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(<sup>1</sup>) Text with EEA relevance

Price: EUR 8

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## I

(Legislative acts)

## REGULATIONS

**REGULATION (EU) No 1092/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL****of 24 November 2010****on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Central Bank <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) Financial stability is a precondition for the real economy to provide jobs, credit and growth. The financial crisis has revealed important shortcomings in financial supervision, which has failed to anticipate adverse macro-prudential developments and to prevent the accumulation of excessive risks within the financial system.
- (2) The European Parliament called repeatedly for the reinforcement of a true level playing field for all actors at the level of the Union while pointing out significant failures in

the Union's supervision of ever more integrated financial markets (in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan <sup>(4)</sup>, of 21 November 2002 on prudential supervision rules in the European Union <sup>(5)</sup>, of 11 July 2007 on financial services policy (2005 to 2010) – White Paper <sup>(6)</sup>, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity <sup>(7)</sup> and of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision <sup>(8)</sup>, and in its positions of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) <sup>(9)</sup> and of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies <sup>(10)</sup>).

- (3) In November 2008, the Commission mandated a High-Level Group chaired by Jacques de Larosière to make recommendations on how to strengthen European supervisory arrangements with a view to better protecting the citizen and rebuilding trust in the financial system.
- (4) In its final report presented on 25 February 2009 (the 'de Larosière Report'), the High-Level Group recommended, inter alia, the establishment of a Union level body charged with overseeing risk in the financial system as a whole.

<sup>(1)</sup> OJ C 270, 11.11.2009, p. 1.

<sup>(2)</sup> Opinion of 22 January 2010 (not yet published in the Official Journal).

<sup>(3)</sup> Position of the European Parliament of 22 September 2010 (not yet published in the Official Journal) and decision of the Council of 17 November 2010.

<sup>(4)</sup> OJ C 40, 7.2.2001, p. 453.

<sup>(5)</sup> OJ C 25 E, 29.1.2004, p. 394.

<sup>(6)</sup> OJ C 175 E, 10.7.2008, p. 392.

<sup>(7)</sup> OJ C 8 E, 14.1.2010, p. 26.

<sup>(8)</sup> OJ C 9 E, 15.1.2010, p. 48.

<sup>(9)</sup> OJ C 184 E, 8.7.2010, p. 214.

<sup>(10)</sup> OJ C 184 E, 8.7.2010, p. 292.

- (5) In its Communication of 4 March 2009 entitled 'Driving European Recovery', the Commission welcomed and broadly supported the recommendations of the de Larosière Report. At its meeting of 19 and 20 March 2009, the European Council agreed on the need to improve the regulation and supervision of financial institutions within the Union and to use the de Larosière Report as a basis for action.
- (6) In its Communication of 27 May 2009 entitled 'European Financial Supervision', the Commission suggested a series of reforms to the current arrangements for safeguarding financial stability at the Union level, in particular including the creation of a European Systemic Risk Board (ESRB) responsible for macro-prudential oversight. The Council on 9 June 2009 and the European Council at its meeting of 18 and 19 June 2009 supported the Commission's suggestions and welcomed its intention to put forward legislative proposals for the new framework to be in place in the course of 2010. In line with the views of the Commission, the Council concluded, inter alia, that the European Central Bank (ECB) 'should provide analytical, statistical, administrative and logistical support to the ESRB, also drawing on technical advice from national central banks and supervisors'. The support provided by the ECB to the ESRB, as well as the tasks assigned to the ESRB, should be without prejudice to the principle of the independence of the ECB in the performance of its tasks pursuant to the Treaty on the Functioning of the European Union (TFEU).
- (7) Given the integration of international financial markets and the contagion risk of financial crises, there is a need for a strong commitment on the part of the Union at the global level. The ESRB should draw expertise from a high-level scientific committee and take on all the global responsibilities required in order to ensure that the voice of the Union is heard on issues relating to financial stability, in particular by cooperating closely with the International Monetary Fund (IMF) and the Financial Stability Board (FSB), which are expected to provide early warnings of macro-prudential risks at the global level, and the partners of the Group of Twenty (G-20).
- (8) The ESRB should contribute, inter alia, towards implementing the recommendations of the IMF, the FSB and the Bank for International Settlements (BIS) to the G-20.
- (9) The report of the IMF, the BIS and the FSB, of 28 October 2009, presented to the G-20 Finance Ministers and Central Bank Governors, entitled 'Guidance to Assess the Systemic Importance of Financial Institutions, Markets and Instruments: Initial Considerations' also states that the assessment of systemic risk is likely to vary depending on the economic environment. It will also be conditioned by the financial infrastructure and crisis management arrangements and the capacity to deal with failures when they occur. Financial institutions may be systemically important for local, national or international financial systems and economies. The key criteria helping to identify the systemic importance of markets and institutions are size (the volume of financial services provided by the individual component of the financial system), substitutability (the extent to which other components of the system can provide the same services in the event of failure) and interconnectedness (linkages with other components of the system). An assessment based on those three criteria should be supplemented by a reference to financial vulnerabilities and the capacity of the institutional framework to deal with financial failures and should consider a wide range of additional factors such as, inter alia, the complexity of specific structures and business models, the degree of financial autonomy, intensity and scope of supervision, transparency of financial arrangements and linkages that may affect the overall risk of institutions.
- (10) The ESRB's task should be to monitor and assess systemic risk in normal times for the purpose of mitigating the exposure of the system to the risk of failure of systemic components and enhancing the financial system's resilience to shocks. In that respect, the ESRB should contribute to ensuring financial stability and mitigating the negative impacts on the internal market and the real economy. In order to accomplish its objectives, the ESRB should analyse all the relevant information.
- (11) The present arrangements of the Union place too little emphasis on macro-prudential oversight and on inter-linkages between developments in the broader macroeconomic environment and the financial system. Responsibility for macro-prudential analysis remains fragmented, and is conducted by various authorities at different levels with no mechanism to ensure that macro-prudential risks are adequately identified and that warnings and recommendations are issued clearly, followed up and translated into action. A proper functioning of Union and global financial systems and the mitigation of threats thereto require enhanced consistency between macro- and micro-prudential supervision.
- (12) A newly designed system of macro-prudential oversight requires credible and high-profile leadership. Therefore, given its key role and its international and internal credibility, and in the spirit of the recommendations of the de Larosière Report, the President of the ECB should be the Chair of the ESRB for a first term of 5 years following the entry into force of this Regulation. In addition, the accountability requirements should be increased and the ESRB bodies should be able to draw on a wide range of experience, backgrounds and opinions.

- (13) The de Larosière Report also states that macro-prudential oversight is not meaningful unless it can somehow impact on supervision at the micro level whilst micro-prudential supervision cannot effectively safeguard financial stability without adequately taking account of macro-level developments.
- (14) A European System of Financial Supervision (ESFS) should be established, bringing together the actors of financial supervision at national level and at the level of the Union, to act as a network. Pursuant to the principle of sincere cooperation in accordance with Article 4(3) of the Treaty on European Union, the parties to the ESFS should cooperate with trust and full mutual respect, in particular to ensure that appropriate and reliable information flows between them. At the level of the Union, the network should comprise the ESRB and three micro-supervisory authorities: the European Supervisory Authority (European Banking Authority), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council <sup>(1)</sup>, the European Supervisory Authority (European Insurance and Occupational Pensions Authority), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council <sup>(2)</sup>, and the European Supervisory Authority (European Securities and Markets Authority), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council <sup>(3)</sup> (hereinafter collectively referred to as the 'ESAs').
- (15) The Union needs a specific body responsible for macro-prudential oversight across its financial system, which would identify risks to financial stability and, where necessary, issue risk warnings and recommendations for action to address such risks. Consequently, the ESRB should be established as a new independent body, covering all financial sectors as well as guarantee schemes. The ESRB should be responsible for conducting macro-prudential oversight at the level of the Union and should have no legal personality.
- (16) The ESRB should comprise a General Board, a Steering Committee, a Secretariat, an Advisory Scientific Committee and an Advisory Technical Committee. The composition of the Advisory Scientific Committee should take into account adequate rules of conflict of interests adopted by the General Board. The establishment of the Advisory Technical Committee should take into account existing structures with a view to avoiding any duplication.
- (17) The ESRB should issue warnings and, where it deems necessary, recommendations either of a general or a specific nature, which should be addressed in particular to the Union as a whole or to one or more Member States, or to one or more of the ESAs, or to one or more of the national supervisory authorities with a specified timeline for the relevant policy response.
- (18) The ESRB should elaborate a colour code in order to allow interested parties better to assess the nature of the risk.
- (19) In order to increase their influence and legitimacy, such warnings and recommendations should also be transmitted, subject to strict rules of confidentiality, to the Council and the Commission and, where addressed to one or more national supervisory authorities, to the ESAs. The deliberations of the Council should be prepared by the Economic and Financial Committee (EFC) in accordance with its role as defined in the TFEU. In order to prepare the Council's discussions and provide it with timely policy advice, the ESRB should inform the EFC regularly and should send the texts of any warnings and recommendations as soon as they have been adopted.
- (20) The ESRB should also monitor compliance with its warnings and recommendations, based on reports from addressees, in order to ensure that its warnings and recommendations are effectively followed. Addressees of recommendations should act on them and provide an adequate justification in case of inaction ('act or explain' mechanism). If the ESRB considers that the reaction is inadequate, it should inform, subject to strict confidentiality rules, the addressees, the Council and, where appropriate, the European Supervisory Authority concerned.
- (21) The ESRB should decide, on a case-by-case basis and after having informed the Council sufficiently in advance so that it is able to react, whether a recommendation should be kept confidential or made public, bearing in mind that public disclosure can help to foster compliance with the recommendations in certain circumstances.
- (22) If the ESRB detects a risk which could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the Union's financial system, it should promptly inform the Council of the situation. If the ESRB determines that an emergency situation may arise, it should contact the Council and provide an assessment of the situation. The Council should then assess the need to adopt a decision addressed to the ESAs determining the existence of an emergency situation. During that process, due protection of confidentiality is of the utmost importance.
- (23) The ESRB should report to the European Parliament and the Council at least annually, and more frequently in the event of widespread financial distress. Where appropriate, the European Parliament and the Council should be able to invite the ESRB to examine specific issues related to financial stability.

<sup>(1)</sup> See page 12 of this Official Journal.

<sup>(2)</sup> See page 48 of this Official Journal.

<sup>(3)</sup> See page 84 of this Official Journal.

- (24) The ECB and the national central banks should have a leading role in macro-prudential oversight because of their expertise and their existing responsibilities in the area of financial stability. National supervisors should be involved in providing their specific expertise. The participation of micro-prudential supervisors in the work of the ESRB is essential to ensure that the assessment of macro-prudential risk is based on complete and accurate information about developments in the financial system. Accordingly, the chairpersons of the ESAs should be members with voting rights. One representative of the competent national supervisory authorities of each Member State should attend meetings of the General Board, without voting rights. In a spirit of openness, 15 independent persons should provide the ESRB with external expertise through the Advisory Scientific Committee.
- (25) The participation of a Member of the Commission in the ESRB will help to establish a link with the macroeconomic and financial surveillance of the Union, while the presence of the President of the EFC will reflect the role of Member States' ministries responsible for finance and the Council in safeguarding financial stability and performing economic and financial oversight.
- (26) It is essential that the members of the ESRB perform their duties impartially and consider only the financial stability of the Union as a whole. Where consensus cannot be reached, voting on warnings and recommendations within the ESRB should not be weighted and decisions should, as a rule, be taken by simple majority.
- (27) The interconnectedness of financial institutions and markets implies that the monitoring and assessment of potential systemic risks should be based on a broad set of relevant macroeconomic and micro-financial data and indicators. Those systemic risks include risks of disruption to financial services caused by a significant impairment of all or parts of the Union's financial system that have the potential to have serious negative consequences for the internal market and the real economy. Any type of financial institution and intermediary, market, infrastructure and instrument has the potential to be systemically significant. The ESRB should therefore have access to all the information necessary to perform its duties while preserving the confidentiality of that information as required.
- (28) The measures for the collection of information set out in this Regulation are necessary for the performance of the tasks of the ESRB and should be without prejudice to the legal framework of the European Statistical System in the field of statistics. This Regulation should therefore be without prejudice to Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics <sup>(1)</sup> and to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank <sup>(2)</sup>.
- (29) Market participants can provide valuable input to the understanding of the evolutions affecting the financial system. Where appropriate, the ESRB should therefore consult private sector stakeholders, including financial sector representatives, consumer associations, user groups in the financial services area established by the Commission or by Union legislation, and give them a fair opportunity to make observations.
- (30) The establishment of the ESRB should contribute directly to achieving the objectives of the internal market. The Union macro-prudential oversight of the financial system is an integral part of the overall new supervisory arrangements in the Union as the macro-prudential aspect is closely linked to the micro-prudential supervisory tasks attributed to the ESAs. Only with arrangements in place that properly acknowledge the interdependence of micro- and macro-prudential risks can all stakeholders have sufficient confidence to engage in cross-border financial activities. The ESRB should monitor and assess risks to financial stability arising from developments that can impact on a sectoral level or at the level of the financial system as a whole. By addressing such risks, the ESRB should contribute directly to an integrated Union supervisory structure necessary to promote timely and consistent policy responses among the Member States, thus preventing diverging approaches and improving the functioning of the internal market.
- (31) The Court of Justice in its judgment of 2 May 2006 in Case C-217/04 (United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union) held that 'nothing in the wording of Article 95 EC [now Article 114 TFEU] implies that the addressees of the measures adopted by the Community legislature on the basis of that provision can only be the individual Member States. The legislature may deem it necessary to provide for the establishment of a Community body responsible for contributing to the implementation of a process of harmonisation in situations where, in order to facilitate the uniform implementation and application of acts based on that provision, the adoption of non-binding supporting and framework measures seems appropriate' <sup>(3)</sup>. The ESRB should contribute to the financial stability necessary for further financial integration in the internal market by monitoring systemic risks and issuing warnings and recommendations where appropriate. Those tasks are closely linked to the objectives of the Union legislation concerning the internal market for financial services. The ESRB should therefore be established on the basis of Article 114 TFEU.

<sup>(1)</sup> OJ L 87, 31.3.2009, p. 164.

<sup>(2)</sup> OJ L 318, 27.11.1998, p. 8.

<sup>(3)</sup> European Court Reports 2006 Page I-03771, para 44.

- (32) As suggested in the de Larosière Report, a step-by-step approach is necessary and the European Parliament and the Council should conduct a full review of the ESFS, the ESRB and the ESAs by 17 December 2013.
- (33) Since the objective of this Regulation, namely an effective macro-prudential oversight of the Union financial system, cannot be sufficiently achieved by the Member States because of the integration of the Union financial markets, and can therefore be better achieved at the Union level, the Union may adopt measures in accordance with the principle of subsidiarity, as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective,

HAVE ADOPTED THIS REGULATION:

#### CHAPTER I

#### GENERAL PROVISIONS

##### Article 1

##### Establishment

1. A European Systemic Risk Board (ESRB) is established. It shall have its seat in Frankfurt am Main.
2. The ESRB shall be part of the European System of Financial Supervision (ESFS), the purpose of which is to ensure the supervision of the Union's financial system.
3. The ESFS shall comprise:
  - (a) the ESRB;
  - (b) the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010;
  - (c) the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010;
  - (d) the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010;
  - (e) the Joint Committee of the European Supervisory Authorities (Joint Committee) provided for by Article 54 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010;
  - (f) the competent or supervisory authorities in the Member States as specified in the Union acts referred to in Article 1(2) of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.

4. Pursuant to the principle of sincere cooperation in accordance with Article 4(3) of the Treaty on European Union, the parties to the ESFS shall cooperate with trust and full mutual respect, in particular to ensure that appropriate and reliable information flows between them.

##### Article 2

##### Definitions

For the purpose of this Regulation, the following definitions shall apply:

- (a) 'financial institution' means any undertaking that falls within the scope of the legislation referred to in Article 1(2) of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, as well as any other undertaking or entity in the Union whose main business is of a similar nature;
- (b) 'financial system' means all financial institutions, markets, products and market infrastructures;
- (c) 'systemic risk' means a risk of disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructure may be potentially systemically important to some degree.

##### Article 3

##### Mission, objectives and tasks

1. The ESRB shall be responsible for the macro-prudential oversight of the financial system within the Union in order to contribute to the prevention or mitigation of systemic risks to financial stability in the Union that arise from developments within the financial system and taking into account macroeconomic developments, so as to avoid periods of widespread financial distress. It shall contribute to the smooth functioning of the internal market and thereby ensure a sustainable contribution of the financial sector to economic growth.
2. For the purposes of paragraph 1, the ESRB shall carry out the following tasks:
  - (a) determining and/or collecting and analysing all the relevant and necessary information, for the purposes of achieving the objectives described in paragraph 1;
  - (b) identifying and prioritising systemic risks;
  - (c) issuing warnings where such systemic risks are deemed to be significant and, where appropriate, making those warnings public;
  - (d) issuing recommendations for remedial action in response to the risks identified and, where appropriate, making those recommendations public;

- (e) when the ESRB determines that an emergency situation may arise pursuant to Article 18 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 issuing a confidential warning addressed to the Council and providing the Council with an assessment of the situation, in order to enable the Council to assess the need to adopt a decision addressed to the ESAs determining the existence of an emergency situation;
- (f) monitoring the follow-up to warnings and recommendations;
- (g) cooperating closely with all the other parties to the ESFS; where appropriate, providing the ESAs with the information on systemic risks required for the performance of their tasks; and, in particular, in collaboration with the ESAs, developing a common set of quantitative and qualitative indicators (risk dashboard) to identify and measure systemic risk;
- (h) participating, where appropriate, in the Joint Committee;
- (i) coordinating its actions with those of international financial organisations, particularly the IMF and the FSB as well as the relevant bodies in third countries on matters related to macro-prudential oversight;
- (j) carrying out other related tasks as specified in Union legislation.

## CHAPTER II

### ORGANISATION

#### Article 4

##### Structure

1. The ESRB shall have a General Board, a Steering Committee, a Secretariat, an Advisory Scientific Committee and an Advisory Technical Committee.
2. The General Board shall take the decisions necessary to ensure the performance of the tasks entrusted to the ESRB, pursuant to Article 3(2).
3. The Steering Committee shall assist in the decision-making process of the ESRB by preparing the meetings of the General Board, reviewing the documents to be discussed and monitoring the progress of the ESRB's ongoing work.
4. The Secretariat shall be responsible for the day-to-day business of the ESRB. It shall provide high-quality analytical, statistical, administrative and logistical support to the ESRB under the direction of the Chair and the Steering Committee in accordance with Council Regulation (EU) No 1096/2010<sup>(1)</sup>. It shall also draw on technical advice from the ESAs, national central banks and national supervisors.

<sup>(1)</sup> See page 162 of this Official Journal.

5. The Advisory Scientific Committee and the Advisory Technical Committee referred to in Articles 12 and 13 shall provide advice and assistance on issues relevant to the work of the ESRB.

#### Article 5

##### Chair and Vice-Chairs of the ESRB

1. The ESRB shall be chaired by the President of the ECB for a term of 5 years following the entry into force of this Regulation. For the subsequent terms, the Chair of the ESRB shall be designated in accordance with the modalities determined on the basis of the review provided for in Article 20.
2. The first Vice-Chair shall be elected by and from the members of the General Council of the ECB for a term of 5 years, with regard to the need for a balanced representation of Member States overall and between those whose currency is the euro and those whose currency is not the euro. The first Vice-Chair may be re-elected once.
3. The second Vice-Chair shall be the Chair of the Joint Committee as appointed pursuant to Article 55(3) of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.
4. The Chair and the Vice-Chairs shall present to the European Parliament, during a public hearing, how they intend to discharge their duties under this Regulation.
5. The Chair shall preside at the meetings of the General Board and the Steering Committee.
6. The Vice-Chairs, in order of precedence, shall preside at the General Board and/or the Steering Committee when the Chair is unable to participate in a meeting.
7. If the term of office of a member of the General Council of the ECB elected as first Vice-Chair ends before the completion of the five-year term or if for any reason the first Vice-Chair is unable to discharge his duties, a new first Vice-Chair shall be elected in accordance with paragraph 2.
8. The Chair shall represent the ESRB externally.

#### Article 6

##### General Board

1. Members of the General Board with voting rights shall comprise:
  - (a) the President and the Vice-President of the ECB;
  - (b) the Governors of the national central banks;



- (c) a Member of the Commission;
  - (d) the Chairperson of the European Supervisory Authority (European Banking Authority);
  - (e) the Chairperson of the European Supervisory Authority (European Insurance and Occupational Pensions Authority);
  - (f) the Chairperson of the European Supervisory Authority (European Securities and Markets Authority);
  - (g) the Chair and the two Vice-Chairs of the Advisory Scientific Committee;
  - (h) the Chair of the Advisory Technical Committee.
2. Members of the General Board without voting rights shall comprise:
- (a) one high-level representative per Member State of the competent national supervisory authorities, in accordance with paragraph 3;
  - (b) the President of the Economic and Financial Committee (EFC).

3. With regard to the representation of the national supervisory authorities under paragraph 2(a), the respective high-level representatives shall rotate depending on the item discussed, unless the national supervisory authorities of a particular Member State have agreed on a common representative.

4. The General Board shall establish rules of procedure for the ESRB.

#### Article 7

##### Impartiality

1. When participating in the activities of the General Board and of the Steering Committee or when conducting any other activity relating to the ESRB, the members of the ESRB shall perform their duties impartially and solely in the interest of the Union as a whole. They shall not seek nor take instructions from the Member States, the Union institutions or any other public or private body.
2. No member of the General Board (whether voting or non-voting) shall have a function in the financial industry.
3. Neither the Member States, the Union institutions nor any other public or private body shall seek to influence the members of the ESRB in the performance of the tasks set out in Article 3(2).

#### Article 8

##### Professional secrecy

1. Members of the General Board and any other persons who work or who have worked for or in connection with the ESRB (including the relevant staff of central banks, the Advisory Scientific Committee, the Advisory Technical Committee, the ESAs and

the Member States' competent national supervisory authorities) shall not disclose information that is subject to professional secrecy, even after their duties have ceased.

2. Information received by members of the ESRB shall be used only in the course of their duties and in performing the tasks set out in Article 3(2).

3. Without prejudice to Article 16 and the application of criminal law, no confidential information received by the persons referred to in paragraph 1 whilst performing their duties shall be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual financial institutions cannot be identified.

4. The ESRB shall, together with the ESAs, agree on and establish specific confidentiality procedures in order to safeguard information regarding individual financial institutions and information from which individual financial institutions can be identified.

#### Article 9

##### Meetings of the General Board

1. Ordinary plenary meetings of the General Board shall be convened by the Chair of the ESRB and shall take place at least four times a year. Extraordinary meetings may be convened at the initiative of the Chair of the ESRB or at the request of at least one third of the members of the General Board with voting rights.

2. Each member shall be present in person at the meetings of the General Board and shall not be represented.

3. By way of derogation from paragraph 2, a member who is prevented from attending the meetings for a period of at least 3 months may appoint an alternate. That member may also be replaced by a person who has been formally appointed under the rules governing the institution concerned for the substitution of representatives on a temporary basis.

4. Where appropriate, high-level representatives from international financial organisations carrying out activities directly related to the tasks of the ESRB set out in Article 3(2) may be invited to attend the meetings of the General Board.

5. Participation in the work of the ESRB may be open to high-level representatives of the relevant authorities from third countries, in particular from EEA countries, strictly limited to issues of particular relevance to those countries. Arrangements may be made by the ESRB specifying, in particular, the nature, scope and procedural aspects of the involvement of those third countries in the work of the ESRB. Such arrangements may provide for representation, on an ad-hoc basis, as an observer, on the General Board and should concern only items of relevance to those countries, excluding any case where the situation of individual financial institutions or Member States may be discussed.

6. The proceedings of the meetings shall be confidential.

#### Article 10

##### Voting modalities of the General Board

1. Each member of the General Board with a voting right shall have one vote.

2. Without prejudice to the voting procedures set out in Article 18(1), the General Board shall act by a simple majority of members present with voting rights. In the event of a tie, the Chair of the ESRB shall have the casting vote.

3. By derogation from paragraph 2, a majority of two-thirds of the votes cast shall be required to adopt a recommendation or to make a warning or recommendation public.

4. A quorum of two-thirds of the members with voting rights shall be required for any vote to be taken by the General Board. If the quorum is not met, the Chair of the ESRB may convene an extraordinary meeting at which decisions may be taken with a quorum of one-third. The rules of procedure referred to in Article 6(4) shall provide for adequate notice for convening an extraordinary meeting.

#### Article 11

##### Steering Committee

1. The Steering Committee shall be composed of:

- (a) the Chair and first Vice-Chair of the ESRB;
- (b) the Vice-President of the ECB;
- (c) four other members of the General Board who are also members of the General Council of the ECB, with regard to the need for a balanced representation of Member States overall and between those whose currency is the euro and those whose currency is not the euro. They shall be elected by and from among the members of the General Board who are also members of the General Council of the ECB, for a period of 3 years;
- (d) a Member of the Commission;
- (e) the Chairperson of the European Supervisory Authority (European Banking Authority);
- (f) the Chairperson of the European Supervisory Authority (European Insurance and Occupational Pensions Authority);
- (g) the Chairperson of the European Supervisory Authority (European Securities and Markets Authority);

(h) the President of the EFC;

(i) the Chair of the Advisory Scientific Committee; and

(j) the Chair of the Advisory Technical Committee.

Any vacancy for an elected member of the Steering Committee shall be filled by the election of a new member by the General Board.

2. Meetings of the Steering Committee shall be convened by the Chair of the ESRB at least quarterly, before each meeting of the General Board. The Chair of the ESRB may also convene ad-hoc meetings.

#### Article 12

##### Advisory Scientific Committee

1. The Advisory Scientific Committee shall be composed of the Chair of the Advisory Technical Committee and 15 experts representing a wide range of skills and experiences proposed by the Steering Committee and approved by the General Board for a four-year, renewable mandate. The nominees shall not be members of the ESAs and shall be chosen on the basis of their general competence and their diverse experience in academic fields or other sectors, in particular in small and medium-sized enterprises or trade-unions, or as providers or consumers of financial services.

2. The Chair and the two Vice-Chairs of the Advisory Scientific Committee shall be appointed by the General Board following a proposal from the Chair of the ESRB and they shall each have a high level of relevant expertise and knowledge, for example by virtue of their academic background in the sectors of banking, securities markets, or insurance and occupational pensions. The chairmanship of the Advisory Scientific Committee should rotate between those three persons.

3. The Advisory Scientific Committee shall provide advice and assistance to the ESRB in accordance with Article 4(5), at the request of the Chair of the ESRB.

4. The ESRB Secretariat shall support the work of the Advisory Scientific Committee and the head of the Secretariat shall participate in its meetings.

5. Where appropriate, the Advisory Scientific Committee shall organise consultations at an early stage with stakeholders such as market participants, consumer bodies and academic experts, in an open and transparent manner, while taking into account the requirement of confidentiality.

6. The Advisory Scientific Committee shall be provided with all necessary means in order to successfully complete its tasks.

*Article 13***Advisory Technical Committee**

1. The Advisory Technical Committee shall be composed of:
  - (a) a representative of each national central bank and a representative of the ECB;
  - (b) one representative per Member State of the competent national supervisory authorities, in accordance with the second subparagraph;
  - (c) a representative of the European Supervisory Authority (European Banking Authority);
  - (d) a representative of the European Supervisory Authority (European Insurance and Occupational Pensions Authority);
  - (e) a representative of the European Supervisory Authority (European Securities and Markets Authority);
  - (f) two representatives of the Commission;
  - (g) a representative of the EFC; and
  - (h) a representative of the Advisory Scientific Committee.

The supervisory authorities of each Member State shall choose one representative in the Advisory Technical Committee. With regard to the representation of national supervisory authorities under point (b) of the first subparagraph, the respective representatives shall rotate depending on the item discussed, unless the national supervisory authorities of a particular Member State have agreed on a common representative.

2. The Chair of the Advisory Technical Committee shall be appointed by the General Board following a proposal from the Chair of the ESRB.
3. The Advisory Technical Committee shall provide advice and assistance to the ESRB in accordance with Article 4(5) at the request of the Chair of the ESRB.
4. The ESRB Secretariat shall support the work of the Advisory Technical Committee and the head of the Secretariat shall participate in its meetings.
5. The Advisory Technical Committee shall be provided with all necessary means in order to successfully complete its tasks.

*Article 14***Other sources of advice**

In performing the tasks set out in Article 3(2), the ESRB shall, where appropriate, seek the views of relevant private sector stakeholders.

## CHAPTER III

**TASKS***Article 15***Collection and exchange of information**

1. The ESRB shall provide the ESAs with the information on risks necessary for the achievement of their tasks.
2. The ESAs, the European System of Central Banks (ESCB), the Commission, the national supervisory authorities and national statistics authorities shall cooperate closely with the ESRB and shall provide it with all the information necessary for the fulfilment of its tasks in accordance with Union legislation.
3. Subject to Article 36(2) of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, the ESRB may request information from the ESAs, as a rule in summary or aggregate form such that individual financial institutions cannot be identified.
4. Before requesting information in accordance with this Article, the ESRB shall first take account of the existing statistics produced, disseminated and developed by the European Statistical System and the ESCB.
5. If the requested information is not available or is not made available in a timely manner, the ESRB may request the information from the ESCB, the national supervisory authorities or the national statistics authorities. If the information remains unavailable, the ESRB may request it from the Member State concerned, without prejudice to the prerogatives conferred, respectively, on the Council, the Commission (Eurostat), the ECB, the Eurosystem and the ESCB in the field of statistics and data collection.
6. If the ESRB requests information that is not in summary or aggregate form, the reasoned request shall explain why data on the respective individual financial institution is deemed to be systematically relevant, and necessary, considering the prevailing market situation.
7. Before each request for information which is not in summary or aggregate form, the ESRB shall duly consult the relevant European Supervisory Authority in order to ensure that the request is justified and proportionate. If the relevant European Supervisory Authority does not consider the request to be justified and proportionate, it shall, without delay, send the request back to the ESRB and ask for additional justification. After the ESRB has provided the relevant European Supervisory Authority with such additional justification, the requested information shall be transmitted to the ESRB by the addressees of the request, provided that they have legal access to the relevant information.

*Article 16***Warnings and recommendations**

1. When significant risks to the achievement of the objective in Article 3(1) are identified, the ESRB shall provide warnings and, where appropriate, issue recommendations for remedial action, including, where appropriate, for legislative initiatives.
2. Warnings or recommendations issued by the ESRB in accordance with Article 3(2)(c) and (d) may be of either a general or a specific nature and shall be addressed in particular to the Union as a whole or to one or more Member States, or to one or more of the ESAs, or to one or more of the national supervisory authorities. If a warning or a recommendation is addressed to one or more of the national supervisory authorities, the Member State(s) concerned shall also be informed thereof. Recommendations shall include a specified timeline for the policy response. Recommendations may also be addressed to the Commission in respect of the relevant Union legislation.
3. At the same time as they are transmitted to the addressees in accordance with paragraph 2, the warnings or recommendations shall be transmitted, in accordance with strict rules of confidentiality, to the Council and the Commission and, where addressed to one or more national supervisory authorities, to the ESAs.
4. In order to enhance the awareness of risks in the economy of the Union and to prioritise such risks, the ESRB, in close cooperation with the other parties to the ESFS, shall elaborate a colour-coded system corresponding to situations of different risk levels.

Once the criteria for such classification have been elaborated, the ESRB's warnings and recommendations shall indicate, on a case-by-case basis, and where appropriate, to which category the risk belongs.

*Article 17***Follow-up of the ESRB recommendations**

1. If a recommendation referred to in Article 3(2)(d) is addressed to the Commission, to one or more Member States, to one or more ESAs, or to one or more national supervisory authorities, the addressees shall communicate to the ESRB and to the Council the actions undertaken in response to the recommendation and shall provide adequate justification for any inaction. Where relevant, the ESRB shall, subject to strict rules of confidentiality, inform the ESAs without delay of the answers received.
2. If the ESRB decides that its recommendation has not been followed or that the addressees have failed to provide adequate justification for their inaction, it shall, subject to strict rules of confidentiality, inform the addressees, the Council and, where relevant, the European Supervisory Authority concerned.

3. If the ESRB has made a decision under paragraph 2 on a recommendation that has been made public following the procedure set out in Article 18(1), the European Parliament may invite the Chair of the ESRB to present that decision and the addressees may request to participate in an exchange of views.

*Article 18***Public warnings and recommendations**

1. The General Board shall decide on a case-by-case basis, after having informed the Council sufficiently in advance so that it is able to react, whether a warning or a recommendation should be made public. Notwithstanding Article 10(3), a quorum of two-thirds shall always apply to decisions taken by the General Board under this paragraph.
2. If the General Board decides to make a warning or recommendation public, it shall inform the addressees in advance.
3. The addressees of warnings and recommendations made public by the ESRB shall also be provided with the right of making public their views and reasoning in response thereto.
4. Where the General Board decides not to make a warning or a recommendation public, the addressees and, where appropriate, the Council and the ESAs shall take all the measures necessary for the protection of their confidential nature.

## CHAPTER IV

**FINAL PROVISIONS***Article 19***Accountability and reporting obligations**

1. At least annually and more frequently in the event of widespread financial distress, the Chair of the ESRB shall be invited to an annual hearing in the European Parliament, marking the publication of the ESRB's annual report to the European Parliament and the Council. That hearing shall be conducted separately from the monetary dialogue between the European Parliament and the President of the ECB.
2. The annual report referred to in paragraph 1 shall contain the information that the General Board decides to make public in accordance with Article 18. The annual report shall be made available to the public.
3. The ESRB shall also examine specific issues at the invitation of the European Parliament, the Council or the Commission.
4. The European Parliament may request the Chair of the ESRB to attend a hearing of the competent Committees of the European Parliament.

5. The Chair of the ESRB shall hold confidential oral discussions at least twice a year and more often if deemed appropriate, behind closed doors with the Chair and Vice-Chairs of the Economic and Monetary Affairs Committee of the European Parliament on the ongoing activity of the ESRB. An agreement shall be concluded between the European Parliament and the ESRB on the detailed modalities of organising those meetings, with a view to ensuring full confidentiality in accordance with Article 8. The ESRB shall provide a copy of that agreement to the Council.

*Article 20*

**Review**

By 17 December 2013, the European Parliament and the Council shall examine this Regulation on the basis of a report from the

Commission and, after having received an opinion from the ECB and the ESAs, shall determine whether the mission and organisation of the ESRB need to be reviewed.

They shall, in particular, review the modalities for the designation or election of the Chair of the ESRB.

*Article 21*

**Entry into force**

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

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

Done at Strasbourg, 24 November 2010.

*For the European Parliament*  
*The President*  
J. BUZEK

*For the Council*  
*The President*  
O. CHASTEL

**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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Central Bank <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) The financial crisis in 2007 and 2008 exposed important shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. Nationally based supervisory models have lagged behind financial globalisation and the integrated and interconnected reality of European financial markets, in which many financial institutions operate across borders. The crisis exposed shortcomings in the areas of cooperation, coordination, consistent application of Union law and trust between national supervisors.
- (2) Before and during the financial crisis, the European Parliament has called for a move towards more integrated European supervision in order to ensure a true level playing field for all actors at the level of the Union and to reflect the increasing integration of financial markets in the Union (in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan <sup>(4)</sup>, of 21 November 2002 on prudential supervision rules in the European Union <sup>(5)</sup>, of 11 July 2007 on financial services policy (2005 to 2010) – White Paper <sup>(6)</sup>, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity <sup>(7)</sup> and of 9 October 2008 with recommendations

to the Commission on Lamfalussy follow-up: future structure of supervision <sup>(8)</sup>, and in its positions of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) <sup>(9)</sup> and of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies <sup>(10)</sup>).

- (3) In November 2008, the Commission mandated a High-Level Group chaired by Jacques de Larosière to make recommendations on how to strengthen European supervisory arrangements with a view to better protecting the citizen and rebuilding trust in the financial system. In its final report presented on 25 February 2009 (the 'de Larosière Report'), the High-Level Group recommended that the supervisory framework be strengthened to reduce the risk and severity of future financial crises. It recommended reforms to the structure of supervision of the financial sector in the Union. The group also concluded that a European System of Financial Supervisors should be created, comprising three European Supervisory Authorities, one for the banking sector, one for the securities sector and one for the insurance and occupational pensions sector, and recommended the creation of a European Systemic Risk Council. The report represented the reforms the experts considered were needed and on which work had to begin immediately.
- (4) In its Communication of 4 March 2009 entitled 'Driving European Recovery', the Commission proposed to put forward draft legislation creating a European system of financial supervision and a European systemic risk board. In its Communication of 27 May 2009 entitled 'European Financial Supervision', it provided more detail about the possible architecture of such a new supervisory framework reflecting the main thrust of the de Larosière Report.
- (5) The European Council, in its conclusions of 19 June 2009, confirmed that a European System of Financial Supervisors, comprising three new European Supervisory Authorities, should be established. The system should be aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross-border groups and establishing a European single rule book applicable to all financial institutions in the internal market. It emphasised that the European Supervisory Authorities should also

<sup>(1)</sup> OJ C 13, 20.1.2010, p. 1.

<sup>(2)</sup> Opinion of 22 January 2010 (not yet published in the Official Journal).

<sup>(3)</sup> Position of the European Parliament of 22 September 2010 (not yet published in the Official Journal) and decision of the Council of 17 November 2010.

<sup>(4)</sup> OJ C 40, 7.2.2001, p. 453.

<sup>(5)</sup> OJ C 25 E, 29.1.2004, p. 394.

<sup>(6)</sup> OJ C 175 E, 10.7.2008, p. 392.

<sup>(7)</sup> OJ C 8 E, 14.1.2010, p. 26.

<sup>(8)</sup> OJ C 9 E, 15.1.2010, p. 48.

<sup>(9)</sup> OJ C 184 E, 8.7.2010, p. 214.

<sup>(10)</sup> OJ C 184 E, 8.7.2010, p. 292.

have supervisory powers in relation to credit rating agencies and invited the Commission to prepare concrete proposals on how the European System of Financial Supervisors could play a strong role in crisis situations, while stressing that decisions taken by the European Supervisory Authorities should not impinge on the fiscal responsibilities of Member States.

- (6) On 17 June 2010, the European Council agreed that 'Member States should introduce systems of levies and taxes on financial institutions to ensure fair burden-sharing and to set incentives to contain systemic risk. Such levies or taxes should be part of a credible resolution framework. Further work is urgently required on their main features and issues of level playing field and cumulative impacts of various regulatory measures should be carefully assessed'.
- (7) The financial and economic crisis has created real and serious risks to the stability of the financial system and the functioning of the internal market. Restoring and maintaining a stable and reliable financial system is an absolute prerequisite to preserving trust and coherence in the internal market, and thereby to preserve and improve the conditions for the establishment of a fully integrated and functioning internal market in the field of financial services. Moreover, deeper and more integrated financial markets offer better opportunities for financing and risk diversification, and thus help to improve the capacity of the economies to absorb shocks.
- (8) The Union has reached the limits of what can be done with the present status of the Committees of European Supervisors. The Union cannot remain in a situation where there is no mechanism to ensure that national supervisors arrive at the best possible supervisory decisions for cross-border financial institutions; where there is insufficient cooperation and information exchange between national supervisors; where joint action by national authorities requires complicated arrangements to take account of the patchwork of regulatory and supervisory requirements; where national solutions are most often the only feasible option in responding to problems at the level of the Union, and where different interpretations of the same legal text exist. The European System of Financial Supervision (hereinafter 'the ESFS') should be designed to overcome those deficiencies and provide a system that is in line with the objective of a stable and single Union financial market for financial services, linking national supervisors within a strong Union network.
- (9) The ESFS should be an integrated network of national and Union supervisory authorities, leaving day-to-day supervision to the national level. Greater harmonisation and the coherent application of rules for financial institutions and markets across the Union should also be achieved. In addition to the European Supervisory Authority (European

Banking Authority) (hereinafter 'the Authority'), a European Supervisory Authority (European Insurance and Occupational Pensions Authority) and a European Supervisory Authority (European Securities and Markets Authority) as well as a Joint Committee of the European Supervisory Authorities (hereinafter 'the Joint Committee') should be established. A European Systemic Risk Board (hereinafter 'the ESRB') should form part of the ESFS for the purposes of the tasks as specified in this Regulation and in Regulation (EU) No 1092/2010 of the European Parliament and of the Council <sup>(1)</sup>.

- (10) The European Supervisory Authorities (hereinafter collectively referred to as the 'ESAs') should replace the Committee of European Banking Supervisors established by Commission Decision 2009/78/EC <sup>(2)</sup>, the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2009/79/EC <sup>(3)</sup> and the Committee of European Securities Regulators established by Commission Decision 2009/77/EC <sup>(4)</sup>, and should assume all of the tasks and competences of those committees including the continuation of ongoing work and projects, where appropriate. The scope of each European Supervisory Authority's action should be clearly defined. The ESAs should be accountable to the European Parliament and the Council. When that accountability relates to cross-sectoral issues that have been coordinated through the Joint Committee, the ESAs should be accountable, through the Joint Committee, for such coordination.
- (11) The Authority should act with a view to improving the functioning of the internal market, in particular by ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States and the different nature of financial institutions. The Authority should protect public values such as the stability of the financial system, the transparency of markets and financial products, and the protection of depositors and investors. The Authority should also prevent regulatory arbitrage and guarantee a level playing field, and strengthen international supervisory coordination, for the benefit of the economy at large, including financial institutions and other stakeholders, consumers and employees. Its tasks should also include promoting supervisory convergence and providing advice to the Union institutions in the areas of banking, payments, e-money regulation and supervision, and related corporate governance, auditing and financial reporting issues. The Authority should also be entrusted with certain responsibilities for existing and new financial activities.

<sup>(1)</sup> See page 1 of this Official Journal.

<sup>(2)</sup> OJ L 25, 29.1.2009, p. 23.

<sup>(3)</sup> OJ L 25, 29.1.2009, p. 28.

<sup>(4)</sup> OJ L 25, 29.1.2009, p. 18.

- (12) The Authority should also be able to temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in this Regulation. If required to make such temporary prohibition in the case of an emergency situation, the Authority should do so in accordance with and under the conditions laid down in this Regulation. In cases where a temporary prohibition or restriction of certain financial activities has a cross-sectoral impact, sectoral legislation should provide that the Authority should consult and coordinate its action with, where relevant, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and with the European Supervisory Authority (European Securities and Markets Authority), through the Joint Committee.
- (13) The Authority should take due account of the impact of its activities on competition and innovation within the internal market, on the Union's global competitiveness, on financial inclusion, and on the Union's new strategy for jobs and growth.
- (14) In order to fulfil its objectives, the Authority should have legal personality as well as administrative and financial autonomy.
- (15) Based on the work of international bodies, systemic risk should be defined as a risk of disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructures may be potentially systemically important to some degree.
- (16) Cross-border risk includes all risks caused by economic imbalances or financial failures in all or parts of the Union that have the potential to have significant negative consequences for the transactions between economic operators of two or more Member States, for the functioning of the internal market or for the public finances of the Union or any of its Member States.
- (17) The Court of Justice of the European Union in its judgment of 2 May 2006 in Case C-217/04 (United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union) held that 'nothing in the wording of Article 95 EC [now Article 114 of the Treaty on the Functioning of the European Union (TFEU)] implies that the addressees of the measures adopted by the Community legislature on the basis of that provision can only be the individual Member States. The legislature may deem it necessary to provide for the establishment of a Community body responsible for contributing to the implementation of a process of harmonisation in situations where, in order to facilitate the uniform implementation and application of acts based on that provision, the adoption of non-binding supporting and framework measures seems appropriate' <sup>(1)</sup>. The purpose and tasks of the Authority – assisting competent national supervisory authorities in the consistent interpretation and application of Union rules and contributing to financial stability necessary for financial integration – are closely linked to the objectives of the Union *acquis* concerning the internal market for financial services. The Authority should therefore be established on the basis of Article 114 TFEU.
- (18) The following legislative acts lay down the tasks for the competent authorities of Member States, including cooperating with each other and with the Commission: Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions <sup>(2)</sup>, Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions <sup>(3)</sup> and Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes <sup>(4)</sup>.
- (19) Existing Union legislation regulating the field covered by this Regulation also includes Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate <sup>(5)</sup>, Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group <sup>(6)</sup>, Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds <sup>(7)</sup>, Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions <sup>(8)</sup>, and the relevant parts of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing <sup>(9)</sup>, of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services <sup>(10)</sup> and of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market <sup>(11)</sup>.

(1) European Court Reports 2006 Page I-03771, para. 44.

(2) OJ L 177, 30.6.2006, p. 1.

(3) OJ L 177, 30.6.2006, p. 201.

(4) OJ L 135, 31.5.1994, p. 5.

(5) OJ L 35, 11.2.2003, p. 1.

(6) OJ L 330, 5.12.1998, p. 1.

(7) OJ L 345, 8.12.2006, p. 1.

(8) OJ L 267, 10.10.2009, p. 7.

(9) OJ L 309, 25.11.2005, p. 15.

(10) OJ L 271, 9.10.2002, p. 16.

(11) OJ L 319, 5.12.2007, p. 1.



- (20) It is desirable that the Authority promote a consistent approach in the area of deposit guarantees to ensure a level playing field and the equitable treatment of depositors across the Union. As deposit guarantee schemes are subject to oversight in their Member States rather than regulatory supervision, the Authority should be able to exercise its powers under this Regulation in relation to the deposit guarantee scheme itself and its operator.
- (21) In accordance with the Declaration (No 39) on Article 290 of the Treaty on the Functioning of the European Union (TFEU), annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, the elaboration of regulatory technical standards requires assistance of technical expertise in a form which is specific to the financial services area. It is necessary to allow the Authority to provide such expertise also on standards or parts of standards that are not based on a draft technical standard that it has elaborated.
- (22) There is a need to introduce an effective instrument to establish harmonised regulatory technical standards in financial services to ensure, also through a single rulebook, a level playing field and adequate protection of depositors, investors and consumers across the Union. As a body with highly specialised expertise, it is efficient and appropriate to entrust the Authority, in areas defined by Union law, with the elaboration of draft regulatory technical standards, which do not involve policy choices.
- (23) The Commission should endorse those draft regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU in order to give them binding legal effect. They should be subject to amendment only in very restricted and extraordinary circumstances, since the Authority is the actor in close contact with and knowing best the daily functioning of financial markets. Draft regulatory technical standards would be subject to amendment if they were incompatible with Union law, did not respect the principle of proportionality or ran counter to the fundamental principles of the internal market for financial services as reflected in the *acquis* of Union financial services legislation. The Commission should not change the content of the draft regulatory technical standards prepared by the Authority without prior coordination with the Authority. To ensure a smooth and expeditious adoption process for those standards, the Commission's decision to endorse draft regulatory technical standards should be subject to a time limit.
- (24) Given the technical expertise of the Authority in the areas where regulatory technical standards should be developed, note should be taken of the Commission's stated intention to rely, as a rule, on the draft regulatory technical standards submitted to it by the Authority in view of the adoption of the corresponding delegated acts. However, in cases where the Authority fails to submit a draft regulatory technical standard within the time limits set out by the relevant legislative act, it should be ensured that the result of the exercise of delegated power is actually achieved, and the efficiency of the decision-making process be maintained. In those cases, the Commission should therefore be empowered to adopt regulatory technical standards in the absence of a draft by the Authority.
- (25) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts pursuant to Article 291 TFEU.
- (26) In areas not covered by regulatory or implementing technical standards, the Authority should have the power to issue guidelines and recommendations on the application of Union law. In order to ensure transparency and to strengthen compliance by national supervisory authorities with those guidelines and recommendations, it should be possible for the Authority to publish the reasons for supervisory authorities' non-compliance with those guidelines and recommendations.
- (27) Ensuring the correct and full application of Union law is a core prerequisite for the integrity, transparency, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial institutions in the Union. A mechanism should therefore be established whereby the Authority addresses instances of non-application or incorrect application of Union law amounting to a breach thereof. That mechanism should apply in areas where Union law defines clear and unconditional obligations.
- (28) To allow for a proportionate response to instances of incorrect or insufficient application of Union law, a three-step mechanism should apply. First, the Authority should be empowered to investigate alleged incorrect or insufficient application of Union law obligations by national authorities in their supervisory practice, concluded by a recommendation. Second, where the competent national authority does not follow the recommendation, the Commission should be empowered to issue a formal opinion taking into account the Authority's recommendation, requiring the competent authority to take the actions necessary to ensure compliance with Union law.
- (29) Third, to overcome exceptional situations of persistent inaction by the competent authority concerned, the Authority should be empowered, as a last resort, to adopt decisions addressed to individual financial institutions. That power should be limited to exceptional circumstances in which a competent authority does not comply with the formal opinion addressed to it and in which Union law is directly applicable to financial institutions by virtue of existing or future Union regulations.

- (30) Serious threats to the orderly functioning and integrity of financial markets or the stability of the financial system in the Union require a swift and concerted response at Union level. The Authority should therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. The power to determine the existence of an emergency situation should be conferred on the Council, following a request by any of the ESAs, the Commission or the ESRB.
- (31) The Authority should be able to require national supervisory authorities to take specific action to remedy an emergency situation. The action undertaken by the Authority in this respect should be without prejudice to the Commission's powers pursuant to Article 258 TFEU to initiate infringement proceedings against the Member State of that supervisory authority for its failure to take such action, and without prejudice to the Commission's right in such circumstances to seek interim measures in accordance with the rules of procedure of the Court of Justice of the European Union. Furthermore, it should be without prejudice to any liability that that Member State might incur in accordance with the case law of the Court of Justice of the European Union if its supervisory authorities fail to take the action required by the Authority.
- (32) In order to ensure efficient and effective supervision and a balanced consideration of the positions of the competent authorities in different Member States, the Authority should be able to settle disagreements in cross-border situations between those competent authorities with binding effect, including within colleges of supervisors. A conciliation phase should be provided for during which the competent authorities may reach an agreement. The Authority's competence should cover disagreements on the procedure or content of an action or inaction by a competent authority of a Member State in cases specified in the legally binding Union acts referred to in this Regulation. In such a situation, one of the supervisors involved should be entitled to refer the issue to the Authority, which should act in accordance with this Regulation. The Authority should be empowered to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter in order to ensure compliance with Union law, with binding effects for the competent authorities concerned. If a competent authority does not comply with the settlement decision addressed to it, the Authority should be empowered to adopt decisions directly addressed to financial institutions in areas of Union law directly applicable to them. The power to adopt such decisions should apply only as a last resort and then only to ensure the correct and consistent application of Union law. In cases where the relevant Union legislation confers discretion on Member States' competent authorities, decisions taken by the Authority cannot replace the exercise in compliance with Union law of that discretion.
- (33) The crisis has proven that the current system of cooperation between national authorities whose powers are limited to individual Member States is insufficient as regards financial institutions that operate across borders.
- (34) Expert Groups set up by Member States to examine the causes of the crisis and make suggestions to improve the regulation and supervision of the financial sector have confirmed that the current arrangements are not a sound basis for the future regulation and supervision of cross-border financial institutions across the Union.
- (35) As the de Larosière Report indicates, '[i]n essence, we have two alternatives: the first "chacun pour soi" beggar-thy-neighbour solutions; or the second – enhanced, pragmatic, sensible European cooperation for the benefit of all to preserve an open world economy. This will bring undoubted economic gains'.
- (36) Colleges of supervisors play an important role in the efficient, effective and consistent supervision of financial institutions operating across borders. The Authority should contribute to promoting and monitoring the efficient, effective and consistent functioning of the colleges of supervisors and, in that respect, have a leading role in ensuring the consistent and coherent functioning of colleges of supervisors for cross-border financial institutions across the Union. The Authority should therefore have full participation rights in colleges of supervisors with a view to streamlining the functioning of and the information exchange process in the colleges of supervisors and to foster convergence and consistency across colleges in the application of Union law. As the de Larosière Report states, 'competition distortions and regulatory arbitrage stemming from different supervisory practices must be avoided, because they have the potential of undermining financial stability – inter alia by encouraging a shift of financial activity to countries with lax supervision. The supervisory system has to be perceived as fair and balanced'.
- (37) Convergence in the fields of crisis prevention, management and resolution, including funding mechanisms, is necessary in order to ensure the internalisation of costs by the financial system and the ability of public authorities to resolve failing financial institutions whilst minimising the impact of failures on the financial system, reliance on taxpayer funds to bail out banks and the use of public sector resources, limiting damage to the economy, and coordinating the application of national resolution measures. In this regard it is imperative to develop a common set of rules on a complete set of tools for the prevention and resolution of failing banks, to deal in particular with the crisis of large, cross-border or interconnected institutions, and the need to confer additional relevant powers to the Authority should be assessed as well as how banks and savings institutions could prioritise the protection of savers.

- (38) In the current review of Directive 94/19/EC and Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes <sup>(1)</sup>, the Commission's intention to pay special attention to the need to ensure further harmonisation throughout the Union is noted. In the insurance sector, the Commission's intention to examine the possibility of introducing Union rules protecting insurance policy holders in case of a failing insurance company is also noted. The ESAs should play an important role in those areas and appropriate powers concerning the European guarantee scheme systems should be conferred upon them.
- (39) The delegation of tasks and responsibilities can be a useful instrument in the functioning of the network of supervisors in order to reduce the duplication of supervisory tasks, to foster cooperation and thereby streamline the supervisory process, as well as to reduce the burden imposed on financial institutions. This Regulation should therefore provide a clear legal basis for such delegation. Whilst respecting the general rule that delegation should be allowed, Member States should be able to introduce specific conditions for the delegation of responsibilities, for example, regarding information about, and the notification of, delegation arrangements. Delegation of tasks means that tasks are carried out by the Authority or by a national supervisory authority other than the responsible authority, while the responsibility for supervisory decisions remains with the delegating authority. By the delegation of responsibilities, the Authority or a national supervisory authority (the delegate) should be able to decide upon a certain supervisory matter in its own name in lieu of the delegating authority. Delegations should be governed by the principle of allocating supervisory competence to a supervisor which is best placed to take action in the subject matter. A reallocation of responsibilities would be appropriate, for example, for reasons of economies of scale or scope, of coherence in group supervision, and of optimal use of technical expertise among national supervisory authorities. Decisions by the delegate should be recognised by the delegating authority and by other competent authorities as determinative if those decisions are within the scope of the delegation. Relevant Union legislation could further specify the principles for the reallocation of responsibilities upon agreement. The Authority should facilitate and monitor delegation agreements between national supervisory authorities by all appropriate means.
- It should be informed in advance of intended delegation agreements, in order to be able to express an opinion where appropriate. It should centralise the publication of such agreements to ensure timely, transparent and easily accessible information about agreements for all parties concerned. It should identify and disseminate best practices regarding delegation and delegation agreements.
- (40) The Authority should actively foster supervisory convergence across the Union with the aim of establishing a common supervisory culture.
- (41) Peer reviews are an efficient and effective tool for fostering consistency within the network of financial supervisors. The Authority should therefore develop the methodological framework for such reviews and conduct them on a regular basis. Reviews should focus not only on the convergence of supervisory practices, but also on the capacity of supervisors to achieve high-quality supervisory outcomes, as well as on the independence of those competent authorities. The outcome of peer reviews should be made public with the agreement of the competent authority subject to the review. Best practices should also be identified and made public.
- (42) The Authority should actively promote a coordinated Union supervisory response, in particular to ensure the orderly functioning and integrity of financial markets and the stability of the financial system in the Union. In addition to its powers for action in emergency situations, the Authority should therefore be entrusted with a general coordination function within the ESFS. The smooth flow of all relevant information between competent authorities should be a particular focus of the Authority's actions.
- (43) In order to safeguard financial stability it is necessary to identify, at an early stage, trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors. The Authority should monitor and assess such developments in the area of its competence and, where necessary, inform the European Parliament, the Council, the Commission, the other European Supervisory Authorities and the ESRB on a regular and, as necessary, on an ad hoc basis. The Authority should also, in cooperation with the ESRB, initiate and coordinate Union-wide stress tests to assess the resilience of financial institutions to adverse market developments, and it should ensure that an as consistent as possible methodology is applied at the national level to such tests. In order to perform its functions properly, the Authority should conduct economic analyses of the markets and the impact of potential market developments.
- (44) Given the globalisation of financial services and the increased importance of international standards, the Authority should foster dialogue and cooperation with supervisors outside the Union. It should be empowered to develop contacts and enter into administrative arrangements with the supervisory authorities and administrations of third countries and with international organisations, while fully respecting the existing roles and respective competences of the Member States and the Union institutions. Participation in the work of the Authority should be open to countries which have concluded agreements with the Union whereby they have adopted and are applying Union law, and the Authority should be able to cooperate

<sup>(1)</sup> OJ L 84, 26.3.1997, p. 22.

- with third countries which apply legislation that has been recognised as equivalent to that of the Union.
- (45) The Authority should serve as an independent advisory body to the European Parliament, the Council, and the Commission in the area of its competence. Without prejudice to the competencies of the competent authorities concerned, the Authority should be able to provide its opinion on the prudential assessment of mergers and acquisitions under Directive 2006/48/EC, as amended by Directive 2007/44/EC<sup>(1)</sup> in those cases in which that Directive requires consultation between competent authorities from two or more Member States.
- (46) In order to carry out its duties effectively, the Authority should have the right to request all necessary information. To avoid the duplication of reporting obligations for financial institutions, that information should normally be provided by the national supervisory authorities which are closest to the financial markets and institutions and should take into account already existing statistics. However, as a last resort, the Authority should be able to address a duly justified and reasoned request for information directly to a financial institution where a national competent authority does not or cannot provide such information in a timely fashion. Member States' authorities should be obliged to assist the Authority in enforcing such direct requests. In that context, the work on common reporting formats is essential. The measures for the collection of information should be without prejudice to the legal framework of the European Statistical System and the European System of Central Banks in the field of statistics. This Regulation should therefore be without prejudice both to Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics<sup>(2)</sup> and to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank<sup>(3)</sup>.
- (47) Close cooperation between the Authority and the ESRB is essential to give full effectiveness to the functioning of the ESRB and the follow-up to its warnings and recommendations. The Authority and the ESRB should share any relevant information with each other. Data related to individual undertakings should be provided only upon reasoned request. Upon receipt of warnings or recommendations addressed by the ESRB to the Authority or a national supervisory authority, the Authority should ensure follow-up as appropriate.
- (48) The Authority should consult interested parties on regulatory or implementing technical standards, guidelines and recommendations and provide them with a reasonable opportunity to comment on proposed measures. Before adopting draft regulatory or implementing technical standards, guidelines and recommendations, the Authority should carry out an impact study. For reasons of efficiency, a Banking Stakeholder Group should be used for that purpose, and should represent, in balanced proportions, Union credit and investment institutions, representing the diverse models and sizes of financial institutions and businesses, including, as appropriate, institutional investors and other financial institutions which themselves use financial services; small and medium-sized enterprises (SMEs); trade unions; academics; consumers; and other retail users of banking services. The Banking Stakeholder Group should work as an interface with other user groups in the financial services area established by the Commission or by Union legislation.
- (49) Members of the Banking Stakeholder Group representing non-profit organisations or academics should receive adequate compensation in order to allow persons that are neither well-funded nor industry representatives to take part fully in the debate on financial regulation.
- (50) Member States have a core responsibility for ensuring coordinated crisis management and preserving financial stability in crisis situations, in particular with regard to stabilising and resolving individual failing financial institutions. Decisions by the Authority in emergency or settlement situations affecting the stability of a financial institution should not impinge on the fiscal responsibilities of Member States. A mechanism should be established whereby Member States may invoke this safeguard and ultimately bring the matter before the Council for a decision. However, that safeguard mechanism should not be abused, in particular in relation to a decision taken by the Authority which does not have a significant or material fiscal impact, such as a reduction of income linked to the temporary prohibition of specific activities or products for consumer protection purposes. When taking decisions under the safeguard mechanism, the Council should vote in accordance with the principle where each member has one vote. It is appropriate to confer on the Council a role in this matter given the particular responsibilities of the Member States in this respect. Given the sensitivity of the issue, strict confidentiality arrangements should be ensured.
- (51) In its decision-making procedures, the Authority should be bound by Union rules and general principles on due process and transparency. The right of the addressees of the
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- (1) Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ L 247, 21.9.2007, p. 1).
- (2) OJ L 87, 31.3.2009, p. 164.
- (3) OJ L 318, 27.11.1998, p. 8.

