in the sectoral legislation, following a request from one of the supervisors involved. In these situations, the time period stated in each of the articles would also count as the conciliation period envisaged in the EBA's disagreement settlement mechanism, and after that period the EBA would have one month to take a final decision. Supervisors would be required to wait for and act in conformity with the EBA's decision before issuing their final decisions to the firms involved. Finally, the amendment should clarify that once supervisors have issued their decisions; the matter can no longer be referred to the EBA.

Insurance

As for banking, the Solvency II directive requires supervisors to cooperate with each other in a number of areas. Additionally, the Solvency II directive lays down a comprehensive approach to group supervision which allocates tasks and responsibilities to either the group supervisor or supervisors of individual entities. In a number of areas supervisors are required to take decisions following consultation, coordination or cooperation with other supervisors and/or CEIOPS.[28] Therefore, the disagreement settlement mechanism of EIOPA will not require specific amendments to apply. However, there are also a number of areas where the Solvency II directive provides for an explicit procedure to be followed by supervisors who are required to do everything within their power to reach a joint decision on certain issues, and in certain cases the possibility exists to refer the matter to CEIOPS prior to taking a decision, outlined below.

Group model approval

Article 229 provides for the possibility for an insurance group to apply an internal model to calculate its solvency capital requirement (SCR) across all of its European operations. At present, following an application from the firm, supervisors have six (or eight) months to make a joint decision. In the absence of a joint decision, the group supervisor can take its own decision.

Decision on the application of supervision of group solvency for groups with centralised risk management

Article 235 requires the supervisory authorities concerned to do everything within their power to reach a joint decision on the application mentioned above. In the absence of a joint decision the group supervisor can take its own decision.

Determination of the SCR of a subsidiary

Article 236 requires the college of supervisors to do everything within their power to reach an agreement on the proposals of the solo supervisor on the SCR of a subsidiary (e.g. to impose a capital add-on). The supervisory authority having authorised the subsidiary can take the final decision.

Non-compliance with the SCR

Article 238 requires the supervisors within the college to do everything within their power to reach an agreement on the recovery plan and the measures to be taken in deteriorating financial conditions. The supervisory authority having authorised the subsidiary has the final say.

Determination of the group supervisor

The group supervisor plays a key role in coordinating supervisory activities for the group and taking certain decisions. Article 251 allows any supervisory authority to request a discussion

[28] For example articles 211, 212, 213, 214, 218, 219, 225, 242, 248 and 249. All article references are provisional pending finalisation of the text.

be opened as to whether the criteria used to determine who the group supervisor is are appropriate. A joint decision is required to select a different group supervisor within three months. Following this, a consultation with the level 3 Committee is possible and the deadline is extended by a further 3 months.

In each of these articles, an amendment is needed to ensure supervisors make full use of the periods foreseen in the joint decision making/consultation procedures to come to an agreement between them. If this fails there exists the possibility for EIOPA to settle the matter as outlined in the Regulation establishing the Authority. EIOPA's disagreement settlement mechanism would be triggered at the end of the time period stated in each of the above articles in the sectoral legislation, following a request from one of the supervisors involved. In these situations, the time period stated in each of the articles would also count as the conciliation period envisaged in EIOPA's disagreement settlement mechanism, and after that period EIOPA would have one month to take a final decision. Supervisors would be required to wait for and act in conformity with EIOPA decision before issuing their final decisions to the firms involved. Finally, the amendment should clarify that once supervisors have issued their decisions; the matter can no longer be referred to EIOPA.

Securities

As for banking and insurance, securities legislation contains a number of cooperation obligations. For example, both MiFID and UCITS require supervisors to cooperate with each other whenever necessary for the purpose of carrying out their duties or making use of their powers whether set out in the directive or in national law.[29] Additionally, there are no joint decision making processes in securities legislation. Therefore, the disagreement settlement mechanism of ESMA will not require specific amendments to apply.

[29] Article 56(1) in MiFID and 101 in UCITS

4. General amendments

There are a number of areas where consequential amendments which are common to most sectoral legislation and necessary for the directives to operate in the context of new authorities may possibly be needed. This section outlines these areas.