- Authority's decisions to be heard should be fully respected. The Authority's acts should form an integral part of Union law.
- (52) A Board of Supervisors composed of the heads of the relevant competent authorities in each Member State, and chaired by the Chairperson of the Authority, should be the principal decision-making organ of the Authority. Representatives of the Commission, the ESRB, the European Central Bank, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) should participate as observers. Members of the Board of Supervisors should act independently and only in the Union's interest.
- (53) As a general rule, the Board of Supervisors should take its decisions by simple majority in accordance with the principle where each member has one vote. However, for acts of a general nature, including those relating to regulatory and implementing technical standards, guidelines and recommendations, for budgetary matters as well as in respect of requests by a Member State to reconsider a decision by the Authority to temporarily prohibit or restrict certain financial activities, it is appropriate to apply the rules of qualified majority voting as laid down in Article 16(4) of the Treaty on European Union and in the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted, objective panel, composed of members who neither are representatives of the competent authorities which are party to the disagreement nor have any interest in the conflict or direct links to the competent authorities concerned. The composition of the panel should be appropriately balanced. The decision taken by the panel should be approved by the Board of Supervisors by simple majority in accordance with the principle where each member has one vote. However, with regard to decisions taken by the consolidating supervisor, the decision proposed by the panel could be rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.
- (54) A Management Board, composed of the Chairperson of the Authority, of representatives of national supervisory authorities and of the Commission, should ensure that the Authority carries out its mission and performs the tasks assigned to it. The Management Board should be entrusted with the necessary powers, *inter alia*, to propose the annual and multi-annual work programme, to exercise certain budgetary powers, to adopt the Authority's staff policy plan, to adopt special provisions on the right to access to documents and to propose the annual report.
- (55) The Authority should be represented by a full-time Chairperson, appointed by the Board of Supervisors, on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open selection procedure organised and managed by the Board of Supervisors assisted by the Commission. For the designation of the first Chairperson of the Authority, the Commission should, *inter alia*, draw up a shortlist of candidates on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation. For the subsequent designations, the opportunity of having a shortlist drawn up by the Commission should be reviewed in a report to be established pursuant to this Regulation. Before the selected person takes up his duties, and up to 1 month after his selection by the Board of Supervisors, the European Parliament should be entitled, after having heard the person selected, to object to his designation.
- (56) The management of the Authority should be entrusted to an Executive Director, who should have the right to participate in meetings of the Board of Supervisors and the Management Board without the right to vote.
- (57) In order to ensure cross-sectoral consistency in the activities of the ESAs, they should coordinate closely through a Joint Committee and reach common positions where appropriate. The Joint Committee should coordinate the functions of the ESAs in relation to financial conglomerates and other cross-sectoral matters. Where relevant, acts also falling within the area of competence of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) or the European Supervisory Authority (European Securities and Markets Authority) should be adopted in parallel by the European Supervisory Authorities concerned. The Joint Committee should be chaired for a 12-month term on a rotating basis by the Chairpersons of the ESAs. The Chairperson of the Joint Committee should be a Vice-Chair of the ESRB. The Joint Committee should have dedicated staff provided by the ESAs to allow for informal information sharing and the development of a common supervisory culture approach across the ESAs.
- (58) It is necessary to ensure that the parties affected by decisions adopted by the Authority may have recourse to the necessary remedies. To protect effectively the rights of parties, and for reasons of procedural economy, where the Authority has decision-making powers, parties should be granted a right of appeal to a Board of Appeal. For reasons of efficiency and consistency, the Board of Appeal should be a joint body of the ESAs, independent from their administrative and regulatory structures. The decisions of the Board of Appeal should be subject to appeal before the Court of Justice of the European Union.

- (59) In order to guarantee its full autonomy and independence, the Authority should be granted an autonomous budget with revenues mainly from obligatory contributions from national supervisory authorities and from the General Budget of the European Union. Union financing of the Authority is subject to an agreement by the budgetary authority in accordance with Point 47 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management <sup>(1)</sup>. The Union budgetary procedure should be applicable. The auditing of accounts should be undertaken by the Court of Auditors. The overall budget is subject to the discharge procedure.
- (60) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) <sup>(2)</sup> should apply to the Authority. The Authority should also accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) <sup>(3)</sup>.
- (61) In order to ensure open and transparent employment conditions and equal treatment of staff, the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities <sup>(4)</sup> should apply to the staff of the Authority.
- (62) It is essential that business secrets and other confidential information be protected. The confidentiality of information made available to the Authority and exchanged in the network should be subject to stringent and effective confidentiality rules.
- (63) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(5)</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(6)</sup> are fully applicable to the processing of personal data for the purposes of this Regulation.
- (64) In order to ensure the transparent operation of the Authority, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents <sup>(7)</sup> should apply to the Authority.
- (65) Third countries should be allowed to participate in the work of the Authority in accordance with appropriate agreements to be concluded by the Union.
- (66) Since the objectives of this Regulation, namely improving the functioning of the internal market by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting depositors and investors, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability of the financial system, and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (67) The Authority should assume all current tasks and powers of the Committee of European Banking Supervisors. Commission Decision 2009/78/EC should therefore be repealed on the date of the establishment of the Authority and Decision No 716/2009/EC of the European Parliament and of the Council of 16 September 2009 establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing <sup>(8)</sup> should be amended accordingly. Given the existing structures and operations of the Committee of European Banking Supervisors, it is important to ensure very close cooperation between the Committee of European Banking Supervisors and the Commission when establishing appropriate transitional arrangements, to ensure that the period during which the Commission is responsible for the administrative establishment and initial administrative operation of the Authority be as limited as possible.
- (68) It is appropriate to set a time limit for the application of this Regulation in order to ensure that the Authority is adequately prepared to begin operations and a smooth transition from the Committee of European Banking Supervisors. The Authority should be appropriately financed. At least initially, it should be financed 40 % from Union funds and 60 % through contributions from Member States, made in accordance with the weighting of votes set out in Article 3(3) of the Protocol (No 36) on transitional provisions.
- (69) In order to enable the Authority to be established on 1 January 2011, this Regulation should enter into force on the day following its publication in the *Official Journal of the European Union*,

<sup>(1)</sup> OJ C 139, 14.6.2006, p. 1.

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 1.

<sup>(3)</sup> OJ L 136, 31.5.1999, p. 15.

<sup>(4)</sup> OJ L 56, 4.3.1968, p. 1.

<sup>(5)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(6)</sup> OJ L 8, 12.1.2001, p. 1.

<sup>(7)</sup> OJ L 145, 31.5.2001, p. 43.

<sup>(8)</sup> OJ L 253, 25.9.2009, p. 8.

HAVE ADOPTED THIS REGULATION:

CHAPTER I

**ESTABLISHMENT AND LEGAL STATUS**

*Article 1*

**Establishment and scope of action**

1. This Regulation establishes a European Supervisory Authority (European Banking Authority) (hereinafter 'the Authority').

2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2006/48/EC, Directive 2006/49/EC, Directive 2002/87/EC, Regulation (EC) No 1781/2006, Directive 94/19/EC and, to the extent that those acts apply to credit and financial institutions and the competent authorities that supervise them, within the relevant parts of Directive 2005/60/EC, Directive 2002/65/EC, Directive 2007/64/EC and Directive 2009/110/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

3. The Authority shall also act in the field of activities of credit institutions, financial conglomerates, investment firms, payment institutions and e-money institutions in relation to issues not directly covered in the acts referred to in paragraph 2, including matters of corporate governance, auditing and financial reporting, provided that such actions by the Authority are necessary to ensure the effective and consistent application of those acts.

4. The provisions of this Regulation are without prejudice to the powers of the Commission, in particular pursuant to Article 258 TFEU, to ensure compliance with Union law.

5. The objective of the Authority shall be to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The Authority shall contribute to:

- (a) improving the functioning of the internal market, including, in particular, a sound, effective and consistent level of regulation and supervision;
- (b) ensuring the integrity, transparency, efficiency and orderly functioning of financial markets;
- (c) strengthening international supervisory coordination;
- (d) preventing regulatory arbitrage and promoting equal conditions of competition;
- (e) ensuring the taking of credit and other risks are appropriately regulated and supervised; and
- (f) enhancing customer protection.

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

In the exercise of the tasks conferred upon it by this Regulation, the Authority shall pay particular attention to any systemic risk posed by financial institutions, the failure of which may impair the operation of the financial system or the real economy.

When carrying out its tasks, the Authority shall act independently and objectively and in the interest of the Union alone.

*Article 2*

**European System of Financial Supervision**

1. The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services.

2. The ESFS shall comprise the following:

- (a) the European Systemic Risk Board (ESRB), for the purposes of the tasks as specified in Regulation (EU) No 1092/2010 and this Regulation;
- (b) the Authority;
- (c) the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council <sup>(1)</sup>;
- (d) the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council <sup>(2)</sup>;
- (e) the Joint Committee of the European Supervisory Authorities (Joint Committee) for the purposes of carrying out the tasks as specified in Articles 54 to 57 of this Regulation, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010;
- (f) the competent or supervisory authorities in the Member States as specified in the Union acts referred to in Article 1(2) of this Regulation, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010.

<sup>(1)</sup> See page 48 of this Official Journal.

<sup>(2)</sup> See page 84 of this Official Journal.

3. The Authority shall cooperate regularly and closely with the ESRB as well as with the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) through the Joint Committee, ensuring cross-sectoral consistency of work and reaching joint positions in the area of supervision of financial conglomerates and on other cross-sectoral issues.

4. In accordance with the principle of sincere cooperation pursuant to Article 4(3) of the Treaty on European Union, the parties to the ESFS shall cooperate with trust and full mutual respect, in particular in ensuring the flow of appropriate and reliable information between them.

5. Those supervisory authorities that are party to the ESFS shall be obliged to supervise financial institutions operating in the Union in accordance with the acts referred to in Article 1(2).

#### Article 3

#### Accountability of the Authorities

The Authorities referred to in Article 2(2)(a) to (d) shall be accountable to the European Parliament and the Council.

#### Article 4

#### Definitions

For the purposes of this Regulation the following definitions apply:

- (1) 'financial institutions' means 'credit institutions' as defined in Article 4(1) of Directive 2006/48/EC, 'investment firms' as defined in Article 3(1)(b) of Directive 2006/49/EC, and 'financial conglomerates' as defined in Article 2(14) of Directive 2002/87/EC, save that, with regard to Directive 2005/60/EC, 'financial institutions' means credit institutions and financial institutions as defined in Article 3(1) and (2) of that Directive;
- (2) 'competent authorities' means:
  - (i) competent authorities as defined in Directives 2006/48/EC, 2006/49/EC and 2007/64/EC and as referred to in Directive 2009/110/EC;
  - (ii) with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by credit and financial institutions; and
  - (iii) with regard to deposit guarantee schemes, bodies which administer deposit-guarantee schemes pursuant to Directive 94/19/EC, or, where the operation of the deposit-guarantee scheme is administered by a private company, the public authority supervising those schemes pursuant to that Directive.

#### Article 5

#### Legal status

1. The Authority shall be a Union body with legal personality.
2. In each Member State, the Authority shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.
3. The Authority shall be represented by its Chairperson.

#### Article 6

#### Composition

The Authority shall comprise:

- (1) a Board of Supervisors, which shall exercise the tasks set out in Article 43;
- (2) a Management Board, which shall exercise the tasks set out in Article 47;
- (3) a Chairperson, who shall exercise the tasks set out in Article 48;
- (4) an Executive Director, who shall exercise the tasks set out in Article 53;
- (5) a Board of Appeal, which shall exercise the tasks set out in Article 60.

#### Article 7

#### Seat

The Authority shall have its seat in London.

#### CHAPTER II

#### TASKS AND POWERS OF THE AUTHORITY

#### Article 8

#### Tasks and powers of the Authority

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



- (b) to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the acts referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, ensuring effective and consistent supervision of financial institutions, ensuring a coherent functioning of colleges of supervisors and taking actions, inter alia, in emergency situations;
- (c) to stimulate and facilitate the delegation of tasks and responsibilities among competent authorities;
- (d) to cooperate closely with the ESRB, in particular by providing the ESRB with the necessary information for the achievement of its tasks and by ensuring a proper follow up to the warnings and recommendations of the ESRB;
- (e) to organise and conduct peer review analyses of competent authorities, including issuing guidelines and recommendations and identifying best practices, in order to strengthen consistency in supervisory outcomes;
- (f) to monitor and assess market developments in the area of its competence, including where appropriate trends in credit, in particular, to households and SMEs;
- (g) to undertake economic analyses of markets to inform the discharge of the Authority's functions;
- (h) to foster depositor and investor protection;
- (i) to contribute to the consistent and coherent functioning of colleges of supervisors, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans, providing a high level of protection to depositors and investors throughout the Union and developing methods for the resolution of failing financial institutions and an assessment of the need for appropriate financing instruments, in accordance with Articles 21 to 26;
- (j) to fulfil any other specific tasks set out in this Regulation or in other legislative acts;
- (k) to publish on its website, and to update regularly, information relating to its field of activities, in particular, within the area of its competence, on registered financial institutions, in order to ensure information is easily accessible by the public;
- (l) to take over, as appropriate, all existing and ongoing tasks from the Committee of European Banking Supervisors (CEBS).
2. To achieve the tasks set out in paragraph 1, the Authority shall have the powers set out in this Regulation, in particular to:
- (a) develop draft regulatory technical standards in the specific cases referred to in Article 10;
- (b) develop draft implementing technical standards in the specific cases referred to in Article 15;
- (c) issue guidelines and recommendations, as laid down in Article 16;
- (d) issue recommendations in specific cases, as referred to in Article 17(3);
- (e) take individual decisions addressed to competent authorities in the specific cases referred to in Articles 18(3) and 19(3);
- (f) in cases concerning directly applicable Union law, take individual decisions addressed to financial institutions, in the specific cases referred to in Article 17(6), 18(4) and 19(4);
- (g) issue opinions to the European Parliament, the Council, or the Commission as provided for in Article 34;
- (h) collect the necessary information concerning financial institutions as provided for in Article 35;
- (i) develop common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of institutions and on consumer protection;
- (j) provide a centrally accessible database of registered financial institutions in the area of its competence where specified in the acts referred to in Article 1(2).

#### Article 9

#### **Tasks related to consumer protection and financial activities**

1. The Authority shall take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market, including by:
- (a) collecting, analysing and reporting on consumer trends;
- (b) reviewing and coordinating financial literacy and education initiatives by the competent authorities;
- (c) developing training standards for the industry; and
- (d) contributing to the development of common disclosure rules.

2. The Authority shall monitor new and existing financial activities and may adopt guidelines and recommendations with a view to promoting the safety and soundness of markets and convergence of regulatory practice.

3. The Authority may also issue warnings in the event that a financial activity poses a serious threat to the objectives laid down in Article 1(5).

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

5. The Authority may temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or, if so required, in the case of an emergency situation in accordance with and under the conditions laid down in Article 18.

The Authority shall review the decision referred to in the first subparagraph at appropriate intervals and at least every 3 months. If the decision is not renewed after a 3-month period, it shall automatically expire.

A Member State may request the Authority to reconsider its decision. In that case, the Authority shall decide, in accordance with the procedure set out in the second subparagraph of Article 44(1), whether it maintains its decision.

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

#### Article 10

### Regulatory technical standards

1. Where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards by means of delegated acts pursuant to Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts referred to in Article 1(2), the Authority may develop draft regulatory technical standards. The Authority shall submit its draft standards to the Commission for endorsement.

Regulatory technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based.

Before submitting them to the Commission, the Authority shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the opinion of the Banking Stakeholder Group referred to in Article 37.

Where the Authority submits a draft regulatory technical standard, the Commission shall immediately forward it to the European Parliament and the Council.

Within 3 months of receipt of a draft regulatory technical standard, the Commission shall decide whether to endorse it. The Commission may endorse the draft regulatory technical standards in part only, or with amendments, where the Union's interests so require.

Where the Commission intends not to endorse a draft regulatory technical standard or to endorse it in part or with amendments, it shall send the draft regulatory technical standard back to the Authority, explaining why it does not endorse it, or, as the case may be, explaining the reasons for its amendments. Within a period of 6 weeks, the Authority may amend the draft regulatory technical standard on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of that six-week period, the Authority has not submitted an amended draft regulatory technical standard, or has submitted a draft regulatory technical standard that is not amended in a way consistent with the Commission's proposed amendments, the Commission may adopt the regulatory technical standard with the amendments it considers relevant, or reject it.

The Commission may not change the content of a draft regulatory technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

2. Where the Authority has not submitted a draft regulatory technical standard within the time limit set out in the legislative acts referred to in Article 1(2), the Commission may request such a draft within a new time limit.

3. Only where the Authority does not submit a draft regulatory technical standard to the Commission within the time limits in accordance with paragraph 2, may the Commission adopt a regulatory technical standard by means of a delegated act without a draft from the Authority.

The Commission shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Commission shall also request the opinion or advice of the Banking Stakeholder Group referred to in Article 37.

The Commission shall immediately forward the draft regulatory technical standard to the European Parliament and the Council.

The Commission shall send its draft regulatory technical standard to the Authority. Within a period of 6 weeks, the Authority may amend the draft regulatory technical standard and submit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If on the expiry of the six-week period referred to in the fourth subparagraph, the Authority has not submitted an amended draft regulatory technical standard, the Commission may adopt the regulatory technical standard.

If the Authority has submitted an amended draft regulatory technical standard within the six-week period, the Commission may amend the draft regulatory technical standard on the basis of the Authority's proposed amendments or adopt the regulatory technical standard with the amendments it considers relevant. The Commission shall not change the content of the draft regulatory technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

4. The regulatory technical standards shall be adopted by means of regulations or decisions. They shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

#### Article 11

##### Exercise of the delegation

1. The power to adopt regulatory technical standards referred to in Article 10 shall be conferred on the Commission for a period of 4 years from 16 December 2010. The Commission shall draw up a report in respect of the delegated power not later than 6 months before the end of the 4-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 14.

2. As soon as it adopts a regulatory technical standard, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The power to adopt regulatory technical standards is conferred on the Commission subject to the conditions laid down in Articles 12 to 14.

#### Article 12

##### Revocation of the delegation

1. The delegation of power referred to in Article 10 may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke a delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation.

3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the regulatory technical standards already in force. It shall be published in the *Official Journal of the European Union*.

#### Article 13

##### Objections to regulatory technical standards

1. The European Parliament or the Council may object to a regulatory technical standard within a period of 3 months from the date of notification of the regulatory technical standard adopted by the Commission. At the initiative of the European Parliament or the Council that period shall be extended by 3 months.

Where the Commission adopts a regulatory technical standard which is the same as the draft regulatory technical standard submitted by the Authority, the period during which the European Parliament and the Council may object shall be 1 month from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by 1 month.

2. If, on the expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the regulatory technical standard, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

The regulatory technical standard may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If either the European Parliament or the Council objects to a regulatory technical standard within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the regulatory technical standard.

#### Article 14

##### Non-endorsement or amendment of draft regulatory technical standards

1. In the event that the Commission does not endorse a draft regulatory technical standard or amends it as provided for in Article 10, the Commission shall inform the Authority, the European Parliament and the Council, stating its reasons.

2. Where appropriate, the European Parliament or the Council may invite the responsible Commissioner, together with the Chairperson of the Authority, within 1 month of the notice referred to in paragraph 1, for an ad hoc meeting of the competent committee of the European Parliament or the Council to present and explain their differences.

#### Article 15

### Implementing technical standards

1. The Authority may develop implementing technical standards, by means of implementing acts pursuant to Article 291 TFEU, in the areas specifically set out in the legislative acts referred to in Article 1(2). Implementing technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be to determine the conditions of application of those acts. The Authority shall submit its draft implementing technical standards to the Commission for endorsement.

Before submitting draft implementing technical standards to the Commission, the Authority shall conduct open public consultations and shall analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the opinion of the Banking Stakeholder Group referred to in Article 37.

Where the Authority submits a draft implementing technical standard, the Commission shall immediately forward it to the European Parliament and the Council.

Within 3 months of receipt of a draft implementing technical standard, the Commission shall decide whether to endorse it. The Commission may extend that period by 1 month. The Commission may endorse the draft implementing technical standard in part only, or with amendments, where the Union's interests so require.

Where the Commission intends not to endorse a draft implementing technical standard or intends to endorse it in part or with amendments, it shall send it back to the Authority explaining why it does not intend to endorse it, or, as the case may be, explaining the reasons for its amendments. Within a period of 6 weeks, the Authority may amend the draft implementing technical standard on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fifth subparagraph, the Authority has not submitted an amended draft implementing technical standard, or has submitted a draft implementing technical standard that is not amended in a way consistent with the Commission's proposed amendments, the Commission may adopt the implementing technical standard with the amendments it considers relevant or reject it.

The Commission shall not change the content of a draft implementing technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

2. In cases where the Authority has not submitted a draft implementing technical standard within the time limit set out in the legislative acts referred to in Article 1(2), the Commission may request such a draft within a new time limit.

3. Only where the Authority does not submit a draft implementing technical standard to the Commission within the time limits in accordance with paragraph 2, may the Commission adopt an implementing technical standard by means of an implementing act without a draft from the Authority.

The Commission shall conduct open public consultations on draft implementing technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Commission shall also request the opinion or advice of the Banking Stakeholder Group referred to in Article 37.

The Commission shall immediately forward the draft implementing technical standard to the European Parliament and the Council.

The Commission shall send the draft implementing technical standard to the Authority. Within a period of 6 weeks, the Authority may amend the draft implementing technical standard and submit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fourth subparagraph, the Authority has not submitted an amended draft implementing technical standard, the Commission may adopt the implementing technical standard.

If the Authority has submitted an amended draft implementing technical standard within that six-week period, the Commission may amend the draft implementing technical standard on the basis of the Authority's proposed amendments or adopt the implementing technical standard with the amendments it considers relevant.

The Commission shall not change the content of the draft implementing technical standards prepared by the Authority without prior coordination with the Authority, as set out in this Article.

4. The implementing technical standards shall be adopted by means of regulations or decisions. They shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

*Article 16***Guidelines and recommendations**

1. The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to competent authorities or financial institutions.

2. The Authority shall, where appropriate, conduct open public consultations regarding the guidelines and recommendations and analyse the related potential costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, where appropriate, also request opinions or advice from the Banking Stakeholder Group referred to in Article 37.

3. The competent authorities and financial institutions shall make every effort to comply with those guidelines and recommendations.

Within 2 months of the issuance of a guideline or recommendation, each competent authority shall confirm whether it complies or intends to comply with that guideline or recommendation. In the event that a competent authority does not comply or does not intend to comply, it shall inform the Authority, stating its reasons.

The Authority shall publish the fact that a competent authority does not comply or does not intend to comply with that guideline or recommendation. The Authority may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority for not complying with that guideline or recommendation. The competent authority shall receive advanced notice of such publication.

If required by that guideline or recommendation, financial institutions shall report, in a clear and detailed way, whether they comply with that guideline or recommendation.

4. In the report referred to in Article 43(5) the Authority shall inform the European Parliament, the Council and the Commission of the guidelines and recommendations that have been issued, stating which competent authority has not complied with them, and outlining how the Authority intends to ensure that the competent authority concerned follow its recommendations and guidelines in the future.

*Article 17***Breach of Union law**

1. Where a competent authority has not applied the acts referred to in Article 1(2), or has applied them in a way which appears to be a breach of Union law, including the regulatory technical standards and implementing technical standards established in accordance with Articles 10 to 15, in particular by failing to ensure that a financial institution satisfies the requirements laid down in those acts, the Authority shall act in accordance with the powers set out in paragraphs 2, 3 and 6 of this Article.

2. Upon a request from one or more competent authorities, the European Parliament, the Council, the Commission or the Banking Stakeholder Group, or on its own initiative, and after having informed the competent authority concerned, the Authority may investigate the alleged breach or non-application of Union law.

Without prejudice to the powers laid down in Article 35, the competent authority shall, without delay, provide the Authority with all information which the Authority considers necessary for its investigation.

3. The Authority may, not later than 2 months from initiating its investigation, address a recommendation to the competent authority concerned setting out the action necessary to comply with Union law.

The competent authority shall, within 10 working days of receipt of the recommendation, inform the Authority of the steps it has taken or intends to take to ensure compliance with Union law.

4. Where the competent authority has not complied with Union law within 1 month from receipt of the Authority's recommendation, the Commission may, after having been informed by the Authority, or on its own initiative, issue a formal opinion requiring the competent authority to take the action necessary to comply with Union law. The Commission's formal opinion shall take into account the Authority's recommendation.

The Commission shall issue such a formal opinion no later than 3 months after the adoption of the recommendation. The Commission may extend this period by 1 month.

The Authority and the competent authorities shall provide the Commission with all necessary information.

5. The competent authority shall, within 10 working days of receipt of the formal opinion referred to in paragraph 4, inform the Commission and the Authority of the steps it has taken or intends to take to comply with that formal opinion.

6. Without prejudice to the powers of the Commission pursuant to Article 258 TFEU, where a competent authority does not comply with the formal opinion referred to in paragraph 4 within the period of time specified therein, and where it is necessary to remedy in a timely manner such non-compliance in order to maintain or restore neutral conditions of competition in the market or ensure the orderly functioning and integrity of the financial system, the Authority may, where the relevant requirements of the acts referred to in Article 1(2) are directly applicable to financial institutions, adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under Union law including the cessation of any practice.

The decision of the Authority shall be in conformity with the formal opinion issued by the Commission pursuant to paragraph 4.

7. Decisions adopted under paragraph 6 shall prevail over any previous decision adopted by the competent authorities on the same matter.

When taking action in relation to issues which are subject to a formal opinion pursuant to paragraph 4 or a decision pursuant to paragraph 6, competent authorities shall comply with the formal opinion or the decision, as the case may be.

8. In the report referred to in Article 43(5), the Authority shall set out which competent authorities and financial institutions have not complied with the formal opinions or decisions referred to in paragraphs 4 and 6 of this Article.

#### Article 18

##### Action in emergency situations

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

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

2. The Council, in consultation with the Commission and the ESRB and, where appropriate, the ESAs, may adopt a decision addressed to the Authority, determining the existence of an emergency situation for the purposes of this Regulation, following a request by the Authority, the Commission or the ESRB. The Council shall review that decision at appropriate intervals and at least once a month. If the decision is not renewed at the end of a 1-month period, it shall automatically expire. The Council may declare the discontinuation of the emergency situation at any time.

Where the ESRB or the Authority considers that an emergency situation may arise, it shall issue a confidential recommendation addressed to the Council and provide it with an assessment of the situation. The Council shall then assess the need for a meeting. In that process, due care of confidentiality shall be guaranteed.

If the Council determines the existence of an emergency situation, it shall duly inform the European Parliament and the Commission without delay.

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

4. Without prejudice to the powers of the Commission pursuant to Article 258 TFEU, where a competent authority does not comply with the decision of the Authority referred to in paragraph 3 within the period laid down in that decision, the Authority may, where the relevant requirements laid down in the legislative acts referred to in Article 1(2) including in regulatory technical standards and implementing technical standards adopted in accordance with those acts are directly applicable to financial institutions, adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under that legislation, including the cessation of any practice. This shall apply only in situations in which a competent authority does not apply the legislative acts referred to in Article 1(2), including regulatory technical standards and implementing technical standards adopted in accordance with those acts, or applies them in a way which appears to be a manifest breach of those acts, and where urgent remedying is necessary to restore the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union.

5. Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter.

Any action by the competent authorities in relation to issues which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.

#### Article 19

##### Settlement of disagreements between competent authorities in cross-border situations

1. Without prejudice to the powers laid down in Article 17, where a competent authority disagrees about the procedure or content of an action or inaction of a competent authority of another Member State in cases specified in the acts referred to in Article 1(2), the Authority, at the request of one or more of the competent authorities concerned, may assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 of this Article.

In cases specified in the legislation referred to in Article 1(2), and where on the basis of objective criteria, disagreement between competent authorities from different Member States can be determined, the Authority may, on its own initiative, assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4.

2. The Authority shall set a time limit for conciliation between the competent authorities taking into account any relevant time periods specified in the acts referred to in Article 1(2) and the complexity and urgency of the matter. At that stage the Authority shall act as a mediator.

3. If the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority may, in accordance with the procedure set out in the third and fourth subparagraph of Article 44(1) take a decision requiring them to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with Union law.

4. Without prejudice to the powers of the Commission pursuant to Article 258 TFEU, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial institution complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2), the Authority may adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under Union law, including the cessation of any practice.

5. Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter. Any action by the competent authorities in relation to facts which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.

6. In the report referred to in Article 50(2), the Chairperson of the Authority shall set out the nature and type of disagreements between competent authorities, the agreements reached and the decisions taken to settle such disagreements.

#### Article 20

### Settlement of disagreements between competent authorities across sectors

The Joint Committee shall, in accordance with the procedure laid down in Articles 19 and 56, settle cross-sectoral disagreements that may arise between competent authorities as defined in Article 4(2) of this Regulation, of Regulation (EU) 1094/2010 and of Regulation (EU) 1095/2010 respectively.

#### Article 21

### Colleges of supervisors

1. The Authority shall contribute to promoting and monitoring the efficient, effective and consistent functioning of the colleges of supervisors referred to in Directive 2006/48/EC and foster the coherence of the application of Union law among the colleges of supervisors. With the objective of converging supervisory best practices, staff from the Authority shall be able to participate in the activities of the colleges of supervisors, including on-site examinations, carried out jointly by two or more competent authorities.

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

For the purpose of this paragraph and of paragraph 1 of this Article, the Authority shall be considered a 'competent authority' within the meaning of the relevant legislation.

The Authority may:

- (a) collect and share all relevant information in cooperation with the competent authorities in order to facilitate the work of the college and establish and manage a central system to make such information accessible to the competent authorities in the college;
- (b) initiate and coordinate Union-wide stress tests in accordance with Article 32 to assess the resilience of financial institutions, in particular the systemic risk posed by financial institutions as referred to in Article 23, to adverse market developments, and evaluate the potential for systemic risk to increase in situations of stress, ensuring that a consistent methodology is applied at the national level to such tests and, where appropriate, address a recommendation to the competent authority to correct issues identified in the stress test;
- (c) promote effective and efficient supervisory activities, including evaluating the risks to which financial institutions are or might be exposed as determined under the supervisory review process or in stress situations;
- (d) oversee, in accordance with the tasks and powers specified in this Regulation, the tasks carried out by the competent authorities; and
- (e) request further deliberations of a college in any cases where it considers that the decision would result in an incorrect application of Union law or would not contribute to the objective of convergence of supervisory practices. It may also require the consolidating supervisor to schedule a meeting of the college or add a point to the agenda of a meeting.

3. The Authority may develop draft regulatory and implementing technical standards to ensure uniform conditions of application with respect to the provisions regarding the operational functioning of colleges of supervisors and issue guidelines and recommendations adopted pursuant to Article 16 to promote convergence in supervisory functioning and best practices adopted by the colleges of supervisors.

4. The Authority shall have a legally binding mediation role to resolve disputes between competent authorities in accordance with the procedure set out in Article 19. The Authority may take supervisory decisions directly applicable to the institution concerned in accordance with Article 19.

#### Article 22

##### General provisions

1. The Authority shall duly consider systemic risk as defined by Regulation (EU) No 1092/2010. It shall address any risk of disruption in financial services that:

- (a) is caused by an impairment of all or parts of the financial system; and
- (b) has the potential to have serious negative consequences for internal market and the real economy.

The Authority shall consider, where appropriate, the monitoring and assessment of systemic risk as developed by the ESRB and the Authority and respond to warnings and recommendations by the ESRB in accordance with Article 17 of Regulation (EU) No 1092/2010.

2. The Authority shall, in collaboration with the ESRB, develop a common set of quantitative and qualitative indicators (risk dashboard) to identify and measure systemic risk.

The Authority shall also develop an adequate stress-testing regime to help identifying those institutions that may pose systemic risk. These institutions shall be subject to strengthened supervision, and where necessary, to the recovery and resolution procedures referred to in Article 25.

3. Without prejudice to the acts referred to in Article 1(2), the Authority shall draw up, as necessary, additional guidelines and recommendations for financial institutions, to take account of the systemic risk posed by them.

The Authority shall ensure that the systemic risk posed by financial institutions is taken into account when developing draft regulatory and implementing technical standards in the areas laid down in the legislative acts referred to in Article 1(2).

4. Upon a request from one or more competent authorities, the European Parliament, the Council or the Commission, or on its own initiative, the Authority may conduct an inquiry into a particular type of financial institution or type of product or type of conduct in order to assess potential threats to the stability of the financial system and make appropriate recommendations for action to the competent authorities concerned.

For those purposes, the Authority may use the powers conferred on it under this Regulation, including Article 35.

5. The Joint Committee shall ensure overall and cross-sectoral coordination of the activities carried out in accordance with this Article.

#### Article 23

##### Identification and measurement of systemic risk

1. The Authority shall, in consultation with the ESRB, develop criteria for the identification and measurement of systemic risk and an adequate stress-testing regime which includes an evaluation of the potential for systemic risk posed by financial institutions to increase in situations of stress. The financial institutions that may pose a systemic risk shall be subject to strengthened supervision, and where necessary, the recovery and resolution procedures referred to in Article 25.

2. The Authority shall take fully into account the relevant international approaches when developing the criteria for the identification and measurement of systemic risk posed by financial institutions, including those established by the Financial Stability Board, the International Monetary Fund and the Bank for International Settlements.

#### Article 24

##### Permanent capacity to respond to systemic risks

1. The Authority shall ensure it has specialised and ongoing capacity to respond effectively to the materialisation of systemic risks as referred to in Articles 22 and 23, in particular, with respect to institutions that pose a systemic risk.

2. The Authority shall fulfil the tasks conferred upon it in this Regulation and in the legislation referred to in Article 1(2), and shall contribute to ensuring a coherent and coordinated crisis management and resolution regime in the Union.

#### Article 25

##### Recovery and resolution procedures

1. The Authority shall contribute to and participate actively in the development and coordination of effective and consistent recovery and resolution plans, procedures in emergency situations and preventive measures to minimise the systemic impact of any failure.

2. The Authority may identify best practices aimed at facilitating the resolution of failing institutions and, in particular, cross-border groups, in ways which avoid contagion, ensuring that appropriate tools, including sufficient resources, are available and allow the institution or the group to be resolved in an orderly, cost-efficient and timely manner.

3. The Authority may develop regulatory and implementing technical standards as specified in the legislative acts referred to in Article 1(2) in accordance with the procedure laid down in Articles 10 to 15.



*Article 26***European system of deposit guarantee schemes**

1. The Authority shall contribute to strengthening the European system of national deposit guarantee schemes by acting under the powers conferred to it in this Regulation to ensure the correct application of Directive 94/19/EC with the aim of ensuring that national deposit guarantee schemes are adequately funded by contributions from financial institutions including from those financial institutions established and taking deposits within the Union but headquartered outside the Union as provided for in Directive 94/19/EC and provide a high level of protection to all depositors in a harmonised framework throughout the Union, which leaves the stabilising safeguard role of mutual guarantee schemes intact, provided they comply with Union legislation.
2. Article 16 concerning the Authority's powers to adopt guidelines and recommendations shall apply to deposit guarantee schemes.
3. The Authority may develop regulatory and implementing technical standards as specified in the legislative acts referred to in Article 1(2) in accordance with the procedure laid down in Articles 10 to 15.
4. The review of this Regulation provided for in Article 81 shall, in particular, examine the convergence of the European system of national deposit guarantee schemes.

*Article 27***European system of bank resolution and funding arrangements**

1. The Authority shall contribute to developing methods for the resolution of failing financial institutions, in particular those that may pose a systemic risk, in ways which avoid contagion and allow them to be wound down in an orderly and timely manner, including, where applicable, coherent and robust funding mechanisms as appropriate.
2. The Authority shall contribute to the assessment of the need for a system of coherent, robust and credible funding mechanisms, with appropriate financing instruments linked to a set of coordinated national crisis management arrangements.

The Authority shall contribute to the work on the level playing field issues and cumulative impacts of any systems of levies and contributions on financial institutions that may be introduced to ensure fair burden sharing and incentives to contain systemic risk as a part of a coherent and credible resolution framework.

The review of this Regulation provided for in Article 81 shall, in particular, examine the possible enhancement of the role of the Authority in a framework of crisis prevention, management and resolution, and, if necessary, the creation of a European resolution fund.

*Article 28***Delegation of tasks and responsibilities**

1. Competent authorities may, with the consent of the delegate, delegate tasks and responsibilities to the Authority or other competent authorities subject to the conditions set out in this Article. Member States may set out specific arrangements regarding the delegation of responsibilities that have to be complied with before their competent authorities enter into such delegation agreements, and may limit the scope of delegation to what is necessary for the effective supervision of cross-border financial institutions or groups.
2. The Authority shall stimulate and facilitate the delegation of tasks and responsibilities between competent authorities by identifying those tasks and responsibilities that can be delegated or jointly exercised and by promoting best practices.
3. The delegation of responsibilities shall result in the reallocation of competences laid down in the acts referred to in Article 1(2). The law of the delegate authority shall govern the procedure, enforcement and administrative and judicial review relating to the delegated responsibilities.
4. The competent authorities shall inform the Authority of delegation agreements into which they intend to enter. They shall put the agreements into effect at the earliest 1 month after informing the Authority.

The Authority may give an opinion on the intended agreement within 1 month of being informed.

The Authority shall publish, by appropriate means, any delegation agreement as concluded by the competent authorities, in order to ensure that all parties concerned are informed appropriately.

*Article 29***Common supervisory culture**

1. The Authority shall play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union. The Authority shall carry out, at a minimum, the following activities:
  - (a) providing opinions to competent authorities;
  - (b) promoting an effective bilateral and multilateral exchange of information between competent authorities, with full respect for the applicable confidentiality and data protection provisions provided for in the relevant Union legislation;
  - (c) contributing to developing high-quality and uniform supervisory standards, including reporting standards, and international accounting standards in accordance with Article 1(3);

- (d) reviewing the application of the relevant regulatory and implementing technical standards adopted by the Commission, and of the guidelines and recommendations issued by the Authority and proposing amendments where appropriate; and
- (e) establishing sectoral and cross-sectoral training programmes, facilitating personnel exchanges and encouraging competent authorities to intensify the use of secondment schemes and other tools.

2. The Authority may, as appropriate, develop new practical instruments and convergence tools to promote common supervisory approaches and practices.

#### Article 30

##### Peer reviews of competent authorities

1. The Authority shall periodically organise and conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency in supervisory outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison between the authorities reviewed. When conducting peer reviews, existing information and evaluations already made with regard to the competent authority concerned shall be taken into account.

2. The peer review shall include an assessment of, but shall not be limited to:

- (a) the adequacy of resources and governance arrangements of the competent authority, with particular regard to the effective application of the regulatory technical standards and implementing technical standards referred to in Articles 10 to 15 and of the acts referred to in Article 1(2) and the capacity to respond to market developments;
- (b) the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted pursuant to Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;
- (c) best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;
- (d) the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.

3. On the basis of a peer review, the Authority may issue guidelines and recommendations pursuant to Article 16. In accordance with Article 16(3), the competent authorities shall endeavour to follow those guidelines and recommendations. The Authority shall take into account the outcome of the peer review when developing draft regulatory technical or implementing technical standards in accordance with Articles 10 to 15.

4. The Authority shall make the best practices that can be identified from those peer reviews publicly available. In addition, all other results of peer reviews may be disclosed publicly, subject to the agreement of the competent authority that is the subject of the peer review.

#### Article 31

##### Coordination function

The Authority shall fulfil a general coordination role between competent authorities, in particular in situations where adverse developments could potentially jeopardise the orderly functioning and integrity of financial markets or the stability of the financial system in the Union.

The Authority shall promote a coordinated Union response, *inter alia*, by:

- (a) facilitating the exchange of information between the competent authorities;
- (b) determining the scope and, where possible and appropriate, verifying the reliability of information that should be made available to all the competent authorities concerned;
- (c) without prejudice to Article 19, carrying out non-binding mediation upon a request from the competent authorities or on its own initiative;
- (d) notifying the ESRB of any potential emergency situations without delay;
- (e) taking all appropriate measures in case of developments which may jeopardise the functioning of the financial markets with a view to facilitating the coordination of actions undertaken by relevant competent authorities;
- (f) centralising information received from competent authorities in accordance with Articles 21 and 35 as the result of the regulatory reporting obligations for institutions active in more than one Member State. The Authority shall share that information with the other competent authorities concerned.

#### Article 32

##### Assessment of market developments

1. The Authority shall monitor and assess market developments in the area of its competence and, where necessary, inform the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), the ESRB and the European Parliament, the Council and the Commission about the relevant micro-prudential trends, potential risks and vulnerabilities. The Authority shall include in its assessments an economic analysis of the markets in which financial institutions operate and an assessment of the impact of potential market developments on such institutions.

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

- (a) common methodologies for assessing the effect of economic scenarios on an institution's financial position;
- (b) common approaches to communication on the outcomes of these assessments of the resilience of financial institutions;
- (c) common methodologies for assessing the effect of particular products or distribution processes on an institution's financial position and on depositors, investors and customer information.

3. Without prejudice to the tasks of the ESRB set out in Regulation (EU) No 1092/2010, the Authority shall, at least once a year, and more frequently as necessary, provide assessments to the European Parliament, the Council, the Commission and the ESRB of trends, potential risks and vulnerabilities in its area of competence.

The Authority shall include a classification of the main risks and vulnerabilities in these assessments and, where necessary, recommend preventative or remedial actions.

4. The Authority shall ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities by closely cooperating with the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) through the Joint Committee.

#### Article 33

##### International relations

1. Without prejudice to the respective competences of the Member States and the Union institutions, the Authority may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries. Those arrangements shall not create legal obligations in respect of the Union and its Member States nor shall they prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with those third countries.

2. The Authority shall assist in preparing equivalence decisions pertaining to supervisory regimes in third countries in accordance with the acts referred to in Article 1(2).

3. In the report referred to in Article 43(5), the Authority shall set out the administrative arrangements agreed upon with international organisations or administrations in third countries and the assistance provided in preparing equivalence decisions.

#### Article 34

##### Other tasks

1. The Authority may, upon a request from the European Parliament, the Council or the Commission, or on its own initiative, provide opinions to the European Parliament, the Council and the Commission on all issues related to its area of competence.

2. With regard to prudential assessments of mergers and acquisitions falling within the scope of Directive 2006/48/EC, as amended by Directive 2007/44/EC, and which according to that Directive require consultation between competent authorities from two or more Member States, the Authority may, on application of one of the competent authorities concerned, issue and publish an opinion on a prudential assessment, except in relation to the criteria in Article 19a(1)(e) of Directive 2006/48/EC. The opinion shall be issued promptly and in any event before the end of the assessment period in accordance with Directive 2006/48/EC, as amended by Directive 2007/44/EC. Article 35 shall apply to the areas in respect of which the Authority may issue an opinion.

#### Article 35

##### Collection of information

1. At the request of the Authority, the competent authorities of the Member States shall provide the Authority with all the necessary information to carry out the duties assigned to it by this Regulation, provided that they have legal access to the relevant information and that the request for information is necessary in relation to the nature of the duty in question.

2. The Authority may also request information to be provided at recurring intervals and in specified formats. Such requests shall, where possible, be made using common reporting formats.

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

4. Before requesting information in accordance with this Article and in order to avoid the duplication of reporting obligations, the Authority shall take account of any relevant existing statistics produced and disseminated by the European Statistical System and the European System of Central Banks.

5. Where information is not available or is not made available by the competent authorities in a timely fashion, the Authority may address a duly justified and reasoned request to other supervisory authorities, to the ministry responsible for finance where it has at its disposal prudential information, to the national central bank or to the statistical office of the Member State concerned.

6. Where information is not available or is not made available under paragraph 1 or 5 in a timely fashion, the Authority may address a duly justified and reasoned request directly to the relevant financial institutions. The reasoned request shall explain why the information concerning the respective individual financial institutions is necessary.

The Authority shall inform the relevant competent authorities of requests in accordance with this paragraph and with paragraph 5.

At the request of the Authority, the competent authorities shall assist the Authority in collecting the information.

7. The Authority may use confidential information received pursuant to this Article only for the purposes of carrying out the duties assigned to it by this Regulation.

#### Article 36

##### Relationship with the ESRB

1. The Authority shall cooperate closely and on a regular basis with the ESRB.

2. The Authority shall provide the ESRB with regular and timely information necessary for the achievement of its tasks. Any data necessary for the achievement of its tasks that are not in summary or aggregate form shall be provided, without delay, to the ESRB upon a reasoned request, as specified in Article 15 of Regulation (EU) No 1092/2010. The Authority, in cooperation with the ESRB, shall have in place adequate internal procedures for the transmission of confidential information, in particular information regarding individual financial institutions.

3. The Authority shall, in accordance with paragraphs 4 and 5, ensure a proper follow-up to ESRB warnings and recommendations referred to in Article 16 of Regulation (EU) No 1092/2010.

4. On receipt of a warning or recommendation from the ESRB addressed to the Authority, the Authority shall convene a meeting of the Board of Supervisors without delay and assess the implications of such a warning or recommendation for the fulfilment of its tasks.

It shall decide, by the relevant decision-making procedure, on any actions to be taken in accordance with the powers conferred upon it by this Regulation for addressing the issues identified in the warnings and recommendations.

If the Authority does not act on a recommendation, it shall explain to the ESRB and the Council its reasons for not doing so.

5. On receipt of a warning or recommendation from the ESRB addressed to a competent national supervisory authority, the Authority shall, where relevant, use the powers conferred upon it by this Regulation to ensure a timely follow-up.

Where the addressee intends not to follow the recommendation of the ESRB, it shall inform and discuss with the Board of Supervisors its reasons for not acting.

The competent authority shall take due account of the views of the Board of Supervisors when informing the Council and the ESRB in accordance with Article 17 of Regulation (EU) No 1092/2010.

6. In discharging the tasks set out in this Regulation, the Authority shall take the utmost account of the warnings and recommendations of the ESRB.

#### Article 37

##### Banking Stakeholder Group

1. To help facilitate consultation with stakeholders in areas relevant to the tasks of the Authority, a Banking Stakeholder Group shall be established. The Banking Stakeholder Group shall be consulted on actions taken in accordance with Articles 10 to 15 concerning regulatory technical standards and implementing technical standards and, to the extent that these do not concern individual financial institutions, Article 16 concerning guidelines and recommendations. If actions must be taken urgently and consultation becomes impossible, the Banking Stakeholder Group shall be informed as soon as possible.

The Banking Stakeholder Group shall meet at least four times a year.

2. The Banking Stakeholder Group shall be composed of 30 members, representing in balanced proportions credit and investment institutions operating in the Union, their employees' representatives as well as consumers, users of banking services and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial institutions, three of whom shall represent cooperative and savings banks.

3. The members of the Banking Stakeholder Group shall be appointed by the Board of Supervisors, following proposals from the relevant stakeholders. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across the Union.

4. The Authority shall provide all necessary information subject to professional secrecy as set out in Article 70 and ensure adequate secretarial support for the Banking Stakeholder Group. Adequate compensation shall be provided to members of the Banking Stakeholder Group representing non-profit organisations, excluding industry representatives. The Banking Stakeholder Group may establish working groups on technical issues. Members of the Banking Stakeholder Group shall serve for a period of 2 1/2 years, following which a new selection procedure shall take place.

The members of the Banking Stakeholder Group may serve two successive terms.

5. The Banking Stakeholder Group may submit opinions and advice to the Authority on any issue related to the tasks of the Authority with particular focus on the tasks set out in Articles 10 to 16 and Articles 29, 30 and 32.

6. The Banking Stakeholder Group shall adopt its rules of procedure by a majority of two-thirds of its members.

7. The Authority shall make public the opinions and advice of the Banking Stakeholder Group and the results of its consultations.

#### Article 38

##### Safeguards

1. The Authority shall ensure that no decision adopted pursuant to Article 18 or 19 impinges in any way on the fiscal responsibilities of Member States.

2. Where a Member State considers that a decision taken pursuant to Article 19(3) impinges on its fiscal responsibilities, it may notify the Authority and the Commission within 2 weeks after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority.

In its notification, the Member State shall clearly and specifically explain why and how the decision impinges on its fiscal responsibilities.

In the case of such notification, the decision of the Authority shall be suspended.

Within a period of 1 month from the notification by the Member State, the Authority shall inform the Member State as to whether it maintains its decision or whether it amends or revokes it. If the decision is maintained or amended, the Authority shall state that fiscal responsibilities are not affected.

Where the Authority maintains its decision, the Council shall take a decision, by a majority of the votes cast, at one of its meetings not later than 2 months after the Authority has informed the Member State as set out in the fourth subparagraph, as to whether the Authority's decision is maintained.

Where the Council, after having considered the matter, does not take a decision to maintain the Authority's decision in accordance with the fifth subparagraph, the Authority's decision shall be terminated.

3. Where a Member State considers that a decision taken pursuant to Article 18(3) impinges on its fiscal responsibilities, it may notify the Authority, the Commission and the Council within 3 working days after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority.

In its notification, the Member State shall clearly and specifically explain why and how the decision impinges on its fiscal responsibilities.

In the case of such notification, the decision of the Authority shall be suspended.

The Council shall, within 10 working days, convene a meeting and take a decision, by a simple majority of its members, as to whether the Authority's decision is revoked.

Where the Council, after having considered the matter, does not take a decision to revoke the Authority's decision in accordance with the fourth subparagraph, the suspension of the Authority's decision shall be terminated.

4. Where the Council has taken a decision in accordance with paragraph 3 not to revoke a decision of the Authority relating to Article 18(3), and the Member State concerned still considers that the decision of the Authority impinges upon its fiscal responsibilities, that Member State may notify the Commission and the Authority and request the Council to re-examine the matter. The Member State concerned shall clearly set out the reasons for its disagreement with the decision of the Council.

Within a period of 4 weeks after the notification referred to in the first subparagraph, the Council shall confirm its original decision or take a new decision in accordance with paragraph 3.

The period of 4 weeks may be extended by four additional weeks by the Council, if the particular circumstances of the case so require.

5. Any abuse of this Article, in particular in relation to a decision by the Authority which does not have a significant or material fiscal impact, shall be prohibited as incompatible with the internal market.

#### Article 39

##### Decision-making procedures

1. Before taking the decisions provided for in this Regulation, the Authority shall inform any named addressee of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter. This applies *mutatis mutandis* to recommendations as referred to in Article 17(3).

2. The decisions of the Authority shall state the reasons on which they are based.

3. The addressees of decisions of the Authority shall be informed of the legal remedies available under this Regulation.

4. Where the Authority has taken a decision pursuant to Article 18(3) or (4), it shall review that decision at appropriate intervals.

5. The decisions which the Authority takes pursuant to Article 17, 18 or 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 interests of financial institutions in the protection of their business secrets or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the Union.

CHAPTER III  
ORGANISATION

SECTION 1  
**Board of Supervisors**

*Article 40*

**Composition**

1. The Board of Supervisors shall be composed of:
  - (a) the Chairperson, who shall be non-voting;
  - (b) the head of the national public authority competent for the supervision of credit institutions in each Member State, who shall meet in person at least twice a year;
  - (c) one representative of the Commission, who shall be non-voting;
  - (d) one representative of the European Central Bank, who shall be non-voting;
  - (e) one representative of the ESRB, who shall be non-voting;
  - (f) one representative of each of the other two European Supervisory Authorities, who shall be non-voting.
2. The Board of Supervisors shall convene meetings with the Banking Stakeholder Group regularly, at least twice a year.
3. Each competent authority shall be responsible for nominating a high-level alternate from its authority, who may replace the member of the Board of Supervisors referred to in paragraph 1(b), where that person is prevented from attending.
4. Where the authority referred to in paragraph 1(b) is not a central bank, the member of the Board of Supervisors referred to in that point may decide to bring a representative from the Member State's central bank, who shall be non-voting.
5. In Member States where more than one authority is responsible for the supervision according to this Regulation, those authorities shall agree on a common representative. Nevertheless, 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 member referred to in paragraph 1(b), that member may bring a representative from the relevant national authority, who shall be non-voting.
6. For the purpose of acting within the scope of Directive 94/19/EC, the member of the Board of Supervisors referred to in paragraph 1(b) may, where appropriate, be accompanied by a representative from the relevant bodies which administer deposit-guarantee schemes in each Member State, who shall be non-voting.
7. The Board of Supervisors may decide to admit observers.

The Executive Director may participate in meetings of the Board of Supervisors, without the right to vote.

*Article 41*

**Internal committees and panels**

1. The Board of Supervisors may establish internal committees or panels for specific tasks attributed to the Board of Supervisors, and may provide for the delegation of certain clearly defined tasks and decisions to internal committees or panels, to the Management Board or to the Chairperson.
2. For the purposes of Article 19, the Board of Supervisors shall convoke an independent panel to facilitate an impartial settlement of the disagreement, consisting of the Chairperson and two of its members, who are not representatives of the competent authorities which are party to the disagreement and who have neither any interest in the conflict nor direct links to the competent authorities concerned.
3. Subject to Article 19(2), the panel shall propose a decision for final adoption by the Board of Supervisors, in accordance with the procedure set out in the third subparagraph of Article 44(1).
4. The Board of Supervisors shall adopt rules of procedure for the panel referred to in paragraph 2.

*Article 42*

**Independence**

When carrying out the tasks conferred upon it by this Regulation, the Chairperson and the voting members of the Board of Supervisors shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Board of Supervisors in the performance of their tasks.

*Article 43*

**Tasks**

1. The Board of Supervisors shall give guidance to the work of the Authority and shall be in charge of taking the decisions referred to in Chapter II.
2. The Board of Supervisors shall adopt the opinions, recommendations, and decisions, and issue the advice referred to in Chapter II.
3. The Board of Supervisors shall appoint the Chairperson.
4. The Board of Supervisors shall adopt, before 30 September of each year, on the basis of a proposal by the Management Board, the work programme of the Authority for the coming year, and shall transmit it for information to the European Parliament, the Council and the Commission.

The work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

5. The Board of Supervisors shall, on the basis of a proposal by the Management Board, adopt the annual report on the activities of the Authority, including on the performance of the Chairperson's duties, on the basis of the draft report referred to in Article 53(7) and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.

6. The Board of Supervisors shall adopt the multi-annual work programme of the Authority, and shall transmit it for information to the European Parliament, the Council and the Commission.

The multi-annual work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

7. The Board of Supervisors shall adopt the budget in accordance with Article 63.

8. The Board of Supervisors shall exercise disciplinary authority over the Chairperson and the Executive Director and may remove them from office in accordance with Article 48(5) or 51(5) respectively.

#### Article 44

##### **Decision-making**

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

With regard to the acts specified in Articles 10 to 16 and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.

With regard to decisions in accordance with Article 19(3), for decisions taken by the consolidating supervisor, the decision proposed by the panel shall be considered as adopted, if approved by a simple majority, unless it is rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.

For all other decisions in accordance with Article 19(3), the decision proposed by the panel shall be adopted by a simple majority of the members of the Board of Supervisors. Each member shall have one vote.

2. Meetings of the Board of Supervisors shall be convened by the Chairperson at his own initiative or at the request of one third of its members, and shall be chaired by the Chairperson.

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

4. The rules of procedure shall set out in detail the arrangements governing voting, including, where appropriate, the rules governing quorums. The non-voting members and the observers, with the exception of the Chairperson and the Executive Director, shall not attend any discussions within the Board of Supervisors relating to individual financial institutions, unless otherwise provided for in Article 75(3) or in the acts referred to in Article 1(2).

#### SECTION 2

##### **Management Board**

#### Article 45

##### **Composition**

1. The Management Board shall be composed of the Chairperson and six other members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors.

Other than the Chairperson, each member of the Management Board shall have an alternate, who may replace him if he is prevented from attending.

The term of office of the members elected by the Board of Supervisors shall be 2 1/2 years. That term may be extended once. The composition of the Management Board shall be balanced and proportionate and shall reflect the Union as a whole. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.

2. Decisions by the Management Board shall be adopted on the basis of a majority of the members present. Each member shall have one vote.

The Executive Director and a representative of the Commission shall participate in meetings of the Management Board without the right to vote.

The representative of the Commission shall have the right to vote on matters referred to in Article 63.

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

3. Meetings of the Management Board shall be convened by the Chairperson at his own initiative or at the request of at least a third of its members, and shall be chaired by the Chairperson.

The Management Board shall meet prior to every meeting of the Board of Supervisors and as often as the Management Board deems necessary. It shall meet at least five times a year.

4. The members of the Management Board may, subject to the rules of procedure, be assisted by advisers or experts. The non-voting members, with the exception of the Executive Director, shall not attend any discussions within the Management Board relating to individual financial institutions.

*Article 46***Independence**

The members of the Management Board shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Management Board in the performance of their tasks.

*Article 47***Tasks**

1. The Management Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with this Regulation.

2. The Management Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme.

3. The Management Board shall exercise its budgetary powers in accordance with Articles 63 and 64.

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

5. The Management Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 72.

6. The Management Board shall propose an annual report on the activities of the Authority, including on the Chairperson's duties, on the basis of the draft report referred to in Article 53(7) to the Board of Supervisors for approval.

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

8. The Management Board shall appoint and remove the members of the Board of Appeal in accordance with Article 58(3) and (5).

*SECTION 3***Chairperson***Article 48***Appointment and tasks**

1. The Authority shall be represented by a Chairperson, who shall be a full-time independent professional.

The Chairperson shall be responsible for preparing the work of the Board of Supervisors and shall chair the meetings of the Board of Supervisors and the Management Board.

2. The Chairperson shall be appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open selection procedure.

Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person.

The Board of Supervisors shall also elect, from among its members, an alternate who shall carry out the functions of the Chairperson in his absence. That alternate shall not be elected from among the members of the Management Board.

3. The Chairperson's term of office shall be 5 years and may be extended once.

4. In the course of the 9 months preceding the end of the 5-year term of office of the Chairperson, the Board of Supervisors shall evaluate:

- (a) the results achieved in the first term of office and the way they were achieved;
- (b) the Authority's duties and requirements in the coming years.

The Board of Supervisors, taking into account the evaluation, may extend the term of office of the Chairperson once subject to confirmation by the European Parliament.

5. The Chairperson may be removed from office only by the European Parliament following a decision of the Board of Supervisors.

The Chairperson shall not prevent the Board of Supervisors from discussing matters relating to the Chairperson, in particular the need for his removal, and shall not be involved in deliberations concerning such a matter.

*Article 49***Independence**

Without prejudice to the role of the Board of Supervisors in relation to the tasks of the Chairperson, the Chairperson shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the Chairperson in the performance of his tasks.



In accordance with the Staff Regulations referred to in Article 68, the Chairperson shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

#### Article 50

##### Report

1. The European Parliament and the Council may invite the Chairperson or his alternate to make a statement, while fully respecting his independence. The Chairperson shall make a statement before the European Parliament and answer any questions put by its members, whenever so requested.

2. The Chairperson shall report in writing on the main activities of the Authority to the European Parliament when requested and at least 15 days before making the statement referred to in paragraph 1.

3. In addition to the information referred to in Articles 11 to 18 and Articles 20 and 33, the report shall also include any relevant information requested by the European Parliament on an ad-hoc basis.

#### SECTION 4

##### Executive Director

#### Article 51

##### Appointment

1. The Authority shall be managed by an Executive Director, who shall be a full-time independent professional.

2. The Executive Director shall be appointed by the Board of Supervisors, after confirmation by the European Parliament, on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation and managerial experience, following an open selection procedure.

3. The Executive Director's term of office shall be 5 years and may be extended once.

4. In the course of the 9 months preceding the end of the Executive Director's term of office, the Board of Supervisors shall evaluate in particular:

- (a) the results achieved in the first term of office and the way they were achieved;
- (b) the Authority's duties and requirements in the coming years.

The Board of Supervisors, taking into account the evaluation referred to in the first subparagraph, may extend the term of office of the Executive Director once.

5. The Executive Director may be removed from office only upon a decision of the Board of Supervisors.

#### Article 52

##### Independence

Without prejudice to the respective roles of the Management Board and the Board of Supervisors in relation to the tasks of the Executive Director, the Executive Director shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the Executive Director in the performance of his tasks.

In accordance with the Staff Regulations referred to in Article 68, the Executive Director shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

#### Article 53

##### Tasks

1. The Executive Director shall be in charge of the management of the Authority and shall prepare the work of the Management Board.

2. The Executive Director shall be responsible for implementing the annual work programme of the Authority under the guidance of the Board of Supervisors and under the control of the Management Board.

3. The Executive Director shall take the necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation.

4. The Executive Director shall prepare a multi-annual work programme, as referred to in Article 47(2).

5. Each year, by 30 June, the Executive Director shall prepare a work programme for the following year, as referred to in Article 47(2).

6. The Executive Director shall draw up a preliminary draft budget of the Authority pursuant to Article 63 and shall implement the budget of the Authority pursuant to Article 64.

7. Each year the Executive Director shall prepare a draft report with a section on the regulatory and supervisory activities of the Authority and a section on financial and administrative matters.

8. The Executive Director shall exercise in respect to the Authority's staff the powers laid down in Article 68 and manage staff matters.

## CHAPTER IV

**JOINT BODIES OF THE EUROPEAN SUPERVISORY  
AUTHORITIES**

## SECTION 1

**Joint Committee of European Supervisory Authorities**

## Article 54

**Establishment**

1. The Joint Committee of the European Supervisory Authorities is hereby established.
2. The Joint Committee shall serve as a forum in which the Authority shall cooperate regularly and closely and ensure cross-sectoral consistency with the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), in particular regarding:
  - financial conglomerates,
  - accounting and auditing,
  - micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability,
  - retail investment products,
  - measures combating money laundering, and
  - information exchange with the ESRB and developing the relationship between the ESRB and the ESAs.
3. The Joint Committee shall have a dedicated staff provided by the ESAs that shall act as a secretariat. The Authority shall contribute adequate resources to administrative, infrastructure and operational expenses.
4. In the event that a financial institution reaches across different sectors, the Joint Committee shall resolve disagreements in accordance with Article 56.

## Article 55

**Composition**

1. The Joint Committee shall be composed of the Chairpersons of the ESAs, and, where applicable, the Chairperson of any Sub-Committee established pursuant to Article 57.
2. The Executive Director, a representative of the Commission and the ESRB shall be invited to the meetings of the Joint Committee, as well as of any Sub-Committees referred to in Article 57, as observers.
3. The Chairperson of the Joint Committee shall be appointed on an annual rotational basis from among the Chairpersons of the ESAs. The Chairperson of the Joint Committee shall be a Vice-Chair of the ESRB.

4. The Joint Committee shall adopt and publish its own rules of procedure. The rules may specify further participants in the meetings of the Joint Committee.

The Joint Committee shall meet at least once every 2 months.

## Article 56

**Joint positions and common acts**

Within the scope of its tasks in Chapter II, and in particular with respect to the implementation of Directive 2002/87/EC, where relevant, the Authority shall reach joint positions with the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and with the European Supervisory Authority (European Securities and Markets Authority), as appropriate.

Acts pursuant to Articles 10 to 15, 17, 18 or 19 of this Regulation in relation to the application of Directive 2002/87/EC and of any other Union acts referred to in Article 1(2) that also fall within the area of competence of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) or the European Supervisory Authority (European Securities and Markets Authority) shall be adopted, in parallel, by the Authority, the European Supervisory Authority (European Insurance and Occupational Pensions Authority), and the European Supervisory Authority (European Securities and Markets Authority), as appropriate.

## Article 57

**Sub-Committees**

1. For the purposes of Article 56, a Sub-Committee on Financial Conglomerates to the Joint Committee shall be established.
2. The Sub-Committee shall be composed of the individuals referred to in Article 55(1), and one high-level representative from the current staff of the relevant competent authority from each Member State.
3. The Sub-Committee shall elect a Chairperson from among its members, who shall also be a member of the Joint Committee.
4. The Joint Committee may establish further Sub-Committees.

## SECTION 2

**Board of Appeal**

## Article 58

**Composition and operation**

1. The Board of Appeal shall be a joint body of the ESAs.

2. The Board of Appeal shall be composed of six members and six alternates, who shall be individuals of a high repute with a proven record of relevant knowledge and professional experience, including supervisory experience, to a sufficiently high level in the fields of banking, insurance, occupational pensions, securities markets or other financial services, excluding current staff of the competent authorities or other national or Union institutions involved in the activities of the Authority. The Board of Appeal shall have sufficient legal expertise to provide expert legal advice on the legality of the Authority's exercise of its powers.

The Board of Appeal shall designate its President.

3. Two members of the Board of Appeal and two alternates shall be appointed by the Management Board of the Authority from a short-list proposed by the Commission, following a public call for expressions of interest published in the *Official Journal of the European Union*, and after consultation of the Board of Supervisors.

The other members shall be appointed in accordance with Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010.

4. The term of office of the members of the Board of Appeal shall be 5 years. That term may be extended once.

5. A member of the Board of Appeal appointed by the Management Board of the Authority shall not be removed during his term of office, unless he has been found guilty of serious misconduct and the Management Board takes a decision to that effect after consulting the Board of Supervisors.

6. The decisions of the Board of Appeal shall be adopted on the basis of a majority of at least four of its six members. Where the appealed decision falls within the scope of this Regulation, the deciding majority shall include at least one of the two members of the Board of Appeal appointed by the Authority.

7. The Board of Appeal shall be convened by its President when necessary.

8. The ESAs shall ensure adequate operational and secretarial support for the Board of Appeal through the Joint Committee.

#### Article 59

### Independence and impartiality

1. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They shall not perform any other duties in relation to the Authority, its Management Board or its Board of Supervisors.

2. Members of the Board of Appeal shall not take part in any appeal proceedings in which they have any personal interest, if they have previously been involved as representatives of one of the parties to the proceedings, or if they have participated in the decision under appeal.

3. If, for one of the reasons referred to in paragraphs 1 and 2 or for any other reason, a member of a Board of Appeal considers that another member should not take part in any appeal proceedings, he shall inform the Board of Appeal accordingly.

4. Any party to the appeal proceedings may object to the participation of a member of the Board of Appeal on any of the grounds referred to in paragraphs 1 and 2, or if suspected of bias.

No objection may be based on the nationality of members nor shall it be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has nonetheless taken a procedural step other than objecting to the composition of the Board of Appeal.

5. The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs 1 and 2 without the participation of the member concerned.

For the purpose of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate. Where the alternate is in a similar situation, the Chairperson shall designate a replacement from among the available alternates.

6. The members of the Board of Appeal shall undertake to act independently and in the public interest.

For that purpose, they shall make a declaration of commitments and a declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence.

Those declarations shall be made public, annually and in writing.

## CHAPTER V

### REMEDIES

#### Article 60

### Appeals

1. Any natural or legal person, including competent authorities, may appeal against a decision of the Authority referred to in Articles 17, 18 and 19 and any other decision taken by the Authority in accordance with the Union acts referred to in Article 1(2) which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.

2. The appeal, together with a statement of grounds, shall be filed in writing at the Authority within 2 months of the date of notification of the decision to the person concerned, or, in the absence of a notification, of the day on which the Authority published its decision.

The Board of Appeal shall decide upon the appeal within 2 months after the appeal has been lodged.

3. An appeal lodged pursuant to paragraph 1 shall not have suspensive effect.

However, the Board of Appeal may, if it considers that circumstances so require, suspend the application of the contested decision.

4. If the appeal is admissible, the Board of Appeal shall examine whether it is well-founded. It shall invite the parties to the appeal proceedings to file observations on its own notifications or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make oral representations.

5. The Board of Appeal may confirm the decision taken by the competent body of the Authority, or remit the case to the competent body of the Authority. That body shall be bound by the decision of the Board of Appeal and that body shall adopt an amended decision regarding the case concerned.

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

7. The decisions taken by the Board of Appeal shall be reasoned and shall be made public by the Authority.

#### Article 61

### Actions before the Court of Justice of the European Union

1. Proceedings may be brought before the Court of Justice of the European Union, in accordance with Article 263 TFEU, contesting a decision taken by the Board of Appeal or, in cases where there is no right of appeal before the Board of Appeal, by the Authority.

2. Member States and the Union institutions, as well as any natural or legal person, may institute proceedings before the Court of Justice of the European Union against decisions of the Authority, in accordance with Article 263 TFEU.

3. In the event that the Authority has an obligation to act and fails to take a decision, proceedings for failure to act may be brought before the Court of Justice of the European Union in accordance with Article 265 TFEU.

4. The Authority shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.

## CHAPTER VI

### FINANCIAL PROVISIONS

#### Article 62

### Budget of the Authority

1. The revenues of the Authority, a European body in accordance with Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>(1)</sup> (hereinafter the 'Financial Regulation'), shall consist, in particular, of any combination of the following:

- (a) obligatory contributions from the national public authorities competent for the supervision of financial institutions, which shall be made in accordance with a formula based on the weighting of votes set out in Article 3(3) of Protocol (No 36) on transitional provisions. For the purposes of this Article, Article 3(3) of Protocol (No 36) on transitional provisions shall continue to apply beyond the deadline of 31 October 2014 therein established;
- (b) a subsidy from the Union, entered in the General Budget of the European Union (Commission Section);
- (c) any fees paid to the Authority in the cases specified in the relevant instruments of Union law.

2. The expenditure of the Authority shall include, at least, staff, remuneration, administrative, infrastructure, professional training and operational expenses.

3. Revenue and expenditure shall be in balance.

4. Estimates of all Authority revenue and expenditure shall be prepared for each financial year, corresponding to the calendar year, and shall be presented in the budget of the Authority.

#### Article 63

### Establishment of the budget

1. By 15 February each year, the Executive Director shall draw up a draft statement of estimates of revenue and expenditure for the following financial year, and shall forward it to the Management Board and the Board of Supervisors, together with the establishment plan. Each year, the Board of Supervisors shall, on the basis of the draft statement drawn up by the Executive Director and approved by the Management Board, produce a statement of estimates of revenue and expenditure of the Authority for the following financial year. That statement of estimates, including a draft establishment plan, shall be transmitted by the Board of Supervisors to the Commission by 31 March. Prior to adoption of the statement of estimates, the draft prepared by the Executive Director shall be approved by the Management Board.

<sup>(1)</sup> OJ L 248, 16.9.2002, p. 1.

2. The statement of estimates shall be transmitted by the Commission to the European Parliament and to the Council (hereinafter referred to together as the 'budgetary authority'), together with the draft budget of the European Union.

3. On the basis of the statement of estimates, the Commission shall enter in the draft budget of the European Union the estimates it deems necessary in respect of the establishment plan and the amount of the subsidy to be charged to the General Budget of the European Union in accordance with Articles 313 and 314 TFEU.

4. The budgetary authority shall adopt the establishment plan for the Authority. The budgetary authority shall authorise the appropriations for the subsidy to the Authority.

5. The budget of the Authority shall be adopted by the Board of Supervisors. It shall become final after the final adoption of the General Budget of the European Union. Where necessary, it shall be adjusted accordingly.

6. The Management Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property, such as the rental or purchase of buildings. It shall inform the Commission thereof. If either branch of the budgetary authority intends to issue an opinion, it shall, within 2 weeks of receipt of the information on the project, notify the Authority of its intention to issue such an opinion. In the absence of a reply, the Authority may proceed with the planned operation.

7. For the first year of operation of the Authority, ending on 31 December 2011, the financing of the Authority by the Union is subject to an agreement by the budgetary authority as provided for in Point 47 of the Interinstitutional Agreement on budgetary discipline and sound financial management.

#### Article 64

### Implementation and control of the budget

1. The Executive Director shall act as authorising officer and shall implement the Authority's budget.

2. By 1 March following the completion of each financial year, the Authority's accounting officer shall forward to the Commission's accounting officer and to the Court of Auditors the provisional accounts, accompanied by the report on budgetary and financial management during the financial year. The Authority's accounting officer shall also send the report on budgetary and financial management to the members of the Board of Supervisors, the European Parliament and the Council by 31 March of the following year.

The Commission's accounting officer shall then consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the Financial Regulation.

3. After receiving the observations of the Court of Auditors on the provisional accounts of the Authority in accordance with Article 129 of the Financial Regulation, the Executive Director, acting on his own responsibility, shall draw up the final accounts of the Authority and transmit them, for opinion, to the Management Board.

4. The Management Board shall deliver an opinion on the final accounts of the Authority.

5. The Executive Director shall transmit those final accounts, accompanied by the opinion of the Management Board, by 1 July following the completion of the financial year, to the Members of the Board of Supervisors, the European Parliament, the Council, the Commission and the Court of Auditors.

6. The final accounts shall be published.

7. The Executive Director shall send the Court of Auditors a reply to the latter's observations by 30 September. He shall also send a copy of that reply to the Management Board and the Commission.

8. The Executive Director shall submit to the European Parliament, at the latter's request and as provided for in Article 146(3) of the Financial Regulation, any information necessary for the smooth application of the discharge procedure for the financial year in question.

9. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget comprising revenue from the General Budget of the European Union and competent authorities for the financial year N.

#### Article 65

### Financial rules

The financial rules applicable to the Authority shall be adopted by the Management Board after consulting the Commission. Those rules may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup> unless the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission.

#### Article 66

### Anti-fraud measures

1. For the purposes of combating fraud, corruption and any other illegal activity, Regulation (EC) No 1073/1999 shall apply to the Authority without any restriction.

2. The Authority shall accede to the Interinstitutional Agreement concerning internal investigations by OLAF and shall immediately adopt appropriate provisions for all staff of the Authority.

<sup>(1)</sup> OJ L 357, 31.12.2002, p. 72.

3. The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks on the beneficiaries of monies disbursed by the Authority as well as on the staff responsible for allocating these monies.

## CHAPTER VII

### GENERAL PROVISIONS

#### Article 67

#### Privileges and immunities

The Protocol (No 7) on the privileges and immunities of the European Union annexed to the Treaty on European Union and to the TFEU shall apply to the Authority and its staff.

#### Article 68

#### Staff

1. The Staff Regulations, the Conditions of Employment of Other Servants and the rules adopted jointly by the Union institutions for the purpose of applying them shall apply to the staff of the Authority, including its Executive Director and its Chairperson.

2. The Management Board, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations.

3. In respect of its staff, the Authority shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants.

4. The Management Board shall adopt provisions to allow national experts from Member States to be seconded to the Authority.

#### Article 69

#### Liability of the Authority

1. In the case of non-contractual liability, the Authority shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its staff in the performance of their duties. The Court of Justice of the European Union shall have jurisdiction in any dispute over the remedying of such damage.

2. The personal financial liability and disciplinary liability of Authority staff towards the Authority shall be governed by the relevant provisions applying to the staff of the Authority.

#### Article 70

#### Obligation of professional secrecy

1. Members of the Board of Supervisors and the Management Board, the Executive Director, and members of the staff of the

Authority including officials seconded by Member States on a temporary basis and all other persons carrying out tasks for the Authority on a contractual basis shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and the relevant provisions in Union legislation, even after their duties have ceased.

Article 16 of the Staff Regulations shall apply to them.

In accordance with the Staff Regulations, the staff shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence staff members of the Authority in the performance of their tasks.

2. Without prejudice to cases covered by criminal law, any confidential information received by persons referred to in paragraph 1 whilst performing their duties may not be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual financial institutions cannot be identified.

Moreover, the obligation under paragraph 1 and the first subparagraph of this paragraph shall not prevent the Authority and the national supervisory authorities from using the information for the enforcement of the acts referred to in Article 1(2), and in particular for legal procedures for the adoption of decisions.

3. Paragraphs 1 and 2 shall not prevent the Authority from exchanging information with national supervisory authorities in accordance with this Regulation and other Union legislation applicable to financial institutions.

That information shall be subject to the conditions of professional secrecy referred to in paragraphs 1 and 2. The Authority shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

4. The Authority shall apply Commission Decision 2001/844/EC/ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure <sup>(1)</sup>.

#### Article 71

#### Data protection

This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Directive 95/46/EC or the obligations of the Authority relating to its processing of personal data under Regulation (EC) No 45/2001 when fulfilling its responsibilities.

#### Article 72

#### Access to documents

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Authority.

<sup>(1)</sup> OJ L 317, 3.12.2001, p. 1.

2. The Management Board shall, by 31 May 2011, adopt practical measures for applying Regulation (EC) No 1049/2001.

3. Decisions taken by the Authority pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice of the European Union, following an appeal to the Board of Appeal, as appropriate, in accordance with the conditions laid down in Articles 228 and 263 TFEU respectively.

#### Article 73

##### Language arrangements

1. Council Regulation No 1 determining the languages to be used by the European Economic Community <sup>(1)</sup> shall apply to the Authority.

2. The Management Board shall decide on the internal language arrangements for the Authority.

3. The translation services required for the functioning of the Authority shall be provided by the Translation Centre for the Bodies of the European Union.

#### Article 74

##### Headquarters Agreement

The necessary arrangements concerning the accommodation to be provided for the Authority in the Member State where its seat is located and the facilities to be made available by that Member State, as well as the specific rules applicable in that Member State to the Executive Director, the members of the Management Board, the staff of the Authority and members of their families shall be laid down in a Headquarters Agreement between the Authority and that Member State concluded after obtaining the approval of the Management Board.

That Member State shall provide the best possible conditions to ensure the proper functioning of the Authority, including multilingual, European-oriented schooling and appropriate transport connections.

#### Article 75

##### Participation of third countries

1. Participation in the work of the Authority shall be open to third countries which have concluded agreements with the Union whereby they have adopted and are applying Union law in the areas of competence of the Authority as referred to in Article 1(2).

2. The Authority may cooperate with the countries referred to in paragraph 1, applying legislation which has been recognised as equivalent in the areas of competence of the Authority referred to in Article 1(2), as provided for in international agreements concluded by the Union in accordance with Article 216 TFEU.

<sup>(1)</sup> OJ 17, 6.10.1958, p. 385.

3. Under the relevant provisions of the agreements referred to in paragraphs 1 and 2, arrangements shall be made specifying, in particular, the nature, scope and procedural aspects of the involvement of the countries referred to in paragraph 1 in the work of the Authority, including provisions relating to financial contributions and to staff. They may provide for representation, as an observer, on the Board of Supervisors, but shall ensure that those countries do not attend any discussions relating to individual financial institutions, except where there is a direct interest.

#### CHAPTER VIII

##### TRANSITIONAL AND FINAL PROVISIONS

#### Article 76

##### Preparatory actions

1. Following the entry into force of this Regulation, and before the establishment of the Authority, CEBS shall act in close cooperation with the Commission to prepare for the replacement of CEBS by the Authority.

2. Once the Authority has been established, the Commission shall be responsible for the administrative establishment and initial administrative operation of the Authority until the Authority has appointed an Executive Director.

For that purpose, until such time as the Executive Director takes up his duties following his appointment by the Board of Supervisors in accordance with Article 51, the Commission may assign one official on an interim basis in order to fulfil the functions of the Executive Director. That period shall be limited to the time necessary for the appointment of an Executive Director of the Authority.

The interim Executive Director may authorise all payments covered by credits provided in the budget of the Authority, once approved by the Management Board and may conclude contracts, including staff contracts following the adoption of the Authority's establishment plan.

3. Paragraphs 1 and 2 are without prejudice to the powers of the Board of Supervisors and the Management Board.

4. The Authority shall be considered the legal successor of CEBS. By the date of establishment of the Authority, all assets and liabilities and all pending operations of CEBS shall be automatically transferred to the Authority. CEBS shall establish a statement showing its closing asset and liability situation as of the date of that transfer. That statement shall be audited and approved by CEBS and by the Commission.

#### Article 77

##### Transitional staff provisions

1. By way of derogation from Article 68, all employment contracts and secondment agreements concluded by CEBS or its Secretariat and in force on 1 January 2011 shall be honoured until their expiry date. They may not be extended.

2. All members of staff under contracts referred to in paragraph 1 shall be offered the possibility of concluding temporary agent contracts pursuant to Article 2(a) of the Conditions of Employment of Other Servants at the various grades as set out in the Authority's establishment plan.

An internal selection limited to staff who have contracts with CEBS or its Secretariat shall be carried out after the entry into force of this Regulation by the authority authorised to conclude contracts in order to check the ability, efficiency and integrity of those to be engaged. The internal selection procedure shall take full account of the skills and experience demonstrated by the individuals' performance prior to the engagement.

3. Depending on the type and level of functions to be performed, successful applicants shall be offered temporary agents' contracts of a duration corresponding at least to the time remaining under the prior contract.

4. The relevant national law relating to labour contracts and other relevant instruments shall continue to apply to staff members with prior contracts who choose not to apply for temporary agents' contracts or who are not offered temporary agents contracts in accordance with paragraph 2.

#### Article 78

#### National provisions

The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

#### Article 79

#### Amendments

Decision No 716/2009/EC is hereby amended in so far as CEBS is removed from the list of beneficiaries set out in Section B of the Annex to that Decision.

#### Article 80

#### Repeal

Commission Decision 2009/78/EC, establishing CEBS, is hereby repealed with effect from 1 January 2011.

#### Article 81

#### Review

1. By 2 January 2014, and every 3 years thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation. That report shall evaluate, inter alia:

- (a) the convergence in supervisory practices reached by competent authorities:
  - (i) the convergence in functional independence of the competent authorities and in standards equivalent to corporate governance;

- (ii) the impartiality, objectivity and autonomy of the Authority;

- (b) the functioning of the colleges of supervisors;
- (c) the progress achieved towards convergence in the fields of crisis prevention, management and resolution, including Union funding mechanisms;
- (d) the role of the Authority as regards systemic risk;
- (e) the application of the safeguard clause established in Article 38;
- (f) the application of the binding mediation role established in Article 19.

2. The report referred to in paragraph 1 shall also examine whether:

- (a) it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets;
- (b) it is appropriate to undertake prudential supervision and supervise the conduct of business separately or by the same supervisor;
- (c) it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;
- (d) the evolution of the ESFS is consistent with that of the global evolution;
- (e) there is sufficient diversity and excellence within the ESFS;
- (f) accountability and transparency in relation to publication requirements are adequate;
- (g) the resources of the Authority are adequate to carry out its responsibilities;
- (h) it is appropriate for the seat of the Authority to be maintained or to move the ESAs to a single seat to enhance better coordination between them.

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

4. The report and any accompanying proposals, as appropriate, shall be forwarded to the European Parliament and to the Council.



Article 82

**Entry into force**

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

It shall apply from 1 January 2011, with the exception of Article 76 and Article 77(1) and (2), which shall apply as from the date of its entry into force.

The Authority shall be established on 1 January 2011.

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

Done at Strasbourg, 24 November 2010.

*For the European Parliament*  
*The President*  
J. BUZEK

*For the Council*  
*The President*  
O. CHASTEL

**REGULATION (EU) No 1094/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 24 November 2010**

**establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Central Bank <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) The financial crisis in 2007 and 2008 exposed important shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. Nationally based supervisory models have lagged behind financial globalisation and the integrated and interconnected reality of European financial markets, in which many financial institutions operate across borders. The crisis exposed shortcomings in the areas of cooperation, coordination, consistent application of Union law and trust between national supervisors.
- (2) Before and during the financial crisis, the European Parliament has called for a move towards more integrated European supervision in order to ensure a true level playing field for all actors at the level of the Union and to reflect the increasing integration of financial markets in the Union (in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan <sup>(4)</sup>, of 21 November 2002

on prudential supervision rules in the European Union <sup>(5)</sup>, of 11 July 2007 on financial services policy (2005 to 2010) – White Paper <sup>(6)</sup>, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity <sup>(7)</sup> and of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision <sup>(8)</sup>, and in its positions of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) <sup>(9)</sup> and of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies <sup>(10)</sup>).

- (3) In November 2008, the Commission mandated a High-Level Group chaired by Jacques de Larosière to make recommendations on how to strengthen European supervisory arrangements with a view to better protecting the citizen and rebuilding trust in the financial system. In its final report presented on 25 February 2009 (the ‘de Larosière Report’), the High-Level Group recommended that the supervisory framework be strengthened to reduce the risk and severity of future financial crises. It recommended reforms to the structure of supervision of the financial sector in the Union. The group also concluded that a European System of Financial Supervisors should be created, comprising three European Supervisory Authorities, one for the banking sector, one for the securities sector and one for the insurance and occupational pensions sector, and recommended the creation of a European Systemic Risk Council. The report represented the reforms the experts considered were needed and on which work had to begin immediately.
- (4) In its Communication of 4 March 2009 entitled ‘Driving European Recovery’, the Commission proposed to put forward draft legislation creating a European system of financial supervision and a European systemic risk board. In its Communication of 27 May 2009 entitled ‘European Financial Supervision’, it provided more detail about the possible architecture of such a new supervisory framework reflecting the main thrust of the de Larosière Report.

<sup>(1)</sup> OJ C 13, 20.1.2010, p. 1.

<sup>(2)</sup> Opinion of 22 January 2010 (not yet published in the Official Journal).

<sup>(3)</sup> Position of the European Parliament of 22 September 2010 (not yet published in the Official Journal) and decision of the Council of 17 November 2010.

<sup>(4)</sup> OJ C 40, 7.2.2001, p. 453.

<sup>(5)</sup> OJ C 25 E, 29.1.2004, p. 394.

<sup>(6)</sup> OJ C 175 E, 10.7.2008, p. 392.

<sup>(7)</sup> OJ C 8 E, 14.1.2010, p. 26.

<sup>(8)</sup> OJ C 9 E, 15.1.2010, p. 48.

<sup>(9)</sup> OJ C 184 E, 8.7.2010, p. 214.

<sup>(10)</sup> OJ C 184 E, 8.7.2010, p. 292.

- (5) The European Council, in its conclusions of 19 June 2009, confirmed that a European System of Financial Supervisors, comprising three new European Supervisory Authorities, should be established. The system should be aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross-border groups and establishing a European single rule book applicable to all financial institutions in the internal market. It emphasised that the European Supervisory Authorities should also have supervisory powers in relation to credit rating agencies and invited the Commission to prepare concrete proposals on how the European System of Financial Supervisors could play a strong role in crisis situations, while stressing that decisions taken by the European Supervisory Authorities should not impinge on the fiscal responsibilities of Member States.
- (6) The financial and economic crisis has created real and serious risks to the stability of the financial system and the functioning of the internal market. Restoring and maintaining a stable and reliable financial system is an absolute prerequisite to preserving trust and coherence in the internal market, and thereby to preserve and improve the conditions for the establishment of a fully integrated and functioning internal market in the field of financial services. Moreover, deeper and more integrated financial markets offer better opportunities for financing and risk diversification, and thus help to improve the capacity of the economies to absorb shocks.
- (7) The Union has reached the limits of what can be done with the present status of the Committees of European Supervisors. The Union cannot remain in a situation where there is no mechanism to ensure that national supervisors arrive at the best possible supervisory decisions for cross-border financial institutions; where there is insufficient cooperation and information exchange between national supervisors; where joint action by national authorities requires complicated arrangements to take account of the patchwork of regulatory and supervisory requirements; where national solutions are most often the only feasible option in responding to problems at the level of the Union; and where different interpretations of the same legal text exist. The European System of Financial Supervision (hereinafter the ESFS) should be designed to overcome those deficiencies and provide a system that is in line with the objective of a stable and single Union financial market for financial services, linking national supervisors within a strong Union network.
- (8) The ESFS should be an integrated network of national and Union supervisory authorities, leaving day-to-day supervision to the national level. Greater harmonisation and the coherent application of rules for financial institutions and markets across the Union should also be achieved. In addition to the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (hereinafter the Authority), a European Supervisory Authority (European Banking Authority) and a European Supervisory Authority (European Securities and Markets Authority) as well as a Joint Committee of the European Supervisory Authorities (hereinafter the Joint Committee) should be established. A European Systemic Risk Board (hereinafter the ESRB) should form part of the ESFS for the purposes of the tasks as specified in this Regulation and in Regulation (EU) No 1092/2010 of the European Parliament and of the Council <sup>(1)</sup>.
- (9) The European Supervisory Authorities (hereinafter collectively referred to as the 'ESAs') should replace the Committee of European Banking Supervisors established by Commission Decision 2009/78/EC <sup>(2)</sup>, the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2009/79/EC <sup>(3)</sup> and the Committee of European Securities Regulators established by Commission Decision 2009/77/EC <sup>(4)</sup>, and should assume all of the tasks and competences of those committees including the continuation of ongoing work and projects, where appropriate. The scope of each European Supervisory Authority's action should be clearly defined. The ESAs should be accountable to the European Parliament and the Council. When that accountability relates to cross-sectoral issues that have been coordinated through the Joint Committee, the ESAs should be accountable, through the Joint Committee, for such coordination.
- (10) The Authority should act with a view to improving the functioning of the internal market, in particular by ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States and the different nature of financial institutions. The Authority should protect public values such as the stability of the financial system, the transparency of markets and financial products, and the protection of policyholders, pension scheme members and beneficiaries. The Authority should also prevent regulatory arbitrage, guarantee a level playing field, and strengthen international supervisory coordination, for the benefit of the economy at large, including financial institutions and other stakeholders, consumers and employees. Its tasks should also include promoting supervisory convergence and providing advice to the Union institutions in the area of insurance, reinsurance and occupational retirement provision regulation and supervision, and related corporate governance, auditing and financial reporting issues. The Authority should also be entrusted with certain responsibilities for existing and new financial activities.

<sup>(1)</sup> See page 1 of this Official Journal.

<sup>(2)</sup> OJ L 25, 29.1.2009, p. 23.

<sup>(3)</sup> OJ L 25, 29.1.2009, p. 28.

<sup>(4)</sup> OJ L 25, 29.1.2009, p. 18.

- (11) The Authority should also be able to temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in this Regulation. If required to make such temporary prohibition in the case of an emergency situation, the Authority should do so in accordance with and under the conditions laid down in this Regulation. In cases where a temporary prohibition or restriction of certain financial activities has a cross-sectoral impact, sectoral legislation should provide that the Authority consult and coordinate its action with, where relevant, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Securities and Markets Authority), through the Joint Committee.
- (12) The Authority should take due account of the impact of its activities on competition and innovation within the internal market, on the Union's global competitiveness, on financial inclusion, and on the Union's new strategy for jobs and growth.
- (13) In order to fulfil its objectives, the Authority should have legal personality as well as administrative and financial autonomy.
- (14) Based on the work of international bodies, systemic risk should be defined as a risk of disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructures may be potentially systemically important to some degree.
- (15) Cross-border risk includes all risks caused by economic imbalances or financial failures in all or parts of the Union that have the potential to have significant negative consequences for the transactions between economic operators of two or more Member States, for the functioning of the internal market or for the public finances of the Union or any of its Member States.
- (16) The Court of Justice of the European Union in its judgment of 2 May 2006 in Case C-217/04 (United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union) held that 'nothing in the wording of Article 95 EC [now Article 114 of the Treaty on the Functioning of the European Union (TFEU)] implies that the addressees of the measures adopted by the Community legislature on the basis of that provision can only be the individual Member States. The legislature may deem it necessary to provide for the establishment of a Community body responsible for contributing to the implementation of a process of harmonisation in situations where, in order to facilitate the uniform implementation and application of acts based on that provision, the adoption of non-binding supporting and framework measures seems appropriate' <sup>(1)</sup>. The purpose and tasks of the Authority – assisting competent national supervisory authorities in the consistent interpretation and application of Union rules and contributing to financial stability necessary for financial integration – are closely linked to the objectives of the Union *acquis* concerning the internal market for financial services. The Authority should therefore be established on the basis of Article 114 TFEU.
- (17) The following legislative acts lay down the tasks for the competent authorities of Member States, including cooperating with each other and with the Commission: Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) <sup>(2)</sup>, with the exception of Title IV thereof, Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation <sup>(3)</sup>, Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision <sup>(4)</sup>, Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate <sup>(5)</sup>, Council Directive 64/225/EEC of 25 February 1964 on the abolition of restrictions on freedom of establishment and freedom to provide services in respect of reinsurance and retrocession <sup>(6)</sup>, Council Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance <sup>(7)</sup>, Council Directive 73/240/EEC of 24 July 1973 abolishing restrictions on freedom of establishment in the business of direct insurance other than life assurance <sup>(8)</sup>, Council Directive 76/580/EEC of 29 June 1976 amending Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking up and pursuit of the business of direct insurance other than life assurance <sup>(9)</sup>, Council Directive 78/473/EEC of 30 May 1978 on the coordination of laws, regulations and administrative provisions relating to Community co-insurance <sup>(10)</sup>, Council Directive 84/641/EEC of 10 December 1984 amending, particularly as regards

<sup>(1)</sup> European Court Reports 2006 Page I-03771, para. 44.

<sup>(2)</sup> OJ L 335, 17.12.2009, p. 1.

<sup>(3)</sup> OJ L 9, 15.1.2003, p. 3.

<sup>(4)</sup> OJ L 235, 23.9.2003, p. 10.

<sup>(5)</sup> OJ L 35, 11.2.2003, p. 1.

<sup>(6)</sup> OJ 56, 4.4.1964, p. 878.

<sup>(7)</sup> OJ L 228, 16.8.1973, p. 3.

<sup>(8)</sup> OJ L 228, 16.8.1973, p. 20.

<sup>(9)</sup> OJ L 189, 13.7.1976, p. 13.

<sup>(10)</sup> OJ L 151, 7.6.1978, p. 25.

tourist assistance, the First Council Directive 73/239/EEC on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance <sup>(1)</sup>, Council Directive 87/344/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to legal expenses insurance <sup>(2)</sup>, Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services <sup>(3)</sup>, Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (third non-life insurance Directive) <sup>(4)</sup>, Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group <sup>(5)</sup>, Directive 2001/17/EC of the European Parliament and of the Council of 19 March 2001 on the reorganisation and winding-up of insurance undertakings <sup>(6)</sup>, Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance <sup>(7)</sup> and Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance <sup>(8)</sup>. However, with regard to institutions for occupational retirement provision, the Authority's actions should be without prejudice to national social and labour law.

- (18) Existing Union legislation regulating the field covered by this Regulation also includes the relevant parts of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing <sup>(9)</sup>, and of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services <sup>(10)</sup>.
- (19) It is desirable that the Authority contribute to the assessment of the need for a European network of national insurance guarantee schemes which is adequately funded and sufficiently harmonised.
- (20) In accordance with the Declaration (No 39) on Article 290 of the Treaty on the Functioning of the European Union (TFEU), annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, the elaboration of regulatory technical standards requires assistance of technical expertise in a form which is specific to the

financial services area. It is necessary to allow the Authority to provide such expertise also on standards or parts of standards that are not based on a draft technical standard that it has elaborated.

- (21) There is a need to introduce an effective instrument to establish harmonised regulatory technical standards in financial services to ensure, also through a single rulebook, a level playing field and adequate protection of policyholders, pension scheme members and other beneficiaries across the Union. As a body with highly specialised expertise, it is efficient and appropriate to entrust the Authority, in areas defined by Union law, with the elaboration of draft regulatory technical standards, which do not involve policy choices.
- (22) The Commission should endorse those draft regulatory technical standards by means of delegated acts under Article 290 TFEU in order to give them binding legal effect. They should be subject to amendment only in very restricted and extraordinary circumstances, since the Authority is the actor in close contact with and knowing best the daily functioning of financial markets. Draft regulatory technical standards would be subject to amendment if they were incompatible with Union law, did not respect the principle of proportionality or ran counter to the fundamental principles of the internal market for financial services as reflected in the *acquis* of Union financial services legislation. The Commission should not change the content of the draft regulatory technical standards prepared by the Authority without prior coordination with the Authority. To ensure a smooth and expeditious adoption process for those standards, the Commission's decision to endorse draft regulatory technical standards should be subject to a time limit.
- (23) Given the technical expertise of the Authority in the areas where regulatory technical standards should be developed, note should be taken of the Commission's stated intention to rely, as a rule, on the draft regulatory technical standards submitted to it by the Authority in view of the adoption of the corresponding delegated acts. However, in cases where the Authority fails to submit a draft regulatory technical standard within the time limits set out by the relevant legislative act, it should be ensured that the result of the exercise of delegated power is actually achieved, and the efficiency of the decision-making process be maintained. In those cases, the Commission should therefore be empowered to adopt regulatory technical standards in the absence of a draft by the Authority.
- (24) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts under Article 291 TFEU.

<sup>(1)</sup> OJ L 339, 27.12.1984, p. 21.

<sup>(2)</sup> OJ L 185, 4.7.1987, p. 77.

<sup>(3)</sup> OJ L 172, 4.7.1988, p. 1.

<sup>(4)</sup> OJ L 228, 11.8.1992, p. 1.

<sup>(5)</sup> OJ L 330, 5.12.1998, p. 1.

<sup>(6)</sup> OJ L 110, 20.4.2001, p. 28.

<sup>(7)</sup> OJ L 345, 19.12.2002, p. 1.

<sup>(8)</sup> OJ L 323, 9.12.2005, p. 1.

<sup>(9)</sup> OJ L 309, 25.11.2005, p. 15.

<sup>(10)</sup> OJ L 271, 9.10.2002, p. 16.

- (25) In areas not covered by regulatory or implementing technical standards, the Authority should have the power to issue guidelines and recommendations on the application of Union law. In order to ensure transparency and to strengthen compliance by national supervisory authorities with those guidelines and recommendations, it should be possible for the Authority to publish the reasons for supervisory authorities' non-compliance with those guidelines and recommendations.
- (26) Ensuring the correct and full application of Union law is a core prerequisite for the integrity, transparency, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial institutions in the Union. A mechanism should therefore be established whereby the Authority addresses instances of non-application or incorrect application of Union law amounting to a breach thereof. That mechanism should apply in areas where Union law defines clear and unconditional obligations.
- (27) To allow for a proportionate response to instances of incorrect or insufficient application of Union law, a three-step mechanism should apply. First, the Authority should be empowered to investigate alleged incorrect or insufficient application of Union law obligations by national authorities in their supervisory practice, concluded by a recommendation. Second, where the competent national authority does not follow the recommendation, the Commission should be empowered to issue a formal opinion taking into account the Authority's recommendation, requiring the competent authority to take the actions necessary to ensure compliance with Union law.
- (28) Third, to overcome exceptional situations of persistent inaction by the competent authority concerned, the Authority should be empowered, as a last resort, to adopt decisions addressed to individual financial institutions. That power should be limited to exceptional circumstances in which a competent authority does not comply with the formal opinion addressed to it and in which Union law is directly applicable to financial institutions by virtue of existing or future Union regulations.
- (29) Serious threats to the orderly functioning and integrity of financial markets or the stability of the financial system in the Union require a swift and concerted response at Union level. The Authority should therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. The power to determine the existence of an emergency situation should be conferred on the Council, following a request by any of the ESAs, the Commission or the ESRB.
- (30) The Authority should be able to require national supervisory authorities to take specific action to remedy an emergency situation. The action undertaken by the Authority in this respect should be without prejudice to the Commission's powers under Article 258 TFEU to initiate infringement proceedings against the Member State of that supervisory authority for its failure to take such action, and without prejudice to the Commission's right in such circumstances to seek interim measures in accordance with the rules of procedure of the Court of Justice of the European Union. Furthermore, it should be without prejudice to any liability that that Member State might incur in accordance with the case law of the Court of Justice of the European Union if its supervisory authorities fail to take the action required by the Authority.
- (31) In order to ensure efficient and effective supervision and a balanced consideration of the positions of the competent authorities in different Member States, the Authority should be able to settle disagreements in cross-border situations between those competent authorities with binding effect, including within colleges of supervisors. A conciliation phase should be provided for during which the competent authorities may reach an agreement. The Authority's competence should cover disagreements on the procedure or content of an action or inaction by a competent authority of a Member State in cases specified in the legally binding Union acts referred to in this Regulation. In such a situation, one of the supervisors involved should be entitled to refer the issue to the Authority, which should act in accordance with this Regulation. The Authority should be empowered to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter in order to ensure compliance with Union law, with binding effects for the competent authorities concerned. If a competent authority does not comply with the settlement decision addressed to it, the Authority should be empowered to adopt decisions directly addressed to financial institutions in areas of Union law directly applicable to them. The power to adopt such decisions should apply only as a last resort and then only to ensure the correct and consistent application of Union law. In cases where the relevant Union legislation confers discretion on Member States' competent authorities, decisions taken by the Authority cannot replace the exercise in compliance with Union law of that discretion.
- (32) The crisis has proven that the current system of cooperation between national authorities whose powers are limited to individual Member States is insufficient as regards financial institutions that operate across borders.
- (33) Expert Groups set up by Member States to examine the causes of the crisis and make suggestions to improve the regulation and supervision of the financial sector have confirmed that the current arrangements are not a sound basis for the future regulation and supervision of cross-border financial institutions across the Union.
- (34) As the de Larosière Report indicates, '[i]n essence, we have two alternatives: the first "chacun pour soi" beggar-thy-neighbour solutions; or the second – enhanced, pragmatic,

sensible European cooperation for the benefit of all to preserve an open world economy. This will bring undoubted economic gains’.

(35) Colleges of supervisors play an important role in the efficient, effective and consistent supervision of financial institutions operating across borders. The Authority should contribute to promoting and monitoring the efficient, effective and consistent functioning of the colleges of supervisors and, in that respect, have a leading role in ensuring the consistent and coherent functioning of colleges of supervisors for cross-border financial institutions across the Union. The Authority should therefore have full participation rights in colleges of supervisors with a view to streamlining the functioning of and the information exchange process in the colleges of supervisors and to foster convergence and consistency across colleges in the application of Union law. As the de Larosière Report states, ‘competition distortions and regulatory arbitrage stemming from different supervisory practices must be avoided, because they have the potential of undermining financial stability – inter alia by encouraging a shift of financial activity to countries with lax supervision. The supervisory system has to be perceived as fair and balanced’.

(36) Convergence in the fields of crisis prevention, management and resolution, including funding mechanisms, is necessary in order to ensure that public authorities are able to resolve failing financial institutions whilst minimising the impact of failures on the financial system, reliance on taxpayer funds to bail out insurance or reinsurance undertakings and the use of public sector resources, limiting damage to the economy, and coordinating the application of national resolution measures. In this regard, the Commission should be able to request the Authority to contribute to the assessment referred to in Article 242 of Directive 2009/138/EC, in particular as regards the cooperation of supervisory authorities within, and functionality of, the colleges of supervisors; the supervisory practices concerning setting the capital add-ons; the assessment of the benefit of enhancing group supervision and capital management within a group of insurance or reinsurance undertakings, including possible measures to enhance the sound cross-border management of insurance groups, notably in respect of risks and assets; and reporting on any new developments and progress concerning a set of coordinated national crisis management arrangements, including the necessity or otherwise of a system of coherent and credible funding mechanisms, with appropriate financing instruments.

(37) In the current review of Directive 94/19/EC of the European Parliament and the Council of 30 May 1994 on deposit-guarantee schemes <sup>(1)</sup> and Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997

on investor-compensation schemes <sup>(2)</sup>, the Commission’s intention to pay special attention to the need to ensure further harmonisation throughout the Union is noted. In the insurance sector, the Commission’s intention to examine the possibility of introducing Union rules protecting insurance policy holders in case of a failing insurance company is also noted. The ESAs should play an important role in those areas and appropriate powers concerning the European network of national insurance guarantee schemes should be conferred upon them.

(38) The delegation of tasks and responsibilities can be a useful instrument in the functioning of the network of supervisors in order to reduce the duplication of supervisory tasks, to foster cooperation and thereby streamline the supervisory process, as well as to reduce the burden imposed on financial institutions. This Regulation should therefore provide a clear legal basis for such delegation. Whilst respecting the general rule that delegation should be allowed, Member States should be able to introduce specific conditions for the delegation of responsibilities, for example, regarding information about, and the notification of, delegation arrangements. Delegation of tasks means that tasks are carried out by the Authority or by a national supervisory authority other than the responsible authority, while the responsibility for supervisory decisions remains with the delegating authority. By the delegation of responsibilities, the Authority or a national supervisory authority (the delegate) should be able to decide upon a certain supervisory matter in its own name in lieu of the delegating authority. Delegations should be governed by the principle of allocating supervisory competence to a supervisor which is best placed to take action in the subject matter. A reallocation of responsibilities would be appropriate, for example, for reasons of economies of scale or scope, of coherence in group supervision, and of optimal use of technical expertise among national supervisory authorities. Decisions by the delegate should be recognised by the delegating authority and by other competent authorities as determinative if those decisions are within the scope of the delegation. Relevant Union legislation could further specify the principles for the reallocation of responsibilities upon agreement.

The Authority should facilitate and monitor delegation agreements between national supervisory authorities by all appropriate means. It should be informed in advance of intended delegation agreements, in order to be able to express an opinion where appropriate. It should centralise the publication of such agreements to ensure timely, transparent and easily accessible information about agreements for all parties concerned. It should identify and disseminate best practices regarding delegation and delegation agreements.

<sup>(1)</sup> OJ L 135, 31.5.1994, p. 5.

<sup>(2)</sup> OJ L 84, 26.3.1997, p. 22.

- (39) The Authority should actively foster supervisory convergence across the Union with the aim of establishing a common supervisory culture.
- (40) Peer reviews are an efficient and effective tool for fostering consistency within the network of financial supervisors. The Authority should therefore develop the methodological framework for such reviews and conduct them on a regular basis. Reviews should focus not only on the convergence of supervisory practices, but also on the capacity of supervisors to achieve high-quality supervisory outcomes, as well as on the independence of those competent authorities. The outcome of peer reviews should be made public with the agreement of the competent authority subject to the review. Best practices should also be identified and made public.
- (41) The Authority should actively promote a coordinated Union supervisory response, in particular to ensure the orderly functioning and integrity of financial markets and the stability of the financial system in the Union. In addition to its powers for action in emergency situations, the Authority should therefore be entrusted with a general coordination function within the ESFS. The smooth flow of all relevant information between competent authorities should be a particular focus of the Authority's actions.
- (42) In order to safeguard financial stability it is necessary to identify, at an early stage, trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors. The Authority should monitor and assess such developments in the area of its competence and, where necessary, inform the European Parliament, the Council, the Commission, the other European Supervisory Authorities and the ESRB on a regular and, as necessary, on an ad hoc basis. The Authority should also, in cooperation with the ESRB, initiate and coordinate Union-wide stress tests to assess the resilience of financial institutions to adverse market developments, and it should ensure that an as consistent as possible methodology is applied at the national level to such tests. In order to perform its functions properly, the Authority should conduct economic analyses of the markets and the impact of potential market developments.
- (43) Given the globalisation of financial services and the increased importance of international standards, the Authority should foster dialogue and cooperation with supervisors outside the Union. It should be empowered to develop contacts and enter into administrative arrangements with the supervisory authorities and administrations of third countries and with international organisations, while fully respecting the existing roles and respective competences of the Member States and the Union institutions. Participation in the work of the Authority should be open to countries which have concluded agreements with the Union whereby they have adopted and are applying Union law, and the Authority should be able to cooperate with third countries which apply legislation that has been recognised as equivalent to that of the Union.
- (44) The Authority should serve as an independent advisory body to the European Parliament, the Council, and the Commission in the area of its competence. Without prejudice to the competencies of the competent authorities concerned, the Authority should be able to provide its opinion on the prudential assessment of mergers and acquisitions under Directive 92/49/EEC and Directives 2002/83/EC and 2005/68/EC, as amended by Directive 2007/44/EC <sup>(1)</sup> in those cases in which that Directive requires consultation between competent authorities from two or more Member States.
- (45) In order to carry out its duties effectively, the Authority should have the right to request all necessary information. To avoid the duplication of reporting obligations for financial institutions, that information should normally be provided by the national supervisory authorities which are closest to the financial markets and institutions and should take into account already existing statistics. However, as a last resort, the Authority should be able to address a duly justified and reasoned request for information directly to a financial institution where a national competent authority does not or cannot provide such information in a timely fashion. Member States' authorities should be obliged to assist the Authority in enforcing such direct requests. In that context, the work on common reporting formats is essential. The measures for the collection of information should be without prejudice to the legal framework of the European Statistical System and the European System of Central Banks in the field of statistics. This Regulation should therefore be without prejudice both to Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics <sup>(2)</sup> and to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank <sup>(3)</sup>.
- (46) Close cooperation between the Authority and the ESRB is essential to give full effectiveness to the functioning of the ESRB and the follow-up to its warnings and recommendations. The Authority and the ESRB should share any relevant information with each other. Data related to individual undertakings should be provided only upon reasoned request. Upon receipt of warnings or recommendations addressed by the ESRB to the Authority or a national supervisory authority, the Authority should ensure follow-up as appropriate.

<sup>(1)</sup> Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ L 247, 21.9.2007, p. 1).

<sup>(2)</sup> OJ L 87, 31.3.2009, p. 164.

<sup>(3)</sup> OJ L 318, 27.11.1998, p. 8.



- (47) The Authority should consult interested parties on regulatory or implementing technical standards, guidelines and recommendations and provide them with a reasonable opportunity to comment on proposed measures. Before adopting draft regulatory or implementing technical standards, guidelines and recommendations, the Authority should carry out an impact study. For reasons of efficiency, an Insurance and Reinsurance Stakeholder Group and an Occupational Pensions Stakeholder Group should be used for that purpose and should represent, in balanced proportions and respectively, the relevant financial institutions operating in the Union, representing the diverse business models and sizes of financial institutions and businesses; small and medium-sized enterprises (SMEs); trade unions; academics; consumers; other retail users of those financial institutions; and representatives of relevant professional associations. Those stakeholder groups should work as an interface with other user groups in the financial services area established by the Commission or by Union legislation.
- (48) Members of the stakeholder groups representing non-profit organisations or academics should receive adequate compensation in order to allow persons that are neither well-funded nor industry representatives to take part fully in the debate on financial regulation.
- (49) The stakeholder groups should be consulted by the Authority and should be able to submit opinions and advice to the Authority on issues related to the optional application to institutions covered by Directive 2002/83/EC or Directive 2003/41/EC.
- (50) Member States have a core responsibility for ensuring coordinated crisis management and preserving financial stability in crisis situations, in particular with regard to stabilising and resolving individual failing financial institutions. Decisions by the Authority in emergency or settlement situations affecting the stability of a financial institution should not impinge on the fiscal responsibilities of Member States. A mechanism should be established whereby Member States may invoke this safeguard and ultimately bring the matter before the Council for a decision. However, that safeguard mechanism should not be abused, in particular in relation to a decision taken by the Authority which does not have a significant or material fiscal impact, such as a reduction of income linked to the temporary prohibition of specific activities or products for consumer protection purposes. When taking decisions under the safeguard mechanism, the Council should vote in accordance with the principle where each member has one vote. It is appropriate to confer on the Council a role in this matter given the particular responsibilities of the Member States in this respect. Given the sensitivity of the issue, strict confidentiality arrangements should be ensured.
- (51) In its decision-making procedures, the Authority should be bound by Union rules and general principles on due process and transparency. The right of the addressees of the Authority's decisions to be heard should be fully respected. The Authority's acts should form an integral part of Union law.
- (52) A Board of Supervisors composed of the heads of the relevant competent authorities in each Member State, and chaired by the Chairperson of the Authority, should be the principal decision-making organ of the Authority. Representatives of the Commission, the ESRB, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Securities and Markets Authority) should participate as observers. Members of the Board of Supervisors should act independently and only in the Union's interest.
- (53) As a general rule, the Board of Supervisors should take its decisions by simple majority in accordance with the principle where each member has one vote. However, for acts of a general nature, including those relating to regulatory and implementing technical standards, guidelines and recommendations, for budgetary matters as well as in respect of requests by a Member State to reconsider a decision by the Authority to temporarily prohibit or restrict certain financial activities, it is appropriate to apply the rules of qualified majority voting as laid down in Article 16(4) of the Treaty on European Union and in the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted, objective panel, composed of members who neither are representatives of the competent authorities which are party to the disagreement nor have any interest in the conflict or direct links to the competent authorities concerned. The composition of the panel should be appropriately balanced. The decision taken by the panel should be approved by the Board of Supervisors by simple majority in accordance with the principle where each member has one vote. However, with regard to decisions taken by the consolidating supervisor, the decision proposed by the panel could be rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.
- (54) A Management Board, composed of the Chairperson of the Authority, of representatives of national supervisory authorities and of the Commission, should ensure that the Authority carries out its mission and performs the tasks assigned to it. The Management Board should be entrusted with the necessary powers, inter alia, to propose the annual and multi-annual work programme, to exercise certain budgetary powers, to adopt the Authority's staff policy plan, to adopt special provisions on the right to access to documents and to propose the annual report.

- (55) The Authority should be represented by a full-time Chairperson, appointed by the Board of Supervisors, on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open selection procedure organised and managed by the Board of Supervisors assisted by the Commission. For the designation of the first Chairperson of the Authority, the Commission should, *inter alia*, draw up a shortlist of candidates on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation. For the subsequent designations, the opportunity of having a shortlist drawn up by the Commission should be reviewed in a report to be established pursuant to this Regulation. Before the selected person takes up his duties, and up to 1 month after his selection by the Board of Supervisors, the European Parliament should be entitled, after having heard the person selected, to object to his designation.
- (56) The management of the Authority should be entrusted to an Executive Director, who should have the right to participate in meetings of the Board of Supervisors and the Management Board without the right to vote.
- (57) In order to ensure cross-sectoral consistency in the activities of the ESAs, they should coordinate closely through a Joint Committee and reach common positions where appropriate. The Joint Committee should coordinate the functions of the ESAs in relation to financial conglomerates and other cross-sectoral matters. Where relevant, acts also falling within the area of competence of the European Supervisory Authority (European Banking Authority) or the European Supervisory Authority (European Securities and Markets Authority) should be adopted in parallel by the European Supervisory Authorities concerned. The Joint Committee should be chaired for a 12-month term on a rotating basis by the Chairpersons of the ESAs. The Chairperson of the Joint Committee should be a Vice-Chair of the ESRB. The Joint Committee should have dedicated staff provided by the ESAs to allow for informal information sharing and the development of a common supervisory culture approach across the ESAs.
- (58) It is necessary to ensure that the parties affected by decisions adopted by the Authority may have recourse to the necessary remedies. To protect effectively the rights of parties, and for reasons of procedural economy, where the Authority has decision-making powers, parties should be granted a right of appeal to a Board of Appeal. For reasons of efficiency and consistency, the Board of Appeal should be a joint body of the ESAs, independent from their administrative and regulatory structures. The decisions of the Board of Appeal should be subject to appeal before the Court of Justice of the European Union.
- (59) In order to guarantee its full autonomy and independence, the Authority should be granted an autonomous budget with revenues mainly from obligatory contributions from national supervisory authorities and from the General Budget of the European Union. Union financing of the Authority is subject to an agreement by the budgetary authority in accordance with Point 47 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management <sup>(1)</sup>. The Union budgetary procedure should be applicable. The auditing of accounts should be undertaken by the Court of Auditors. The overall budget is subject to the discharge procedure.
- (60) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) <sup>(2)</sup> should apply to the Authority. The Authority should also accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) <sup>(3)</sup>.
- (61) In order to ensure open and transparent employment conditions and equal treatment of staff, the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities <sup>(4)</sup> should apply to the staff of the Authority.
- (62) It is essential that business secrets and other confidential information be protected. The confidentiality of information made available to the Authority and exchanged in the network should be subject to stringent and effective confidentiality rules.
- (63) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(5)</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(6)</sup> are fully applicable to the processing of personal data for the purposes of this Regulation.
- (64) In order to ensure the transparent operation of the Authority, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents <sup>(7)</sup> should apply to the Authority.
- (65) Third countries should be allowed to participate in the work of the Authority in accordance with appropriate agreements to be concluded by the Union.

(1) OJ C 139, 14.6.2006, p. 1.

(2) OJ L 136, 31.5.1999, p. 1.

(3) OJ L 136, 31.5.1999, p. 15.

(4) OJ L 56, 4.3.1968, p. 1.

(5) OJ L 281, 23.11.1995, p. 31.

(6) OJ L 8, 12.1.2001, p. 1.

(7) OJ L 145, 31.5.2001, p. 43.

(66) Since the objectives of this Regulation, namely improving the functioning of the internal market by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting policyholders, pension scheme members and other beneficiaries, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability of the financial system, and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

(67) The Authority should assume all current tasks and powers of the Committee of European Insurance and Occupational Pensions Supervisors. Commission Decision 2009/79/EC should therefore be repealed on the date of the establishment of the Authority, and Decision No 716/2009/EC of the European Parliament and of the Council of 16 September 2009 establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing <sup>(1)</sup> should be amended accordingly. Given the existing structures and operations of the Committee of European Insurance and Occupational Pensions Supervisors, it is important to ensure very close cooperation between the Committee of European Insurance and Occupational Pensions Supervisors and the Commission when establishing appropriate transitional arrangements, to ensure that the period during which the Commission is responsible for the administrative establishment and initial administrative operation of the Authority be as limited as possible.

(68) It is appropriate to set a time limit for the application of this Regulation in order to ensure that the Authority is adequately prepared to begin operations and a smooth transition from the Committee of European Insurance and Occupational Pensions Supervisors. The Authority should be appropriately financed. At least initially, it should be financed 40 % from Union funds and 60 % through contributions from Member States, made in accordance with the weighting of votes set out in Article 3(3) of the Protocol (No 36) on transitional provisions.

(69) In order to enable the Authority to be established on 1 January 2011, this Regulation should enter into force on the day following its publication in the *Official Journal of the European Union*,

## CHAPTER I

## ESTABLISHMENT AND LEGAL STATUS

## Article 1

## Establishment and scope of action

1. This Regulation establishes a European Supervisory Authority (European Insurance and Occupational Pensions Authority) (hereinafter the Authority').

2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 2009/138/EC with the exception of Title IV thereof, of Directives 2002/92/EC, 2003/41/EC, 2002/87/EC, 64/225/EEC, 73/239/EEC, 73/240/EEC, 76/580/EEC, 78/473/EEC, 84/641/EEC, 87/344/EEC, 88/357/EEC, 92/49/EEC, 98/78/EC, 2001/17/EC, 2002/83/EC, 2005/68/EC and, to the extent that those acts apply to insurance undertakings, reinsurance undertakings, institutions for occupational retirement provision and insurance intermediaries, within the relevant parts of Directives 2005/60/EC and 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

3. The Authority shall also act in the field of activities of insurance undertakings, reinsurance undertakings, financial conglomerates, institutions for occupational retirement provision and insurance intermediaries, in relation to issues not directly covered in the acts referred to in paragraph 2, including matters of corporate governance, auditing and financial reporting, provided that such actions by the Authority are necessary to ensure the effective and consistent application of those acts.

4. With regard to institutions for occupational retirement provision, the Authority shall act without prejudice to national social and labour law.

5. The provisions of this Regulation are without prejudice to the powers of the Commission, in particular under Article 258 TFEU, to ensure compliance with Union law.

6. The objective of the Authority shall be to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The Authority shall contribute to:

- (a) improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision,
- (b) ensuring the integrity, transparency, efficiency and orderly functioning of financial markets,
- (c) strengthening international supervisory coordination,

HAVE ADOPTED THIS REGULATION:

<sup>(1)</sup> OJ L 253, 25.9.2009, p. 8.

- (d) preventing regulatory arbitrage and promoting equal conditions of competition,
- (e) ensuring the taking of risks related to insurance, reinsurance and occupational pensions activities is appropriately regulated and supervised, and
- (f) enhancing customer protection.

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

In the exercise of the tasks conferred upon it by this Regulation, the Authority shall pay particular attention to any potential systemic risk posed by financial institutions, the failure of which may impair the operation of the financial system or the real economy.

When carrying out its tasks, the Authority shall act independently and objectively and in the interest of the Union alone.

#### Article 2

### European System of Financial Supervision

1. The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services.
2. The ESFS shall comprise the following:
  - (a) the European Systemic Risk Board (ESRB), for the purposes of the tasks as specified in Regulation (EU) No 1092/2010 and this Regulation;
  - (b) the Authority;
  - (c) the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council <sup>(1)</sup>;
  - (d) the European Supervisory Authority (European Securities and Markets Authority) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council <sup>(2)</sup>;
  - (e) the Joint Committee of the European Supervisory Authorities (Joint Committee) for the purposes of carrying out the tasks as specified in Articles 54 to 57 of this Regulation, of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1095/2010;

<sup>(1)</sup> See page 12 of this Official Journal.

<sup>(2)</sup> See page 84 of this Official Journal.

- (f) the competent or supervisory authorities in the Member States as specified in the Union acts referred to in Article 1(2) of this Regulation, of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1095/2010;

3. The Authority shall cooperate regularly and closely with the ESRB as well as with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Securities and Markets Authority) through the Joint Committee, ensuring cross-sectoral consistency of work and reaching joint positions in the area of supervision of financial conglomerates and on other cross-sectoral issues.

4. In accordance with the principle of sincere cooperation under Article 4(3) of the Treaty on European Union, the parties to the ESFS shall cooperate with trust and full mutual respect, in particular in ensuring the flow of appropriate and reliable information between them.

5. Those supervisory authorities that are party to the ESFS shall be obliged to supervise financial institutions operating in the Union in accordance with the acts referred to in Article 1(2).

#### Article 3

### Accountability of the Authorities

The Authorities referred to in Article 2(2)(a) to (d) shall be accountable to the European Parliament and the Council.

#### Article 4

### Definitions

For the purposes of this Regulation the following definitions apply:

- (1) 'financial institutions' means undertakings, entities and natural and legal persons subject to any of the legislative acts referred to in Article 1(2). With regard to Directive 2005/60/EC, 'financial institutions' means only insurance undertakings and insurance intermediaries as defined in that Directive;
- (2) 'competent authorities' means:
  - (i) supervisory authorities as defined in Directive 2009/138/EC, and competent authorities as defined in Directive 2003/41/EC and 2002/92/EC;
  - (ii) with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by financial institutions as defined in point (1).

#### Article 5

### Legal status

1. The Authority shall be a Union body with legal personality.

2. In each Member State, the Authority shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.

3. The Authority shall be represented by its Chairperson.

#### Article 6

##### Composition

The Authority shall comprise:

- (1) a Board of Supervisors, which shall exercise the tasks set out in Article 43;
- (2) a Management Board, which shall exercise the tasks set out in Article 47;
- (3) a Chairperson, who shall exercise the tasks set out in Article 48;
- (4) an Executive Director, who shall exercise the tasks set out in Article 53;
- (5) a Board of Appeal, which shall exercise the tasks set out in Article 60.

#### Article 7

##### Seat

The Authority shall have its seat in Frankfurt am Main.

### CHAPTER II

#### TASKS AND POWERS OF THE AUTHORITY

#### Article 8

##### Tasks and powers of the Authority

1. The Authority shall have the following tasks:

- (a) to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, in particular by providing opinions to the Union institutions and by developing guidelines, recommendations, and draft regulatory and implementing technical standards which shall be based on the legislative acts referred to in Article 1(2);
- (b) to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the acts referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, ensuring effective and consistent supervision of colleges of supervisors, ensuring a coherent functioning of colleges of supervisors and taking actions, inter alia, in emergency situations;

- (c) to stimulate and facilitate the delegation of tasks and responsibilities among competent authorities;
  - (d) to cooperate closely with the ESRB, in particular by providing the ESRB with the necessary information for the achievement of its tasks and by ensuring a proper follow up to the warnings and recommendations of the ESRB;
  - (e) to organise and conduct peer review analyses of competent authorities, including issuing guidelines and recommendations and identifying best practices, in order to strengthen consistency in supervisory outcomes;
  - (f) to monitor and assess market developments in the area of its competences;
  - (g) to undertake economic analyses of markets to inform the discharge of the Authority's functions;
  - (h) to foster the protection of policyholders, pension scheme members and beneficiaries
  - (i) to contribute to the consistent and coherent functioning of colleges of supervisors, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans, providing a high level of protection to policy holders, to beneficiaries and throughout the Union, in accordance with Articles 21 to 26;
  - (j) to fulfil any other specific tasks set out in this Regulation or in other legislative acts;
  - (k) to publish on its website, and to update regularly, information relating to its field of activities, in particular, within the area of its competence, on registered financial institutions, in order to ensure information is easily accessible by the public;
  - (l) to take over, as appropriate, all existing and ongoing tasks from the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS);
2. To achieve the tasks set out in paragraph 1, the Authority shall have the powers set out in this Regulation, in particular to:
- (a) develop draft regulatory technical standards in the specific cases referred to in Article 10;
  - (b) develop draft implementing technical standards in the specific cases referred to in Article 15;
  - (c) issue guidelines and recommendations, as laid down in Article 16;

- (d) issue recommendations in specific cases, as referred to in Article 17(3);
- (e) take individual decisions addressed to competent authorities in the specific cases referred to in Articles 18(3) and 19(3);
- (f) in cases concerning directly applicable Union law, take individual decisions addressed to financial institutions, in the specific cases referred to in Article 17(6), in Article 18(4) and in Article 19(4);
- (g) issue opinions to the European Parliament, the Council, or the Commission as provided for in Article 34;
- (h) collect the necessary information concerning financial institutions as provided for in Article 35;
- (i) develop common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of institutions and on consumer protection;
- (j) provide a centrally accessible database of registered financial institutions in the area of its competence where specified in the acts referred to in Article 1(2).