To discharge the current tasks of the present Level 3 Committees

In order to ensure that the new Authorities can continue to undertake the current tasks of the level 3 Committees smoothly, in all of the directives listed above, the following references would need to be replaced:

'Committee of European Banking Supervisors' with 'European Banking Authority'

'Committee of European Insurance and Occupational Pensions Supervisors' with 'European Insurance and Occupational Pensions Authority'

'Committee of European Securities Regulators' with 'European Securities and Markets Authority'

Cooperation obligations and information sharing with the ESAs

The new supervisory architecture will require national supervisory authorities to cooperate closely with the European Authorities. In particular, they should receive sufficient information from the national supervisory authorities in order to be able to discharge their duties under the regulation.

Where necessary, specific information sharing requirements to facilitate the above will be set out in sectoral legislation. However, in the vast majority of cases, it will not be possible to specify in legislation the exact type of information that will be needed for the delivery of these tasks, not least because a number of them are situation and context dependent. Therefore amendments to the relevant legislation will clarify the obligations on national supervisors to provide the necessary information for the discharge of the tasks of the authorities and appropriate information gateways to ensure there are no legal obstacles to the information sharing obligations included in the Regulations establishing the Authorities.

Interaction with third countries

It is proposed that the ESAs be given an appropriate role with regards to the dealing with third countries. The two broad areas envisaged are general interaction and cooperation agreements and assisting the Commission in preparing equivalence decisions. In terms of general interaction, amendments will be needed to allow the ESAs to conclude cooperation agreements with third countries and exchange information where those third countries can provide guarantees of professional secrecy.

List keeping and other amendments

It is proposed that the ESAs will be given the duty to establish, publish and regularly update registers and lists of financial actors in the Community, which is currently the duty of each national competent authority, e.g. to keep the register of all investment firms according to Art 5 (3) MiFID or the list of regulated markets according to Art 47 MiFID. Having one

consolidated list or register for each category of financial actors in the Community may improve transparency and better reflects the single financial market.

Additionally, in the context of the reduction of national options and discretions, forthcoming amendments to the Capital Requirements Directive could entrust the authority with the responsibility for assessing, monitoring and mapping external credit assessment institutions (ECAI), which are active in different Member States.

Annex I: Possible areas for amendments to existing legislation concerning technical standards

FINANCIAL CONGLOMERATES DIRECTIVE

2002/87/EC

Area	*Description*	*Rationale*
Durable link criterion for identification - Article 2(11)	The detection of relationships of the conglomerate with entities that may pose additional risks to the group, also otherwise than through a control- or ownership-relationship	Currently no level playing field, nor legal certainty, in application of durable link criterion to detect participations
Relevant competent authorities, i.e. membership of the core college - Article 2(17)	The criteria for the determination of the "relevant competent authority", as different from the other "competent authorities" (all those who authorised one or more legal entities of the group)	Determination of which supervisor may be invited to the core college is not clear, important for consistent approach across colleges
Identification of a conglomerate by means of other criteria than balance sheet and solvency figures - Article 3(5)	The basic identification method builds on two relative indicators and one absolute indicator: balance sheet ratios, solvency ratios, and balance sheet total. To enable the identification of other, less straightforward, complex and cross sectoral groups as financial conglomerates, also criteria such as income structure and off balance sheet activities may be used, but the legal provision does not prescribe how these alternative criteria should be applied	Use of other criteria than balance sheet total and solvency figures for the identification of conglomerates neither clear nor predictable
Method of calculation of capital at conglomerate level - Article 6(2)	There are two basic methods eligible for aggregating the capital figures of all the legal entities in a group and calculating available group capital, known as the consolidation method and the deduction-and-aggregation method, consistent with CRD and Solvency II. However, the inputs into these methods are not prescribed, leaving scope for significant variation	Although the directive restricts the methods which can be used for the calculation of capital, many degrees of freedom remain, potentially causing unjustified different outcomes for similar conglomerates
Supervision of risk concentrations - Article 7	The aspects which need to be checked by supervisors in order to detect whether the same risk adds up throughout the financial conglomerate	The directive allows for many approaches and potentially overlaps of supervision on risk concentrations within sector-silos. It is important to align application across directives applicable to conglomerates

Supervision of Intra group transactions - Article 8	The aspects which need to be checked by supervisors in order to detect whether risks in one part of the conglomerate may spread to or affect other parts of the conglomerate	The directive allows for many approaches and potentially overlaps supervision on intra group transactions. It is important to align application across directives applicable to conglomerates
Supervision on internal control mechanisms - Article 9	Supervision on internal control mechanisms, such as risk management and internal governance. Closely related to elements in the supervisory review process, required by both the CRD and Solvency II.	As far as relevant for the cross sectoral elements of conglomerates' risk management and internal control, need for alignment of application across directives applicable to conglomerates
Appointment of coordinating supervisor - Article 10	The coordinator is determined following several criteria but the directive provides flexibility in case the involved supervisors would favour a certain choice. Article 10 should be read combined with articles 11, 12 and 15	To limit the scope for disagreement over who should be the coordinator of the supplementary supervision
Tasks of coordinating supervisor - Article 11	The coordinator's tasks are clearly listed but the directive does not prescribe how these tasks should be carried out. Article 11 should be read combined with articles 10, 12 and 15	Variation of practices and lack of clarity with respect to the application of the tasks listed can create uncertainty
Information exchange requirements - Article 12	Supervisors on the same conglomerate are obliged to share information based on a prescribed list of items. Article 12 should be read combined with articles 10, 11 and 15	Variation of practices and lack of clarity with respect to the application of the information exchange requirements, including for emergency situations
Delegation of tasks - Article 15	Supervisors on the same conglomerate can decide to delegate verification tasks to each other. Article 15 should be read combined with articles 10, 11 and 12	Variation of practices and lack of clarity with respect to the application of this provision

CAPITAL REQUIREMENTS DIRECTIVE

2006/48/EC and 2006/49/EC[30]

Area	*Description*	*Rationale*
Pillar 2 – interest rate risk - Article 150(2)(a)	Specification of the size of sudden and unexpected changes in the interest rates referred to in Article 124(5)	Technical issue to strengthen supervisory convergence
Temporary changes to requirements - Article 150(2)(b)	Temporary modification of the minimum level of own funds and/or the risk weights in order to take account of specific circumstances in view of ensuring financial stability. This will also extend to temporary modification of the disclosure framework (Pillar 3)	Flexibility required. Technical standards would provide some flexibility to respond to financial stability developments
Supervisory disclosure - Article 150(2)(d) and (e) and Article 144	Framework for supervisory disclosure	Technical issue to strengthen supervisory convergence. CEBS guidelines already exist in this area
Authorisation - Article 6	Specification of requirements for a credit institution to be authorised in a Member State	Technical issue to strengthen supervisory convergence
Prudential assessment of acquisitions - Article 19-21	Specifications of procedure, assessment criteria and information exchange when making a prudential assessment of an acquisition	Technical/practical issue, to strengthen supervisory convergence. CEBS guidelines currently exist in this area
Exercise of the passport - Articles 25, 26, 28	Relates to the transmission of information between home and host authorities for the purpose of implementing the provisions relating to freedom to provide services/of establishment.	Practical issue. Supervisors best placed to deal with cooperation procedures. CEBS guidelines are being developed in this area
Information sharing	List of information to be shared in the context of home/host cooperation	Technical/practical issue, to strengthen supervisory convergence