#### *Article 9*

#### **Tasks related to consumer protection and financial activities**

1. The Authority shall take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market, including by:
  - (a) collecting, analysing and reporting on consumer trends;
  - (b) reviewing and coordinating financial literacy and education initiatives by the competent authorities;
  - (c) developing training standards for the industry; and
  - (d) contributing to the development of common disclosure rules.
2. The Authority shall monitor new and existing financial activities and may adopt guidelines and recommendations with a view to promoting the safety and soundness of markets and convergence of regulatory practice.
3. The Authority may also issue warnings in the event that a financial activity poses a serious threat to the objectives laid down in Article 1(6).

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

5. The Authority may temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or, if so required, in the case of an emergency situation in accordance with and under the conditions laid down in Article 18.

The Authority shall review the decision referred to in the first subparagraph at appropriate intervals and at least every 3 months. If the decision is not renewed after a three-month period, it shall automatically expire.

A Member State may request the Authority to reconsider its decision. In that case, the Authority shall decide in accordance with the procedure set out in the second subparagraph of Article 44(1), whether it maintains its decision.

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

#### *Article 10*

#### **Regulatory technical standards**

1. Where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards by means of delegated acts under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts referred to in Article 1(2), the Authority may develop draft regulatory technical standards. The Authority shall submit its draft standards to the Commission for endorsement.

Regulatory technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based.

Before submitting them to the Commission, the Authority shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the opinion of the relevant stakeholder group referred to in Article 37.

Where the Authority submits a draft regulatory technical standard, the Commission shall immediately forward it to the European Parliament and the Council.

Within 3 months of receipt of a draft regulatory technical standard, the Commission shall decide whether to endorse it. The Commission may endorse the draft regulatory technical standards in part only, or with amendments, where the Union's interests so require.

Where the Commission intends not to endorse a draft regulatory technical standard, or to endorse it in part or with amendments, it shall send the draft regulatory technical standard back to the Authority, explaining why it does not endorse it, or, as the case may be, explaining the reasons for its amendments. Within a period of 6 weeks, the Authority may amend the draft regulatory technical standard on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of that six-week period, the Authority has not submitted an amended draft regulatory technical standard, or has submitted a draft regulatory technical standard that is not amended in a way consistent with the Commission's proposed amendments, the Commission may adopt the regulatory technical standard with the amendments it considers relevant or reject it.

The Commission may not change the content of a draft regulatory technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

2. Where the Authority has not submitted a draft regulatory technical standard within the time limit set out in the legislative acts referred to in Article 1(2), the Commission may request such a draft within a new time limit.

3. Only where the Authority does not submit a draft regulatory technical standard to the Commission within the time limits in accordance with paragraph 2, may the Commission adopt a regulatory technical standard by means of a delegated act without a draft from the Authority.

The Commission shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Commission shall also request the opinion or advice of the relevant stakeholder group referred to in Article 37.

The Commission shall immediately forward the draft regulatory technical standard to the European Parliament and the Council.

The Commission shall send its draft regulatory technical standard to the Authority. Within a period of 6 weeks, the Authority may amend the draft regulatory technical standard and submit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fourth subparagraph, the Authority has not submitted an amended draft regulatory technical standard, the Commission may adopt the regulatory technical standard.

If the Authority has submitted an amended draft regulatory technical standard within the six-week period, the Commission may amend the draft regulatory technical standard on the basis of the Authority's proposed amendments or adopt the regulatory technical standard with the amendments it considers relevant. The Commission shall not change the content of the draft regulatory technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

4. The regulatory technical standards shall be adopted by means of regulations or decisions. They shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

#### Article 11

##### Exercise of the delegation

1. The power to adopt regulatory technical standards referred to in Article 10 shall be conferred on the Commission for a period of four years from 16 December 2010. The Commission shall draw up a report in respect of the delegated power not later than 6 months before the end of the four-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 14.

2. As soon as it adopts a regulatory technical standard, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The power to adopt regulatory technical standards is conferred on the Commission subject to the conditions laid down in Articles 12 to 14.

#### Article 12

##### Revocation of the delegation

1. The delegation of power referred to in Article 10 may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke a delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation.

3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the regulatory technical standards already in force. It shall be published in the *Official Journal of the European Union*.

#### Article 13

##### Objections to regulatory technical standards

1. The European Parliament or the Council may object to a regulatory technical standard within a period of 3 months from the date of notification of the regulatory technical standard adopted by the Commission. At the initiative of the European Parliament or the Council that period shall be extended by 3 months.

Where the Commission adopts a regulatory technical standard which is the same as the draft regulatory technical standard submitted by the Authority, the period during which the European Parliament and the Council may object shall be 1 month from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by 1 month.

2. If, on the expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the regulatory technical standard, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein. The regulatory technical standard may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If either the European Parliament or the Council objects to a regulatory technical standard within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the regulatory technical standard.

#### Article 14

##### Non-endorsement or amendment of draft regulatory technical standards

1. In the event that the Commission does not endorse a draft regulatory technical standard or amends it as provided for in Article 10, the Commission shall inform the Authority, the European Parliament and the Council, stating its reasons.

2. Where appropriate, the European Parliament or the Council may invite the responsible Commissioner, together with the Chairperson of the Authority, within 1 month of the notice referred to in paragraph 1, for an ad hoc meeting of the competent committee of the European Parliament or the Council to present and explain their differences.

#### Article 15

##### Implementing technical standards

1. The Authority may develop implementing technical standards, by means of implementing acts under Article 291 TFEU, in the areas specifically set out in the legislative acts referred to in Article 1(2). Implementing technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be to determine the conditions of application of those acts. The Authority shall submit its draft implementing technical standards to the Commission for endorsement.

Before submitting draft implementing technical standards to the Commission, the Authority shall conduct open public consultations and shall analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the opinion of the relevant stakeholder group referred to in Article 37.

Where the Authority submits a draft implementing technical standard, the Commission shall immediately forward it to the European Parliament and the Council.

Within 3 months of receipt of a draft implementing technical standard, the Commission shall decide whether to endorse it. The Commission may extend that period by 1 month. The Commission may endorse the draft implementing technical standard in part only, or with amendments, where the Union's interests so require.

Where the Commission intends not to endorse a draft implementing technical standard or intends to endorse it in part or with amendments, it shall send it back to the Authority explaining why it does not intend to endorse it, or, as the case may be, explaining the reasons for its amendments. Within a period of 6 weeks, the Authority may amend the draft implementing technical standard on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fifth subparagraph, the Authority has not submitted an amended draft implementing technical standard, or has submitted a draft implementing technical standard that is not amended in a way consistent with the Commission's proposed amendments, the Commission may adopt the implementing technical standard with the amendments it considers relevant or reject it.

The Commission shall not change the content of a draft implementing technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.



2. In cases where the Authority has not submitted a draft implementing technical standard within the time limit set out in the legislative acts referred to in Article 1(2), the Commission may request such a draft within a new time limit.

3. Only where the Authority does not submit a draft implementing technical standard to the Commission within the time limits in accordance with paragraph 2, may the Commission adopt an implementing technical standard by means of an implementing act without a draft from the Authority.

The Commission shall conduct open public consultations on draft implementing technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Commission shall also request the opinion or advice of the relevant stakeholder group referred to in Article 37.

The Commission shall immediately forward the draft implementing technical standard to the European Parliament and the Council.

The Commission shall send the draft implementing technical standard to the Authority. Within a period of 6 weeks, the Authority may amend the draft implementing technical standard and submit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fourth subparagraph, the Authority has not submitted an amended draft implementing technical standard, the Commission may adopt the implementing technical standard.

If the Authority has submitted an amended draft implementing technical standard within that six-week period, the Commission may amend the draft implementing technical standard on the basis of the Authority's proposed amendments or adopt the implementing technical standard with the amendments it considers relevant.

The Commission shall not change the content of the draft implementing technical standards prepared by the Authority without prior coordination with the Authority, as set out in this Article.

4. The implementing technical standards shall be adopted by means of regulations or decisions. They shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

#### Article 16

### Guidelines and recommendations

1. The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to competent authorities or financial institutions.

2. The Authority shall, where appropriate, conduct open public consultations regarding the guidelines and recommendations and analyse the related potential costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, where appropriate, also request opinions or advice from the relevant stakeholder group referred to in Article 37.

3. The competent authorities and financial institutions shall make every effort to comply with those guidelines and recommendations.

Within 2 months of the issuance of a guideline or recommendation, each competent authority shall confirm whether it complies or intends to comply with that guideline or recommendation. In the event that a competent authority does not comply or does not intend to comply, it shall inform the Authority, stating its reasons.

The Authority shall publish the fact that a competent authority does not comply or does not intend to comply with that guideline or recommendation. The Authority may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority for not complying with that guideline or recommendation. The competent authority shall receive advanced notice of such publication.

If required by that guideline or recommendation, financial institutions shall report, in a clear and detailed way, whether they comply with that guideline or recommendation.

4. In the report referred to in Article 43(5) the Authority shall inform the European Parliament, the Council and the Commission of the guidelines and recommendations that have been issued, stating which competent authority has not complied with them, and outlining how the Authority intends to ensure that the competent authority concerned follow its recommendations and guidelines in the future.

#### Article 17

### Breach of Union law

1. Where a competent authority has not applied the acts referred to in Article 1(2) or has applied them in a way which appears to be a breach of Union law, including the regulatory technical standards and implementing technical standards established in accordance with Articles 10 to 15, in particular by failing to ensure that a financial institution satisfies the requirements laid down in those acts, the Authority shall act in accordance with the powers set out in paragraphs 2, 3 and 6 of this Article.

2. Upon a request from one or more competent authorities, the European Parliament, the Council, the Commission or the relevant stakeholder group, or on its own initiative and after having informed the competent authority concerned, the Authority may investigate the alleged breach or non-application of Union law.

Without prejudice to the powers laid down in Article 35, the competent authority shall, without delay, provide the Authority with all information which the Authority considers necessary for its investigation.

3. The Authority may, not later than 2 months from initiating its investigation, address a recommendation to the competent authority concerned setting out the action necessary to comply with Union law.

The competent authority shall, within ten working days of receipt of the recommendation, inform the Authority of the steps it has taken or intends to take to ensure compliance with Union law.

4. Where the competent authority has not complied with Union law within 1 month from receipt of the Authority's recommendation, the Commission may, after having been informed by the Authority, or on its own initiative, issue a formal opinion requiring the competent authority to take the action necessary to comply with Union law. The Commission's formal opinion shall take into account the Authority's recommendation.

The Commission shall issue such a formal opinion no later than 3 months after the adoption of the recommendation. The Commission may extend this period by 1 month.

The Authority and the competent authorities shall provide the Commission with all necessary information.

5. The competent authority shall, within ten working days of receipt of the formal opinion referred to in paragraph 4, inform the Commission and the Authority of the steps it has taken or intends to take to comply with that formal opinion.

6. Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not comply with the formal opinion referred to in paragraph 4 within the period of time specified therein, and where it is necessary to remedy in a timely manner such non-compliance in order to maintain or restore neutral conditions of competition in the market or ensure the orderly functioning and integrity of the financial system, the Authority may, where the relevant requirements of the acts referred to in Article 1(2) are directly applicable to financial institutions, adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under Union law including the cessation of any practice.

The decision of the Authority shall be in conformity with the formal opinion issued by the Commission pursuant to paragraph 4.

7. Decisions adopted under paragraph 6 shall prevail over any previous decision adopted by the competent authorities on the same matter.

When taking action in relation to issues which are subject to a formal opinion pursuant to paragraph 4 or a decision pursuant to paragraph 6, competent authorities shall comply with the formal opinion or the decision, as the case may be.

8. In the report referred to in Article 43(5), the Authority shall set out which competent authorities and financial institutions have not complied with the formal opinions or decisions referred to in paragraphs 4 and 6 of this Article.

#### Article 18

#### Action in emergency situations

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

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

2. The Council, in consultation with the Commission and the ESRB and, where appropriate, the ESAs, may adopt a decision addressed to the Authority, determining the existence of an emergency situation for the purposes of this Regulation, following a request by the Authority, the Commission or the ESRB. The Council shall review that decision at appropriate intervals and at least once a month. If the decision is not renewed at the end of a one-month period, it shall automatically expire. The Council may declare the discontinuation of the emergency situation at any time.

Where the ESRB or the Authority considers that an emergency situation may arise, it shall issue a confidential recommendation addressed to the Council and provide it with an assessment of the situation. The Council shall then assess the need for a meeting. In that process, due care of confidentiality shall be guaranteed.

If the Council determines the existence of an emergency situation, it shall duly inform the European Parliament and the Commission without delay.

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

4. Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not comply with the decision of the Authority referred to in paragraph 3 within the period laid down in that decision, the Authority may, where the relevant requirements laid down in the legislative acts referred to in Article 1(2) including in regulatory technical standards and implementing technical standards adopted in accordance with those acts are directly applicable to financial institutions, adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under that legislation, including the cessation of any practice. This shall apply only in situations in which a competent authority does not apply the legislative acts referred to in Article 1(2), including regulatory technical standards and implementing technical standards adopted in accordance with those acts, or applies them in a way which appears to be a manifest breach of those acts, and where urgent remedying is necessary to restore the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union.

5. Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter.

Any action by the competent authorities in relation to issues which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.

#### Article 19

##### **Settlement of disagreements between competent authorities in cross-border situations**

1. Without prejudice to the powers laid down in Article 17, where a competent authority disagrees about the procedure or content of an action or inaction of a competent authority of another Member State in cases specified in the acts referred to in Article 1(2), the Authority, at the request of one or more of the competent authorities concerned, may assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 of this Article.

In cases specified in the legislation referred to in Article 1(2), and where on the basis of objective criteria, disagreement between competent authorities from different Member States can be determined, the Authority may, on its own initiative, assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4.

2. The Authority shall set a time limit for conciliation between the competent authorities taking into account any relevant time periods specified in the acts referred to in Article 1(2) and the complexity and urgency of the matter. At that stage the Authority shall act as a mediator.

3. If the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority may, in accordance with the procedure set out in the third and fourth subparagraph of Article 44(1) take a decision requiring them to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with Union law.

4. Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial institution complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2), the Authority may adopt an individual decision addressed to a financial institution requiring the necessary action to comply with its obligations under Union law, including the cessation of any practice.

5. Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter. Any action by the competent authorities in relation to facts which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.

6. In the report referred to in Article 50(2), the Chairperson of the Authority shall set out the nature and type of disagreements between competent authorities, the agreements reached and the decisions taken to settle such disagreements.

#### Article 20

##### **Settlement of disagreements between competent authorities across sectors**

The Joint Committee shall, in accordance with the procedure laid down in Article 19 and Article 56, settle cross-sectoral disagreements that may arise between competent authorities as defined in Article 4(2) of this Regulation, of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1095/2010 respectively.

#### Article 21

##### **Colleges of supervisors**

1. The Authority shall contribute to promoting and monitoring the efficient, effective and consistent functioning of the colleges of supervisors referred to in Directive 2009/138/EC and foster the coherence of the application of Union law among the colleges of supervisors. With the objective of converging supervisory best practices, staff from the Authority shall be able to participate in the activities of the colleges of supervisors, including on-site examinations, carried out jointly by two or more competent authorities.

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

For the purpose of this paragraph and of paragraph 1 of this Article, the Authority shall be considered a 'competent authority' within the meaning of the relevant legislation.

The Authority may:

- (a) collect and share all relevant information in cooperation with the competent authorities in order to facilitate the work of the college and establish and manage a central system to make such information accessible to the competent authorities in the college;
- (b) initiate and coordinate Union-wide stress tests in accordance with Article 32 to assess the resilience of financial institutions, in particular the systemic risk posed by financial institutions as referred to in Article 23, to adverse market developments, and evaluate the potential for systemic risk to increase in situations of stress, ensuring that a consistent methodology is applied at the national level to such tests and, where appropriate, address a recommendation to the competent authority to correct issues identified in the stress test;
- (c) promote effective and efficient supervisory activities, including evaluating the risks to which financial institutions are or might be exposed as determined under the supervisory review process or in stress situations;
- (d) oversee, in accordance with the tasks and powers specified in this Regulation, the tasks carried out by the competent authorities; and
- (e) request further deliberations of a college in any cases where it considers that the decision would result in an incorrect application of Union law or would not contribute to the objective of convergence of supervisory practices. It may also require the group supervisor to schedule a meeting of the college or add a point to the agenda of a meeting.

3. The Authority may develop draft regulatory and implementing technical standards to ensure uniform conditions of application with respect to the provisions regarding the operational functioning of colleges of supervisors and issue guidelines and recommendations adopted under Article 16 to promote convergence in supervisory functioning and best practices adopted by the colleges of supervisors.

4. The Authority shall have a legally binding mediation role to resolve disputes between competent authorities in accordance with the procedure set out in Article 19. The Authority may take supervisory decisions directly applicable to the institution concerned in accordance with Article 19.

## Article 22

### General provisions

1. The Authority shall duly consider systemic risk as defined by Regulation (EU) No 1092/2010. It shall address any risk of disruption in financial services that:

- (a) is caused by an impairment of all or parts of the financial system; and
- (b) has the potential to have serious negative consequences for internal market and the real economy.

The Authority shall consider, where appropriate, the monitoring and assessment of systemic risk as developed by the ESRB and the Authority and respond to warnings and recommendations by the ESRB in accordance with Article 17 of Regulation (EU) No 1092/2010.

2. The Authority shall, in collaboration with the ESRB, and in accordance with Article 23(1), develop a common approach to the identification and measurement of systemic importance, including quantitative and qualitative indicators as appropriate.

These indicators shall be a critical element in the determination of appropriate supervisory actions. The Authority shall monitor the degree of convergence in the determinations made, with a view to promoting a common approach.

3. Without prejudice to the acts referred to in Article 1(2), the Authority shall draw up, as necessary, additional guidelines and recommendations for financial institutions, to take account of the systemic risk posed by them.

The Authority shall ensure that the systemic risk posed by financial institutions is taken into account when developing draft regulatory and implementing technical standards in the areas laid down in the legislative acts referred to in Article 1(2).

4. Upon a request from one or more competent authorities, the European Parliament, the Council or the Commission, or on its own initiative, the Authority may conduct an inquiry into a particular type of financial institution or type of product or type of conduct in order to assess potential threats to the stability of the financial system and make appropriate recommendations for action to the competent authorities concerned.

For those purposes, the Authority may use the powers conferred on it under this Regulation, including Article 35.

5. The Joint Committee shall ensure overall and cross-sectoral coordination of the activities carried out in accordance with this Article.

*Article 23***Identification and measurement of systemic risk**

1. The Authority shall, in consultation with the ESRB, develop criteria for the identification and measurement of systemic risk and an adequate stress testing regime which includes an evaluation of the potential for systemic risk that may be posed by financial institutions to increase in situations of stress.

The Authority shall develop an adequate stress testing regime to help identify those financial institutions that may pose a systemic risk. These institutions shall be subject to strengthened supervision, and where necessary, to the recovery and resolution procedures referred to in Article 25.

2. The Authority shall take fully into account the relevant international approaches when developing the criteria for the identification and measurement of systemic risk that may be posed by insurance, re-insurance and occupational pensions institutions, including those established by the Financial Stability Board, the International Monetary Fund, the International Association of Insurance Supervisors and the Bank for International Settlements.

*Article 24***Permanent capacity to respond to systemic risks**

1. The Authority shall ensure it has specialised and ongoing capacity to respond effectively to the materialisation of systemic risks as referred to in Articles 22 and 23, in particular with respect to institutions that pose a systemic risk.

2. The Authority shall fulfil the tasks conferred upon it in this Regulation and in the legislation referred to in Article 1(2), and shall contribute to ensuring a coherent and coordinated crisis management and resolution regime in the Union.

*Article 25***Recovery and resolution procedures**

1. The Authority shall contribute to and participate actively in the development and coordination of effective and consistent recovery and resolution plans, procedures in emergency situations and preventive measures to minimise the systemic impact of any failure.

2. The Authority may identify best practices aimed at facilitating the resolution of failing institutions and, in particular, cross-border groups, in ways which avoid contagion, ensuring that appropriate tools, including sufficient resources, are available and allow the institution or the group to be resolved in an orderly, cost-efficient and timely manner.

3. The Authority may develop regulatory and implementing technical standards as specified in the legislative acts referred to in Article 1(2) in accordance with the procedure laid down in Articles 10 to 15.

*Article 26***Development of a European network of national insurance guarantee schemes**

The Authority may contribute to the assessment of the need for a European network of national insurance guarantee schemes which is adequately funded and sufficiently harmonised.

*Article 27***Crisis prevention, management and resolution**

The Authority may be requested by the Commission to contribute to the assessment referred to in Article 242 of Directive 2009/138/EC, in particular as regards the cooperation of supervisory authorities within, and functionality of, colleges of supervisors; the supervisory practices concerning setting the capital add-ons; the assessment of the benefit of enhancing group supervision and capital management within a group of insurance or reinsurance undertakings, including possible measures to enhance a sound cross-border management of insurance groups, in particular in respect of risks and asset management; and may report on any new developments and progress concerning:

- (a) a harmonised framework for early intervention;
- (b) practices in centralised group risk management and functioning of group internal models including stress testing;
- (c) intra-group transactions and risk concentrations;
- (d) the behaviour of diversification and concentration effects over time;
- (e) a harmonised framework for asset transferability, insolvency and winding-up procedures which eliminates the relevant national company or corporate law barriers to asset transferability;
- (f) an equivalent level of protection of policy holders and beneficiaries of the undertakings of the same group, particularly in crisis situations;
- (g) a harmonised and adequately funded Union-wide solution for insurance guarantee schemes.

Having regard to point (f), the Authority may also report on any new developments and progress concerning a set of coordinated national crisis management arrangements and including the necessity or otherwise of a system of coherent and credible funding mechanisms, with appropriate financing instruments.

The review of this Regulation provided for in Article 81 shall, in particular, examine the possible enhancement of the role of the Authority in a framework of crisis prevention, management and resolution.

#### Article 28

##### Delegation of tasks and responsibilities

1. Competent authorities may, with the consent of the delegate, delegate tasks and responsibilities to the Authority or other competent authorities subject to the conditions set out in this Article. Member States may set out specific arrangements regarding the delegation of responsibilities that have to be complied with before their competent authorities enter into such delegation agreements, and may limit the scope of delegation to what is necessary for the effective supervision of cross-border financial institutions or groups.

2. The Authority shall stimulate and facilitate the delegation of tasks and responsibilities between competent authorities by identifying those tasks and responsibilities that can be delegated or jointly exercised and by promoting best practices.

3. The delegation of responsibilities shall result in the reallocation of competences laid down in the acts referred to in Article 1(2). The law of the delegate authority shall govern the procedure, enforcement and administrative and judicial review relating to the delegated responsibilities.

4. The competent authorities shall inform the Authority of delegation agreements into which they intend to enter. They shall put the agreements into effect at the earliest 1 month after informing the Authority.

The Authority may give an opinion on the intended agreement within 1 month of being informed.

The Authority shall publish, by appropriate means, any delegation agreement as concluded by the competent authorities, in order to ensure that all parties concerned are informed appropriately.

#### Article 29

##### Common supervisory culture

1. The Authority shall play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union. The Authority shall carry out, at a minimum, the following activities:

- (a) providing opinions to competent authorities;
- (b) promoting an effective bilateral and multilateral exchange of information between competent authorities, with full respect for the applicable confidentiality and data protection provisions provided for in the relevant Union legislation;

- (c) contributing to developing high quality and uniform supervisory standards, including reporting standards, and international accounting standards in accordance with Article 1(3);
- (d) reviewing the application of the relevant regulatory and implementing technical standards adopted by the Commission, and of the guidelines and recommendations issued by the Authority and proposing amendments where appropriate; and
- (e) establishing sectoral and cross-sectoral training programmes, facilitating personnel exchanges and encouraging competent authorities to intensify the use of secondment schemes and other tools.

2. The Authority may, as appropriate, develop new practical instruments and convergence tools to promote common supervisory approaches and practices.

#### Article 30

##### Peer reviews of competent authorities

1. The Authority shall periodically organise and conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency in supervisory outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison between the authorities reviewed. When conducting peer reviews, existing information and evaluations already made with regard to the competent authority concerned shall be taken into account.

2. The peer review shall include an assessment of, but shall not be limited to:

- (a) the adequacy of resources and governance arrangements of the competent authority, with particular regard to the effective application of the regulatory technical standards and implementing technical standards referred to in Articles 10 to 15 and of the acts referred to in Article 1(2) and the capacity to respond to market developments;
- (b) the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted under Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;
- (c) best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;
- (d) the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.

3. On the basis of a peer review, the Authority may issue guidelines and recommendations pursuant to Article 16. In accordance with Article 16(3), the competent authorities shall endeavour to follow those guidelines and recommendations. The Authority shall take into account the outcome of the peer review when developing draft regulatory technical or implementing technical standards in accordance with Articles 10 to 15.

4. The Authority shall make the best practices that can be identified from those peer reviews publicly available. In addition, all other results of peer reviews may be disclosed publicly, subject to the agreement of the competent authority that is the subject of the peer review.

#### Article 31

##### Coordination function

The Authority shall fulfil a general coordination role between competent authorities, in particular in situations where adverse developments could potentially jeopardise the orderly functioning and integrity of financial markets or the stability of the financial system in the Union.

The Authority shall promote a coordinated Union response, inter alia, by:

- (a) facilitating the exchange of information between the competent authorities;
- (b) determining the scope and, where possible and appropriate, verifying the reliability of information that should be made available to all the competent authorities concerned;
- (c) without prejudice to Article 19, carrying out non-binding mediation upon a request from the competent authorities or on its own initiative;
- (d) notifying the ESRB of any potential emergency situations without delay;
- (e) taking all appropriate measures in case of developments which may jeopardise the functioning of the financial markets with a view to facilitating the coordination of actions undertaken by relevant competent authorities;
- (f) centralising information received from competent authorities in accordance with Articles 21 and 35 as the result of the regulatory reporting obligations for institutions active in more than one Member State. The Authority shall share that information with the other competent authorities concerned.

#### Article 32

##### Assessment of market developments

1. The Authority shall monitor and assess market developments in the area of its competence and, where necessary, inform the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Securities and Markets Authority), the ESRB and the European Parliament,

the Council and the Commission about the relevant micro-prudential trends, potential risks and vulnerabilities. The Authority shall include in its assessments an economic analysis of the markets in which financial institutions operate and an assessment of the impact of potential market developments on such institutions.

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

- (a) common methodologies for assessing the effect of economic scenarios on an institution's financial position;
- (b) common approaches to communication on the outcomes of these assessments of the resilience of financial institutions;
- (c) common methodologies for assessing the effect of particular products or distribution processes on an institution's financial position and on policyholders, pension scheme members, beneficiaries and customer information.

3. Without prejudice to the tasks of the ESRB set out in Regulation (EU) No 1092/2010, the Authority shall, at least once a year, and more frequently as necessary, provide assessments to the European Parliament, the Council, the Commission and the ESRB of trends, potential risks and vulnerabilities in its area of competence.

The Authority shall include a classification of the main risks and vulnerabilities in these assessments and, where necessary, recommend preventative or remedial actions.

4. The Authority shall ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities by closely cooperating with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Securities and Markets Authority) through the Joint Committee.

#### Article 33

##### International relations

1. Without prejudice to the respective competences of the Member States and the Union institutions, the Authority may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries. Those arrangements shall not create legal obligations in respect of the Union and its Member States nor shall they prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with those third countries.

2. The Authority shall assist in preparing equivalence decisions pertaining to supervisory regimes in third countries in accordance with the acts referred to in Article 1(2).

3. In the report referred to in Article 43(5), the Authority shall set out the administrative arrangements agreed upon with international organisations or administrations in third countries and the assistance provided in preparing equivalence decisions.

#### Article 34

##### Other tasks

1. The Authority may, upon a request from the European Parliament, the Council or the Commission, or on its own initiative, provide opinions to the European Parliament, the Council and the Commission on all issues related to its area of competence.

2. With regard to prudential assessments of mergers and acquisitions falling within the scope of Directive 92/49/EEC and Directives 2002/83/EC and 2005/68/EC, as amended by Directive 2007/44/EC, and which, according to those Directives, require consultation between competent authorities from two or more Member States, the Authority may, on application of one of the competent authorities concerned, issue and publish an opinion on a prudential assessment, except in relation to the criteria in Article 15b(1)(e) of Directive 92/49/EEC, Article 15b(1)(e) of Directive 2002/83/EC and Article 19a(1)(e) of Directive 2005/68/EC. The opinion shall be issued promptly and in any event before the end of the assessment period in accordance with Directive 92/49/EEC and Directives 2002/83/EC and 2005/68/EC, as amended by Directive 2007/44/EC. Article 35 shall apply to the areas in respect of which the Authority may issue an opinion.

#### Article 35

##### Collection of information

1. At the request of the Authority, the competent authorities of the Member States shall provide the Authority with all the necessary information to carry out the duties assigned to it by this Regulation, provided that they have legal access to the relevant information and that the request for information is necessary in relation to the nature of the duty in question.

2. The Authority may also request information to be provided at recurring intervals and in specified formats. Such requests shall, where possible, be made using common reporting formats.

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

4. Before requesting information in accordance with this Article and in order to avoid the duplication of reporting obligations, the Authority shall take account of any relevant existing statistics produced and disseminated by the European Statistical System and the European System of Central Banks.

5. Where information is not available or is not made available by the competent authorities in a timely fashion, the Authority may address a duly justified and reasoned request to other supervisory authorities, to the ministry responsible for finance where it has at its disposal prudential information, to the national central bank or to the statistical office of the Member State concerned.

6. Where information is not available or is not made available under paragraph 1 or 5 in a timely fashion, the Authority may address a duly justified and reasoned request directly to the relevant financial institutions. The reasoned request shall explain why the information concerning the respective individual financial institutions is necessary.

The Authority shall inform the relevant competent authorities of requests in accordance with this paragraph and with paragraph 5.

At the request of the Authority, the competent authorities shall assist the Authority in collecting the information.

7. The Authority may use confidential information received under this Article only for the purposes of carrying out the duties assigned to it by this Regulation.

#### Article 36

##### Relationship with the ESRB

1. The Authority shall cooperate closely and on a regular basis with the ESRB.

2. The Authority shall provide the ESRB with regular and timely information necessary for the achievement of its tasks. Any data necessary for the achievement of its tasks that are not in summary or aggregate form shall be provided, without delay, to the ESRB upon a reasoned request, as specified in Article 15 of Regulation (EU) No 1092/2010. The Authority, in cooperation with the ESRB, shall have in place adequate internal procedures for the transmission of confidential information, in particular information regarding individual financial institutions.

3. The Authority shall, in accordance with paragraphs 4 and 5, ensure a proper follow-up to ESRB warnings and recommendations referred to in Article 16 of Regulation (EU) No 1092/2010.

4. On receipt of a warning or recommendation from the ESRB addressed to the Authority, the Authority shall convene a meeting of the Board of Supervisors without delay and assess the implications of such a warning or recommendation for the fulfilment of its tasks.



It shall decide, by the relevant decision-making procedure, on any actions to be taken in accordance with the powers conferred upon it by this Regulation for addressing the issues identified in the warnings and recommendations.

If the Authority does not act on a recommendation, it shall explain to the ESRB and the Council its reasons for not doing so.

5. On receipt of a warning or recommendation from the ESRB addressed to a competent national supervisory authority, the Authority shall, where relevant, use the powers conferred upon it by this Regulation to ensure a timely follow-up.

Where the addressee intends not to follow the recommendation of the ESRB, it shall inform and discuss with the Board of Supervisors its reasons for not acting.

The competent authority shall take due account of the views of the Board of Supervisors when informing the Council and the ESRB in accordance with Article 17 of Regulation (EU) No 1092/2010.

6. In discharging the tasks set out in this Regulation, the Authority shall take the utmost account of the warnings and recommendations of the ESRB.

#### Article 37

##### **Insurance and Reinsurance Stakeholder Group and Occupational Pensions Stakeholder Group**

1. To help facilitate consultation with stakeholders in areas relevant to the tasks of the Authority, an Insurance and Reinsurance Stakeholder Group and an Occupational Pensions Stakeholder Group shall be established (hereinafter collectively referred to as the 'Stakeholder Groups'). The Stakeholder Groups shall be consulted on actions taken in accordance with Articles 10 to 15 concerning regulatory technical standards and implementing technical standards, and, to the extent that these do not concern individual financial institutions, Article 16 concerning guidelines and recommendations. If actions must be taken urgently and consultation becomes impossible, the Stakeholder Groups shall be informed as soon as possible.

The Stakeholder Groups shall meet at least four times a year. They may, together, discuss areas of mutual interest and shall inform each other of the other issues being discussed.

Members of one stakeholder group may be also members of the other stakeholder group.

2. The Insurance and Reinsurance Stakeholder Group shall be composed of 30 members, representing in balanced proportions insurance and reinsurance undertakings and insurance intermediaries operating in the Union, and their employees' representatives, as well as consumers, users of insurance and reinsurance services, representatives of SMEs and representatives of relevant professional associations. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent

insurance undertakings, reinsurance undertakings or insurance intermediaries, three of whom shall represent cooperative and mutual insurers or reinsurers.

3. The Occupational Pensions Stakeholder Group shall be composed of 30 members, representing in balanced proportions institutions for occupational retirement provision operating in the Union, representatives of employees, representatives of beneficiaries, representatives of SMEs and representatives of relevant professional associations. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent institutions for occupational retirement provision.

4. The members of the Stakeholder Groups shall be appointed by the Board of Supervisors, following proposals from the relevant stakeholders. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across the Union.

5. The Authority shall provide all necessary information subject to professional secrecy as set out in Article 70 and ensure adequate secretarial support for the Stakeholder Groups. Adequate compensation shall be provided to members of the Stakeholder Groups representing non-profit organisations, excluding industry representatives. The Stakeholder Groups may establish working groups on technical issues. Members of the Stakeholder Groups shall serve for a period of two-and-a-half years, following which a new selection procedure shall take place.

The members of the Stakeholder Groups may serve two successive terms.

6. The Stakeholder Groups may submit opinions and advice to the Authority on any issue related to the tasks of the Authority with particular focus on the tasks set out in Articles 10 to 16, and Articles 29, 30 and 32.

7. The Stakeholder Groups shall adopt their rules of procedure on the basis of the agreement of a two-thirds majority of their respective members.

8. The Authority shall make public the opinions and advice of the Stakeholder Groups and the results of their consultations.

#### Article 38

##### **Safeguards**

1. The Authority shall ensure that no decision adopted under Articles 18 or 19 impinges in any way on the fiscal responsibilities of Member States.

2. Where a Member State considers that a decision taken under Article 19(3) impinges on its fiscal responsibilities, it may notify the Authority and the Commission within 2 weeks after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority.

In its notification, the Member State shall clearly and specifically explain why and how the decision impinges on its fiscal responsibilities.

In the case of such notification, the decision of the Authority shall be suspended.

Within a period of 1 month from the notification by the Member State, the Authority shall inform the Member State as to whether it maintains its decision or whether it amends or revokes it. If the decision is maintained or amended, the Authority shall state that fiscal responsibilities are not affected.

Where the Authority maintains its decision, the Council shall take a decision, by a majority of the votes cast, at one of its meetings not later than 2 months after the Authority has informed the Member State as set out in the fourth subparagraph, as to whether the Authority's decision is maintained.

Where the Council, after having considered the matter, does not take a decision to maintain the Authority's decision in accordance with the fifth subparagraph, the Authority's decision shall be terminated.

3. Where a Member State considers that a decision taken under Article 18(3) impinges on its fiscal responsibilities, it may notify the Authority, the Commission and the Council, within three working days after notification of the Authority's decision to the competent authority, that the decision will not be implemented by the competent authority.

In its notification, the Member State shall clearly and specifically explain why and how the decision impinges on its fiscal responsibilities.

In the case of such notification, the decision of the Authority shall be suspended.

The Council shall, within ten working days, convene a meeting and take a decision, by a simple majority of its members, as to whether the Authority's decision is revoked.

Where the Council, after having considered the matter, does not take a decision to revoke the Authority's decision in accordance with the fourth subparagraph, the suspension of the Authority's decision shall be terminated.

4. Where the Council has taken a decision in accordance with paragraph 3 not to revoke a decision of the Authority relating to Article 18(3), and the Member State concerned still considers that the decision of the Authority impinges upon its fiscal responsibilities, that Member State may notify the Commission and the Authority and request the Council to re-examine the matter. The Member State concerned shall clearly set out the reasons for its disagreement with the decision of the Council.

Within a period of 4 weeks after the notification referred to in the first subparagraph, the Council shall confirm its original decision or take a new decision in accordance with paragraph 3.

The period of 4 weeks may be extended by four additional weeks by the Council, if the particular circumstances of the case so require.

5. Any abuse of this Article, in particular in relation to a decision by the Authority which does not have a significant or material fiscal impact, shall be prohibited as incompatible with the internal market.

#### Article 39

### Decision-making procedures

1. Before taking the decisions provided for in this Regulation, the Authority shall inform any named addressee of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter. This applies *mutatis mutandis* to recommendations as referred to in Article 17(3).

2. The decisions of the Authority shall state the reasons on which they are based.

3. The addressees of decisions of the Authority shall be informed of the legal remedies available under this Regulation.

4. Where the Authority has taken a decision pursuant to Article 18(3) or (4), it shall review that decision at appropriate intervals.

5. The decisions which the Authority takes pursuant to Articles 17, 18 or 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 interests of financial institutions in the protection of their business secrets or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the Union.

## CHAPTER III

### ORGANISATION

#### SECTION 1

### Board of Supervisors

#### Article 40

### Composition

1. The Board of Supervisors shall be composed of:
  - (a) the Chairperson, who shall be non-voting;
  - (b) the head of the national public authority competent for the supervision of financial institutions in each Member State, who shall meet in person at least twice a year;
  - (c) one representative of the Commission, who shall be non-voting;
  - (d) one representative of the ESRB, who shall be non-voting;
  - (e) one representative of each of the other two European Supervisory Authorities, who shall be non-voting;

2. The Board of Supervisors shall convene meetings with the Stakeholder Groups regularly, at least twice a year.

3. Each competent authority shall be responsible for nominating a high-level alternate from its authority, who may replace the member of the Board of Supervisors referred to in paragraph 1(b), where that person is prevented from attending.

4. In Member States where more than one authority is responsible for the supervision according to this Regulation, those authorities shall agree on a common representative. Nevertheless, 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 member referred to in paragraph 1(b), that member may bring a representative from the relevant national authority, who shall be non-voting.

5. The Board of Supervisors may decide to admit observers.

The Executive Director may participate in meetings of the Board of Supervisors, without the right to vote.

#### Article 41

##### **Internal committees and panels**

1. The Board of Supervisors may establish internal committees or panels for specific tasks attributed to the Board of Supervisors, and may provide for the delegation of certain clearly defined tasks and decisions to internal committees or panels, to the Management Board or to the Chairperson.

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

3. Subject to Article 19(2), the panel shall propose a decision for final adoption by the Board of Supervisors, in accordance with the procedure set out in the third subparagraph of Article 44(1).

4. The Board of Supervisors shall adopt rules of procedure for the panel referred to in paragraph 2.

#### Article 42

##### **Independence**

When carrying out the tasks conferred upon it by this Regulation, the Chairperson and the voting members of the Board of Supervisors shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Board of Supervisors in the performance of their tasks.

#### Article 43

##### **Tasks**

1. The Board of Supervisors shall give guidance to the work of the Authority and shall be in charge of taking the decisions referred to in Chapter II.

2. The Board of Supervisors shall adopt the opinions, recommendations, and decisions, and issue the advice referred to in Chapter II.

3. The Board of Supervisors shall appoint the Chairperson.

4. The Board of Supervisors shall adopt, before 30 September of each year, on the basis of a proposal by the Management Board, the work programme of the Authority for the coming year, and shall transmit it for information to the European Parliament, the Council and the Commission.

The work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

5. The Board of Supervisors shall, on the basis of a proposal by the Management Board, adopt the annual report on the activities of the Authority, including on the performance of the Chairperson's duties, on the basis of the draft report referred to in Article 53(7) and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.

6. The Board of Supervisors shall adopt the multi-annual work programme of the Authority, and shall transmit it for information to the European Parliament, the Council and the Commission.

The multi-annual work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

7. The Board of Supervisors shall adopt the budget in accordance with Article 63.

8. The Board of Supervisors shall exercise disciplinary authority over the Chairperson and the Executive Director and may remove them from office in accordance with Article 48(5) or Article 51(5) respectively.

#### Article 44

##### **Decision making**

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

With regard to the acts specified in Articles 10 to 16 and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.

With regard to decisions in accordance with Article 19(3), for decisions taken by the group supervisor, the decision proposed by the panel shall be considered as adopted, if approved by a simple majority, unless it is rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.

For all other decisions in accordance with Article 19(3), the decision proposed by the panel shall be adopted by a simple majority of the members of the Board of Supervisors. Each member shall have one vote.

2. Meetings of the Board of Supervisors shall be convened by the Chairperson at his own initiative or at the request of one third of its members, and shall be chaired by the Chairperson.

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

4. The rules of procedure shall set out in detail the arrangements governing voting, including, where appropriate, the rules governing quorums. The non-voting members and the observers, with the exception of the Chairperson and the Executive Director, shall not attend any discussions within the Board of Supervisors relating to individual financial institutions, unless otherwise provided for in Article 75(3) or in the acts referred to in Article 1(2).

## SECTION 2

### **Management Board**

#### *Article 45*

#### **Composition**

1. The Management Board shall be composed of the Chairperson and six other members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors.

Other than the Chairperson, each member of the Management Board shall have an alternate, who may replace him if he is prevented from attending.

The term of office of the members elected by the Board of Supervisors shall be two-and-a-half years. That term may be extended once. The composition of the Management Board shall be balanced and proportionate and shall reflect the Union as a whole. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.

2. Decisions by the Management Board shall be adopted on the basis of a majority of the members present. Each member shall have one vote.

The Executive Director and a representative of the Commission shall participate in meetings of the Management Board without the right to vote.

The representative of the Commission shall have the right to vote on matters referred to in Article 63.

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

3. Meetings of the Management Board shall be convened by the Chairperson at his own initiative or at the request of at least a third of its members, and shall be chaired by the Chairperson.

The Management Board shall meet prior to every meeting of the Board of Supervisors and as often as the Management Board deems necessary. It shall meet at least five times a year.

4. The members of the Management Board may, subject to the rules of procedure, be assisted by advisers or experts. The non-voting members, with the exception of the Executive Director, shall not attend any discussions within the Management Board relating to individual financial institutions.

#### *Article 46*

#### **Independence**

The members of the Management Board shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Management Board in the performance of their tasks.

#### *Article 47*

#### **Tasks**

1. The Management Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with this Regulation.

2. The Management Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme.

3. The Management Board shall exercise its budgetary powers in accordance with Articles 63 and 64.

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

5. The Management Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 72.

6. The Management Board shall propose an annual report on the activities of the Authority, including on the Chairperson's duties, on the basis of the draft report referred to in Article 53(7) to the Board of Supervisors for approval.

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

8. The Management Board shall appoint and remove the members of the Board of Appeal in accordance with Article 58(3) and (5).

### SECTION 3

#### **Chairperson**

##### *Article 48*

#### **Appointment and tasks**

1. The Authority shall be represented by a Chairperson, who shall be a full-time independent professional.

The Chairperson shall be responsible for preparing the work of the Board of Supervisors and shall chair the meetings of the Board of Supervisors and the Management Board.

2. The Chairperson shall be appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open selection procedure.

Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person.

The Board of Supervisors shall also elect, from among its members, an alternate who shall carry out the functions of the Chairperson in his absence. That alternate shall not be elected from among the members of the Management Board.

3. The Chairperson's term of office shall be 5 years and may be extended once.

4. In the course of the 9 months preceding the end of the five-year term of office of the Chairperson, the Board of Supervisors shall evaluate:

- (a) the results achieved in the first term of office and the way they were achieved;
- (b) the Authority's duties and requirements in the coming years.

The Board of Supervisors, taking into account the evaluation, may extend the term of office of the Chairperson once subject to confirmation by the European Parliament.

5. The Chairperson may be removed from office only by the European Parliament following a decision of the Board of Supervisors.

The Chairperson shall not prevent the Board of Supervisors from discussing matters relating to the Chairperson, in particular the need for his removal, and shall not be involved in deliberations concerning such a matter.

##### *Article 49*

#### **Independence**

Without prejudice to the role of the Board of Supervisors in relation to the tasks of the Chairperson, the Chairperson shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies nor any other public or private body shall seek to influence the Chairperson in the performance of his tasks.

In accordance with the Staff Regulations referred to in Article 68, the Chairperson shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

##### *Article 50*

#### **Report**

1. The European Parliament and the Council may invite the Chairperson or his alternate to make a statement, while fully respecting his independence. The Chairperson shall make a statement before the European Parliament and answer any questions put by its members whenever so requested.

2. The Chairperson shall report in writing on the main activities of the Authority to the European Parliament when requested and at least 15 days before making the statement referred to in paragraph 1.

3. In addition to the information referred to in Articles 11 to 18 and Articles 20 and 33, the report shall also include any relevant information requested by the European Parliament on an ad-hoc basis.

### SECTION 4

#### **Executive Director**

##### *Article 51*

#### **Appointment**

1. The Authority shall be managed by an Executive Director, who shall be a full-time independent professional.

2. The Executive Director shall be appointed by the Board of Supervisors, after confirmation by the European Parliament, on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation and managerial experience, following an open selection procedure.

3. The Executive Director's term of office shall be 5 years and may be extended once.

4. In the course of the 9 months preceding the end of the Executive Director's term of office, the Board of Supervisors shall evaluate in particular:

- (a) the results achieved in the first term of office and the way they were achieved;
- (b) the Authority's duties and requirements in the coming years.

The Board of Supervisors, taking into account the evaluation referred to in the first subparagraph, may extend the term of office of the Executive Director once.

5. The Executive Director may be removed from office only upon a decision of the Board of Supervisors.

#### Article 52

### Independence

Without prejudice to the respective roles of the Management Board and the Board of Supervisors in relation to the tasks of the Executive Director, the Executive Director shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State, or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the Executive Director in the performance of his tasks.

In accordance with the Staff Regulations referred to in Article 68, the Executive Director shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

#### Article 53

### Tasks

1. The Executive Director shall be in charge of the management of the Authority and shall prepare the work of the Management Board.

2. The Executive Director shall be responsible for implementing the annual work programme of the Authority under the guidance of the Board of Supervisors and under the control of the Management Board.

3. The Executive Director shall take the necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation.

4. The Executive Director shall prepare a multi-annual work programme, as referred to in Article 47(2).

5. Each year, by 30 June, the Executive Director shall prepare a work programme for the following year, as referred to in Article 47(2).

6. The Executive Director shall draw up a preliminary draft budget of the Authority pursuant to Article 63 and shall implement the budget of the Authority pursuant to Article 64.

7. Each year the Executive Director shall prepare a draft report with a section on the regulatory and supervisory activities of the Authority and a section on financial and administrative matters.

8. The Executive Director shall exercise in respect to the Authority's staff the powers laid down in Article 68 and manage staff matters.

## CHAPTER IV

### JOINT BODIES OF THE EUROPEAN SUPERVISORY AUTHORITIES

#### SECTION 1

#### *Joint Committee of European Supervisory Authorities*

#### Article 54

### Establishment

1. The Joint Committee of the European Supervisory Authorities is hereby established.

2. The Joint Committee shall serve as a forum in which the Authority shall cooperate regularly and closely and ensure cross-sectoral consistency with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Securities and Markets Authority), in particular regarding:

- financial conglomerates,
- accounting and auditing,
- micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability,
- retail investment products,
- measures combating money laundering; and,
- information exchange with the ESRB and developing the relationship between the ESRB and the ESAs,

3. The Joint Committee shall have a dedicated staff provided by the ESAs that shall act as a secretariat. The Authority shall contribute adequate resources to administrative, infrastructure and operational expenses.

4. In the event that a financial institution reaches across different sectors, the Joint Committee shall resolve disagreements in accordance with Article 56.

#### Article 55

### Composition

1. The Joint Committee shall be composed of the Chairpersons of the ESAs, and, where applicable, the Chairperson of any Sub-Committee established under Article 57.

2. The Executive Director, a representative of the Commission and the ESRB shall be invited to the meetings of the Joint Committee, as well as of any Sub-Committees referred to in Article 57, as observers.

3. The Chairperson of the Joint Committee shall be appointed on an annual rotational basis from among the Chairpersons of the ESAs. The Chairperson of the Joint Committee shall be a Vice-Chair of the ESRB.

4. The Joint Committee shall adopt and publish its own rules of procedure. The rules may specify further participants in the meetings of the Joint Committee.

The Joint Committee shall meet at least once every 2 months.

#### Article 56

### Joint positions and common acts

Within the scope of its tasks in Chapter II, and in particular with respect to the implementation of Directive 2002/87/EC, where relevant, the Authority shall reach joint positions with the European Supervisory Authority (European Banking Authority) and with the European Supervisory Authority (European Securities and Markets Authority), as appropriate.

Acts under Articles 10 to 15, 17, 18 or 19 of this Regulation in relation to the application of Directive 2002/87/EC and of any other Union acts referred to in Article 1(2) that also fall within the area of competence of the European Supervisory Authority (European Banking Authority) or the European Supervisory Authority (European Securities and Markets Authority) shall be adopted, in parallel, by the Authority, the European Supervisory Authority (European Banking Authority), and the European Supervisory Authority (European Securities and Market Authority), as appropriate.

#### Article 57

### Sub-Committees

1. For the purposes of Article 56, a Sub-Committee on Financial Conglomerates to the Joint Committee shall be established.

2. The Sub-Committee shall be composed of the individuals referred to in Article 55(1), and one high-level representative from the current staff of the relevant competent authority from each Member State.

3. The Sub-Committee shall elect a Chairperson from among its members, who shall also be a member of the Joint Committee.

4. The Joint Committee may establish further Sub-Committees.

#### SECTION 2

### Board of Appeal

#### Article 58

### Composition and operation

1. The Board of Appeal shall be a joint body of the ESAs.

2. The Board of Appeal shall be composed of six members and six alternates, who shall be individuals of a high repute with a proven record of relevant knowledge and professional experience, including supervisory experience, to a sufficiently high level in the fields of banking, insurance, occupational pensions, securities markets or other financial services, excluding current staff of the competent authorities or other national or Union institutions involved in the activities of the Authority. The Board of Appeal shall have sufficient legal expertise to provide expert legal advice on the legality of the Authority's exercise of its powers.

The Board of Appeal shall designate its President.

3. Two members of the Board of Appeal and two alternates shall be appointed by the Management Board of the Authority from a short-list proposed by the Commission, following a public call for expressions of interest published in the *Official Journal of the European Union*, and after consultation of the Board of Supervisors.

The other members shall be appointed in accordance with Regulation (EU) No 1093/2010 and Regulation (EU) No 1095/2010.

4. The term of office of the members of the Board of Appeal shall be 5 years. That term may be extended once.

5. A member of the Board of Appeal appointed by the Management Board of the Authority shall not be removed during his term of office unless he has been found guilty of serious misconduct and the Management Board takes a decision to that effect after consulting the Board of Supervisors.

6. The decisions of the Board of Appeal shall be adopted on the basis of a majority of at least four of its six members. Where the appealed decision falls within the scope of this Regulation, the deciding majority shall include at least one of the two members of the Board of Appeal appointed by the Authority.

7. The Board of Appeal shall be convened by its President when necessary.

8. The ESAs shall ensure adequate operational and secretarial support for the Board of Appeal through the Joint Committee.

#### Article 59

### Independence and impartiality

1. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They shall not perform any other duties in relation to the Authority, its Management Board or its Board of Supervisors.

2. Members of the Board of Appeal shall not take part in any appeal proceedings in which they have any personal interest if they have previously been involved as representatives of one of the parties to the proceedings, or if they have participated in the decision under appeal.

3. If, for one of the reasons referred to in paragraphs 1 and 2 or for any other reason, a member of a Board of Appeal considers that another member should not take part in any appeal proceedings, he shall inform the Board of Appeal accordingly.

4. Any party to the appeal proceedings may object to the participation of a member of the Board of Appeal on any of the grounds referred to in paragraphs 1 and 2, or if suspected of bias.

No objection may be based on the nationality of members nor shall it be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has nonetheless taken a procedural step other than objecting to the composition of the Board of Appeal.

5. The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs 1 and 2 without the participation of the member concerned.

For the purpose of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate. Where the alternate is in a similar situation, the Chairperson shall designate a replacement from among the available alternates.

6. The members of the Board of Appeal shall undertake to act independently and in the public interest.

For that purpose, they shall make a declaration of commitments and a declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence.

Those declarations shall be made public, annually and in writing.

## CHAPTER V

### REMEDIES

#### Article 60

##### Appeals

1. Any natural or legal person, including competent authorities, may appeal against a decision of the Authority referred to in Articles 17, 18 and 19 and any other decision taken by the Authority in accordance with the Union acts referred to in Article 1(2) which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.

2. The appeal, together with a statement of grounds, shall be filed in writing at the Authority within 2 months of the date of notification of the decision to the person concerned, or, in the absence of a notification, of the day on which the Authority published its decision.

The Board of Appeal shall decide upon the appeal within 2 months after the appeal has been lodged.

3. An appeal lodged pursuant to paragraph 1 shall not have suspensive effect.

However, the Board of Appeal may, if it considers that circumstances so require, suspend the application of the contested decision.

4. If the appeal is admissible, the Board of Appeal shall examine whether it is well-founded. It shall invite the parties to the appeal proceedings to file observations on its own notifications or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make oral representations.

5. The Board of Appeal may confirm the decision taken by the competent body of the Authority, or remit the case to the competent body of the Authority. That body shall be bound by the decision of the Board of Appeal and that body shall adopt an amended decision regarding the case concerned.

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

7. The decisions taken by the Board of Appeal shall be reasoned and shall be made public by the Authority.

#### Article 61

### Actions before the Court of Justice of the European Union

1. Proceedings may be brought before the Court of Justice of the European Union, in accordance with Article 263 TFEU, contesting a decision taken by the Board of Appeal or, in cases where there is no right of appeal before the Board of Appeal, by the Authority.

2. Member States and the Union institutions, as well as any natural or legal person, may institute proceedings before the Court of Justice of the European Union against decisions of the Authority, in accordance with Article 263 TFEU.

3. In the event that the Authority has an obligation to act and fails to take a decision, proceedings for failure to act may be brought before the Court of Justice of the European Union in accordance with Article 265 TFEU.

4. The Authority shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.



## CHAPTER VI

**FINANCIAL PROVISIONS***Article 62***Budget of the Authority**

1. The revenues of the Authority, a European body in accordance with Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup> (hereinafter the 'Financial Regulation'), shall consist, in particular, of any combination of the following:

- (a) obligatory contributions from the national public authorities competent for the supervision of financial institutions, which shall be made in accordance with a formula based on the weighting of votes set out in Article 3(3) of Protocol (No 36) on transitional provisions. For the purposes of this Article, Article 3(3) of Protocol (No 36) on transitional provisions shall continue to apply beyond the deadline of 31 October 2014 therein established;
- (b) a subsidy from the Union, entered in the General Budget of the European Union (Commission Section);
- (c) any fees paid to the Authority in the cases specified in the relevant instruments of Union law.

2. The expenditure of the Authority shall include, at least, staff, remuneration, administrative, infrastructure, professional training and operational expenses.

3. Revenue and expenditure shall be in balance.

4. Estimates of all Authority revenue and expenditure shall be prepared for each financial year, corresponding to the calendar year, and shall be presented in the budget of the Authority.

*Article 63***Establishment of the budget**

1. By 15 February each year, the Executive Director shall draw up a draft statement of estimates of revenue and expenditure for the following financial year, and shall forward it to the Management Board and the Board of Supervisors, together with the establishment plan. Each year, the Board of Supervisors shall, on the basis of the draft statement drawn up by the Executive Director and approved by the Management Board, produce a statement of estimates of revenue and expenditure of the Authority for the following financial year. That statement of estimates, including a draft establishment plan, shall be transmitted by the Board of Supervisors to the Commission by 31 March. Prior to adoption of the statement of estimates, the draft prepared by the Executive Director shall be approved by the Management Board.

<sup>(1)</sup> OJ L 248, 16.9.2002, p. 1.

2. The statement of estimates shall be transmitted by the Commission to the European Parliament and to the Council (hereinafter referred to together as the 'budgetary authority'), together with the draft budget of the European Union.

3. On the basis of the statement of estimates, the Commission shall enter in the draft budget of the European Union the estimates it deems necessary in respect of the establishment plan and the amount of the subsidy to be charged to the General Budget of the European Union in accordance with Articles 313 and 314 TFEU.

4. The budgetary authority shall adopt the establishment plan for the Authority. The budgetary authority shall authorise the appropriations for the subsidy to the Authority.

5. The budget of the Authority shall be adopted by the Board of Supervisors. It shall become final after the final adoption of the General Budget of the European Union. Where necessary, it shall be adjusted accordingly.

6. The Management Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property, such as the rental or purchase of buildings. It shall inform the Commission thereof. If either branch of the budgetary authority intends to issue an opinion, it shall, within 2 weeks of receipt of the information on the project, notify the Authority of its intention to issue such an opinion. In the absence of a reply, the Authority may proceed with the planned operation.

7. For the first year of operation of the Authority, ending on 31 December 2011, the financing of the Authority by the Union is subject to an agreement by the budgetary authority as provided for in Point 47 of the Interinstitutional Agreement on budgetary discipline and sound financial management.

*Article 64***Implementation and control of the budget**

1. The Executive Director shall act as authorising officer and shall implement the Authority's budget.

2. By 1 March following the completion of each financial year, the Authority's accounting officer shall forward to the Commission's accounting officer and to the Court of Auditors the provisional accounts, accompanied by the report on budgetary and financial management during the financial year. The Authority's accounting officer shall also send the report on budgetary and financial management to the members of the Board of Supervisors, the European Parliament and the Council by 31 March of the following year.

The Commission's accounting officer shall then consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the Financial Regulation.

3. After receiving the observations of the Court of Auditors on the provisional accounts of the Authority in accordance with Article 129 of the Financial Regulation, the Executive Director, acting on his own responsibility, shall draw up the final accounts of the Authority and transmit them, for opinion, to the Management Board.

4. The Management Board shall deliver an opinion on the final accounts of the Authority.

5. The Executive Director shall transmit those final accounts, accompanied by the opinion of the Management Board, by 1 July following the completion of the financial year, to the Members of the Board of Supervisors, the European Parliament, the Council, the Commission and the Court of Auditors.

6. The final accounts shall be published.

7. The Executive Director shall send the Court of Auditors a reply to the latter's observations by 30 September. He shall also send a copy of that reply to the Management Board and the Commission.

8. The Executive Director shall submit to the European Parliament, at the latter's request and as provided for in Article 146(3) of the Financial Regulation, any information necessary for the smooth application of the discharge procedure for the financial year in question.

9. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget comprising revenue from the General Budget of the European Union and competent authorities for the financial year N.

#### *Article 65*

##### **Financial rules**

The financial rules applicable to the Authority shall be adopted by the Management Board after consulting the Commission. Those rules may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup> unless the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission.

#### *Article 66*

##### **Anti-fraud measures**

1. For the purposes of combating fraud, corruption and any other illegal activity, Regulation (EC) No 1073/1999 shall apply to the Authority without any restriction.

<sup>(1)</sup> OJ L 357, 31.12.2002, p. 72.

2. The Authority shall accede to the Interinstitutional Agreement concerning internal investigations by OLAF and shall immediately adopt appropriate provisions for all staff of the Authority.

3. The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks on the beneficiaries of monies disbursed by the Authority as well as on the staff responsible for allocating these monies.

#### CHAPTER VII

##### **GENERAL PROVISIONS**

#### *Article 67*

##### **Privileges and immunities**

The Protocol (No 7) on the privileges and immunities of the European Union annexed to the Treaty on European Union and to the TFEU shall apply to the Authority and its staff.

#### *Article 68*

##### **Staff**

1. The Staff Regulations, the Conditions of Employment of Other Servants and the rules adopted jointly by the Union institutions for the purpose of applying them shall apply to the staff of the Authority, including its Executive Director and its Chairperson.

2. The Management Board, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations.

3. In respect of its staff, the Authority shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants.

4. The Management Board shall adopt provisions to allow national experts from Member States to be seconded to the Authority.

#### *Article 69*

##### **Liability of the Authority**

1. In the case of non-contractual liability, the Authority shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its staff in the performance of their duties. The Court of Justice of the European Union shall have jurisdiction in any dispute over the remedying of such damage.

2. The personal financial liability and disciplinary liability of Authority staff towards the Authority shall be governed by the relevant provisions applying to the staff of the Authority.

*Article 70***Obligation of professional secrecy**

1. Members of the Board of Supervisors and the Management Board, the Executive Director, and members of the staff of the Authority including officials seconded by Member States on a temporary basis and all other persons carrying out tasks for the Authority on a contractual basis shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and the relevant provisions in Union legislation, even after their duties have ceased.

Article 16 of the Staff Regulations shall apply to them.

In accordance with the Staff Regulations, the staff shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence staff members of the Authority in the performance of their tasks.

2. Without prejudice to cases covered by criminal law, any confidential information received by persons referred to in paragraph 1 whilst performing their duties may not be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual financial institutions cannot be identified.

Moreover, the obligation under paragraph 1 and the first subparagraph of this paragraph shall not prevent the Authority and the national supervisory authorities from using the information for the enforcement of the acts referred to in Article 1(2), and in particular for legal procedures for the adoption of decisions.

3. Paragraphs 1 and 2 shall not prevent the Authority from exchanging information with national supervisory authorities in accordance with this Regulation and other Union legislation applicable to financial institutions.

That information shall be subject to the conditions of professional secrecy referred to in paragraphs 1 and 2. The Authority shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

4. The Authority shall apply Commission Decision 2001/844/EC, ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure <sup>(1)</sup>.

*Article 71***Data protection**

This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Directive 95/46/EC or the obligations of the Authority relating to its processing of personal data under Regulation (EC) No 45/2001 when fulfilling its responsibilities.

<sup>(1)</sup> OJ L 317, 3.12.2001, p. 1.