[30] Unless otherwise specified references are to Directive 2006/48/EC

- Article 42		
Hybrid instruments - Article 63a(6)	CEBS are required to produce guidelines on Tier 1 hybrid instruments under the amended CRD due to come into force in 2011	Technical issue, to strengthen supervisory convergence
Reporting – solvency and large exposures - Article 74 and 110(2)	CEBS are required to develop a uniform reporting (format, frequency and dates) to be applied by 2012 for credit institutions and investment firms' minimum capital requirements and large exposures	Technical issue, to strengthen supervisory convergence
Rating agencies (ECAI) – recognition - Article 81(2) and 97	Standards regarding the recognition of ECAI's in relation to the credit rating agencies regulation	Technical issue, to strengthen supervisory convergence, avoid duplication of work and reduce the burden of the recognition process where an ECAI is registered as a CRA. Further to the adoption of the CRA regulation, existing CEBS guidelines will need to be amended in this area
Model validation – IRB system - Article 84	Conditions under which supervisors permit credit institutions to use their own models for calculating credit risk – known as the IRB Approach	Technical issues, to further specify existing requirements to strengthen supervisory convergence. CEBS guidelines already exist in these areas
Model validation – operational risk - Article 105	Conditions under which supervisors permit credit institutions to use their own models to calculate operational risk – known as Advanced Measurement Approaches	
Large exposures - Article 106(2), 113	CEBS are required in the amended CRD to clarify exemptions in points c) and d) relating to money transmission, and other exemptions provided in Article 113	Technical issue to strengthen supervisory convergence
Securitisation - Article 122a(10)	Standards to specify due diligence and retention requirements for institutions involved in securitisation activity, in particular regarding the measures that can be taken to deal with breaches of due diligence requirements. CEBS guidelines are required under the amended CRD	Technical and practical issue to strengthen supervisory convergence
Pillar 2 - Article 124, 129(3)	Standards regarding the joint decision process for assessing a groups overall risk profile and capital requirements, and the application of Pillar 2 (internal capital adequacy assessment process, supervisory review process, and decision to require additional own funds). Guidelines are required under the	Practical issue. Supervisors best placed to deal with cooperation-related issues, and group risk assessments

	amended CRD	
Colleges - Article 131a(2)	Requires that operational functioning of Colleges of supervisors be based on written arrangements, underpinned by CEBS guidelines	Practical issue. Supervisors best placed to deal with cooperation procedures
Liquidity risk management - Annex V, points 15 to 17	Standards relating to the application of certain principles relating to liquidity risk management	Technical issues to strengthen supervisory convergence in these areas
Rating agencies (ECAI) – mapping - Annex VI, Part 2, points 12, 13 and 14	Standards regarding the mapping of ratings external ratings into risk weights. CEBS guidelines already exist in this area	
Model validation – market risk - Annex V of 2006/49/EC	Conditions under which supervisors permit credit institutions to use internal models to calculate their market risk. This includes specification of the requirements regarding the validation of internal models for incremental risk and migration risk and specification of the calculation of the stressed value-at-risk	

INSTITUTIONS FOR OCCUPATIONAL RETIREMENT PROVISION DIRECTIVE

2003/41/EC

Area	***Description***	***Rationale***
Information to be provided to competent authorities - Article 13	There are persistent differences with regard to the amount of information that has to be submitted to the supervisory authority, as well as on the interval/frequency and the institution /party on which the reporting obligation lies	Technical issue, to strengthen supervisory convergence. Standards will enhance the level of transparency and comparability
Cross-border activities and cooperation between competent authorities - Article 21	The prudential requirements are supervised by the competent authorities of the home Member State, while the national social and labour law relevant to the field of occupational pension schemes is supervised by the competent authorities of the host Member State. In practice, however, for cross-border activity as referred to in Article 20 it is difficult to know for each Member State which rules fall within the scope of prudential law and which rules fall within the scope of national social and labour law. This, in turn, acts as a barrier to cross-border business. Moreover, the cooperation between competent authorities as referred to in Article 21 should be facilitated	The prudential matters refer to aspects dealt with in the Directive, such as the maximum interest rates or the biometric tables used. The technical standards should specify more clearly the rules falling under the mutual recognition principle and supervised by the competent authorities of the home Member State

SOLVENCY II

The Solvency II directive is yet to be finalised and therefore will not be included in the October package of legislative changes described in the introduction