*Article 72***Access to documents**

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Authority.

2. The Management Board shall, by 31 May 2011, adopt practical measures for applying Regulation (EC) No 1049/2001.

3. Decisions taken by the Authority pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice of the European Union, following an appeal to the Board of Appeal, as appropriate, in accordance with the conditions laid down in Articles 228 and 263 TFEU respectively.

*Article 73***Language arrangements**

1. Council Regulation No 1 determining the languages to be used by the European Economic Community <sup>(2)</sup> shall apply to the Authority.

2. The Management Board shall decide on the internal language arrangements for the Authority.

3. The translation services required for the functioning of the Authority shall be provided by the Translation Centre for the Bodies of the European Union.

*Article 74***Headquarters Agreement**

The necessary arrangements concerning the accommodation to be provided for the Authority in the Member State where its seat is located and the facilities to be made available by that Member State, as well as the specific rules applicable in that Member State to the Executive Director, the members of the Management Board, the staff of the Authority and members of their families shall be laid down in a Headquarters Agreement between the Authority and that Member State concluded after obtaining the approval of the Management Board.

That Member State shall provide the best possible conditions to ensure the proper functioning of the Authority, including multilingual, European-oriented schooling and appropriate transport connections.

*Article 75***Participation of third countries**

1. Participation in the work of the Authority shall be open to third countries which have concluded agreements with the Union whereby they have adopted and are applying Union law in the areas of competence of the Authority as referred to in Article 1(2).

<sup>(2)</sup> OJ 17, 6.10.1958, p. 385.

2. The Authority may cooperate with the countries referred to in paragraph 1 applying legislation which has been recognised as equivalent in the areas of competence of the Authority referred to in Article 1(2), as provided for in international agreements concluded by the Union in accordance with Article 216 TFEU.

3. Under the relevant provisions of the agreements referred to in paragraphs 1 and 2, arrangements shall be made specifying, in particular, the nature, scope and procedural aspects of the involvement of the countries referred to in paragraph 1 in the work of the Authority, including provisions relating to financial contributions and to staff. They may provide for representation, as an observer, on the Board of Supervisors, but shall ensure that those countries do not attend any discussions relating to individual financial institutions, except where there is a direct interest.

#### CHAPTER VIII

### TRANSITIONAL AND FINAL PROVISIONS

#### Article 76

##### Preparatory actions

1. Following the entry into force of this Regulation, and before the establishment of the Authority, CEIOPS shall act in close cooperation with the Commission to prepare for the replacement of CEIOPS by the Authority.

2. Once the Authority has been established, the Commission shall be responsible for the administrative establishment and initial administrative operation of the Authority until the Authority has appointed an Executive Director.

For that purpose, until such time as the Executive Director takes up his duties following his appointment by the Board of Supervisors in accordance with Article 51, the Commission may assign one official on an interim basis in order to fulfil the functions of the Executive Director. That period shall be limited to the time necessary for the appointment of an Executive Director of the Authority.

The interim Executive Director may authorise all payments covered by credits provided in the budget of the Authority, once approved by the Management Board and may conclude contracts, including staff contracts following the adoption of the Authority's establishment plan.

3. Paragraphs 1 and 2 are without prejudice to the powers of the Board of Supervisors and the Management Board.

4. The Authority shall be considered the legal successor of CEIOPS. By the date of establishment of the Authority, all assets and liabilities and all pending operations of CEIOPS shall be automatically transferred to the Authority. CEIOPS shall establish a statement showing its closing asset and liability situation as of the date of that transfer. That statement shall be audited and approved by CEIOPS and by the Commission.

#### Article 77

##### Transitional staff provisions

1. By way of derogation from Article 68, all employment contracts and secondment agreements concluded by CEIOPS or its Secretariat and in force on 1 January 2011 shall be honoured until their expiry date. They may not be extended.

2. All members of staff under contracts referred to in paragraph 1 shall be offered the possibility of concluding temporary agent contracts under Article 2(a) of the Conditions of Employment of Other Servants at the various grades as set out in the Authority's establishment plan.

An internal selection limited to staff who have contracts with CEIOPS or its Secretariat shall be carried out after the entry into force of this Regulation by the authority authorised to conclude contracts in order to check the ability, efficiency and integrity of those to be engaged. The internal selection procedure shall take full account of the skills and experience demonstrated by the individuals' performance prior to the engagement.

3. Depending on the type and level of functions to be performed, successful applicants shall be offered temporary agents' contracts of a duration corresponding at least to the time remaining under the prior contract.

4. The relevant national law relating to labour contracts and other relevant instruments shall continue to apply to staff members with prior contracts who choose not to apply for temporary agent's contracts or who are not offered temporary agents contracts in accordance with paragraph 2.

#### Article 78

##### National provisions

The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

#### Article 79

##### Amendments

Decision No 716/2009/EC is hereby amended in so far as CEIOPS is removed from the list of beneficiaries set out in Section B of the Annex to that Decision.

#### Article 80

##### Repeal

Commission Decision 2009/79/EC, establishing CEIOPS, is hereby repealed with effect from 1 January 2011.

*Article 81***Review**

1. By 2 January 2014, and every 3 years thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation. That report shall evaluate, inter alia:

- (a) the convergence in supervisory practices reached by competent authorities,
  - (i) the convergence in functional independence of the competent authorities and in standards equivalent to corporate governance;
  - (ii) the impartiality, objectivity and autonomy of the Authority;
- (b) the functioning of the colleges of supervisors;
- (c) the progress achieved towards convergence in the fields of crisis prevention, management and resolution, including Union funding mechanisms;
- (d) the role of the Authority as regards systemic risk;
- (e) the application of the safeguard clause established in Article 38;
- (f) the application of the binding mediation role established in Article 19.

2. The report referred to in paragraph 1 shall also examine whether:

- (a) it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets;
- (b) it is appropriate to undertake prudential supervision and supervise the conduct of business separately or by the same supervisor;

- (c) it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;
- (d) the evolution of the ESFS is consistent with that of the global evolution;
- (e) there is sufficient diversity and excellence within the ESFS;
- (f) accountability and transparency in relation to publication requirements are adequate;
- (g) the resources of the Authority are adequate to carry out its responsibilities;
- (h) it is appropriate for the seat of the Authority to be maintained or to move the ESAs to a single seat to enhance better coordination between them.

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

4. The report and any accompanying proposals, as appropriate, shall be forwarded to the European Parliament and to the Council.

*Article 82***Entry into force**

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

It shall apply from 1 January 2011, with the exception of Article 76 and Article 77(1) and (2), which shall apply as from the date of its entry into force.

The Authority shall be established on 1 January 2011.

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

Done at Strasbourg, 24 November 2010.

*For the Council*  
*The President*  
 J. BUZEK

*For the European Parliament*  
*The President*  
 O. CHASTEL

**REGULATION (EU) No 1095/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 24 November 2010**

**establishing a European Supervisory Authority (European Securities and Markets Authority),  
amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Central Bank <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

- (1) The financial crisis in 2007 and 2008 exposed important shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. Nationally based supervisory models have lagged behind financial globalisation and the integrated and interconnected reality of European financial markets, in which many financial institutions operate across borders. The crisis exposed shortcomings in the areas of cooperation, coordination, consistent application of Union law and trust between national supervisors.
- (2) Before and during the financial crisis, the European Parliament has called for a move towards more integrated European supervision in order to ensure a true level playing field for all actors at the level of the Union and to reflect the increasing integration of financial markets in the Union (in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan <sup>(4)</sup>, of 21 November 2002 on prudential supervision rules in the European Union <sup>(5)</sup>, of 11 July 2007 on financial services policy (2005 to 2010) – White Paper <sup>(6)</sup>, of 23 September 2008 with recommendations to the Commission on hedge funds and private

equity <sup>(7)</sup> and of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision <sup>(8)</sup>, and in its positions of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) <sup>(9)</sup> and of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies <sup>(10)</sup>).

- (3) In November 2008, the Commission mandated a High-Level Group chaired by Jacques de Larosière to make recommendations on how to strengthen European supervisory arrangements with a view to better protecting the citizen and rebuilding trust in the financial system. In its final report presented on 25 February 2009 (the 'de Larosière Report'), the High-Level Group recommended that the supervisory framework be strengthened to reduce the risk and severity of future financial crises. It recommended reforms to the structure of supervision of the financial sector in the Union. The group also concluded that a European System of Financial Supervisors should be created, comprising three European Supervisory Authorities, one for the banking sector, one for the securities sector and one for the insurance and occupational pensions sector and recommended the creation of a European Systemic Risk Council. The report represented the reforms the experts considered were needed and on which work had to begin immediately.
- (4) In its Communication of 4 March 2009 entitled 'Driving European Recovery', the Commission proposed to put forward draft legislation creating a European system of financial supervision and a European systemic risk board. In its Communication of 27 May 2009 entitled 'European Financial Supervision', it provided more detail about the possible architecture of such a new supervisory framework reflecting the main thrust of the de Larosière Report.
- (5) The European Council, in its conclusions of 19 June 2009, confirmed that a European System of Financial Supervisors, comprising three new European Supervisory Authorities, should be established. The system should be aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross-border groups and

<sup>(1)</sup> OJ C 13, 20.1.2010, p. 1.

<sup>(2)</sup> Opinion of 22 January 2010 (not yet published in the Official Journal).

<sup>(3)</sup> Position of the European Parliament of 22 September 2010 (not yet published in the Official Journal) and decision of the Council of 17 November 2010.

<sup>(4)</sup> OJ C 40, 7.2.2001, p. 453.

<sup>(5)</sup> OJ C 25 E, 29.1.2004, p. 394.

<sup>(6)</sup> OJ C 175 E, 10.7.2008, p. 392.

<sup>(7)</sup> OJ C 8 E, 14.1.2010, p. 26.

<sup>(8)</sup> OJ C 9 E, 15.1.2010, p. 48.

<sup>(9)</sup> OJ C 184 E, 8.7.2010, p. 214.

<sup>(10)</sup> OJ C 184 E, 8.7.2010, p. 292.

establishing a European single rule book applicable to all financial market participants in the internal market. It emphasised that the European Supervisory Authorities should also have supervisory powers in relation to credit rating agencies and invited the Commission to prepare concrete proposals on how the European System of Financial Supervisors could play a strong role in crisis situations, while stressing that decisions taken by the European Supervisory Authorities should not impinge on the fiscal responsibilities of Member States. The Commission has presented a Proposal for a Regulation amending Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies <sup>(1)</sup>. The European Parliament and the Council should consider that proposal in order to ensure that European Supervisory Authority (European Securities and Markets Authority) (hereinafter the Authority) will have adequate supervisory powers over credit rating agencies, bearing in mind that the Authority should execute exclusive supervisory powers over Credit Rating Agencies entrusted to it in Regulation (EC) No 1060/2009. For that purpose, the Authority should have appropriate powers of investigation and enforcement as specified in the relevant legislation, as well as the possibility of charging fees.

(6) On 17 June 2010, the European Council agreed that 'Member States should introduce systems of levies and taxes on financial institutions to ensure fair burden-sharing and to set incentives to contain systemic risk. Such levies or taxes should be part of a credible resolution framework. Further work is urgently required on their main features and issues of level playing field and cumulative impacts of various regulatory measures should be carefully assessed'.

(7) The financial and economic crisis has created real and serious risks to the stability of the financial system and the functioning of the internal market. Restoring and maintaining a stable and reliable financial system is an absolute prerequisite to preserving trust and coherence in the internal market, and thereby to preserve and improve the conditions for the establishment of a fully integrated and functioning internal market in the field of financial services. Moreover, deeper and more integrated financial markets offer better opportunities for financing and risk diversification, and thus help to improve the capacity of the economies to absorb shocks.

(8) The Union has reached the limits of what can be done with the present status of the Committees of European Supervisors. The Union cannot remain in a situation where there is no mechanism to ensure that national supervisors arrive

at the best possible supervisory decisions for cross-border financial market participants; where there is insufficient cooperation and information exchange between national supervisors; where joint action by national authorities requires complicated arrangements to take account of the patchwork of regulatory and supervisory requirements; where national solutions are most often the only feasible option in responding to problems at the level of the Union; and where different interpretations of the same legal text exist. The European System of Financial Supervision (hereinafter the ESFS) should be designed to overcome those deficiencies and provide a system that is in line with the objective of a stable and single Union financial market for financial services, linking national supervisors within a strong Union network.

(9) The ESFS should be an integrated network of national and Union supervisory authorities, leaving day-to-day supervision to the national level. Greater harmonisation and the coherent application of rules for financial market participants across the Union should also be achieved. In addition to the Authority, a European Supervisory Authority (European Banking Authority) and a European Supervisory Authority (European Insurance and Occupational Pensions Authority) as well as a Joint Committee of the European Supervisory Authorities (hereinafter the Joint Committee) should be established. A European Systemic Risk Board (hereinafter the ESRB) should form part of the ESFS for the purposes of the tasks as specified in this Regulation and in Regulation (EU) No 1092/2010 of the European Parliament and of the Council <sup>(2)</sup>.

(10) The European Supervisory Authorities (hereinafter collectively referred to as the 'ESAs') should replace the Committee of European Banking Supervisors established by Commission Decision 2009/78/EC <sup>(3)</sup>, the Committee of European Insurance and Occupational Pensions Supervisors established by Commission Decision 2009/79/EC <sup>(4)</sup> and the Committee of European Securities Regulators established by Commission Decision 2009/77/EC <sup>(5)</sup>, and should assume all of the tasks and competences of those committees including the continuation of ongoing work and projects, where appropriate. The scope of each European Supervisory Authority's action should be clearly defined. The ESAs should be accountable to the European Parliament and the Council. When that accountability relates to cross-sectoral issues that have been coordinated through the Joint Committee, the ESAs should be accountable, through the Joint Committee, for such coordination.

<sup>(2)</sup> See page 1 of this Official Journal.

<sup>(3)</sup> OJ L 25, 29.1.2009, p. 23.

<sup>(4)</sup> OJ L 25, 29.1.2009, p. 28.

<sup>(5)</sup> OJ L 25, 29.1.2009, p. 18.

<sup>(1)</sup> OJ L 302, 17.11.2009, p. 1.

- (11) The Authority should act with a view to improving the functioning of the internal market, in particular by ensuring a high, effective and consistent level of regulation and supervision taking account of the varying interests of all Member States and the different nature of financial market participants. The Authority should protect public values such as the integrity and stability of the financial system, the transparency of markets and financial products and the protection of investors. The Authority should also prevent regulatory arbitrage and guarantee a level playing field, and strengthen international supervisory coordination, for the benefit of the economy at large, including financial institutions and other stakeholders, consumers and employees. Its tasks should also include promoting supervisory convergence and providing advice to the Union institutions in the areas of its responsibility. The Authority should also be entrusted with certain responsibilities for existing and new financial activities.
- (12) The Authority should also be able to temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in this Regulation. If required to make such temporary prohibition in the case of an emergency situation, the Authority should do so in accordance with and under the conditions laid down in this Regulation. In cases where a temporary prohibition or restriction of certain financial activities has a cross-sectoral impact, sectoral legislation should provide that the Authority should consult and coordinate its action with, where relevant, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), through the Joint Committee.
- (13) The Authority should take due account of the impact of its activities on competition and innovation within the internal market, on the Union's global competitiveness, on financial inclusion, and on the Union's new strategy for jobs and growth.
- (14) In order to fulfil its objectives, the Authority should have legal personality as well as administrative and financial autonomy.
- (15) Based on the work of international bodies, systemic risk should be defined as a risk of disruption in the financial system with the potential to have serious negative consequences for the internal market and the real economy. All types of financial intermediaries, markets and infrastructures may be potentially systemically important to some degree.
- (16) Cross-border risk includes all risks caused by economic imbalances or financial failures in all or parts of the Union that have the potential to have significant negative consequences for the transactions between economic operators of two or more Member States, for the functioning of the internal market or for the public finances of the Union or any of its Member States.
- (17) The Court of Justice of the European Union in its judgment of 2 May 2006 in Case C-217/04 (United Kingdom of Great Britain and Northern Ireland v. European Parliament and Council of the European Union) held that: 'nothing in the wording of Article 95 EC [now Article 114 of the Treaty on the Functioning of the European Union (TFEU)] implies that the addressees of the measures adopted by the Community legislature on the basis of that provision can only be the individual Member States. The legislature may deem it necessary to provide for the establishment of a Community body responsible for contributing to the implementation of a process of harmonisation in situations where, in order to facilitate the uniform implementation and application of acts based on that provision, the adoption of non-binding supporting and framework measures seems appropriate' <sup>(1)</sup>. The purpose and tasks of the Authority – assisting competent national supervisory authorities in the consistent interpretation and application of Union rules and contributing to financial stability necessary for financial integration – are closely linked to the objectives of the Union *acquis* concerning the internal market for financial services. The Authority should therefore be established on the basis of Article 114 TFEU.
- (18) The following legislative acts lay down the tasks for competent authorities of Member States, including cooperating with each other and with the Commission: Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes <sup>(2)</sup>, Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems <sup>(3)</sup>, Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities <sup>(4)</sup>, Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements <sup>(5)</sup>, Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) <sup>(6)</sup>, Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive

<sup>(1)</sup> European Court Reports 2006 Page I-03771, para 44.

<sup>(2)</sup> OJ L 84, 26.3.1997, p. 22.

<sup>(3)</sup> OJ L 166, 11.6.1998, p. 45.

<sup>(4)</sup> OJ L 184, 6.7.2001, p. 1.

<sup>(5)</sup> OJ L 168, 27.6.2002, p. 43.

<sup>(6)</sup> OJ L 96, 12.4.2003, p. 16.



- 2001/34/EC <sup>(1)</sup>, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments <sup>(2)</sup>, Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market <sup>(3)</sup>, Directive 2006/49/EC of the European Parliament and the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions <sup>(4)</sup>, without prejudice to the competence of the European Supervisory Authority (European Banking Authority), as far as prudential supervision is concerned, Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) <sup>(5)</sup>, any future legislation in the area of Alternative Investment Fund Managers (AIFM) and Regulation (EC) No 1060/2009.
- (19) Existing Union legislation regulating the field covered by this Regulation also includes Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate <sup>(6)</sup>, Directive 98/78/EC of the European Parliament and of the Council of 27 October 1998 on the supplementary supervision of insurance undertakings in an insurance group <sup>(7)</sup>, Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds <sup>(8)</sup>, and the relevant parts of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing <sup>(9)</sup> and of Directive 2002/65/EC of the European Parliament and of the Council of 23 September 2002 concerning the distance marketing of consumer financial services <sup>(10)</sup>.
- (20) It is desirable that the Authority promote a consistent approach in the area of investor compensation schemes to ensure a level playing field and the equitable treatment of investors across the Union. As investor compensation schemes are subject to oversight in their Member States rather than regulatory supervision, the Authority should be able to exercise its powers under this Regulation in relation to the investor compensation scheme itself and its operator.
- (21) In accordance with the Declaration (No 39) on Article 290 of the Treaty on the Functioning of the European Union (TFEU), annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, the elaboration of regulatory technical standards requires assistance of technical expertise in a form which is specific to the financial services area. It is necessary to allow the Authority to provide such expertise also on standards or parts of standards that are not based on a draft technical standard that it has elaborated.
- (22) There is a need to introduce an effective instrument to establish harmonised regulatory technical standards in financial services to ensure, also through a single rulebook, a level playing field and adequate protection of investors and consumers across the Union. As a body with highly specialised expertise, it is efficient and appropriate to entrust the Authority, in areas defined by Union law, with the elaboration of draft regulatory technical standards, which do not involve policy choices.
- (23) The Commission should endorse those draft regulatory technical standards by means of delegated acts under Article 290 TFEU in order to give them binding legal effect. They should be subject to amendment only in very restricted and extraordinary circumstances, since the Authority is the actor in close contact with and knowing best the daily functioning of financial markets. Draft regulatory technical standards would be subject to amendment if they were incompatible with Union law, did not respect the principle of proportionality or ran counter to the fundamental principles of the internal market for financial services as reflected in the *acquis* of Union financial services legislation. The Commission should not change the content of the draft regulatory technical standards prepared by the Authority without prior coordination with the Authority. To ensure a smooth and expeditious adoption process for those standards, the Commission's decision to endorse draft regulatory technical standards should be subject to a time limit.
- (24) Given the technical expertise of the Authority in the areas where regulatory technical standards should be developed, note should be taken of the Commission's stated intention to rely, as a rule, on the draft regulatory technical standards submitted to it by the Authority in view of the adoption of the corresponding delegated acts. However, in cases where the Authority fails to submit a draft regulatory technical standard within the time limits set out by the relevant legislative act, it should be ensured that the result of the exercise of delegated power is actually achieved, and the efficiency of the decision-making process be maintained. In those cases, the Commission should therefore be empowered to adopt regulatory technical standards in the absence of a draft by the Authority.

<sup>(1)</sup> OJ L 345, 31.12.2003, p. 64.

<sup>(2)</sup> OJ L 145, 30.4.2004, p. 1.

<sup>(3)</sup> OJ L 390, 31.12.2004, p. 38.

<sup>(4)</sup> OJ L 177, 30.6.2006, p. 201.

<sup>(5)</sup> OJ L 302, 17.11.2009, p. 32.

<sup>(6)</sup> OJ L 35, 11.2.2003, p. 1.

<sup>(7)</sup> OJ L 330, 5.12.1998, p. 1.

<sup>(8)</sup> OJ L 345, 8.12.2006, p. 1.

<sup>(9)</sup> OJ L 309, 25.11.2005, p. 15.

<sup>(10)</sup> OJ L 271, 9.10.2002, p. 16.

- (25) The Commission should also be empowered to adopt implementing technical standards by means of implementing acts under Article 291 TFEU.
- (26) In areas not covered by regulatory or implementing technical standards, the Authority should have the power to issue guidelines and recommendations on the application of Union law. In order to ensure transparency and to strengthen compliance by national supervisory authorities with those guidelines and recommendations, it should be possible for the Authority to publish the reasons for supervisory authorities' non-compliance with those guidelines and recommendations.
- (27) Ensuring the correct and full application of Union law is a core prerequisite for the integrity, transparency, efficiency and orderly functioning of financial markets, the stability of the financial system, and for neutral conditions of competition for financial market participants in the Union. A mechanism should therefore be established whereby the Authority addresses instances of non-application or incorrect application of Union law amounting to a breach thereof. That mechanism should apply in areas where Union law defines clear and unconditional obligations.
- (28) To allow for a proportionate response to instances of incorrect or insufficient application of Union law, a three-step mechanism should apply. First, the Authority should be empowered to investigate alleged incorrect or insufficient application of Union law obligations by national authorities in their supervisory practice, concluded by a recommendation. Second, where the competent national authority does not follow the recommendation, the Commission should be empowered to issue a formal opinion taking into account the Authority's recommendation, requiring the competent authority to take the actions necessary to ensure compliance with Union law.
- (29) Third, to overcome exceptional situations of persistent inaction by the competent authority concerned, the Authority should be empowered, as a last resort, to adopt decisions addressed to individual financial market participants. That power should be limited to exceptional circumstances in which a competent authority does not comply with the formal opinion addressed to it and in which Union law is directly applicable to financial market participants by virtue of existing or future Union regulations.
- (30) Serious threats to the orderly functioning and integrity of financial markets or the stability of the financial system in the Union require a swift and concerted response at Union level. The Authority should therefore be able to require national supervisory authorities to take specific actions to remedy an emergency situation. The power to determine the existence of an emergency situation should be conferred on the Council, following a request by any of the ESAs, the Commission or the ESRB.
- (31) The Authority should be able to require national supervisory authorities to take specific action to remedy an emergency situation. The action undertaken by the Authority in this respect should be without prejudice to the Commission's powers under Article 258 TFEU to initiate infringement proceedings against the Member State of that supervisory authority for its failure to take such action, and without prejudice to the Commission's right in such circumstances to seek interim measures in accordance with the rules of procedure of the Court of Justice of the European Union. Furthermore, it should be without prejudice to any liability that that Member State might incur in accordance with the case law of the Court of Justice of the European Union if its supervisory authorities fail to take the action required by the Authority.
- (32) In order to ensure efficient and effective supervision and a balanced consideration of the positions of the competent authorities in different Member States, the Authority should be able to settle disagreements in cross-border situations between those competent authorities with binding effect, including within colleges of supervisors. A conciliation phase should be provided for during which the competent authorities may reach an agreement. The Authority's competence should cover disagreements on the procedure or content of an action or inaction by a competent authority of a Member State in cases specified in the legally binding Union acts referred to in this Regulation. In such a situation, one of the supervisors involved should be entitled to refer the issue to the Authority, which should act in accordance with this Regulation. The Authority should be empowered to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter in order to ensure compliance with Union law, with binding effects for the competent authorities concerned. If a competent authority does not comply with the settlement decision addressed to it, the Authority should be empowered to adopt decisions directly addressed to financial market participants in areas of Union law directly applicable to them. The power to adopt such decisions should apply only as a last resort and then only to ensure the correct and consistent application of Union law. In cases where the relevant Union legislation confers discretion on Member States' competent authorities, decisions taken by the Authority cannot replace the exercise in compliance with Union law of that discretion.
- (33) The crisis has proven that the current system of cooperation between national authorities whose powers are limited to individual Member States is insufficient as regards financial institutions that operate across borders.
- (34) Expert Groups set up by Member States to examine the causes of the crisis and make suggestions to improve the regulation and supervision of the financial sector have confirmed that the current arrangements are not a sound basis for the future regulation and supervision of cross-border financial institutions across the Union.

- (35) As the de Larosière Report indicates, '[i]n essence, we have two alternatives: the first "chacun pour soi" beggar-thy-neighbour solutions; or the second – enhanced, pragmatic, sensible European cooperation for the benefit of all to preserve an open world economy. This will bring undoubted economic gains'.
- (36) Colleges of supervisors play an important role in the efficient, effective and consistent supervision of financial market participants operating across borders. The Authority should contribute to promoting and monitoring the efficient, effective and consistent functioning of the colleges of supervisors and, in that respect, have a leading role in ensuring the consistent and coherent functioning of colleges of supervisors for cross-border financial institutions across the Union. The Authority should therefore have full participation rights in colleges of supervisors with a view to streamlining the functioning of and the information exchange process in the colleges of supervisors and to foster convergence and consistency across colleges in the application of Union law. As the de Larosière Report states, 'competition distortions and regulatory arbitrage stemming from different supervisory practices must be avoided, because they have the potential of undermining financial stability – inter alia by encouraging a shift of financial activity to countries with lax supervision. The supervisory system has to be perceived as fair and balanced'.
- (37) In the areas of its competence, the Authority should contribute to, and participate actively in the development and coordination of effective and consistent recovery and resolution plans, procedures in emergency situations and preventive measures to ensure the internalisation of costs by the financial system, in order to minimise the systemic impact of any failure and the reliance on taxpayer funds to bail out financial market participants. It should contribute to developing methods for the resolution of failing key financial market participants in ways which avoid contagion, which allow them to be wound down in an orderly and timely manner, and which, where applicable, include coherent and credible funding mechanisms as appropriate.
- (38) In the current review of Directive 94/19/EC of the European Parliament and of the Council of 30 May 1994 on deposit-guarantee schemes <sup>(1)</sup> and Directive 97/9/EC, the Commission's intention to pay special attention to the need to ensure further harmonisation throughout the Union is noted. In the insurance sector, the Commission's intention to examine the possibility of introducing Union rules protecting insurance policy holders in case of a failing insurance company is also noted. The ESAs should play an important role in those areas and appropriate powers concerning the European guarantee scheme systems should be conferred upon them.
- (39) The delegation of tasks and responsibilities can be a useful instrument in the functioning of the network of supervisors in order to reduce the duplication of supervisory tasks, to foster cooperation and thereby streamline the supervisory process, as well as to reduce the burden imposed on financial market participants. This Regulation should therefore provide a clear legal basis for such delegation. Whilst respecting the general rule that delegation should be allowed, Member States should be able to introduce specific conditions for the delegation of responsibilities, for example regarding information about, and the notification of, delegation arrangements. Delegation of tasks means that tasks are carried out by the Authority or by a national supervisory authority other than the responsible authority, while the responsibility for supervisory decisions remains with the delegating authority. By the delegation of responsibilities, the Authority or a national supervisory authority (the delegate) should be able to decide upon a certain supervisory matter in its own name in lieu of the delegating authority. Delegations should be governed by the principle of allocating supervisory competence to a supervisor which is best placed to take action in the subject matter. A reallocation of responsibilities would be appropriate, for example, for reasons of economies of scale or scope, of coherence in group supervision, and of optimal use of technical expertise among national supervisory authorities. Decisions by the delegate should be recognised by the delegating authority and by other competent authorities as determinative if those decisions are within the scope of the delegation. Relevant Union legislation could further specify the principles for the reallocation of responsibilities upon agreement. The Authority should facilitate and monitor delegation agreements between national supervisory authorities by all appropriate means.
- It should be informed in advance of intended delegation agreements, in order to be able to express an opinion where appropriate. It should centralise the publication of such agreements to ensure timely, transparent and easily accessible information about agreements for all parties concerned. It should identify and disseminate best practices regarding delegation and delegation agreements.
- (40) The Authority should actively foster supervisory convergence across the Union with the aim of establishing a common supervisory culture.
- (41) Peer reviews are an efficient and effective tool for fostering consistency within the network of financial supervisors. The Authority should therefore develop the methodological framework for such reviews and conduct them on a regular basis. Reviews should focus not only on the convergence of supervisory practices but also on the capacity

<sup>(1)</sup> OJ L 135, 31.5.1994, p. 5.

of supervisors to achieve high quality supervisory outcomes as well as on the independence of those competent authorities. The outcome of peer reviews should be made public with the agreement of the competent authority subject to the review. Best practices should also be identified and made public.

(42) The Authority should actively promote a coordinated Union supervisory response, in particular to ensure the orderly functioning and integrity of financial markets and the stability of the financial system in the Union. In addition to its powers for action in emergency situations, the Authority should therefore be entrusted with a general coordination function within the ESFS. The smooth flow of all relevant information between competent authorities should be a particular focus of the Authority's actions.

(43) In order to safeguard financial stability it is necessary to identify, at an early stage, trends, potential risks and vulnerabilities stemming from the micro-prudential level, across borders and across sectors. The Authority should monitor and assess such developments in the area of its competence and, where necessary, inform the European Parliament, the Council, the Commission, the other European Supervisory Authorities and the ESRB on a regular and, as necessary, on an ad hoc basis. The Authority should also, in cooperation with the ESRB, initiate and coordinate Union-wide stress tests to assess the resilience of financial market participants to adverse market developments, and it should ensure that an as consistent as possible methodology is applied at the national level to such tests. In order to perform its functions properly, the Authority should conduct economic analyses of the markets and the impact of potential market developments.

(44) Given the globalisation of financial services and the increased importance of international standards, the Authority should foster dialogue and cooperation with supervisors outside the Union. It should be empowered to develop contacts and enter into administrative arrangements with the supervisory authorities and administrations of third countries and with international organisations, while fully respecting the existing roles and respective competences of the Member States and the Union institutions. Participation in the work of the Authority should be open to countries which have concluded agreements with the Union whereby they have adopted and are applying Union law, and the Authority should be able to cooperate with third countries which apply legislation that has been recognised as equivalent to that of the Union.

(45) The Authority should serve as an independent advisory body to the European Parliament, the Council, and the Commission in the area of its competence. Without prejudice to the competencies of the competent authorities concerned, the Authority should be able to provide its opinion on the prudential assessment of mergers and acquisitions under Directive 2004/39/EC of the European Parliament

and of the Council of 21 April 2004 on markets in financial instruments <sup>(1)</sup>, as amended by Directive 2007/44/EC <sup>(2)</sup> in those cases in which that Directive requires consultation between competent authorities from two or more Member States.

(46) In order to carry out its duties effectively, the Authority should have the right to request all necessary information. To avoid the duplication of reporting obligations for financial market participants, that information should normally be provided by the national supervisory authorities which are closest to the financial markets and financial market participants and should take into account already existing statistics. However, as a last resort, the Authority should be able to address a duly justified and reasoned request for information directly to a financial market participant where a national competent authority does not or cannot provide such information in a timely fashion. Member States' authorities should be obliged to assist the Authority in enforcing such direct requests. In that context, the work on common reporting formats is essential. The measures for the collection of information should be without prejudice to the legal framework of the European Statistical System and the European System of Central Banks in the field of statistics. This Regulation should therefore be without prejudice both to Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics <sup>(3)</sup> and to Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank <sup>(4)</sup>.

(47) Close cooperation between the Authority and the ESRB is essential to give full effectiveness to the functioning of the ESRB and the follow-up to its warnings and recommendations. The Authority and the ESRB should share any relevant information with each other. Data related to individual undertakings should be provided only upon reasoned request. Upon receipt of warnings or recommendations addressed by the ESRB to the Authority or a national supervisory authority, the Authority should ensure follow-up as appropriate.

(48) The Authority should consult interested parties on regulatory or implementing technical standards, guidelines and recommendations and provide them with a reasonable opportunity to comment on proposed measures. Before adopting draft regulatory or implementing technical

<sup>(1)</sup> OJ L 145, 30.4.2004, p. 1.

<sup>(2)</sup> Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector (OJ L 247, 21.9.2007, p. 1).

<sup>(3)</sup> OJ L 87, 31.3.2009, p. 164.

<sup>(4)</sup> OJ L 318, 27.11.1998, p. 8.

- standards, guidelines and recommendations, the Authority should carry out an impact study. For reasons of efficiency, a Securities and Markets Stakeholder Group should be used for that purpose, and should represent, in balanced proportions, financial market participants, small and medium-sized enterprises (SMEs), academics and consumers and other retail users of financial services. The Securities and Markets Stakeholder Group should work as an interface with other user groups in the financial services area established by the Commission or by Union legislation.
- (49) Members of the Securities and Markets Stakeholder Group representing non-profit organisations or academics should receive adequate compensation in order to allow persons that are neither well-funded nor industry representatives to take part fully in the debate on financial regulation.
- (50) Member States have a core responsibility for ensuring coordinated crisis management and preserving financial stability in crisis situations, in particular with regard to stabilising and resolving individual failing financial market participants. Decisions by the Authority in emergency or settlement situations affecting the stability of a financial market participant should not impinge on the fiscal responsibilities of Member States. A mechanism should be established whereby Member States may invoke this safeguard and ultimately bring the matter before the Council for a decision. However, that safeguard mechanism should not be abused, in particular in relation to a decision taken by the Authority which does not have a significant or material fiscal impact, such as a reduction of income linked to the temporary prohibition of specific activities or products for consumer protection purposes. When taking decisions under the safeguard mechanism, the Council should vote, in accordance with the principle where each member has one vote. It is appropriate to confer on the Council a role in this matter given the particular responsibilities of the Member States in this respect. Given the sensitivity of the issue, strict confidentiality arrangements should be ensured.
- (51) In its decision-making procedures, the Authority should be bound by Union rules and general principles on due process and transparency. The right of the addressees of the Authority's decisions to be heard should be fully respected. The Authority's acts should form an integral part of Union law.
- (52) A Board of Supervisors composed of the heads of the relevant competent authorities in each Member State, and chaired by the Chairperson of the Authority, should be the principal decision-making organ of the Authority. Representatives of the Commission, the ESRB, the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Banking Authority) should participate as observers. Members of the Board of Supervisors should act independently and only in the Union's interest.
- (53) As a general rule, the Board of Supervisors should take its decisions by simple majority in accordance with the principle where each member has one vote. However, for acts of a general nature, including those relating to regulatory and implementing technical standards, guidelines and recommendations, for budgetary matters as well as in respect of requests by a Member State to reconsider a decision by the Authority to temporarily prohibit or restrict certain financial activities, it is appropriate to apply the rules of qualified majority voting as laid down in Article 16(4) of the Treaty on European Union and in the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union. Cases concerning the settlement of disagreements between national supervisory authorities should be examined by a restricted, objective panel, composed of members who neither are representatives of the competent authorities which are party to the disagreement nor have any interest in the conflict or direct links to the competent authorities concerned. The composition of the panel should be appropriately balanced. The decision taken by the panel should be approved by the Board of Supervisors by simple majority in accordance with the principle where each member has one vote. However, with regard to decisions taken by the consolidating supervisor, the decision proposed by the panel could be rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.
- (54) A Management Board, composed of the Chairperson of the Authority, of representatives of national supervisory authorities and of the Commission, should ensure that the Authority carries out its mission and performs the tasks assigned to it. The Management Board should be entrusted with the necessary powers, inter alia, to propose the annual and multi-annual work programme, to exercise certain budgetary powers, to adopt the Authority's staff policy plan, to adopt special provisions on the right to access to documents and to propose the annual report.
- (55) The Authority should be represented by a full time Chairperson, appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial institutions and markets, and of experience relevant to financial supervision and regulation, following an open selection procedure organised and managed by the Board of Supervisors assisted by the Commission. For the designation of the first Chairperson of the Authority, the Commission should, inter alia, draw up a shortlist of candidates on the basis of merit, skills, knowledge of financial institutions and markets, and experience relevant to financial supervision and regulation. For the subsequent designations, the opportunity of having a shortlist drawn up by the Commission

- should be reviewed in a report to be established pursuant to this Regulation. Before the selected person takes up his duties, and up to 1 month after his selection by the Board of Supervisors, the European Parliament should be entitled, after having heard the person selected, to object to his designation.
- (56) The management of the Authority should be entrusted to an Executive Director, who should have the right to participate in meetings of the Board of Supervisors and the Management Board without the right to vote.
- (57) In order to ensure cross-sectoral consistency in the activities of the ESAs, they should coordinate closely through a Joint Committee and reach common positions where appropriate. The Joint Committee should coordinate the functions of the ESAs in relation to financial conglomerates and other cross sectoral matters. Where relevant, acts also falling within the area of competence of the European Supervisory Authority (European Insurance and Occupational Pensions Authority) or the European Supervisory Authority (European Banking Authority) should be adopted in parallel by the European Supervisory Authorities concerned. The Joint Committee should be chaired for a 12-month term on a rotating basis by the Chairpersons of the ESAs. The Chairperson of the Joint Committee should be a Vice-Chair of the ESRB. The Joint Committee should have dedicated staff provided by the ESAs to allow for informal information sharing and the development of a common supervisory culture approach across the ESAs.
- (58) It is necessary to ensure that the parties affected by decisions adopted by the Authority may have recourse to the necessary remedies. To protect effectively the rights of parties, and for reasons of procedural economy, where the Authority has decision-making powers, parties should be granted a right of appeal to a Board of Appeal. For reasons of efficiency and consistency, the Board of Appeal should be a joint body of the ESAs, independent from their administrative and regulatory structures. The decisions of the Board of Appeal should be subject to appeal before the Court of Justice of the European Union.
- (59) In order to guarantee its full autonomy and independence, the Authority should be granted an autonomous budget with revenues mainly from obligatory contributions from national supervisory authorities and from the General Budget of the European Union. Union financing of the Authority is subject to an agreement by the budgetary authority in accordance with Point 47 of the Interinstitutional Agreement between the European Parliament, the Council and the Commission of 17 May 2006 on budgetary discipline and sound financial management <sup>(1)</sup>. The Union budgetary procedure should be applicable. The auditing of accounts should be undertaken by the Court of Auditors. The overall budget is subject to the discharge procedure.
- (60) Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) <sup>(2)</sup> should apply to the Authority. The Authority should also accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF) <sup>(3)</sup>.
- (61) In order to ensure open and transparent employment conditions and equal treatment of staff, Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities <sup>(4)</sup> should apply to the staff of the Authority.
- (62) It is essential that business secrets and other confidential information be protected. The confidentiality of information made available to the Authority and exchanged in the network should be subject to stringent and effective confidentiality rules.
- (63) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data <sup>(5)</sup> and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data <sup>(6)</sup> are fully applicable to the processing of personal data for the purposes of this Regulation.
- (64) In order to ensure the transparent operation of the Authority, Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents <sup>(7)</sup> should apply to the Authority.
- (65) Third countries should be allowed to participate in the work of the Authority in accordance with appropriate agreements to be concluded by the Union.
- (66) Since the objectives of this Regulation, namely improving the functioning of the internal market by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting investors, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability of the financial system, and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale of the action, be

<sup>(2)</sup> OJ L 136, 31.5.1999, p. 1.

<sup>(3)</sup> OJ L 136, 31.5.1999, p. 15.

<sup>(4)</sup> OJ L 56, 4.3.1968, p. 1.

<sup>(5)</sup> OJ L 281, 23.11.1995, p. 31.

<sup>(6)</sup> OJ L 8, 12.1.2001, p. 1.

<sup>(7)</sup> OJ L 145, 31.5.2001, p. 43.

<sup>(1)</sup> OJ C 139, 14.6.2006, p. 1.

better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.

- (67) The Authority should assume all current tasks and powers of the Committee of European Securities Regulators. Commission Decision 2009/77/EC should therefore be repealed on the date of the establishment of the Authority and Decision No 716/2009/EC of the European Parliament and of the Council of 16 September 2009 establishing a Community programme to support specific activities in the field of financial services, financial reporting and auditing <sup>(1)</sup>, should be amended accordingly. Given the existing structures and operations of the Committee of European Securities Regulators, it is important to ensure very close cooperation between the Committee of European Securities Regulators and the Commission when establishing appropriate transitional arrangements, to ensure that the period during which the Commission is responsible for the administrative establishment and initial administrative operation of the Authority be as limited as possible.
- (68) It is appropriate to set a time limit for the application of this Regulation in order to ensure that the Authority is adequately prepared to begin operations and a smooth transition from the Committee of European Securities Regulators. The Authority should be appropriately financed. At least initially, it should be financed 40 % from Union funds and 60 % through contributions from Member States, made in accordance with the weighting of votes set out in Article 3(3) of the Protocol (No 36) on transitional provisions.
- (69) In order to enable the Authority to be established on 1 January 2011, this Regulation should enter into force on the day following its publication in the *Official Journal of the European Union*,

HAVE ADOPTED THIS REGULATION:

#### CHAPTER I

#### ESTABLISHMENT AND LEGAL STATUS

##### Article 1

##### Establishment and scope of action

1. This Regulation establishes a European Supervisory Authority (European Securities and Markets Authority) (hereinafter the Authority).

<sup>(1)</sup> OJ L 253, 25.9.2009, p. 8.

2. The Authority shall act within the powers conferred by this Regulation and within the scope of Directive 97/9/EC, Directive 98/26/EC, Directive 2001/34/EC, Directive 2002/47/EC, Directive 2003/6/EC, Directive 2003/71/EC, Directive 2004/39/EC, Directive 2004/109/EC, Directive 2009/65/EC and to Directive 2006/49/EC, without prejudice to the competence of the European Supervisory Authority (European Banking Authority) in terms of prudential supervision, any future legislation in the area of Alternative Investment Fund Managers (AIFM), and Regulation (EC) No 1060/2009, and, to the extent that these acts apply to firms providing investment services or to collective investment undertakings marketing their units or shares and the competent authorities that supervise them, within the relevant parts of, Directive 2002/87/EC, Directive 2005/60/EC, Directive 2002/65/EC, including all directives, regulations, and decisions based on those acts, and of any further legally binding Union act which confers tasks on the Authority.

3. The Authority shall also act in the field of activities of market participants in relation to issues not directly covered in the acts referred to in paragraph 2, including matters of corporate governance, auditing and financial reporting, provided that such actions by the Authority are necessary to ensure the effective and consistent application of those acts. The Authority shall also take appropriate action in the context of take-over bids, clearing and settlement and derivative issues.

4. The provisions of this Regulation are without prejudice to the powers of the Commission, in particular under Article 258 TFEU, to ensure compliance with Union law.

5. The objective of the Authority shall be to protect the public interest by contributing to the short, medium and long-term stability and effectiveness of the financial system, for the Union economy, its citizens and businesses. The Authority shall contribute to:

- (a) improving the functioning of the internal market, including in particular a sound, effective and consistent level of regulation and supervision,
- (b) ensuring the integrity, transparency, efficiency and orderly functioning of financial markets,
- (c) strengthening international supervisory coordination,
- (d) preventing regulatory arbitrage and promoting equal conditions of competition,
- (e) ensuring the taking of investment and other risks are appropriately regulated and supervised, and
- (f) enhancing customer protection.

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

In the exercise of the tasks conferred upon it by this Regulation, the Authority shall pay particular attention to any systemic risk posed by financial market participants, the failure of which may impair the operation of the financial system or the real economy.

When carrying out its tasks, the Authority shall act independently and objectively and in the interest of the Union alone.

#### Article 2

### European System of Financial Supervision

1. The Authority shall form part of a European System of Financial Supervision (ESFS). The main objective of the ESFS shall be to ensure that the rules applicable to the financial sector are adequately implemented to preserve financial stability and to ensure confidence in the financial system as a whole and sufficient protection for the customers of financial services.

2. The ESFS shall comprise the following:

- (a) the European Systemic Risk Board (ESRB), for the purposes of the tasks as specified in Regulation (EU) No 1092/2010 <sup>(1)</sup> and this Regulation;
- (b) the Authority;
- (c) the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council <sup>(2)</sup>;
- (d) the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council <sup>(3)</sup>;
- (e) the Joint Committee of the European Supervisory Authorities ('Joint Committee') for the purposes of carrying out the tasks as specified in Articles 54 to 57 of this Regulation, of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1094/2010;
- (f) the competent or supervisory authorities in the Member States as specified in the Union acts referred to in Article 1(2) of this Regulation, of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1094/2010.

3. The Authority shall cooperate regularly and closely with the ESRB as well as with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority)

<sup>(1)</sup> See page 1 of this Official Journal.

<sup>(2)</sup> See page 12 of this Official Journal.

<sup>(3)</sup> See page 48 of this Official Journal.

through the Joint Committee, ensuring cross-sectoral consistency of work and reaching joint positions in the area of supervision of financial conglomerates and on other cross-sectoral issues.

4. In accordance with the principle of sincere cooperation under Article 4(3) of the Treaty on European Union, the parties to the ESFS shall cooperate with trust and full mutual respect, in particular in ensuring the flow of appropriate and reliable information between them.

5. Those supervisory authorities that are party to the ESFS shall be obliged to supervise financial market participants operating in the Union in accordance with the acts referred to in Article 1(2).

#### Article 3

### Accountability of the Authorities

The Authorities referred to in Article 2(2)(a) to (d) shall be accountable to the European Parliament and the Council.

#### Article 4

### Definitions

For the purposes of this Regulation the following definitions apply:

- (1) 'financial market participant' means any person in relation to whom a requirement in the legislation referred to in Article 1(2) or a national law implementing such legislation applies;
- (2) 'key financial market participant' means a financial market participant whose regular activity or financial viability has or is likely to have a significant effect on the stability, integrity or efficiency of the financial markets in the Union;
- (3) 'competent authorities' means:
  - (i) competent authorities and/or supervisory authorities as defined in the legislation referred to in Article 1(2);
  - (ii) with regard to Directives 2002/65/EC and 2005/60/EC, the authorities competent for ensuring compliance with the requirements of those Directives by firms providing investment services and by collective investment undertakings marketing their units or shares;
  - (iii) with regard to investor compensation schemes, bodies which administer national compensation schemes pursuant to Directive 97/9/EC, or in the case where the operation of the investor compensation scheme is administered by a private company, the public authority supervising those schemes pursuant to that Directive.



*Article 5***Legal status**

1. The Authority shall be a Union body with legal personality.
2. In each Member State, the Authority shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.
3. The Authority shall be represented by its Chairperson.

*Article 6***Composition**

The Authority shall comprise:

- (1) a Board of Supervisors, which shall exercise the tasks set out in Article 43;
- (2) a Management Board, which shall exercise the tasks set out in Article 47;
- (3) a Chairperson, who shall exercise the tasks set out in Article 48;
- (4) an Executive Director, who shall exercise the tasks set out in Article 53;
- (5) a Board of Appeal, which shall exercise the tasks set out in Article 60.

*Article 7***Seat**

The Authority shall have its seat in Paris.

## CHAPTER II

**TASKS AND POWERS OF THE AUTHORITY***Article 8***Tasks and powers of the Authority**

1. The Authority shall have the following tasks:
  - (a) to contribute to the establishment of high-quality common regulatory and supervisory standards and practices, in particular by providing opinions to the Union institutions and by developing guidelines, recommendations, and draft regulatory and implementing technical standards which shall be based on the legislative acts referred to in Article 1(2);
  - (b) to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the acts referred to in Article 1(2), preventing regulatory arbitrage, mediating and settling disagreements between competent authorities, ensuring effective and consistent supervision of financial market participants, ensuring a coherent functioning of colleges of supervisors and taking actions, inter alia, in emergency situations;

- (c) to stimulate and facilitate the delegation of tasks and responsibilities among competent authorities;
  - (d) to cooperate closely with the ESRB, in particular by providing the ESRB with the necessary information for the achievement of its tasks and by ensuring a proper follow up to the warnings and recommendations of the ESRB;
  - (e) to organise and conduct peer review analyses of competent authorities, including issuing guidelines and recommendations and identifying best practices, in order to strengthen consistency in supervisory outcomes;
  - (f) to monitor and assess market developments in the area of its competence;
  - (g) to undertake economic analyses of markets to inform the discharge of the Authority's functions;
  - (h) to foster investor protection;
  - (i) to contribute to the consistent and coherent functioning of colleges of supervisors, the monitoring, assessment and measurement of systemic risk, the development and coordination of recovery and resolution plans, providing a high level of protection to investors throughout the Union and developing methods for the resolution of failing financial market participants and an assessment of the need for appropriate financing instruments, in accordance with Articles 21 to 26;
  - (j) to fulfil any other specific tasks set out in this Regulation or in other legislative acts;
  - (k) to publish on its website, and to update regularly, information relating to its field of activities, in particular, within the area of its competence, on registered financial market participants, in order to ensure information is easily accessible by the public;
  - (l) to take over, as appropriate, all existing and ongoing tasks from the Committee of European Securities Regulators (CESR).
2. To achieve the tasks set out in paragraph 1, the Authority shall have the powers set out in this Regulation, in particular to:
    - (a) develop draft regulatory technical standards in the specific cases referred to in Article 10;
    - (b) develop draft implementing technical standards in the specific cases referred to in Article 15;
    - (c) issue guidelines and recommendations, as laid down in Article 16;

- (d) issue recommendations in specific cases, as referred to in Article 17(3);
- (e) take individual decisions addressed to competent authorities in the specific cases referred to in Articles 18(3) and 19(3);
- (f) in cases concerning directly applicable Union law, take individual decisions addressed to financial market participants, in the specific cases referred to in Article 17(6), in Article 18(4) and in Article 19(4);
- (g) issue opinions to the European Parliament, the Council, or the Commission as provided for in Article 34;
- (h) collect the necessary information concerning financial market participants as provided for in Article 35;
- (i) develop common methodologies for assessing the effect of product characteristics and distribution processes on the financial position of financial market participants and on consumer protection;
- (j) provide a centrally accessible database of registered financial market participants in the area of its competence where specified in the acts referred to in Article 1(2).

#### Article 9

##### Tasks related to consumer protection and financial activities

1. The Authority shall take a leading role in promoting transparency, simplicity and fairness in the market for consumer financial products or services across the internal market, including by:
  - (a) collecting, analysing and reporting on consumer trends;
  - (b) reviewing and coordinating financial literacy and education initiatives by the competent authorities;
  - (c) developing training standards for the industry; and
  - (d) contributing to the development of common disclosure rules.
2. The Authority shall monitor new and existing financial activities and may adopt guidelines and recommendations with a view to promoting the safety and soundness of markets and convergence of regulatory practice.
3. The Authority may also issue warnings in the event that a financial activity poses a serious threat to the objectives laid down in Article 1(5).
4. The Authority shall establish, as an integral part of the Authority, a Committee on financial innovation, which brings together all relevant competent national supervisory authorities

with a view to achieving a coordinated approach to the regulatory and supervisory treatment of new or innovative financial activities and providing advice for the Authority to present to the European Parliament, the Council and the Commission.

5. The Authority may temporarily prohibit or restrict certain financial activities that threaten the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union in the cases specified and under the conditions laid down in the legislative acts referred to in Article 1(2) or if so required in the case of an emergency situation in accordance with and under the conditions laid down in Article 18.

The Authority shall review the decision referred to in the first subparagraph at appropriate intervals and at least every 3 months. If the decision is not renewed after a three-month period, it shall automatically expire.

A Member State may request the Authority to reconsider its decision. In that case, the Authority shall decide in accordance with the procedure set out in the second subparagraph of Article 44(1), whether it maintains its decision.

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

#### Article 10

##### Regulatory technical standards

1. Where the European Parliament and the Council delegate power to the Commission to adopt regulatory technical standards by means of delegated acts under Article 290 TFEU in order to ensure consistent harmonisation in the areas specifically set out in the legislative acts referred to in Article 1(2), the Authority may develop draft regulatory technical standards. The Authority shall submit its draft standards to the Commission for endorsement.

Regulatory technical standards shall be technical, shall not imply strategic decisions or policy choices and their content shall be delimited by the legislative acts on which they are based.

Before submitting them to the Commission, the Authority shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the opinion of the Securities and Markets Stakeholder Group referred to in Article 37.

Where the Authority submits a draft regulatory technical standard, the Commission shall immediately forward it to the European Parliament and the Council.

Within 3 months of receipt of a draft regulatory technical standard, the Commission shall decide whether to endorse it. The Commission may endorse the draft regulatory technical standards in part only, or with amendments, where the Union's interests so require.

Where the Commission intends not to endorse a draft regulatory technical standard or to endorse it in part or with amendments, it shall send the draft regulatory technical standard back to the Authority, explaining why it does not endorse it, or, as the case may be, explaining the reasons for its amendments. Within a period of 6 weeks, the Authority may amend the draft regulatory technical standard on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of that six-week period, the Authority has not submitted an amended draft regulatory technical standard, or has submitted a draft regulatory technical standard that is not amended in a way consistent with the Commission's proposed amendments, the Commission may adopt the regulatory technical standard with the amendments it considers relevant, or reject it.

The Commission may not change the content of a draft regulatory technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

2. Where the Authority has not submitted a draft regulatory technical standard within the time limit set out in the legislative acts referred to in Article 1(2), the Commission may request such a draft within a new time limit.

3. Only where the Authority does not submit a draft regulatory technical standard to the Commission within the time limits in accordance with paragraph 2, may the Commission adopt a regulatory technical standard by means of a delegated act without a draft from the Authority.

The Commission shall conduct open public consultations on draft regulatory technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft regulatory technical standards concerned or in relation to the particular urgency of the matter. The Commission shall also request the opinion or advice of the Securities and Markets Stakeholder Group referred to in Article 37.

The Commission shall immediately forward the draft regulatory technical standard to the European Parliament and the Council.

The Commission shall send its draft regulatory technical standard to the Authority. Within a period of 6 weeks, the Authority may amend the draft regulatory technical standard and submit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fourth subparagraph, the Authority has not submitted an amended draft regulatory technical standard, the Commission may adopt the regulatory technical standard.

If the Authority has submitted an amended draft regulatory technical standard within the six-week period, the Commission may amend the draft regulatory technical standard on the basis of the Authority's proposed amendments or adopt the regulatory technical standard with the amendments it considers relevant. The Commission shall not change the content of the draft regulatory technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

4. The regulatory technical standards shall be adopted by means of regulations or decisions. They shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

#### Article 11

##### Exercise of the delegation

1. The power to adopt regulatory technical standards referred to in Article 10 shall be conferred on the Commission for a period of 4 years from 16 December 2010. The Commission shall draw up a report in respect of the delegated power not later than 6 months before the end of the four-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 14.

2. As soon as it adopts a regulatory technical standard, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The power to adopt regulatory technical standards is conferred on the Commission subject to the conditions laid down in Articles 12 to 14.

#### Article 12

##### Revocation of the delegation

1. The delegation of power referred to in Article 10 may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke a delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation.

3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the regulatory technical standards already in force. It shall be published in the *Official Journal of the European Union*.

*Article 13***Objections to regulatory technical standards**

1. The European Parliament or the Council may object to a regulatory technical standard within a period of 3 months from the date of notification of the regulatory technical standard adopted by the Commission. At the initiative of the European Parliament or the Council that period shall be extended by 3 months.

Where the Commission adopts a regulatory technical standard which is the same as the draft regulatory technical standard submitted by the Authority, the period during which the European Parliament and the Council may object shall be 1 month from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by 1 month.

2. If, on the expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the regulatory technical standard, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

The regulatory technical standard may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If either the European Parliament or the Council objects to a regulatory technical standard within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the regulatory technical standard.

*Article 14***Non-endorsement or amendment of draft regulatory technical standards**

1. In the event that the Commission does not endorse a draft regulatory technical standard or amends it as provided for in Article 10, the Commission shall inform the Authority, the European Parliament and the Council, stating its reasons.

2. Where appropriate, the European Parliament or the Council may invite the responsible Commissioner, together with the Chairperson of the Authority, within 1 month of the notice referred to in paragraph 1, for an ad hoc meeting of the competent committee of the European Parliament or the Council to present and explain their differences.

*Article 15***Implementing technical standards**

1. The Authority may develop implementing technical standards, by means of implementing acts under Article 291 TFEU, in the areas specifically set out in the legislative acts referred to in Article 1(2). Implementing technical standards shall be technical, shall not imply strategic decisions or policy choices and their

content shall be to determine the conditions of application of those acts. The Authority shall submit its draft implementing technical standards to the Commission for endorsement.

Before submitting draft implementing technical standards to the Commission, the Authority shall conduct open public consultations and shall analyse the potential, related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Authority shall also request the opinion of the Securities and Markets Stakeholder Group referred to in Article 37.

Where the Authority submits a draft implementing technical standard, the Commission shall immediately forward it to the European Parliament and the Council.

Within 3 months of receipt of a draft implementing technical standard, the Commission shall decide whether to endorse it. The Commission may extend that period by 1 month. The Commission may endorse the draft implementing technical standard in part only, or with amendments, where the Union's interests so require.

Where the Commission intends not to endorse a draft implementing technical standard or intends to endorse it in part or with amendments, it shall send it back to the Authority explaining why it does not intend to endorse it, or as the case may be, explaining the reasons for its amendments. Within a period of 6 weeks, the Authority may amend the draft implementing technical standard on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fifth subparagraph, the Authority has not submitted an amended draft implementing technical standard, or has submitted a draft implementing technical standard that is not amended in a way consistent with the Commission's proposed amendments, the Commission may adopt the implementing technical standard with the amendments it considers relevant or reject it.

The Commission shall not change the content of a draft implementing technical standard prepared by the Authority without prior coordination with the Authority, as set out in this Article.

2. In cases where the Authority has not submitted a draft implementing technical standard within the time limit set out in the legislative acts referred to in Article 1(2), the Commission may request such a draft within a new time limit.

3. Only where the Authority does not submit a draft implementing technical standard to the Commission within the time limits in accordance with paragraph 2, may the Commission adopt an implementing technical standard by means of an implementing act without a draft from the Authority.

The Commission shall conduct open public consultations on draft implementing technical standards and analyse the potential related costs and benefits, unless such consultations and analyses are disproportionate in relation to the scope and impact of the draft implementing technical standards concerned or in relation to the particular urgency of the matter. The Commission shall also request the opinion or advice of the Securities and Markets Stakeholder Group referred to in Article 37.

The Commission shall immediately forward the draft implementing technical standard to the European Parliament and the Council.

The Commission shall send the draft implementing technical standard to the Authority. Within a period of 6 weeks, the Authority may amend the draft implementing technical standard and submit it in the form of a formal opinion to the Commission. The Authority shall send a copy of its formal opinion to the European Parliament and to the Council.

If, on the expiry of the six-week period referred to in the fourth subparagraph, the Authority has not submitted an amended draft implementing technical standard, the Commission may adopt the implementing technical standard.

If the Authority has submitted an amended draft implementing technical standard within that six-week period, the Commission may amend the draft implementing technical standard on the basis of the Authority's proposed amendments or adopt the implementing technical standard with the amendments it considers relevant.

The Commission shall not change the content of the draft implementing technical standards prepared by the Authority without prior coordination with the Authority, as set out in this Article.

4. The implementing technical standards shall be adopted by means of regulations or decisions. They shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

#### Article 16

##### Guidelines and recommendations

1. The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to competent authorities or financial market participants.

2. The Authority shall, where appropriate, conduct open public consultations regarding the guidelines and recommendations and analyse the related potential costs and benefits. Such consultations and analyses shall be proportionate in relation to the scope, nature and impact of the guidelines or recommendations. The Authority shall, where appropriate, also request opinions or advice from the Securities and Markets Stakeholder Group referred to in Article 37.

3. The competent authorities and financial market participants shall make every effort to comply with those guidelines and recommendations.

Within 2 months of the issuance of a guideline or recommendation, each competent authority shall confirm whether it complies or intends to comply with that guideline or recommendation. In the event that a competent authority does not comply or does not intend to comply, it shall inform the Authority, stating its reasons.

The Authority shall publish the fact that a competent authority does not comply or does not intend to comply with that guideline or recommendation. The Authority may also decide, on a case by case basis, to publish the reasons provided by the competent authority for not complying with that guideline or recommendation. The competent authority shall receive advanced notice of such publication.

If required by that guideline or recommendation, financial market participants shall report, in a clear and detailed way, whether they comply with that guideline or recommendation.

4. In the report referred to in Article 43(5) the Authority shall inform the European Parliament, the Council and the Commission of the guidelines and recommendations that have been issued, stating which competent authority has not complied with them, and outlining how the Authority intends to ensure that the competent authority concerned follow its recommendations and guidelines in the future.

#### Article 17

##### Breach of Union law

1. Where a competent authority has not applied the acts referred to in Article 1(2), or has applied them in a way which appears to be a breach of Union law, including the regulatory technical standards and implementing technical standards established in accordance with Articles 10 to 15, in particular by failing to ensure that a financial market participant satisfies the requirements laid down in those acts, the Authority shall act in accordance with the powers set out in paragraphs 2, 3 and 6 of this Article.

2. Upon a request from one or more competent authorities, the European Parliament, the Council, the Commission or the Securities and Markets Stakeholder Group, or on its own initiative, and after having informed the competent authority concerned, the Authority may investigate the alleged breach or non-application of Union law.

Without prejudice to the powers laid down in Article 35, the competent authority shall, without delay, provide the Authority with all information which the Authority considers necessary for its investigation.

3. The Authority may, not later than 2 months from initiating its investigation, address a recommendation to the competent authority concerned setting out the action necessary to comply with Union law.

The competent authority shall, within ten working days of receipt of the recommendation, inform the Authority of the steps it has taken or intends to take to ensure compliance with Union law.

4. Where the competent authority has not complied with Union law within 1 month from receipt of the Authority's recommendation, the Commission may, after having been informed by the Authority or on its own initiative, issue a formal opinion requiring the competent authority to take the action necessary to comply with Union law. The Commission's formal opinion shall take into account the Authority's recommendation.

The Commission shall issue such a formal opinion no later than 3 months after the adoption of the recommendation. The Commission may extend this period by 1 month.

The Authority and the competent authorities shall provide the Commission with all necessary information.

5. The competent authority shall, within ten working days of receipt of the formal opinion referred to in paragraph 4, inform the Commission and the Authority of the steps it has taken or intends to take to comply with that formal opinion.

6. Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not comply with the formal opinion referred to in paragraph 4 within the period of time specified therein, and where it is necessary to remedy in a timely manner such non compliance in order to maintain or restore neutral conditions of competition in the market or ensure the orderly functioning and integrity of the financial system, the Authority may, where the relevant requirements of the acts referred to in Article 1(2) are directly applicable to financial market participants, adopt an individual decision addressed to a financial market participant requiring the necessary action to comply with its obligations under Union law including the cessation of any practice.

The decision of the Authority shall be in conformity with the formal opinion issued by the Commission pursuant to paragraph 4.

7. Decisions adopted under paragraph 6 shall prevail over any previous decision adopted by the competent authorities on the same matter.

When taking action in relation to issues which are subject to a formal opinion pursuant to paragraph 4 or a decision pursuant to paragraph 6, competent authorities shall comply with the formal opinion or the decision, as the case may be.

8. In the report referred to in Article 43(5), the Authority shall set out which competent authorities and financial market participants have not complied with the formal opinions or decisions referred to in paragraphs 4 and 6 of this Article.

## Article 18

### Action in emergency situations

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

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

2. The Council, in consultation with the Commission and the ESRB and, where appropriate, the ESAs, may adopt a decision addressed to the Authority, determining the existence of an emergency situation for the purposes of this Regulation, following a request by the Authority, the Commission or the ESRB. The Council shall review that decision at appropriate intervals and at least once a month. If the decision is not renewed at the end of a one-month period, it shall automatically expire. The Council may declare the discontinuation of the emergency situation at any time.

Where the ESRB or the Authority considers that an emergency situation may arise, it shall issue a confidential recommendation addressed to the Council and provide it with an assessment of the situation. The Council shall then assess the need for a meeting. In that process, due care of confidentiality shall be guaranteed.

If the Council determines the existence of an emergency situation, it shall duly inform the European Parliament and the Commission without delay.

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

4. Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not comply with the decision of the Authority referred to in paragraph 3 within the period laid down in that decision, the Authority may, where the relevant requirements laid down in the legislative acts referred to in Article 1(2) including in regulatory technical standards and implementing technical standards adopted in accordance with those acts are directly applicable to financial market

participants, adopt an individual decision addressed to a financial market participant requiring the necessary action to comply with its obligations under that legislation, including the cessation of any practice. This shall apply only in situations in which a competent authority does not apply the legislative acts referred to in Article 1(2), including regulatory technical standards and implementing technical standards adopted in accordance with those acts, or applies them in a way which appears to be a manifest breach of those acts, and where urgent remedying is necessary to restore the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system in the Union.

5. Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter.

Any action by the competent authorities in relation to issues which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.

#### Article 19

##### **Settlement of disagreements between competent authorities in cross-border situations**

1. Without prejudice to the powers laid down in Article 17, where a competent authority disagrees about the procedure or content of an action or inaction of a competent authority of another Member State in cases specified in the acts referred to in Article 1(2), the Authority, at the request of one or more of the competent authorities concerned may assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4 of this Article.

In cases specified in the legislation referred to in Article 1(2), and where on the basis of objective criteria, disagreement between competent authorities from different Member States can be determined, the Authority may, on its own initiative, assist the authorities in reaching an agreement in accordance with the procedure set out in paragraphs 2 to 4.

2. The Authority shall set a time limit for conciliation between the competent authorities taking into account any relevant time periods specified in the acts referred to in Article 1(2) and the complexity and urgency of the matter. At that stage the Authority shall act as a mediator.

3. If the competent authorities concerned fail to reach an agreement within the conciliation phase referred to in paragraph 2, the Authority may, in accordance with the procedure set out in the third and fourth subparagraph of Article 44(1) take a decision requiring them to take specific action or to refrain from action in order to settle the matter, with binding effects for the competent authorities concerned, in order to ensure compliance with Union law.

4. Without prejudice to the powers of the Commission under Article 258 TFEU, where a competent authority does not comply with the decision of the Authority, and thereby fails to ensure that a financial market participant complies with requirements directly applicable to it by virtue of the acts referred to in Article 1(2), the Authority may adopt an individual decision addressed to a financial market participant requiring the necessary action to comply with its obligations under Union law, including the cessation of any practice.

5. Decisions adopted under paragraph 4 shall prevail over any previous decision adopted by the competent authorities on the same matter. Any action by the competent authorities in relation to facts which are subject to a decision pursuant to paragraph 3 or 4 shall be compatible with those decisions.

6. In the report referred to in Article 50(2), the Chairperson of the Authority shall set out the nature and type of disagreements between competent authorities, the agreements reached and the decisions taken to settle such disagreements.

#### Article 20

##### **Settlement of disagreements between competent authorities across sectors**

The Joint Committee shall, in accordance with the procedure laid down in Article 19 and Article 56, settle cross-sectoral disagreements that may arise between competent authorities as defined in Article 4(2) of this Regulation, of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1094/2010 respectively.

#### Article 21

##### **Colleges of supervisors**

1. The Authority shall contribute to promoting and monitoring the efficient, effective and consistent functioning of the colleges of supervisors established in the legislative acts referred to in Article 1(2) and foster the coherence of the application of Union law among the colleges of supervisors. With the objective of converging supervisory best practices, staff from the Authority shall be able to participate in the activities of the colleges of supervisors, including on-site examinations, carried out jointly by two or more competent authorities.

2. The Authority shall lead in ensuring a consistent and coherent functioning of colleges of supervisors for cross-border institutions across the Union, taking account of the systemic risk posed by financial market participants referred to in Article 23.

For the purpose of this paragraph and of paragraph 1 of this Article, the Authority shall be considered a 'competent authority' within the meaning of the relevant legislation.

The Authority may:

- (a) collect and share all relevant information in cooperation with the competent authorities in order to facilitate the work of the college and establish and manage a central system to make such information accessible to the competent authorities in the college;
- (b) initiate and coordinate Union-wide stress tests in accordance with Article 32 to assess the resilience of financial market participants, in particular the systemic risk posed by key financial market participants as referred to in Article 23, to adverse market developments, and evaluate the potential for systemic risk posed by key financial market participants to increase in situations of stress, ensuring that a consistent methodology is applied at the national level to such tests and, where appropriate, address a recommendation to the competent authority to correct issues identified in the stress test;
- (c) promote effective and efficient supervisory activities, including evaluating the risks to which financial market participants are or might be exposed in stress situations;
- (d) oversee, in accordance with the tasks and powers specified in this Regulation, the tasks carried out by the competent authorities, and
- (e) request further deliberations of a college in any cases where it considers that the decision would result in an incorrect application of Union law or would not contribute to the objective of convergence of supervisory practices. It may also require to schedule a meeting of the college or add a point to the agenda of a meeting.

3. The Authority may develop draft regulatory and implementing technical standards to ensure uniform conditions of application with respect to the provisions regarding the operational functioning of colleges of supervisors and issue guidelines and recommendations adopted under Article 16 to promote convergence in supervisory functioning and best practices adopted by the colleges of supervisors.

4. The Authority shall have a legally binding mediation role to resolve disputes between competent authorities in accordance with the procedure set out in Article 19. The Authority may take supervisory decisions directly applicable to the financial market participant concerned in accordance with Article 19.

#### Article 22

#### General provisions

1. The Authority shall duly consider systemic risk as defined by Regulation (EU) No 1092/2010. It shall address any risk of disruption in financial services that:

- (a) is caused by an impairment of all or parts of the financial system; and

- (b) has the potential to have serious negative consequences for internal market and the real economy.

The Authority shall consider, where appropriate, the monitoring and assessment of systemic risk as developed by the ESRB and the Authority and respond to warnings and recommendations by the ESRB in accordance with Article 17 of Regulation (EU) No 1092/2010.

2. The Authority shall, in collaboration with the ESRB, and in accordance with Article 23 develop a common approach for the identification and measurement of systemic risk posed by key financial market participants, including quantitative and qualitative indicators as appropriate.

Those indicators shall be a critical element in the determination of appropriate supervisory actions. The Authority shall monitor the degree of convergence in the determinations made, with a view to promoting a common approach.

3. Without prejudice to the acts referred to in Article 1(2), the Authority shall draw up, as necessary, additional guidelines and recommendations for key financial market participants, to take account of the systemic risk posed by them.

The Authority shall ensure that the systemic risk posed by key financial market participants is taken into account when developing draft regulatory and implementing technical standards in the areas laid down in the legislative acts referred to in Article 1(2).

4. Upon a request from one or more competent authorities, the European Parliament, the Council or the Commission, or on its own initiative, the Authority may conduct an inquiry into a particular type of financial activity or type of product or type of conduct in order to assess potential threats to the integrity of financial markets or the stability of the financial system and make appropriate recommendations for action to the competent authorities concerned.

For those purposes, the Authority may use the powers conferred on it under this Regulation, including Article 35.

5. The Joint Committee shall ensure overall and cross-sectoral coordination of the activities carried out in accordance with this Article.

#### Article 23

#### Identification and measurement of systemic risk

1. The Authority shall, in consultation with the ESRB, develop criteria for the identification and measurement of systemic risk and an adequate stress testing regime which includes an evaluation of the potential for systemic risk posed by financial market participants to increase in situations of stress. The financial market participants that may pose a systemic risk shall be subject to strengthened supervision, and where necessary, the recovery and resolution procedures referred to in Article 25.



2. The Authority shall take fully into account the relevant international approaches when developing the criteria for the identification and measurement of systemic risk posed by financial market participants, including those established by the Financial Stability Board, the International Monetary Fund and the Bank for International Settlements.

#### Article 24

##### **Permanent capacity to respond to systemic risks**

1. The Authority shall ensure it has specialised and ongoing capacity to respond effectively to the materialisation of systemic risks as referred to in Articles 22 and 23, in particular with respect to institutions that pose a systemic risk.

2. The Authority shall fulfil the tasks conferred upon it in this Regulation and in the legislation referred to in Article 1(2), and shall contribute to ensuring a coherent and coordinated crisis management and resolution regime in the Union.

#### Article 25

##### **Recovery and resolution procedures**

1. The Authority shall contribute to and participate actively in the development and coordination of effective and consistent recovery and resolution plans, procedures in emergency situations and preventive measures to minimise the systemic impact of any failure.

2. The Authority may develop regulatory and implementing technical standards as specified in the legislative acts referred to in Article 1(2) in accordance with the procedure laid down in Articles 10 to 15.

#### Article 26

##### **European system of national Investor Compensation Schemes**

1. The Authority shall contribute to strengthening the European system of national Investor Compensation Schemes (ICS) by acting under the powers conferred to it in this Regulation to ensure the correct application of Directive 97/9/EC with the aim of ensuring that national Investor Compensation Schemes are adequately funded by contributions from the concerned financial market participants, including where appropriate financial market participants headquartered in third-countries, and provide a high level of protection to all investors in a harmonised framework throughout the Union.

2. Article 16 concerning the Authority's powers to adopt guidelines and recommendations shall apply to Investor Compensation Schemes.

3. The Authority may develop regulatory and implementing technical standards as specified in the legislative acts referred to in Article 1(2) in accordance with the procedure laid down in Articles 10 to 15.

4. The review of this Regulation provided for in Article 81 shall in particular examine the convergence of the European system of national Investor Compensation Schemes.

#### Article 27

##### **European system of resolution and funding arrangements**

1. In the areas of its competence, the Authority shall contribute to developing methods for the resolution of failing key financial market participants in ways which avoid contagion, allow them to be wound down in an orderly and timely manner, and, where applicable, including coherent and credible funding mechanisms as appropriate.

2. The Authority shall contribute to the work on the level playing field issues and cumulative impacts of any systems of levies and contributions on financial institutions that may be introduced to ensure fair burden sharing and incentives to contain systemic risk as a part of a coherent and credible resolution framework.

The review of this Regulation provided for in Article 81 shall in particular examine the possible enhancement of the role of the Authority in a framework of crisis prevention, management and resolution.

#### Article 28

##### **Delegation of tasks and responsibilities**

1. Competent authorities may, with the consent of the delegate, delegate tasks and responsibilities to the Authority or other competent authorities subject to the conditions set out in this Article. Member States may set out specific arrangements regarding the delegation of responsibilities that have to be complied with before their competent authorities enter into such delegation agreements, and may limit the scope of delegation to what is necessary for the effective supervision of cross-border financial market participants or groups.

2. The Authority shall stimulate and facilitate the delegation of tasks and responsibilities between competent authorities by identifying those tasks and responsibilities that can be delegated or jointly exercised and by promoting best practices.

3. The delegation of responsibilities shall result in the reallocation of competences laid down in the acts referred to in Article 1(2). The law of the delegate authority shall govern the procedure, enforcement and administrative and judicial review relating to the delegated responsibilities.

4. The competent authorities shall inform the Authority of delegation agreements into which they intend to enter. They shall put the agreements into effect at the earliest 1 month after informing the Authority.

The Authority may give an opinion on the intended agreement within 1 month of being informed.

The Authority shall publish, by appropriate means, any delegation agreement as concluded by the competent authorities, in order to ensure that all parties concerned are informed appropriately.

#### Article 29

### Common supervisory culture

1. The Authority shall play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring uniform procedures and consistent approaches throughout the Union. The Authority shall carry out, at a minimum, the following activities:

- (a) providing opinions to competent authorities;
- (b) promoting an effective bilateral and multilateral exchange of information between competent authorities, with full respect for the applicable confidentiality and data protection provisions provided for in the relevant Union legislation;
- (c) contributing to developing high-quality and uniform supervisory standards, including reporting standards, and international accounting standards in accordance with Article 1(3);
- (d) reviewing the application of the relevant regulatory and implementing technical standards adopted by the Commission, and of the guidelines and recommendations issued by the Authority and proposing amendments where appropriate; and
- (e) establishing sectoral and cross-sectoral training programmes, facilitating personnel exchanges and encouraging competent authorities to intensify the use of secondment schemes and other tools.

2. The Authority may, as appropriate, develop new practical instruments and convergence tools to promote common supervisory approaches and practices.

#### Article 30

### Peer reviews of competent authorities

1. The Authority shall periodically organise and conduct peer reviews of some or all of the activities of competent authorities, to further strengthen consistency in supervisory outcomes. To that end, the Authority shall develop methods to allow for objective assessment and comparison between the authorities reviewed. When conducting peer reviews, existing information and evaluations already made with regard to the competent authority concerned shall be taken into account.

2. The peer review shall include an assessment of, but shall not be limited to:

- (a) the adequacy of resources and governance arrangements of the competent authority, with particular regard to the

effective application of the regulatory technical standards and implementing technical standards referred to in Articles 10 to 15 and of the acts referred to in Article 1(2) and the capacity to respond to market developments;

- (b) the degree of convergence reached in the application of Union law and in supervisory practice, including regulatory technical standards and implementing technical standards, guidelines and recommendations adopted under Articles 10 to 16, and the extent to which the supervisory practice achieves the objectives set out in Union law;
- (c) best practices developed by some competent authorities which might be of benefit for other competent authorities to adopt;
- (d) the effectiveness and the degree of convergence reached with regard to the enforcement of the provisions adopted in the implementation of Union law, including the administrative measures and sanctions imposed against persons responsible where those provisions have not been complied with.

3. On the basis of a peer review, the Authority may issue guidelines and recommendations pursuant to Article 16. In accordance with Article 16(3), the competent authorities shall endeavour to follow those guidelines and recommendations. The Authority shall take into account the outcome of the peer review when developing draft regulatory technical or implementing technical standards in accordance with Articles 10 to 15.

4. The Authority shall make the best practices that can be identified from those peer reviews publicly available. In addition, all other results of peer reviews may be disclosed publicly, subject to the agreement of the competent authority that is the subject of the peer review.

#### Article 31

### Coordination function

The Authority shall fulfil a general coordination role between competent authorities, in particular in situations where adverse developments could potentially jeopardise the orderly functioning and integrity of financial markets or the stability of the financial system in the Union.

The Authority shall promote a coordinated Union response, *inter alia*, by:

- (a) facilitating the exchange of information between the competent authorities;
- (b) determining the scope and, where possible and appropriate, verifying the reliability of information that should be made available to all the competent authorities concerned;

- (c) without prejudice to Article 19, carrying out non-binding mediation upon a request from the competent authorities or on its own initiative;
- (d) notifying the ESRB of any potential emergency situations without delay.
- (e) taking all appropriate measures in case of developments which may jeopardise the functioning of the financial markets with a view to facilitating the coordination of actions undertaken by relevant competent authorities;
- (f) centralising information received from competent authorities in accordance with Articles 21 and 35 as the result of the regulatory reporting obligations for financial market participants active in more than one Member State. The Authority shall share that information with the other competent authorities concerned.

#### Article 32

##### Assessment of market developments

1. The Authority shall monitor and assess market developments in the area of its competence and, where necessary, inform the European Supervisory Authority (European Banking Authority), and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), the ESRB and the European Parliament, the Council and the Commission about the relevant micro-prudential trends, potential risks and vulnerabilities. The Authority shall include in its assessments an economic analysis of the markets in which financial market participants operate, and an assessment of the impact of potential market developments on such financial market participants.
2. The Authority shall, in cooperation with the ESRB, initiate and coordinate Union-wide assessments of the resilience of financial market participants to adverse market developments. To that end, it shall develop the following, for application by the competent authorities:
  - (a) common methodologies for assessing the effect of economic scenarios on the financial position of a financial market participant;
  - (b) common approaches to communication on the outcomes of these assessments of the resilience of financial market participants;
  - (c) common methodologies for assessing the effect of particular products or distribution processes on the financial position of a financial market participant and on investors and customer information.
3. Without prejudice to the tasks of the ESRB set out in Regulation (EU) No 1092/2010, the Authority shall, at least once a year, and more frequently as necessary, provide assessments to the European Parliament, the Council, the Commission and the ESRB of trends, potential risks and vulnerabilities in its area of competence.

The Authority shall include a classification of the main risks and vulnerabilities in these assessments and, where necessary, recommend preventative or remedial actions.

4. The Authority shall ensure an adequate coverage of cross-sectoral developments, risks and vulnerabilities by closely cooperating with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority) through the Joint Committee.

#### Article 33

##### International relations

1. Without prejudice to the respective competences of the Member States and the Union institutions, the Authority may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries. Those arrangements shall not create legal obligations in respect of the Union and its Member States nor shall they prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with those third countries.
2. The Authority shall assist in preparing equivalence decisions pertaining to supervisory regimes in third countries in accordance with the acts referred to in Article 1(2).
3. In the report referred to in Article 43(5), the Authority shall set out the administrative arrangements agreed upon with international organisations or administrations in third countries and the assistance provided in preparing equivalence decisions.

#### Article 34

##### Other tasks

1. The Authority may, upon a request from the European Parliament, the Council or the Commission, or on its own initiative, provide opinions to the European Parliament, the Council and the Commission on all issues related to its area of competence.
2. With regard to prudential assessments of mergers and acquisitions falling within the scope of Directive 2004/39/EC, as amended by Directive 2007/44/EC, and which according to that Directive require consultation between competent authorities from two or more Member States, the Authority may, on application of one of the competent authorities concerned, issue and publish an opinion on a prudential assessment, except in relation to the criteria in Article 10b(e) of Directive 2004/39/EC. The opinion shall be issued promptly and in any event before the end of the assessment period in accordance with Directive 2004/39/EC, as amended by Directive 2007/44/EC. Article 35 shall apply to the areas in respect of which the Authority may issue an opinion.

*Article 35***Collection of information**

1. At the request of the Authority, the competent authorities of the Member States shall provide the Authority with all the necessary information to carry out the duties assigned to it by this Regulation, provided that they have legal access to the relevant information, and that the request for information is necessary in relation to the nature of the duty in question.

2. The Authority may also request information to be provided at recurring intervals and in specified formats. Such requests shall, where possible, be made using common reporting formats.

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

4. Before requesting information in accordance with this Article and in order to avoid the duplication of reporting obligations, the Authority shall take account of any relevant existing statistics produced and disseminated by the European Statistical System and the European System of Central Banks.

5. Where information is not available or is not made available by the competent authorities in a timely fashion, the Authority may address a duly justified and reasoned request to other supervisory authorities, to the ministry responsible for finance where it has at its disposal prudential information, to the national central bank or to the statistical office of the Member State concerned.

6. Where information is not available or is not made available under paragraph 1 or 5 in a timely fashion, the Authority may address a duly justified and reasoned request directly to the relevant financial market participants. The reasoned request shall explain why the information concerning the respective individual financial market participants is necessary.

The Authority shall inform the relevant competent authorities of requests in accordance with this paragraph and with paragraph 5.

At the request of the Authority, the competent authorities shall assist the Authority in collecting the information.

7. The Authority may use confidential information received under this Article only for the purposes of carrying out the duties assigned to it by this Regulation.

*Article 36***Relationship with the ESRB**

1. The Authority shall cooperate closely and on a regular basis with the ESRB.

2. The Authority shall provide the ESRB with regular and timely information necessary for the achievement of its tasks. Any data necessary for the achievement of its tasks that are not in summary or aggregate form shall be provided, without delay, to the ESRB upon a reasoned request, as specified in Article 15 of Regulation (EU) No 1092/2010. The Authority, in cooperation with the ESRB, shall have in place adequate internal procedures for the transmission of confidential information, in particular information regarding individual financial market participants.

3. The Authority shall, in accordance with paragraphs 4 and 5, ensure a proper follow-up to ESRB warnings and recommendations referred to in Article 16 of Regulation (EU) No 1092/2010.

4. On receipt of a warning or recommendation from the ESRB addressed to the Authority, the Authority shall convene a meeting of the Board of Supervisors without delay and assess the implications of such a warning or recommendation for the fulfilment of its tasks.

It shall decide, by the relevant decision-making procedure, on any actions to be taken in accordance with the powers conferred upon it by this Regulation for addressing the issues identified in the warnings and recommendations.

If the Authority does not act on a recommendation, it shall explain to the ESRB and the Council its reasons for not doing so.

5. On receipt of a warning or recommendation from the ESRB addressed to a competent national supervisory authority, the Authority shall, where relevant, use the powers conferred upon it by this Regulation to ensure a timely follow-up.

Where the addressee intends not to follow the recommendation of the ESRB, it shall inform and discuss with the Board of Supervisors its reasons for not acting.

The competent authority shall take due account of the views of the Board of Supervisors when informing the Council and the ESRB in accordance with Article 17 of Regulation (EU) No 1092/2010.

6. In discharging the tasks set out in this Regulation, the Authority shall take the utmost account of the warnings and recommendations of the ESRB.

*Article 37***Securities and Markets Stakeholder Group**

1. To help facilitate consultation with stakeholders in areas relevant to the tasks of the Authority, a Securities and Markets Stakeholder Group shall be established. The Securities and Markets Stakeholder Group shall be consulted on actions taken in accordance with Articles 10 to 15 concerning regulatory technical standards and implementing technical standards and, to the extent that these do not concern individual financial market participants, Article 16 concerning guidelines and recommendations. If actions must be taken urgently and consultation becomes impossible, the Securities and Markets Stakeholder Group shall be informed as soon as possible.

The Securities and Markets Stakeholder Group shall meet at least four times a year.

2. The Securities and Markets Stakeholder Group shall be composed of 30 members, representing in balanced proportions financial market participants operating in the Union, their employees' representatives as well as consumers, users of financial services and representatives of SMEs. At least five of its members shall be independent top-ranking academics. Ten of its members shall represent financial market participants.

3. The members of the Securities and Markets Stakeholder Group shall be appointed by the Board of Supervisors, following proposals from the relevant stakeholders. In making its decision, the Board of Supervisors shall, to the extent possible, ensure an appropriate geographical and gender balance and representation of stakeholders across the Union.

4. The Authority shall provide all necessary information, subject to professional secrecy, as set out in Article 70, and ensure adequate secretarial support for the Securities and Markets Stakeholder Group. Adequate compensation shall be provided to members of the Securities and Markets Stakeholder Group that are representing non-profit organisations, excluding industry representatives. The Securities and Markets Stakeholder Group may establish working groups on technical issues. Members of the Securities and Markets Stakeholder Group shall serve for a period of two-and-a-half years, following which a new selection procedure shall take place.

The members of the Securities and Markets Stakeholder Group may serve two successive terms.

5. The Securities and Markets Stakeholder Group may submit opinions and advice to the Authority on any issue related to the tasks of the Authority with particular focus on the tasks set out in Articles 10 to 16 and Articles 29, 30 and 32.

6. The Securities and Markets Stakeholder Group shall adopt its rules of procedure by a majority of two-thirds of its members.

7. The Authority shall make public the opinions and advice of the Securities and Markets Stakeholder Group and the results of its consultations.

#### Article 38

#### Safeguards

1. The Authority shall ensure that no decision adopted under Articles 18 or 19 impinges in any way on the fiscal responsibilities of Member States.

2. Where a Member State considers that a decision taken under Article 19(3) impinges on its fiscal responsibilities, it may notify the Authority and the Commission within 2 weeks after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority.

In its notification, the Member State shall clearly and specifically explain why and how the decision impinges on its fiscal responsibilities.

In the case of such notification, the decision of the Authority shall be suspended.

Within a period of 1 month from the notification by the Member State, the Authority shall inform the Member State as to whether it maintains its decision or whether it amends or revokes it. If the decision is maintained or amended, the Authority shall state that fiscal responsibilities are not affected.

Where the Authority maintains its decision, the Council shall take a decision, by a majority of the votes cast, at one of its meetings not later than 2 months after the Authority has informed the Member State as set out in the fourth subparagraph, as to whether the Authority's decision is maintained.

Where the Council, after having considered the matter, does not take a decision to maintain the Authority's decision in accordance with the fifth subparagraph, the Authority's decision shall be terminated.

3. Where a Member State considers that a decision taken under Article 18(3) impinges on its fiscal responsibilities, it may notify the Authority, the Commission and the Council within three working days after notification of the Authority's decision to the competent authority that the decision will not be implemented by the competent authority.

In its notification, the Member State shall clearly and specifically explain why and how the decision impinges on its fiscal responsibilities.

In the event of such notification, the decision of the Authority shall be suspended.

The Council shall, within ten working days, convene a meeting and take a decision, by a simple majority of its members, as to whether the Authority's decision is revoked.

Where the Council, after having considered the matter, does not take a decision to revoke the Authority's decision in accordance with the fourth subparagraph, the suspension of the Authority's decision shall be terminated.

4. Where the Council has taken a decision in accordance with paragraph 3 not to revoke a decision of the Authority relating to Article 18(3), and the Member State concerned still considers that the decision of the Authority impinges upon its fiscal responsibilities, that Member State may notify the Commission and the Authority and request the Council to re-examine the matter. The Member State concerned shall clearly set out the reasons for its disagreement with the decision of the Council.

Within a period of 4 weeks after the notification referred to in the first subparagraph, the Council shall confirm its original decision or take a new decision in accordance with paragraph 3.

The period of 4 weeks may be extended by four additional weeks by the Council, if the particular circumstances of the case so require.

5. Any abuse of this Article, in particular in relation to a decision by the Authority which does not have a significant or material fiscal impact, shall be prohibited as incompatible with the internal market.

#### Article 39

##### Decision-making procedures

1. Before taking the decisions provided for in this Regulation, the Authority shall inform any named addressee of its intention to adopt the decision, setting a time limit within which the addressee may express its views on the matter, taking full account of the urgency, complexity and potential consequences of the matter. This applies *mutatis mutandis* to recommendations as referred to in Article 17(3).

2. The decisions of the Authority shall state the reasons on which they are based.

3. The addressees of decisions of the Authority shall be informed of the legal remedies available under this Regulation.

4. Where the Authority has taken a decision pursuant to Article 18(3) or (4), it shall review that decision at appropriate intervals.

5. The decisions which the Authority takes pursuant to Articles 17, 18 or 19 shall be made public and shall state the identity of the competent authority or financial market participant concerned and the main content of the decision, unless such publication is in conflict with the legitimate interests of financial market participants in the protection of their business secrets or could seriously jeopardise the orderly functioning and integrity of financial markets or the stability of the whole or part of the financial system of the Union.

### CHAPTER III ORGANISATION

#### SECTION 1

##### *Board of Supervisors*

#### Article 40

##### Composition

1. The Board of Supervisors shall be composed of:
  - (a) the Chairperson, who shall be non-voting;
  - (b) the head of the national public authority competent for the supervision of financial market participants in each Member State, who shall meet in person at least twice a year;
  - (c) one representative of the Commission, who shall be non-voting;
  - (d) one representative of the ESRB, who shall be non-voting;

- (e) one representative of each of the other two European Supervisory Authorities who shall be non-voting;

2. The Board of Supervisors shall convene meetings with the Securities and Markets Stakeholder Group regularly, at least twice a year.

3. Each competent authority shall be responsible for nominating a high-level alternate from its authority, who may replace the member of the Board of Supervisors referred to in paragraph 1(b), where that person is prevented from attending.

4. In Member States where more than one authority is responsible for the supervision according to this Regulation, those authorities shall agree on a common representative. Nevertheless, 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 member referred to in paragraph 1(b), that member may bring a representative from the relevant national authority, who shall be non-voting.

5. For the purpose of acting within the scope of Directive 97/9/EC, the member of the Board of Supervisors referred to in paragraph 1(b) may, where appropriate, be accompanied by a representative from the relevant bodies which administer investor compensation schemes in each Member State, who shall be non-voting.

6. The Board of Supervisors may decide to admit observers.

The Executive Director may participate in meetings of the Board of Supervisors without the right to vote.

#### Article 41

##### Internal committees and panels

1. The Board of Supervisors may establish internal committees or panels for specific tasks attributed to the Board of Supervisors, and may provide for the delegation of certain clearly defined tasks and decisions to internal committees or panels, to the Management Board or to the Chairperson.

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

3. Subject to Article 19(2), the panel shall propose a decision for final adoption by the Board of Supervisors, in accordance with the procedure set out in the third subparagraph of Article 44(1).

4. The Board of Supervisors shall adopt rules of procedure for the panel referred to in paragraph 2.

*Article 42***Independence**

When carrying out the tasks conferred upon it by this Regulation, the Chairperson and the voting members of the Board of Supervisors shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Board of Supervisors in the performance of their tasks.

*Article 43***Tasks**

1. The Board of Supervisors shall give guidance to the work of the Authority and shall be in charge of taking the decisions referred to in Chapter II.
2. The Board of Supervisors shall adopt the opinions, recommendations, and decisions, and issue the advice referred to in Chapter II.
3. The Board of Supervisors shall appoint the Chairperson.
4. The Board of Supervisors shall adopt, before 30 September of each year, on the basis of a proposal by the Management Board, the work programme of the Authority for the coming year, and shall transmit it for information to the European Parliament, the Council and the Commission.

The work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

5. The Board of Supervisors shall, on the basis of a proposal by the Management Board, adopt the annual report on the activities of the Authority, including on the performance of the Chairperson's duties, on the basis of the draft report referred to in Article 53(7) and shall transmit that report to the European Parliament, the Council, the Commission, the Court of Auditors and the European Economic and Social Committee by 15 June each year. The report shall be made public.
6. The Board of Supervisors shall adopt the multi-annual work programme of the Authority, and shall transmit it for information to the European Parliament, the Council and the Commission.

The multi-annual work programme shall be adopted without prejudice to the annual budgetary procedure and shall be made public.

7. The Board of Supervisors shall adopt the budget in accordance with Article 63.
8. The Board of Supervisors shall exercise disciplinary authority over the Chairperson and the Executive Director and may remove them from office in accordance with Article 48(5) or Article 51(5) respectively.

*Article 44***Decision making**

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

With regard to the acts specified in Articles 10 to 16 and measures and decisions adopted under the third subparagraph of Article 9(5) and Chapter VI and by way of derogation from the first subparagraph of this paragraph, the Board of Supervisors shall take decisions on the basis of a qualified majority of its members, as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.

With regard to decisions in accordance with Article 19(3), for decisions taken by the consolidating supervisor, the decision proposed by the panel shall be considered as adopted, if approved by a simple majority, unless it is rejected by members representing a blocking minority of the votes as defined in Article 16(4) of the Treaty on European Union and in Article 3 of the Protocol (No 36) on transitional provisions.

For all other decisions in accordance with Article 19(3), the decision proposed by the panel shall be adopted by a simple majority of the members of the Board of Supervisors. Each member shall have one vote.

2. Meetings of the Board of Supervisors shall be convened by the Chairperson at his own initiative or at the request of one third of its members, and shall be chaired by the Chairperson.

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

4. The rules of procedure shall set out in detail the arrangements governing voting, including, where appropriate, the rules governing quorums. The non-voting members and the observers, with the exception of the Chairperson and the Executive Director, shall not attend any discussions within the Board of Supervisors relating to individual financial market participants, unless otherwise provided for in Article 75(3) or in the acts referred to in Article 1(2).

## SECTION 2

**Management Board***Article 45***Composition**

1. The Management Board shall be composed of the Chairperson and six other members of the Board of Supervisors, elected by and from the voting members of the Board of Supervisors.

Other than the Chairperson, each member of the Management Board shall have an alternate, who may replace him if he is prevented from attending.

The term of office of the members elected by the Board of Supervisors shall be two-and-a-half years. That term may be extended once. The composition of the Management Board shall be balanced and proportionate and shall reflect the Union as a whole. Mandates shall be overlapping and an appropriate rotating arrangement shall apply.

2. Decisions by the Management Board shall be adopted on the basis of a majority of the members present. Each member shall have one vote.

The Executive Director and a representative of the Commission shall participate in meetings of the Management Board without the right to vote.

The representative of the Commission shall have the right to vote on matters referred to in Article 63.

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

3. Meetings of the Management Board shall be convened by the Chairperson at his own initiative or at the request of at least a third of its members, and shall be chaired by the Chairperson.

The Management Board shall meet prior to every meeting of the Board of Supervisors and as often as the Management Board deems necessary. It shall meet at least five times a year.

4. The members of the Management Board may, subject to the rules of procedure, be assisted by advisers or experts. The non-voting members, with the exception of the Executive Director, shall not attend any discussions within the Management Board relating to individual financial market participants.

#### Article 46

### Independence

The members of the Management Board shall act independently and objectively in the sole interest of the Union as a whole and shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the members of the Management Board in the performance of their tasks.

#### Article 47

### Tasks

1. The Management Board shall ensure that the Authority carries out its mission and performs the tasks assigned to it in accordance with this Regulation.

2. The Management Board shall propose, for adoption by the Board of Supervisors, an annual and multi-annual work programme.

3. The Management Board shall exercise its budgetary powers in accordance with Articles 63 and 64.

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

5. The Management Board shall adopt the special provisions on right of access to the documents of the Authority, in accordance with Article 72.

6. The Management Board shall propose an annual report on the activities of the Authority, including on the Chairperson's duties, on the basis of the draft report referred to in Article 53(7) to the Board of Supervisors for approval.

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

8. The Management Board shall appoint and remove the members of the Board of Appeal in accordance with Article 58(3) and (5).

#### SECTION 3

### Chairperson

#### Article 48

### Appointment and tasks

1. The Authority shall be represented by a Chairperson, who shall be a full-time independent professional.

The Chairperson shall be responsible for preparing the work of the Board of Supervisors and shall chair the meetings of the Board of Supervisors and the Management Board.

2. The Chairperson shall be appointed by the Board of Supervisors on the basis of merit, skills, knowledge of financial market participants and markets, and of experience relevant to financial supervision and regulation, following an open selection procedure.

Before taking up his duties, and up to 1 month after the selection by the Board of Supervisors, the European Parliament may, after having heard the candidate selected by the Board of Supervisors, object to the designation of the selected person.

The Board of Supervisors shall also elect, from among its members, an alternate who shall carry out the functions of the Chairperson in his absence. That alternate shall not be elected from among the members of the Management Board.

3. The Chairperson's term of office shall be 5 years and may be extended once.

4. In the course of the 9 months preceding the end of the five-year term of office of the Chairperson, the Board of Supervisors shall evaluate:

- (a) the results achieved in the first term of office and the way they were achieved;
- (b) the Authority's duties and requirements in the coming years.



The Board of Supervisors, taking into account the evaluation may extend the term of office of the Chairperson once subject to confirmation by the European Parliament.

5. The Chairperson may be removed from office only by the European Parliament following a decision of the Board of Supervisors.

The Chairperson shall not prevent the Board of Supervisors from discussing matters relating to the Chairperson, in particular the need for his removal, and shall not be involved in deliberations concerning such a matter.

#### *Article 49*

### **Independence**

Without prejudice to the role of the Board of Supervisors in relation to the tasks of the Chairperson, the Chairperson shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the Chairperson in the performance of his tasks.

In accordance with the Staff Regulations referred to in Article 68, the Chairperson shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

#### *Article 50*

### **Report**

1. The European Parliament and the Council may invite the Chairperson or his alternate to make a statement, while fully respecting his independence. The Chairperson shall, make a statement before the European Parliament and answer any questions put by its members, whenever so requested.

2. The Chairperson shall report in writing on the main activities of the Authority to the European Parliament when requested and at least 15 days before making the statement referred to in paragraph 1.

3. In addition to the information referred to in Articles 11 to 18 and Articles 20 and 33, the report shall also include any relevant information requested by the European Parliament on an ad-hoc basis.

#### SECTION 4

### **Executive Director**

#### *Article 51*

### **Appointment**

1. The Authority shall be managed by an Executive Director, who shall be a full-time independent professional.

2. The Executive Director shall be appointed by the Board of Supervisors, after confirmation by the European Parliament, on the basis of merit, skills, knowledge of financial market participants and markets, and experience relevant to financial supervision and regulation and managerial experience, following an open selection procedure.

3. The Executive Director's term of office shall be 5 years and may be extended once.

4. In the course of the 9 months preceding the end of the Executive Director's term of office, the Board of Supervisors shall evaluate in particular:

- (a) the results achieved in the first term of office and the way they were achieved;
- (b) the Authority's duties and requirements in the coming years.

The Board of Supervisors, taking into account the evaluation referred to in the first subparagraph, may extend the term of office of the Executive Director once.

5. The Executive Director may be removed from office only upon a decision of the Board of Supervisors.

#### *Article 52*

### **Independence**

Without prejudice to the respective roles of the Management Board and the Board of Supervisors in relation to the tasks of the Executive Director, the Executive Director shall neither seek nor take instructions from the Union institutions or bodies, from any government of a Member State or from any other public or private body.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence the Executive Director in the performance of his tasks.

In accordance with the Staff Regulations referred to in Article 68, the Executive Director shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

#### *Article 53*

### **Tasks**

1. The Executive Director shall be in charge of the management of the Authority and shall prepare the work of the Management Board.

2. The Executive Director shall be responsible for implementing the annual work programme of the Authority under the guidance of the Board of Supervisors and under the control of the Management Board.

3. The Executive Director shall take the necessary measures, notably the adoption of internal administrative instructions and the publication of notices, to ensure the functioning of the Authority, in accordance with this Regulation.

4. The Executive Director shall prepare a multi-annual work programme, as referred to in Article 47(2).

5. Each year by 30 June, the Executive Director shall prepare a work programme for the following year, as referred to in Article 47(2).

6. The Executive Director shall draw up a preliminary draft budget of the Authority pursuant to Article 63 and shall implement the budget of the Authority pursuant to Article 64.

7. Each year the Executive Director shall prepare a draft report with a section on the regulatory and supervisory activities of the Authority and a section on financial and administrative matters.

8. The Executive Director shall exercise in respect to the Authority's staff the powers laid down in Article 68 and manage staff matters.

#### CHAPTER IV

### JOINT BODIES OF THE EUROPEAN SUPERVISORY AUTHORITIES

#### SECTION 1

#### *Joint Committee of European Supervisory Authorities*

#### *Article 54*

#### **Establishment**

1. The Joint Committee of the European Supervisory Authorities is hereby established.

2. The Joint Committee shall serve as a forum in which the Authority shall cooperate regularly and closely and ensure cross-sectoral consistency with the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), in particular regarding:

- financial conglomerates,
- accounting and auditing,
- micro-prudential analyses of cross-sectoral developments, risks and vulnerabilities for financial stability,
- retail investment products,
- measures combating money laundering; and,
- information exchange with the ESRB and developing the relationship between the ESRB and the ESAs,

3. The Joint Committee shall have a dedicated staff provided by the ESAs that shall act as a secretariat. The Authority shall contribute adequate resources to administrative, infrastructure and operational expenses.

4. In the event that a financial market participant reaches across different sectors, the Joint Committee shall resolve disagreements in accordance with Article 56.

#### *Article 55*

#### **Composition**

1. The Joint Committee shall be composed of the Chairpersons of the ESAs, and, where applicable, the Chairperson of any Sub-Committee established under Article 57.

2. The Executive Director, a representative of the Commission and the ESRB shall be invited to the meetings of the Joint Committee, as well as of any Sub-Committees referred to in Article 57, as observers.

3. The Chairperson of the Joint Committee shall be appointed on an annual rotational basis from among the Chairpersons of the ESAs. The Chairperson of the Joint Committee shall be a Vice-Chair of the ESRB.

4. The Joint Committee shall adopt and publish its own rules of procedure. The rules may specify further participants in the meetings of the Joint Committee.

The Joint Committee shall meet at least once every 2 months.

#### *Article 56*

#### **Joint positions and common acts**

Within the scope of its tasks in Chapter II, and, in particular with respect to the implementation of Directive 2002/87/EC, where relevant, the Authority shall reach joint positions with the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and with the European Supervisory Authority (European Banking Authority), as appropriate.

Acts under Articles 10 to 15, 17, 18 or 19 of this Regulation in relation to the application of Directive 2002/87/EC and of any other Union acts referred to in Article 1(2) that also fall within the area of competence of the European Supervisory Authority (European Banking Authority) or the European Supervisory Authority (European Insurance and Occupational Pensions Authority) shall be adopted, in parallel, by the Authority, the European Supervisory Authority (European Banking Authority) and the European Supervisory Authority (European Insurance and Occupational Pensions Authority), as appropriate.

## Article 57

**Sub-Committees**

1. For the purposes of Article 56, a Sub-Committee on Financial Conglomerates to the Joint Committee shall be established.
2. The Sub-Committee shall be composed of the individuals referred to in Article 55(1), and one high-level representative from the current staff of the relevant competent authority from each Member State.
3. The Sub-Committee shall elect a Chairperson from among its members, who shall also be a member of the Joint Committee.
4. The Joint Committee may establish further Sub Committees.

## SECTION 2

**Board of Appeal**

## Article 58

**Composition and operation**

1. The Board of Appeal shall be a joint body of the ESAs.
2. The Board of Appeal shall be composed of six members and six alternates, who shall be individuals of a high repute with a proven record of relevant knowledge and professional experience, including supervisory, experience to a sufficiently high level in the fields of banking, insurance, occupational pensions, securities markets or other financial services, excluding current staff of the competent authorities or other national or Union institutions involved in the activities of the Authority. The Board of Appeal shall have sufficient legal expertise to provide expert legal advice on the legality of the Authority's exercise of its powers.

The Board of Appeal shall designate its President.

3. Two members of the Board of Appeal and two alternates shall be appointed by the Management Board of the Authority from a short-list proposed by the Commission, following a public call for expressions of interest published in the *Official Journal of the European Union*, and after consultation of the Board of Supervisors.

The other members shall be appointed in accordance with Regulation (EU) No 1093/2010 and Regulation (EU) No 1094/2010.

4. The term of office of the members of the Board of Appeal shall be 5 years. That term may be extended once.

5. A member of the Board of Appeal appointed by the Management Board of the Authority shall not be removed during his term of office, unless he has been found guilty of serious misconduct and the Management Board takes a decision to that effect after consulting the Board of Supervisors.

6. The decisions of the Board of Appeal shall be adopted on the basis of a majority of at least four of its six members. Where the appealed decision falls within the scope of this Regulation, the deciding majority shall include at least one of the two members of the Board of Appeal appointed by the Authority.

7. The Board of Appeal shall be convened by its President when necessary.

8. The ESAs shall ensure adequate operational and secretarial support for the Board of Appeal through the Joint Committee.

## Article 59

**Independence and impartiality**

1. The members of the Board of Appeal shall be independent in making their decisions. They shall not be bound by any instructions. They shall not perform any other duties in relation to the Authority, its Management Board or its Board of Supervisors.
2. Members of the Board of Appeal shall not take part in any appeal proceedings in which they have any personal interest, if they have previously been involved as representatives of one of the parties to the proceedings, or if they have participated in the decision under appeal.
3. If, for one of the reasons referred to in paragraphs 1 and 2 or for any other reason, a member of a Board of Appeal considers that another member should not take part in any appeal proceedings, he shall inform the Board of Appeal accordingly.
4. Any party to the appeal proceedings may object to the participation of a member of the Board of Appeal on any of the grounds referred to in paragraphs 1 and 2, or if suspected of bias.

No objection may be based on the nationality of members nor shall it be admissible if, while being aware of a reason for objecting, the party to the appeal proceedings has nonetheless taken a procedural step other than objecting to the composition of the Board of Appeal.

5. The Board of Appeal shall decide on the action to be taken in the cases specified in paragraphs 1 and 2 without the participation of the member concerned.

For the purpose of taking that decision, the member concerned shall be replaced on the Board of Appeal by his alternate. Where the alternate is in a similar situation, the Chairperson shall designate a replacement from among the available alternates.

6. The members of the Board of Appeal shall undertake to act independently and in the public interest.

For that purpose, they shall make a declaration of commitments and a declaration of interests indicating either the absence of any interest which may be considered prejudicial to their independence or any direct or indirect interest which might be considered prejudicial to their independence.

Those declarations shall be made public, annually and in writing.

## CHAPTER V

### REMEDIES

#### Article 60

##### Appeals

1. Any natural or legal person, including competent authorities, may appeal against a decision of the Authority referred to in Articles 17, 18 and 19 and any other decision taken by the Authority in accordance with the Union acts referred to in Article 1(2) which is addressed to that person, or against a decision which, although in the form of a decision addressed to another person, is of direct and individual concern to that person.

2. The appeal, together with a statement of grounds, shall be filed in writing at the Authority within 2 months of the date of notification of the decision to the person concerned, or, in the absence of a notification, of the day on which the Authority published its decision.

The Board of Appeal shall decide upon the appeal within 2 months after the appeal has been lodged.

3. An appeal lodged pursuant to paragraph 1 shall not have suspensive effect.

However, the Board of Appeal may, if it considers that circumstances so require, suspend the application of the contested decision.

4. If the appeal is admissible, the Board of Appeal shall examine whether it is well-founded. It shall invite the parties to the appeal proceedings to file observations on its own notifications or on communications from the other parties to the appeal proceedings, within specified time limits. Parties to the appeal proceedings shall be entitled to make oral representations.

5. The Board of Appeal may confirm the decision taken by the competent body of the Authority, or remit the case to the competent body of the Authority. That body shall be bound by the decision of the Board of Appeal and that body shall adopt an amended decision regarding the case concerned.

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

7. The decisions taken by the Board of Appeal shall be reasoned and shall be made public by the Authority.

#### Article 61

### Actions before the Court of Justice of the European Union

1. Proceedings may be brought before the Court of Justice of the European Union, in accordance with Article 263 TFEU, contesting a decision taken by the Board of Appeal or, in cases where there is no right of appeal before the Board of Appeal, by the Authority.

2. Member States and the Union institutions, as well as any natural or legal person, may institute proceedings before the Court of Justice of the European Union against decisions of the Authority, in accordance with Article 263 TFEU.

3. In the event that the Authority has an obligation to act and fails to take a decision, proceedings for failure to act may be brought before the Court of Justice of the European Union in accordance with Article 265 TFEU.

4. The Authority shall be required to take the necessary measures to comply with the judgment of the Court of Justice of the European Union.

## CHAPTER VI

### FINANCIAL PROVISIONS

#### Article 62

##### Budget of the Authority

1. The revenues of the Authority, a European body in accordance with Article 185 of Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup> (hereinafter the 'Financial Regulation'), shall consist, in particular, of any combination of the following:

- (a) obligatory contributions from the national public authorities competent for the supervision of financial market participants which shall be made in accordance with a formula based on the weighting of votes set out in Article 3(3) of Protocol (No 36) on transitional provisions. For the purposes of this Article, Article 3(3) of Protocol (No 36) on transitional provisions shall continue to apply beyond the deadline of 31 October 2014 therein established;
- (b) a subsidy from the Union, entered in the General Budget of the European Union (Commission Section);
- (c) any fees paid to the Authority in the cases specified in the relevant instruments of Union law.

2. The expenditure of the Authority shall include, at least, staff, remuneration, administrative, infrastructure professional training and operational expenses.

3. Revenue and expenditure shall be in balance.

4. Estimates of all Authority revenue and expenditure shall be prepared for each financial year, corresponding to the calendar year, and shall be presented in the budget of the Authority.

<sup>(1)</sup> OJ L 248, 16.9.2002, p. 1.

*Article 63***Establishment of the budget**

1. By 15 February each year, the Executive Director shall draw up a draft statement of estimates of revenue and expenditure for the following financial year, and shall forward it to the Management Board and the Board of Supervisors, together with the establishment plan. Each year, the Board of Supervisors shall, on the basis of the draft statement drawn up by the Executive Director and approved by the Management Board, produce a statement of estimates of revenue and expenditure of the Authority for the following financial year. That statement of estimates, including a draft establishment plan, shall be transmitted by the Board of Supervisors to the Commission by 31 March. Prior to adoption of the statement of estimates, the draft prepared by the Executive Director shall be approved by the Management Board.
2. The statement of estimates shall be transmitted by the Commission to the European Parliament and to the Council (hereinafter referred to together as the 'budgetary authority'), together with the draft budget of the European Union.
3. On the basis of the statement of estimates, the Commission shall enter in the draft budget of the European Union the estimates it deems necessary in respect of the establishment plan and the amount of the subsidy to be charged to the General Budget of the European Union in accordance with Articles 313 and 314 TFEU.
4. The budgetary authority shall adopt the establishment plan for the Authority. The budgetary authority shall authorise the appropriations for the subsidy to the Authority.
5. The budget of the Authority shall be adopted by the Board of Supervisors. It shall become final after the final adoption of the General Budget of the European Union. Where necessary, it shall be adjusted accordingly.
6. The Management Board shall, without delay, notify the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its budget, in particular any project relating to property, such as the rental or purchase of buildings. It shall inform the Commission thereof. If either branch of the budgetary authority intends to issue an opinion, it shall, within 2 weeks of receipt of the information on the project, notify the Authority of its intention to issue such an opinion. In the absence of a reply, the Authority may proceed with the planned operation.
7. For the first year of operation of the Authority, ending on 31 December 2011, the financing of the Authority by the Union is subject to an agreement by the budgetary authority as provided for in Point 47 of the Interinstitutional Agreement on budgetary discipline and sound financial management.

*Article 64***Implementation and control of the budget**

1. The Executive Director shall act as authorising officer and shall implement the Authority's budget.
2. By 1 March following the completion of each financial year, the Authority's accounting officer shall forward to the Commission's accounting officer and to the Court of Auditors the

provisional accounts, accompanied by the report on budgetary and financial management during the financial year. The Authority's accounting officer shall also send the report on budgetary and financial management to the members of the Board of Supervisors, the European Parliament and the Council by 31 March of the following year.

The Commission's accounting officer shall then consolidate the provisional accounts of the institutions and decentralised bodies in accordance with Article 128 of the Financial Regulation.

3. After receiving the observations of the Court of Auditors on the provisional accounts of the Authority in accordance with Article 129 of the Financial Regulation, the Executive Director, acting on his own responsibility, shall draw up the final accounts of the Authority and transmit them, for opinion, to the Management Board.
4. The Management Board shall deliver an opinion on the final accounts of the Authority.
5. The Executive Director shall transmit those final accounts, accompanied by the opinion of the Management Board, by 1 July following the completion of the financial year, to the Members of the Board of Supervisors, the European Parliament, the Council, the Commission and the Court of Auditors.
6. The final accounts shall be published.
7. The Executive Director shall send the Court of Auditors a reply to the latter's observations by 30 September. He shall also send a copy of that reply to the Management Board and the Commission.
8. The Executive Director shall submit to the European Parliament, at the latter's request and as provided for in Article 146(3) of the Financial Regulation, any information necessary for the smooth application of the discharge procedure for the financial year in question.
9. The European Parliament, following a recommendation from the Council acting by qualified majority, shall, before 15 May of the year N + 2, grant a discharge to the Authority for the implementation of the budget comprising revenue from the General Budget of the European Union and competent authorities for the financial year N.

*Article 65***Financial rules**

The financial rules applicable to the Authority shall be adopted by the Management Board after consulting the Commission. Those rules may not depart from Commission Regulation (EC, Euratom) No 2343/2002 of 19 November 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup> unless the specific operational needs for the functioning of the Authority so require and only with the prior agreement of the Commission.

<sup>(1)</sup> OJ L 357, 31.12.2002, p. 72.

*Article 66***Anti-fraud measures**

1. For the purposes of combating fraud, corruption and any other illegal activity, Regulation (EC) No 1073/1999 shall apply to the Authority without any restriction.
2. The Authority shall accede to the Interinstitutional Agreement concerning internal investigations by OLAF and shall immediately adopt appropriate provisions for all staff of the Authority.
3. The funding decisions and the agreements and the implementing instruments resulting from them shall explicitly stipulate that the Court of Auditors and OLAF may, if need be, carry out on-the-spot checks on the beneficiaries of monies disbursed by the Authority as well as on the staff responsible for allocating these monies.

## CHAPTER VII

**GENERAL PROVISIONS***Article 67***Privileges and immunities**

The Protocol (No 7) on the privileges and immunities of the European Union annexed to the Treaty on European Union and to the TFEU shall apply to the Authority and its staff.

*Article 68***Staff**

1. The Staff Regulations, the Conditions of Employment of Other Servants and the rules adopted jointly by the Union institutions for the purpose of applying them shall apply to the staff of the Authority, including its Executive Director and its Chairperson.
2. The Management Board, in agreement with the Commission, shall adopt the necessary implementing measures, in accordance with the arrangements provided for in Article 110 of the Staff Regulations.
3. In respect of its staff, the Authority shall exercise the powers conferred on the appointing authority by the Staff Regulations and on the authority entitled to conclude contracts by the Conditions of Employment of Other Servants.
4. The Management Board shall adopt provisions to allow national experts from Member States to be seconded to the Authority.

*Article 69***Liability of the Authority**

1. In the case of non-contractual liability, the Authority shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its staff in the performance of their duties. The Court of Justice of the

European Union shall have jurisdiction in any dispute over the remedying of such damage.

2. The personal financial liability and disciplinary liability of Authority staff towards the Authority shall be governed by the relevant provisions applying to the staff of the Authority.

*Article 70***Obligation of professional secrecy**

1. Members of the Board of Supervisors and the Management Board, the Executive Director, and members of the staff of the Authority including officials seconded by Member States on a temporary basis and all other persons carrying out tasks for the Authority on a contractual basis shall be subject to the requirements of professional secrecy pursuant to Article 339 TFEU and the relevant provisions in Union legislation, even after their duties have ceased.

Article 16 of the Staff Regulations shall apply to them.

In accordance with the Staff Regulations, the staff shall, after leaving service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Neither Member States, the Union institutions or bodies, nor any other public or private body shall seek to influence staff members of the Authority in the performance of their tasks.

2. Without prejudice to cases covered by criminal law, any confidential information received by persons referred to in paragraph 1 whilst performing their duties may not be divulged to any person or authority whatsoever, except in summary or aggregate form, such that individual financial market participants cannot be identified.

Moreover, the obligation under paragraph 1 and the first subparagraph of this paragraph shall not prevent the Authority and the national supervisory authorities from using the information for the enforcement of the acts referred to in Article 1(2), and in particular for legal procedures for the adoption of decisions.

3. Paragraphs 1 and 2 shall not prevent the Authority from exchanging information with national supervisory authorities in accordance with this Regulation and other Union legislation applicable to financial market participants.

That information shall be subject to the conditions of professional secrecy referred to in paragraphs 1 and 2. The Authority shall lay down in its internal rules of procedure the practical arrangements for implementing the confidentiality rules referred to in paragraphs 1 and 2.

4. The Authority shall apply Commission Decision 2001/844/EC/ECSC, Euratom of 29 November 2001 amending its internal Rules of Procedure<sup>(1)</sup>.

<sup>(1)</sup> OJ L 317, 3.12.2001, p. 1.

*Article 71***Data protection**

This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Directive 95/46/EC or the obligations of the Authority relating to its processing of personal data under Regulation (EC) No 45/2001 when fulfilling its responsibilities.

*Article 72***Access to documents**

1. Regulation (EC) No 1049/2001 shall apply to documents held by the Authority.
2. The Management Board shall, by 31 May 2011, adopt practical measures for applying Regulation (EC) No 1049/2001.
3. Decisions taken by the Authority pursuant to Article 8 of Regulation (EC) No 1049/2001 may be the subject of a complaint to the Ombudsman or of proceedings before the Court of Justice of the European Union, following an appeal to the Board of Appeal, as appropriate, in accordance with the conditions laid down in Articles 228 and 263 TFEU respectively.

*Article 73***Language arrangements**

1. Council Regulation No 1 determining the languages to be used by the European Economic Community <sup>(1)</sup> shall apply to the Authority.
2. The Management Board shall decide on the internal language arrangements for the Authority.
3. The translation services required for the functioning of the Authority shall be provided by the Translation Centre for the Bodies of the European Union.

*Article 74***Headquarters Agreement**

The necessary arrangements concerning the accommodation to be provided for the Authority in the Member State where its seat is located and the facilities to be made available by that Member State, as well as the specific rules applicable in that Member State to the Executive Director, the members of the Management Board, the staff of the Authority and members of their families shall be laid down in a Headquarters Agreement between the Authority and that Member State concluded after obtaining the approval of the Management Board.

That Member State shall provide the best possible conditions to ensure the proper functioning of the Authority, including multi-lingual, European-oriented schooling and appropriate transport connections.

<sup>(1)</sup> OJ L17, 6.10.1958, p. 385.

*Article 75***Participation of third countries**

1. Participation in the work of the Authority shall be open to third countries which have concluded agreements with the Union whereby they have adopted and are applying Union law in the areas of competence of the Authority as referred to in Article 1(2).
2. The Authority may cooperate with the countries referred to in paragraph 1, applying legislation which has been recognised as equivalent in the areas of competence of the Authority referred to in Article 1(2), as provided for in international agreements concluded by the Union in accordance with Article 216 TFEU.
3. Under the relevant provisions of the agreements referred to in paragraphs 1 and 2, arrangements shall be made specifying, in particular, the nature, scope and procedural aspects of the involvement of the countries referred to in paragraph 1 in the work of the Authority, including provisions relating to financial contributions and to staff. They may provide for representation, as an observer, on the Board of Supervisors, but shall ensure that those countries do not attend any discussions relating to individual financial market participants, except where there is a direct interest.

## CHAPTER VIII

**TRANSITIONAL AND FINAL PROVISIONS***Article 76***Preparatory actions**

1. Following the entry into force of this Regulation, and before the establishment of the Authority, CESR shall act in close cooperation with the Commission to prepare for the replacement of CESR by the Authority.
2. Once the Authority has been established, the Commission shall be responsible for the administrative establishment and initial administrative operation of the Authority until the Authority has appointed an Executive Director.

For that purpose, until such time as the Executive Director takes up his duties following his appointment by the Board of Supervisors in accordance with Article 51, the Commission may assign one official on an interim basis in order to fulfil the functions of the Executive Director. That period shall be limited to the time necessary for the appointment of an Executive Director of the Authority.

The interim Executive Director may authorise all payments covered by credits provided in the budget of the Authority, once approved by the Management Board and may conclude contracts, including staff contracts following the adoption of the Authority's establishment plan.

3. Paragraphs 1 and 2 are without prejudice to the powers of the Board of Supervisors and the Management Board.

4. The Authority shall be considered the legal successor of CESR. By the date of establishment of the Authority, all assets and liabilities and all pending operations of CESR shall be automatically transferred to the Authority. The CESR shall establish a statement showing its closing asset and liability situation as of the date of that transfer. That statement shall be audited and approved by CESR and by the Commission.

#### Article 77

##### Transitional staff provisions

1. By way of derogation from Article 68, all employment contracts and secondment agreements concluded by CESR or its Secretariat and in force on 1 January 2011 shall be honoured until their expiry date. They may not be extended.

2. All members of staff under contracts referred to in paragraph 1 shall be offered the possibility of concluding temporary agent contracts under Article 2(a) of the Conditions of Employment of Other Servants at the various grades as set out in the Authority's establishment plan.

An internal selection limited to staff who have contracts with CESR or its Secretariat shall be carried out after the entry into force of this Regulation by the authority authorised to conclude contracts in order to check the ability, efficiency and integrity of those to be engaged. The internal selection procedure shall take full account of the skills and experience demonstrated by the individuals' performance prior to the engagement.

3. Depending on the type and level of functions to be performed, successful applicants shall be offered temporary agents' contracts of a duration corresponding at least to the time remaining under the prior contract.