Area	*Description*	*Rationale*
Transparency and accountability of supervisory authorities - Article 30 (a)-(e)	Supervisory authorities are accountable for how they enforce compliance with prudential regulations. Therefore, appropriate disclosure by supervisory authorities on supervisory approaches and their legal basis is necessary	Standards on the format and structure of the disclosures to further specify the key elements set out in the implementing measure could further improve transparency and accountability and strengthen supervisory convergence
Supervisory reporting and public disclosure - Article 35 and 55	Information to be provided by insurance and reinsurance undertakings to supervisory authorities and information to be disclosed to the public in the Solvency and Financial Condition report. The public disclosure requirements aim to enhance market discipline and transparency	Standards could contribute to enhanced convergence by further specifying the principles set out in level 2, in particular in relation to reporting and disclosure templates
Prudential assessment of acquisitions[31] - Article 56-62	Specifications of procedure, assessment criteria and information exchange	Technical/practical issue. To promote supervisory convergence
Technical Provisions - Article 85 (a)-(h)	Technical provisions are the main component of an insurance undertakings' liabilities. Implementing measures will be developed to underpin the valuation of technical provisions	Standards which further specify the requirements set out at level 2 could contribute to ensuring the necessary flexibility whilst at the same time maintaining a level playing field
Own funds - Article 92, article 97 and article 99	Eligible own funds are classified into three tiers. The characteristics and criteria to do so need to be interpreted in the same way in order to ensure harmonisation	Standards which further specify the principles set out at level 2 could contribute to ensuring the necessary flexibility whilst at the same time maintaining a level playing field
Solvency Capital Requirement (SCR) - Article 109, 112	The SCR represents the level of capital insurers are expected to hold. Insurers will be able to use either the Standard Formula or an internal model to calculate the SCR. Implementing measures will be developed for both	If the standard formula is to remain truly risk sensitive over time, it may need to be regularly reviewed and if necessary updated to ensure that its calibration remains appropriate. Given each internal

[31] Directive 2007/44

and 125	methods	model will be tailored to the undertaking, it will also be difficult to be too prescriptive at level 2 particularly as practice is likely to evolve over time
Information - Article 253	Information to be gathered and disseminated systematically by the group supervisor to other supervisory authorities or to be transmitted to the group supervisor by other supervisory authorities	The directive sets out the general principles and the future level 2 measures could be complemented with standards in order to ensure the obligatory character of certain technical details such as the reporting and disclosure templates
Disclosure - Article 260	Information which must be disclosed and the means by which this is to be achieved as regards the single solvency and financial condition report	

INSURANCE MEDIATION DIRECTIVE

2002/92/EC

The IMD is currently under review and these issues will be covered in its revision and the resulting legislative proposal due by the end of 2010

Area	***Description***	***Rationale***
Professional indemnity insurance - Article 4(3)	This requirement is part of the professional requirements for insurance intermediaries (IIM). It obliges insurance and reinsurance IIM to hold Professional Indemnity Insurance covering the whole territory of the Community or some other comparable guarantee against liability arising from professional negligence, for at least EUR 1000000 applying to each claim and in aggregate EUR 1500000 per year for all claims (certain exemptions to this rule are contained further in the article)	The amounts are subject to regular review. Technical standards might establish a mechanism for carrying out these updates and consequently introduce a higher clarity for (especially) supervisory purposes, including the precision of methods of calculation
Information provision - Art. 12(1), (2) and (3). Additional legal basis: Art. 13 on information conditions	Art. 12 contains a list of (minimum) information to be provided by the IIM to the customer prior to the conclusion of any initial insurance contract, and if necessary, upon amendment or renewal thereof	The current Art. 12 will be thoroughly reviewed during the prepared revision of the IMD as the current minimum harmonisation does not represent the necessary guarantee for effective consumer protection. Technical standards in this area might further strengthen the harmonisation of these standards across the Single Market

TRANSPARENCY DIRECTIVE

2004/109/EC

Area	***Description***	***Rationale***
Notification of major holding of voting rights - Article 12(8)(a), 13(2)(c)	Standard form for the notification of major holdings of voting rights and of financial instruments giving access to voting rights Standards could establish a standard form to be used throughout the Community when notifying required information on holdings of voting rights to the issuer and when filing this information with the competent authority	Relates to practical implementation of provisions of the Directive which is best left to supervisors. Standards could strengthen supervisory convergence
Supervisory convergence - Article 24(4)	Standards as regards supervisory practices and exercise by competent authorities of their powers in order to ensure compliance with directive's obligations.	Relates to the coordination and consistent exercise by competent authorities of their powers. This is an area where CESR already can adopt non-binding guidelines. However, standards in future could strengthen convergence.