4. The relevant national law relating to labour contracts and other relevant instruments shall continue to apply to staff members with prior contracts who choose not to apply for temporary agent's contracts or who are not offered temporary agents contracts in accordance with paragraph 2.

#### Article 78

##### National provisions

The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

#### Article 79

##### Amendments

Decision No 716/2009/EC is hereby amended in so far as CESR is removed from the list of beneficiaries set out in Section B of the Annex to that Decision.

#### Article 80

##### Repeal

Commission Decision 2009/77/EC, establishing CESR, is hereby repealed with effect from 1 January 2011.

#### Article 81

##### Review

1. By 2 January 2014 and every 3 years thereafter, the Commission shall publish a general report on the experience acquired as a result of the operation of the Authority and the procedures laid down in this Regulation. That report shall evaluate, inter alia:

- (a) the convergence in supervisory practices reached by competent authorities,
  - (i) the convergence in functional independence of the competent authorities and in standards equivalent to corporate governance;
  - (ii) the impartiality, objectivity and autonomy of the Authority;
- (b) the functioning of the colleges of supervisors;
- (c) the progress achieved towards convergence in the fields of crisis prevention, management and resolution, including Union funding mechanisms;
- (d) the role of the Authority as regards systemic risk;
- (e) the application of the safeguard clause established in Article 38;
- (f) the application of the binding mediation role established in Article 19.

2. The report referred to in paragraph 1 shall also examine whether:

- (a) it is appropriate to continue separate supervision of banking, insurance, occupational pensions, securities and financial markets;
- (b) it is appropriate to undertake prudential supervision and supervise the conduct of business separately or by the same supervisor;
- (c) it is appropriate to simplify and reinforce the architecture of the ESFS in order to increase the coherence between the macro and the micro levels and between the ESAs;
- (d) the evolution of the ESFS is consistent with that of the global evolution;
- (e) there is sufficient diversity and excellence within the ESFS;
- (f) accountability and transparency in relation to publication requirements are adequate;
- (g) the resources of the Authority are adequate to carry out its responsibilities;



(h) it is appropriate for the seat of the Authority to be maintained or to move the ESAs to a single seat to enhance better coordination between them.

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

4. The report and any accompanying proposals, as appropriate, shall be forwarded to the European Parliament and to the Council.

#### Article 82

#### Entry into force

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

It shall apply from 1 January 2011, with the exception of Article 76 and Article 77(1) and (2), which shall apply as from the date of its entry into force.

The Authority shall be established on 1 January 2011.

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

Done at Strasbourg, 24 November 2010.

*For the European Parliament*  
*The President*  
J. BUZEK

*For the Council*  
*The President*  
O. CHASTEL

## DIRECTIVES

## DIRECTIVE 2010/78/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 24 November 2010

amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50, Article 53(1) and Articles 62 and 114 thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Central Bank <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with the ordinary legislative procedure <sup>(3)</sup>,

Whereas:

(1) The financial crisis in 2007 and 2008 exposed important shortcomings in financial supervision, both in particular cases and in relation to the financial system as a whole. Nationally based supervisory models have lagged behind financial globalisation and the integrated and interconnected reality of European financial markets, in which many financial institutions operate across borders. The crisis exposed shortcomings in the areas of cooperation, coordination, consistent application of Union law and trust between national competent authorities.

<sup>(1)</sup> Opinion of 18 March 2010 (OJ C 87, 1.4.2010, p. 1).

<sup>(2)</sup> Opinion of 18 March 2010 (not yet published in the Official Journal).

<sup>(3)</sup> Position of the European Parliament of 22 September 2010 (not yet published in the Official Journal) and decision of the Council of 17 November 2010.

(2) In several resolutions before and during the financial crisis, the European Parliament has called for a move towards more integrated European supervision, in order to ensure a true level playing field for all actors at Union level and reflect the increasing integration of financial markets in the Union (in its resolutions of 13 April 2000 on the Commission communication on implementing the framework for financial markets: Action Plan, of 21 November 2002 on prudential supervision rules in the European Union, of 11 July 2007 on financial services policy (2005 to 2010) – White Paper, of 23 September 2008 with recommendations to the Commission on hedge funds and private equity, and of 9 October 2008 with recommendations to the Commission on Lamfalussy follow-up: future structure of supervision, and in its positions of 22 April 2009 on the amended proposal for a directive of the European Parliament and of the Council on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) and of 23 April 2009 on the proposal for a regulation of the European Parliament and of the Council on Credit Rating Agencies).

(3) In November 2008, the Commission mandated a High-Level Group chaired by Jacques de Larosière to make recommendations on how to strengthen European supervisory arrangements with a view to better protecting the citizen and rebuilding trust in the financial system. In its final report presented on 25 February 2009 (the 'de Larosière Report'), the High-Level Group recommended that the supervisory framework be strengthened to reduce the risk and severity of future financial crises. It recommended far-reaching reforms to the supervisory structure of the financial sector within the Union. The de Larosière Report also recommended that a European System of Financial Supervisors (ESFS) be created, comprising three European Supervisory Authorities (ESA) – one for each of the banking, the securities and the insurance and occupational pensions sectors – and a European Systemic Risk Council.

- (4) In its Communication of 4 March 2009 entitled 'Driving European Recovery', the Commission proposed to put forward draft legislation creating the ESFS and in its Communication of 27 May 2009 entitled 'European Financial Supervision', it provided more details of the possible architecture of that new supervisory framework.
- (5) In its conclusions following its meeting on 18 and 19 June 2009, the European Council recommended that a European System of Financial Supervisors, comprising three new ESA, be established. The system should be aimed at upgrading the quality and consistency of national supervision, strengthening oversight of cross-border groups, establishing a European single rule book applicable to all financial institutions in the internal market. It emphasised that the ESA should also have supervisory powers for credit rating agencies and invited the Commission to prepare concrete proposals on how the ESFS could play a strong role in crisis situations.
- (6) On 23 September 2009, the Commission adopted proposals for three regulations establishing the ESFS including the creation of the three ESA.
- (7) In order for the ESFS to work effectively, changes to legal acts of the Union in the field of operation of the three ESA are necessary. Such changes concern the definition of the scope of certain powers of the ESA, the integration of certain powers established in legal acts of the Union, and amendments to ensure a smooth and effective functioning of the ESA in the context of the ESFS.
- (8) The establishment of the three ESA should be accompanied by the development of a single rule book to ensure consistent harmonisation and uniform application and thus contribute to a more effective functioning of the internal market.
- (9) The regulations establishing the ESFS provide that, in the areas specifically set out in the relevant legislation, the ESA may develop draft technical standards, to be submitted to the Commission for adoption in accordance with Articles 290 and 291 of the Treaty on the Functioning of the European Union (TFEU) by means of delegated or implementing acts. This Directive should identify a first set of such areas and should be without prejudice to adding further areas in the future.
- (10) The relevant legislation should define those areas where the ESA are empowered to develop draft technical standards and how they should be adopted. The relevant legislation should lay down the elements, conditions and specifications as detailed in Article 290 TFEU in the case of delegated acts.
- (11) The identification of areas for technical standards should strike an appropriate balance between building a single set of harmonised rules and avoiding unduly complicated regulation and enforcement. The only areas selected should be those in which consistent technical rules will contribute significantly and effectively to the achievement of the objectives of the relevant legislation, while ensuring that policy decisions are taken by the European Parliament, the Council and the Commission in accordance with their usual procedures.
- (12) Matters subject to technical standards should be genuinely technical, where their development requires the expertise of supervisory experts. The technical standards adopted as delegated acts should further develop, specify and determine the conditions for consistent harmonisation of the rules included in basic instruments adopted by the European Parliament and the Council, supplementing or amending certain non-essential elements of the legislative act. The technical standards adopted as implementing acts should set conditions for the uniform application of legally binding Union acts. Technical standards should not involve policy choices.
- (13) In the case of regulatory technical standards it is appropriate to introduce the procedure provided for in Articles 10 to 14 of 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) <sup>(1)</sup>, of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) <sup>(2)</sup> and of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) <sup>(3)</sup>, respectively. Implementing technical standards should be adopted in accordance with the procedure provided for in Article 15 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, respectively. The European Council endorsed the four-level 'Lamfalussy' approach to make the regulatory process for Union financial legislation more efficient and transparent. The Commission is empowered to adopt level-2 measures in many areas, and a large number of level-2 Commission regulations and directives are in force. In cases where the regulatory technical standards are designed to further develop, specify or determine the conditions of application of such level-2 measures, they should be adopted only once the relevant level-2 measures have been adopted and should be compatible with that level-2 measure.

<sup>(1)</sup> See page 12 of this Official Journal.

<sup>(2)</sup> See page 48 of this Official Journal.

<sup>(3)</sup> See page 84 of this Official Journal.

- (14) Binding technical standards contribute to a single rulebook for financial services legislation as endorsed by the European Council in its conclusions of June 2009. To the extent that certain requirements in Union legislative acts are not fully harmonised, and in accordance with the precautionary principle on supervision, binding technical standards developing, specifying or determining the conditions of application for those requirements should not prevent Member States from requiring additional information or imposing more stringent requirements. Technical standards should therefore allow Member States to do so in specific areas, when those legislative acts provide for such discretion.
- (15) As set out in the regulations establishing the ESFS, before submitting the technical standards to the Commission, the ESA should, where appropriate, conduct open public consultations relating thereto and analyse the potential related costs and benefits.
- (16) It should be possible for technical standards to provide for transitional measures subject to adequate deadlines, if the costs of immediate implementation would be excessive compared to the benefits involved.
- (17) The regulations establishing the ESFS provide for a mechanism to settle disagreements between national competent authorities. Where a competent authority disagrees with the procedure or content of an action or inaction by another competent authority in areas specified in legal acts of the Union in accordance with Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, where the relevant legislation requires cooperation, coordination or joint decision-making by national competent authorities from more than one Member State, the ESA, at the request of one of the competent authorities concerned, should be able to assist the authorities in reaching an agreement within the time limit set by the ESA which should take into account any relevant time limits in the relevant legislation, and the urgency and complexity of the disagreement. In the event that such disagreement persists, the ESA should be able to settle the matter.
- (18) The regulations establishing the ESA require that the cases where the mechanism to settle disagreements between national competent authorities may be applied are to be specified in the sectoral legislation. This Directive should identify a first set of such cases and should be without prejudice to adding further cases in the future. This Directive should not prevent the ESA from acting in accordance with other powers or fulfilling tasks specified in their establishing regulations, including non-binding mediation and contributing to the consistent, efficient and effective application of legal acts of the Union. Moreover, in those areas where some form of non-binding mediation is already established in the relevant legal act, or where there are time limits for joint decisions to be taken by one or more national competent authorities, amendments are needed to ensure clarity and minimum disruption of the process for reaching a joint decision, but also that where necessary, the ESA should be able to resolve disagreements. The binding procedure for the settlement of disagreements is designed to solve situations where national competent authorities cannot resolve, among themselves, procedural or substantive issues relating to compliance with legal acts of the Union.
- (19) This Directive should therefore identify situations in which a procedural or a substantive issue of compliance with Union law needs to be resolved and the national competent authorities are not able to resolve the matter on their own. In such a situation, one of the national competent authorities concerned should be able to raise the issue with the European Supervisory Authority concerned. That European Supervisory Authority should act in accordance with its establishing regulation and with this Directive. The European Supervisory Authority concerned should be able to require the competent authorities concerned to take specific action or to refrain from action in order to settle the matter and to ensure compliance with Union law, with binding effects on the competent authorities concerned. In cases where the relevant legal act of the Union confers discretion on Member States, decisions taken by a European Supervisory Authority should not replace the exercise of discretion by the competent authorities in compliance with Union law.
- (20) Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions <sup>(1)</sup> provides for mediation or joint decisions as regards the determination of significant branches for the purposes of supervisory college membership, model validation and group risk assessment. In all of those areas, amendments should clearly state that in the event of disagreement during a specified time period, the European Supervisory Authority (European Banking Authority) may resolve the disagreement using the process outlined in Regulation (EU) No 1093/2010. That approach makes it clear that, while the European Supervisory Authority (European Banking Authority) should not replace the exercise of discretion by the competent authorities in compliance with Union law, it should be possible for disagreements to be resolved and cooperation to be strengthened before a final decision is taken or issued to an institution.

<sup>(1)</sup> OJ L 177, 30.6.2006, p. 1.

- (21) In order to ensure a smooth transition of the current tasks of the Committee of European Banking Supervisors, the Committee of European Insurance and Occupational Pensions Supervisors and the Committee of European Securities Regulators to the new ESA, references to those Committees should be replaced in the relevant legislation with references to the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), respectively.
- (22) In order to give full effect to the new framework provided for in the TFEU, it is necessary to adapt and replace the implementing powers designed under Article 202 of the Treaty establishing the European Community (EC Treaty) with the appropriate provisions in accordance with Articles 290 and 291 TFEU. That review should be finalised within 3 years from the entry into force of the Treaty of Lisbon and the remaining powers conferred under Article 202 EC Treaty should cease to apply on that date.
- (23) The alignment of committee procedures to the TFEU and, in particular, to Articles 290 and 291 thereof, should be effected on a case-by-case basis. In order to take account of the technical developments in the financial markets and to specify the requirements laid down in the directives amended by this Directive, the Commission should be empowered to adopt delegated acts in accordance with Article 290 TFEU.
- (24) The European Parliament and the Council should have 3 months from the date of notification to object to a delegated act. At the initiative of the European Parliament or the Council, it should be possible to prolong that period by 3 months in regard to significant areas of concern. It should also be possible for the European Parliament and the Council to inform the other institutions of their intention not to raise objections. Such early approval of delegated acts is particularly appropriate when deadlines need to be met, for example where there are timetables in the basic act for the Commission to adopt delegated acts.
- (25) In the Declaration (No 39) on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, the Conference took note of the Commission's intention to continue to consult experts appointed by the Member States in the preparation of draft delegated acts in the financial services area, in accordance with its established practice.
- (26) The new supervisory architecture established by the ESFS will require national competent authorities to cooperate closely with the ESA. Amendments to the relevant legislation should ensure there are no legal obstacles to the information sharing obligations included in the regulations establishing the ESA.
- (27) Information transmitted to or exchanged between competent authorities and the ESA or the ESRB should be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.
- (28) The regulations establishing the ESA provide that they may develop contacts with supervisory authorities from third countries and assist in preparing equivalence decisions pertaining to supervisory regimes in third countries. Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments <sup>(1)</sup> and Directive 2006/48/EC should be amended to allow the ESA to establish cooperation agreements with third countries and exchange information where those third countries can provide guarantees that professional secrecy will be protected.
- (29) Having a single consolidated list or register for each category of financial institution in the Union, which is currently the duty of each national competent authority, will improve transparency and is more appropriate in the context of the single financial market. The ESA should be given the task of establishing, publishing and regularly updating registers and lists of financial actors within the Union. This concerns the list of authorisations of credit institutions granted by national competent authorities, the register of all investment firms and the list of regulated markets under Directive 2004/39/EC. Similarly, the European Supervisory Authority (European Securities and Markets Authority) should be given the task of establishing, publishing and regularly updating the list of approved prospectuses and the certificates of approval under Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading <sup>(2)</sup>.
- (30) In those areas where the ESA are under an obligation to develop draft technical standards, those draft technical standards should be submitted to the Commission within 3 years of the creation of the ESA unless another deadline is established by the relevant legislative act.
- (31) The tasks of the European Supervisory Authority (European Securities and Markets Authority) in relation to Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems <sup>(3)</sup> should be without prejudice to the competence of the European System of Central Banks to promote the smooth operation of payment systems, in line with the fourth indent of Article 127(2) TFEU.

<sup>(1)</sup> OJ L 145, 30.4.2004, p. 1.

<sup>(2)</sup> OJ L 345, 31.12.2003, p. 64.

<sup>(3)</sup> OJ L 166, 11.6.1998, p. 45.

- (32) The technical standards to be drafted by the European Supervisory Authority (European Insurance and Occupational Pensions Authority) in accordance with this Directive and in relation to Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision <sup>(1)</sup> should be without prejudice to the competences of Member States with regard to prudential requirements on such institutions as provided for in Directive 2003/41/EC.
- (33) Under Article 13(5) of Directive 2003/71/EC, the competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State, subject to the agreement of that competent authority. Article 28(4) of Regulation (EU) No 1095/2010 requires that such delegation agreements be notified to the European Supervisory Authority (European Securities and Markets Authority) at least 1 month before they are put into effect. However, given the experience in transfer of approval under Directive 2003/71/EC, which provides for shorter deadlines, it is appropriate not to apply Article 28(4) of Regulation (EU) No 1095/2010 to that situation.
- (34) There is currently no need for the ESA to develop draft technical standards on the existing requirements that the persons who effectively direct the business of investment firms, credit institutions, UCITS and their management companies be of sufficiently good repute and sufficiently experienced so as to ensure their sound and prudent management. However, given the importance of those requirements, the ESA should give priority to identifying best practices in guidelines and to ensuring the convergence of supervisory and prudential processes towards those best practices. They should similarly identify best practices and ensure convergence with respect to prudential requirements relative to the head office of those bodies.
- (35) The European single rule book, applicable to all financial institutions in the internal market, should ensure adequate harmonisation of criteria and methodology to be applicable by the competent authorities to assess the risk of credit institutions. More particularly, the purpose of developing draft technical standards in relation to the Internal Ratings Based approach, the Advanced Measurement Approach and the internal model for market risk approach, as provided for by this Directive, should be to ensure the quality and robustness of such approaches, as well as the consistency of their review by the competent authorities. Those technical standards should allow the competent authorities to permit financial institutions to develop different approaches based on their experience and specificities, in accordance with the requirements laid down in Directive 2006/48/EC and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions <sup>(2)</sup> and subject to the requirements of the relevant technical standards.
- (36) Since the objectives of this Directive, namely improving the functioning of the internal market by means of ensuring a high, effective and consistent level of prudential regulation and supervision, protecting depositors, investors and beneficiaries and thereby businesses and consumers, protecting the integrity, efficiency and orderly functioning of financial markets, maintaining the stability and sustainability of the financial system, preserving the real economy, safeguarding public finances and strengthening international supervisory coordination, cannot be sufficiently achieved by the Member States and can, therefore, by reason of their scale, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (37) The Commission should, by 1 January 2014, report to the European Parliament and to the Council on the submission by the ESA of the draft technical standards provided for in this Directive and present any appropriate proposals.
- (38) Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems <sup>(3)</sup>, Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate <sup>(4)</sup>, Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) <sup>(5)</sup>, Directive 2003/41/EC, Directive 2003/71/EC, Directive 2004/39/EC, Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market <sup>(6)</sup>, Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing <sup>(7)</sup>, Directive 2006/48/EC, Directive 2006/49/EC and Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) <sup>(8)</sup> should therefore be amended accordingly,

<sup>(2)</sup> OJ L 177, 30.6.2006, p. 201.

<sup>(3)</sup> OJ L 166, 11.6.1998, p. 45.

<sup>(4)</sup> OJ L 35, 11.2.2003, p. 1.

<sup>(5)</sup> OJ L 96, 12.4.2003, p. 16.

<sup>(6)</sup> OJ L 390, 31.12.2004, p. 38.

<sup>(7)</sup> OJ L 309, 25.11.2005, p. 15.

<sup>(8)</sup> OJ L 302, 17.11.2009, p. 32.

<sup>(1)</sup> OJ L 235, 23.9.2003, p. 10.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

**Amendments to Directive 98/26/EC**

Directive 98/26/EC is hereby amended as follows:

(1) Article 6(3) is replaced by the following:

‘3. The Member State referred to in paragraph 2 shall immediately notify the European Systemic Risk Board, other Member States and the European Supervisory Authority (European Securities and Markets Authority) (hereinafter “ESMA”), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (\*).

(\*) OJ L 331, 15.12.2010, p. 84.’

(2) In Article 10(1) the first subparagraph is replaced by the following:

‘1. Member States shall specify the systems, and the respective system operators, which are to be included in the scope of this Directive and shall notify them to ESMA and inform it of the authorities chosen in accordance with Article 6(2). ESMA shall publish that information on its website.’

(3) The following Article is inserted:

*‘Article 10a*

1. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities shall provide, without delay, ESMA with all the information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.’

*Article 2*

**Amendments to Directive 2002/87/EC**

Directive 2002/87/EC is hereby amended as follows:

(1) Article 4 is amended as follows:

(a) paragraph 2 is replaced by the following:

‘2. The coordinator appointed in accordance with Article 10 shall inform the parent undertaking at the head of a group or, in the absence of a parent undertaking, the regulated entity with the largest balance sheet total in the most important financial sector in a group, that the group has been identified as a financial conglomerate and of the appointment of the coordinator.

The coordinator shall also inform the competent authorities which have authorised regulated entities in the group and the competent authorities of the Member State in which the mixed financial holding company has its head office, and the Joint Committee of the European Supervisory Authorities (ESA) established by Articles 54 of 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) (\*), of Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) (\*\*) and of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority) (\*\*\*) (hereinafter “the Joint Committee”), respectively.

(\*) OJ L 331, 15.12.2010, p. 12.

(\*\*) OJ L 331, 15.12.2010, p. 48.

(\*\*\*) OJ L 331, 15.12.2010, p. 84.’

(b) the following paragraph is added:

‘3. The Joint Committee shall publish on its website and keep up-to-date the list of identified financial conglomerates. That information shall be available by hyperlink on each of the European Supervisory Authority’s websites.’

(2) In Article 9(2), the following point is added:

‘(d) arrangements in place to contribute to and develop, if required, adequate recovery and resolution arrangements and plans. Such arrangements shall be updated regularly.’

(3) The title of Section 3 is replaced by the following:

‘MEASURES TO FACILITATE SUPPLEMENTARY SUPERVISION AND POWERS OF THE JOINT COMMITTEE’.

(4) The following Article is inserted in Section 3:

*‘Article 9a*

**Role of the Joint Committee**

The Joint Committee shall, in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, ensure coherent cross-sectoral and cross-border supervision and compliance with Union legislation.’

(5) Article 10(1) is replaced by the following:

‘1. In order to ensure adequate supplementary supervision of the regulated entities in a financial conglomerate, a single coordinator, responsible for coordination and exercise of supplementary supervision, shall be appointed from among the competent authorities of the Member States concerned, including those of the Member State in which the mixed financial holding company has its head office. The identity of the coordinator shall be published on the Joint Committee’s website.’

- (6) In Article 11(1), the second subparagraph is replaced by the following:

'In order to facilitate and establish supplementary supervision on a broad legal basis, the coordinator, and the other relevant competent authorities, and, where necessary, the other competent authorities concerned, shall have coordination arrangements in place. The coordination arrangements may entrust additional tasks to the coordinator and may specify the procedures for the decision-making process among the relevant competent authorities as referred to in Articles 3 and 4, Article 5(4), Article 6, Article 12(2) and Articles 16 and 18, and for cooperation with other competent authorities.

In accordance with Article 8 and the procedure set out in Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, the ESA, through the Joint Committee, shall develop guidelines aimed at the convergence of supervisory practices with regard to the consistency of supervisory coordination arrangements in accordance with Article 131a of Directive 2006/48/EC and Article 248(4) of Directive 2009/138/EC.'

- (7) In Article 12(1), the third subparagraph is replaced by the following:

The competent authorities may also exchange with the following authorities such information as may be needed for the performance of their respective tasks, regarding regulated entities in a financial conglomerate, in line with the provisions laid down in the sectoral rules: central banks, the European System of Central Banks, the European Central Bank and the European Systemic Risk Board in accordance with Article 15 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (\*).

(\* ) OJ L 331, 15.12.2010, p. 1.'

- (8) The following Article is inserted:

*'Article 12a*

**Cooperation and exchange of information with the Joint Committee**

1. The competent authorities shall cooperate with the Joint Committee for the purposes of this Directive, in accordance with Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010, and Regulation (EU) No 1095/2010.

2. The competent authorities shall without delay provide the Joint Committee with all information necessary to carry out its duties in accordance with Article 35 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 respectively.'

- (9) Article 14(1) is replaced by the following:

'1. Member States shall ensure that there are no legal impediments within their jurisdiction preventing the natural and legal persons included within the scope of supplementary supervision, whether or not a regulated entity, from exchanging with each other any information which would be relevant for the purposes of supplementary supervision and from exchanging information in accordance with this Directive and with the ESA in accordance with Article 35 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, where necessary through the Joint Committee.'

- (10) The second paragraph of Article 16 is replaced by the following:

'Without prejudice to Article 17(2), Member States may determine what measures may be taken by the competent authorities with respect to mixed financial holding companies. In accordance with Articles 16 and 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, the ESA, through the Joint Committee, may develop guidelines for measures in relation to mixed financial holding companies.'

- (11) Article 18 is amended as follows:

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

'1. Without prejudice to the sectoral rules, where Article 5(3) applies, the competent authorities shall verify whether the regulated entities, the parent undertaking of which has its head office in a third country are subject to supervision by that third country's competent authority, which is equivalent to that provided for by this Directive on the supplementary supervision of regulated entities referred to in Article 5(2). The verification shall be carried out by the competent authority which would be the coordinator if the criteria set out in Article 10(2) were to apply, on the request of the parent undertaking or of any of the regulated entities authorised in the Union or on its own initiative.

That competent authority shall consult the other relevant competent authorities, and shall make every effort to comply with any applicable guidelines prepared through the Joint Committee in accordance with Articles 16 and 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively.'

- (b) the following paragraph is inserted:

'1a. Where a competent authority disagrees with the decision taken by another relevant competent authority under paragraph 1, Article 19 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively shall apply.'



(12) Article 19(2) is replaced by the following:

‘2. Without prejudice to Article 218(1) and (2) of the Treaty on the Functioning of the European Union (TFEU), the Commission shall, with the assistance of the Joint Committee, the European Banking Committee, the European Insurance and Occupational Pensions Committee and the Financial Conglomerates Committee, examine the outcome of the negotiations referred to in paragraph 1 and the resulting situation.’

(13) In Article 20(1), the following subparagraph is added:

‘Those measures shall not include the subject matter of the power delegated and conferred on the Commission with regard to the items listed in Article 21a.’

(14) Article 21 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. The ESA, through the Joint Committee, may provide general guidelines as to whether the supplementary supervision arrangements of competent authorities in third countries are likely to achieve the objectives of the supplementary supervision as defined in this Directive, in relation to the regulated entities in a financial conglomerate, the head of which has its head office in a third country. The Joint Committee shall keep any such guidelines under review and take into account any changes to the supplementary supervision carried out by such competent authorities.’

(b) paragraph 5 is replaced by the following:

‘5. By 1 December 2011 the Commission shall review Article 20 and present any appropriate legislative proposals in order to allow the full application of delegated acts under Article 290 TFEU and implementing acts under Article 291 TFEU in respect of this Directive. Without prejudice to implementing measures already adopted, the powers conferred on the Commission in Article 21 to adopt implementing measures that remain after the entry into force of the Lisbon Treaty, shall cease to apply on 1 December 2012.’

(15) The following Article is inserted:

*‘Article 21a*

**Technical standards**

1. In order to ensure consistent harmonisation of this Directive, the ESA, in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 respectively may develop draft regulatory technical standards with regard to:

(a) Article 2(11) in order to specify the application of Article 17 of Council Directive 78/660/EEC in the context of this Directive;

(b) Article 2(17) in order to establish procedures or specify criteria for the determination of “relevant competent authorities”;

(c) Article 3(5) in order to specify the alternative parameters for the identification of a financial conglomerate.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 respectively.

2. In order to ensure uniform conditions of application of this Directive, the ESA, in accordance with Articles 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 respectively may develop draft implementing technical standards with regard to:

(a) Article 6(2) in order to ensure uniform conditions of application of the calculation methods listed in Annex I part II, but without prejudice to Article 6(4);

(b) Article 7(2) in order to ensure uniform conditions of application of the procedures for including the items within the scope of the definition of “risk concentrations” in the supervisory overview referred to in the second subparagraph of Article 7(2);

(c) Article 8(2) in order to ensure uniform conditions of application of the procedures for including the items within the scope of the definition of “intra group transactions” in the supervisory overview referred to in the third subparagraph of Article 8(2).

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 respectively.’

*Article 3*

**Amendments to Directive 2003/6/EC**

Directive 2003/6/EC is hereby amended as follows:

(1) In Article 1(5) the following subparagraphs are added:

‘The European Supervisory Authority (European Securities and Markets Authority) (hereinafter “ESMA”), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (\*) may develop draft implementing technical standards to ensure uniform conditions of application of the acts adopted by the Commission in accordance with this Article in relation to accepted market practices.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

(\*) OJ L 331, 15.12.2010, p. 84.

- (2) In Article 6, the following paragraph is added:

‘11. ESMA may develop draft implementing technical standards to ensure uniform conditions of application of the acts adopted by the Commission in accordance with the sixth indent of the first subparagraph of paragraph 10.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

- (3) Article 8 is amended as follows:

(a) the existing text is numbered as paragraph 1.

(b) the following paragraph is added:

‘2. ESMA may develop draft implementing technical standards to ensure uniform conditions of application of acts adopted by the Commission in accordance with paragraph 1.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

- (4) In Article 14 the following paragraph is added:

‘5. Member States shall provide ESMA annually with aggregated information regarding all administrative measures and sanctions imposed in accordance with paragraphs 1 and 2.

Where the competent authority has disclosed an administrative measure or a sanction to the public, it shall contemporaneously report that fact to ESMA.

Where a published sanction relates to an investment firm authorised in accordance with Directive 2004/39/EC, ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3) of Directive 2004/39/EC.’

- (5) The following Article is inserted:

*‘Article 15a*

1. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.’

- (6) Article 16 is amended as follows:

(a) in paragraph 2, the fourth subparagraph is replaced by the following:

‘Without prejudice to Article 258 of the Treaty on the Functioning of the European Union (TFEU), a competent authority whose request for information is not acted upon within a reasonable time or whose request for information is rejected may refer that rejection or absence of action within a reasonable timeframe to ESMA. In the situations referred to in the first sentence, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibilities for refusing to act on a request for information provided for in the second subparagraph of this paragraph and to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.’;

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

‘Without prejudice to Article 258 TFEU, a competent authority whose application to open an inquiry or whose request for authorisation for its officials to accompany those of the other Member State’s competent authority is not acted upon within a reasonable time or is rejected may refer that rejection or absence of action within a reasonable timeframe to ESMA. In the situations referred to in the first sentence, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibilities for refusing to act on a request for information provided in the fourth subparagraph of this paragraph and to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.’;

(c) paragraph 5 is replaced by the following:

‘5. In order to ensure uniform conditions of application of paragraphs 2 and 4, ESMA may develop draft implementing technical standards on the procedures and forms for exchange of information and for cross-border inspections as referred to in this Article.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

- (7) The following Article is inserted:

*‘Article 17a*

By 1 December 2011 the Commission shall review Articles 1, 6, 8, 14, and 16 and present any appropriate legislative proposals in order to allow the full application of the delegated acts under Article 290 TFEU and implementing acts under Article 291 TFEU in respect of this Directive. Without prejudice to implementing measures already adopted, the powers conferred on the Commission in Article 17 to adopt implementing measures that remain after the entry into force of the Lisbon Treaty shall cease to apply on 1 December 2012.’

## Article 4

**Amendments to Directive 2003/41/EC**

Directive 2003/41/EC is hereby amended as follows:

(1) Article 9 is amended as follows:

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

‘(a) the institution is registered in a national register by the competent authority or authorised; in the case of cross-border activities referred to in Article 20, the register shall also indicate the Member States in which the institution is operating; that information shall be communicated to the European Supervisory Authority (European Insurance and Occupational Pensions Authority (hereinafter “EIOPA”), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (\*) which shall publish it on its website;

(\*) OJ L 331, 15.12.2010, p. 48.’;

(b) paragraph 5 is replaced by the following:

‘5. In the case of cross-border activity as referred to in Article 20, the conditions of operation of the institution shall be subject to a prior authorisation by the competent authorities of the home Member State. When giving such authorisation, Member States shall immediately inform EIOPA.’

(2) Article 13 is amended as follows:

(a) the existing text is numbered as paragraph 1;

(b) the following paragraph is added:

‘2. EIOPA may develop draft implementing technical standards on the forms and formats for the documents listed in paragraph 1(c)(i) to (vi).

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.’

(3) In Article 14(4), the second subparagraph is replaced by the following:

‘Any decision to prohibit the activities of an institution shall contain detailed reasons and be notified to the institution in question. It shall also be notified to EIOPA.’

(4) In Article 15(6), the first subparagraph is replaced by the following:

‘6. With a view to further harmonisation of the rules regarding the calculation of technical provisions which may be justified – in particular the interest rates and other assumptions influencing the level of technical provisions – the

Commission, drawing on advice from EIOPA, shall, every 2 years or at the request of a Member State, issue a report on the situation concerning the development in cross-border activities.’.

(5) In Article 20, the following paragraph is added:

‘11. Member States shall report to EIOPA their national provisions of prudential nature relevant to the field of occupational pension schemes, which are not covered by the reference to national social and labour law in paragraph 1.

Member States shall update that information on a regular basis and at least every 2 years and EIOPA shall make that information available on its website.

In order to ensure uniform conditions of application of this paragraph, EIOPA shall develop draft implementing technical standards on the procedures to be followed and formats and templates to be used by the competent authorities when transmitting and updating the relevant information to EIOPA. EIOPA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1094/2010.’

(6) Article 21 is amended as follows:

(a) the title is replaced by the following:

‘Cooperation between Member States, EIOPA and the Commission’;

(b) the following paragraph is inserted:

‘2a. The competent authorities shall cooperate with EIOPA for the purposes of this Directive, in accordance with Regulation (EU) No 1094/2010.

The competent authorities shall without delay provide EIOPA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No 1094/2010, in accordance with Article 35 of that Regulation.’;

(c) paragraph 3 is replaced by the following:

‘3. Each Member State shall inform the Commission and EIOPA of any major difficulties to which the application of this Directive gives rise.

The Commission, EIOPA and the competent authorities of the Member States concerned shall examine such difficulties as quickly as possible in order to find an appropriate solution.’.

## Article 5

**Amendments to Directive 2003/71/EC**

Directive 2003/71/EC is hereby amended as follows:

- (1) In Article 4, paragraph 3 is replaced by the following:

‘3. In order to ensure consistent harmonisation of this Directive, the European Supervisory Authority (European Securities and Markets Authority) (hereinafter “ESMA”) established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (\*) may develop draft regulatory technical standards to specify the exemptions concerning the points (a) to (e) of paragraph 1 and points (a) to (h) of paragraph 2.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

(\*) OJ L 331, 15.12.2010, p. 84.’

- (2) In Article 5(2), the following subparagraphs are added:

‘In order to ensure uniform conditions of application of this Directive and of the delegated acts adopted by the Commission in accordance with paragraph 5, ESMA shall develop draft implementing technical standards in order to ensure uniform conditions of application of the delegated acts adopted by the Commission in accordance with paragraph 5 in relation to a uniform template for the presentation of the summary and to allow investors to compare the security concerned with other relevant products.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

- (3) In Article 7, the following paragraph is added:

‘4. ESMA may develop draft implementing technical standards in order to ensure uniform conditions of application of the delegated acts adopted by the Commission in accordance with paragraph 1.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

- (4) In Article 8, the following paragraph is added:

‘5. ESMA may develop draft implementing technical standards to ensure uniform conditions of application of the delegated acts adopted by the Commission in accordance with paragraph 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

- (5) Article 13 is amended as follows:

- (a) in paragraph 2, the following subparagraph is added:

‘The competent authority shall notify ESMA of the approval of the prospectus and any supplement thereto at the same time as that approval is notified to the issuer, the offeror or the person asking for admission to trading on a regulated market, as the case may be. The competent authorities shall at the same time provide ESMA with a copy of the prospectus and any supplement thereto.’;

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

‘5. The competent authority of the home Member State may transfer the approval of a prospectus to the competent authority of another Member State, subject to prior notification to ESMA and the agreement of the competent authority. Such a transfer shall be notified to the issuer, the offeror or the person asking for admission to trading on a regulated market within three working days from the date of the decision taken by the competent authority of the home Member State. The time limit referred to in paragraph 2 shall apply from that date. Article 28(4) of Regulation (EU) No 1095/2010 shall not apply to the transfer of the approval of the prospectus in accordance with this paragraph.

In order to ensure uniform conditions of application of this Directive and to facilitate communication between the competent authorities and between the competent authorities and ESMA, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the notifications provided for in this paragraph.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

- (6) Article 14 is amended as follows:

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

‘1. Once approved, the prospectus shall be filed with the competent authority of the home Member State, shall be accessible to ESMA through the competent authority and shall be made available to the public by the issuer, the offeror or the person asking for admission to trading on a regulated market as soon as practicable and, in any event, at a reasonable time in advance of, and at the latest at the beginning of, the offer to the public or the admission to trading of the securities involved. In addition, in the case of an initial public offer of a class of shares not already admitted to trading on a regulated market that is to be admitted to trading for the first time, the prospectus shall be available at least six working days before the end of the offer.’;

(b) the following paragraph is inserted:

‘4a. ESMA shall publish on its website the list of prospectuses approved in accordance with Article 13, including, if applicable, a hyperlink to the prospectus published on the website of the competent authority of the home Member State, or on the website of the issuer, or on the website of the regulated market. The published list shall be kept up-to-date and each item shall remain on the website for a period of at least 12 months.’

(7) In Article 16, the following paragraph is added:

‘3. In order to ensure consistent harmonisation, to specify the requirements laid down in this Article and to take account of technical developments on financial markets, ESMA shall develop draft regulatory technical standards to specify situations where a significant new factor, material mistake or inaccuracy relating to the information included in the prospectus requires a supplement to the prospectus to be published. ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.’

(8) Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Without prejudice to Article 23, where an offer to the public or admission to trading on a regulated market is provided for in one or more Member States, or in a Member State other than the home Member State, the prospectus approved by the home Member State and any supplements thereto shall be valid for the public offer or the admission to trading in any number of host Member States, provided that ESMA and the competent authority of each host Member State are notified in accordance with Article 18. Competent authorities of host Member States shall not undertake any approval or administrative procedures relating to prospectuses.’

(b) paragraph 2 is replaced by the following:

‘2. If significant new factors, material mistakes or inaccuracies come to light after approval of the prospectus, as referred to in Article 16, the competent authority of the home Member State shall require the publication of a supplement to be approved in accordance with Article 13(1). ESMA and the competent authority of the host Member State may inform the competent authority of the home Member State of the need for new information.’

(9) In Article 18, the following paragraphs are added:

‘3. The competent authority of the home Member State shall notify ESMA of the certificate of approval of the prospectus at the same time as it is notified to the competent authority of the host Member State.

ESMA and the competent authority of the host Member State shall publish on their websites the list of certificates of approval of prospectuses and any supplements thereto, which are notified in accordance with this Article, including, if applicable, a hyperlink to those documents published on the website of the competent authority of the home Member State, on the website of the issuer, or on the website of the regulated market. The published list shall be kept up-to-date and each item shall remain on the websites for a period of at least 12 months.

4. In order to ensure uniform conditions of application of this Directive and to take account of technical developments on financial markets, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the notification of the certificate of approval, the copy of the prospectus, the supplement of the prospectus and the translation of the summary.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

(10) Article 21 is amended as follows:

(a) the following paragraphs are inserted:

‘1a. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

1b. The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.’

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

‘The Member States shall inform the Commission, ESMA and the competent authorities of other Member States of any arrangements entered into with regard to delegation of tasks, including the precise conditions regulating such delegation.’

(c) in paragraph 4, the following subparagraph is added:

‘In accordance with Article 21 of Regulation (EU) No 1095/2010, ESMA shall be entitled to participate in on-site inspections referred to in point (d) where they are carried out jointly by two or more competent authorities.’

(11) Article 22 is amended as follows:

(a) in paragraph 2, the following subparagraph is added:

‘The competent authorities may refer to ESMA situations where a request for cooperation, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Without prejudice to Article 258 of the Treaty on the Functioning of the European Union (TFEU), ESMA may, in the situations referred to in the first sentence, act in accordance with the power conferred on it under Article 19 of Regulation (EU) No 1095/2010.’;

(b) paragraph 3 is replaced by the following:

‘3. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information or from transmitting confidential information to ESMA or the European Systemic Risk Board (hereinafter the “ESRB”), subject to constraints relating to firm-specific information and effects on third countries as provided for in Regulation (EU) No 1095/2010 and Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (\*) respectively. Information exchanged between competent authorities and ESMA or the ESRB shall be covered by the obligation of professional secrecy, to which the persons employed or formerly employed by the competent authorities receiving the information are subject.

(\*) OJ L 331, 15.12.2010, p. 1.’;

(c) The following paragraph is added:

‘4. In order to ensure consistent harmonisation of this Article and to take account of technical developments on financial markets, ESMA shall develop draft regulatory technical standards to specify the information required in paragraph 2.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of paragraph 2, and to take account of technical developments on financial markets, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation and exchange of information between competent authorities.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(12) Article 23 is replaced by the following:

‘Article 23

### **Precautionary measures**

1. Where the competent authority of the host Member State finds that irregularities have been committed by the issuer or by the financial institutions in charge of the public offer or that the issuer has breached its obligations by reason of the fact that securities are admitted to trading on a regulated market, it shall refer those findings to the competent authority of the home Member State and to ESMA.

2. If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the issuer or the financial institution in charge of the public offer persists in breaching the relevant legal or regulatory provisions, the competent authority of the host Member State, after informing the competent authority of the home Member State and ESMA, shall take all appropriate measures in order to protect investors and shall inform the Commission and ESMA thereof at the earliest opportunity.’.

Article 6

### **Amendments to Directive 2004/39/EC**

Directive 2004/39/EC is hereby amended as follows:

(1) Article 5(3) is replaced by the following:

‘3. Member States shall register all investment firms. The register shall be publicly accessible and shall contain information on the services or activities for which the investment firm is authorised. It shall be updated on a regular basis. Every authorisation shall be notified to the European Supervisory Authority (European Securities and Markets Authority) (hereinafter “ESMA”), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (\*).

ESMA shall establish a list of all investment firms in the Union. The list shall contain information on the services or activities for which the investment firm is authorised and it shall be updated on a regular basis. ESMA shall publish and keep up-to-date that list on its website.

Where a competent authority has withdrawn an authorisation in accordance with Article 8(b) to (d), that withdrawal shall be published on the list for a period of 5 years.

(\*) OJ L 331, 15.12.2010, p. 84.’.

(2) In Article 7, the following paragraph is added:

'4. In order to ensure consistent harmonisation of this Article and of Article 9(2) to (4), Article 10(1) and (2), ESMA may develop draft regulatory technical standards to specify:

- (a) the information to be provided to the competent authorities under Article 7(2) including the programme of operations;
- (b) the requirements applicable to the management of investment firms under Article 9(4) and the information for the notifications under Article 9(2);
- (c) the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, under Article 10(1) and (2).

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of Article 7(2) and Article 9(2), ESMA may develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in those Articles.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'

(3) In Article 8 the following paragraph is added:

'Every withdrawal of authorisation shall be notified to ESMA.'

(4) In Article 10a, the following paragraph is added:

'8. In order to ensure consistent harmonisation of this Article, ESMA shall develop draft regulatory technical standards to establish an exhaustive list of information, referred to in paragraph 4 to be included by proposed acquirers in their notification, without prejudice to paragraph 2.

ESMA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of Articles 10, 10a and 10b, ESMA shall develop draft implementing technical standards to determine standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities as referred to in Article 10(4).

ESMA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'

(5) Article 15 is amended as follows

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

'1. Member States shall inform the Commission and ESMA of any general difficulties which their investment firms encounter in establishing themselves or providing investment services and/or performing investment activities in any third country.'

(b) paragraph 2 is replaced by the following:

'2. Whenever it appears to the Commission, on the basis of information submitted to it under paragraph 1, that a third country does not grant Union investment firms effective market access comparable to that granted by the Union to investment firms from that third country, the Commission, taking into account guidance issued by ESMA, shall submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Union investment firms. The Council shall act by qualified majority.

The European Parliament shall be immediately and fully informed at all stages of the procedure in accordance with Article 217 of the Treaty on the Functioning of the European Union (TFEU).

ESMA shall assist the Commission for the purposes of this Article.'

(6) In Article 16(2), the following subparagraph is added:

'ESMA may develop guidelines regarding the monitoring methods referred to in this paragraph.'

(7) In Article 19(6), the first indent is replaced by the following:

— the services referred to in the introductory part relate to shares admitted to trading on a regulated market or in an equivalent third-country market, money market instruments, bonds or other forms of securitised debt (excluding those bonds or securitised debt that embed a derivative), UCITS and other non-complex financial instruments. A third-country market shall be considered as equivalent to a regulated market if it complies with equivalent requirements to those established under Title III. The Commission and ESMA shall publish on their websites a list of those markets that are to be considered as equivalent. That list shall be updated periodically. ESMA shall assist the Commission in the assessment of third-country markets.'

(8) In Article 23(3), the first subparagraph is replaced by the following:

‘3. Member States that decide to allow investment firms to appoint tied agents shall establish a public register. Tied agents shall be registered in the public register in the Member State where they are established. ESMA shall publish on its website references or hyperlinks to the public registers established under this Article by the Member States that decide to allow investment firms to appoint tied agents.’.

(9) Article 25 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Without prejudice to the allocation of responsibilities for enforcing the provisions of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (\*), Member States coordinated by ESMA in accordance with Article 31 of Regulation (EU) No 1095/2010 shall ensure that appropriate measures are in place to enable the competent authority to monitor the activities of investment firms to ensure that they act honestly, fairly and professionally and in a manner which promotes the integrity of the market.

(\*) OJ L 96, 12.4.2003, p. 16.’;

(b) paragraph 2 is replaced by the following:

‘2. Member States shall require investment firms to keep at the disposal of the competent authority, for at least 5 years, the relevant data relating to all transactions in financial instruments which they have carried out, whether on own account or on behalf of a client. In the case of transactions carried out on behalf of clients, the records shall contain all the information and details of the identity of the client, and the information required under Directive 2005/60/EC.

ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.’.

(10) Article 27(2) is replaced by the following:

‘2. The competent authority of the most relevant market in terms of liquidity as defined in Article 25 for each share shall determine at least annually, on the basis of the arithmetic average value of the orders executed in the market in respect of that share, the class of shares to which it belongs. That information shall be made public to all market participants and transmitted to ESMA, which shall publish it on its website.’.

(11) Article 31 is amended as follows:

(a) in paragraph 2, the second subparagraph is replaced by the following:

‘In cases where the investment firm intends to use tied agents, the competent authority of the home Member State of the investment firm shall, at the request of the competent authority of the host Member State and within a reasonable time, communicate the identity of the tied agents that the investment firm intends to use in that Member State. The host Member State may make public such information. ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.’.

(b) the following paragraph is added:

‘7. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 2, 4 and 6.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3, 4 and 6.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(12) In Article 32, the following paragraph is added:

‘10. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 2, 4 and 9.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3 and 9.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.



(13) In Article 36, the following paragraph is added:

‘6. ESMA shall be notified of any withdrawal of authorisation.’

(14) Article 41(2) is replaced by the following:

‘2. A competent authority which requests the suspension or removal of a financial instrument from trading on one or more regulated markets shall immediately make public its decision and inform ESMA and the competent authorities of the other Member States. Save where it is likely to cause significant damage to the investors’ interests or the orderly functioning of the internal market, the competent authorities of the other Member States shall request the suspension or removal of that financial instrument from trading on the regulated markets and MTFs that operate under their supervision.’

(15) In Article 42(6), the second subparagraph is replaced by the following:

‘The regulated market shall communicate to the competent authority of its home Member State the Member State in which it intends to provide such arrangements. The competent authority of the home Member State shall communicate that information to the Member State in which the regulated market intends to provide such arrangements within 1 month. ESMA may request access to that information in accordance with the procedure and under the conditions set out in Article 35 of Regulation (EU) No 1095/2010.’

(16) Article 47 is replaced by the following:

‘Article 47

### **List of regulated markets**

Each Member State shall draw up a list of the regulated markets for which it is the home Member State and shall forward that list to the other Member States and ESMA. A similar communication shall be effected in respect of each change to that list. ESMA shall publish and keep up-to-date a list of all regulated markets on its website.’

(17) Article 48 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Each Member State shall designate the competent authorities which are to carry out each of the duties provided for in this Directive. Member States shall inform the Commission, ESMA and the competent authorities of other Member States of the identity of the competent authorities responsible for enforcement of each of those duties, and of any division of those duties.’

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

‘Member States shall inform the Commission, ESMA and the competent authorities of other Member States of any arrangements entered into with regard to delegation of tasks, including the precise conditions regulating such delegation.’

(c) paragraph 3 is replaced by the following:

‘3. ESMA shall publish and keep up-to-date a list of the competent authorities referred to in paragraphs 1 and 2 on its website.’

(18) In Article 51, the following paragraphs are added:

‘4. Member States shall provide ESMA annually with aggregated information about all administrative measures and sanctions imposed in accordance with paragraphs 1 and 2.

5. Where the competent authority has disclosed an administrative measure or sanction to the public, it shall, contemporaneously, report that fact to ESMA.

6. Where a published sanction relates to an investment firm authorised in accordance with this Directive, ESMA shall add a reference to the published sanction in the register of investment firms established under Article 5(3).’

(19) In Article 53, the following paragraph is added:

‘3. The competent authorities shall notify ESMA of the complaint and redress procedures referred to in paragraph 1 which are available under its jurisdictions.

ESMA shall publish and keep up-to-date a list of all extra-judicial mechanisms on its website.’

(20) The Title of Chapter II is replaced by the following:

‘Cooperation between the competent authorities of the Member States and with ESMA’.

(21) Article 56 is amended as follows:

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

‘In order to facilitate and accelerate cooperation, and more particularly exchange of information, Member States shall designate a single competent authority as a contact point for the purposes of this Directive. Member States shall communicate to the Commission, ESMA and to the other Member States the names of the authorities which are designated to receive requests for exchange of information or cooperation pursuant to this paragraph. ESMA shall publish and keep up-to-date a list of those authorities on its website.’

(b) paragraph 4 is replaced by the following:

‘4. Where a competent authority has good reasons to suspect that acts contrary to the provisions of this Directive, carried out by entities not subject to its supervision, are being or have been carried out on the territory of another Member State, it shall notify the competent authority of the other Member State and ESMA in as specific a manner as possible. The notified competent authority shall take appropriate action. It shall inform the notifying competent authority and ESMA of the outcome of the action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competence of the notifying competent authority.’;

(c) the following paragraph is added:

‘6. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the cooperation arrangements referred to in paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(22) Article 57 is amended as follows:

(a) the existing text is renumbered as paragraph 1.

(b) the following paragraphs are added:

‘2. With the objective of converging supervisory practices, ESMA shall be able to participate in the activities of the colleges of supervisors, including on-site verifications or investigations, carried out jointly by two or more competent authorities in accordance with Article 21 of Regulation (EU) No 1095/2010.

3. In order to ensure consistent harmonisation of paragraph 1, ESMA may develop draft regulatory technical standards to specify the information to be exchanged between competent authorities when cooperating in supervisory activities, on-the-spot verifications, and investigations.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of paragraph 1, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for competent authorities to cooperate in supervisory activities, on-site verifications, and investigations.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(23) Article 58 is amended as follows:

(a) paragraph 4 is replaced by the following:

‘4. In order to ensure uniform conditions of application of paragraphs 1 and 2, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the exchange of information.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’;

(b) paragraph 5 is replaced by the following:

‘5. Neither this Article nor Articles 54 or 63 shall prevent a competent authority from transmitting to ESMA, the European Systemic Risk Board (hereinafter the “ESRB”), central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and, where appropriate, to other public authorities responsible for overseeing payment and settlement systems, confidential information intended for the performance of their tasks; likewise such authorities or bodies shall not be prevented from communicating to the competent authorities such information as they may need for the purpose of performing their functions provided for in this Directive.’.

(24) The following Article is inserted:

‘Article 58a

#### **Binding mediation**

The competent authorities may refer to ESMA situations where a request relating to one of the following has been rejected or has not been acted upon within a reasonable time:

(a) to carry out a supervisory activity, an on-the-spot verification, or an investigation, as provided for in Article 57; or

(b) to exchange information as provided for in Article 58.

In the situations referred to in the first paragraph, ESMA may act in accordance with Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibilities for refusing to act on a request for information foreseen in Article 59a and to the possibility of ESMA acting in accordance with Article 17 of Regulation (EU) No 1095/2010.’.

(25) Article 59, the second paragraph is replaced by the following:

‘In the case of such a refusal, the competent authority shall notify the requesting competent authority and ESMA accordingly, providing as detailed information as possible.’.

(26) In Article 60, the following paragraph is added:

‘4. In order to ensure uniform conditions of application of paragraphs 1 and 2, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

(27) Article 62 is amended as follows:

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

‘If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the investment firm persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the following shall apply:

(a) after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets, which shall include the possibility of preventing offending investment firms from initiating any further transactions within their territories. The Commission and ESMA shall be informed of such measures without delay;

(b) in addition, the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.’;

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

‘If, despite the measures taken by the host Member State, the investment firm persists in breaching the legal or regulatory provisions referred to in the first subparagraph in force in the host Member State, the following shall apply:

(a) after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets. The Commission and ESMA shall be informed of such measures without delay;

(b) in addition, the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.’;

(c) in paragraph 3, the second subparagraph is replaced by the following:

‘If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, that regulated market or the MTF persists in acting in a manner that is clearly prejudicial to the interests of host Member State investors or the orderly functioning of markets, the following shall apply:

(a) after informing the competent authority of the home Member State, the competent authority of the host Member State shall take all the appropriate measures needed in order to protect investors and the proper functioning of the markets, which shall include the possibility of preventing that regulated market or the MTF from making their arrangements available to remote members or participants established in the host Member State. The Commission and ESMA shall be informed of such measures without delay;

(b) in addition, the competent authority of the host Member State may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.’.

(28) The following Article is inserted:

‘Article 62a

#### **Cooperation and exchange of information with ESMA**

1. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

2. The competent authorities shall, without delay, provide ESMA with all information necessary to carry out its duties under this Directive and in accordance with Article 35 of Regulation (EU) No 1095/2010.’.

(29) Article 63(1) is replaced by the following:

‘1. Member States and in accordance with Article 33 of Regulation (EU) No 1095/2010, ESMA may conclude cooperation agreements providing for the exchange of information with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 54. Such exchange of information must be intended for the performance of the tasks of those competent authorities.

Member States and ESMA may transfer personal data to a third country in accordance with Chapter IV of Directive 95/46/EC.

Member States and ESMA may also conclude cooperation agreements providing for the exchange of information with third country authorities, bodies and natural or legal persons responsible for one or more of the following:

- (a) the supervision of credit institutions, other financial institutions, insurance undertakings and the supervision of financial markets;
- (b) the liquidation and bankruptcy of investment firms and other similar procedures;
- (c) the carrying out of statutory audits of the accounts of investment firms and other financial institutions, credit institutions and insurance undertakings, in the performance of their supervisory functions, or which administer compensation schemes, in the performance of their functions;
- (d) oversight of the bodies involved in the liquidation and bankruptcy of investment firms and other similar procedures;
- (e) oversight of persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

The cooperation agreements referred to in the third subparagraph may be concluded only where the information disclosed is subject to guarantees of professional secrecy at least equivalent to those required under Article 54. Such exchange of information shall be intended for the performance of the tasks of those authorities or bodies or natural or legal persons.’

(30) The following Article is inserted

*‘Article 64a*

**Sunset clause**

By 1 December 2011 the Commission shall review Articles 2, 4, 10b, 13, 15, 18, 19, 21, 22, 24 and 25, Articles 27 to 30, and Articles 40, 44, 45, 56 and 58 and present any appropriate legislative proposal in order to allow the full application of the delegated acts under Article 290 TFEU and implementing acts under Article 291 TFEU in respect of this Directive. Without prejudice to implementing measures already adopted, the powers conferred on the Commission in Article 64 to adopt implementing measures that remain after the entry into force of the Lisbon Treaty on 1 December 2009 shall cease to apply on 1 December 2012.’

*Article 7*

**Amendments to Directive 2004/109/EC**

Directive 2004/109/EC is hereby amended as follows:

(1) Article 2(3) is amended as follows:

- (a) the first subparagraph is replaced by the following:

‘3. In order to take account of technical developments on financial markets, to specify the requirements

and to ensure the uniform application of paragraph 1, the Commission shall adopt, in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures concerning the definitions set out in paragraph 1.’

- (b) the third subparagraph is replaced by the following:

‘The measures referred to in points (a) and (b) of the second subparagraph shall be laid down by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b.’

(2) Article 5(6) is amended as follows:

- (a) the first subparagraph is replaced by the following:

‘6. The Commission shall adopt, in accordance with Article 27(2) or Article 27(2a), (2b) and (2c), in order to take account of technical developments on financial markets, measures to specify the requirements and ensure the uniform application of paragraphs 1 to 5 of this Article.’;

- (b) the third subparagraph is replaced by the following:

‘The measures referred to in point (a) shall be adopted in accordance with the regulatory procedure referred to in Article 27(2). The measures referred to in points (b) and (c) shall be laid down by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b.’;

- (c) the fourth subparagraph is replaced by the following:

‘Where appropriate, the Commission may also adapt the five-year period referred to in paragraph 1 by means of a delegated act in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b.’

(3) Article 9(7) is amended as follows:

- (a) the first subparagraph is replaced by the following:

‘7. The Commission shall adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures in order to take account of technical developments on financial markets and to specify the requirements laid down in paragraphs 2, 4 and 5.’

- (b) the second subparagraph is replaced by the following:

‘The Commission shall specify, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, the maximum length of the “short settlement cycle” referred to in paragraph 4 of this Article, as well as the appropriate control mechanisms by the competent authority of the home Member State.’

(4) Article 12 is amended as follows:

(a) in paragraph 8:

(i) in the first subparagraph, the introductory part is replaced by the following:

'8. In order to take account of technical developments on financial markets and to specify the requirements laid down in paragraphs 1, 2, 4, 5 and 6 of this Article, the Commission shall adopt, in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures';

(ii) point (a) is deleted;

(iii) the second subparagraph is deleted;

(b) the following paragraph is added:

'9. In order to ensure the uniform conditions of application of this Article and to take account of technical developments on financial markets, the European Supervisory Authority (European Securities and Markets Authority) (hereinafter "ESMA"), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (\*) may develop draft implementing technical standards to establish standard forms, templates and procedures to be used when notifying the required information to the issuer under paragraph 1 of this Article or when filing information under Article 19(3).

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

(\*) OJ L 331, 15.12.2010, p. 84.'

(5) Article 13 is amended as follows:

(a) in paragraph 2:

(i) the first subparagraph is replaced by the following:

'2. The Commission shall adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures in order to take account of technical developments on financial markets and to specify the requirements laid down in paragraph 1. It shall in particular determine';

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

'(c) the contents of the notification to be made';

(iii) the second subparagraph is deleted;

(b) the following paragraph is added:

'3. In order to ensure uniform conditions of application of paragraph 1 of this Article and to take account of technical developments on financial markets, ESMA may develop draft implementing technical standards to

establish standard forms, templates and procedures to be used when notifying the required information to the issuer under paragraph 1 of this Article or when filing information under Article 19(3).

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'

(6) Article 14(2) is replaced by the following:

'2. The Commission shall adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures in order to take account of technical developments on financial markets and to specify the requirements laid down in paragraph 1.'

(7) Article 17(4) is replaced by the following:

'4. The Commission shall adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures in order to take account of technical developments on financial markets, to take account of developments in information and communication technology and to specify the requirements laid down in paragraphs 1, 2 and 3. The Commission shall, in particular, specify the types of financial institution through which a shareholder may exercise the financial rights provided for in paragraph 2(c).'

(8) Article 18(5) is replaced by the following:

'5. The Commission shall adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures in order to take account of technical developments on financial markets, to take account of developments in information and communication technology and to specify the requirements laid down in paragraphs 1 to 4. The Commission shall, in particular, specify the types of financial institution through which a debt security holder may exercise the financial rights provided for in paragraph 2(c).'

(9) Article 19(4) is replaced by the following:

'4. The Commission shall adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures in order to specify the requirements laid down in paragraphs 1, 2 and 3.

The Commission shall, in particular, specify the procedure in accordance with which an issuer, a holder of shares or other financial instruments, or a person or entity referred to in Article 10, is to file information with the competent authority of the home Member State under paragraph 1 or 3, respectively, in order to enable filing by electronic means in the home Member State.'

(10) Article 21(4) is replaced by the following:

‘4. The Commission shall adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures to take account of technical developments on financial markets, to take account of developments in information and communication technology and to specify the requirements laid down in paragraphs 1, 2 and 3.

The Commission shall, in particular, specify:

- (a) minimum standards for the dissemination of regulated information, as referred to in paragraph 1;
- (b) minimum standards for the central storage mechanism as referred to in paragraph 2.

The Commission may also specify and update a list of media for the dissemination of information to the public.’

(11) In Article 22, the first subparagraph of paragraph 1 is replaced by the following:

‘1. ESMA shall draw up guidelines, in accordance with Article 16 of Regulation (EU) No 1095/2010, with a view to further facilitating public access to information to be disclosed under Directive 2003/6/EC, Directive 2003/71/EC and under this Directive.’

(12) Article 23 is amended as follows:

(a) paragraph 1 is replaced by the following:

‘1. Where the registered office of an issuer is situated in a third country, the competent authority of the home Member State may exempt that issuer from requirements under Articles 4 to 7, Article 12(6) and Articles 14 to 18, provided that the law of the third country in question lays down equivalent requirements or such an issuer complies with requirements of the law of a third country that the competent authority of the home Member State considers as equivalent.

The competent authority shall then inform ESMA of the exemption granted.’

(b) paragraph 4 is replaced by the following:

‘4. In order to ensure the uniform conditions of application of paragraph 1, the Commission shall adopt, in accordance with the procedure referred to in Article 27(2), implementing measures:

- (i) setting up a mechanism ensuring the establishment of equivalence of information required under this Directive, including financial statements and information, required under the law, regulations or administrative provisions of a third country;
- (ii) stating that, by reason of its domestic law, regulations, administrative provisions, or of the practices or procedures based on the international standards set by international organisations, the third country where the issuer is registered ensures the equivalence of the information requirements provided for in this Directive.