MARKETS IN FINANCIAL INSTRUMENTS DIRECTIVE

2004/39/EC

Area	***Description***	***Rationale***
Requirements for authorisation - Art., 7, 9, 10, 12	MiFID sets out various requirements that must be met before an investment firm can be authorised	Technical Standards specifying certain requirements for authorisation (e.g. the 'fit and proper' requirement) could help to ensure uniform application of authorisation process and strengthen convergence
Prudential assessment of acquisitions - Articles 10- 10b	Specifications of procedure, assessment criteria and information exchange [There is currently 3L3 guidance on cross border mergers and acquisitions]	Technical/practical issue. To further specify existing requirements to promote supervisory convergence
Information exchange - Art 56-58, 60	Requires supervisory authorities to cooperate with each other. Standards could encompass templates to facilitate cooperation/information exchange between home andhost (e.g. such as the standard notification template referred to above)	Supervisors may benefit from a more standardised process. Will also strengthen convergence

MARKET ABUSE DIRECTIVE

2003/6/EC

Area	***Description***	***Rationale***
Information exchange - Art. 16	Under the MAD regime, supervisory co-operation – a prerequisite for effective cross-border enforcement – is expected to take place by way of exchanging information, alerting about suspected abuses and acting upon such notifications, seeking and offering assistance as well as collaborating in investigations and inspections. Templates/standards could facilitate cooperation/information exchange between supervisors (e.g. standard notification template)	Competent authorities are likely to engage more willingly and more effectively into supervisory co-operation if some of the co-operation aspects are standardised and/or formalised.

PROSPECTUS DIRECTIVE

2003/71/EC

Area	***Description***	***Rationale***
Cooperation between authorities - Art. 22.2	Obligation of the competent authorities to exchange information and cooperate with each other. Standards could facilitate information exchange/cooperation between home/host	Supervisors may benefit from a more standardised process. Will also strengthen supervisory convergence

UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES DIRECTIVE

85/611/EEC ***(work on level 2 implementing measures is ongoing. The Commission intends to adopt the measures by 1 July 2010)***

Area	***Description***	***Rationale***
Content of the application for the authorisation of UCITS. – Art. 5(8)	The UCITS Directive requires UCITS to be authorised by its home competent authority. The authority has to approve (i) the application of the management company to manage a common fund (or the investment company, where relevant), (ii) the fund rules or the instruments of incorporation, and (iii) the choice of the depositary. Once a UCITS is authorised in one Member State, it can market its units in another Member State – subject to the notification procedure of Article 93 – without going again through the same process of authorisation.	Since UCITS benefit from the EU "passport", the authorisation process should be consistent throughout the Community. Competent authorities should require similar documentation, no matter in which Member State the authorisation is filed. In order to develop consistent supervisory practices and to ensure legal certainty, standards could specify the precise information that promoter of a UCITS has to submit to competent authorities to get the authorisation.
Conditions for the authorisation of the management company and the investment company. – Arts. 7(6) and 29(5)	UCITS management company and the self-managed investment company have to meet the conditions required by the Directive in order to be authorised. Once authorised, both entities can operate on a cross border basis.	Since both entities benefit from a "passport" in the EU, the competent authorities should interpret these conditions in a consistent way. In order to develop consistent supervisory practices and to ensure legal certainty, standards could further specify the information to be provided in the application for the authorisation, the content of the programme of activities and operations and the description of the organisational requirements and conduct of business rules. In addition, the standards could further specify the criteria for assessing the suitability of the persons conducting the business and of qualified shareholders.
Organisational requirements to minimise conflicts of interests – Art.12(3)	Management companies are required to adhere to some minimum prudential and organisational requirements. Level 2 provisions will set out the requirements in more detail.	Technical standards could further specify level 2 provisions to contribute to a common understanding and consistent application of the rules on organisational arrangements on internal control functions, complaints handling, personal transactions, electronic data processing, record keeping, accounting and organisational arrangements for minimising conflicts of interest.
Rules of conduct for management companies – Art	UCITS Directive requires management companies to (i) act honestly, fairly and with due skill, care and diligence in the best interest of the UCITS; (ii) employ its resources effectively and performs its business activities properly; (iii) identify, prevent, manage or disclose conflicts of interests. These general	In order to promote the common understanding and consistent application of conduct of business rules, technical standards could complement level 2 measures by further specifying due diligence requirements and criteria for identifying and managing conflicts of