In the context of point (ii) of the first subparagraph, the Commission shall also adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures concerning the assessment of standards relevant to the issuers of more than one country.

The Commission shall, in accordance with the procedure referred to in Article 27(2), take the necessary decisions on the equivalence of accounting standards which are used by third-country issuers under the conditions set out in Article 30(3). If the Commission decides that the accounting standards of a third country are not equivalent, it may allow the issuers concerned to continue using such accounting standards during an appropriate transitional period.

In the context of the third subparagraph, the Commission shall also adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures aimed at establishing general equivalence criteria regarding accounting standards relevant to issuers of more than one country.’

(c) paragraph 5 is replaced by the following:

‘5. In order to specify the requirements laid down in paragraph 2, the Commission may adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures defining the type of information disclosed in a third country that is of importance to the public in the Union.’

(d) in paragraph 7, the second subparagraph is replaced by the following:

‘The Commission shall also adopt, by means of delegated acts in accordance with Article 27(2a), (2b) and (2c), and subject to the conditions of Articles 27a and 27b, measures aimed at establishing general equivalence criteria for the purpose of the first subparagraph.’

(e) the following paragraph is added:

‘8. ESMA shall assist the Commission in carrying out its tasks under this Article in accordance with Article 33 of Regulation (EU) No 1095/2010.’

(13) Article 24 is amended as follows:

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

‘1. Each Member State shall designate the central authority referred to in Article 21(1) of Directive 2003/71/EC as the central competent administrative authority responsible for carrying out the obligations provided for in this Directive and for ensuring that the provisions adopted pursuant to this Directive are applied. Member States shall inform the Commission and ESMA accordingly.’

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

'3. Member States shall inform the Commission, ESMA in accordance with Article 28(4) of Regulation (EU) No 1095/2010, and competent authorities of other Member States of any arrangements entered into with regard to the delegation of tasks, including the precise conditions for regulating the delegations.'

- (14) Article 25 is amended as follows:

- (a) the following paragraphs are inserted:

'2a. The competent authorities may refer to ESMA situations where a request for cooperation has been rejected or has not been acted upon within a reasonable time. Without prejudice to the Article 258 of the Treaty on the Functioning of the European Union (TFEU), ESMA may, in situations referred to in the first sentence, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

2b. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

2c. The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No 1095/2010, in accordance with Article 35 of that Regulation.'

- (b) in paragraph 3, the first sentence is replaced by the following:

'3. Paragraph 1 shall not prevent the competent authorities from exchanging confidential information with, or from transmitting information to, other competent authorities, ESMA and the European Systemic Risk Board (ESRB) established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (\*).

(\* ) OJ L 331, 15.12.2010, p. 1.;

- (c) paragraph 4 is replaced by the following:

'4. Member States and ESMA in accordance with Article 33 of Regulation (EU) No 1095/2010, may conclude cooperation agreements providing for the exchange of information with the competent authorities or bodies of third countries enabled by their respective legislation to carry out any tasks under this Directive in accordance with Article 24. Member States shall notify ESMA when they conclude cooperation agreements. Such an exchange of information is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such an exchange of information shall be intended for the performance of the supervisory task of the authorities or bodies mentioned. Where the information originates in another

Member State, it shall not be disclosed without the express agreement of the competent authorities which disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.'

- (15) Article 26 is replaced by the following:

'Article 26

### Precautionary measures

1. Where the competent authority of a host Member State finds that the issuer or the holder of shares or other financial instruments, or the person or entity referred to in Article 10, has committed irregularities or infringed its obligations, it shall refer its findings to the competent authority of the home Member State and to ESMA.

2. If, despite the measures taken by the competent authority of the home Member State, or because such measures prove inadequate, the issuer or the security holder persists in infringing the relevant legal or regulatory provisions, the competent authority of the host Member State shall, after informing the competent authority of the home Member State, take, in accordance with Article 3(2), all the appropriate measures in order to protect investors, informing the Commission and ESMA thereof at the earliest opportunity.'

- (16) The title of Chapter VI is replaced by the following:

'DELEGATED ACTS AND IMPLEMENTING MEASURES'

- (17) Article 27 is amended as follows:

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

'2a. The power to adopt the delegated acts referred to in Article 2(3), Article 5(6), Article 9(7), Article 12(8), Article 13(2), Article 14(2), Article 17(4), Article 18(5), Article 19(4), Article 21(4), Article 23(4), Article 23(5) and Article 23(7) shall be conferred on the Commission for a period of 4 years from 4 January 2011. The Commission shall draw up a report in respect of delegated power at the latest 6 months before the end of the four-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 27a.'

- (b) the following paragraphs are inserted:

'2b. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

2c. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 27a and 27b.'

(18) The following Articles are inserted:

*Article 27a*

#### **Revocation of the delegation**

1. The delegation of power referred to in Article 2(3), Article 5(6), Article 9(7), Article 12(8), Article 13(2), Article 14(2), Article 17(4), Article 18(5), Article 19(4), Article 21(4), Article 23(4), Article 23(5) and Article 23(7) may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke a delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation.

3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

*Article 27b*

#### **Objections to delegated acts**

1. The European Parliament or the Council may object to a delegated act within a period of 3 months from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by 3 months.

2. If, on the expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If either the European Parliament or the Council objects to a delegated act within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the delegated act.'

*Article 8*

#### **Amendments to Directive 2005/60/EC**

Directive 2005/60/EC is hereby amended as follows:

(1) Article 11(4) is replaced by the following:

'4. The Member States shall inform each other, the European Supervisory Authority (European Banking Authority)

(hereinafter "EBA"), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (\*), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) (hereinafter "EIOPA"), established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (\*\*), and the European Supervisory Authority (European Securities and Markets Authority) (hereinafter "ESMA"), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (\*\*\*) (collectively, the "ESA") to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, and the Commission of cases where they consider that a third country meets the conditions laid down in paragraphs 1 or 2 or in other situations which meet the technical criteria established in accordance with Article 40(1)(b).

(\*) OJ L 331, 15.12.2010, p. 12.

(\*\*) OJ L 331, 15.12.2010, p. 48.

(\*\*\*) OJ L 331, 15.12.2010, p. 84.'

(2) Article 16(2) is replaced by the following:

'2. The Member States shall inform each other, the ESA to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010, and the Commission of cases where they consider that a third country meets the conditions laid down in paragraph 1(b).'

(3) Article 28(7) is replaced by the following:

'7. The Member States shall inform each other, the ESA to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 and the Commission of cases where they consider that a third country meets the conditions laid down in paragraphs 3, 4 or 5.'

(4) Article 31 is amended as follows:

(a) paragraph 2 is replaced by the following:

'2. The Member States, the ESA to the extent relevant for the purposes of this Directive and in accordance with the relevant provisions of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 and the Commission shall inform each other of cases where the legislation of the third country does not permit application of the measures required under the first subparagraph of paragraph 1 and coordinated action could be taken to pursue a solution.'



(b) the following paragraph is added:

‘4. In order to ensure consistent harmonisation of this Article and to take account of technical developments in the fight against money laundering and terrorist financing, the ESA taking into account the existing framework and cooperating, as appropriate, with other relevant Union bodies in that field, may develop draft regulatory technical standards in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010, and of Regulation (EU) No 1095/2010 respectively to specify the type of additional measures referred to in paragraph 3 of this Article and the minimum action to be taken by credit and financial institutions where the legislation of the third country does not permit application of the measures required under the first subparagraph of paragraph 1 of this Article.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(5) In Article 34, the following paragraph is added:

‘3. In order to ensure consistent harmonisation and to take account of technical developments in the fight against money laundering and terrorist financing, the ESA, taking into account the existing framework and cooperating, as appropriate, with other relevant Union bodies in that field, may develop draft regulatory technical standards in accordance with Article 56 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010 respectively, to specify the minimum content of the communication referred to in paragraph 2.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(6) The following Article is inserted:

‘Article 37a

1. The competent authorities shall cooperate with the ESA for the purposes of this Directive, in accordance with Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010, and Regulation (EU) No 1095/2010, respectively.

2. The competent authorities shall provide the ESA with all information necessary to carry out their duties under this Directive and under Regulation (EU) No 1093/2010, Regulation (EU) No 1094/2010 and Regulation (EU) No 1095/2010, respectively.’

(7) The title of Chapter VI is replaced by the following:

‘DELEGATED ACTS AND IMPLEMENTING MEASURES’

(8) Article 40 is amended as follows:

(a) in paragraph 1:

(i) in the first subparagraph, the introductory part is replaced by the following:

‘1. In order to take account of technical developments in the fight against money laundering and terrorist financing and to specify the requirements laid down in this Directive, the Commission may, adopt the following measures:’;

(ii) the second subparagraph is replaced by the following:

‘The measures shall be adopted by means of delegated acts in accordance with Article 41(2a), (2b) and (2c), and subject to the conditions of Articles 41a and 41b.’;

(b) in paragraph 3, the second subparagraph is replaced by the following:

‘The measures shall be adopted by means of delegated acts in accordance with Article 41(2a), (2b) and (2c), and subject to the conditions of Articles 41a and 41b.’

(9) Article 41 is amended as follows:

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

‘2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to Article 8 thereof and provided that the measures adopted in accordance with that procedure do not modify the essential provisions of this Directive.’;

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

‘2a. The power to adopt delegated acts referred to in Article 40 shall be conferred on the Commission for a period of 4 years from 4 January 2011. The Commission shall draw up a report in respect of the delegated power at the latest 6 months before the end of the four-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes it in accordance with Article 41a.’;

(c) the following paragraphs are inserted:

‘2b. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

2c. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 41a and 41b.’;

(d) paragraph 3 is deleted.

(10) The following Articles are inserted:

‘Article 41a

#### **Revocation of the delegation**

1. The delegation of power referred to in Article 40 may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke a delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation.

3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or on a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Article 41b

#### **Objections to delegated acts**

1. The European Parliament or the Council may object to a delegated act within a period of 3 months from the date of notification. At the initiative of the European Parliament or the Council that period shall be extended by 3 months.

2. If, on the expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If either the European Parliament or the Council objects to a delegated act within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the delegated act.’

Article 9

#### **Amendments to Directive 2006/48/EC**

Directive 2006/48/EC is hereby amended as follows:

(1) Article 6 is amended as follows:

(a) the existing paragraph is replaced by the following:

‘1. Member States shall require credit institutions to obtain authorisation before commencing their activities. Without prejudice to Articles 7 to 12, they shall lay

down the requirements for such authorisation and notify the Commission and the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (\*) (hereinafter “EBA”) thereof.

(\*) OJ L 331, 15.12.2010, p. 12.’;

(b) the following paragraphs are added:

‘2. In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards:

(a) on the information to be provided to the competent authorities in the application for the authorisation of credit institutions, including the programme of operations provided for in Article 7;

(b) specifying the conditions to comply with the requirement set out in Article 8;

(c) specifying the requirements applicable to shareholders and members with qualifying holdings, as well as to specify obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as provided for in Article 12.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in points (a), (b) and (c) of the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

3. In order to ensure uniform conditions of application of this Article, EBA may develop draft implementing technical standards on standard forms, templates and procedures for such provision of information;

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’

(2) In Article 9(2), point b is replaced by the following:

‘(b) the Member States concerned shall notify the Commission and EBA of their reasons for exercising that option; and’.

(3) Article 14 is replaced by the following:

‘Article 14

#### **Every authorisation shall be notified to EBA.**

The name of each credit institution to which authorisation has been granted shall be entered in a list. EBA shall publish and keep that list up-to-date on its website.’

(4) Article 17(2) is replaced by the following:

‘2. Withdrawal of authorisation shall be notified to the Commission and EBA and shall be reasoned. The persons concerned shall be notified of those reasons.’

(5) In Article 19, the following paragraph is added:

‘9. In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards to establish an exhaustive list of information, referred to in Article 19a(4), to be included by proposed acquirers in their notification, without prejudice to paragraph 3 of this Article.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

In order to ensure uniform conditions of application of this Directive, EBA may develop draft implementing technical standards to establish common procedures, forms and templates for the consultation process between the relevant competent authorities as referred to in Article 19b.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’

(6) In Article 22, the following paragraph is added:

‘3. In order to specify the requirements laid down in this Article and to ensure the convergence of supervisory practices, EBA may develop draft regulatory technical standards to specify the arrangements, processes and mechanisms referred to in paragraph 1, in accordance with the principles of proportionality and comprehensiveness set out in paragraph 2.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(7) In Article 25, the following paragraph is added:

‘5. In order to ensure consistent harmonisation of this Article, EBA shall develop draft regulatory technical standards to specify the information to be notified in accordance with this Article.

In order to ensure uniform conditions of application of this Article, EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for such notification.

EBA shall submit those draft technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

Power is also conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’

(8) In Article 26, the following paragraph is added:

‘5. In order to ensure consistent harmonisation of this Article, EBA shall develop draft regulatory technical standards to specify the information to be notified in accordance with this Article.

In order to ensure uniform conditions of application of this Article, EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for such notification.

EBA shall submit those draft technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

Power is also conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’

(9) In Article 28, the following paragraph is added:

‘4. In order to ensure consistent harmonisation of this Article, EBA shall develop draft regulatory technical standards to specify the information to be notified in accordance with this Article.

In order to ensure uniform conditions of application of this Article, EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for such notification.

EBA shall submit those draft technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.

Power is also conferred on the Commission to adopt the implementing technical standards referred to in the second subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’

(10) In Article 33, the first paragraph is replaced by the following:

'Before following the procedure provided for in Article 30, the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of depositors, investors and others to whom services are provided. The Commission, EBA and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.'

(11) Article 36 is replaced by the following:

*'Article 36*

The Member States shall inform the Commission and EBA of the number and type of cases in which there has been a refusal pursuant to Article 25 and Article 26(1), (2) and (3) or in which measures have been taken in accordance with Article 30(3).'

(12) Article 38(2) is replaced by the following:

'2. The competent authorities shall notify the Commission, EBA and the European Banking Committee of all authorisations for branches granted to credit institutions having their head office in a third country.'

(13) In Article 39 is amended as follows:

(a) in paragraph 2, the following point is added:

'(c) that EBA is able to obtain the information from the competent authorities of the Member States received from national authorities of third countries in accordance with Article 35 of Regulation (EU) No 1093/2010;'

(b) the following paragraph is added:

'4. EBA shall assist the Commission for the purposes of this Article in accordance with Article 33 of Regulation (EU) No 1093/2010.'

(14) In Article 42, the following paragraphs are added:

'The competent authorities may refer to EBA situations where a request for collaboration, in particular to exchange information, has been rejected or has not been acted upon within a reasonable time. Without prejudice to Article 258 of the Treaty on the Functioning of the European Union (TFEU), EBA may, in situations referred to in the first sentence, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.

In order to ensure consistent harmonisation of this Article, EBA shall develop draft regulatory technical standards to specify the information contained in this Article.

In order to ensure uniform conditions of application of this Article, EBA shall develop draft implementing technical standards to establish standard forms, templates and procedures for the information sharing requirements which are likely to facilitate the monitoring of credit institutions.

EBA shall submit those draft technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the third paragraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

Power is also conferred on the Commission to adopt the implementing technical standards referred to in the fourth paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.'

(15) Article 42a is amended as follows:

(a) in paragraph 1, the following subparagraph is inserted after the fourth subparagraph:

'If, at the end of the initial two-month period any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities of the host Member State shall defer their decision and await the decision that EBA may take in accordance with Article 19(3) of that Regulation. The competent authorities of the host Member State shall take their decision in conformity with that of EBA. The two-month period shall be deemed to be the "conciliation phase" within the meaning of Article 19 of that Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the initial two month period or after a joint decision has been reached.'

(b) in paragraph 3, the following subparagraphs are added:

'In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards in order to specify general conditions for the functioning of colleges of supervisors.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the fourth subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

In order to ensure uniform conditions of application of this Article, EBA may develop draft implementing technical standards in order to determine the operational functioning of colleges of supervisors.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the sixth subparagraph in accordance with Article 15 of Regulation (EU) No 1093/2010.'

(16) Article 42b is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. In the exercise of their duties, the competent authorities shall take into account the convergence in respect of supervisory tools and supervisory practices in the application of the laws, regulations and administrative requirements adopted pursuant to this Directive. For that purpose, Member States shall ensure that:

- (a) the competent authorities participate in the activities of EBA;
- (b) the competent authorities follow the guidelines and recommendations of EBA and state the reasons if they do not do so;
- (c) national mandates conferred on the competent authorities do not inhibit the performance of their duties as members of EBA or under this Directive.;

(b) paragraph 2 is deleted.

(17) Article 44(2) is replaced by the following:

'2. Paragraph 1 shall not prevent the competent authorities of the various Member States from exchanging information or transmitting information to EBA in accordance with this Directive, with other Directives applicable to credit institutions, and with Articles 31 and 35 of Regulation (EU) No 1093/2010. That information shall be subject to the conditions relating to professional secrecy set out in paragraph 1'.

(18) Article 46 is replaced by the following:

*Article 46*

In accordance with Article 33 of Regulation (EU) No 1093/2010, Member States and EBA may conclude cooperation agreements, providing for exchanges of information, with the competent authorities of third countries or with authorities or bodies of third countries as defined in Article 47 and Article 48(1) of this Directive only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in Article 44(1) of this Directive. Such exchange of information shall be for the purpose of performing the supervisory tasks of those authorities or bodies.

Where the information originates in another Member State, it shall not be disclosed without the express agreement of the authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.'

(19) Article 49 is amended as follows:

(a) the first paragraph is replaced by the following:

'This Section shall not prevent a competent authority from transmitting information to the following for the purposes of their tasks:

- (a) central banks of the European System of the Central Banks and other bodies with a similar function in their capacity as monetary authorities when the information is relevant for the exercise of their respective statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems, and the safeguarding of stability of the financial system;
- (b) where appropriate, other public authorities responsible for overseeing payment systems;
- (c) the European Systemic Risk Board (hereinafter the "ESRB"), where that information is relevant for the exercise of its statutory tasks under Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (\*).

This Section shall not prevent the authorities or bodies referred to in the first subparagraph from communicating to the competent authorities such information as they may need for the purposes of Article 45.

(\*) OJ L 331, 15.12.2010, p. 1.;

(b) the fourth paragraph is replaced by the following:

'In an emergency situation as referred to in Article 130(1), Member States shall allow the competent authorities to communicate, without delay, information to the central banks in the European System of the Central Banks where that information is relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, the oversight of payments, clearing and securities settlement systems, and the safeguarding stability of the financial system, and to the ESRB under Regulation (EU) No 1092/2010, where such information is relevant for the exercise of its statutory tasks.'

(20) Article 63a is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. The provisions governing the instrument shall provide for principal, unpaid interest or dividend to be such as to absorb losses and to not hinder the recapitalisation of the credit institution through appropriate mechanisms, as developed by EBA under paragraph 6';

- (b) paragraph 6 is replaced by the following:
- ‘6. In order to ensure consistent harmonisation and to ensure the convergence of supervisory practices, EBA shall develop draft regulatory technical standards to specify the requirements applicable to the instruments referred to in paragraph 1 of this Article EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014. Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.
- EBA shall also issue guidelines in relation to instruments referred to in point (a) of the first paragraph of Article 57.
- EBA shall monitor the application of those guidelines.’
- (21) In Article 74(2), the second subparagraph is replaced by the following:
- ‘In order to ensure uniform conditions of application of this Directive, for the communication of those calculations by credit institutions, the competent authorities shall apply, from 31 December 2012, uniform formats, frequencies and dates of reporting. In order to ensure uniform conditions of application of this Directive, EBA shall develop draft implementing technical standards to introduce, within the Union, uniform formats (with associated instructions), frequencies and dates of reporting before 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions’ activities.
- In order to ensure uniform conditions of application of this Directive, EBA shall also develop draft implementing technical standards regarding IT solutions to be applied for such reporting.
- Power is conferred on the Commission to adopt the implementing technical standards referred to in the second and third subparagraphs in accordance with Article 15 of Regulation (EU) No 1093/2010.’
- (22) In Article 81(2) the following subparagraphs are added:
- ‘In order to ensure consistent harmonisation of this Article, EBA, in consultation with the European Supervisory Authority (European Securities and Markets Authority) (hereinafter “ESMA”), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (\*), shall develop draft regulatory technical standards to specify the assessment methodology relating to credit assessments. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.
- Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.
- (23) In Article 84(2), the following subparagraphs are added:
- ‘In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards to specify the assessment methodology under which the competent authorities permit credit institutions to use the IRB approach.
- Power is delegated to the Commission to adopt the regulatory technical standards referred to in point (a) of the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.’
- (24) In Article 97(2), the following subparagraphs are added:
- ‘In order to ensure consistent harmonisation of this Article, EBA, in consultation with ESMA, shall develop draft regulatory technical standards to specify the assessment methodology relating to credit assessments. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.
- Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.’
- (25) In Article 105(1), the following subparagraphs are added:
- ‘In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards to specify the assessment methodology under which the competent authorities permit credit institutions to use Advanced Measurement Approaches.
- Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.’
- (26) In Article 106(2), the second subparagraph is replaced by the following:
- ‘In order to ensure consistent harmonisation of this paragraph, EBA shall develop draft regulatory technical standards in order to specify the exemptions in points (c) and (d) as well as to specify the conditions used to determine the existence of a group of connected clients, as stated in paragraph 3. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.
- Power is delegated to the Commission to adopt the regulatory technical standards referred to the second subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(\*) OJ L 331, 15.12.2010, p. 84.’

(27) Article 110(2) is replaced by the following:

‘2. Member States shall provide that reporting shall be carried out at least twice a year. The competent authorities shall apply, from 31 December 2012, uniform formats, frequencies and dates of reporting. In order to ensure uniform conditions of application of this Directive, EBA shall develop draft implementing technical standards to introduce, within the Union, uniform formats (with associated instructions), frequencies and dates of reporting before 1 January 2012. The reporting formats shall be proportionate to the nature, scale and complexity of the credit institutions’ activities.

In order to ensure uniform conditions of application of this Directive, EBA shall also develop draft implementing technical standards regarding IT solutions to be applied for such reporting.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first and second subparagraphs in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1093/2010.’

(28) In Article 111(1), the fourth subparagraph is replaced by the following:

‘Member States may set a lower limit than EUR 150 million and shall inform EBA and the Commission thereof.’

(29) Article 122a(10) is replaced by the following:

‘10. EBA shall report to the Commission annually on the compliance with this Article by the competent authorities.

In order to ensure consistent harmonisation of this Article, EBA shall develop draft regulatory technical standards for the convergence of supervisory practices with regard to this Article, including the measures taken in case of breach of the due diligence and risk management obligations. EBA shall submit those draft regulatory technical standards to the Commission by 1 January 2014.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(30) In Article 124, the following paragraph is added:

‘6. In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards to specify this Article and a common risk assessment procedure and methodology.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.’

(31) Article 126(4) is replaced by the following.

‘4. The competent authorities shall notify the Commission and EBA of any agreement falling within paragraph 3.’

(32) Article 129 is amended as follows:

(a) in paragraph 1, the following subparagraph is inserted after the first subparagraph:

‘Where the consolidating supervisor fails to carry out the tasks referred to in the first subparagraph or where the competent authorities do not cooperate with the consolidating supervisor to the extent required in carrying out the tasks in the first subparagraph, any of the competent authorities concerned may refer the matter to EBA, which may act in accordance with Article 19 of Regulation (EU) No 1093/2010.’;

(b) in paragraph 2, the following is added to the fifth subparagraph:

‘If, at the end of the six month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation on its decision, and shall take its decision in conformity with the decision of EBA. The six-month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the six month period or after a joint decision has been reached.’;

(c) in paragraph 2, the following subparagraphs are added:

‘EBA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in this paragraph, with regard to the applications for permissions referred to in Article 84(1), Article 87(9) and Article 105 and in Annex III part 6, with a view to facilitating joint decisions.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the sixth and the seventh subparagraphs in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1093/2010.’;

(d) paragraph 3 is amended as follows:

(i) in the third subparagraph, the term ‘Committee of European Banking Supervisors’ is replaced by ‘EBA’;

- (ii) the fourth subparagraph is replaced by the following:

'In the absence of such a joint decision between the competent authorities within 4 months, a decision on the application of Articles 123 and 124 and Article 136(2) shall be taken on a consolidated basis by the consolidating supervisor after duly considering the risk assessment of subsidiaries performed by relevant competent authorities. If, at the end of the four month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the consolidating supervisor shall defer its decision and await any decision that EBA may take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The four month period shall be deemed the conciliation period within the meaning of the Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the four month period or after a joint decision has been reached.'

- (iii) the fifth subparagraph is replaced by the following:

'The decision on the application of Articles 123 and 124 and Article 136(2) shall be taken by the respective competent authorities responsible for supervision of subsidiaries of a Union parent credit institution or a Union parent financial holding company on an individual or sub-consolidated basis after duly considering the views and reservations expressed by the consolidating supervisor. If, at the end of the four-month period, any of the competent authorities concerned has referred the matter to EBA in accordance with Article 19 of Regulation (EU) No 1093/2010, the competent authorities shall defer their decision and await any decision that EBA shall take in accordance with Article 19(3) of that Regulation, and shall take its decision in conformity with the decision of EBA. The four month period shall be deemed the conciliation period within the meaning of that Regulation. EBA shall take its decision within 1 month. The matter shall not be referred to EBA after the end of the four-month period or after a joint decision has been reached.'

- (iv) the seventh subparagraph is replaced by the following:

'Where EBA has been consulted, all the competent authorities shall consider its advice, and explain any significant deviation therefrom.'

- (v) the tenth subparagraph is replaced by the following:

'EBA may develop draft implementing technical standards to ensure uniform conditions of application of the joint decision process referred to in this

paragraph, with regard to the application of Articles 123 and 124 and Article 136(2) with a view to facilitating joint decisions.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the tenth subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1093/2010.'

- (33) In Article 130(1), the first and second subparagraphs are replaced by the following:

'1. Where an emergency situation, including a situation as defined in Article 18 of Regulation (EU) No 1093/2010 or a situation of adverse developments in markets, arises, which potentially jeopardises the market liquidity and the stability of the financial system in any of the Member State where entities of a group have been authorised or where significant branches referred to in Article 42a are established, the consolidating supervisor shall, subject to Chapter 1, Section 2, alert as soon as is practicable, EBA, ESRB and the authorities referred to in the fourth subparagraph of Article 49 and in Article 50 and shall communicate all information essential for the pursuance of their tasks. Those obligations shall apply to all competent authorities under Articles 125 and 126 and to the competent authority identified under Article 129(1).

If the authority referred to in the fourth paragraph of Article 49 becomes aware of a situation described in the first subparagraph, it shall alert as soon as is practicable the competent authorities referred to in Articles 125 and 126, and EBA.'

- (34) In Article 131, the third paragraph is replaced by the following:

'The competent authorities responsible for authorising the subsidiary of a parent undertaking which is a credit institution may, by bilateral agreement, in accordance with Article 28 of Regulation (EU) No 1093/2010, delegate their responsibility for supervision to the competent authorities which authorised and supervise the parent undertaking so that they assume responsibility for supervising the subsidiary in accordance with this Directive. EBA shall be kept informed of the existence and content of such agreements. It shall forward such information to the competent authorities of the other Member States and to the European Banking Committee.'

- (35) Article 131a is amended as follows:

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

'1. The consolidating supervisor shall establish colleges of supervisors to facilitate the exercise of the tasks referred to in Article 129 and Article 130(1) and subject to the confidentiality requirements of paragraph 2 of this Article and compatibility with Union law, ensure appropriate coordination and cooperation with relevant third-country competent authorities where appropriate.



EBA shall contribute to promoting and monitoring the efficient, effective and consistent functioning of colleges of supervisors referred to in this Article in accordance with Article 21 of Regulation (EU) No 1093/2010. To that end, EBA shall participate as it deems appropriate and shall be considered as a competent authority for that purpose.

Colleges of supervisors shall provide a framework for the consolidating Supervisor, EBA and the other competent authorities concerned to carry out the following tasks:

- (a) exchanging information among themselves and with EBA in accordance with Article 21 of Regulation (EU) No 1093/2010;
- (b) agreeing on voluntary entrustment of tasks and voluntary delegation of responsibilities where appropriate;
- (c) determining supervisory examination programmes based on a risk assessment of the group in accordance with Article 124;
- (d) increasing the efficiency of supervision by removing unnecessary duplication of supervisory requirements, including in relation to the information requests referred to in Article 130(2) and Article 132(2);
- (e) consistently applying the prudential requirements under this Directive across all entities within a banking group without prejudice to the options and discretions available in Union legislation;
- (f) applying Article 129(1)(c) taking into account the work of other forums that may be established in that area.

The competent authorities participating in the colleges of supervisors and EBA shall cooperate closely. The confidentiality requirements under Chapter 1, Section 2 shall not prevent the competent authorities from exchanging confidential information within colleges of supervisors. The establishment and functioning of colleges of supervisors shall not affect the rights and responsibilities of the competent authorities under this Directive.;

(b) in paragraph 2:

- (i) the second subparagraph is replaced by the following:

'In order to ensure consistent harmonisation of this Article, EBA may develop draft regulatory technical standards in order to specify general conditions of functioning of the colleges of supervisors.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the second subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

In order to ensure uniform conditions of application of this Article, EBA may develop draft implementing technical standards in order to determine the operational functioning of the colleges of supervisors.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the fourth subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1093/2010.;

- (ii) the sixth subparagraph is replaced by the following:

'The consolidating supervisor, subject to the confidentiality requirements under Chapter 1, Section 2, shall inform EBA of the activities of the college of supervisors, including in emergency situations, and communicate to EBA all information that is of particular relevance for the purposes of supervisory convergence.'

(36) Article 132(1) is amended as follows:

- (a) the following subparagraphs are inserted after the first subparagraph:

'The competent authorities shall cooperate with EBA for the purposes of this Directive, in accordance with Regulation (EU) No 1093/2010.

The competent authorities shall provide EBA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No 1093/2010, in accordance with Article 35 of that Regulation.;

- (b) the following subparagraphs are added:

'The competent authorities may refer to EBA situations where:

- (a) a competent authority has not communicated essential information, or
- (b) a request for cooperation, in particular to exchange relevant information, has been rejected or has not been acted upon within a reasonable time.

Without prejudice to Article 258 TFEU, EBA may, in situations referred to in the seventh subparagraph, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1093/2010.'

(37) In Article 140, paragraph 3 is replaced by the following:

- '3. The competent authorities responsible for supervision on a consolidated basis shall establish lists of the financial holding companies referred to in Article 71(2). Those lists shall be communicated to the competent authorities of the other Member States, to EBA and to the Commission.'

(38) Article 143 is amended as follows:

(a) paragraph (2) is amended as follows:

(i) the following sentence is added at the end of the first subparagraph:

‘EBA shall assist the Commission and the European Banking Committee in carrying out those tasks, including as to whether such guidance should be updated.’;

(ii) the second subparagraph is replaced by the following:

‘The competent authority carrying out the verification referred to in the first subparagraph of paragraph 1 shall take into account any such guidance. For that purpose, the competent authority shall consult EBA before adopting a decision.’.

(b) in paragraph 3, the fourth subparagraph is replaced by the following:

‘The supervisory techniques shall be designed to achieve the objectives of consolidated supervision as defined in this Chapter and shall be notified to the other competent authorities involved, EBA and the Commission.’.

(39) In Article 144, the following paragraphs are added:

‘In order to ensure uniform conditions of application of this Article, EBA shall develop draft implementing technical standards to determine the format, structure, contents list and annual publication date of the disclosures provided for in this Article. EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third paragraph in accordance with Article 15 of Regulation (EU) No 1093/2010.’.

(40) In Article 150, the following paragraph is added:

‘3. EBA shall develop draft implementing technical standards to ensure uniform conditions of application of this Directive with respect to the conditions of application of:

(a) points 15 to 17 of Annex V;

(b) point 23(l) of Annex V as regards the criteria to determine the appropriate ratios between fixed and the variable component of the total remuneration and of point 23(o)(ii) of Annex V as regards specifying the classes of instruments that satisfy the conditions laid down in that point.

(c) Part 2 of Annex VI as regards the quantitative factors referred to in point 12, the qualitative factors referred to in point 13 and the benchmark referred to in point 14;

EBA shall submit those draft implementing technical standards to the Commission by 1 January 2014.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the procedure laid down in Article 15 of Regulation (EU) No 1093/2010.’.

(41) Article 156 is amended as follows:

(a) the term ‘Committee of European Banking Supervisors’ is replaced by ‘EBA’;

(b) the first subparagraph is replaced by the following:

‘The Commission, in cooperation with EBA and the Member States, and taking into account the contribution of the European Central Bank, shall periodically monitor whether this Directive, together with Directive 2006/49/EC, has significant effects on the economic cycle and, in the light of that examination, shall consider whether any remedial measures are justified.’.

#### Article 10

#### Amendments to Directive 2006/49/EC

Directive 2006/49/EC is hereby amended as follows:

(1) In Article 18, the following paragraph is added:

‘5. The European Supervisory Authority (European Banking Authority) (hereinafter “EBA”) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (\*), may develop draft regulatory technical standards to specify the assessment methodology under which competent authorities permit institutions to use internal models for the purposes of calculating capital requirements under this Directive.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1093/2010.

(\*) OJ L 331, 15.12.2010, p. 12.’.

(2) In Article 22(1), the following subparagraph is added:

‘Where the competent authorities waive the application of capital requirements on a consolidated basis provided for in this Article, they shall notify the Commission and EBA.’.

(3) Article 32(1) is amended as follows:

(a) the second subparagraph is replaced by the following:

‘The competent authorities shall notify EBA, the Council and the Commission of those procedures.’;

(b) the following subparagraph is added:

‘EBA shall issue guidelines in relation to the procedures referred to in this paragraph.’.

(4) Article 36(1) is replaced by the following:

'1. Member States shall designate the authorities which are competent to carry out the duties provided for in this Directive. They shall inform EBA and the Commission thereof, indicating any division of duties.'

(5) In Article 38(1), the following subparagraphs are added:

'The competent authorities shall cooperate with EBA for the purposes of this Directive, in accordance with Regulation (EU) No 1093/2010.

The competent authorities shall without delay provide EBA with all information necessary to carry out its duties under this Directive and under Regulation (EU) No 1093/2010, in accordance with Article 35 of that Regulation.'

#### Article 11

#### Amendments to Directive 2009/65/EC

Directive 2009/65/EC is hereby amended as follows:

(1) In Article 5, the following paragraph is added:

'8. In order to ensure consistent harmonisation of this Article the European Supervisory Authority (European Securities and Markets Authority) (hereinafter "ESMA"), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council (\*) may develop draft regulatory technical standards to specify the information to be provided to the competent authorities in the application for authorisation of a UCITS.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

(\*) OJ L 331, 15.12.2010, p. 84.'

(2) In Article 6(1) the following subparagraph is added:

'ESMA shall be notified of every authorisation granted and shall publish and keep up-to-date a list of authorised management companies on its website.'

(3) In Article 7, the following paragraph is added:

'6. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify:

- (a) the information to be provided to the competent authorities in the application for the authorisation of the management company, including the programme of activity;
- (b) the requirements applicable to the management company under paragraph 2 and the information for the notification provided for in paragraph 3;

(c) the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as provided for in Article 8(1) of this Directive and in Article 10(1) and (2) of Directive 2004/39/EC, in accordance with Article 11 of this Directive.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in points (a) and (b) of the first subparagraph.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'

(4) Article 9(2) is replaced by the following:

'2. Member States shall inform ESMA and the Commission of any general difficulties which UCITS encounter in marketing their units in any third country.

The Commission shall examine such difficulties as quickly as possible in order to find an appropriate solution. ESMA shall assist it in discharging that task.'

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

'3. In order to ensure consistent harmonisation of this Directive, ESMA may develop draft regulatory technical standards to establish an exhaustive list of information, as provided for in this Article, with reference to Article 10b(4) of Directive 2004/39/EC, to be included by proposed acquirers in their notification, without prejudice to Article 10a(2) of that Directive.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities, as provided for in this Article, with reference to Article 10(4) of Directive 2004/39/EC.

Power is conferred to the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(6) Article 12 is amended as follows:

(a) paragraph 3 is amended as follows:

(i) the first subparagraph is replaced by the following:

‘3. Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying the procedures and arrangements as referred to under point (a) of the second subparagraph of paragraph 1 and the structures and organisational requirements to minimise conflicts of interests as referred to under point (b) of the second subparagraph of paragraph 1.’;

(ii) the second subparagraph is deleted.

(b) the following paragraph is added:

‘4. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of applications of the delegated acts adopted by the Commission regarding the procedures, arrangements, structures and organisational requirements referred to in paragraph 3.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(7) Article 14 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) in the first subparagraph, the introductory part is replaced by the following:

‘2. Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures with a view to ensuring that the management company complies with the duties set out in paragraph 1, in particular to:’;

(ii) the second subparagraph is deleted.

(b) the following paragraph is added:

‘3. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the delegated acts adopted by the Commission regarding the criteria, principles and steps referred to in paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(8) In Article 17, the following paragraph is added:

‘10. In order to ensure consistent harmonisation of this Article ESMA may develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 1, 2, 3, 8 and 9.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3 and 9.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(9) In Article 18, the following paragraph is added:

‘5. In order to ensure consistent harmonisation of this Article ESMA may develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 1, 2 and 4.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 2 and 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(10) In Article 20, the following paragraph is added:

‘5. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to determine the information to be provided to the competent authorities in the application for managing a UCITS established in another Member State.

The Commission may adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for such provision of information.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

(11) Article 21 is amended as follows:

(a) paragraph 5 is replaced by the following:

‘5. If, despite the measures taken by the competent authorities of the management company’s home Member State or because such measures prove to be inadequate or are not available in the Member State in question, the management company continues to refuse to provide the information requested by the management company’s host Member State pursuant to paragraph 2, or persists in breaching the legal or regulatory provisions, referred to in the same paragraph, in force in the management company’s host Member State, the competent authorities of the management company’s host Member State may take either of the following actions:

(a) after informing the competent authorities of the management company’s home Member State, take appropriate measures, including under Articles 98 and 99, to prevent or penalise further irregularities and, in so far as necessary, to prevent that management company from initiating any further transaction within its territory. Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on management companies. Where the service provided within the management company’s host Member State is the management of a UCITS, the management company’s host Member State may require the management company to cease managing that UCITS; or

(b) where they consider that the competent authority of the management company’s home Member State has not acted adequately, refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.’

(b) in paragraph 7, the first and second subparagraphs are replaced by the following:

‘7. Before following the procedure laid down in paragraphs 3, 4 or 5, the competent authorities of the management company’s host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission, ESMA, and the competent authorities of the other Member

States concerned shall be informed of such measures at the earliest opportunity.

After consulting the competent authorities of the Member States concerned, the Commission may decide that the Member State in question must amend or abolish those measures, without prejudice to power of ESMA under Article 17 of Regulation (EU) No 1095/2010.’

(c) in paragraph 9, the first subparagraph is replaced by the following:

‘9. Member States shall inform ESMA and the Commission of the number and type of cases in which they refuse authorisation under Article 17 or an application under Article 20 and of any measures taken in accordance with paragraph 5 of this Article.’

(12) Article 23(6) is amended as follows:

(a) the first subparagraph is replaced by the following:

‘6. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures in relation to the measures to be taken by a depositary in order to fulfil its duties regarding a UCITS managed by a management company established in another Member State, including the particulars that need to be included in the standard agreement to be used by the depositary and the management company in accordance with paragraph 5.’

(b) the second subparagraph is deleted.

(13) In Article 29, the following paragraphs are added:

‘5. In order to ensure consistent harmonisation of this Directive, ESMA may develop draft regulatory technical standards to specify:

(a) the information to be provided to the competent authorities in the application for the authorisation of the investment company, including the programme of operations; and

(b) the obstacles which may prevent effective exercise of the supervisory functions of the competent authority under paragraph 1(c).

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the provision of information referred to in point (a) of the first subparagraph of paragraph 5.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

(14) Article 32(6) is replaced by the following:

‘6. Member States shall inform ESMA and the Commission of the identities of the investment companies benefiting from the derogations provided for in paragraphs 4 and 5.’

(15) Article 33(6) is amended as follows:

(a) the first subparagraph is replaced by the following:

‘6. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures in relation to the measures to be taken by a depositary in order to fulfil its duties regarding a UCITS managed by a management company established in another Member State, including the particulars that need to be included in the standard agreement to be used by the depositary and the management company in accordance with paragraph 5.’;

(b) the second subparagraph is deleted.

(16) Article 43 is amended as follows:

(a) in paragraph 5:

(i) the first subparagraph is replaced by the following:

‘5. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying the detailed content, format and method by which to provide the information referred to in paragraphs 1 and 3.’;

(ii) the second subparagraph is deleted.

(b) the following paragraph is added:

‘6. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of applications of the delegated acts adopted by the Commission regarding the content, format and method by which the information referred to in paragraphs 1 and 3 of this Article is to be provided.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(17) In Article 50, the following paragraph is added:

‘4. In order to ensure consistent harmonisation of this Article ESMA may develop draft regulatory technical standards to specify the provisions concerning the categories of assets in which UCITS can invest in accordance with this Article and with delegated acts adopted by the Commission which relate to such provisions.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’.

(18) Article 51 is amended as follows:

(a) in paragraph 1, the following subparagraph is added:

‘Competent authorities shall ensure that all information received under the third paragraph aggregated in respect of all the management or investment companies they supervise is accessible to ESMA in accordance with Article 35 of the Regulation (EU) No 1095/2010, and the European Systemic Risk Board (the “ESRB”) established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board (\*) in accordance with Article 15 of that Regulation for the purpose of monitoring systemic risks at Union level.

(\*) OJ L 331, 15.12.2010, p. 1.’;

(b) paragraph 4 is replaced by the following:

‘4. Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying the following:

(a) criteria for assessing the adequacy of the risk management process employed by the management company in accordance with the first subparagraph of paragraph 1;

(b) detailed rules regarding the accurate and independent assessment of the value of OTC derivatives; and

(c) detailed rules regarding the content of and procedure to be followed for communicating the information referred to in the third subparagraph of paragraph 1 to the competent authorities of the management company’s home Member State.’;

(c) the following paragraph is added:

‘5. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the criteria and rules referred to in paragraph 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’.

(19) In Article 52(4), the third subparagraph is replaced by the following:

'Member States shall send to ESMA and to the Commission a list of the categories of bonds referred to in the first subparagraph together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in that subparagraph, to issue bonds complying with the criteria set out in this Article. A notice specifying the status of the guarantees offered shall be attached to those lists. The Commission and ESMA shall immediately forward that information to the other Member States together with any comments they consider appropriate and shall make the information available to the public on their website. Such communications may be the subject of exchanges of views within the European Securities Committee referred to in Article 112(1).'

(20) Article 60 is amended as follows:

(a) in paragraph 6:

(i) in the first subparagraph, the introductory part is replaced by the following:

'6. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying:'

(ii) the second subparagraph is deleted;

(b) the following paragraph is added:

'7. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the agreement, measures and procedures referred to in paragraph 6.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the Article 15 of Regulation (EU) No 1095/2010.'

(21) Article 61 is amended as follows:

(a) paragraph 3 is replaced by the following:

'3. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures further specifying the following:

(a) the particulars that need to be included in the agreement referred to in paragraph 1; and

(b) the types of irregularities referred to in paragraph 2 which are deemed to have a negative impact on the feeder UCITS.'

(b) the following paragraph is added:

'4. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the agreement, measures and types of irregularities referred to in paragraph 3.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'

(22) Article 62(4) is replaced by the following:

'4. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying the content of the agreement referred to in the first subparagraph of paragraph 1.'

(23) Article 64 is amended as follows:

(a) paragraph 4 is replaced by the following:

'4. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying:

(a) the format and the manner in which to provide the information referred to in paragraph 1; or

(b) in the event that the feeder UCITS transfers all or parts of its assets to the master UCITS in exchange for units, the procedure for valuing and auditing such a contribution in kind and the role of the depositary of the feeder UCITS in that process.'

(b) the following paragraph is added:

'5. In order to ensure uniform conditions of application in which the information is provided, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the format and the manner of the information provided and procedure referred to in paragraph 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.'

(24) In Article 69, the following paragraph is added:

'5. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the provisions concerning the content of the prospectus, the annual report and the half-yearly report as laid down in Annex I, and the format of those documents.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’

(25) In Article 75, paragraph 4 is replaced by the following:

‘4. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures which define the specific conditions which need to be met when providing the prospectus in a durable medium other than paper or by means of a website which does not constitute a durable medium.’

(26) Article 78 is amended as follows:

(a) paragraph 7 is replaced by the following:

‘7. The Commission shall adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures which define the following:

(a) the detailed and exhaustive content of the key investor information to be provided to investors as referred to in paragraphs 2, 3 and 4;

(b) the detailed and exhaustive content of the key investor information to be provided to investors in the following specific cases:

(i) for UCITS having different investment compartments, the key investor information to be provided to investors subscribing to a specific investment compartment, including how to pass from one investment compartment into another and the costs related thereto,

(ii) for UCITS offering different share classes, the key investor information to be provided to investors subscribing to a specific share class,

(iii) for fund of funds structures, the key investor information to be provided to investors subscribing to a UCITS, which invests itself in other UCITS or other collective investment undertakings referred to in Article 50(1)(e),

(iv) for master-feeder structures, the key investor information to be provided to investors subscribing to a feeder UCITS,

(v) for structured, capital protected and other comparable UCITS, the key investor information to be provided to investors in relation to the special characteristics of such UCITS; and

(c) the specific details of the format and presentation of the key investor information to be provided to investors as referred to in paragraph 5.’

(b) the following paragraph is added:

‘8. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission in accordance with paragraph 7 regarding the information referred to in paragraph 3.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

(27) Article 81(2) is replaced by the following:

‘2. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures which define the specific conditions which need to be met when providing key investor information in a durable medium other than on paper or by means of a website which does not constitute a durable medium.’

(28) In Article 83, the following paragraph is added:

‘3. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the requirements of this Article relating to borrowing.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’

(29) In Article 84, the following paragraph is added:

‘4. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the conditions which need to be met by the UCITS after the adoption of the temporary suspension of the re-purchase or redemption of the units of the UCITS as referred to in paragraph 2(a), once the suspension has been decided.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.’

(30) Article 95 is replaced by the following:

‘Article 95

1. The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying:

(a) the scope of the information referred to in Article 91(3);



- (b) the facilitation of access for the competent authorities of the UCITS host Member States to the information or documents referred to in Article 93(1), (2) and (3) in accordance with Article 93(7).

2. In order to ensure uniform conditions of application of Article 93, ESMA may develop draft implementing technical standards to determine:

- (a) the form and contents of a standard model notification letter to be used by a UCITS for the purpose of notification referred to in Article 93(1), including an indication as to which documents the translations refer to;
- (b) the form and contents of a standard model attestation to be used by competent authorities of Member States referred to in Article 93(3);
- (c) the procedure for the exchange of information and the use of electronic communication between competent authorities for the purpose of notification under Article 93.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010<sup>1</sup>.

(31) Article 97(1) is replaced by the following:

‘1. Member States shall designate the competent authorities which are to carry out the duties provided for in this Directive. They shall inform ESMA and the Commission thereof, indicating any division of duties.’

(32) Article 101 is amended as follows:

- (a) the following paragraph is inserted:

‘2a. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.’;

- (b) paragraphs 8 and 9 are replaced by the following:

‘8. The competent authorities may refer to ESMA situations where a request:

- (a) to exchange information as provided for in Article 109 has been rejected or has not been acted upon within a reasonable time;
- (b) to carry out an investigation or on-the-spot verification as provided for in Article 110 has been rejected or has not been acted upon within a reasonable time; or

- (c) for authorisation for its officials to accompany those of the competent authority of the other Member State has been rejected or has not been acted upon within a reasonable time.

Without prejudice to Article 258 of the Treaty of the Functioning of the European Union (TFEU), ESMA may, in situations referred to in the first subparagraph, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibilities for refusing to act on a request for information or for an investigation provided for in paragraph 6 of this Article and to the ability of ESMA to act in accordance with Article 17 of that Regulation in those cases.

9. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish common procedures for competent authorities to cooperate in on-the-spot verifications and investigations as referred to in paragraphs 4 and 5.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010<sup>2</sup>.

(33) Article 102 is amended as follows:

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

‘2. Paragraph 1 shall not prevent the competent authorities of the Member States from exchanging information in accordance with this Directive or other Union legislation applicable to UCITS or to undertakings contributing towards their business activity or from transmitting it to ESMA in accordance with Regulation (EU) No 1095/2010 or the ESRB. That information shall be subject to the conditions of professional secrecy laid down in paragraph 1.’;

- (b) in paragraph 5, the following point is added:

‘(d) ESMA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council (\*), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council (\*\*) and the ESRB.

(\*) OJ L 331, 15.12.2010, p. 12.

(\*\*) OJ L 331, 15.12.2010, p. 48.’.

(34) Article 103 is amended as follows:

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

‘3. Member States shall communicate to ESMA, to the Commission and to the other Member States the names of the authorities which may receive information pursuant to paragraph 1.’;

(b) paragraph 7 is replaced by the following:

‘7. Member States shall communicate to ESMA, to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to paragraph 4.’

(35) Article 105 is replaced by the following:

‘Article 105

In order to ensure uniform conditions of application of the provisions in this Directive concerning the exchange of information, ESMA may develop draft implementing technical standards to determine the conditions of application with regard to the procedures for exchange of information between competent authorities and between the competent authorities and ESMA.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.’

(36) Article 108(5) is amended as follows:

(a) point (b) of the first subparagraph is replaced by the following:

‘(b) if necessary, refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.’;

(b) the second subparagraph is replaced by the following:

‘The Commission and ESMA shall be informed without delay of any measure taken pursuant to point (a) of the first subparagraph.’

(37) The title of chapter XIII is replaced by the following:

‘DELEGATED ACTS AND POWERS OF EXECUTION’

(38) Article 111 is replaced by the following:

‘Article 111

The Commission may adopt technical amendments to this Directive in the following areas:

(a) clarification of the definitions in order to ensure consistent harmonisation and uniform application of this Directive throughout the Union; or

(b) alignment of terminology and the framing of definitions in accordance with subsequent acts on UCITS and related matters.

The measures referred to in the first subparagraph shall be adopted by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b.’

(39) Article 112 is replaced by the following:

‘Article 112

1. The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC.

2. The power to adopt the delegated acts referred to in Articles 12, 14, 23, 33, 43, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall be conferred on the Commission for a period of 4 years from 4 January 2011. The Commission shall draw up a report in respect of delegated powers at the latest 6 months before the end of the four-year period. The delegation of power shall be automatically extended for periods of an identical duration, unless the European Parliament or the Council revokes them in accordance with Article 112a.

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

4. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in Articles 112a and 112b.’

(40) The following Articles are inserted:

‘Article 112a

#### **Revocation of the delegation**

1. The delegation of power referred to in Articles 12, 14, 23, 33, 43, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke a delegation of power shall endeavour to inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating the delegated power which could be subject to revocation.

3. The decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Article 112b

#### **Objections to delegated acts**

1. The European Parliament or the Council may object to a delegated act within a period of 3 months from the date of notification. At the initiative of the European Parliament or the Council that period may be extended by 3 months.

2. If, on the expiry of the period referred to in paragraph 1, neither the European Parliament nor the Council has objected to the delegated act, it shall be published in the *Official Journal of the European Union* and shall enter into force on the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If either the European Parliament or the Council objects to a delegated act within the period referred to in paragraph 1, it shall not enter into force. In accordance with Article 296 TFEU, the institution which objects shall state the reasons for objecting to the delegated act.'

#### Article 12

##### Review

The Commission shall, by 1 January 2014, submit to the European Parliament and to the Council a report specifying whether the ESA have submitted the draft regulatory technical standards and the draft implementing technical standards provided for in this Directive, whether the submission is mandatory or optional, with any appropriate proposals.

#### Article 13

##### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with Article 1(1) and (2), Article 2(1)(a), Article 2(2), (5), (7) and (9), Article 2(11)(b), Article 3(4), Article 3(6)(a) and (b), Article 4(1)(a), Article 4(3), Article 5(5)(a), the first subparagraph of Article 5(5)(b), Article 5(6), (8), (9) (in relation to Article 18(3) of Directive 2003/71/EC), Article 5(10), Article 5(11)(a) and (b), Article 5(12), Article 6(1) (in relation to the first subparagraph of Article 5(3) of Directive 2004/39/EC), Article 6(3), Article 6(5)(a), Article 6(10), (13), (14) and (16), Article 6(17)(a) and (b), Article 6(18) and (19) (in relation to the first subparagraph of Article 53(3) of Directive 2004/39/EC), Article 6(21)(a) and (b),

Article 6(23)(b), Article 6(24), (25) and (27), Article 7(12)(a), Article 7(13), (14) (15) and (16), Article 9(1)(a), Article 9(2), (3), (4), (10), (11), (12), (15), (16), (17), (18), (20), (29) and (32), Article 9(33)(a) and (b), Article 9(33)(d)(ii) to (iv), Article 9(34) and (35), Article 9(36)(b)(ii), Article 9(37)(b), Article 9(38) and (39), Article 10(2), Article 10(3)(a), Article 10(4), Article 11(2), (4), (11), (14), (19) and (31), Article 11(32)(b) in regard to Article 101(8) of Directive 2009/65/EC, and Article 11(33), (34) and (36) of this Directive, by 31 December 2011. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### Article 14

##### Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

#### Article 15

##### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 24 November 2010.

For the European Parliament  
The President  
J. BUZEK

For the Council  
The President  
O. CHASTEL

## II

(Non-legislative acts)

## REGULATIONS

**COUNCIL REGULATION (EU) No 1096/2010****of 17 November 2010****conferring specific tasks upon the European Central Bank concerning the functioning of the European Systemic Risk Board**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 127(6) thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the European Parliament <sup>(1)</sup>,

Having regard to the opinion of the European Central Bank <sup>(2)</sup>,

Whereas:

(1) The financial crisis has revealed important shortcomings in financial supervision, which has failed to anticipate adverse macro-prudential developments and prevent the accumulation of excessive risks in the financial sector, and has in particular highlighted the weaknesses of the existing macro-prudential oversight.

(2) In November 2008, the Commission mandated a High Level Group chaired by Mr Jacques de Larosière (the de Larosière Group) to make recommendations on how to strengthen European supervisory arrangements with a view to better protecting the citizen and rebuilding trust in the financial system.

(3) In its final report presented on 25 February 2009, the de Larosière Group recommended, among other things, the establishment of a body at the level of the Union charged with overseeing risk in the financial system as a whole.

(4) In its Communication of 4 March 2009 entitled 'Driving European Recovery', the Commission welcomed and broadly supported the recommendations of the de Larosière Group. At its meeting of 19 and 20 March 2009, the European Council agreed on the need to improve the regulation and supervision of financial institutions within the Union and to use the de Larosière Group's report as a basis for action.

(5) In its Communication of 27 May 2009 entitled 'European Financial Supervision', the Commission set out a series of reforms to the current arrangements for safeguarding financial stability at the level of the Union, notably including the creation of a European Systemic Risk Board (ESRB) responsible for macro-prudential oversight. The Council, on 9 June 2009, and the European Council, at its meeting of 18 and 19 June 2009, supported the view of the Commission and welcomed the Commission's intention to bring forward legislative proposals so that the new framework could be fully established.

(6) Regulation (EU) No 1092/2010 of the European Parliament and of the Council <sup>(3)</sup> established macro-prudential oversight of the financial system at the level of the Union and a European Systemic Risk Board (ESRB).

(7) Given its expertise on macro-prudential issues, the European Central Bank (ECB) can make a significant contribution to the effective macro-prudential oversight of the Union's financial system.

<sup>(1)</sup> Opinion of 22 September 2010 (not yet published in the Official Journal).

<sup>(2)</sup> OJ C 270, 11.11.2009, p. 1.

<sup>(3)</sup> See page 1 of this Official Journal.

- (8) The Secretariat of the ESRB (the Secretariat) should be ensured by the ECB and, to this effect, the ECB should provide sufficient human and financial resources. The staff of the Secretariat should therefore be subject to the Conditions of Employment for Staff of the ECB. In particular, according to the preamble of the Decision of the ECB of 9 June 1998 on the adoption of the Conditions of Employment for Staff of the European Central Bank as amended on 31 March 1999 (ECB/1998/4) <sup>(1)</sup>, the staff of the ECB should be recruited on the broadest possible geographical basis from among nationals of the Member States.
- (9) On 9 June 2009, the Council concluded that the ECB should provide analytical, statistical, administrative and logistical support to the ESRB. As it is the task of the ESRB to cover all aspects and areas of financial stability, the ECB should involve national central banks and supervisors to provide their specific expertise. The option to confer specific tasks concerning policies relating to prudential supervision upon the ECB provided for by the Treaty on the Functioning of the European Union should therefore be exercised, by conferring on the ECB the task of ensuring the Secretariat to the ESRB.
- (10) The ECB should be entrusted with the task of providing statistical support to the ESRB. The collection and processing of information as set out in this Regulation and as necessary for the performance of the tasks of the ESRB should therefore fall under Article 5 of the Statute of the European System of Central Banks and of the ECB, and under Council Regulation (EC) No 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank <sup>(2)</sup>. Accordingly, confidential statistical information collected by the ECB or the European System of Central Banks should be shared with the ESRB. In addition, this Regulation should be without prejudice to Regulation (EC) No 223/2009 of the European Parliament and of the Council of 11 March 2009 on European statistics <sup>(3)</sup>.
- (11) The Secretariat should prepare the meetings of the ESRB and support the work of the General Board, the Steering Committee, the Advisory Technical Committee and the Advisory Scientific Committee of the ESRB. On behalf of the ESRB, the Secretariat should collect all information necessary for the achievement of the tasks of the ESRB,

HAS ADOPTED THIS REGULATION:

#### Article 1

### Membership

The President and Vice-President of the European Central Bank (ECB) shall be Members of the General Board of the European Systemic Risk Board (ESRB) as set up by Regulation (EU) No 1092/2010.

<sup>(1)</sup> OJ L 125, 19.5.1999, p. 32.

<sup>(2)</sup> OJ L 318, 27.11.1998, p. 8.

<sup>(3)</sup> OJ L 87, 31.3.2009, p. 164.

#### Article 2

### Support of the ESRB

The ECB shall ensure a Secretariat, and thereby provide analytical, statistical, logistical and administrative support to the ESRB. The mission of the Secretariat as defined in Article 4(4) of Regulation (EU) No 1092/2010, shall include in particular:

- (a) the preparation of the ESRB meetings;
- (b) in accordance with Article 5 of the Statute of the European System of Central Banks and the European Central Bank and Article 5 of this Regulation, the collection and processing of information, including statistical information, on behalf and for the benefit of the fulfilment of the tasks of the ESRB;
- (c) the preparation of the analyses necessary to carry out the tasks of the ESRB, drawing on technical advice from national central banks and supervisors;
- (d) the support to the ESRB in its international cooperation at administrative level with other relevant bodies on macro-prudential issues;
- (e) the support to the work of the General Board, the Steering Committee, the Advisory Technical Committee and the Advisory Scientific Committee.

#### Article 3

### Organisation of the Secretariat

1. The ECB shall provide sufficient human and financial resources for the fulfilment of its task of ensuring the Secretariat.
2. The head of the Secretariat shall be appointed by the ECB, in consultation with the General Board of the ESRB.

#### Article 4

### Management

1. The ESRB's Chair and its Steering Committee shall give directions to the head of the Secretariat on behalf of the ESRB.
2. The head of the Secretariat or his representative shall attend the meetings of the General Board, the Steering Committee, the Advisory Technical Committee and the Advisory Scientific Committee of the ESRB.

#### Article 5

### Collection of information on behalf of the ESRB

1. The ESRB shall determine the information necessary for the purposes of the performance of its tasks, as set out in Article 3 of Regulation (EU) No 1092/2010. In view thereof, the Secretariat shall collect all the necessary information on behalf of the ESRB on a regular and ad hoc basis, in accordance with Article 15 of Regulation (EU) No 1092/2010 and subject to Article 6 of this Regulation.

2. On behalf of the ESRB, the Secretariat shall make available to the European Supervisory Authorities the information on risks necessary for the performance of their tasks.

#### Article 6

##### **Confidentiality of information and documents**

1. Without prejudice to the application of criminal law, any confidential information received by the Secretariat while performing its duties may not be divulged to any person or authority outside the ESRB whatsoever, except in summary or aggregate form, such that individual financial institutions cannot be identified.

2. The Secretariat shall ensure that documents are submitted to the ESRB in a manner which ensures their confidentiality.

3. The ECB shall ensure the confidentiality of the information received by the Secretariat for the performance of the tasks of the ECB under this Regulation. The ECB shall establish internal mechanisms and adopt internal rules to ensure the protection of information collected by the Secretariat on behalf of the ESRB. The ECB staff shall comply with the applicable rules relating to professional secrecy.

4. Information acquired by the ECB as a result of the application of this Regulation shall only be used for the purposes mentioned in Article 2.

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

Done at Brussels, 17 November 2010.

#### Article 7

##### **Access to documents**

1. The Secretariat shall ensure the application of Decision of the European Central Bank of 4 March 2004 on public access to European Central Bank documents (ECB/2004/3) <sup>(1)</sup>.

2. The practical arrangements for the application of Decision ECB/2004/3 to documents relating to the ESRB, shall be adopted by 17 June 2011.

#### Article 8

##### **Review**

By 17 December 2013, the Council shall examine this Regulation, on the basis of a report from the Commission. After having received opinions from the ECB and from the European Supervisory Authorities, it shall determine whether this Regulation should be reviewed.

#### Article 9

##### **Entry into force**

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

It shall apply from 16 December 2010.

*For the Council*  
*The President*  
D. REYNDEERS

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<sup>(1)</sup> OJ L 80, 18.3.2004, p. 42.



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