14(2)	principles will be complemented be Level 2 implementing legislation.	interest.
Merger of UCITS - information to be provided to unit-holders - Art. 43(5)	UCITS involved in a merger have to provide their unit-holders with appropriate information (listed in Article 43(3)) about the merger, so that investors can make an informed judgement in advance of the operation. The specification of the content, format and method for providing the information will be implemented at level 2.	In order to strengthen supervisory convergence and to promote the same level of investor protection in the Community, technical standards could clarify certain elements related to the content, format and method of delivery of the information.
Clarification of UCITS investment criteria as referred to in Article 50 – Art. 50(4)	Article 50 of the Directive enumerates the categories of assets that UCITS can acquire and criteria according to which UCITS can invest. It is essential that UCITS and the competent authorities share a common understanding of the investment criteria of UCITS. Due to the constant innovation in the financial sector, new financial instruments are very often launched in the financial markets and traditional assets are further developed or present new features.	In order to ensure consistent supervisory practices throughout the Community and respond to market innovation, standards could provide for a common understanding of the investment criteria of UCITS. Standards would represent the technical specifications of the categories of assets and criteria enumerated in Article 50 of the Directive and would not modify the content or scope of such Article.
Criteria for assessing the adequacy of the risk management process employed by a management company – Art. 51(1) and 51(4)	The risk management requirements laid down in the UCITS Directive will be further developed at Level 2. Level 2 measures should define the main principles governing the risk management process, in particular (i) the organisational arrangements, (ii) requirements on risk measurement that will allow fund managers to identify and manage properly the risk, (iii) report on derivative instruments.	In order to develop a common supervisory approach to risk management built on mutual trust between supervisors and to ensure a high standard of investor protection, technical standards could further specify technical aspects of risk management process. Technical standards would ensure the flexibility necessary to react to market developments and address particular cases or situations. Technical standards can further specify the requirements for the risk-measurement process and the content, form and frequency of communications to the management company's home Member State required under article 51(1).
Master-feeder structures – Arts. 60(6), 61(3)(a) and (b), 62(4), and 64(4)(a) and (b)	The recast of UCITS Directive has introduced a new and detailed legal framework for master-feeder structures. The Commission will adopt implementing measures specifying the regime applicable to master-feeder structures.	In order to strengthen supervisory convergence as well as be able to respond to market developments, technical standards could further specify elements of the level 2 implementing measures on the relationship between master and feeder UCITS and their depositaries and format and process for providing information.
Specification of the content and format of the prospectus, the annual report	UCITS have to keep investors and markets periodically informed by publishing a prospectus, an annual report and a half-yearly report. The information items that should be displayed in these documents are listed in Annex I of the Directive. Where a UCITS is marketed in a host Member	In order to ensure the same level of investors' protection throughout the Community and to promote consistent supervisory practices, standards could further specify the content and format of the prospectus, the annual report and the half-yearly report and the

and the half-yearly report – Art. 69(2) and (3) and Art. 73	State, investors should receive these documents in the way prescribed by the laws of that host Member State. Hence, the different competent authorities should interpret in the same way the information requirements. In particular, competent authorities should share a common understanding of the accounting requirements for UCITS.	accounting obligations for UCITS. They will consist of technical clarifications of the elements listed in Annex I of the Directive.
Key investor information (KII) – Art 78	The manager of UCITS is obliged to draw up a short document containing key investor information (KII). The KII shall include appropriate information about the essential characteristics of the UCITS, so that investors can make informed investment decision and can understand the nature and the risk related to investment in a UCITS. Level 2 measures will define the detailed content and form of the KII.	Technical standards could usefully complement these definitions, contributing to common understanding and consistent application of provisions, in particular to the preparation, presentation and calculation of the information to be provided in the KII. Such standards would contribute to ensure a consistent level of investor protection throughout the Community.
Conditions for suspending the re-purchase or the redemption of the units of UCITS – art. 84	UCITS are obliged to repurchase or to redeem their units at the request of any unit-holder. In exceptional cases, if justified, a UCITS may temporarily suspend the repurchase or redemption of its units, taking into account the interests of the unit-holders. The UCITS should inform without delay the supervisors of the Member States where it markets its units.	In order to ensure the same level of investor protection and consistent supervisory practices throughout the Community, standards could further specify the conditions for the temporary suspension of the re-purchase or redemption of the units decided by the UCITS.
Notification of marketing of UCITS in host Member States – Art. 95	When a UCITS intends to market its units in a host Member State it must inform the competent authorities of its home Member State by submitting a notification letter. The process of the cross-border marketing of units involves the competent authorities of both UCITS home and host Member States. The notification letter is a piece of information addressed to competent authorities.	In order to promote an efficient cooperation between supervisors, standards could further specify technical arrangements of this obligation, in particular the form and content of the notification and the attestation, conditions for the electronic transmission of documentation and cooperation between supervisors.
Procedures for exchange of information between authorities and on-the-spot verifications and investigations – Art. 105 and 101(9)	The exchange of information between home and host authorities is crucial in order to allow supervisors to discharge their duties properly in relation to the cross-border activity of UCITS and their managers. Standards and procedures for handling requests for information should be defined in a consistent manner and the exchange of information should be subject to the confidentiality rules of Articles 102 to 104 of the Directive. In addition, UCITS Directive requires competent authorities to cooperate among them when needed to carry out on-the-spot verifications and investigations.	Standards may further specify the procedures for exchange of information between competent authorities in order to organise an efficient and adequate information flow. In addition, in order to ensure consistent supervisory practices throughout the Community and to develop an efficient cooperation between the competent authorities, technical standards could further specify the practical arrangements for cooperation between supervisors when carrying out on-the-spot verifications and investigations. These provisions are of direct concern to supervisors

CRA Regulation

Area	*Description*	*Rationale/explanation*
Registration process, including on the information set out in Annex II, and language regime for applications submitted to the ESMA - Art. 21(2)(a) empowering provision[32]	CRAs are required to submit their applications for registration including necessary information set out in Annex II. Further in the registration process they may be required to provide additional information and documents to support their application for registration.	Technical issue which could strengthen convergence, expertise with supervisors
Information that the credit rating agency must provide for the application for certification and for the assessment of its systemic importance to the financial stability or integrity of financial markets referred to in Article 5 - Art. 21(3)(d) empowering provision[33]	A CRA from a 3rd country that seeks to operate under the certification regime is proposed to register with the ESMA. The ESMA may take a decision on registration only after it establishes that specific conditions are met, on the basis of information provided by the overseas CRA in accordance with Article 5. Not being of systemic importance to the financial stability or integrity of financial markets is one of the preconditions for such certification.	Technical issue which could strengthen convergence, expertise with supervisors
Presentation of the information, including structure, format, method and period of reporting, that credit rating agencies shall disclose in accordance with Article 11(2) and point 1 of Part II of Section E of Annex I - Art. 21(2)(d) empowering provision[34]	A CRA to make available in a central repository established by CESR information on its historical performance data including the ratings transition frequency and information about credit ratings issued in the past and on their changes. In future, ESMA could make that information accessible to the public and shall publish summary information on the main developments observed on an annual basis. (Art. 11(2), Annex I.E.II.1)	Technical issue which could strengthen convergence, expertise with supervisors

[32] Under existing text of the CRA Regulation to be developed as guidance by CESR
[33] Under existing text of the CRA Regulation to be developed as guidance by CESR
[34] Under existing text of the CRA Regulation to be developed as guidance by CESR

ANTI MONEY LAUNDERING DIRECTIVE

2005/60/EC

Area	***Description***	***Rationale/explanation***
AML consolidated group approach - Article 31(1) + 34(2)	Sets out the high level principle requiring EU financial institutions to establish adequate and appropriate policies and procedures of customer due diligence, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication equivalent to those defined by the Directive in their branches and majority-owned subsidiaries located in third countries. Non-cooperative countries and jurisdictions constitute a specific subset of third countries that deserve peculiar attention.	Technical standards could be developed to establish minimum criteria and practices for the supervision of compliance by EU credit and financial institutions with AML consolidated group approach and the "know-your-structure" principle in Articles 31(1) and 34(2) in connection with non-cooperative countries and jurisdictions
Supervisory convergence - Article 37	Standards as regards supervisory practices and exercise by competent authorities of their powers in order to ensure compliance with the directive's obligations	Relates to the coordination and consistent exercise by competent authorities of their powers. In this area, CESR already can adopt non-binding guidelines. However, binding standards may be needed in future in this area to strengthen convergence.